

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

FORM 10-Q

(Mark one)

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

For the quarterly period ended September 30, 2024

OR

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number: 001-38701

SI-BONE, INC.

(Exact Name of Registrant as Specified in its Charter)

Delaware

(State or Other Jurisdiction of  
Incorporation or Organization)

471 El Camino Real , Suite 101 , Santa Clara , California  
(Address of principal executive offices)

26-2216351

(I.R.S. Employer  
Identification Number)

95050

(Zip Code)

Registrant's telephone number, including area code: ( 408 ) 207-0700

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

<u>Title of each class</u>	<u>Trading Symbol(s)</u>	<u>Name of each exchange on which registered</u>
Common Stock, par value \$0.0001 per share	SIBN	The Nasdaq Global Market

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 x No o

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes x No o

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

Large accelerated filer	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>	Non-accelerated filer	<input type="checkbox"/>
Smaller reporting company	<input type="checkbox"/>	Emerging growth company	<input type="checkbox"/>		

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act. ☐

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

The number of shares outstanding of the registrant's Common Stock was 41,938,179 as of October 31, 2024.

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## SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q contains forward-looking statements. All statements other than statements of historical facts contained in this Quarterly Report, including statements regarding our future results of operations and financial position, business strategy, prospective products and product candidates, sales force expansion, physician adoption, reimbursement determinations, clinical trial results, and U.S. Food and Drug Administration ("FDA") approvals, are forward-looking statements.

These statements involve known and unknown risks, uncertainties and other important factors that may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by the forward-looking statements.

In some cases, you can identify forward-looking statements by terms such as "may," "will," "should," "expect," "plan," "anticipate," "could," "intend," "target," "project," "contemplate," "believe," "estimate," "predict," "potential" or "continue" or the negative of these terms or other similar expressions, although not all forward-looking statements contain these identifying words. These forward-looking statements speak only as of the date of this Quarterly Report and are subject to a number of risks, uncertainties and assumptions, including those described under the sections in this Quarterly Report titled "Risk Factors" and "Management's Discussion and Analysis of Financial Condition and Results of Operations." These forward-looking statements include, but are not limited to, statements about the following:

- Our expectation that a significant portion of our revenues will be derived from sales of a series of patented titanium implants and the instruments used to implant them, as well as implantable bone products;
- our ability to develop and commercialize additional revenue opportunities, including new indications for use and new products;
- our ability to retain and selectively grow our sales team based on the demand for our products;
- our ability to identify, train, and retain physicians to perform procedures using our products;
- our ability to obtain and maintain favorable coverage and reimbursement determinations from third-party payors;
- our estimates of our market opportunity;
- our expectations regarding the scope of protection from intellectual property rights covering our products;
- developments or disputes concerning our intellectual property or other proprietary rights;
- timing of and results from our clinical trials;
- marketing clearances and authorization from the FDA and regulators in other jurisdictions and CE Certificates of Conformity from Notified Bodies;
- timing of regulatory filings and feedback;
- the impact of changes in coding and reimbursement of procedures using our products and related procedures and products;
- competition in the markets we serve;
- our expectations of the reliability and performance of our products;
- our expectations of the benefits of our products to patients, providers, and payors;
- factors impacting the supply chains we rely on, including the availability of raw materials and skilled labor serving our suppliers, and the cost of these factors of production which may in turn impact the prices we pay for our devices;
- our reliance on a limited number of suppliers, including sole source suppliers, which may impact the availability of instruments and materials;
- our ability to sustain or increase demand for our products;
- our estimates regarding our costs and risks associated with our international operations and expansion;
- our expectations regarding our ability to retain and recruit key personnel;
- our ability to attract and retain employees, including those with specialized skills and experience;

- our expectations regarding acquisitions and strategic operations;
- our ability to access capital markets;
- our ability to fund our working capital requirements;
- our compliance with, and the cost of, federal, state, and foreign regulatory requirements;
- the factors that may impact our financial results; and
- anticipated trends and challenges in our business and the markets in which we operate.

Forward-looking statements are based on management's current expectations, estimates, forecasts, and projections about our business and the industry in which we operate, and management's beliefs and assumptions are not guarantees of future performance or development and involve known and unknown risks, uncertainties, and other factors that are in some cases beyond our control. As a result, any or all of our forward-looking statements in this report may turn out to be inaccurate. Furthermore, if the forward-looking statements prove to be inaccurate, the inaccuracy may be material. In light of the significant uncertainties in these forward-looking statements, you should not regard these statements as a representation or warranty by us or any other person that we will achieve our objectives and plans in any specified time frame, or at all. In addition, statements that "we believe" and similar statements reflect our beliefs and opinions on the relevant subject. These statements are based upon information available to us as of the date of this Quarterly Report on Form 10-Q, and while we believe such information forms a reasonable basis for such statements, such information may be limited or incomplete, and our statements should not be read to indicate that we have conducted an exhaustive inquiry into, or review of, all potentially available relevant information. These statements are inherently uncertain and investors are cautioned not to unduly rely upon these statements.

Factors that may cause actual results to differ materially from current expectations include, among other things, those listed under "Risk Factors" in our Annual Report on Form 10-K for the year ended December 31, 2023, together with any updates in the section titled "Risk Factors" in this Quarterly Report on Form 10-Q. These statements, like all statements in this report, speak only as of their date. We caution investors that our business and financial performance are subject to substantial risks and uncertainties. Except as required by law, we assume no obligation to update or revise these forward-looking statements for any reason, even if new information becomes available in the future, except as may be required by law.

PART I-FINANCIAL INFORMATION

Item 1. Financial Statements

SI-BONE, INC.  
CONDENSED CONSOLIDATED BALANCE SHEETS  
(In thousands, except share and per share amounts)  
(Unaudited)

	September 30, 2024	December 31, 2023
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 30,225	\$ 33,271
Short-term investments	120,593	132,748
Accounts receivable, net of allowance for credit losses of \$ 1,331 and \$ 1,118 , respectively	24,909	21,953
Inventory	25,518	20,249
Prepaid expenses and other current assets	2,454	3,173
Total current assets	203,699	211,394
Property and equipment, net	20,748	16,000
Operating lease right-of-use assets	2,225	2,706
Other non-current assets	326	325
TOTAL ASSETS	\$ 226,998	\$ 230,425
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Accounts payable	\$ 7,318	\$ 4,588
Accrued liabilities and other	16,156	17,452
Operating lease liabilities, current portion	1,210	1,416
Total current liabilities	24,684	23,456
Long-term borrowings	36,192	36,065
Operating lease liabilities, net of current portion	1,135	1,511
Other long-term liabilities	13	18
TOTAL LIABILITIES	62,024	61,050
Commitments and contingencies (Note 6)		
<b>STOCKHOLDERS' EQUITY</b>		
Preferred stock, \$ 0.0001 par value; 5,000,000 shares authorized; no shares issued and outstanding	—	—
Common stock, \$ 0.0001 par value; 100,000,000 shares authorized; 41,790,410 and 40,693,299 shares issued and outstanding, respectively	4	4
Additional paid-in capital	591,247	569,477
Accumulated other comprehensive income	582	335
Accumulated deficit	( 426,859 )	( 400,441 )
TOTAL STOCKHOLDERS' EQUITY	164,974	169,375
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	\$ 226,998	\$ 230,425

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

**SI-BONE, INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE LOSS**  
(In thousands, except share and per share amounts)  
(Unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
Revenue	\$ 40,340	\$ 34,014	\$ 118,176	\$ 100,027
Cost of goods sold	8,437	7,041	24,832	19,283
Gross profit	31,903	26,973	93,344	80,744
Operating expenses:				
Sales and marketing	27,448	26,512	85,805	81,317
Research and development	3,993	3,919	12,690	10,866
General and administrative	8,095	7,711	24,603	22,986
Total operating expenses	39,536	38,142	123,098	115,169
Loss from operations	( 7,633 )	( 11,169 )	( 29,754 )	( 34,425 )
Interest and other income (expense), net:				
Interest income	1,936	2,174	6,064	4,689
Interest expense	( 884 )	( 884 )	( 2,647 )	( 2,573 )
Other income (expense)	6	( 143 )	( 81 )	( 44 )
Net loss	\$ ( 6,575 )	\$ ( 10,022 )	\$ ( 26,418 )	\$ ( 32,353 )
Other comprehensive income (loss):				
Changes in foreign currency translation	139	53	137	34
Unrealized gain on marketable securities	216	5	110	90
Comprehensive loss	\$ ( 6,220 )	\$ ( 9,964 )	\$ ( 26,171 )	\$ ( 32,229 )
Net loss per share, basic and diluted	\$ ( 0.16 )	\$ ( 0.25 )	\$ ( 0.64 )	\$ ( 0.86 )
Weighted-average number of common shares used to compute basic and diluted net loss per share	41,717,505	40,265,520	41,324,614	37,702,207

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

SI-BONE, INC.  
CONDENSED CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY  
(In thousands, except share amounts)  
(Unaudited)

	Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Income	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount				
<b>Balance as of December 31, 2023</b>	40,693,299	\$ 4	\$ 569,477	\$ 335	\$ ( 400,441 )	\$ 169,375
Issuance of common stock upon exercise of stock options, net of shares withheld	29,892	—	105	—	—	105
Issuance of common stock upon vesting of restricted stock units	355,571	—	—	—	—	—
Stock-based compensation	—	—	7,030	—	—	7,030
Foreign currency translation	—	—	—	29	—	29
Net unrealized loss on marketable securities	—	—	—	( 98 )	—	( 98 )
Net loss	—	—	—	—	( 10,904 )	( 10,904 )
<b>Balance as of March 31, 2024</b>	<b>41,078,762</b>	<b>4</b>	<b>576,612</b>	<b>266</b>	<b>( 411,345 )</b>	<b>165,537</b>
Issuance of common stock upon exercise of stock options, net of shares withheld	69,428	—	304	—	—	304
Issuance of common stock related to employee stock purchase plan	114,636	—	1,472	—	—	1,472
Issuance of common stock upon vesting of restricted stock units	247,985	—	—	—	—	—
Stock-based compensation	—	—	6,398	—	—	6,398
Foreign currency translation	—	—	—	( 31 )	—	( 31 )
Net unrealized loss on marketable securities	—	—	—	( 8 )	—	( 8 )
Net loss	—	—	—	—	( 8,939 )	( 8,939 )
<b>Balance as of June 30, 2024</b>	<b>41,510,811</b>	<b>4</b>	<b>584,786</b>	<b>227</b>	<b>( 420,284 )</b>	<b>164,733</b>
Issuance of common stock upon exercise of stock options, net of shares withheld	42,540	—	155	—	—	155
Issuance of common stock upon vesting of restricted stock units	237,059	—	—	—	—	—
Stock-based compensation	—	—	6,306	—	—	6,306
Foreign currency translation	—	—	—	139	—	139
Net unrealized loss on marketable securities	—	—	—	216	—	216
Net loss	—	—	—	—	( 6,575 )	( 6,575 )
<b>Balance as of September 30, 2024</b>	<b>41,790,410</b>	<b>\$ 4</b>	<b>\$ 591,247</b>	<b>\$ 582</b>	<b>\$ ( 426,859 )</b>	<b>\$ 164,974</b>

	Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Income	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount				
<b>Balance as of December 31, 2022</b>	34,731,577	\$ 3	\$ 455,172	\$ 232	\$ ( 357,105 )	\$ 98,302
Issuance of common stock upon exercise of stock options, net of shares withheld	120,266	—	520	—	—	520
Issuance of common stock upon vesting of restricted stock units	254,320	—	—	—	—	—
Stock-based compensation	—	—	6,194	—	—	6,194
Foreign currency translation	—	—	—	( 22 )	—	( 22 )
Net unrealized gain on marketable securities	—	—	—	90	—	90
Net loss	—	—	—	—	( 11,125 )	( 11,125 )
<b>Balance as of March 31, 2023</b>	<b>35,106,163</b>	<b>3</b>	<b>461,886</b>	<b>300</b>	<b>( 368,230 )</b>	<b>93,959</b>
Issuance of common stock from public offerings, net of underwriting discounts, commissions and offering costs	4,068,497	1	83,671	—	—	83,672
Issuance of common stock upon exercise of stock options, net of shares withheld	497,926	—	3,515	—	—	3,515
Issuance of common stock related to employee stock purchase plan	130,867	—	1,471	—	—	1,471
Issuance of common stock upon vesting of restricted stock units	261,709	—	—	—	—	—
Issuance of common stock upon exercise of warrant, net of shares withheld	22,603	—	—	—	—	—
Stock-based compensation	—	—	5,998	—	—	5,998
Foreign currency translation	—	—	—	3	—	3
Net unrealized loss on marketable securities	—	—	—	( 5 )	—	( 5 )
Net loss	—	—	—	—	( 11,206 )	( 11,206 )
<b>Balance as of June 30, 2023</b>	<b>40,087,765</b>	<b>4</b>	<b>556,541</b>	<b>298</b>	<b>( 379,436 )</b>	<b>177,407</b>
Issuance of common stock upon exercise of stock options, net of shares withheld	52,302	—	229	—	—	229
Issuance of common stock upon vesting of restricted stock units	237,624	—	—	—	—	—
Stock-based compensation	—	—	5,928	—	—	5,928
Foreign currency translation	—	—	—	53	—	53
Net unrealized loss on marketable securities	—	—	—	5	—	5
Net loss	—	—	—	—	( 10,022 )	( 10,022 )
<b>Balance as of September 30, 2023</b>	<b>40,377,691</b>	<b>\$ 4</b>	<b>\$ 562,698</b>	<b>\$ 356</b>	<b>\$ ( 389,458 )</b>	<b>\$ 173,600</b>

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.



**SI-BONE, INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(In thousands)  
(Unaudited)

	Nine Months Ended September 30,	
	2024	2023
<b>Cash flows from operating activities</b>		
Net loss	\$ ( 26,418 )	\$ ( 32,353 )
Adjustments to reconcile net loss to net cash used in operating activities:		
Stock-based compensation	19,734	18,120
Depreciation and amortization	3,166	3,855
Accounts receivable credit losses	328	352
Amortization of discount and premium on marketable securities	( 4,254 )	( 2,417 )
Inventory reserve	618	190
Amortization of debt issuance costs	127	165
Loss on disposal of property and equipment	1,250	941
Changes in operating assets and liabilities:		
Accounts receivable	( 3,304 )	344
Inventory	( 5,922 )	( 5,229 )
Prepaid expenses and other assets	718	460
Accounts payable	1,757	( 876 )
Accrued liabilities and other	( 1,403 )	32
Net cash used in operating activities	( 13,603 )	( 16,416 )
<b>Cash flows from investing activities</b>		
Maturities of marketable securities	186,500	93,500
Purchases of marketable securities	( 169,983 )	( 127,680 )
Purchases of property and equipment	( 8,231 )	( 6,706 )
Net cash (used in) provided by investing activities	8,286	( 40,886 )
<b>Cash flows from financing activities</b>		
Proceeds from public offering, net of discounts, commissions and offering costs	—	83,671
Proceeds from debt financing	—	36,000
Repayments of debt financing	—	( 35,275 )
Payments of debt issuance costs	—	( 40 )
Proceeds from issuance of common stock under employee stock purchase plan	1,472	1,471
Proceeds from the exercise of stock options	564	4,264
Net cash provided by financing activities	2,036	90,091
Effect of exchange rate changes on cash and cash equivalents	235	( 14 )
Net increase (decrease) in cash and cash equivalents	( 3,046 )	32,775
<b>Cash and cash equivalents at</b>		
Beginning of period	33,271	20,717
End of period	<u>\$ 30,225</u>	<u>\$ 53,492</u>
<b>Supplemental disclosure of non-cash information</b>		
Unpaid purchases of property and equipment	1,445	120

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

**SI-BONE, INC.**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Unaudited)**

**1. The Company and Nature of Business**

SI-BONE, Inc. (the "Company") was incorporated in the state of Delaware on March 18, 2008 and is headquartered in Santa Clara, California. The Company is a medical device company dedicated to solving musculoskeletal disorders of the sacropelvic anatomy. Leveraging its knowledge of pelvic anatomy and biomechanics, the Company has pioneered proprietary minimally invasive surgical implant systems to address sacroiliac joint dysfunction as well as address unmet clinical needs in pelvic fixation and management of pelvic fractures. The Company's products include a series of patented titanium implants and the instruments used to implant them, as well as implantable bone products. Since launching its first generation iFuse in 2009, the Company has launched multiple titanium implant product lines, including iFuse-3D in 2017, iFuse-TORQ in 2021, iFuse Bedrock Granite in 2022 and iFuse INTRA, an implantable bone product, in January 2024. In the United States, iFuse, iFuse 3D, iFuse TORQ and iFuse Bedrock Granite have clearances for applications in sacroiliac joint dysfunction, adult spinal deformity and pelvic trauma. iFuse TORQ TNT has clearances for applications in pelvic trauma and sacroiliac joint dysfunction.

In May 2023, the Company received a total of \$ 83.7 million of net proceeds after deducting the underwriting discounts and commissions from the offering of 3,775,000 shares of the Company's common stock and the exercise of underwriter's option to purchase from the Company an additional 566,250 shares of the Company's common stock, at a public offering price of \$ 22.00 per share. Of these shares, 272,753 shares were offered by a selling stockholder and did not result in any proceeds to the Company.

**2. Summary of Significant Accounting Policies**

***Basis of Presentation and Principles of Consolidation***

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with generally accepted accounting principles in the United States of America ("U.S. GAAP") and applicable rules and regulations of the Securities and Exchange Commission ("SEC") regarding interim financial reporting. As permitted under those rules, certain footnotes or other financial information that are normally required by U.S. GAAP have been condensed or omitted, and accordingly the balance sheet as of December 31, 2023 has been derived from the audited consolidated financial statements at that date but does not include all of the information required by U.S. GAAP for complete financial statements. These unaudited interim condensed consolidated financial statements have been prepared on the same basis as the Company's annual financial statements and, in the opinion of management, reflect all adjustments that are necessary for a fair statement of the Company's consolidated financial information. The results of operations for the three and nine months ended September 30, 2024 are not necessarily indicative of the results to be expected for the year ending December 31, 2024 or for any other interim period or for any other future year.

The accompanying condensed consolidated financial statements should be read in conjunction with the audited financial statements and related notes thereto for the year ended December 31, 2023 contained in the Company's Annual Report on Form 10-K filed with the SEC on February 27, 2024 (the "2023 Annual Report").

***Use of Estimates***

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities as of the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. Significant accounting estimates and management judgments reflected in the condensed consolidated financial statements primarily includes the fair value of performance-based restricted stock unit awards. Estimates are based on historical experience, where applicable and other assumptions believed to be reasonable by the management. Actual results could differ from those estimates.

***Change in accounting estimate***

During the first quarter of 2024, the Company reassessed the useful life of its instrument trays based on a comprehensive evaluation of usage trends and its estimate on the average life of instruments before loss or damage that requires disposal. As a result of this review, the Company determined that extending the useful life of its instrument trays would more accurately reflect its anticipated future economic benefits. Effective January 1, 2024, the Company changed its estimates of the useful lives of instrument trays from three to five years. The effect of this change in estimate reduced depreciation expense by \$ 0.5 million, resulting in a decrease in net loss of \$ 0.5 million and basic and diluted earnings per share by \$ 0.01 for the three months ended September 30, 2024. The effect of this change in estimate reduced depreciation expense by \$ 1.5 million, resulting in a decrease in loss from operations and net loss of \$ 1.5 million and basic and diluted earnings per share by \$ 0.04 for the nine months ended September 30, 2024.

**SI-BONE, INC.**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Unaudited)**

**Significant Accounting Policies**

The Company's significant accounting policies are disclosed in the 2023 Annual Report. There have been no material changes to these accounting policies.

**Segments**

The Company's chief operating decision makers are the Chief Executive Officer ("CEO") and Chief Financial Officer ("CFO"). The CEO and the CFO review financial information presented on a consolidated basis, accompanied by information about revenue by geographic region, for purposes of evaluating financial performance. The Company has one business activity and there are no segment managers who are held accountable for operations, operating results or plans for levels or components below the consolidated unit level. Accordingly, the Company has determined that it has a single reportable and operating segment structure.

The Company derives substantially all of its revenue from sales to customers in the U.S. Revenue by geography is based on billing address of the customer. International revenue accounted for less than 10% of the total revenue during the periods presented. Long-lived assets held outside the U.S. are immaterial. The following table summarizes the Company's revenue by geography:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
	(in thousands)			
United States	\$ 38,263	\$ 32,300	\$ 111,502	\$ 93,967
International	2,077	1,714	6,674	6,060
	<u>\$ 40,340</u>	<u>\$ 34,014</u>	<u>\$ 118,176</u>	<u>\$ 100,027</u>

**Recent Accounting Pronouncements**

In November 2023, the FASB issued ASU 2023-07, Segment Reporting (Topic 280): Improvements to Reportable Segment Disclosures. ASU 2023-07 requires companies with a single reportable segment to provide all existing segment disclosures, as well as requires incremental segment information to be disclosed. The guidance is effective for fiscal years beginning after December 15, 2023 on a retrospective basis, and interim periods within fiscal years beginning after December 15, 2024. Early adoption is permitted. The Company is currently evaluating the guidance to determine the impact on its disclosures.

In December 2023, the FASB issued ASU 2023-09, Income Taxes (Topic 740): Improvements to Income Tax Disclosures ("ASU 2023-09"). ASU 2023-09 requires public business entities to disclose additional information in specified categories with respect to the reconciliation of the effective tax rate to the statutory rate (the rate reconciliation) for federal, state, and foreign income taxes. It also requires greater detail about individual reconciling items in the rate reconciliation to the extent the impact of those items exceeds a specified threshold. ASU 2023-09 is effective for fiscal years beginning after December 15, 2024, and for interim periods for fiscal years beginning after December 15, 2025. The Company is currently evaluating the impacts of ASU 2023-09 on its disclosures.

In November 2024, the FASB issued ASU 2024-03, Income Statement-Reporting Comprehensive Income-Expense Disaggregation Disclosures (Subtopic 220-40): Disaggregation of Income Statement Expenses ("ASU 2024-03"). ASU 2024-03 requires disclosure in the notes to the financial statements of specified information about certain costs and expenses. ASU 2024-03 is effective for fiscal years beginning after December 15, 2026 and for interim periods within fiscal years beginning after December 15, 2027. ASU 2024-03 should be applied either prospectively to financial statements issued for reporting periods after the effective date of this ASU or retrospectively to any or all prior periods presented in the financial statements. The Company is currently evaluating the impact of ASU 2024-03 on its disclosures.

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**3. Marketable Securities**

All of the Company's marketable securities were available-for-sale and were classified based on their maturities. Marketable securities with remaining maturities at the date of purchase of three months or less are classified as cash equivalents. Short-term investments are securities that original maturity or remaining maturity is greater than three months and not more than twelve months. Long-term investments are securities for which the original maturity or remaining maturity is greater than twelve months.

The table below summarizes the marketable securities:

September 30, 2024				
	Amortized Cost	Unrealized Gains	Unrealized Losses	Aggregate Fair Value
(in thousands)				
Money market funds	\$ 22,168	\$ —	\$ —	\$ 22,168
U.S. treasury securities	3,996	—	—	3,996
Cash equivalents	26,164	—	—	26,164
U.S. treasury securities	118,418	177	—	118,595
U.S. agency bonds	1,999	—	( 1 )	1,998
Short-term investments	120,417	177	( 1 )	120,593
Total marketable securities	\$ 146,581	\$ 177	\$ ( 1 )	\$ 146,757

December 31, 2023				
	Amortized Cost	Unrealized Gains	Unrealized Losses	Aggregate Fair Value
(in thousands)				
Money market funds	\$ 23,331	\$ —	\$ —	\$ 23,331
Cash equivalents	23,331	—	—	23,331
U.S. treasury securities	129,695	67	—	129,762
U.S. agency bonds	2,988	—	( 2 )	2,986
Short-term investments	132,683	67	( 2 )	132,748
Total marketable securities	\$ 156,014	\$ 67	\$ ( 2 )	\$ 156,079

The amortized cost of the Company's available-for-sale securities approximates their fair value. Unrealized losses are generally due to interest rate fluctuations, as opposed to credit quality. However, the Company reviews individual securities that are in an unrealized loss position in order to evaluate whether or not they have experienced or are expected to experience credit losses. During the three and nine months ended September 30, 2024 and 2023, unrealized gains and losses from the investments were not material and were not the result of a decline in credit quality. As a result, the Company did not recognize any credit losses related to its investments and that all unrealized gains and losses on available-for-sale securities are recorded in accumulated other comprehensive income (loss) on the condensed consolidated balance sheets as of September 30, 2024 and December 31, 2023.

The Company elected to present accrued interest receivable separately from short-term and long-term investments on its condensed consolidated balance sheets. Accrued interest receivable was \$ 0.3 million as of September 30, 2024, and was recorded in prepaid expenses and other current assets. The Company also elected to exclude accrued interest receivable from the estimation of expected credit losses on its marketable securities and reverse accrued interest receivable through interest income (expense) when amounts are determined to be uncollectible. The Company did not write off any accrued interest receivable as of September 30, 2024 or December 31, 2023.

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**4. Fair Value Measurement**

Carrying amounts of certain of the Company's financial instruments, including cash equivalents, accounts receivable, accounts payable and accrued liabilities, approximate fair value due to their relatively short maturities and market interest rates, if applicable. The carrying value of the Company's long-term debt also approximates fair value based on management's estimation that a current interest rate would not differ materially from the stated rate. There were no other financial assets and liabilities that require fair value hierarchy measurements and disclosures for the periods presented.

The table below summarizes the fair value of the Company's marketable securities measured at fair value on a recurring basis based on the three-tier fair value hierarchy:

September 30, 2024				
	Level 1	Level 2	Level 3	Total
(in thousands)				
<b>Marketable securities</b>				
Money market funds	\$ 22,168	\$ —	\$ —	\$ 22,168
U.S. treasury securities	122,591	—	—	122,591
U.S. agency bonds	—	1,998	—	1,998
Total marketable securities	\$ 144,759	\$ 1,998	\$ —	\$ 146,757

  

December 31, 2023				
	Level 1	Level 2	Level 3	Total
(in thousands)				
<b>Marketable securities</b>				
Money market funds	\$ 23,331	\$ —	\$ —	\$ 23,331
U.S. treasury securities	129,762	—	—	129,762
U.S. agency bonds	—	2,986	—	2,986
Total marketable securities	\$ 153,093	\$ 2,986	\$ —	\$ 156,079

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**5. Balance Sheet Components**

***Inventory***

As of September 30, 2024, inventory consisted of finished goods of \$ 23.5 million and work-in-progress and components of \$ 2.0 million. As of December 31, 2023, inventory consisted of finished goods of \$ 18.8 million and work-in-progress and components of \$ 1.4 million.

***Property and Equipment, net:***

	September 30, 2024	December 31, 2023
	(in thousands)	
Instrument trays	\$ 21,294	\$ 18,205
Machinery and equipment	3,206	3,067
Construction in progress	7,756	3,856
Computer and office equipment	2,660	1,856
Leasehold improvements	3,873	3,873
Furniture and fixtures	389	389
	39,178	31,246
Less: Accumulated depreciation and amortization	( 18,430 )	( 15,246 )
	<u>\$ 20,748</u>	<u>\$ 16,000</u>

As of September 30, 2024, construction in progress pertains to the cost of individual components of an instrument tray used for surgical placement of the Company's products that have not yet been placed into service of \$ 7.2 million and software costs of \$ 0.6 million. As of December 31, 2023, construction in progress pertains to cost of individual components of an instrument tray used for surgical placement of the Company's products that have not yet been placed into service of \$ 3.5 million and software costs of \$ 0.4 million. Depreciation expense was \$ 1.1 million and \$ 1.5 million for the three months ended September 30, 2024 and 2023, respectively. Depreciation expense was \$ 3.2 million and \$ 3.9 million for the nine months ended September 30, 2024 and 2023, respectively.

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**Accrued Liabilities and Other:**

	September 30, 2024	December 31, 2023
	(in thousands)	
Accrued compensation and related expenses	\$ 11,185	\$ 13,464
Accrued royalty	1,643	1,360
Accrued rebates	1,534	687
Accrued professional services	899	929
Others	895	1,012
	<u>\$ 16,156</u>	<u>\$ 17,452</u>

**Accounts Receivable and Allowance for Credit Losses:**

The movement in the allowance for credit losses was as follows:

	September 30, 2024	December 31, 2023
	(in thousands)	
Balance at beginning of period	\$ 1,118	\$ 400
Provision	328	761
Write-offs	( 115 )	( 43 )
Balance at end of period	<u>\$ 1,331</u>	<u>\$ 1,118</u>

**6. Commitments and Contingencies**

**Operating Leases**

The Company has a non-cancelable operating lease for an office building space, located in Santa Clara, California which expires in July 2026 and a building used for research and development and warehouse space in Santa Clara, California which expires in October 2026. The Company also has a non-cancelable operating lease for its office building spaces in Gallarate, Italy which expires in August 2027.

The Company also leases vehicles under operating lease arrangements for certain of its personnel in Europe which expire at various times throughout 2024 to 2026.

Supplemental information related to lease expense and valuation of the lease assets and lease liabilities are as follows:

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	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
Operating lease expense	\$ 312	\$ 386	\$ 1,065	\$ 1,170
Variable lease expense	190	140	471	340
Total lease expense	<u>\$ 502</u>	<u>\$ 526</u>	<u>\$ 1,536</u>	<u>\$ 1,510</u>
Cash paid for amounts included in the measurement of operating lease liabilities	\$ 385	\$ 401	\$ 1,171	\$ 1,237
Leased assets obtained in exchange for new operating lease liabilities	\$ 407	\$ 19	\$ 407	\$ 143
	<u>September 30, 2024</u>	<u>December 31, 2023</u>		
Weighted average remaining lease term (in years)	1.95	2.20		
Weighted average discount rate	7.21 %	5.87 %		

Future minimum lease payments under non-cancelable operating leases as of September 30, 2024 was as follows:

Year Ending December 31,	(in thousands)
Remainder of 2024	\$ 388
2025	1,230
2026	870
2027	9
2028	—
Thereafter	—
Total operating lease payments	<u>2,497</u>
Less: imputed interest	<u>( 152 )</u>
Total operating lease liabilities	<u>\$ 2,345</u>

As of September 30, 2024, the Company had no operating lease liabilities that had not commenced.

**Purchase Commitments and Obligations**

The Company has certain purchase commitments related to its inventory management with certain manufacturing suppliers based on the agreements or blanket purchase orders. The contractual obligations represent future cash commitments and liabilities under agreements with third parties and exclude orders for goods and services entered into in the normal course of business that are not enforceable or legally binding. These outstanding commitments amounted to \$ 0.5 million and \$ 0.4 million as of September 30, 2024 and December 31, 2023, respectively.

**Indemnification**

The Company enters into standard indemnification arrangements in the ordinary course of business. Pursuant to these arrangements, the Company indemnifies, holds harmless, and agrees to reimburse the indemnified parties for losses suffered or incurred by the indemnified party, in connection with any trade secret, copyright, patent or other intellectual property infringement claim by any third-party with respect to the Company's technology. The term of these indemnification agreements is generally perpetual. The maximum potential amount of future payments the Company could be required to make under these agreements is not determinable because it involves claims that may be made against the Company in the future, but have not yet been made.



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The Company has entered into indemnification agreements with its directors and officers that may require the Company to indemnify its directors and officers against liabilities that may arise by reason of their status or service as directors or officers, other than liabilities arising from willful misconduct of the individual.

The Company has not incurred costs to defend lawsuits or settle claims related to these indemnification agreements. No liability associated with such indemnifications has been recorded to date.

**Legal Contingencies**

In October 2024, the Company received a civil investigative demand ("CID") from the U.S. Department of Justice, Civil Division, in connection with an investigation under the federal Anti-Kickback Statute and Civil False Claims Act (the "Investigation"). The CID requests information and documents primarily relating to meals and consulting service payments provided to health care professionals. The Company is cooperating with the Investigation but is currently unable to express a view regarding the likely duration, or ultimate outcome, of the Investigation or estimate the possibility of, or amount or range of, any possible financial impact. Depending on how the Investigation progresses, there may be a material impact on the Company's business, results of operations, or financial condition.

From time to time, the Company may become involved in legal proceedings arising in the ordinary course of its business. Except with regards to the Investigation, the Company is not presently a party to any material legal proceedings that, if determined adversely to the Company, would have a material adverse effect on the Company.

**7. Borrowings**

**Term Loan**

The following table summarizes the outstanding borrowings from the term loan as of periods presented:

	September 30, 2024	December 31, 2023
	(in thousands)	
Principal outstanding and final fee	\$ 36,720	\$ 36,720
Less: Unamortized debt issuance costs	( 64 )	( 81 )
Unaccreted value of final fee	( 464 )	( 574 )
Outstanding debt, net of debt issuance costs and unaccreted value of final fee	\$ 36,192	\$ 36,065
Classified as:		
Long-term borrowings	\$ 36,192	\$ 36,065

The outstanding debt is related to a term loan pursuant to the Loan and Security Agreement dated August 12, 2021 entered into by the Company with Silicon Valley Bank ("SVB" or the "Lender") (the "Original Loan Agreement"). Pursuant to the Original Loan Agreement, SVB provided a term loan in an aggregate principal amount of \$ 35.0 million to the Company (the "Original Term Loan").

On January 6, 2023, the Company entered into a First Amendment to Loan and Security Agreement (the "First Amendment") with SVB, which amended the Company's Original Term Loan pursuant to which the Company received a new term loan facility in an aggregate principal amount of \$ 36.0 million (the "Original Loan Agreement" with the Amendment, collectively the "Amended Loan Agreement"). Upon entry into the Amended Loan Agreement, the Company borrowed \$ 36.0 million pursuant to a term loan (the "Term Loan"), which was substantially used to repay in full the \$ 35.0 million term loan outstanding under the Original Loan Agreement and secured a revolving credit facility in an aggregate principal amount of up to \$ 15.0 million (the "Revolving Line"). The Amended Loan Agreement also includes an uncommitted accordion term loan in an aggregate principal amount of up to \$ 15.0 million, which accordion may be approved by the Lender solely in its discretion, upon the Company's request. The Term Loan matures on December 1, 2027 (the "Term Loan Maturity Date"). Interest on the Term Loan will be payable monthly at a floating annual rate set at the greater of (i) the prime rate as published in the Wall Street Journal plus 0.5 % or (ii) 6.75 %. Commencing on July 1, 2025, the Company will be required to make monthly principal Term Loan amortization payments. A final fee payment of 2 % of the original principal amount of the Term Loan is due upon the earlier of the Term Loan Maturity Date, termination of the Amended Loan Agreement, acceleration by the Lender following an event of default, or prepayment of the Term Loan. The Company may elect to prepay the Term Loan in whole prior to the Term Loan Maturity Date subject to a prepayment fee equal to 2 % of the principal amount of the Term Loan prepaid at such time. No prepayment fee would be due if the Term Loan is refinanced by the Lender. Pursuant to the terms of the Amended Loan Agreement, revolving loans may be borrowed, repaid and reborrowed until the maturity date, which will

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be July 6, 2025 (the "Revolving Line Maturity Date"). Borrowings under the Revolving Line are based on 80 % of eligible domestic accounts receivable borrowing base. Interest on the outstanding balance of the Revolving Line will be payable monthly at a floating annual rate set at the greater of the prime rate as published in the Wall Street Journal or 6.25 %. Interest on borrowings is due monthly and any principal balance is due on the Revolving Line Maturity Date, provided that when Revolving Line Advances are outstanding, in the event the Company does not maintain an adjusted quick ratio of at least 1.5 to 1.0, then falling below such threshold will allow the Lender to apply accounts receivable collections to outstanding Revolving Line borrowings. The Company will pay a total commitment fee of \$ 187,500 on account of the Revolving Line payable in installments, but fully earned at close. The Company will also be required to pay a fee of \$ 150,000 if it terminates the Amended Loan Agreement or Revolving Line prior to Revolving Line Maturity Date, or if the Lender terminates the Loan Agreement or the Revolving Line following an event of default. No termination fee would be due if the Revolving Line is replaced with a new facility with the Lender.

On March 14, 2023, all of SVB's assets and liabilities, including all of SVB's rights as the lender pursuant to the Amended Loan Agreement, were assigned to Silicon Valley Bridge Bank. On March 27, 2023, all of Silicon Valley Bridge Bank's assets and liabilities were assigned and assumed by First-Citizens Bank & Trust Company ("First-Citizens").

On January 25, 2024, the Company entered into a Second Amendment to Loan and Security Agreement with SVB which amends the Company's Amended Loan Agreement (the "Second Amendment" and together with the Amended Loan Agreement, the "Second Amended Loan Agreement"). The Second Amendment revised certain provisions related to financial covenants and the periods in which the covenants apply. No amounts were outstanding under the Revolver as of September 30, 2024.

The Company accounted for the Second Amended Loan Agreement as a debt modification. Accordingly, the remaining unamortized debt issuance costs related to the Original Loan Agreement together with any lender fees incurred in connection with the entry of the Second Amended Loan Agreement are amortized to interest expense using the straight-line method over the new term of the loan through December 2027.

The effective interest rate related to the First-Citizens Term Loan for the three and nine months ended September 30, 2024 was 9.2 % and 9.3 %, respectively. The effective interest rate related to the First-Citizens Term Loan for the three and nine months ended September 30, 2023 was 9.3 % and 8.9 %, respectively.

The table below summarizes the future principal and final fee payments under the First-Citizens Term Loan as of September 30, 2024:

Year ending December 31,	(in thousands)
Remainder of 2024	\$ —
2025	8,400
2026	14,400
2027	13,920
2028	—
Total principal and final fee payments	<u>\$ 36,720</u>

The Second Amended Loan Agreement includes affirmative and negative covenants applicable to the Company and certain of its foreign subsidiaries. The affirmative covenants include, among others, covenants requiring the Company to maintain its legal existence and governmental compliance, deliver certain financial reports, and maintain insurance coverage. The negative covenants include, among others, restrictions regarding transferring collateral, pledging the Company's intellectual property to other parties, engaging in mergers or acquisitions, paying dividends or making other distributions, incurring indebtedness, transacting with affiliates, and entering into certain investments, in each case subject to certain exceptions. As of September 30, 2024, the Company was in compliance with all debt covenants.

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On November 8, 2024, the Company entered into a Third Amendment to the Loan and Security Agreement with First-Citizens (the "Third Amendment" and together with the Second Amended Loan Agreement, collectively, the "Third Amended Loan Agreement"), pursuant to which a new term loan in the original aggregate principal amount of \$ 36.0 million was extended by First-Citizens to the Company (the "Third Amendment Term Loan"), which was substantially used to refinance and repay in full the then-outstanding \$ 36.0 million existing Term Loan. The Company also paid a certain final payment due relative to such prior Term Loan. The Third Amendment sets the maturity date for the Third Amendment Term Loan to September 1, 2029 (the "Third Amendment Term Loan Maturity Date"), and defers the first principal repayment due date relative to the Third Amendment Term Loan to October 1, 2027; provided that upon the achievement of the Performance Milestone (as defined in the Third Amendment), the first principal payment shall become due on October 1, 2028. Interest on the Third Amendment Term Loan will be payable monthly at a floating rate per annum equal to the greater of 4.25 % and the Prime Rate minus 0.5 %. The Company may elect to prepay the Third Amendment Term Loan in whole prior to the Third Amendment Term Loan Term Loan Maturity Date, subject to a prepayment fee equal to 1.5 % of the original principal amount of the Third Amendment Term Loan if it is prepaid within 18 months following the closing of the Third Amendment. The Third Amendment further revised certain provisions related to financial covenants and the periods in which the covenants apply, and First-Citizens and the Company also terminated the Revolving Line and an uncommitted accordion term loan provision. Accordingly, the Company's outstanding amount under the Second Amended Loan Agreement was classified as non-current as of September 30, 2024.

**8. Stock-Based Incentive Compensation Plans**

**Stock Options**

The table below summarizes the stock option activity for the nine months ended September 30, 2024:

	Number of Shares	Weighted- Average Exercise Price	Weighted-Average Contractual Remaining Life (Years)	Aggregate Intrinsic Value (in thousands)
<b>Outstanding as of December 31, 2023</b>	1,188,708	\$ 10.14	3.51	\$ 13,197
Exercised	( 141,860 )	\$ 3.97		
Canceled and forfeited	( 3,892 )	\$ 11.97		
<b>Outstanding as of September 30, 2024</b>	1,042,956	\$ 10.97	3.08	\$ 5,910
<b>Options vested and exercisable, September 30, 2024</b>	1,042,956	\$ 10.97	3.08	\$ 5,910
<b>Options vested and expected to vest, September 30, 2024</b>	1,042,956	\$ 10.97	3.08	\$ 5,910

As of September 30, 2024, there is no unrecognized compensation cost related to stock options.

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There were no stock options granted during the three and nine months ended September 30, 2024 and 2023.

**Restricted Stock Units ("RSUs")**

RSUs are share awards that entitle the holder to receive freely tradable shares of the Company's common stock upon vesting. RSUs generally vest over one to four years based upon continued services and are settled at vesting in shares of the Company's common stock. Certain RSUs vest based upon continued services and the achievement of financial milestones. The grant date fair value of the RSUs is equal to the closing price of the Company's common stock on the grant date. As of September 30, 2024, the unrecognized compensation cost related to the RSUs was \$ 33.0 million, which is expected to be recognized over a period of approximately 2.4 years.

The Company granted performance-based restricted stock unit awards subject to market and service vesting conditions to certain executive officers under SI-BONE's 2018 Equity Incentive Plan ("PSUs"). The shares subject to PSUs vest over a three-year performance period. The actual number of PSUs that will vest in each measurement period will be determined by the Compensation Committee based on the Company's total shareholder return ("TSR") relative to the TSR of the Median Peer Companies (as defined in the award agreement). The grant date fair value of each stock award with a market condition was determined using the Monte Carlo valuation model. The table below summarizes the assumptions used to estimate the grant date fair value of the PSUs granted:

	Nine Months Ended September 30,					
	2024			2023		
Expected volatility of common stock	47.0 %	to	59.0 %	58.0 %	to	73.0 %
Expected volatility of peer companies	29.0 %	to	97.0 %	33.0 %	to	141.0 %
Correlation coefficient of peer companies	( 0.01 )	to	1.00	( 0.15 )	to	1.00
Risk-free interest rate	4.1 %	to	4.7 %	3.9 %	to	5.0 %
Dividend yield	0.6 %	to	4.7 %	— %	to	1.3 %

As of September 30, 2024, the unrecognized compensation cost related to the PSUs was \$ 4.8 million, which is expected to be recognized over a period of approximately 2.0 years.

The table below summarizes RSU and PSU activity for the nine months ended September 30, 2024:

	RSUs		PSUs	
	Number of Shares	Weighted Average Grant Date Fair Value	Number of Shares	Weighted Average Grant Date Fair Value
<b>Outstanding as of December 31, 2023</b>	1,899,790	\$ 19.93	385,122	\$ 14.74
Granted	1,107,102	18.14	319,858	18.48
Vested	( 746,176 )	21.06	( 94,439 )	16.27
Canceled and forfeited	( 61,911 )	19.68	—	—
<b>Outstanding as of September 30, 2024</b>	<b>2,198,805</b>	<b>18.65</b>	<b>610,541</b>	<b>16.47</b>

**Employee Stock Purchase Plan**

The Company's 2018 Employee Stock Purchase Plan (the "ESPP") allows eligible employees to purchase shares of the Company's common stock through payroll deductions at the price equal to 85 % of the lesser of the fair market value of the stock as of the first date or the ending date of each six month offering period. The offering period generally commences in May and November. On March 26, 2020, the Company's Compensation Committee approved the amendment of the terms of future offerings under the ESPP which, among other things, increased the maximum number of shares that may be purchased on any single purchase date, provided for automatic enrollment in a new offering.

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The fair value of the ESPP shares is estimated using the Black-Scholes option pricing model, which is being amortized over the requisite service period. The Company issued 114,636 and 130,867 shares under the ESPP, representing \$ 1.5 million in employee contributions for each of the nine months ended September 30, 2024 and 2023. As of September 30, 2024 and December 31, 2023, total accumulated ESPP related employee payroll deductions amounted to \$ 0.6 million and \$ 0.4 million, respectively, which were included within accrued compensation and related expenses in the condensed consolidated balance sheets.

**Stock-Based Compensation**

The table below presents the detail of stock-based compensation expense amounts included in the condensed consolidated statements of operations:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
(in thousands)				
Cost of goods sold	\$ 262	\$ 172	\$ 753	\$ 471
Sales and marketing	2,546	2,655	8,476	8,267
Research and development	813	699	2,456	2,198
General and administrative	2,685	2,402	8,049	7,184
	<u>\$ 6,306</u>	<u>\$ 5,928</u>	<u>\$ 19,734</u>	<u>\$ 18,120</u>

**Warrants**

The table below summarizes common stock warrants activity for the nine months ended September 30, 2024:

Date		Outstanding Balance at	Price per Share	Warrants	Warrant	Warrant	Outstanding
Issuance	Expiration	December 31, 2023		Issued	Exercised	Expired	Balance at September 30, 2024
3/1/2017	3/1/2027	1,388	\$ 5.94	—	—	—	1,388
11/26/2014	11/26/2024	6,680	\$ 16.47	—	—	—	6,680
10/20/2015	10/20/2025	41,650	\$ 16.47	—	—	—	41,650
11/9/2015	11/9/2025	25,709	\$ 16.47	—	—	—	25,709
12/22/2016	12/22/2026	9,712	\$ 10.03	—	—	—	9,712
		<u>85,139</u>		<u>—</u>	<u>—</u>	<u>—</u>	<u>85,139</u>

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**9. Net Loss Per Share of Common Stock**

The table below summarizes the computation of basic and diluted net loss per share:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
(in thousands, except share and per share data)				
Net loss	\$ ( 6,575 )	\$ ( 10,022 )	\$ ( 26,418 )	\$ ( 32,353 )
Weighted-average shares used to compute basic and diluted net loss per share	41,717,505	40,265,520	41,324,614	37,702,207
Net loss per share, basic and diluted	\$ ( 0.16 )	\$ ( 0.25 )	\$ ( 0.64 )	\$ ( 0.86 )

Because the Company has reported a net loss in all periods presented, outstanding stock options, restricted stock units, ESPP purchase rights and common stock warrants are anti-dilutive and therefore diluted net loss per common share is the same as basic net loss per common share for the periods presented. The following anti-dilutive common stock equivalents were excluded from the computation of diluted net loss per share for the periods presented:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
Stock options	1,042,956	1,216,841	1,042,956	1,216,841
Restricted stock units	2,809,346	2,501,207	2,809,346	2,501,207
ESPP purchase rights	63,987	38,727	63,987	38,727
Common stock warrants	85,139	85,139	85,139	85,139
	4,001,428	3,841,914	4,001,428	3,841,914

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NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Unaudited)

**10. Related Party Transactions**

On February 24, 2020, the Company entered into a joint development agreement (the "Development Agreement") with SeaSpine Orthopedics Corporation ("SeaSpine"), which merged with Orthofix Medical, Inc. ("Orthofix"), to develop a next generation device for sacropelvic fixation. On April 27, 2021, the Company and SeaSpine entered into that certain Addendum No.1 to the Development Agreement to extend certain obligations as described under the Development Agreement to a consultant of the Company. Mr. Keith C. Valentine, formerly a member of the Company's Board of Directors from August 2015 through June 2024, served as the President, Chief Executive Officer and a member of the board of directors of SeaSpine until its merger with Orthofix in January 2023, and subsequently as the President, Chief Executive Officer and a member of the board of directors of Orthofix until his resignation in October 2023. Subsequent to October 4, 2023, SeaSpine is no longer a related party of the Company.

Pursuant to the development plan, SeaSpine shall use reasonable efforts to assist in the development of the potential product offering, including licensing certain existing intellectual property to be incorporated into such product. Under the terms of the Development Agreement, the Company agreed to make monthly payments to SeaSpine to reimburse for full time resources employed by SeaSpine responsible to conduct the development activities. For the three and nine months ended September 30, 2023, the Company did not incur any reimbursement charges from SeaSpine.

Certain intellectual property developed pursuant to the project plan will be owned by the Company, certain intellectual property developed pursuant to the project plan will be owned by SeaSpine, and other intellectual property developed pursuant to the project plan will be jointly owned by SeaSpine and the Company. The Company also agreed to provide SeaSpine a royalty-free, worldwide, perpetual, non-exclusive license of certain of the Company's intellectual property incorporated into the product to be developed. The Company also agreed to pay SeaSpine a product royalty, in an amount specified in the Development Agreement, for each resulting product sold for a period of 10 years beginning on the initial market launch. The term of the Development Agreement shall continue until the expiration of all royalty terms, unless earlier terminated by either party, as provided for by the Development Agreement. The Company recorded \$ 0.1 million and \$ 0.2 million royalty for the three and nine months ended September 30, 2023, respectively.

**SI-BONE, INC.**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Unaudited)**

**11. Income Taxes**

In determining quarterly provisions for income taxes, the Company uses the annual estimated effective tax rate applied to the actual year-to-date profit or loss, adjusted for discrete items arising in that quarter. The Company updates its estimate of its annual effective tax rate at the end of each quarterly period. The estimate takes into account annual forecasted income (loss) before income taxes, the geographic mix of income (loss) before income taxes and any significant permanent tax items. The Company did not have provision for income taxes for the three and nine months ended September 30, 2024 and 2023. The Company continues to maintain a full valuation allowance against its net deferred tax assets due to the uncertainty surrounding realization of such assets.

The Company accounts for the uncertainty in income taxes by utilizing a comprehensive model for the recognition, measurement, presentation and disclosure in financial statements of any uncertain tax positions that have been taken or are expected to be taken on an income tax return. There had been no changes in the estimated uncertain tax benefits recorded as of September 30, 2024 compared to December 31, 2023.



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

*The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our condensed consolidated financial statements and the related notes to those statements included elsewhere in this Quarterly Report on Form 10-Q, and with the consolidated financial statements and management's discussion and analysis of our financial condition and results of operations in our Annual Report on Form 10-K filed with the SEC on February 27, 2024. Some of the information contained in this discussion and analysis, or set forth elsewhere in this Quarterly Report on Form 10-Q, including information with respect to our plans and strategy for our business, includes forward-looking statements that involve risks and uncertainties. As a result of many important factors, including those set forth in the "Risk Factors" section of our Annual Report on Form 10-K filed on February 27, 2024, our actual results could differ materially from the results described in, or implied, by these forward-looking statements.*

### Overview

We are a medical device company dedicated to solving musculoskeletal disorders of the sacropelvic anatomy. Leveraging our knowledge of pelvic anatomy and biomechanics, we have pioneered proprietary minimally invasive surgical implant systems to address sacroiliac joint dysfunction as well as address unmet clinical needs in pelvic fixation and management of pelvic fractures. Our products include a series of patented titanium implants and the instruments used to implant them, as well as implantable bone products. Since launching our first generation iFuse in 2009, we have launched multiple titanium implant product lines, including iFuse-3D in 2017, iFuse-TORQ in 2021, iFuse Bedrock Granite in 2022, and iFuse INTRA and iFuse TORQ TNT in 2024. In the United States, iFuse, iFuse-3D, iFuse-TORQ and iFuse Bedrock Granite have clearances for applications in sacroiliac joint dysfunction, adult spinal deformity and pelvic trauma. iFuse TORQ TNT has clearances for applications in pelvic trauma and sacroiliac joint dysfunction.

We market our products primarily with a direct sales force as well as a number of third-party sales agents in the United States, and with a combination of a direct sales force, and sales agents and resellers in other countries. As of September 30, 2024, over 110,000 procedures have been performed using our products by over 4,100 physicians in the United States and 38 other countries since we introduced iFuse in 2009.

In May 2023, we received a total of \$83.7 million of net proceeds from the offering of 3,775,000 shares of our common stock, and the exercise of the underwriter's option to purchase an additional 566,250 shares of our common stock, at a public offering price of \$22.00 per share. Of these shares, 272,753 shares were offered by a selling stockholder and did not result in any proceeds to us.

### Factors Affecting Results of Operations and Key Performance Indicators

We monitor certain key performance indicators that we believe provide us and our investors indications of conditions that may affect results of our operations. Our revenue growth rate and commercial progress is impacted by, among other things, our key performance indicators, including our ability to expand access to solutions, increase physician penetration, launch new products, address human capital needs and gain operational efficiencies.

#### *Expand Access to Solutions*

As we expand our portfolio, the experience, caliber, and strong clinician relationships of our sales force, including our network of third-party sales agents, will be crucial to drive adoption of our future products and procedures. Since our initial public offering in 2018, we have made significant investments in our commercial infrastructure to build a valuable sales team to expand the market, drive physician engagement and deliver revenue growth.

While we will continue to selectively expand our sales force, we are also focused on increasing our sales managers' capacity and driving sales force productivity by adding more clinical support specialists and implementing hybrid models, including selectively adding third-party sales agents for case coverage, and by placing instrument trays and implants at select sites of service. This expansion of our sales force is one aspect of increasing the overall number of procedures in a given period that we can support with products, which is what we call "surgical capacity." Our surgical capacity is also limited by the volume of implant inventory and the number of instrument trays held ready for surgery, either at our headquarters facility, forward deployed with our sales force or placed at customer facilities. As we grow, and as adoption of our solutions continues to mature, our overall surgical capacity may become an important driver of the amount of revenue that we can generate.

As of September 30, 2024, our U.S. sales force consisted of 82 territory sales managers and 76 clinical support specialists directly employed by us and 227 third-party sales agents, compared to 83 territory sales managers and 68 clinical support specialists directly employed by us and 160 third-party sales agents as of September 30, 2023. As of September 30, 2024, our international sales force consisted of 11 sales representatives directly employed by us and a total of 29 third-party sales agents and resellers, compared to 13 sales representatives directly employed by us and a total of 30 third-party sales agents and resellers as of September 30, 2023.

As of September 30, 2024, over 20 percent of our procedures for sacroiliac joint dysfunction were performed at ambulatory surgery centers, or ASCs. With the steady increase in the numbers of minimally invasive procedures, including sacroiliac joint fusion procedures, being performed at ASCs, we continue to actively engage with these facilities to educate their management groups on our clinical evidence, exclusive commercial payor coverage and focus on driving improved education and pathways between pain physicians and surgeons.

#### ***Physician Engagement***

Engaging and educating physician and other healthcare professionals about the clinical merits and patient benefits of our solutions will be important to grow physician adoption. Our medical affairs team works closely with our sales team to increase physician engagement and activation. Physician activity includes both the number of physicians performing our procedures as well as the number of procedures performed per physician. In addition to training new physicians, we have several initiatives to re-engage inactive physicians.

We utilize a combination of hands-on cadaveric and dry-lab training, as well as the SI-BONE Simulator - a portable, radiation-free, haptics and computer-based simulator - for training purposes, and optimize our programs to improve adoption rate, time to first case and ultimately physician productivity.

We are currently targeting over 12,000 U.S. physicians, including over 8,000 orthopedic and neurological surgeons and approximately 4,500 interventional spine physicians, to perform our procedures. As of September 30, 2024 and 2023, in the United States more than 3,000 and 2,400 physicians, respectively, have been trained on our products and have treated at least one patient. Outside the United States, as of September 30, 2024 and 2023, more than 1,100 and 940 physicians, respectively, have been trained on our product and have treated at least one patient. Since launching our academic training program in August 2018, we have trained approximately 1,800 surgical residents and fellows in over 250 academic programs in the United States.

#### ***Expand Addressable Markets***

Expanding our platform of sacropelvic solutions to address sacroiliac joint dysfunction, pelvic fixation and pelvic trauma has been a key tenet of our strategy, and we have made substantial progress on this mission. With iFuse-3D, iFuse-TORQ, iFuse Bedrock Granite and iFuse TORQ TNT, we believe that the value of our innovative, versatile, and complementary product portfolio provides physicians with a comprehensive set of alternatives, and positions us as the top choice for physicians for sacropelvic solutions. We also offer an allograft bone implant for physicians who believe that this kind of implant can be important to obtaining stabilization and /or fusion.

In June 2022, we completed enrollment in SILVIA, a two-year prospective international multi-center randomized controlled trial of two different methods for pelvic fixation in adult patients undergoing multi-segmental, or long-construct, spinal fusion. We anticipate the results for the primary endpoint in 2025. We are working with a select group of physicians on STACI, a prospective study on the use of iFuse-TORQ in patients with sacroiliac joint dysfunction. The purpose of STACI is to provide post-market information on the safety and effectiveness of minimally invasive sacroiliac joint fusion procedures performed with iFuse-TORQ. We are no longer actively recruiting patients in our SAFFRON study and anticipate publishing follow-up results in 2025.

We continue to invest in research and development initiatives to bring new and differentiated solutions to the market that deliver on our vision of improving patient quality of life through differentiated solutions to target segments with a clear unmet clinical need. Robust clinical evidence is central to drive adoption and favorable reimbursement, and we remain focused on continuing to set the industry standard in delivering evidence-based care through best-in-class clinical trials that demonstrate the efficacy, safety, and economic benefit of our solutions. During the nine months ended September 30, 2024, we spent \$12.7 million on research and development, equating to 11% of our revenue. During the nine months ended September 30, 2023, we spent \$10.9 million on research and development, equating to 11% of our revenue.

### ***Enhance Employee Experience and Engagement***

Our ability to recruit, develop and retain highly skilled talent is a significant determinant of our success. To attract, retain, and develop our talent, we seek to create a diverse and inclusive workplace with opportunities for our employees to thrive and advance in their careers. We support this with market-competitive compensation, comprehensive benefits, and health and wellness programs.

In addition to ensuring workforce diversity and equitable compensation for our employees, we maintain a strong focus on enhancing employee retention and job satisfaction. To achieve this, we have established a feedback mechanism to continually monitor and respond to employee sentiment. Using this feedback, we deploy strategies that enhance the skills of our people managers and improve internal communications with employees. Furthermore, we provide ongoing learning and leadership training opportunities to support professional growth.

In 2023, we conducted instructor-led trainings designed to build people leadership capabilities and train managers on delivering actionable feedback. We have also adopted a goal for each of our managers to have regular check-ins with employees to discuss their personal goals and career plans in furtherance of our commitment to career and professional development.

We maintain a commitment to employee retention by leveraging insights from exit interviews and engagement surveys to continuously enhance the workplace experience.

### ***Gain operational efficiency***

To support our growing portfolio of solutions, we continue to evolve our business processes to identify, measure and improve operational efficiency. The information developed will allow us to optimize processes, increase sales force productivity and improve asset utilization.

We are focused on increasing our territory sales managers and sales representatives capacity, efficiency and productivity. We may do this by adding more clinical support specialists and third-party sales agents as part of hybrid arrangements for case coverage, and by consigning instrument trays and implants at select sites of service. As of September 30, 2024, our trailing twelve month average revenue per territory sales manager was approximately \$1.8 million.

We have made significant investments in instrument trays used to perform surgeries. Our goal is to deploy instrument trays to the market where the demand exists to increase our asset utilization rates over time and use capital more effectively by having our instrument trays used in more surgeries in any given time period. Given supply chain disruptions impacting the industry, we are working closely with our suppliers to reduce lead time for our implants to ensure we can support our expanding physician footprint and over time build the resilience in our supply chain to reduce our cash investment in inventory. Additionally, we are partnering with our suppliers around design for manufacturing, specifically for newer products, to reduce the overall cost of the implants as we scale, and reduce waste and rework. Lastly, we are integrating our demand planning and manufacturing systems, to ensure we leverage actual usage trends as we build surgical capacity to support our growth.

## **Components of Results of Operations**

### ***Revenue***

Our revenue from sales of implants fluctuates based on volume of cases (procedures performed), discounts, mix of international and U.S. sales, different implant pricing and the number of implants used for a particular patient. Similar to other orthopedic companies, our case volume can vary from quarter to quarter due to a variety of factors including reimbursement, sales force changes, physician activities, product launches, and seasonality. In addition, our revenue is impacted by changes in average selling price as we respond to the competitive landscape and price differences at different medical facilities, such as hospitals, ASCs and office-based labs or OBLs. Further, revenue results can differ based upon the mix of business between U.S. and international sales mix of our products used, and the sales channel through which each procedure is supported. Our revenue from international sales is impacted by fluctuations in foreign currency exchange rates between the U.S. dollar (our reporting currency) and the local currency.

Our business is affected by seasonal variations. For instance, we have historically experienced lower sales in the summer months and higher sales in the last quarter of the fiscal year as patients have more time in the winter months to have the procedure completed or want to take advantage of their annual limits on deductibles, co-payments and other out-of-pocket payments specified in their insurance plans. However, taken as a whole, seasonality does not have a material impact on our financial results from year to year.

### ***Cost of Goods Sold, Gross Profit, and Gross Margin***

We utilize third-party manufacturers for production of our implants and instrument trays. Cost of goods sold consists primarily of costs of the components of implants and instruments, instrument tray depreciation, royalties, scrap and inventory obsolescence, as well as distribution-related expenses such as logistics and shipping costs. Our cost of goods sold has historically increased as case levels increase and from changes in our product mix.

### ***Operating Expenses***

Our operating expenses consist of sales and marketing, research and development, and general and administrative expenses. Personnel costs are the most significant component of operating expenses and consist of salaries, sales commissions and other cash and stock-based compensation related expenses. We intend to make investments to execute our strategic plans and operational initiatives. We anticipate certain operating expenses will continue to increase to support our growth.

#### ***Sales and Marketing Expenses***

Sales and marketing expenses primarily consist of salaries, stock-based compensation expense, and other compensation related costs, for personnel employed in sales, marketing, medical affairs, reimbursement and professional education departments. In addition, our sales and marketing expenses include commissions and bonuses, generally based on a percentage of sales, as well as certain commission guarantees paid to our senior sales management, territory sales managers, clinical support specialists and third-party sales agents.

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

Our research and development expenses primarily consist of engineering, product development, clinical and regulatory expenses (including clinical study expenses), consulting services, outside prototyping services, outside research activities, materials, depreciation, and other costs associated with development of our products. Research and development expenses also include related personnel compensation and stock-based compensation expense. We expense research and development costs as they are incurred.

Research and development expenses for engineering projects fluctuate with project timing. Based upon our broader set of product development initiatives and the stage of the underlying projects, we expect to continue to make investments in research and development. As such, we anticipate that research and development expenses will continue to increase in the future.

#### ***General and Administrative Expenses***

General and administrative expenses primarily consist of salaries, stock-based compensation expense, and other costs for finance, accounting, legal, insurance, compliance, and administrative matters.

### ***Interest Income***

Interest income is primarily related to our investments of excess cash in money market funds and marketable securities.

### ***Interest Expense***

Interest expense is primarily related to borrowings, amortization of debt issuance costs, and accretion of final fees on the First-Citizens Term Loan.

### ***Other Income (Expense), Net***

Other income (expense), net consists primarily of net foreign exchange gains and losses on foreign transactions.

## Results of Operations

We manage and operate as one reportable segment. The table below summarizes our results of operations for the periods presented (percentages are amounts as a percentage of revenue), which we derived from the accompanying condensed consolidated financial statements:

	Three Months Ended September 30,								Nine Months Ended September 30,							
	2024				2023				2024				2023			
	Amount		%		Amount		%		Amount		%		Amount		%	
(in thousands, except for percentages)																
Consolidated Statements of Operations Data:																
Revenue	\$	40,340	100	%	\$	34,014	100	%	\$	118,176	100	%	\$	100,027	100	%
Cost of goods sold		8,437	21	%		7,041	21	%		24,832	21	%		19,283	19	%
Gross profit		31,903	79	%		26,973	79	%		93,344	79	%		80,744	81	%
Operating expenses:																
Sales and marketing		27,448	68	%		26,512	78	%		85,805	73	%		81,317	81	%
Research and development		3,993	10	%		3,919	12	%		12,690	11	%		10,866	11	%
General and administrative		8,095	20	%		7,711	23	%		24,603	21	%		22,986	23	%
Total operating expenses		39,536	98	%		38,142	113	%		123,098	105	%		115,169	115	%
Loss from operations		(7,633)	(19)	%		(11,169)	(34)	%		(29,754)	(26)	%		(34,425)	(34)	%
Interest and other income (expense), net:																
Interest income		1,936	5	%		2,174	6	%		6,064	5	%		4,689	5	%
Interest expense		(884)	(2)	%		(884)	(3)	%		(2,647)	(2)	%		(2,573)	(3)	%
Other income (expense), net		6	—	%		(143)	—	%		(81)	—	%		(44)	—	%
Net loss	\$	(6,575)	(16)	%	\$	(10,022)	(31)	%	\$	(26,418)	(23)	%	\$	(32,353)	(32)	%

We derive the majority of our revenue from sales to customers in the U.S. Revenue by geography is based on billing address of the customer. The table below summarizes our revenue by geography:

	Three Months Ended September 30,								Nine Months Ended September 30,							
	2024				2023				2024				2023			
	Amount		%		Amount		%		Amount		%		Amount		%	
(in thousands except for percentages)																
United States	\$	38,263	95	%	\$	32,300	95	%	\$	111,502	94	%	\$	93,967	94	%
International		2,077	5	%		1,714	5	%		6,674	6	%		6,060	6	%
	\$	40,340	100	%	\$	34,014	100	%	\$	118,176	100	%	\$	100,027	100	%

## Comparison of the Three Months Ended September 30, 2024 and 2023

### Revenue, Cost of Goods Sold, Gross Profit, and Gross Margin :

	Three Months Ended September 30,			
	2024	2023	\$ Change	% Change
(in thousands, except for percentages)				
Revenue	\$ 40,340	\$ 34,014	\$ 6,326	19%
Cost of goods sold	8,437	7,041	1,396	20%
Gross profit	<u>\$ 31,903</u>	<u>\$ 26,973</u>	<u>\$ 4,930</u>	18%
Gross margin	79 %	79 %		

**Revenue.** The increase in revenue for the three months ended September 30, 2024 as compared to the three months ended September 30, 2023 was primarily driven by a \$6.0 million increase in our U.S. revenue from increased case volumes due to our expanded product portfolio and \$0.3 million increase in international revenue due to the increase in case volumes.

**Gross Profit and Gross Margin.** Gross profit increased \$4.9 million for the three months ended September 30, 2024 as compared to the three months ended September 30, 2023, mainly driven by higher revenue. The gross margin was 79% for the three months ended September 30, 2024 consistent with the gross margin of 79% for the three months ended September 30, 2023.

### Operating Expenses:

	Three Months Ended September 30,							
	2024	2023	\$ Change	% Change				
(in thousands, except for percentages)								
Sales and marketing	\$	27,448	\$	26,512	\$	936	4	%
Research and development		3,993		3,919		74	2	%
General and administrative		8,095		7,711		384	5	%
Total operating expenses	\$	39,536	\$	38,142	\$	1,394	4	%

**Sales and Marketing Expenses.** The increase in sales and marketing expenses for the three months ended September 30, 2024 as compared to the three months ended September 30, 2023 was primarily due to a \$0.5 million increase in commissions driven by higher revenues and \$0.4 million increase in training to support the expansion of our sales and marketing activities.

**Research and Development Expenses.** The slight increase in research and development expenses for the three months ended September 30, 2024 compared to the three months ended September 30, 2023 was primarily due to an increase in employee-related costs and stock-based compensation due to an increase in headcount within research and development departments.

**General and Administrative Expenses.** The increase in general and administrative expenses for the three months ended September 30, 2024 compared to the three months ended September 30, 2023 was primarily due to a \$0.4 million increase in employee-related costs and stock-based compensation due to an increase in headcount within general and administrative departments.

**Interest and Other Income (Expense), Net :**

	Three Months Ended September 30,			
	2024	2023	\$ Change	% Change
(in thousands, except for percentages)				
Interest income	\$ 1,936	\$ 2,174	\$ (238)	(11) %
Interest expense	(884)	(884)	—	0 %
Other income (expense), net	6	(143)	149	104 %
Total interest and other expense, net	\$ 1,058	\$ 1,147	\$ (89)	8 %

*Interest Income.* The decrease in interest income for the three months ended September 30, 2024 as compared to the three months ended September 30, 2023 was primarily due to lower investment balances.

*Interest Expense.* The interest expense for the three months ended September 30, 2024 remained consistent as compared to the three months ended September 30, 2023, due to relatively stable interest rates associated with the First-Citizens Term Loan year over year.

*Other Income (Expense), Net.* The change in other income (expense), net for the three months ended September 30, 2024 as compared to the three months ended September 30, 2023 was primarily due to foreign currency fluctuations.

**Comparison of the Nine Months Ended September 30, 2024 and 2023**

**Revenue, Cost of Goods Sold, Gross Profit, and Gross Margin :**

	Nine Months Ended September 30,			
	2024	2023	\$ Change	% Change
(in thousands, except for percentages)				
Revenue	\$ 118,176	\$ 100,027	\$ 18,149	18 %
Cost of goods sold	24,832	19,283	5,549	29 %
Gross profit	\$ 93,344	\$ 80,744	\$ 12,600	16 %
Gross margin	79 %	81 %		

*Revenue.* The increase in revenue for the nine months ended September 30, 2024 as compared to the nine months ended September 30, 2023 was primarily driven by a \$17.5 million increase in our U.S. revenue due to the increase in case volumes due to our expanded product portfolio and \$0.6 million increase in international revenue due to the increase in case volumes.

*Gross Profit and Gross Margin.* Gross profit increased \$12.6 million for the nine months ended September 30, 2024 as compared to the nine months ended September 30, 2023, mainly driven by higher revenue. The gross margin was 79% for the nine months ended September 30, 2024 as compared to 81% for the nine months ended September 30, 2023. Gross margin decreased in the nine months ended September 30, 2024 as compared to the nine months ended September 30, 2023, primarily due to changes in procedure and product mix.

**Operating Expenses:**

	Nine Months Ended September 30,			
	2024	2023	\$ Change	% Change
(in thousands, except for percentages)				
Sales and marketing	\$ 85,805	\$ 81,317	\$ 4,488	6 %
Research and development	12,690	10,866	1,824	17 %
General and administrative	24,603	22,986	1,617	7 %
Total operating expenses	\$ 123,098	\$ 115,169	\$ 7,929	7 %

*Sales and Marketing Expenses.* The increase in sales and marketing expenses for the nine months ended September 30, 2024 as compared to the nine months ended September 30, 2023 was primarily due to a \$2.0 million increase in commissions driven by higher revenues, \$1.7 million increase in training and travel costs to support the expansion of our sales and marketing activities, and a \$0.8

million increase in employee-related costs and stock-based compensation driven by an increase in headcount within sales and marketing departments.

**Research and Development Expenses.** The increase in research and development expenses for the nine months ended September 30, 2024 as compared to the nine months ended September 30, 2023 was primarily due to a \$1.0 million increase in research, regulatory, and consulting fees to support our product development activities and a \$0.8 million increase in employee-related costs and stock-based compensation due to an increase in headcount within research and development departments.

**General and Administrative Expenses.** The increase in general and administrative expenses for the nine months ended September 30, 2024 as compared to the nine months ended September 30, 2023 was primarily due to a \$1.4 million increase in employee-related costs and stock-based compensation due to an increase in headcount within general and administrative departments, a \$0.2 million increase in audit fees related to the audit of our financial statements and the audit of our internal control over financial reporting.

**Interest and Other Income (Expense), Net :**

	Nine Months Ended September 30,			
	2024	2023	\$ Change	% Change
	(in thousands, except for percentages)			
Interest income	\$ 6,064	\$ 4,689	\$ 1,375	29 %
Interest expense	(2,647)	(2,573)	(74)	(3) %
Other income (expense), net	(81)	(44)	(37)	(84) %
Total interest and other expense, net	\$ 3,336	\$ 2,072	\$ 1,264	(61) %

**Interest Income.** The increase in interest income for the nine months ended September 30, 2024 as compared to the nine months ended September 30, 2023 was primarily due to higher interest earned on our investments in marketable securities, primarily as a result of higher interest rates earned.

**Interest Expense.** The increase in interest expense for the nine months ended September 30, 2024 as compared to the nine months ended September 30, 2023 was primarily due to higher interest rates associated with the First-Citizens Term Loan.

**Other Income (Expense), Net.** The change in other income (expense), net for the nine months ended September 30, 2024 as compared to the nine months ended September 30, 2023 was primarily due to foreign currency fluctuations.

**Liquidity and Capital Resources**

As of September 30, 2024, we had cash and marketable securities of \$150.8 million as compared to \$166.0 million as of December 31, 2023. We have financed our operations primarily through the sale of our common stock in our public offerings and debt financing arrangements. As of September 30, 2024, we had \$36.2 million in outstanding debt as compared to \$36.1 million as of December 31, 2023.

As of September 30, 2024, we had an accumulated deficit of \$426.9 million as compared to \$400.4 million as of December 31, 2023. During the nine months ended September 30, 2024, we incurred a net loss of \$26.4 million. During the years ended December 31, 2023 and 2022, we incurred a net loss of \$43.3 million and \$61.3 million, respectively, and expect to incur additional losses in the future. We have not achieved positive cash flow from operations to date.

In May 2023, we received a total of \$83.7 million of net proceeds after deducting the underwriting discounts and commissions from the public offering of our common stock.



Based upon our current operating plan, we believe that our existing cash and marketable securities will enable us to fund our operating expenses and capital expenditure requirements over the next 12 months from the filing of this Form 10-Q. However, the economic impact of a potential future disruptions in the healthcare operating environment and uncertainties affecting the economic and capital markets environment and the financial services industry pose risks and uncertainties to our future available capital resources. Further, we may face challenges and uncertainties and, as a result, may need to raise additional capital as our available capital resources may be consumed more rapidly than currently expected due to, but not limited to the following: (a) decreases in sales of our products and the uncertainty of future revenues from new products; (b) changes we may make to the business that affect ongoing operating expenses; (c) changes we may make in our business strategy; (d) regulatory and reimbursement developments affecting our existing products; (e) changes we may make in our research and development spending plans; and (f) other items affecting our forecasted level of expenditures and use of cash resources. In addition, as we seek to deploy new product offerings, the need for additional capital to fund the purchase of inventories of implants and instrument trays may become more acute and may limit the number of revenue opportunities that we pursue. Each new product line introduced typically requires the purchase of consumable implant inventory as well as investment in a fleet of instrument trays required to support procedures nationwide.

#### **Term Loan**

Our outstanding debt is related to a term loan pursuant to the Loan and Security Agreement dated August 12, 2021 (the "Original Loan Agreement"), entered into by us and Silicon Valley Bank ("SVB" or "Lender"). Pursuant to the Original Loan Agreement, SVB provided a term loan in the aggregate principal amount of \$35.0 million to us (the "Original Term Loan").

On January 6, 2023, we entered into a First Amendment to Loan and Security Agreement (the "Amendment" and together with the Original Loan Agreement, the "Amended Loan Agreement") with SVB, which increased our Original Term Loan facility of \$35.0 million to \$36.0 million. Upon entry into the Amendment, we borrowed \$36.0 million pursuant to a new term loan (the "Term Loan"), which was substantially used to repay in full the Original Term Loan, and we also secured a revolving credit facility in an aggregate principal amount of up to \$15.0 million (the "Revolving Line") and an uncommitted accordion term loan in an aggregate principal amount of up to \$15.0 million, which accordion may be approved by the Lender, solely in its discretion, upon our request. The Term Loan matures on December 1, 2027 (the "Term Loan Maturity Date"). Interest on the Term Loan will be payable monthly at a floating annual rate set at the greater of (i) the prime rate as published in the Wall Street Journal plus 0.5% or (ii) 6.75%. Commencing on July 1, 2025, we will be required to make monthly principal Term Loan amortization payments. A final fee payment of 2% of the original principal amount of the Term Loan is due upon the earlier of the Term Loan Maturity Date, termination of the Amended Loan Agreement, acceleration by the Lender following an event of default, or prepayment of the Term Loan. We may elect to prepay the Term Loan in whole prior to the Term Loan Maturity Date subject to a prepayment fee equal to 2% of the principal amount of the Term Loan prepaid at such time. No prepayment fee would be due if the Term Loan is refinanced by the Lender. Pursuant to the terms of the Amended Loan Agreement, revolving loans may be borrowed, repaid and reborrowed until the maturity date, which will be July 6, 2025 (the "Revolving Line Maturity Date"). Borrowings under the Revolving Line are based on 80% of eligible domestic accounts receivable borrowing base. Interest on the outstanding balance of the Revolving Line will be payable monthly at a floating annual rate set at the greater of the prime rate as published in the Wall Street Journal or 6.25%. Interest on borrowings is due monthly and any principal balance is due on the Revolving Line Maturity Date, provided that when Revolving Line Advances are outstanding, in the event we do not maintain an adjusted quick ratio of at least 1.5 to 1.0, then falling below such threshold will allow the Lender to apply accounts receivable collections to outstanding Revolving Line borrowings. We will pay a total commitment fee of \$187,500 on account of the Revolving Line payable in installments, but fully earned at close. We will also be required to pay a fee of \$150,000 if we terminate the Amended Loan Agreement or the Revolving Line prior to Revolving Line Maturity Date, or if the Lender terminates the Loan Agreement or the Revolving Line following an event of default. No termination fee would be due if the Revolving Line is replaced with a new facility with the Lender.

On March 14, 2023 all of SVB's assets and liabilities, including all of SVB's rights as the lender pursuant to the Amended Loan Agreement, were assigned to Silicon Valley Bridge Bank. On March 27, 2023, all of Silicon Valley Bridge Bank's assets and liabilities were assigned and assumed by First-Citizens Bank & Trust Company ("First-Citizens"). On January 25, 2024, the Company entered into a Second Amendment to Loan and Security Agreement with First-Citizens which amends the Company's Amended Loan Agreement (the "Second Amendment" and together with the Amended Loan Agreement, the "Second Amended Loan Agreement"). The Second Amendment revised certain provisions related to financial covenants and the periods in which the covenants apply. No amounts were outstanding under the Revolving Line as of September 30, 2024.

On March 10, 2023, we violated certain terms of the Amended Loan Agreement by opening bank accounts with another financial institution and transferring funds from SVB. We entered into a letter agreement with Silicon Valley Bridge Bank waiving enforcement of this covenant and providing us the right to hold a portion of our cash at other financial institutions. A future violation of any covenants could result in a default under the Second Amended Loan Agreement that would permit First-Citizens to restrict our ability to further access the Revolving Line of Credit for loans and require the immediate repayment of any outstanding loans under the agreement. As of September 30, 2024, we were in compliance with all debt covenants.

The Second Amended Loan Agreement contains customary events of default, including bankruptcy, the failure to make payments when due, the occurrence of a material impairment on First-Citizens' security interest over the collateral, a material adverse change, the occurrence of a default under certain other indebtedness of our company and our subsidiaries, the rendering of certain types of judgments against us and our subsidiaries, the revocation of certain government approvals, violation of covenants, and incorrectness of representations and warranties in any material respect. In addition, the Second Amended Loan Agreement contains a financial covenant which requires us to maintain, at all times during which we are subject to financial covenants under the Second Amended Loan Agreement is in effect, certain net revenue levels as agreed upon by us and First-Citizens. If we do not comply with the various covenants under the Second Amended Loan Agreement and an event of default occurs under the Second Amended Loan Agreement, the interest rate on outstanding amounts can increase by 3% and First-Citizens may, subject to various customary cure rights, decline to provide additional advances under the Revolving Line, require the immediate payment of all loans and other amounts outstanding under the Second Amended Loan Agreement, and foreclose on all collateral.

On November 8, 2024, we entered into a Third Amendment to Loan and Security Agreement with First-Citizens (the "Third Amendment" and together with the Second Amended Loan Agreement, collectively, the "Third Amended Loan Agreement"), relative to a new term loan in the original aggregate principal amount of \$36.0 million extended by First-Citizens to the Company (the "Third Amendment Term Loan"), which was substantially used to refinance and repay in full the then-outstanding \$36.0 million existing Term Loan. The Company also paid a certain final payment due relative to such prior Term Loan. The Third Amendment sets the maturity date for the Third Amendment Term Loan to September 1, 2029 (the "Third Amendment Term Loan Maturity Date"), and defers the first principal repayment due date relative to the Third Amendment Term Loan to October 1, 2027; provided that upon the achievement of the Performance Milestone (as defined in the Third Amendment), the first principal payment shall become due on October 1, 2028. Interest on the Third Amendment Term Loan will be payable monthly at a floating rate per annum equal to the greater of 4.25% and the prime rate minus 0.5%. The Company may elect to prepay the Third Amendment Term Loan in whole prior to the Third Amendment Term Loan Maturity Date, subject to a prepayment fee equal to 1.5% of the original principal amount of the Third Amendment Term Loan if it is prepaid within 18 months following the closing of the Third Amendment. The Third Amendment further revised certain provisions related to financial covenants and the periods in which the covenants apply, and First-Citizens and the Company also terminated the Revolving Line and an uncommitted accordion term loan provision.

Our material cash requirements include various contractual and other obligations consisting of long-term debt obligations with First-Citizens, operating lease obligations and purchase obligations with some of our suppliers and have not changed materially since the Form 10-K filed with the SEC on February 27, 2024. As of September 30, 2024, expected timing of those payments are as follows:

	Payments Due By Period				
	Total	Less than 1 year	1-3 years	4-5 years	More than 5 years
	(in thousands)				
Principal obligations and final fee on debt (1)	\$ 36,720	\$ —	\$ 22,800	\$ 13,920	\$ —
Interest obligations (2)	6,075	782	4,727	566	—
Operating lease obligations	2,497	388	2,100	9	—
Purchase obligations	528	528	—	—	—
Total	\$ 45,820	\$ 1,698	\$ 29,627	\$ 14,495	\$ —

(1) Represents the principal obligations and the final fee at maturities of our First-Citizens Term Loan.

(2) Represents the future interest obligations on our First-Citizens Term Loan estimated using an interest rate of 8.50% as of September 30, 2024.

This compares to \$49.2 million of contractual obligations as of December 31, 2023.

## Cash Flows

The following table sets forth the primary sources and uses of cash for each of the periods presented below:

	Nine Months Ended September 30,		
	2024	2023	\$ Change
Net cash provided by (used in):	(in thousands)		
Operating activities	\$ (13,603)	\$ (16,416)	\$ 2,813
Investing activities	8,286	(40,886)	49,172
Financing activities	2,036	90,091	(88,055)
Effects of exchange rate changes on cash and cash equivalents	235	(14)	249
Net increase (decrease) in cash and cash equivalents	\$ (3,046)	\$ 32,775	\$ (35,821)

### Cash Used in Operating Activities

Net cash used in operating activities for the nine months ended September 30, 2024 of \$13.6 million resulted from cash outflows due to a net loss of \$26.4 million, adjusted for \$21.0 million of non-cash items, and cash outflows from net changes in operating assets and liabilities of \$8.2 million. Net cash used in operating activities for the nine months ended September 30, 2023 of \$16.4 million resulted from cash outflows due to a net loss of \$32.4 million, adjusted for \$21.2 million of non-cash items, and cash outflows from changes in operating assets and liabilities of \$5.3 million. The decrease in net loss, net of non-cash items for the nine months ended September 30, 2024 as compared to the nine months ended September 30, 2023 was mainly due to increased revenues. Net cash outflows from changes in operating assets and liabilities for the nine months ended September 30, 2024 was primarily due to higher accounts receivable due to timing of collections, higher inventory due to new product introductions, higher account payables and lower accrued liabilities attributable to the normal timing of expenses. Net cash outflows from changes in operating assets and liabilities for the nine months ended September 30, 2023 was primarily due to higher inventory due to the inventory build-up related to our implants, and lower account payables attributable to the normal course timing of expenses.

### Cash Flows From Investing Activities

Net cash provided by investing activities in the nine months ended September 30, 2024 was \$8.3 million as compared to cash used in investing activities of \$40.9 million in the nine months ended September 30, 2023. Net cash provided by investing activities for the nine months ended September 30, 2024 consisted of maturities of our marketable securities net of purchases of \$16.5 million, and purchases of property and equipment of \$8.2 million primarily related to individual components in instrument sets to support revenue growth. Net cash used in investing activities for the nine months ended September 30, 2023 consisted of purchases of our marketable securities net of maturities of \$34.2 million, and purchases of property and equipment of \$6.7 million primarily related to individual components in instrument sets to support revenue growth, as well as leasehold improvements made to the building used for research and development and warehouse space in Santa Clara.

### Cash Provided by Financing Activities

Cash provided by financing activities in the nine months ended September 30, 2024 was \$2.0 million resulting from the issuance of common stock under our stock-based incentive compensation plans. This compares to \$90.1 million resulting from proceeds of \$83.7 million from the issuance of common stock under our follow-on public offering, proceeds of \$5.7 million from the issuance of common stock under our stock-based incentive compensation plans, and net proceeds of \$0.7 million from the refinancing of our Term Loan with First-Citizens.

## Critical Accounting Policies, Significant Judgments, and Use of Estimates

This discussion and analysis of our financial condition and results of operations is based on our condensed consolidated financial statements, which have been prepared in accordance with U.S. GAAP. The preparation of these condensed consolidated financial statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the condensed consolidated financial statements, as well as the reported revenue generated, and expenses incurred during the reporting periods. Our estimates are based on our historical experience and on various other factors that we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates.

Our critical accounting policies and estimates are described in "Management's Discussion and Analysis of Financial Condition and Results of Operations - Critical Accounting Policies, Significant Judgments, and Use of Estimates" in our 2023 Annual Report. There had been no material changes to the descriptions of these accounting policies, judgments and estimates.

## Seasonality

Our business is affected by seasonal variations. For instance, we have historically experienced lower sales in the summer months and higher sales in the last quarter of the fiscal year. However, taken as a whole, seasonality does not have a material impact on our financial results.

## Item 3. Quantitative and Qualitative Disclosures about Market Risk

We are exposed to market risks, including changes to foreign currency exchange rates and interest rates.

### **Foreign Currency Exchange Risk**

We have foreign currency risks related to our revenue and operating expenses denominated in currencies other than the U.S. dollar, primarily the Euro. Accordingly, changes in exchange rates, and in particular a strengthening of the U.S. dollar, have in the past, and may in the future, negatively affect our revenue and other operating results as expressed in U.S. dollars.

We have experienced and will continue to experience fluctuations in net loss as a result of transaction gains or losses related to remeasuring certain current asset and current liability balances denominated in currencies other than the functional currency of the entities in which they are recorded. At this time, we have not entered into, but in the future we may enter into, derivatives or other financial instruments in an attempt to hedge our foreign currency exchange risk. It is difficult to predict the effect hedging activities would have on our results of operations. Foreign currency gains or losses, net recognized in the three and nine months ended September 30, 2024 and 2023 were not material. A hypothetical 100 basis point change in foreign exchange rates during any of the periods presented would not have had a material impact on our condensed consolidated financial statements.

### **Interest Rate Risk**

Our exposure to changes in interest rates relates to interest earned and market value on our cash and cash equivalents and short-term investments. Our cash and cash equivalents and short-term investments consist of cash, money market funds, U.S. government securities. The market value of our marketable securities may decline if current market interest rates rise. Our investment policy and strategy are focused on preservation of capital and supporting our liquidity requirements. We do not make investments for trading or speculative purposes.

With the execution of the Third Amendment with First-Citizens relative to the Third Amendment Term Loan, interest will be payable monthly at a floating annual rate set at the greater of the prime rate as published in the Wall Street Journal minus 0.5% or 4.25%. Rising interest rates will increase the amount of interest paid on this debt. We believe that our exposure to interest rate risk is not significant due to the low risk profile of our investments and amount of our Term Loan, therefore a hypothetical 100 basis point in market interest rates during any of the periods presented would not have had a material impact on our condensed consolidated financial statements.

#### **Item 4. Controls and Procedures**

##### ***Evaluation of Disclosure Controls and Procedures***

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in the reports that we file or submit under the Securities and Exchange Act of 1934 is (i) recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and (ii) accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

Internal control over financial reporting has inherent limitations. Internal control over financial reporting is a process that involves human diligence and compliance and is subject to lapses in judgment and breakdowns resulting from human failures. Internal control over financial reporting also can be circumvented by collusion or improper management override. Because of such limitations, there is a risk that material misstatements will not be prevented or detected on a timely basis by internal control over financial reporting. However, these inherent limitations are known features of the financial reporting process. Therefore, it is possible to design into the process safeguards to reduce, though not eliminate, this risk.

As of September 30, 2024, our management, with the participation of our Chief Executive Officer ("CEO") and our Chief Financial Officer ("CFO"), have evaluated our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934). Based on that evaluation, our CEO and our CFO have concluded that, as of September 30, 2024, our disclosure controls and procedures were effective at the reasonable assurance level.

##### ***Changes in internal control over financial reporting***

During the quarter ended September 30, 2024, there were no changes in our internal controls over financial reporting that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

#### **PART II—OTHER INFORMATION**

##### **Item 1. Legal Proceedings**

We are involved in various claims, complaints, investigations and legal actions that arise from time to time in the normal course of business, including commercial and employment matters. There are no matters pending that we currently believe are material. There can be no assurance that existing or future legal proceedings arising in the ordinary course of business or otherwise will not have a material adverse effect on our business, financial condition or results of operations.

## Item 1A. Risk Factors

Except as set forth below, there have been no material changes from the risk factors disclosed in Part I, Item 1A. "Risk Factors" of our 2023 Annual Report. The risk factors described in our 2023 Annual Report, as well as other information set forth in this Quarterly Report on Form 10-Q, could materially adversely affect our business, financial condition, results of operations and prospects, and should be carefully considered. The risks and uncertainties that we face, however, are not limited to those described in the 2023 Annual Report. Additional risks and uncertainties not presently known to us or that we currently believe to be immaterial may also adversely affect our business and the trading price of our securities.

***We and our sales representatives must comply with U.S. federal and state fraud and abuse laws, including those relating to healthcare provider kickbacks and false claims for reimbursement, and other applicable federal and state healthcare laws, as well as equivalent foreign laws, and failure to comply could negatively affect our business.***

Healthcare providers, third-party sales agents and resellers and third-party payors play a primary role in the distribution, recommendation, ordering, and purchasing of any implant or other medical device for which we have or obtain marketing clearance or approval. Through our arrangements with customers and third-party payors, we are exposed to the risk that our employees, independent contractors, principal investigators, consultants, vendors, or third-party sales agents and resellers may engage in fraudulent or other illegal activity. Misconduct by these parties could include, among other infractions or violations, intentional, reckless and/or negligent conduct or unauthorized activity that violates FDA regulations, manufacturing standards, federal and state healthcare fraud and abuse laws and regulations, laws that require the true, complete, and accurate coding of claims for reimbursement for medical procedures submitted to private and governmental payors and reporting of other financial information or data, other commercial or regulatory laws or requirements, and equivalent foreign rules. It is not always possible to identify and deter misconduct by our employees and other third parties, and the precautions we take to detect and prevent this activity may not be effective in controlling unknown or unmanaged risks or losses or in protecting us from governmental investigations or other actions or lawsuits stemming from a failure to comply with such laws or regulations, and government authorities may conclude that our business practices do not comply with applicable fraud and abuse or other healthcare laws and regulations or guidance despite our good faith efforts to comply.

There are numerous U.S. federal and state laws pertaining to healthcare fraud and abuse, including anti-kickback and false claims laws. Our relationships and our third-party sales agents and resellers' relationships with physicians, other healthcare professionals, and hospitals are subject to scrutiny under these laws. For example, we are subject to the federal health-care Anti-Kickback Statute, the federal civil False Claims Act, the Health Insurance Portability and Accountability Act ("HIPAA") and the federal Physician Payment Sunshine Act, each of which is described in detail in "Item 1. Business - Healthcare Fraud and Abuse" and "Data Privacy and Security Laws".

Certain states and countries also have enacted analogous state and foreign law equivalents of each of the above federal laws and may also mandate implementation of corporate compliance programs, require compliance with the industry's voluntary compliance guidelines, impose restrictions on device manufacturer marketing practices, and/or require tracking and reporting of gifts, compensation, and other remuneration to healthcare professionals and entities. Many of these state and foreign laws differ from each other in significant ways and may not have the same effect, thus complicating compliance efforts.

If we or our employees are found to have violated any of the above laws we may be subject to significant administrative, civil and criminal penalties, including imprisonment, exclusion from participation in federal healthcare programs, such as Medicare, Medicaid, and equivalent foreign programs, significant fines, monetary penalties and damages, imposition of compliance obligations and monitoring, the curtailment or restructuring of our operations, and damage to our reputation.

We have entered into consulting agreements and royalty agreements with physicians and healthcare executives, including some who are customers. We also engage in co-marketing arrangements with certain physicians who use our products. In addition, prior to our IPO, a small number of our current customer surgeons acquired from us less than 1.0% of our current outstanding common stock, which they either purchased in an arm's length transaction on terms identical to those offered to others or received from us as fair market value consideration for consulting services performed. While all of these transactions were structured to comply with applicable laws, including the federal Anti-Kickback Statute, state anti-kickback laws and other applicable laws, it is possible that regulatory agencies may view these transactions as prohibited arrangements that must be restructured, or discontinued, or for which we could be subject to significant penalties and criminal, civil and administrative liability. We would be materially and adversely affected if regulatory agencies interpret our financial relationships with physicians who order our products to be in violation of applicable laws and we were unable to comply with such laws, which could subject us to, among other things, monetary penalties for non-compliance, the cost of which could be substantial.

Various state and federal regulatory and enforcement agencies, and foreign equivalents, continue actively to investigate violations of health-care laws and regulations, and the U.S. Congress continues to strengthen the arsenal of enforcement tools. To

enforce compliance with the federal laws, the U.S. Department of Justice has continued its scrutiny of interactions between healthcare companies and healthcare providers, which has led to a number of investigations, prosecutions, convictions and settlements in the healthcare industry. For example, in October 2024, we received a civil investigative demand ("CID") from the U.S. Department of Justice, Civil Division, in connection with an investigation under the federal Anti-Kickback Statute and Civil False Claims Act (the "Investigation"). The CID requests information and documents primarily relating to meals and consulting service payments provided to health-care professionals. Dealing with this Investigation and other investigations may be time- and resource-consuming and can divert management's attention from the business. In addition, most of these laws apply to not only the actions taken by us, but also actions taken by our distributors and other third party agents, and healthcare providers with whom we interact. We have limited control over the business practices of our distributors and agents, and we may face regulatory action against us as a result of their actions which could have a material adverse effect on our reputation, business, results of operations, and financial condition. Additionally, if a healthcare company settles an investigation with the Department of Justice or other law enforcement agencies, it may need to agree to additional onerous compliance and reporting requirements as part of a consent decree, deferred or non-prosecution agreement, or corporate integrity agreement. Our current Investigation and any new investigation or settlement could increase our costs or otherwise have an adverse effect on our business. Even if we are not determined to have violated these laws, government investigations into these issues typically require the expenditure of significant resources and generate negative publicity, which could harm our financial condition and divert resources and the attention of our management from operating our business.

The scope and enforcement of these laws is uncertain and subject to rapid change. The shifting compliance environment and the need to build and maintain robust and expandable systems and processes to comply with different compliance and/or reporting requirements in multiple jurisdictions increase the possibility that we may run afoul of one or more of the requirements or that federal or state regulatory authorities might challenge our current or future activities under these laws. Additionally, we cannot predict the impact of any changes in these laws, whether or not retroactive.

***Our ability to access credit on favorable terms, if necessary, for the funding of our operations and capital projects may be limited due to changes in credit markets.***

In the past, the credit markets and the financial services industry have experienced disruption characterized by the bankruptcy, failure, collapse or sale of various financial institutions, increased volatility in securities prices, diminished liquidity and credit availability and intervention from the U.S. and other governments. Continued concerns about the systemic impact of potential long-term or widespread downturn, energy costs, geopolitical issues, the availability and cost of credit, the global commercial and residential real estate markets and related mortgage markets and reduced consumer confidence have contributed to increased market volatility. The cost and availability of credit has been and may continue to be adversely affected by these conditions. We cannot be certain that funding for our capital needs will be available from our existing financial institutions and the credit markets if needed, and if available, to the extent required and on acceptable terms. On November 8, 2024, we entered into a Third Amendment to Loan and Security Agreement (the "Third Amendment") with Silicon Valley Bank, a division of First-Citizens Bank & Trust Company ("SVB"), which amends the Company's Loan and Security Agreement, dated as of August 12, 2021 (the "Original Loan Agreement"), as amended by that certain First Amendment to Loan and Security Agreement, dated as of January 6, 2023 (the "First Amendment") and that certain Second Amendment to Loan and Security Agreement, dated as of January 25, 2024 (the "Second Amendment" and the Original Loan Agreement, as amended by the First Amendment, Second Amendment and Third Amendment, the "Third Amended Loan Agreement"). The Third Amendment Term Loan extended by First-Citizens to us pursuant to the current Third Amended Loan Agreement terminates and matures on September 1, 2029, and if we cannot renew or refinance this Third Amendment Term Loan, if needed at such time, or obtain funding when needed, in each case on acceptable terms, such conditions may have an adverse effect on our ability to operate our business. See "Note 7. Borrowings" to the "Notes to Consolidated Financial Statements" included in this report for additional information.

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

None.

## **Item 3. Defaults Upon Senior Securities**

None.

## **Item 4. Mine Safety Disclosures**

Not Applicable.

## Item 5. Other Information

### *Third Amendment to Loan and Security Agreement*

On November 8, 2024, the Company entered into a Third Amendment to Loan and Security Agreement (the "Third Amendment" and together with the Loan and Security Agreement dated as of August 12, 2021, as amended by that certain First Amendment to Loan and Security Agreement dated as of January 6, 2023 and that certain Second Amendment to Loan and Security Agreement dated January 25, 2024, the "Third Amended Loan Agreement") with First-Citizens Bank & Trust Company ("First-Citizens"), pursuant to which a new term loan in the original aggregate principal amount of \$36.0 million was extended by First-Citizens to the Company (the "Third Amendment Term Loan"), which was substantially used to refinance and repay in full the then-outstanding \$36.0 million existing term loan. The Company also paid a certain final payment due relative to such prior term loan. The Third Amendment sets the maturity date for the Third Amendment Term Loan to September 1, 2029 (the "Third Amendment Term Loan Maturity Date"), and defers the first principal repayment due date relative to the Third Amendment Term Loan to October 1, 2027; provided that upon the achievement of the Performance Milestone (as defined in the Third Amendment), the first principal payment shall become due on October 1, 2028. Interest on the Third Amendment Term Loan will be payable monthly at a floating rate per annum equal to the greater of 4.25% and the prime rate minus 0.5%. The Company may elect to prepay the Third Amendment Term Loan in whole prior to the Third Amendment Term Loan Maturity Date, subject to a prepayment fee equal to 1.5% of the original principal amount of the Third Amendment Term Loan if it is prepaid within 18 months following the closing of the Third Amendment. The Third Amendment further revised certain provisions related to financial covenants and the periods in which the covenants apply, and First-Citizens and the Company also terminated the revolving credit facility in an aggregate principal amount of up to \$15.0 million and an uncommitted accordion term loan provision.

We are including this disclosure in this Form 10-Q rather than filing a Form 8-K under Items 1.01 and 2.03.

### *Trading Plans*

During the fiscal quarter ended September 30, 2024, no director or Section 16 officer adopted or terminated any Rule 10b5-1 trading arrangement or non-Rule 10b5-1 trading arrangement (in each case, as defined in Item 408(a) of Regulation S-K).



Item 6. Exhibits

Exhibit Number	Description	Incorporation By Reference			
		Form	SEC File No.	Exhibit/ Reference	Filing Date
3.1	<a href="#">Amended and Restated Certificate of Incorporation.</a>	8-K	001-38701	3.1	10/19/2018
3.2	<a href="#">Amendment to Amended and Restated Certificate of Incorporation</a>	8-K	001-38701	3.1	6/26/2024
3.3	<a href="#">Second Amended and Restated Bylaws.</a>	8-K	001-38701	3.1	9/20/2023
4.1	<a href="#">Form of Common Stock Certificate of the Company.</a>	S-1/A	333-227445	4.1	10/5/2018
4.2	Reference is made to Exhibits <a href="#">3.1</a> and <a href="#">3.2</a> .				
10.1	<a href="#">Second Amendment to Lease Agreement, dated July 17, 2024, between SI-BONE, Inc. and Bixby SPE Finance 11, LLC</a>	8-K	001-38701	10.1	7/19/2024
10.2*#	<a href="#">Third Amendment to Loan and Security Agreement, dated November 8, 2024, between SI-BONE, Inc. and Silicon Valley Bank</a>				
31.1*	<a href="#">Certification of Principal Executive Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>				
31.2*	<a href="#">Certification of Principal Financial Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>				
32.1**	<a href="#">Certification of Principal Executive Officer and Principal Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>				
101.INS*	Inline XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.				
101.SCH*	Inline XBRL Taxonomy Extension Schema Document.				
101.CAL*	Inline XBRL Taxonomy Extension Calculation Linkbase Document.				
101.DEF*	Inline XBRL Taxonomy Extension Definition Linkbase Document.				
101.LAB*	Inline XBRL Taxonomy Extension Label Linkbase Document.				
101.PRE*	Inline XBRL Taxonomy Extension Presentation Linkbase Document.				
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)				

\* Filed herewith.

\*\* Furnished herewith. Exhibit 32.1 is being furnished and shall not be deemed to be "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or otherwise subject to the liability of that section, nor shall such exhibit be deemed to be incorporated by reference in any registration statement or other document filed under the Securities Act of 1933, as amended, or the Exchange Act, except as otherwise specifically stated in such filing.

# The Company has omitted portions of the referenced exhibit pursuant to Item 601(b) of Regulation S-K because it (a) is not material and (b) the type of information that the Registrant both customarily and actually treats as private or confidential.

## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended, the Registrant has duly caused this Report to be signed on its behalf by the undersigned, thereunto duly authorized, in Santa Clara, California, on November 12, 2024.

SI-BONE, Inc.

Date: November 12, 2024

By: /s/ Laura A. Francis  
Laura A. Francis  
Chief Executive Officer  
(Duly Authorized Officer and Principal Executive Officer)

SI-BONE, Inc.

Date: November 12, 2024

By: /s/ Anshul Maheshwari  
Anshul Maheshwari  
Chief Financial Officer  
(Duly Authorized Officer and Principal Financial and Accounting Officer)

CERTAIN INFORMATION IDENTIFIED BY "[\*]" HAS BEEN EXCLUDED FROM THE EXHIBIT BECAUSE IT IS BOTH NOT MATERIAL AND IS THE TYPE OF INFORMATION THAT THE REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL.

**LOAN AND SECURITY AGREEMENT  
THIRD AMENDMENT TO**

This Third Amendment to Loan and Security Agreement (this "**Amendment**") is entered into as of August 8, 2024, by and between (i) **SILICON VALLEY BANK**, a division of First-Citizens Bank & Trust Company ("**Bank**"), and (ii) **SI-BONE, INC.**, a Delaware corporation ("**Borrower**").

**Recitals**

- A. Bank and Borrower have entered into that certain Loan and Security Agreement dated as of August 12, 2021 (the "**Existing Loan Agreement**"; the Existing Loan Agreement, as amended, restated, amended and restated, modified, or supplemented from time to time, including by that certain First Amendment to Loan and Security Agreement dated as of January 6, 2023, that certain Letter Agreement dated as of March 24, 2023 and that certain Second Amendment to Loan and Security Agreement dated as of January 25, 2024, the "**Loan Agreement**").
- B. Bank has extended credit to Borrower for the purposes permitted in the Loan Agreement.
- C. Borrower has requested that Bank amend the Loan Agreement to make certain revisions to the Loan Agreement as more fully set forth herein.
- D. Bank has agreed to so amend certain provisions of the Loan Agreement, but only to the extent, in accordance with the terms, subject to the conditions and in reliance upon the representations and warranties set forth below.

**Agreement**

**Now, Therefore**, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

1. **Definitions.** Capitalized terms used but not defined in this Amendment shall have the meanings given to them in the Loan Agreement.

2. **Amendments to Loan Agreement.**

2.1 Exhibit A attached hereto, sets forth a clean copy of the Loan Agreement as amended hereby.

2.2 Exhibit B attached hereto, shows deletions of the text in the Existing Loan Agreement pursuant to this Amendment (including, to the extent included in such Exhibit B, each

Schedule or Exhibit to the Existing Loan Agreement), which are indicated by ~~struck-through text~~, and insertions of text, which are indicated by **bold, double-underlined text**.

**3. Representations and Warranties.** To induce Bank to enter into this Amendment, Borrower hereby represents and warrants to Bank as follows:

**3.1** Immediately after giving effect to this Amendment (a) the representations and warranties contained in the Loan Documents are true, accurate and complete in all material respects as of the date hereof (except to the extent such representations and warranties relate to an earlier date, in which case they are true and correct as of such date), and (b) no Event of Default has occurred and is continuing;

**3.2** Borrower has the power and authority to execute and deliver this Amendment and to perform its obligations under the Loan Agreement, as affected by this Amendment;

**3.3** The organizational documents of Borrower delivered to Bank on the First Amendment Effective Date remain true, accurate and complete and have not been amended, supplemented or restated and are and continue to be in full force and effect;

**3.4** The execution and delivery by Borrower of this Amendment and the performance by Borrower of its obligations under the Loan Agreement, as affected by this Amendment, have been duly authorized;

**3.5** The execution and delivery by Borrower of this Amendment and the performance by Borrower of its obligations under the Loan Agreement, as affected by this Amendment, do not and will not contravene (a) any law or regulation binding on or affecting Borrower, (b) any contractual restriction with a Person binding on Borrower, (c) any order, judgment or decree of any court or other governmental or public body or authority, or subdivision thereof, binding on Borrower, or (d) the organizational documents of Borrower, or applicable consents or waivers have been obtained;

**3.6** The execution and delivery by Borrower of this Amendment and the performance by Borrower of its obligations under the Loan Agreement, as affected by this Amendment, do not require any order, consent, approval, license, authorization or validation of, or filing, recording or registration with, or exemption by any governmental or public body or authority, or subdivision thereof, binding on Borrower, except as already has been obtained or made; and

**3.7** This Amendment has been duly executed and delivered by Borrower and is the binding obligation of Borrower, enforceable against Borrower in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, liquidation, moratorium or other similar laws of general application and equitable principles relating to or affecting creditors' rights.

**4. Updated Perfection Certificate.** Borrower has delivered an updated Perfection Certificate dated as of the date hereof in connection with this Amendment (the "**Updated Perfection Certificate**"), which Updated Perfection Certificate shall supersede in all respects that certain Perfection Certificate delivered to Bank on the First Amendment Effective Date. Borrower and Bank acknowledge and agree that all references in the Loan Agreement to the "Perfection Certificate" shall hereinafter be deemed to be a reference to the Updated Perfection Certificate.

**5. Integration.** This Amendment and the Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements. All prior agreements,

understandings, representations, warranties, and negotiations between the parties about the subject matter of this Amendment and the Loan Documents merge into this Amendment and the Loan Documents.

**6. Counterparts.** This Amendment may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

**7. Effectiveness.** As a condition precedent to the effectiveness of this Amendment and Bank's obligation to make further Credit Extensions, Bank shall have received the following prior to or concurrently with this Amendment, each in form and substance satisfactory to Bank:

**7.1** The due execution and delivery to Bank of this Amendment by each party thereto;

**7.2** copies, certified in a certificate executed by a duly authorized officer of Borrower, to be true and complete as of the date of such certificate, of each of (i) the governing documents of Borrower, as in effect on the date of such certificate, (ii) the resolutions of Borrower authorizing the execution and delivery of this Amendment, all documents executed by it in connection herewith, and Borrower's performance of all of the transactions contemplated hereby, and (iii) an incumbency certificate giving the name and bearing a specimen signature of each individual who shall be so authorized;

**7.3** a good standing certificate of Borrower, certified by the Secretary of State of the state of formation of Borrower, and each jurisdiction in which Borrower is qualified to do business required by Bank, dated as of a date no earlier than thirty (30) days prior to the date hereof;

**7.4** repayment of (i) all Obligations constituting Term Loan Advances (as defined in the Loan Agreement prior to the Third Amendment Effective Date) outstanding immediately prior to the Third Amendment Effective Date, and (ii) the Final Payment (as defined in the Loan Agreement prior to the Third Amendment Effective Date);

**7.5** certified copies, dated as of a recent date, of UCC and other lien searches of Borrower, as Bank may request and which shall be obtained by Bank, accompanied by written evidence (including any UCC termination statements) that the Liens revealed in any such searched either (i) will be terminated prior to or in connection with this Amendment, or (ii) will constitute Permitted Liens;

**7.6** the Updated Perfection Certificate of Borrower;

**7.7** Borrower's payment of the Revolving Line Commitment Fee (as defined in the Loan Agreement prior to the Third Amendment Effective Date) in an aggregate amount of Thirty Seven Thousand Five Hundred Dollars (\$37,500);

**7.8** Borrower's payment of Bank's legal fees and expenses incurred in connection with this Amendment; and

**7.9** such other documents as Bank may reasonably request to effectuate the terms of this Amendment.

**8. Governing Law.** This Amendment and any claim, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Amendment and the transactions contemplated hereby and thereby shall be governed by, and construed in accordance with, the

laws of the State of California, without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction).

[Signature page follows.]

**In Witness Whereof**, the parties hereto have caused this Amendment to be duly executed and delivered as of the date first written above.

**BANK:**

FIRST-CITIZENS BANK & TRUST COMPANY

By: /s/ Mark Davis  
Name: Mark Davis  
Title: Vice President

**BORROWER:**

SI-BONE, INC.

By: /s/ Anshul Maheshwari  
Name: Anshul Maheshwari  
Title: CFO

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## **EXHIBIT A**

### **LOAN AND SECURITY AGREEMENT**

This **LOAN AND SECURITY AGREEMENT** (this "**Agreement**") is dated as of the Effective Date between **SILICON VALLEY BANK**, a California corporation ("**Bank**"), and the borrower listed on Schedule I hereto ("**Borrower**"). The parties agree as follows:

#### **1. LOAN AND TERMS OF PAYMENT**

##### **1.1 Term Loan Advance.**

(a) Availability. Subject to the terms and conditions of this Agreement, on or about the Third Amendment Effective Date, Bank shall make one (1) term loan advance to Borrower in an original principal amount equal to the Term Loan Availability Amount (the "**Term Loan Advance**") which shall be used to (i) refinance the Term Loan Advance (as defined in the Agreement prior to the Third Amendment Effective Date) outstanding as of the Third Amendment Effective Date, (ii) satisfy the Final Payment (as defined in the Agreement prior to the Third Amendment Effective Date), which is with respect to the Term Loan Advance (as defined in the Agreement prior to the Third Amendment Effective Date), and (iii) thereafter, used for working capital purposes. Bank and Borrower acknowledge and agree that prior to the Third Amendment Effective Date, the amount Borrower accrued and owed to Bank in connection with the Final Payment (as defined in the Agreement prior to the Third Amendment Effective Date) was Seven Hundred Twenty Thousand Dollars (\$720,000). After repayment (in whole or in part), the Term Loan Advance may not be reborrowed.

(b) Repayment. Borrower shall repay the Term Loan Advance as set forth in Schedule I hereto. All outstanding principal and accrued and unpaid interest under the Term Loan Advance, and all other outstanding Obligations with respect to such Term Loan Advance, are due and payable in full on the Term Loan Maturity Date.

(c) Permitted Prepayment. Borrower shall have the option to prepay all, but not less than all, of the Term Loan Advance, provided Borrower (i) delivers written notice to Bank of its election to prepay the Term Loan Advance at least five (5) Business Days prior to such prepayment, and (ii) pays, on the date of such prepayment (A) the outstanding principal plus accrued and unpaid interest with respect to the Term Loan Advance, (B) the applicable Prepayment Fee, if any, and (C) all other sums, if any, that shall have become due and payable with respect to the Term Loan Advance, including interest at the Default Rate with respect to any past due amounts.

(d) Mandatory Prepayment Upon an Acceleration. If the Term Loan Advance is accelerated by Bank following the occurrence and during the continuance of an Event of Default, Borrower shall immediately pay to Bank an amount equal to the sum of (i) all outstanding principal plus accrued and unpaid interest with respect to the Term Loan Advance, (ii) the applicable Prepayment Fee, if any, and (iii) all other sums, if any, that shall have become due and payable with respect to the Term Loan Advance, including interest at the Default Rate with respect to any past due amounts.

##### **1.2 Payment of Interest on the Credit Extensions.**

(a) Interest Payments. Term Loan Advances. Interest on the outstanding principal amount of each Term Loan Advance is payable as set forth on Schedule I hereto.

(b) Interest Rate.

(i) Term Loan Advance. Subject to Section 1.2(c), the outstanding principal amount of the Term Loan Advance shall accrue interest as set forth on Schedule I hereto.



(ii) All-In Rate. Notwithstanding any terms in this Agreement to the contrary, if at any time the interest rate applicable to any Obligations is less than zero percent (0.0%), such interest rate shall be deemed to be zero percent (0.0%) for all purposes of this Agreement.

(c) Default Rate. Immediately upon the occurrence and during the continuance of an Event of Default, the outstanding Obligations shall bear interest at a rate per annum which is three percent (3.0%) above the rate that is otherwise applicable thereto (the "**Default Rate**"), unless Bank otherwise elects, in its sole discretion, to impose a lesser increase or no increase. Fees and expenses which are required to be paid by Borrower pursuant to the Loan Documents (including, without limitation, Bank Expenses) but are not paid when due shall bear interest until paid at a rate equal to the highest rate applicable to the Obligations. Payment or acceptance of the increased interest rate provided in this Section 1.2(c) is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Bank.

(d) Adjustment to Interest Rate. Each change in the interest rate applicable to any amounts payable under the Loan Documents based on changes to the Prime Rate shall be effective on the effective date of any change to the Prime Rate and to the extent of such change.

(e) Interest Computation. Interest shall be computed as set forth on Schedule I hereto. In computing interest, the date of the making of any Credit Extension shall be included and the date of payment shall be excluded; provided, however, that if any Credit Extension is repaid on the same day on which it is made, such day shall be included in computing interest on such Credit Extension.

**1.3 Fees and Expenses.** Borrower shall pay to Bank:

(a) Prepayment Fee. The Prepayment Fee, if and when due hereunder, which shall be fully earned and non-refundable as of the applicable prepayment date; provided, however, if Borrower refinances the Term Loan Advance with another credit facility from Bank, Bank shall waive the Prepayment Fee;

(b) [Reserved]

(c) Bank Expenses. All Bank Expenses incurred through and after the Third Amendment Effective Date, when due (or, if no stated due date, upon demand by Bank). Borrower has paid to Bank a good faith deposit of Thirty-Five Thousand Dollars (\$35,000) (the "**Good Faith Deposit**"), in connection with the Third Amendment, to initiate Bank's due diligence review process. The Good Faith Deposit will be applied to Bank Expenses as of the Effective Date.

Unless otherwise provided in this Agreement or in a separate writing by Bank, Borrower shall not be entitled to any credit, rebate, or repayment of any fees earned by Bank pursuant to this Agreement notwithstanding any termination of this Agreement or the suspension or termination of Bank's obligation to make loans and advances hereunder. Bank may deduct amounts owing by Borrower under the clauses of this Section 1.3 pursuant to the terms of Section 1.4(c). Bank shall provide Borrower written notice of deductions made pursuant to the terms of the clauses of this Section 1.3.

**1.4 Payments; Application of Payments; Debit of Accounts.**

(a) All payments (including prepayments) to be made by Borrower under any Loan Document shall be made in immediately available funds in Dollars, without setoff, counterclaim, or deduction, before 12:00 p.m. Pacific time on the date when due. Payments of principal and/or interest received after 12:00 p.m. Pacific time are considered received at the opening of business on the next Business Day. When a payment is due on a day that is not a Business Day, the payment shall be due the next Business Day, and additional fees or interest, as applicable, shall continue to accrue until paid.

(b) Subject to the payment terms of this Agreement and Section 8.4, Bank has the exclusive right in its reasonable discretion to determine the order and manner in which all payments with respect to the

Obligations may be applied. Borrower shall have no right to specify the order or the accounts to which Bank shall allocate or apply any payments required to be made by Borrower to Bank or otherwise received by Bank under this Agreement when any such allocation or application is not specified elsewhere in this Agreement.

(c) Bank may debit the Designated Deposit Account (or if insufficient funds are contained therein, or if an Event of Default has occurred and is continuing, any of Borrower's other accounts at Bank), for principal and interest payments or any other amounts Borrower owes Bank when as and when due under this Agreement. These debits shall not constitute a set-off.

#### **1.5 Change in Circumstances.**

(a) Increased Costs. If any Change in Law shall: (i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or advances, loans or other credit extended or participated in by, Bank, (ii) subject Bank to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes, and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitment, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto, or (iii) impose on Bank any other condition, cost or expense (other than Taxes) affecting this Agreement or Credit Extensions made by Bank, and the result of any of the foregoing shall be to increase the cost to Bank of making, converting to, continuing or maintaining any Credit Extension (or of maintaining its obligation to make any such Credit Extension), or to reduce the amount of any sum received or receivable by Bank hereunder (whether of principal, interest or any other amount) then, upon written request of Bank, Borrower shall promptly pay to Bank such additional amount or amounts as will compensate Bank for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If Bank determines that any Change in Law affecting Bank regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on Bank's capital as a consequence of this Agreement, any term loan facility, or the Credit Extensions made by Bank to a level below that which Bank could have achieved but for such Change in Law (taking into consideration Bank's policies with respect to capital adequacy and liquidity), then from time to time upon written request of Bank, Borrower shall promptly pay to Bank such additional amount or amounts as will compensate Bank for any such reduction suffered.

(c) Delay in Requests. Failure or delay on the part of Bank to demand compensation pursuant to this Section 1.5 shall not constitute a waiver of Bank's right to demand such compensation; provided that Borrower compensate Bank pursuant to subsection (a) for any increased costs incurred or reductions suffered more than nine (9) months prior to the date that Bank notifies Borrower of the Change in Law giving rise to such increased costs or reductions (except that if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine (9) month period shall be extended to include the period of retroactive effect).

#### **1.6 Taxes.**

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of Borrower under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by Applicable Law. If any Applicable Law (as determined in the commercially reasonable discretion of Borrower) requires the deduction or withholding of any Tax from any such payment by Borrower, then (i) Borrower shall be entitled to make such deduction or withholding, (ii) Borrower shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with Applicable Law, and (iii) if such Tax is an Indemnified Tax, the sum payable by Borrower shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 1.6) Bank receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) Payment of Other Taxes by Borrower. Without limiting the provisions of subsection (a) above, Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with Applicable Law.

(c) Tax Indemnification. Without limiting the provisions of subsections (a) and (b) above, Borrower shall, and does hereby, indemnify Bank, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 1.6) payable or paid by Bank or required to be withheld or deducted from a payment to Bank and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to Borrower by Bank shall be conclusive absent manifest error.

(d) Evidence of Payments. As soon as practicable after any payment of Taxes by Borrower to a Governmental Authority pursuant to this Section 1.6, Borrower shall deliver to Bank a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to Bank.

(e) Status of Bank. If Bank (including any assignee or successor) is entitled to an exemption from or reduction of withholding tax with respect to payments made under any Loan Document, it shall deliver to Borrower, at the time or times reasonably requested by Borrower, such properly completed and executed documentation reasonably requested by Borrower as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, Bank, if reasonably requested by Borrower, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by Borrower as will enable Borrower to determine whether or not Bank is subject to backup withholding or information reporting requirements. Without limiting the generality of the foregoing, Bank shall deliver whichever of IRS Form W-9, IRS Form W-8BEN-E, IRS Form W-8ECI or IRS Form W-8IMY is applicable, as well as any applicable supporting documentation or certifications. If a payment made to Bank under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if Bank 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), Bank shall deliver to Borrower at the time or times prescribed by law and at such time or times reasonably requested by Borrower 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 Borrower as may be necessary for Borrower to comply with its obligations under FATCA and to determine that Bank has complied with its obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of the preceding sentence, "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(f) Treatment of Certain Refunds. If Bank determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 1.6 (including by the payment of additional amounts pursuant to this Section 1.6), it shall pay to Borrower an amount equal to such refund (but only to the extent of indemnity payments made under this Section 1.6 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of Bank and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Borrower, upon the request of Bank, shall repay to Bank the amount paid over pursuant to this paragraph (f) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that Bank is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (f), in no event will Bank be required to pay any amount to Borrower pursuant to this paragraph (f) the payment of which would place Bank in a less favorable net after-Tax position than Bank would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph (f) shall not be construed to require Bank to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to Borrower or any other Person.

#### **1.7 Procedures for Borrowing.**

(a) Term Loan Advances. Subject to the prior satisfaction of all other applicable conditions to the making of the Term Loan Advance set forth in this Agreement (which must be satisfied no later than 12:00 p.m. Pacific time on the applicable Funding Date), to obtain the Term Loan Advance, Borrower shall notify Bank

(which notice shall be irrevocable) by 12:00 p.m. Pacific time on the Funding Date of the Term Loan Advance. Such notice shall be made by electronic mail or by telephone and, together with any such notification, Borrower shall deliver to Bank by electronic mail a completed Payment/Advance Form executed by an Authorized Signer. Bank may rely on any telephone notice given by a person whom Bank reasonably believes is an Authorized Signer. Borrower will indemnify Bank for any loss Bank suffers due to such reasonable belief or reliance. Bank shall have received satisfactory evidence that the Board has approved that such Authorized Signer may provide such notices and request such Term Loan Advance (which requirement may be deemed satisfied by the prior delivery of Borrowing Resolutions or a secretary's certificate that certifies as to such Board approval).

(b) Bank shall credit proceeds of a Credit Extension to the Designated Deposit Account. Bank may make Term Loan Advances under this Agreement based on instructions from an Authorized Signer or without instructions if such Term Loan Advances are necessary to meet Obligations which have become due.

## **2. CONDITIONS OF CREDIT EXTENSIONS**

**2.1 Conditions Precedent to Initial Credit Extension.** Bank's obligation to make the initial Credit Extension is subject to the condition precedent that Bank shall have received, in form and substance satisfactory to Bank, such documents, and completion of such other matters, as Bank may reasonably deem necessary or appropriate, including, without limitation:

- (a) duly executed Loan Documents;
- (b) a duly executed Control Agreement with U.S. Bank;
- (c) the Operating Documents of Borrower and its Subsidiaries and long-form good standing certificates of Borrower certified by the Secretary of State of the State of Delaware and the Secretary of State (or equivalent agency) of each other jurisdiction in which Borrower is qualified to conduct business, in each case as of a date no earlier than thirty (30) days prior to the Effective Date;
- (d) a certificate duly executed by a Responsible Officer or secretary of Borrower with respect to Borrower's (i) Operating Documents and (ii) Borrowing Resolutions;
- (e) certified copies, dated as of a recent date, of searches for financing statement filed in the central filing office of the State of Delaware, accompanied by written evidence (including any UCC termination statements) that the Liens indicated in any such financing statements either constitute Permitted Liens or have been or, in connection with the initial Credit Extension, will be terminated or released;
- (f) a duly executed Perfection Certificate of Borrower;
- (l) evidence satisfactory to Bank that the insurance policies and endorsements required by Section 5.8 hereof are in full force and effect, together with appropriate evidence showing lender loss payable and additional insured clauses or endorsements in favor of Bank; and
- (m) payment of the fees and Bank Expenses then due as specified in Section 1.3 hereof.

**2.2 Conditions Precedent to all Credit Extensions.** Bank's obligation to make each Credit Extension, including the initial Credit Extension, is subject to the following conditions precedent:

- (a) receipt of Borrower's Credit Extension request and the related materials and documents as required by and in accordance with Section 1.7;
- (b) the representations and warranties in this Agreement shall be true and correct in all material respects as of the date of any Credit Extension request and as of the Funding Date of each Credit Extension; provided, however, that such materiality qualifier shall not be applicable to any representations and

warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true and correct in all material respects as of such date, and no Default or Event of Default shall have occurred and be continuing or result from the Credit Extension. Each Credit Extension is Borrower's representation and warranty on that date that the representations and warranties in this Agreement remain true and correct in all material respects; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true and correct in all material respects as of such date; and

- (c) a Material Adverse Change shall not have occurred.

### **2.3 Covenant to Deliver.**

(a) Borrower shall deliver to Bank each item required to be delivered to Bank under this Agreement as a condition precedent to any Credit Extension. A Credit Extension made prior to the receipt by Bank of any such item shall not constitute a waiver by Bank of Borrower's obligation to deliver such item, and the making of any Credit Extension in the absence of a required item shall be in Bank's sole discretion.

## **3. CREATION OF SECURITY INTEREST**

### **3.1 Grant of Security Interest.**

(a) Borrower hereby grants Bank, to secure the payment and performance in full of all of the Obligations, a continuing security interest in, and pledges to Bank, the Collateral, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof.

(b) Borrower acknowledges that it previously has entered, or may in the future enter, into Bank Services Agreements with Bank. Regardless of the terms of any Bank Services Agreement, Borrower agrees that any amounts Borrower owes Bank thereunder shall be deemed to be Obligations hereunder and that it is the intent of Borrower and Bank to have all such Obligations secured by the first priority perfected security interest in the Collateral granted herein (subject to Permitted Liens).

**3.2 Authorization to File Financing Statements.** Borrower hereby authorizes Bank to file financing statements covering the Collateral, without notice to Borrower, with all jurisdictions deemed necessary or appropriate by Bank to perfect or protect Bank's interest or rights hereunder, including a notice that any disposition of the Collateral, by either Borrower or any other Person, in contravention of the terms of this Agreement shall be deemed to violate the rights of Bank under the Code. Such financing statements may indicate the Collateral

**3.3 Termination.** If this Agreement is terminated, Bank's Lien in the Collateral shall continue until the Obligations (other than inchoate indemnity obligations) are repaid in full in cash. Upon payment in full in cash of the Obligations (other than inchoate indemnity obligations) and at such time as Bank's obligation to make Credit Extensions has terminated, Bank shall, at Borrower's sole cost and expense, promptly terminate its security interest in the Collateral and all rights therein shall automatically revert to Borrower, and Bank shall, upon request from Borrower and at Borrower's sole cost and expense, promptly deliver to Borrower written evidence of the termination of such liens and any other documents reasonably necessary to terminate such liens. In the event (a) all Obligations (other than inchoate indemnity obligations), except for Bank Services, are satisfied in full, and (b) this Agreement is terminated, Bank shall terminate the security interest granted herein upon Borrower providing cash collateral acceptable to Bank in its commercially reasonable discretion for Bank Services, if any. In the event such Bank Services consist of outstanding Letters of Credit, Borrower shall provide to Bank cash collateral in an amount equal to at least (i) one hundred and five percent (105.0%) of the face amount of all such Letters of Credit denominated in Dollars and (ii) one hundred and fifteen percent (115.0%) of the Dollar Equivalent of the face amount of all such Letters of Credit denominated in a Foreign Currency, plus, in each case, all interest, fees, and costs due or estimated by Bank to become due in connection therewith, to secure all of the Obligations relating to such Letters of Credit.

#### **4. REPRESENTATIONS AND WARRANTIES**

Borrower represents and warrants as follows:

##### **4.1 Due Organization, Authorization; Power and Authority.**

(a) Borrower and each of its Subsidiaries are each duly existing and in good standing as a Registered Organization in their respective jurisdiction of formation and are qualified and licensed to do business and is in good standing in any other jurisdiction in which the conduct of their respective business or their ownership of property requires that they be qualified except where the failure to do so could not reasonably be expected to have a material adverse effect on Borrower's business or operations.

(b) All information set forth on the Perfection Certificate pertaining to Borrower and each of its Subsidiaries is true and correct in all material respects (it being understood and agreed that Borrower may from time to time update certain information in the Perfection Certificate after the Third Amendment Effective Date to the extent permitted by one or more specific provisions in this Agreement and the Perfection Certificate shall be deemed to be updated to the extent such notice is provided to Bank of such permitted update).

(c) The execution, delivery and performance by Borrower and each of its Subsidiaries of the Loan Documents to which it is a party have been duly authorized, and do not (i) conflict with any of Borrower's or any such Subsidiary's organizational documents, (ii) contravene, conflict with, constitute a default under or violate any material Applicable Law, (iii) contravene, conflict with or violate any applicable order, writ, judgment, injunction, decree, determination or award of any Governmental Authority by which Borrower or any of its Subsidiaries or any of their property or assets may be bound or affected, (iv) require any action by, filing, registration, or qualification with, or Governmental Approval from, any Governmental Authority (except such Governmental Approvals which have already been obtained and are in full force and effect), or (v) conflict with, contravene, constitute a default or breach under, or result in or permit the termination or acceleration of, any material agreement by which Borrower or any of its Subsidiaries is bound, or applicable consents or waivers have been obtained. Neither Borrower nor any of its Subsidiaries are in default under any material agreement to which it is a party or by which it is bound in which the default could reasonably be expected to have a material adverse effect on Borrower's or any of its Subsidiary's business or operations (taken as a whole).

##### **4.2 Collateral.**

(a) The security interest granted herein is and shall at all times continue to be a first priority perfected security interest in the Collateral (subject to Permitted Liens). Borrower has good title to, rights in, and the power to transfer each item of the Collateral upon which it purports to grant a Lien hereunder, free and clear of any and all Liens except Permitted Liens.

(b) Borrower has no Collateral Accounts at or with any bank or financial institution other than Bank or Bank's Affiliates except for the Collateral Accounts described in the Perfection Certificate delivered to Bank in connection herewith and which Borrower has taken such actions as are necessary to give Bank a perfected security interest therein, to the extent that perfection is required pursuant to the terms of Section 5.9(c). The Accounts are bona fide, existing obligations of the Account Debtors.

(c) The Collateral is not in the possession of any third party bailee (such as a warehouse) except as otherwise provided in the Perfection Certificate or as permitted pursuant to Section 6.2 (other than laptops and other portable electronic items used in the ordinary course of business). None of the components of the Collateral shall be maintained at locations other than as provided in the Perfection Certificate or as permitted pursuant to Section 6.2 (other than laptops and other portable electronic items used in the ordinary course of business).

(d) All Inventory is in all material respects of good and marketable quality, free from material defects.

(e) Borrower owns, or possesses the right to use to the extent reasonably necessary in its business, all Intellectual Property, licenses and other intangible assets that are used in the conduct of its business operations as now operated, except to the extent that such failure to own or possess the right to use such asset would not reasonably be expected to have a material adverse effect on Borrower's business or operations, and no such asset, to the best knowledge of Borrower, conflicts with the valid Intellectual Property, license, or intangible asset of any other Person to the extent that such conflict could reasonably be expected to have a material adverse effect on Borrower's business or operations.

(f) Except as noted on the Perfection Certificate (as updated from time to time in accordance with this Agreement) or for which notice has been given to Bank pursuant to and in accordance with Section 5.11(b), Borrower is not a party to, nor is it bound by, any Restricted License.

**4.3 Reserved.**

**4.4 Litigation.** Other than as set forth on the Perfection Certificate delivered around the Third Amendment Effective Date, and as disclosed to Bank pursuant to Section 5.3, there are no actions, investigations or proceedings pending or, to the knowledge of any Responsible Officer, threatened in writing by or against Borrower or any of its Subsidiaries that could reasonably be expected to result in liability of more than, individually or in the aggregate, Seven Hundred Fifty Thousand Dollars (\$750,000).

**4.5 Financial Statements; Financial Condition.** All consolidated financial statements for Borrower and any of its Subsidiaries delivered to Bank by submission to the Financial Statement Repository or otherwise submitted to Bank fairly present in all material respects Borrower's consolidated financial condition and Borrower's consolidated results of operations as of the dates thereof and for the periods covered thereby, subject, in the case of unaudited financial statements, to normal year-end adjustments and the absence of footnote disclosures. There has not been any material deterioration in Borrower's consolidated financial condition since the date of the most recent financial statements submitted to the Financial Statement Repository or otherwise submitted to Bank.

**4.6 Solvency.** The fair salable value of Borrower's consolidated assets (including goodwill minus disposition costs) exceeds the fair value of Borrower's liabilities; Borrower is not left with unreasonably small capital after the transactions in this Agreement; and Borrower and Borrower and each of its Subsidiaries (taken as a whole) are able to pay their debts (including trade debts) as they mature.

**4.7 Regulatory Compliance.** Borrower is not an "investment company" or a company "controlled" by an "investment company" under the Investment Company Act of 1940, as amended. Borrower is not engaged as one of its important activities in extending credit for margin stock (under Regulations X, T and U of the Federal Reserve Board of Governors). Borrower and each of its Subsidiaries (a) have complied in all material respects with all Applicable Law, and (b) have not violated any Applicable Law the violation of which could reasonably be expected to have a material adverse effect on Borrower's business or operations. Borrower and each of its Subsidiaries have duly complied with, and their respective facilities, business, assets, property, leaseholds, real property and Equipment are in compliance with, Environmental Laws, except where the failure to do so could not reasonably be expected to have a material adverse effect on Borrower's business or operations; there have been no outstanding citations, notices or orders of non-compliance issued to Borrower or any of its Subsidiaries or relating to their respective facilities, businesses, assets, property, leaseholds, real property or Equipment under such Environmental Laws Borrower and each of its Subsidiaries have obtained all consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all Governmental Authorities that are necessary to continue their respective businesses as currently conducted, except where the failure to obtain or make or file the same would not reasonably be expected to have a material adverse effect on Borrower's business or operations.

**4.8 Subsidiaries; Investments.** Borrower does not own any stock, partnership, or other ownership interest or other equity securities except for Permitted Investments.

**4.9 Tax Returns and Payments; Pension Contributions.**

(a) Borrower and each of its Subsidiaries have timely filed, or submitted extensions for, all required tax returns and reports, and Borrower and each of its Subsidiaries have timely paid, or submitted extensions for, all foreign, federal, state and local taxes, assessments, deposits and contributions owed by Borrower and each of its Subsidiaries except (i) to the extent such taxes are being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as such reserve or other appropriate provision, if any, as shall be required in conformity with GAAP shall have been made therefor, or (ii) if such taxes, assessments, deposits and contributions do not, individually or in the aggregate, exceed Fifty Thousand Dollars (\$50,000). Borrower is unaware of any claims or adjustments proposed for any of Borrower's or any of its Subsidiary's prior tax years which could result in additional taxes becoming due and payable by Borrower or any of its Subsidiaries in excess of Fifty Thousand Dollars (\$50,000) in the aggregate.

(b) Borrower and each of its Subsidiaries have paid all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms, and neither Borrower nor any of its Subsidiaries has withdrawn from participation in, and has not permitted partial or complete termination of, or permitted the occurrence of any other event with respect to, any such plan which could reasonably be expected to result in any material liability of Borrower or any of its Subsidiaries, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other Governmental Authority.

**4.10 Full Disclosure.** No written representation, warranty or other statement of Borrower or any of its Subsidiaries in any report, certificate or written statement submitted to the Financial Statement Repository or otherwise submitted to Bank, as of the date such representation, warranty, or other statement was made, taken together with all such written reports, written certificates and written statements submitted to the Financial Statement Repository or otherwise submitted to Bank, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained in the reports, certificates or written statements not misleading in light of the circumstances under which they were made (it being recognized by Bank that the projections and forecasts provided by Borrower or any of its Subsidiaries in good faith and based upon reasonable assumptions are not viewed as facts and that actual results during the period or periods covered by such projections and forecasts may differ from the projected or forecasted results).

**4.11 Sanctions.** Neither Borrower nor any of its Subsidiaries is: (a) in violation of any Sanctions; or (b) a Sanctioned Person. Neither Borrower nor any of its Subsidiaries, or, to Borrower's knowledge, its directors, officers, employees, agents or Affiliates: (i) conducts any business or engages in any transaction or dealing with any Sanctioned Person, including making or receiving any contribution of funds, goods or services to or for the benefit of any Sanctioned Person; (ii) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to any Sanctions; (iii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Sanctions; or (iv) otherwise engages in any transaction that could cause Bank to violate any Sanctions.

## **5. AFFIRMATIVE COVENANTS**

Borrower shall do all of the following:

**5.1 Use of Proceeds.** Cause the proceeds of the Credit Extensions to be used solely as follows: (x) as working capital, (y) to fund its general business purposes, or (z) repayment of all Obligations constituting Term Loan Advances (as defined in the Agreement prior to the Third Amendment Effective Date) outstanding immediately prior to the Third Amendment Effective Date.

### **5.2 Government Compliance.**

(a) Maintain its and all of its Subsidiaries' legal existence (except as permitted under Section 6.3 with respect to Subsidiaries only) and good standing in their respective jurisdictions of formation and maintain qualification in each jurisdiction in which the failure to so qualify would reasonably be expected to have a material adverse effect on Borrower's business or operations. Borrower shall comply, and have each Subsidiary comply, in all material respects, with all material laws, ordinances and regulations to which it is subject.



(b) Obtain all of the Governmental Approvals necessary for the performance by Borrower and each of its Subsidiaries of their obligations under the Loan Documents to which it is a party, including any grant of a security interest in the Collateral to Bank. Borrower shall promptly provide copies of any such obtained Governmental Approvals to Bank upon Bank's request.

**5.3 Financial Statements, Reports.** Deliver to Bank by submitting to the Financial Statement Repository:

(a) Quarterly Financial Statements. No later than forty-five (45) days after the last day of each of the first three fiscal quarters of Borrower's fiscal year, a company prepared consolidated and consolidating balance sheet and income statement covering Borrower's and each of its Subsidiary's operations for such quarter in a form reasonably acceptable to Bank (the "Quarterly Financial Statements"); provided that year-end Quarterly Financial Statements shall be delivered no later than ninety (90) days after the last day of each fiscal year of Borrower;

(b) Compliance Statement. Within forty-five (45) days after the last day of each of the first three fiscal quarters of Borrower (and no later than ninety (90) days after the last day of each fiscal year of Borrower), together with the statements set forth in Section 5.3(c), a duly completed Compliance Statement, confirming that as of the end of such month, Borrower was in full compliance with all of the terms and conditions of this Agreement, and setting forth calculations showing compliance with the financial covenants set forth in this Agreement and such other information as Bank may reasonably request, except as noted therein;

(c) Annual Operating Budget and Financial Projections. Within thirty (30) days after the end of each fiscal year of Borrower, and within thirty (30) days of any material updates or amendments thereto, (i) annual operating budgets (including income statements, balance sheets and cash flow statements, by month) for the then-current fiscal year of Borrower, and (ii) annual financial projections for the then-current fiscal year (on a quarterly basis), in each case as approved by the Board, together with any material related business forecasts for the subsequent two (2) fiscal years which were used in the preparation of such annual financial projections;

(d) Annual Audited Financial Statements. As soon as available, and in any event within one hundred and eighty (180) days following the end of Borrower's fiscal year, audited consolidated financial statements prepared under GAAP, consistently applied, together with an unqualified opinion on the financial statements from an independent certified public accounting firm reasonably acceptable to Bank;

(e) SEC Filings. In the event that Borrower or any of its Subsidiaries becomes subject to the reporting requirements under the Exchange Act within five (5) Business Days of filing, notification of the filing and copies of all periodic and other reports, proxy statements and other materials filed by Borrower and/or any of its Subsidiaries or any Guarantor with the SEC, any Governmental Authority succeeding to any or all of the functions of the SEC or with any national securities exchange, or distributed to its shareholders, as the case may be. Documents required to be delivered pursuant to the terms hereof (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which Borrower or any of its Subsidiaries posts such documents, or provides a link thereto, on Borrower's or any of its Subsidiaries' website on the internet at Borrower's or any of its Subsidiaries' website address; provided, however, Borrower shall notify Bank in writing within five (5) Business Days (which may be by electronic mail) of the posting of any such documents;

(f) Security Holder and Subordinated Debt Holder Reports. Within five (5) Business Days of delivery, copies of all material statements, reports and notices made generally available to Borrower's security holders or to any holders of Subordinated Debt (solely in their capacities as security holders or holders of Subordinated Debt and not in any other role);

(g) Beneficial Ownership Information. Prompt written notice of any changes to the beneficial ownership information set out in Section 14 of the Perfection Certificate. Borrower understands and acknowledges that Bank relies on such true, accurate and up-to-date beneficial ownership information to meet

Bank's regulatory obligations to obtain, verify and record information about the beneficial owners of its legal entity customers;

(h) Legal Action Notice. Prompt written notice upon becoming aware of any legal actions, investigations or proceedings pending or threatened in writing against Borrower or any of its Subsidiaries (not otherwise already disclosed on the Perfection Certificate delivered around the Third Amendment Effective Date) that could reasonably be expected to result in damages or costs to Borrower or any of its Subsidiaries of, individually or in the aggregate, Seven Hundred Fifty Thousand Dollars (\$750,000) or more;

(a) Tort Claim Notice. If Borrower shall acquire a commercial tort claim with a value that could reasonably be expected to exceed Five Hundred Thousand Dollars (\$500,000), Borrower shall promptly notify Bank in a writing signed by Borrower of the general details thereof and, if so requested by Bank, grant to Bank in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance reasonably satisfactory to Bank;

(b) Government Filings. Within five (5) Business Days after the same are sent by Borrower or received by Borrower, copies of all material correspondence, reports, documents and other filings by Borrower or any of its Subsidiaries with any Governmental Authority regarding compliance with or maintenance of Governmental Approvals or Applicable Law, in each case that could reasonably be expected to have a material effect on any of the Governmental Approvals material to the business of Borrower;

(c) Registered Organization. If Borrower is not a Registered Organization as of the Effective Date but later becomes one, promptly notify Bank of such occurrence and provide Bank with Borrower's organizational identification number;

(d) Default. Prompt written notice of the occurrence of a Default or Event of Default; and

(e) Other Information. Promptly, from time to time, such other financial information regarding Borrower or any of its Subsidiaries or compliance with the terms of any Loan Documents as reasonably requested by Bank.

Any submission by Borrower of a Compliance Statement, or any other financial statement submitted to the Financial Statement Repository pursuant to this Section 5.3 or otherwise submitted to Bank shall be deemed to be a representation by Borrower that (i) as of the date of such Compliance Statement, or other financial statement, the information and calculations set forth therein are true and correct in all material respects, (ii) as of the end of the compliance period set forth in such submission, Borrower is in complete compliance with all required covenants except as noted in such Compliance Statement, or other financial statement, as applicable, except as noted in such Compliance Statement or other financial statement, as applicable; (iii) as of the date of such submission, no Events of Default have occurred or are continuing, (iv) all representations and warranties other than any representations or warranties that are made as of a specific date in Section 4 remain true and correct in all material respects as of the date of such submission except as noted in such Compliance Statement, or other financial statement, as applicable, (v) as of the date of such submission, Borrower and each of its Subsidiaries has timely filed all required tax returns and reports, and Borrower has timely paid all foreign, federal, state and local taxes, assessments, deposits and contributions owed by Borrower except as otherwise permitted pursuant to the terms of Section 4.9, and (vi) as of the date of such submission, no Liens have been levied or claims made against Borrower or any of its Subsidiaries relating to unpaid employee payroll or benefits of which Borrower has not previously provided written notification to Bank.

**5.4     Reserved.**

**5.5     Reserved.**

**5.6     Taxes; Pensions.**

(a) Timely file, and require each of its Subsidiaries to timely file (in each case, unless subject to a valid extension), all required tax returns and reports and timely pay, and require each of its Subsidiaries to timely pay, or file extensions for, all foreign, federal, state and local taxes, assessments, deposits and contributions owed by Borrower and each of its Subsidiaries, except for (deferred payment of any taxes contested pursuant to the terms of Section 4.9(a) hereof, and shall deliver to Bank, on demand, appropriate certificates attesting to such payments, and pay, and require each of its Subsidiaries to pay, all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms.

(b) To the extent Borrower or any of its Subsidiaries defers payment of any contested taxes in excess of Fifty Thousand Dollars (\$50,000), (i) notify Bank in writing of the commencement of, and any material development in, the proceedings, and (ii) post bonds or take any other steps required to prevent the Governmental Authority levying such contested taxes from obtaining a Lien upon any of the Collateral that is other than a "Permitted Lien."

**5.7 Access to Collateral; Books and Records.** At reasonable times, on five (5) Business Days' notice (provided no notice is required if an Event of Default has occurred and is continuing), Bank, or its agents, shall have the right to inspect the Collateral and the right to audit and copy Borrower's Books. Such inspections and audits shall be conducted no more often than once every twelve (12) months, unless an Event of Default has occurred and is continuing, in which case such inspections and audits shall occur as often as Bank shall determine is necessary. The foregoing inspections and audits shall be conducted at Borrower's expense and the charge therefor shall be One Thousand Dollars (\$1,000) per person per day (or such higher amount as shall represent Bank's then-current standard charge for the same), plus reasonable out-of-pocket expenses. In the event Borrower and Bank schedule an audit more than eight (8) days in advance, and Borrower cancels or seeks to or reschedules the audit with less than eight (8) days written notice to Bank, then (without limiting any of Bank's rights or remedies) Borrower shall pay Bank a fee of Two Thousand Dollars (\$2,000) plus any out-of-pocket expenses incurred by Bank to compensate Bank for the anticipated costs and expenses of the cancellation or rescheduling.

#### **5.8 Insurance.**

(a) Keep its business and the Collateral insured for risks and in amounts standard for companies in Borrower's industry and location and as Bank may reasonably request. Insurance policies shall be in a form, with financially sound and reputable insurance companies that are not Affiliates of Borrower, and in amounts that are reasonably satisfactory to Bank.

(b) All property policies shall have a lender's loss payable endorsement showing Bank as lender loss payee. All liability policies shall show, or have endorsements showing, Bank as an additional insured. Bank shall be named as lender loss payee and/or additional insured with respect to any such insurance providing coverage in respect of any Collateral.

(c) Ensure that proceeds payable under any property policy are, at Bank's option, payable to Bank on account of the Obligations. Notwithstanding the foregoing, (a) so long as no Event of Default has occurred and is continuing, Borrower shall have the option of applying the proceeds of any casualty policy up to One Million Dollars (\$1,000,000) in the aggregate for all losses under all casualty policies in any one year, toward the replacement or repair of destroyed or damaged property; provided that any such replaced or repaired property (i) shall be of equal or like value as the replaced or repaired Collateral and (ii) shall be deemed Collateral in which Bank has been granted a first priority security interest, and (b) after the occurrence and during the continuance of an Event of Default, all proceeds payable under such casualty policy shall, at the option of Bank, be payable to Bank on account of the Obligations.

(d) At Bank's request, Borrower shall deliver certified copies of insurance policies and evidence of all premium payments. Each provider of any such insurance required under this Section 5.8 shall agree, by endorsement upon the policy or policies issued by it or by independent instruments furnished to Bank, that it will give Bank twenty (20) days (or ten (10) days' prior written notice in the event of cancellation due to non-payment of premium) prior written notice before any such policy or policies shall be materially altered or canceled.

If Borrower fails to obtain insurance as required under this Section 5.8 or to pay any amount or furnish any required proof of payment to third persons and Bank, Bank may make all or part of such payment or obtain such insurance policies required in this Section 5.8, and take any action under the policies Bank deems prudent.

#### 5.9 Accounts.

(a) Maintain Borrower's, any of its Subsidiaries', and any Guarantor's primary banking relationship (including primary operating accounts) with Bank or Bank's Affiliates such that consolidated account balances of Borrower and its Subsidiaries and Guarantors maintained with Bank or Bank's Affiliates represent an amount equal to or greater than the greater of (i) fifty percent (50.0%) of the aggregate Dollar Equivalent value of all cash and Cash Equivalents of Borrower and its Subsidiaries and Guarantors, and (ii) the amount equal to one hundred and ten percent (110.0%) of the aggregate outstanding amount under the Term Loan (the minimum percentages set forth in clause (i) and (ii) of this Section 5.9(a) collectively referred to as the "**Minimum Banking Requirements**"); provided, however, and subject to the Minimum Banking Requirements, Borrower may maintain its other "primary" operating accounts with PNC Bank used in the ordinary course of Borrower's business and subject, at all times, to a Control Agreement in favor of Bank. Additionally, and for the avoidance of doubt, so long as Borrower is in compliance with the Minimum Banking Requirements, Borrower may maintain other Collateral Accounts outside of Bank, subject at all times to the Control Agreement requirements set forth in Section 5.9(c) hereof. Notwithstanding the foregoing, (x) if the aggregate amount of unrestricted and unencumbered cash held by Borrower is less than one hundred and ten percent (110.0%) of the aggregate outstanding amount under the Term Loan, Borrower shall maintain all of its, any of its Subsidiaries' and any Guarantor's operating accounts, depository accounts and excess cash with Bank or Bank's Affiliates other than de minimis amounts requisite to maintaining outside accounts in good standing, except that Borrower's Foreign Subsidiaries may maintain accounts with third parties other than Bank, provided the aggregate value of such accounts is subject to the terms of Section 6.11 (collectively the "**Permitted Foreign Subsidiary Accounts**").

(b) In addition to the foregoing, Borrower, any Subsidiary of Borrower and any Guarantor, shall obtain any business credit card, Letter of Credit, FX Contract, and cash management services exclusively from Bank, except (i) third party credit cards, as permitted in the defined term "Permitted Indebtedness" part (h); (ii) Borrower's Foreign Subsidiaries may maintain the foregoing bank services with third parties other than Bank, (iii) to the extent that Bank does not have such services in foreign locations, Borrower and its Subsidiaries may maintain the foregoing foreign banking services with third parties other than Bank, and (iv) Borrower may maintain and permit to exist online payment processors used in the ordinary course of business with third parties other than Bank.

(c) In addition to and without limiting the restrictions in (a), Borrower shall provide Bank five (5) days prior written notice before establishing any Collateral Account at or with any bank or financial institution other than Bank or Bank's Affiliates. For each Collateral Account that Borrower at any time maintains, Borrower shall cause the applicable bank or financial institution (other than Bank) at or with which any Collateral Account is maintained to execute and deliver a Control Agreement or other appropriate instrument with respect to such Collateral Account to perfect Bank's Lien in such Collateral Account in accordance with the terms hereunder which Control Agreement may not be terminated without the prior written consent of Bank. The provisions of the previous sentence shall not apply to (i) deposit accounts exclusively used for payroll, payroll taxes, and other employee wage and benefit payments to or for the benefit of Borrower's employees and identified to Bank by Borrower as such, and (ii) the Permitted Foreign Subsidiary Accounts.

**5.10 Financial Covenant (Net Revenue).** Commencing on June 30, 2025, Borrower shall achieve Net Revenue (measured in accordance with GAAP on a trailing six (6) month basis), tested quarterly on the last day of each calendar quarter, in an amount equal to or greater than the levels to be agreed upon between Borrower and Bank with respect to which Borrower hereby agrees: (i) shall be documented in an amendment to this Agreement, in form and substance acceptable to Bank, which amendment shall be executed no later than: (x) for the fiscal year ending on December 31, 2025, the earlier to occur of 1) the date when Borrower's unrestricted cash and Cash Equivalent held with Bank and Bank's Affiliates is equal to or falls below [\*\*\*] Dollars, and 2) September 30, 2025, with Borrower's failure to enter into such amendment to this Agreement to reset such covenant levels on or prior to such date being an immediate and non-curable Event of Default hereunder; and (y) for the fiscal year ending on

December 31, 2026 and any fiscal year after that, February 28<sup>th</sup> of each year beginning with February 28, 2026, with Borrower's failure to enter into such amendment to this Agreement to reset such covenant levels on or prior to February 28<sup>th</sup> of each year being an immediate and non-curable Event of Default hereunder; (ii) shall be based on Borrower's projections delivered to Bank in accordance with Section 5.3(e) hereof and acceptable to Bank in its commercially reasonable discretion with such projections for Borrower's 2025 fiscal year showing a year-over-year growth satisfactory to Bank in its sole discretion. Notwithstanding the foregoing, such Net Revenue covenant will not be tested for a certain calendar quarter if (1) Borrower's unrestricted and unencumbered (except for Liens in favor of Bank) cash and Cash Equivalents held at Bank and Bank's Affiliates is equal to or greater than [\*\*\*] Dollars, or (2) Borrower achieves Adjusted EBITDA (calculated on a trailing six (6) month basis) of equal to or greater than [\*\*\*] Dollars.

#### **5.11 Protection of Intellectual Property Rights.**

(a) (i) Use commercially reasonable efforts to protect, defend and maintain the validity and enforceability of Borrower's and each Subsidiary's Intellectual Property, except to the extent that such failure to do so would not reasonably be expected to have a material adverse effect on Borrower's business or operations or that such Intellectual Property does not have material value; (ii) promptly advise Bank in writing of infringements or any other event that could reasonably be expected to materially and adversely affect the value Borrower's and each Subsidiary's Intellectual Property that has material value; and (iii) not allow any Intellectual Property material to Borrower's or any Subsidiary's business to be abandoned, forfeited or dedicated to the public without Bank's written consent.

(b) Provide written notice to Bank within thirty (30) days of entering or becoming bound by any Restricted License (other than over-the-counter software that is commercially available to the public). Borrower shall take such commercially reasonable steps as Bank requests to obtain the consent of, or waiver by, any person whose consent or waiver is necessary for (i) any such Restricted License to be deemed "Collateral" and for Bank to have a security interest in it that might otherwise be restricted or prohibited by law or by the terms of any such Restricted License, whether now existing or entered into in the future, and (ii) Bank to have the ability in the event of a liquidation of any Collateral to dispose of such Collateral in accordance with Bank's rights and remedies under this Agreement and the other Loan Documents.

**5.12 Litigation Cooperation.** From the date hereof and continuing through the termination of this Agreement, make available to Bank, without expense to Bank, Borrower and its officers, employees and agents and Borrower's books and records, to the extent that Bank may deem them reasonably necessary to prosecute or defend any third-party suit or proceeding instituted by or against Bank with respect to any Collateral or relating to Borrower.

#### **5.13 Reserved.**

**5.14 Formation or Acquisition of Subsidiaries.** Notwithstanding and without limiting the negative covenants contained in Sections 6.3 and 6.7 hereof, at the time that Borrower or any Guarantor forms any Subsidiary or acquires any Subsidiary after the Effective Date (including, without limitation, pursuant to a Division), Borrower and such Guarantor shall (a) cause such new Subsidiary to provide to Bank a joinder to this Agreement to become a co-borrower hereunder or a guaranty to become a Guarantor hereunder (as determined by Bank in its sole discretion), together with documentation, all in form and substance satisfactory to Bank (including being sufficient to grant Bank a first priority Lien (subject to Permitted Liens) in and to the assets of such newly formed or acquired Subsidiary that constitute Collateral), (b) provide to Bank appropriate certificates and powers and financing statements, pledging (i) all of the direct or beneficial ownership interest in such new Subsidiary, in form and substance reasonably satisfactory to Bank; and (c) provide to Bank all other documentation in form and substance reasonably satisfactory to Bank, including one or more opinions of counsel satisfactory to Bank, which in its opinion is appropriate with respect to the execution and delivery of the applicable documentation referred to above. Any document, agreement, or instrument executed or issued pursuant to this Section 5.14 shall be a Loan Document.

**5.15 Inventory; Returns.** Keep all Inventory in good and marketable condition, free from material defects. Returns and allowances between Borrower and its Account Debtors shall follow Borrower's customary practices as they exist at the Effective Date. Borrower shall promptly notify Bank of all returns, recoveries, disputes and claims that involve more than Two Hundred Fifty Thousand Dollars (\$250,000) (measured as to any single return, recovery, dispute or claim, and not in the aggregate at such time).

**5.16 Further Assurances.** Execute any further instruments and take such further action as Bank reasonably requests to perfect, protect, ensure the priority of or continue Bank's Lien on the Collateral or to affect the purposes of this Agreement.

**5.17 Sanctions.** (a) Not, and not permit any of its Subsidiaries to, engage in any of the activities described in Section 4.11 in the future; (b) not, and not permit any of its Subsidiaries to, become a Sanctioned Person; (c) ensure that the proceeds of the Obligations are not used to violate any Sanctions; and (d) deliver to Bank any certification or other evidence requested from time to time by Bank in its sole discretion, confirming each such Person's compliance with this Section 5.17. In addition, have implemented, and will consistently apply while this Agreement is in effect, reasonable procedures to ensure that the representations and warranties in Section 4.11 remain true and correct while this Agreement is in effect.

## **6. NEGATIVE COVENANTS**

Borrower shall not do any of the following without Bank's prior written consent:

**6.1 Dispositions.** Convey, sell, lease, transfer, assign, or otherwise dispose of (including, without limitation, pursuant to a Division) (collectively, " **Transfer**"), or permit any of its Subsidiaries to Transfer, all or any part of its business or property, except for Transfers (a) of Inventory in the ordinary course of business; (b) of worn-out, surplus or obsolete Equipment that is, in the reasonable judgment of Borrower, no longer economically practicable to maintain or useful in the ordinary course of business of Borrower; (c) consisting of Permitted Liens and Permitted Investments; (d) consisting of the sale or issuance of any stock, partnership, membership, or other ownership interest or other equity securities of Borrower permitted under Section 6.2 of this Agreement; (e) consisting of Borrower's or its Subsidiaries' use or transfer of money or Cash Equivalents in a manner that is not prohibited by the terms of this Agreement or the other Loan Documents, including without limitation cash returns or refunds of customer payments; (f) of non-exclusive licenses for the use of the property of Borrower or its Subsidiaries in the ordinary course of business, and other licenses permitted pursuant to part (h) of the defined Permitted Liens; (g) other Transfers not to exceed One Hundred Thousand Dollars (\$100,000) in any twelve (12) month period; and (h) other Transfers in which Borrower will receive cash proceeds in an amount equal to no less than seventy-five percent (75%) of such other Transfer consideration (fixed or contingent) paid or payable to Borrower or its Subsidiary.

For the avoidance of doubt, none of (a) the sale of any Permitted Convertible Indebtedness, (b) the sale of any Warrant Transaction, (c) the purchase of any Bond Hedge Transaction or (d) the performance by Borrower of its obligations under any Permitted Convertible Indebtedness, any Warrant Transaction or any Bond Hedge Transaction (including the settlement or termination of any Bond Hedge Transaction or Warrant Transaction) shall constitute a Transfer.

**6.2 Changes in Business, Management, Control, or Business Locations.** (a) Engage in or permit any of its Subsidiaries to engage in any business other than the businesses currently engaged in by Borrower and such Subsidiary, as applicable, or reasonably related thereto; (b) liquidate or dissolve or permit any of its Subsidiaries to liquidate or dissolve (unless such Subsidiary's assets are transferred to Borrower); (c) fail to provide notice to Bank of any Key Person departing from or ceasing to be employed by Borrower within seven (7) Business Days after such Key Person's departure from Borrower; (d) permit, allow or suffer to occur any Change in Control; (e) without at least ten (10) days prior written notice to Bank, (i) add any new offices or business locations, including warehouses (unless such new offices or business locations contain less than Two Hundred Thousand Dollars (\$200,000) in Borrower's assets or property) or deliver any portion of the Collateral valued, individually or in the aggregate, in excess of Two Hundred Thousand Dollars (\$200,000) to a bailee at a location other than to a

bailee and at a location already disclosed in the Perfection Certificate, or (f) without at least twenty (20) days prior written notice to Bank (i) change its jurisdiction of organization, (ii) change its organizational structure or type, (iii) change its legal name, or, (iv) change any organizational number (if any) assigned by its jurisdiction of organization. If Borrower intends to add any new offices or business locations, including warehouses, containing in excess of Two Hundred Thousand Dollars (\$200,000) of Borrower's assets or property, then Borrower will cause the landlord of any such new offices or business locations, including warehouses, to execute and deliver a landlord consent in form and substance reasonably satisfactory to Bank. If Borrower intends to deliver any portion of the Collateral valued, individually or in the aggregate, in excess of Two Hundred Thousand Dollars (\$200,000) to a bailee, and Bank and such bailee are not already parties to a bailee agreement governing both the Collateral and the location to which Borrower intends to deliver the Collateral, then Borrower will cause such bailee to execute and deliver a bailee agreement in form and substance reasonably satisfactory to Bank. For the avoidance of doubt, no landlord or bailee waivers shall be required for or with respect to any foreign locations of Borrower or its Subsidiaries.

**6.3 Mergers or Acquisitions.** Merge or consolidate, or permit any of its Subsidiaries to merge or consolidate, with any other Person, or acquire, or permit any of its Subsidiaries to acquire, all or substantially all of the stock, partnership, membership, or other ownership interest or other equity securities or property of another Person (including, without limitation, by the formation of any Subsidiary or pursuant to a Division), except (i) if (a) Borrower has complied with the notice requirements applicable to prepayments hereunder, and (b) prior to or contemporaneously with the closing of such transaction, all Obligations are paid in full in cash, and all of Bank's obligations to lend to Borrower under this Agreement are terminated, and/or (iii) Permitted Acquisitions. A Subsidiary may merge or consolidate into another Subsidiary or into Borrower.

**6.4 Indebtedness.** Create, incur, assume, or be liable for any Indebtedness, or permit any Subsidiary to do so, other than Permitted Indebtedness.

**6.5 Encumbrance.** Create, incur, allow, or suffer to exist any Lien on any of its property, or assign or convey any right to receive income, including the sale of any Accounts, or permit any of its Subsidiaries to do so, in each case as to the foregoing except for Permitted Liens, permit any Collateral not to be subject to the first priority security interest granted herein, other than Permitted Liens, or enter into any agreement, document, instrument or other arrangement (except with or in favor of Bank) with any Person which directly or indirectly prohibits or has the effect of prohibiting Borrower or any Subsidiary from assigning, mortgaging, pledging, granting a security interest in or upon, or encumbering any of Borrower's or any Subsidiary's Intellectual Property, except as is otherwise permitted in Section 6.1 hereof and the definition of "Permitted Liens" herein.

**6.6 Maintenance of Collateral Accounts.** Maintain any Collateral Account except pursuant to the terms of Section 5.9(c).

**6.7 Distributions; Investments.** (a) Pay any dividends or make any distribution or payment or redeem, retire or purchase any stock, partnership, membership, or other ownership interest or other equity securities, provided that Borrower may (i) convert any of its convertible securities into other securities pursuant to the terms of such convertible securities or otherwise in exchange thereof, (ii) pay dividends solely in common stock or equity interests, (iii) repurchase the stock of former employees, officers, directors or consultants pursuant to stock repurchase agreements or termination of employment or service or repurchases pursuant to rights of first refusal in Borrower's bylaws, so long as an Event of Default does not exist at the time of any such repurchase and would not exist after giving effect to any such repurchase; provided the aggregate amount of all such repurchases shall not exceed Five Hundred Thousand Dollars (\$500,000) per fiscal year, (iv) pay cash distributions in lieu of issuing fractional shares; provided the aggregate amount of all such payments shall not exceed Two Hundred Thousand Dollars (\$200,000) per fiscal year, (v) distribute equity securities to former or current employees, officers, consultants or directors pursuant to the exercise of employee stock options approved by the Board, (vi) pay, in connection with any Permitted Acquisition by Borrower or any of its Subsidiaries, (A) the receipt or acceptance of the return to Borrower or any of its Subsidiaries of stock or equity interests of Borrower constituting a portion of the purchase price consideration in settlement of indemnification claims, or as a result of a purchase price adjustment (including earn-outs or similar obligations) and (B) payments or distributions to equity holders pursuant to appraisal rights required under requirements of law; (vii) the distribution of rights pursuant to any shareholder rights plan or

the redemption of such rights for nominal consideration in accordance with the terms of any shareholder rights plan, and (viii) for the avoidance of doubt, Subsidiaries of Borrower shall be permitted to, directly or indirectly, pay dividends or make distributions to other Subsidiaries or to Borrower, or (b) directly or indirectly make any Investment (including, without limitation, by the formation of any Subsidiary) other than Permitted Investments, or permit any of its Subsidiaries to do so.

Notwithstanding the foregoing, or anything to the contrary herein, and for the avoidance of doubt, this Section 6.7 shall not prohibit (i) the conversion by holders of (including any cash payment upon conversion), or required payment of any principal or premium on, or required payment of any interest with respect to, any Permitted Convertible Debt, in each case, in accordance with the terms of the indenture governing such Permitted Convertible Debt; *provided* that the preceding sentence shall only allow principal payments with respect to any repurchase in connection with the redemption of Permitted Convertible Debt upon satisfaction of a condition related to the stock price of the Borrower's common stock if the Redemption Conditions are satisfied in respect of such redemption; *provided further* that, to the extent both (a) the aggregate amount of cash payable upon conversion or redemption of any Permitted Convertible Debt (excluding any required payment of interest with respect to such Permitted Convertible Debt and excluding any payment of cash in lieu of a fractional share due upon conversion thereof) exceeds the aggregate principal amount thereof and (b) such conversion or redemption does not trigger or correspond to an exercise or early unwind or settlement of a corresponding portion of the Bond Hedge Transactions constituting Permitted Call Spread Agreements relating to such Permitted Convertible Debt (including, for the avoidance of doubt, the case where there is no Bond Hedge Transaction constituting a Permitted Call Spread Agreement relating to such Permitted Convertible Debt), the payment of such excess cash (any such payment, a "**Cash Excess Payment**") shall not be permitted by this clause (i); and (ii) any required payment with respect to (including, for the avoidance of doubt, the payment of the relevant premium for the purchase thereof), or required early unwind or settlement of, any Permitted Call Spread Agreement, in each case, in accordance with the terms of the agreement governing such Permitted Call Spread Agreement; *provided* that, to the extent cash is required to be paid under a Warrant Transaction as a result of the election of "cash settlement" (or substantially equivalent term) as the "settlement method" (or substantially equivalent term) thereunder by the Borrower (or its Affiliate) (including in connection with the exercise and/or early unwind or settlement thereof), the payment of such cash shall not be permitted by this clause (ii). Notwithstanding the foregoing, the Borrower may repurchase, exchange or induce the conversion of Permitted Convertible Debt by delivery of shares of the Borrower's common stock and/or a different series of Permitted Convertible Debt (which series (I) matures after, and does not require any scheduled amortization or other scheduled payments of principal prior to, the analogous date under the indenture governing the Permitted Convertible Debt that are so repurchased, exchanged or converted and (II) has terms, conditions and covenants that are commercially reasonable to the Borrower (as determined by the Borrower in good faith) (any such series of Permitted Convertible Debt, "**Refinancing Convertible Debt**") and/or by payment of cash (x) in lieu of any fractional shares, (y) in respect of accrued and unpaid interest of such Permitted Convertible Debt and (z) additional cash in an amount that does not exceed the proceeds received by the Borrower from the substantially concurrent issuance of shares of the Borrower's common stock and/or a Refinancing Convertible Debt plus the net cash proceeds, if any, received by the Borrower pursuant to the related exercise or early unwind or termination of the related Permitted Call Spread Agreements pursuant to the immediately following proviso; *provided* that, substantially concurrently with, or a commercially reasonable period of time before or after, the related settlement date for the Permitted Convertible Debt that is so repurchased, exchanged or converted, the Borrower shall (and, for the avoidance of doubt, shall be permitted under this Section 7.7 to) exercise or unwind or terminate early (whether in cash, shares or any combination thereof) the portion of the Permitted Call Spread Agreements, if any, corresponding to such Permitted Convertible Debt that is so repurchased, exchanged or converted.

**6.8 Transactions with Affiliates.** Directly or indirectly enter into or permit to exist any material transaction with any Affiliate of Borrower, except for (a) transactions that are in the ordinary course of Borrower's business, upon fair and reasonable terms that are no less favorable to Borrower than would be obtained in an arm's length transaction with a non-affiliated Person; (b) sales of Borrower's equity securities to the then-existing investors of Borrower in connection with a bona fide equity financing by the Board so long as such sale shall not result in a violation of the Change of Control provision in Section 6.2, (c) debt financings from Borrower's investors so long as all such Indebtedness shall constitute Subordinated Debt, (d) reasonable and customary compensation arrangements and benefit plans for officers, and other employees of Borrower approved by the Board, (e) reasonable



and customary compensation arrangements for fees and costs paid to members of the Board in the ordinary course of business, and (f) Investments of the type described in and permitted under clauses (g) and/or (h) of the definition of "Permitted Investments" herein.

**6.9 Subordinated Debt.** Except as expressly permitted under the terms of the subordination, intercreditor, or other similar agreement to which any Subordinated Debt is subject: (a) make or permit any payment on such Subordinated Debt; (b) amend any provision in any document relating to such Subordinated Debt which would increase the amount thereof, or (c) provide for earlier or greater principal, interest, or other payments thereon, or adversely affect the subordination thereof to Obligations owed to Bank in contravention of the terms of such the subordination, intercreditor, or other similar agreement.

**6.10 Compliance.** (a) Become an "investment company" or a company controlled by an "investment company", under the Investment Company Act of 1940, as amended, or undertake as one of its important activities extending credit to purchase or carry margin stock (as defined in Regulation U of the Board of Governors of the Federal Reserve System), or use the proceeds of any Credit Extension for that purpose; (b)(i) fail to meet the minimum funding requirements of ERISA, (ii) permit a Reportable Event or Prohibited Transaction, as defined in ERISA, to occur, (iii) fail to comply with the Federal Fair Labor Standards Act or (iv) violate any other law or regulation, if the foregoing subclauses (i) through (iv), individually or in the aggregate, could reasonably be expected to have a material adverse effect on Borrower's business or operations, or permit any of its Subsidiaries to do so; or (c) withdraw or permit any Subsidiary to withdraw from participation in, permit partial or complete termination of, or permit the occurrence of any other event with respect to, any present pension, profit sharing and deferred compensation plan which could reasonably be expected to result in any material liability of Borrower, including any material liability to the Pension Benefit Guaranty Corporation or its successors or any other Governmental Authority.

**6.11 Cash and Cash Equivalents held by Foreign Subsidiaries .** The aggregate value of cash and Cash Equivalents held by all Foreign Subsidiaries of Borrower to exceed Two Million Five Hundred Thousand Dollars (\$2,500,000) for more than five (5) Business Days in each calendar month.

**6.12 Value of Assets held by Foreign Subsidiaries.** The aggregate value of the assets owned by the Foreign Subsidiaries of Borrower shall not exceed twenty percent (20%) of the aggregate value of all assets owned by the Borrower and its Subsidiaries.

**6.13 Redemption of Permitted Convertible Debt.** Exercise any redemption right with respect to any Permitted Convertible Debt upon satisfaction of a condition related to the stock price of the Borrower's common stock, unless the Redemption Conditions are satisfied in respect of such redemption.

## **7. EVENTS OF DEFAULT**

Any one of the following shall constitute an event of default (an " **Event of Default**") under this Agreement:

**7.1 Payment Default.** Borrower fails to (a) make any payment of principal or interest on any Credit Extension on its due date, or (b) pay any other Obligations within three (3) Business Days after such Obligations are due and payable (which three (3) Business Day cure period shall not apply to payments due on the Term Loan Maturity Date), in each unless such late payment is due to Bank's failure to auto-debit such payment when sufficient funds were contained in the Designated Deposit Account (or if insufficient funds are contained therein, or if an Event of Default has occurred and is continuing, any of Borrower's other accounts at Bank). During the cure period, the failure to make or pay any payment specified under clause (b) hereunder is not an Event of Default (but no Credit Extension will be made during the cure period);

**7.2 Covenant Default.**

(a) Borrower fails or neglects to perform any obligation in Section 5 (other than Sections 5.2 (Government Compliance), 5.12 (Litigation Cooperation), 5.15 (Inventory; Returns) and 5.16 (Further Assurances)) or violates any covenant in Section 6; or

(b) Borrower fails or neglects to perform, keep, or observe any other term, provision, condition, covenant or agreement contained in this Agreement or any Loan Documents, and as to any default (other than those specified in this Section 7) under such other term, provision, condition, covenant or agreement that can be cured, has failed to cure the default within ten (10) days after the occurrence thereof; provided, however, that if the default cannot by its nature be cured within the ten (10) day period or cannot after diligent attempts by Borrower be cured within such ten (10) day period, and such default is likely to be cured within a reasonable time, then Borrower shall have an additional period (which shall not in any case exceed thirty (30) days) to attempt to cure such default, and within such reasonable time period the failure to cure the default shall not be deemed an Event of Default (but no Credit Extensions shall be made during such cure period). Cure periods provided under this section shall not apply, among other things, to financial covenants or any other covenants that are required to be satisfied, completed or tested by a date certain or any covenants set forth in clause (a) above;

**7.3 Material Adverse Change.** A Material Adverse Change occurs;

**7.4 Attachment; Levy; Restraint on Business.**

(a) (i) The service of process seeking to attach, by trustee or similar process, any funds of Borrower or any Subsidiary with a value in excess of Two Hundred Thousand Dollars (\$200,000), or (ii) a notice of lien or levy in an amount in excess of Two Hundred Thousand Dollars (\$200,000), is filed against any of Borrower's or any of its Subsidiaries' assets by any Governmental Authority, and the same under subclauses (i) and (ii) hereof are not, within fifteen (15) days after the occurrence thereof, discharged or stayed (whether through the posting of a bond or otherwise); provided, however, no Credit Extensions shall be made during any fifteen (15) day cure period; or

(b) (i) any material portion of Borrower's or any of its Subsidiaries' assets with a value in excess of Two Hundred Thousand Dollars (\$200,000), is attached, seized, levied on, or comes into possession of a trustee or receiver, or (ii) any court order enjoins, restrains, or prevents Borrower or any of its Subsidiaries from conducting all or any material part of its business;

**7.5 Insolvency.** (a) Borrower or Borrower and of its Subsidiaries (taken as a whole) is unable to pay its debts (including trade debts) as they become due or otherwise becomes insolvent; (b) Borrower or any of its Subsidiaries begins an Insolvency Proceeding; or (c) an Insolvency Proceeding is begun against Borrower or any of its Subsidiaries and is not dismissed or stayed within forty-five (45) days (but no Credit Extensions shall be made while any of the conditions described in clause (a) exist and/or until any Insolvency Proceeding is dismissed);

**7.6 Other Agreements.** There is, under any agreement to which Borrower, any of Borrower's Subsidiaries, or any Guarantor is a party with a third party or parties, (a) any default by Borrower (after applicable grace and/or cure periods) resulting in a right by such third party or parties, whether or not exercised, to accelerate the maturity of any Indebtedness in an amount individually or in the aggregate in excess of Five Hundred Thousand Dollars (\$500,000); or (b) any breach or default by Borrower, any of Borrower's Subsidiaries, or Guarantor the result of which could reasonably be expected to have a material adverse effect on Borrower's, any of Borrower's Subsidiaries', or any Guarantor's business or operations (taken as a whole)

**7.7 Judgments; Penalties.** One or more fines, penalties or final judgments, orders or decrees for the payment of money in an amount, individually or in the aggregate, of at least Five Hundred Thousand Dollars (\$500,000)(not covered by independent third-party insurance as to which liability has been accepted by such insurance carrier) shall be rendered against Borrower or any of its Subsidiaries by any Governmental Authority, and the same are not, within ten (10) days after the entry, assessment or issuance thereof, discharged, satisfied or paid, or after execution thereof, or stayed pending appeal, or such judgments are not discharged, satisfied or paid prior to the

expiration of any such stay (provided that no Credit Extensions will be made prior to the discharge, satisfaction, payment, or stay of such fine, penalty, judgment, order or decree);

**7.8 Misrepresentations.** Borrower or any of its Subsidiaries or any Responsible Person acting for Borrower or any of its Subsidiaries knowingly makes any representation, warranty, or other statement now or later in this Agreement, any Loan Document or in any writing delivered to Bank or to induce Bank to enter this Agreement or any Loan Document, and such representation, warranty, or other statement is incorrect in any material respect when made (it being agreed and acknowledged by Bank that the projections and forecasts provided by Borrower or any of its Subsidiaries in good faith and based upon reasonable assumptions are not viewed as facts and that actual results during the period or periods covered by such projections and forecasts may differ from the projected or forecasted results);

**7.9 Subordinated Debt.** If: (a) any document, instrument, or agreement evidencing any Subordinated Debt shall for any reason be revoked or invalidated or otherwise cease to be in full force and effect (other than in accordance with the terms of such document, instrument or agreement) or any Person (other than Bank)) shall be in breach thereof or contest in any manner the validity or enforceability thereof or deny that it has any further liability or obligation thereunder; (b) a default or event of default (however defined) has occurred under any document, instrument, or agreement evidencing any Subordinated Debt, which default shall not have been cured or waived within any applicable grace period; or (c) the Obligations shall for any reason be subordinated or shall not have the priority contemplated by the applicable subordination or intercreditor agreement;

**7.10 Lien Priority.** There is a material impairment in the perfection or priority of Bank's security interest in the Collateral (unless such failure is caused by Bank's gross negligence or willful misconduct);

**7.11 Guaranty.** (a) Any guaranty of any Obligations terminates or ceases for any reason to be in full force and effect (except due to termination in accordance with the terms of such guaranty); (b) any Guarantor does not perform any material obligation or covenant under any guaranty of the Obligations; (c) any circumstance described in Sections 7.3, 7.4, 7.5, 7.6, 7.7, or 7.8 of this Agreement occurs with respect to any Guarantor (subject to the applicable cure and grace periods herein), (d) the death, liquidation, winding up, or termination of existence of any Guarantor; or (e) a material impairment in the perfection or priority of Bank's Lien in the collateral provided by Guarantor or in the value of such collateral ; or

**7.12 Governmental Approvals.** Any Governmental Approval shall have been (a) revoked, rescinded, suspended, modified in an adverse manner or not renewed in the ordinary course for a full term or (b) subject to any decision by a Governmental Authority that designates a hearing with respect to any applications for renewal of any of such Governmental Approval or that could result in the Governmental Authority taking any of the actions described in clause (a) above, and such decision or such revocation, rescission, suspension, modification or non-renewal (i) causes, or could reasonably be expected to cause, a Material Adverse Change, or (ii) materially and adversely affects the legal qualifications of Borrower or any of its Subsidiaries to hold such Governmental Approval in any applicable jurisdiction and such revocation, rescission, suspension, modification or non-renewal could reasonably be expected to materially and adversely affect the status of or legal qualifications of Borrower or any of its Subsidiaries to hold any Governmental Approval in any other jurisdiction that is material to the operation of Borrower's business.

## **8. BANK'S RIGHTS AND REMEDIES**

**8.1 Rights and Remedies.** Upon the occurrence and during the continuance of an Event of Default, Bank may, without notice or demand, do any or all of the following:

- (a) declare all Obligations immediately due and payable (but if an Event of Default described in Section 7.5 occurs all Obligations are immediately due and payable without any action by Bank);
- (b) stop advancing money or extending credit for Borrower's benefit under this Agreement or under any other agreement between Borrower and Bank;

(c) demand that Borrower (i) deposit cash with Bank in an amount equal to at least (A) one hundred and five percent (105.0%) of the aggregate face amount of any Letters of Credit denominated in Dollars remaining undrawn, and (B) one hundred and fifteen percent (115.0%) of the Dollar Equivalent of the aggregate face amount of any Letters of Credit denominated in a Foreign Currency remaining undrawn (plus, in each case, all interest, fees, and costs due or estimated by Bank to become due in connection therewith), to secure all of the Obligations relating to such Letters of Credit, as collateral security for the repayment of any future drawings under such Letters of Credit, and Borrower shall forthwith deposit and pay such amounts, and (ii) pay in advance all letter of credit fees scheduled to be paid or payable over the remaining term of any Letters of Credit;

(d) terminate any FX Contracts (it being understood and agreed that (i) Bank is not obligated to deliver the currency which Borrower has contracted to receive under any FX Contract, and Bank may cover its exposure for any FX Contracts by purchasing or selling currency in the interbank market as Bank deems appropriate; (ii) Borrower shall be liable for all losses, damages, costs, margin obligations and expenses incurred by Bank arising from Borrower's failure to satisfy its obligations under any FX Contract or the execution of any FX Contract; and (iii) Bank shall not be liable to Borrower for any gain in value of a FX Contract that Bank may obtain in covering Borrower's breach);

(e) verify the amount of, demand payment of and performance under, and collect any Accounts and General Intangibles, settle or adjust disputes and claims directly with Account Debtors for amounts on terms and in any order that Bank considers advisable, and notify any Person owing Borrower money of Bank's security interest in such funds;

(f) make any payments and do any acts it considers necessary or reasonable to protect the Collateral and/or its security interest in the Collateral. Borrower shall assemble the Collateral if Bank requests and make it available as Bank designates. Bank may enter premises where the Collateral is located, take and maintain possession of any part of the Collateral, and pay, purchase, contest, or compromise any Lien which appears to be prior or superior to its security interest and pay all expenses incurred. Borrower grants Bank a license to enter and occupy any of its premises, without charge, to exercise any of Bank's rights or remedies;

(g) apply to the Obligations any (i) balances and deposits of Borrower it holds, or (ii) amount held by Bank owing to or for the credit or the account of Borrower;

(h) ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell the Collateral. For use solely upon the occurrence and during the continuation of an Event of Default, Bank is hereby granted a non-exclusive, royalty-free license or other right to use, without charge, Borrower's labels, Patents, Copyrights, mask works, rights of use of any name, trade secrets, trade names, Trademarks, and advertising matter, or any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Bank's exercise of its rights under this Section 8.1, Borrower's rights under all licenses and all franchise agreements inure to Bank's benefit;

(i) place a "hold" on any account maintained with Bank and/or deliver a notice of exclusive control, any entitlement order, or other directions or instructions pursuant to any Control Agreement or similar agreements providing control of any Collateral;

(j) demand and receive possession of Borrower's Books; and

(k) exercise all rights and remedies available to Bank under the Loan Documents or at law or equity, including all remedies provided under the Code or any Applicable Law (including disposal of the Collateral pursuant to the terms thereof).

**8.2 Power of Attorney.** Borrower hereby irrevocably appoints Bank as its true and lawful attorney-in-fact, (a) exercisable only following the occurrence and during the continuance of an Event of Default, to: (i) endorse Borrower's name on any checks, payment instruments, or other forms of payment or security; (ii) sign Borrower's name on any invoice or bill of lading for any Account or drafts against Account Debtors; (iii) demand,

collect, sue, and give releases to any Account Debtor for monies due, settle and adjust disputes and claims about the Accounts directly with Account Debtors, and compromise, prosecute, or defend any action, claim, case, or proceeding about any Collateral (including filing a claim or voting a claim in any bankruptcy case in Bank's or Borrower's name, as Bank chooses); (iv) make, settle, and adjust all claims under Borrower's insurance policies; (v) pay, contest or settle any Lien, charge, encumbrance, security interest, or other claim in or to the Collateral, or any judgment based thereon, or otherwise take any action to terminate or discharge the same; and (vi) transfer the Collateral into the name of Bank or a third party as the Code permits; and (b) regardless of whether an Event of Default has occurred, to sign Borrower's name on any documents necessary to perfect or continue the perfection of Bank's security interest in the Collateral. Bank's foregoing appointment as Borrower's attorney in fact, and all of Bank's rights and powers, coupled with an interest, are irrevocable until such time as all Obligations (other than inchoate indemnity obligations) have been paid in full in cash, Bank is under no further obligation to make Credit Extensions and the Loan Documents have been terminated. Bank shall not incur any liability in connection with or arising from the exercise of such power of attorney and shall have no obligation to exercise any of the foregoing rights and remedies.

**8.3 Protective Payments.** If Borrower fails to obtain the insurance called for by Section 5.8 or fails to pay any premium thereon or fails to pay any other amount which Borrower is obligated to pay under this Agreement or any other Loan Document or which may be required to preserve the Collateral, Bank may obtain such insurance or make such payment, and all amounts so paid by Bank are Bank Expenses and immediately due and payable, bearing interest at the then highest rate applicable to the Obligations, and secured by the Collateral. Bank will make reasonable efforts to provide Borrower with notice of Bank obtaining such insurance at the time it is obtained or within a reasonable time thereafter. No payments by Bank are deemed an agreement to make similar payments in the future or Bank's waiver of any Event of Default.

**8.4 Application of Payments and Proceeds.** If an Event of Default has occurred and is continuing, Bank shall have the right to apply in any order any funds in its possession, whether from Borrower account balances, payments, proceeds realized as the result of any collection of Accounts or other disposition of the Collateral, or otherwise, to the Obligations in such order as Bank shall determine in its sole discretion. Any surplus shall be paid to Borrower or other Persons legally entitled thereto; Borrower shall remain liable to Bank for any deficiency. Following the occurrence and during the continuation of an Event of Default, if Bank, in its commercially reasonable discretion, directly or indirectly, enters into a deferred payment or other credit transaction with any purchaser at any sale of Collateral, Bank shall have the option, exercisable at any time, of either reducing the Obligations by the principal amount of the purchase price or deferring the reduction of the Obligations until the actual receipt by Bank of cash therefor.

**8.5 Bank's Liability for Collateral.** Bank's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession or under its control, under Section 9-207 of the Code or otherwise, shall be to deal with it in the same manner as Bank deals with its own property consisting of similar instruments or interests. Borrower bears all risk of loss, damage or destruction of the Collateral.

**8.6 No Waiver; Remedies Cumulative.** Bank's failure, at any time or times, to require strict performance by Borrower of any provision of this Agreement or any other Loan Document shall not waive, affect, or diminish any right of Bank thereafter to demand strict performance and compliance herewith or therewith. No waiver hereunder shall be effective unless signed by the party granting the waiver and then is only effective for the specific instance and purpose for which it is given. Bank's rights and remedies under this Agreement and the other Loan Documents are cumulative. Bank has all rights and remedies provided under the Code, by law, or in equity. Bank's exercise of one right or remedy is not an election and shall not preclude Bank from exercising any other remedy under this Agreement or other remedy available at law or in equity, and Bank's waiver of any Event of Default is not a continuing waiver. Bank's delay in exercising any remedy is not a waiver, election, or acquiescence.

**8.7 Demand Waiver.** Borrower waives demand, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees held by Bank on which Borrower is liable.

**9. NOTICES**

All notices, consents, requests, approvals, demands, or other communication by any party to this Agreement or any other Loan Document must be in writing and shall be deemed to have been validly served, given, or delivered: (a) upon the earlier of actual receipt and three (3) Business Days after deposit in the U.S. mail, first class, registered or certified mail return receipt requested, with proper postage prepaid; (b) upon transmission, when sent by electronic mail; (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid; or (d) when delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address or email address indicated below; provided that, for clause (b), if such notice, consent, request, approval, demand or other communication is not sent during the normal business hours of the recipient, it shall be deemed to have been sent at the opening of business on the next Business Day of the recipient. Bank or Borrower may change its mailing or electronic mail address by giving the other party written notice thereof in accordance with the terms of this Section 9.

If to Borrower: SI-Bone, Inc.  
471 El Camino Real, Suite 101  
Santa Clara, CA 95050  
Attn: Laura Francis, CEO; and  
Anshul Maheshwari, CFO  
Email: lfrancis@si-bone.com; and  
Anshul.Maheshwari@si-bone.com

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

Cooley LLP  
3175 Hanover Street  
Palo Alto, CA 94304  
Attn: Matthew Hemington  
Email: mhemington@cooley.com

If to Bank: Silicon Valley Bank, a division of First-Citizens Bank & Trust Company  
505 Howard Street, Floor 3  
San Francisco, CA 94105  
Attn: Mark Davis  
Email: mdavis@svb.com

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

DLA Piper LLP (US)  
4365 Executive Drive Suite 1100  
San Diego California 92121-2133

Attn: Parker Zangoei, Esq.  
Email: parker.zangoei@us.dlapiper.com

**10. CHOICE OF LAW, VENUE AND JURY TRIAL WAIVER; JUDICIAL REFERENCE**

Except as otherwise expressly provided in any of the Loan Documents, California law governs the Loan Documents without regard to principles of conflicts of law that would require the application of the laws of another jurisdiction. Borrower and Bank each irrevocably and unconditionally submit to the exclusive jurisdiction of the State and Federal courts in Santa Clara County, California; provided, however, that nothing in this Agreement shall be deemed to operate to preclude Bank from bringing suit or taking other legal action in any other jurisdiction with respect to the Loan Documents or to realize on the Collateral or any other security for the Obligations, or to enforce

a judgment or other court order in favor of Bank. Borrower expressly, irrevocably and unconditionally submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and Borrower hereby irrevocably and unconditionally waives, to the fullest extent permitted by Applicable Law, any objection that it may have based upon lack of personal jurisdiction, improper venue, or forum non conveniens and hereby irrevocably and unconditionally consents to the granting of such legal or equitable relief as is deemed appropriate by such court. Borrower hereby waives personal service of the summons, complaints, and other process issued in such action or suit and agrees that service of such summons, complaints, and other process may be made by registered or certified mail addressed to Borrower at the address set forth in, or subsequently provided by Borrower in accordance with, Section 9 of this Agreement and that service so made shall be deemed completed upon the earlier to occur of Borrower's actual receipt thereof or three (3) days after deposit in the U.S. mails, proper postage prepaid.

**TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER AND BANK EACH WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY CONTEMPLATED TRANSACTION UNDER THIS AGREEMENT, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR THE PARTIES HERETO TO ENTER INTO THIS AGREEMENT. EACH PARTY HERETO HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.**

WITHOUT INTENDING IN ANY WAY TO LIMIT THE PARTIES' AGREEMENT TO WAIVE THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY, if the above waiver of the right to a trial by jury is not enforceable, the parties hereto agree that any and all disputes or controversies of any nature between them arising at any time shall be decided by a reference to a private judge, mutually selected by the parties (or, if they cannot agree, by the Presiding Judge of the Santa Clara County, California Superior Court) appointed in accordance with California Code of Civil Procedure Section 638 (or pursuant to comparable provisions of federal law if the dispute falls within the exclusive jurisdiction of the federal courts), sitting without a jury, in Santa Clara County, California; and the parties hereby submit to the jurisdiction of such court. The reference proceedings shall be conducted pursuant to and in accordance with the provisions of California Code of Civil Procedure Sections 638 through 645.1, inclusive. The private judge shall have the power, among others, to grant provisional relief, including without limitation, entering temporary restraining orders, issuing preliminary and permanent injunctions and appointing receivers. All such proceedings shall be closed to the public and confidential and all records relating thereto shall be permanently sealed. If during the course of any dispute, a party desires to seek provisional relief, but a judge has not been appointed at that point pursuant to the judicial reference procedures, then such party may apply to the Santa Clara County, California Superior Court for such relief. The proceeding before the private judge shall be conducted in the same manner as it would be before a court under the rules of evidence applicable to judicial proceedings. The parties shall be entitled to discovery which shall be conducted in the same manner as it would be before a court under the rules of discovery applicable to judicial proceedings. The private judge shall oversee discovery and may enforce all discovery rules and orders applicable to judicial proceedings in the same manner as a trial court judge. The parties agree that the selected or appointed private judge shall have the power to decide all issues in the action or proceeding, whether of fact or of law, and shall report a statement of decision thereon pursuant to California Code of Civil Procedure Section 644(a). Nothing in this paragraph shall limit the right of any party at any time to exercise self-help remedies, foreclose against collateral, or obtain provisional remedies. The private judge shall also determine all issues relating to the applicability, interpretation, and enforceability of this paragraph.

This Section 10 shall survive the termination of this Agreement and the repayment of all Obligations.

#### **11. GENERAL PROVISIONS**

**11.1 Termination Prior to Term Loan Maturity Date; Survival.** All covenants, representations and warranties made in this Agreement shall continue in full force until this Agreement has terminated pursuant to its terms and all Obligations (other than inchoate indemnity obligations) have been satisfied. So long as Borrower has satisfied the Obligations (other than inchoate indemnity obligations, and any other obligations which, by their terms, are to survive the termination of this Agreement and the repayment of all Obligations, and any Obligations under Bank Services Agreements that are cash collateralized in accordance with Section 3.1 of this Agreement), this

Agreement may be terminated prior to the Term Loan Maturity Date by Borrower, effective three (3) Business Days after written notice of termination is given to Bank. Those obligations that are expressly specified in this Agreement as surviving this Agreement's termination and the repayment of all Obligations shall continue to survive notwithstanding this Agreement's termination and the repayment of all Obligations.

**11.2 Successors and Assigns.** This Agreement binds and is for the benefit of the successors and permitted assigns of each party. Borrower may not assign or transfer this Agreement or any rights or obligations under it without Bank's prior written consent (which may be granted or withheld in Bank's sole discretion) and any other attempted assignment or transfer by Borrower shall be null and void. Bank has the right, without the consent of or notice to Borrower, to sell, transfer, assign, negotiate, or grant participation in all or any part of, or any interest in, Bank's obligations, rights, and benefits under this Agreement and the other Loan Documents. Notwithstanding the foregoing, or anything to the contrary herein, so long as no Event of Default shall have occurred and is continuing, Bank shall not assign its interest in the Loan Documents to any Person who is (a) a competitor of Borrower, whether as an operating company or direct or indirect parent with voting control over such operating company, or (b) a vulture fund or distressed debt fund.

**11.3 Indemnification.**

(a) General Indemnification. Borrower shall indemnify, defend and hold Bank and its Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of Bank and its Affiliates (each, an "**Indemnified Person**") harmless against: all losses, claims, damages, liabilities and related expenses (including Bank Expenses and the reasonable fees, charges and disbursements of any counsel for any Indemnified Person) (collectively, "**Claims**") arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, (ii) any Credit Extension or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or release of hazardous materials on or from any property owned or operated by Borrower or any of its Subsidiaries, or any environmental liability related in any way to Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by Borrower, and regardless of whether any Indemnified Person is a party thereto; provided that such indemnity shall not, as to any Indemnified Person, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnified Person. All amounts due under this Section 11.3 shall be payable promptly after demand therefor.

(b) Waiver of Consequential Damages, Etc. To the fullest extent permitted by Applicable Law, Borrower shall not assert, and hereby waives, any claim against any Indemnified Person, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) or any loss of profits arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Credit Extension, or the use of the proceeds thereof. No Indemnified Person shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

This Section 11.3 shall survive the termination of this Agreement and the repayment of all Obligations until all statutes of limitation with respect to the Claims, losses, and expenses for which indemnity is given shall have run.

**11.4 Time of Essence.** Time is of the essence for the performance of all Obligations in this Agreement.

**11.5 Severability of Provisions.** Each provision of this Agreement is severable from every other provision in determining the enforceability of any provision.



**11.6 Amendments in Writing; Waiver; Integration.** No purported amendment or modification of any Loan Document, or waiver, discharge or termination of any obligation under any Loan Document, shall be effective unless, and only to the extent, expressly set forth in a writing signed by each party hereto. Without limiting the generality of the foregoing, no oral promise or statement, nor any action, inaction, delay, failure to require performance or course of conduct shall operate as, or evidence, an amendment, supplement or waiver or have any other effect on any Loan Document. Any waiver granted shall be limited to the specific circumstance expressly described in it, and shall not apply to any subsequent or other circumstance, whether similar or dissimilar, or give rise to, or evidence, any obligation or commitment to grant any further waiver. The Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of the Loan Documents merge into the Loan Documents.

**11.7 Counterparts.** This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, is an original, and all taken together, constitute one Agreement. Delivery of an executed signature page of this Agreement by electronic mail transmission shall be effective as delivery of a manually executed counterpart hereof.

**11.8 Confidentiality.** Bank agrees to maintain the confidentiality of Information (as defined below), except that Information may be disclosed (a) to Bank's Subsidiaries and Affiliates and their respective employees, directors, agents, attorneys, accountants and other professional advisors (collectively, "**Representatives**" and, together with Bank, collectively, "**Bank Entities**"), provided that such Bank Entities are subject to the same confidentiality provisions herein; (b) to prospective transferees, assignees, credit providers or purchasers of Bank's interests under or in connection with this Agreement and their Representatives (provided, however, Bank shall use obtain any such prospective transferee's, assignee's, credit provider's, purchaser's or their Representatives' agreement to the terms of this provision or substantially similar terms); (c) as required by law, regulation, subpoena, or other order; (d) to Bank's regulators or as otherwise required or requested in connection with Bank's examination or audit; (e) in connection with the exercise of remedies under the Loan Documents or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder; and (f) to third-party service providers of Bank so long as such service providers have executed a confidentiality agreement with Bank with terms no less restrictive than those contained herein. "**Information**" means all information received from Borrower and its agents regarding Borrower or its business, in each case other than information that is either: (i) in the public domain or in Bank's possession when disclosed to Bank, or becomes part of the public domain (other than as a result of its disclosure by Bank in violation of this Agreement) after disclosure to Bank; or (ii) disclosed to Bank by a third party, if Bank does not know that the third party is prohibited from disclosing the information.

**11.9 Electronic Execution of Documents.** The words "execution," "signed," "signature" and words of like import in any Loan Document shall be deemed to include electronic signatures, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity and enforceability as a manually executed signature or the use of a paper-based recordkeeping systems, as the case may be, to the extent and as provided for in any Applicable Law, including, without limitation, any state law based on the Uniform Electronic Transactions Act.

**11.10 Right of Setoff.** Borrower hereby grants to Bank a Lien and a right of setoff as security for all Obligations to Bank, whether now existing or hereafter arising upon and against all deposits, credits, collateral and property, now or hereafter in the possession, custody, safekeeping or control of Bank or any entity under the control of Bank (including a subsidiary of Bank) or in transit to any of them, and other obligations owing to Bank or any such entity. At any time after the occurrence and during the continuance of an Event of Default, without demand or notice, Bank may setoff the same or any part thereof and apply the same to any liability or Obligation of Borrower even though unmatured and regardless of the adequacy of any other collateral securing the Obligations. ANY AND ALL RIGHTS TO REQUIRE BANK TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES THE OBLIGATIONS, PRIOR TO EXERCISING ITS RIGHT OF SETOFF WITH RESPECT TO SUCH DEPOSITS, CREDITS OR OTHER PROPERTY OF BORROWER, ARE HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED.

**11.11 Captions and Section References.** The headings used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement. Unless indicated otherwise, section references herein are to sections of this Agreement.

**11.12 Construction of Agreement.** The parties hereto mutually acknowledge that they and their attorneys have participated in the preparation and negotiation of this Agreement. In cases of uncertainty this Agreement shall be construed without regard to which of the parties caused the uncertainty to exist.

**11.13 Relationship.** The relationship of the parties to this Agreement is determined solely by the provisions of this Agreement. The parties do not intend to create any agency, partnership, joint venture, trust, fiduciary or other relationship with duties or incidents different from those of parties to an arm's-length contract.

**11.14 Third Parties.** Nothing in this Agreement, whether express or implied, is intended to: (a) confer any benefits, rights or remedies under or by reason of this Agreement on any Persons other than the express parties to it and their respective permitted successors and assigns; (b) relieve or discharge the obligation or liability of any Person not an express party to this Agreement; or (c) give any Person not an express party to this Agreement any right of subrogation or action against any party to this Agreement.

**11.15 Anti-Terrorism Law.** Bank hereby notifies Borrower that, pursuant to the requirements of Anti-Terrorism Law, Bank may be required to obtain, verify and record information that identifies Borrower, which information may include the name and address of Borrower and other information that will allow Bank to identify Borrower in accordance with Anti-Terrorism Law. Borrower hereby agrees to take any action necessary to enable Bank to comply with the requirements of Anti-Terrorism Law.

## **12. ACCOUNTING TERMS AND OTHER DEFINITIONS**

### **12.1 Accounting and Other Terms.**

(a) Accounting terms not defined in this Agreement shall be construed following GAAP, except for non-compliance with FAS 123R with respect to monthly financial statements. Calculations and determinations must be made following GAAP (except for (a) non-compliance with FAS 123R with respect to monthly financial statement), provided that if at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either Borrower or Bank shall so request, Borrower and Bank shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP; provided, further, that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) Borrower shall provide Bank financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

(b) As used in the Loan Documents: (i) the words "shall" or "will" are mandatory, the word "may" is permissive, the word "or" is not exclusive, the words "includes" and "including" are not limiting, the singular includes the plural, and numbers denoting amounts that are set off in brackets are negative; (ii) the term "continuing" in the context of an Event of Default means that the Event of Default has not been remedied (if capable of being remedied) or waived; and (iii) whenever a representation or warranty is made to Borrower's knowledge or awareness, to the "best of" Borrower's knowledge, or with a similar qualification, knowledge or awareness means the actual knowledge, after reasonable investigation, of any Responsible Officer.

**12.2 Definitions.** Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in this Section 12.2. All other terms contained in this Agreement, unless otherwise indicated, shall have the meaning provided by the Code to the extent such terms are defined therein. As used in this Agreement, the following capitalized terms have the following meanings:

**"Account"** is, as to any Person, any "account" of such Person as "account" is defined in the Code with such additions to such term as may hereafter be made, and includes, without limitation, all accounts receivable and other sums owing to such Person.

**"Account Debtor"** is any "account debtor" as defined in the Code with such additions to such term as may hereafter be made.

**"Adjusted EBITDA"** shall mean, for Borrower and its Subsidiaries, with respect to any period, the sum of (a) Net Income, *plus* (b) to the extent deducted or added to the calculation of Net Income, (i) Interest income, Interest Expenses, (ii) depreciation expense and amortization expense, (iii) income tax expense, (iv) non-cash stock compensation, and (v) any other one-time restructuring or non-cash charges.

**"Administrator"** is an individual that is named:

(a) as an "Administrator" in the "SVB Online Services" form completed by Borrower with the authority to determine who will be authorized to use SVB Online Services (as defined in Bank's Online Banking Agreement as in effect from time to time) on behalf of Borrower; and

(b) as an Authorized Signer of Borrower in an approval by the Board.

**"Affiliate"** is, with respect to any Person, each other Person that owns or controls directly or indirectly the Person, any Person that controls or is controlled by or is under common control with the Person, and each of that Person's senior executive officers, directors, partners and, for any Person that is a limited liability company, that Person's managers and members.

**"Agreement"** is defined in the preamble hereof.

**"Anti-Terrorism Law"** means any law relating to terrorism or money-laundering, including Executive Order No. 13224 and the USA Patriot Act.

**"Applicable Law"** means all applicable provisions of constitutions, laws, statutes, ordinances, rules, treaties, regulations, permits, licenses, approvals, interpretations and orders of courts or Governmental Authorities and all orders and decrees of all courts and arbitrators.

**"Authorized Signer"** means any individual listed in Borrower's Borrowing Resolution who is authorized to execute the Loan Documents, including making (and executing if applicable) any Credit Extension request, on behalf of Borrower.

**"Bank"** is defined in the preamble hereof.

**"Bank Entities"** is defined in Section 11.8.

**"Bank Expenses"** are all reasonable audit fees, costs and reasonable expenses (including reasonable, out-of-pocket and documented attorneys' fees and expenses) for preparing, amending, negotiating, administering, defending and enforcing the Loan Documents (including, without limitation, those incurred in connection with appeals or Insolvency Proceedings) or otherwise incurred with respect to Borrower or any Guarantor.

**"Bank Services"** are any products, credit services, and/or financial accommodations previously, now, or hereafter provided to Borrower or any of its Subsidiaries by Bank or any Bank Affiliate, including, without limitation, any letters of credit, cash management services (including, without limitation, merchant services, direct deposit of payroll, business credit cards, and check cashing services), interest rate swap arrangements, and foreign exchange services as any such products or services may be identified in Bank's various agreements related thereto (each, a **"Bank Services Agreement"**).

**"Bank Services Agreement"** is defined in the definition of Bank Services.

**"Board"** is Borrower's board of directors or equivalent governing body.

**"Borrower"** is set forth on Schedule I hereto.

**"Borrower's Books"** are all Borrower's books and records including ledgers, federal and state tax returns, records regarding Borrower's assets or liabilities, the Collateral, business operations or financial condition, and all computer programs or storage or any equipment containing such information.

**"Borrowing Resolutions"** are, with respect to any Person, those resolutions adopted by such Person's board of directors (and, if required under the terms of such Person's Operating Documents, stockholders) and delivered by such Person to Bank approving the Loan Documents to which such Person is a party and the transactions contemplated thereby, together with a certificate executed by its secretary on behalf of such Person certifying (a) such Person has the authority to execute, deliver, and perform its obligations under each of the Loan Documents to which it is a party, (b) that set forth as a part of or attached as an exhibit to such certificate is a true, correct, and complete copy of the applicable resolutions then in full force and effect authorizing and ratifying the execution, delivery, and performance by such Person of the Loan Documents to which it is a party, (c) the name(s) of the Person(s) authorized to execute the Loan Documents, including making (and executing if applicable) any Credit Extension request, on behalf of such Person, together with a sample of the true signature(s) of such Person(s), and (d) that Bank may conclusively rely on such certificate unless and until such Person shall have delivered to Bank a further certificate canceling or amending such prior certificate.

**"Business Day"** is a day other than a Saturday, Sunday or other day on which commercial banks in the State of California are authorized or required by law to close, except that if any determination of a "Business Day" shall relate to an FX Contract, the term "Business Day" shall be a FX Business Day.

**"Cash Equivalents"** are (a) marketable direct obligations issued or unconditionally guaranteed by the United States or any agency or any State thereof having maturities of not more than one (1) year from the date of acquisition; (b) commercial paper maturing no more than one (1) year after its creation and having the highest rating from either Standard & Poor's Ratings Group or Moody's Investors Service, Inc.; (c) Bank's certificates of deposit issued maturing no more than one (1) year after issue; (d) long-term securities having a rating minimum of A-/A3 from either Standard & Poor's Ratings Group or Moody's Investors Service, Inc.; and (e) money market funds at least ninety-five percent (95.0%) of the assets of which constitute Cash Equivalents of the kinds described in clauses (a) through (d) of this definition.

**"Change in Control"** means (a) at any time, any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act), shall become, or obtain rights (whether by means of warrants, options or otherwise) to become, the "beneficial owner" (as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act), directly or indirectly, of forty-nine percent (49.0%) or more of the ordinary voting power for the election of directors, partners, managers and members, as applicable, of Borrower (determined on a fully diluted basis) other than by the sale of Borrower's equity securities in a public offering or to venture capital or private equity investors so long as Borrower identifies to Bank the venture capital or private equity investors at least seven (7) Business Days prior to the closing of the transaction and provides to Bank a description of the material terms of the transaction; (b) during any period of twelve (12) consecutive months, a majority of the members of the Board of Borrower cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first (1st) day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body; or (c) at any time, Borrower shall cease to own and control, of record and beneficially, directly or indirectly, one hundred percent (100.0%) of each class of outstanding stock, partnership, membership, or other ownership interest or other equity

securities of each Subsidiary of Borrower free and clear of all Liens (except Permitted Liens and except dissolutions or transfers permitted pursuant to Sections 6.2 and 6.3 of this Agreement).

**"Change in Law"** means the occurrence, after the Effective Date, of: (a) the adoption or taking effect of any law, rule, regulation or treaty; (b) any change in Applicable Law 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 promulgated by Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

**"Claims"** is defined in Section 11.3.

**"Code"** is the Uniform Commercial Code, as the same may, from time to time, be enacted and in effect in the State of California; provided, that, to the extent that the Code is used to define any term herein or in any Loan Document and such term is defined differently in different Articles or Divisions of the Code, the definition of such term contained in Article or Division 9 shall govern; provided further, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, or priority of, or remedies with respect to, Bank's Lien on any Collateral is governed by the Uniform Commercial Code in effect in a jurisdiction other than the State of California, the term "Code" shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies and for purposes of definitions relating to such provisions.

**"Collateral"** consists of all of Borrower's right, title and interest in and to the following personal property:

(a) (i) all goods, Accounts (including health-care receivables), Equipment, Inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, General Intangibles (except as provided below), commercial tort claims, documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts, certificates of deposit, fixtures, letters of credit rights (whether or not the letter of credit is evidenced by a writing), securities, securities accounts, securities entitlements and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located; and (ii) all Borrower's Books relating to the foregoing, and any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

(b) Notwithstanding the foregoing, the Collateral does not include any of the following (now existing or hereafter arising, owned or created):

(i) any Intellectual Property; provided, however, the Collateral shall include all Accounts and all proceeds of Intellectual Property. If a judicial authority (including a U.S. Bankruptcy Court) would hold that a security interest in the underlying Intellectual Property is necessary to have a security interest in such Accounts and such property that are proceeds of Intellectual Property, then the Collateral shall automatically, and effective as of the Effective Date, include the Intellectual Property to the extent necessary to permit perfection of Bank's security interest in such Accounts and such other property of Borrower that are proceeds of the Intellectual Property; and

(ii) any interest of Borrower as a lessee or sublessee under a real property lease or an Equipment lease if Borrower is prohibited by the terms of such lease from granting a security interest in such lease or under which such an assignment or Lien would cause a default to occur under such lease (but only to the extent that such prohibition is enforceable under all applicable

laws including, without limitation, the Code); provided, however, that upon termination of such prohibition, such interest shall immediately become Collateral without any action by Borrower or Bank.

(c) Pursuant to the terms of a certain negative pledge arrangement with Bank, Borrower has agreed not to encumber any of its Intellectual Property in contravention of the terms of such pledge agreement without Bank's prior written consent.

**"Collateral Account"** is any Deposit Account, Securities Account, or Commodity Account.

**"Commodity Account"** is any "commodity account" as defined in the Code with such additions to such term as may hereafter be made.

**"Compliance Statement"** is that certain statement in the form attached hereto as Exhibit A.

**"Connection Income Taxes"** means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

**"Contingent Obligation"** is, for any Person, any direct or indirect liability of that Person for (a) any direct or indirect guaranty by such Person of any indebtedness, lease, dividend, letter of credit, credit card or other obligation of another, (b) any other obligation endorsed, co-made, discounted or sold with recourse by that Person, or for which that Person is directly or indirectly liable; (c) any obligations for undrawn letters of credit for the account of that Person; and (d) all obligations from any interest rate, currency or commodity swap agreement, interest rate cap or collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices; but "Contingent Obligation" does not include endorsements in the ordinary course of business or any Permitted Call Spread Agreement(s). The amount of a Contingent Obligation is the stated or determined amount of the primary obligation for which the Contingent Obligation is made or, if not determinable, the maximum reasonably anticipated liability for it determined by the Person in good faith; but the amount may not exceed the maximum of the obligations under any guarantee or other support arrangement.

**"Control Agreement"** is any control agreement entered into among the depository institution at which Borrower maintains a Deposit Account or the securities intermediary or commodity intermediary at which Borrower maintains a Securities Account or a Commodity Account, Borrower, and Bank pursuant to which Bank obtains control (within the meaning of the Code) over such Deposit Account, Securities Account, or Commodity Account.

**"Copyrights"** are any and all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret.

**"Credit Extension"** is any Letter of Credit, FX Contract, amount utilized for cash management services, Term Loan Advance, or any other extension of credit under the Loan Documents by Bank for Borrower's benefit.

**"Currency"** is coined money and such other banknotes or other paper money as are authorized by law and circulate as a medium of exchange.

**"Default"** means any event which with notice or passage of time or both, would constitute an Event of Default.

**"Default Rate"** is defined in Section 1.2(c).

**"Deposit Account"** is any **"deposit account"** as defined in the Code with such additions to such term as may hereafter be made.

**"Designated Deposit Account"** is the deposit account with account number xxx-xxxx-9905, established by Borrower with Bank for purposes of receiving Credit Extensions.

**"Division"** means, in reference to any Person which is an entity, the division of such Person into two (2) or more separate Persons, with the dividing Person either continuing or terminating its existence as part of such division, including, without limitation, as contemplated under Section 18-217 of the Delaware Limited Liability Company Act for limited liability companies formed under Delaware law, Section 17-220 of the Delaware Revised Uniform Limited Partnership Act for limited partnerships formed under Delaware law, or any analogous action taken pursuant to any other Applicable Law with respect to any corporation, limited liability company, partnership or other entity.

**"Dollar Equivalent"** is, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in a Foreign Currency, the equivalent amount therefor in Dollars as determined by Bank at such time on the basis of the then-prevailing rate of exchange in San Francisco, California, for sales of the Foreign Currency for transfer to the country issuing such Foreign Currency.

**"Dollars," "dollars"** or use of the sign "\$" means only lawful money of the United States and not any other currency, regardless of whether that currency uses the "\$" sign to denote its currency or may be readily converted into lawful money of the United States.

**"Effective Date"** is set forth on Schedule I hereto.

**"Environmental Laws"** means any Applicable Law (including any permits, concessions, grants, franchises, licenses, agreements or governmental restrictions) relating to pollution or the protection of health, safety or the environment or the release of any materials into the environment (including those related to hazardous materials, air emissions, discharges to waste or public systems and health and safety matters).

**"Equipment"** is all "equipment" as defined in the Code with such additions to such term as may hereafter be made, and includes without limitation all machinery, fixtures, goods, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing.

**"ERISA"** is the Employee Retirement Income Security Act of 1974, as amended, and its regulations.

**"Event of Default"** is defined in Section 7.

**"Exchange Act"** is the Securities Exchange Act of 1934, as amended.

**"Excluded Taxes"** means any of the following Taxes imposed on or with respect to Bank or required to be withheld or deducted from a payment to Bank, (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 Bank being organized under the laws of, or having its principal office or its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) U.S. federal withholding Taxes imposed on amounts payable to or for the account of Bank with respect to an applicable interest in a Credit Extension pursuant to a law in effect on the date on which (i) Bank acquires such interest in the Credit Extensions or (ii) Bank changes its lending office, except in each case to the extent that, pursuant to Section 1.6, amounts with respect to such Taxes were payable either to Bank's assignor immediately before Bank became a party hereto or to Bank immediately before it changed its lending office, (c) Taxes attributable to Bank's failure to comply with Section 1.6(e) and/or any reporting and delivery requirements, and (d) any withholding Taxes imposed under FATCA.

**"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), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Internal Revenue Code and any fiscal or regulatory legislation, rules or

practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Internal Revenue Code.

"**Financial Statement Repository**" is L43f1c@svb.com or such other means of collecting information approved and designated by Bank after providing notice thereof to Borrower from time to time.

"**First Amendment Effective Date**" means January 6, 2023.

"**Foreign Currency**" is the lawful money of a country other than the United States.

"**Foreign Subsidiary**" is a Subsidiary that is not an entity organized under the laws of the United States or any territory thereof or the District of Columbia.

"**Funding Date**" is any date on which a Credit Extension is made to or for the account of Borrower which shall be a Business Day.

"**FX Business Day**" is any day when (a) Bank's Foreign Exchange Department is conducting its normal business and (b) the Foreign Currency being purchased or sold by Borrower is available to Bank from the entity from which Bank shall buy or sell such Foreign Currency.

"**FX Contract**" is any foreign exchange contract by and between Borrower and Bank under which Borrower commits to purchase from or sell to Bank a specific amount of Foreign Currency at a set price or on a specified date.

"**GAAP**" is generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other Person as may be approved by a significant segment of the accounting profession, which are applicable to the circumstances as of the date of determination (except for with respect to unaudited financial statements for the absence of footnotes and subject to year-end audit adjustments).

"**General Intangibles**" is all "general intangibles" as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation, all Intellectual Property, claims, income and other tax refunds, security and other deposits, payment intangibles, contract rights, options to purchase or sell real or personal property, rights in all litigation presently or hereafter pending (whether in contract, tort or otherwise), insurance policies (including without limitation key man, property damage, and business interruption insurance), payments of insurance and rights to payment of any kind.

"**Good Faith Deposit**" is defined in Section 1.3.

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

"**Governmental Authority**" is any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, any securities exchange and any self-regulatory organization.

"**Guarantor**" is any Person providing a Guaranty in favor of Bank with respect to the Obligations.

"**Guaranty**" is any guarantee of all or any part of the Obligations, as the same may from time to time be amended, restated, modified or otherwise supplemented.



**"Indebtedness"** is (a) indebtedness for borrowed money or the deferred price of property or services, such as reimbursement and other obligations for surety bonds and letters of credit, (b) obligations evidenced by notes, bonds, debentures or similar instruments, (c) capital lease obligations, (d) Contingent Obligations and (e) other short- and long-term obligations under debt agreements, lines of credit and extensions of credit, provided, however, that in no event shall obligations under any Permitted Call Spread Agreement constitute Indebtedness.

**"Indemnified Person"** is defined in Section 11.3.

**"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 Borrower under any Loan Document and (b) to the extent not otherwise described in clause (a), Other Taxes.

**"Information"** is defined in Section 11.8.

**"Insolvency Proceeding"** is any proceeding by or against any Person under the United States Bankruptcy Code, or any other bankruptcy or insolvency law, including assignments for the benefit of creditors, compositions, extensions generally with its creditors, or proceedings seeking reorganization, arrangement, receivership or other relief.

**"Intellectual Property"** means, with respect to any Person, all of such Person's right, title, and interest in and to the following, whether now owned or hereafter acquired or created:

- (a) its Copyrights, Trademarks and Patents;
- (b) any and all trade secrets and trade secret rights, including, without limitation, any rights to unpatented inventions, know-how and operating manuals;
- (c) licenses any and all source code;
- (d) any and all design rights which may be available to such Person;
- (e) any and all claims for damages by way of past, present and future infringement of any of the foregoing, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the Intellectual Property rights identified above; and
- (f) all amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents.

**"Interest Expense"** means for any fiscal period, interest expense (whether cash or non-cash) determined in accordance with GAAP for the relevant period ending on such date, including, in any event, interest expense with respect to any Credit Extension and other Indebtedness of Borrower and its Subsidiaries, including, without limitation or duplication, all commissions, discounts, or related amortization and other fees and charges with respect to letters of credit and bankers' acceptance financing and the net costs associated with interest rate swap, cap, and similar arrangements, and the interest portion of any deferred payment obligation (including leases of all types).

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

**"Inventory"** is all **"inventory"** as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products, including without limitation such inventory as is temporarily out of Borrower's custody or possession or in transit and including any returned goods and any documents of title representing any of the above.

**"Investment"** is any beneficial ownership interest in any Person (including stock, partnership, membership, or other ownership interest or other equity securities), and any loan, advance or capital contribution to any Person.

**"Key Person"** is each of Borrower's (i) Chief Executive Officer, and (ii) Chief Financial Officer, as of the Effective Date.

**"Letter of Credit"** is a standby or commercial letter of credit issued by Bank upon request of Borrower based upon an application, guarantee, indemnity, or similar agreement.

**"Lien"** is a claim, mortgage, deed of trust, levy, attachment charge, pledge, hypothecation, security interest or other encumbrance of any kind, whether voluntarily incurred or arising by operation of law or otherwise against any property.

**"Loan Documents"** are, collectively, this Agreement and any schedules, exhibits, certificates, notices, and any other documents related to this Agreement, the Perfection Certificate, the Control Agreement, any Bank Services Agreement, any subordination agreement, any note, or notes or guaranties executed by Borrower or any Guarantor, landlord waivers and consents, bailee waivers and consents, and any other present or future agreement by Borrower and/or any Guarantor with or for the benefit of Bank in connection with this Agreement or Bank Services, all as amended, restated, or otherwise modified in accordance with the terms thereof.

**"Material Adverse Change"** is (a) a material impairment in the perfection or priority of Bank's Lien in the Collateral or in the value of such Collateral; (b) a material adverse change in the business, operations, or condition (financial or otherwise) of Borrower; or (c) a material impairment of the prospect of repayment of any portion of the Obligations when such Obligations are due.

**"Minimum Banking Requirements"** is defined in Section 5.9(a).

**"Net Income"** means, as calculated on a consolidated basis for Borrower and its Subsidiaries for any period as at any date of determination, the net profit (or loss), after provision for taxes, of Borrower and its Subsidiaries for such period taken as a single accounting period.

**"Net Revenue"** means, for any period as of any date of determination, Borrower's net revenue calculated in accordance with GAAP.

**"Obligations"** are Borrower's obligations to pay when due any debts, principal, interest, fees, Bank Expenses, the Prepayment Fee (if applicable), the Final Payment (if applicable), and other amounts Borrower owes Bank now or later, whether under this Agreement, or the other Loan Documents, or otherwise, including, without limitation, all obligations relating to Bank Services and interest accruing after Insolvency Proceedings begin and debts, liabilities, or obligations of Borrower assigned to Bank, and to perform Borrower's duties under the Loan Documents (but in all cases excluding any equity interests of Bank and/or its Affiliates in Borrower).

**"OFAC"** is the Office of Foreign Assets Control of the United States Department of the Treasury and any successor thereto.

**"Operating Documents"** are, for any Person, such Person's formation documents, as certified by the Secretary of State (or equivalent agency) of such Person's jurisdiction of organization on a date that is no earlier than thirty (30) days prior to the Third Amendment Effective Date, and, (a) if such Person is a corporation, its bylaws in current form, (b) if such Person is a limited liability company, its limited liability company agreement (or similar agreement), and (c) if such Person is a partnership or limited partnership, its partnership agreement or limited partnership agreement (or similar agreement), each of the foregoing with all current amendments or modifications thereto.

**"Other Connection Taxes"** means, with respect to Bank, Taxes imposed as a result of a present or former connection between Bank and the jurisdiction imposing such Tax (other than connections arising from Bank 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 Credit Extension or Loan Document).

**"Other Taxes"** means all present or future stamp, court, documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment.

**"Patents"** means all patents, patent applications and like protections including without limitation improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same.

**"Payment/Advance Form"** is that certain form in the form attached hereto as Exhibit B.

**"Payment Date"** is set forth on Schedule I hereto.

**"Perfection Certificate"** is the updated Perfection Certificate delivered by Borrower on or around the Third Amendment Effective Date in connection with this Agreement.

**"Performance Milestone"** means Borrower's delivery to Bank of evidence reasonably satisfactory to Bank in its commercially reasonable discretion, confirming that Borrower has achieved Adjusted EBITDA of at least [\*\*\*] Dollars for the trailing six (6) month period ending on June 30, 2027.

**"Permitted Acquisition"** or **"Permitted Acquisitions"** means an acquisition by Borrower or any Subsidiary of any Intellectual Property or all or substantially all of the assets of, all of the ownership interests in, or a business line, product line (including rights in respect of any medical device) or unit or division of another Person (including any foreign corporations) for cash consideration (including any purchase price adjustments, indemnity payments and earn-out obligations in connection therewith) up to Ten Million Dollars (\$10,000,000) in any fiscal year (or such greater amount as may be agreed with the prior written consent of Bank); *provided* that, with respect to each such acquisition, each of the following conditions shall have been satisfied (or waived by Bank, acting in its commercially reasonable discretion):

(a) no Event of Default shall have occurred and be continuing or would result from the consummation of the proposed acquisition and Bank has received evidence that Borrower is in compliance with all terms and conditions of this Agreement on a pro forma basis after giving effect to such acquisition,

(b) such acquired Person or assets shall be in a similar line of business as is conducted by Borrower as of the Effective Date (or a line of business reasonably related thereto),

(c) such acquisition shall not cause the focus or locations of Borrower's and its Subsidiaries' operations (when taken as a whole) to be located outside of the United States,

(d) such acquisition shall not constitute a hostile acquisition,

(e) any Person acquired as a result of such acquisition shall become a secured Guarantor (or co-borrower) subject to the terms herein, within fifteen (15) Business Days of the consummation of such acquisition,

(f) in connection with such acquisition, neither Borrower nor any of its subsidiaries (including for this purpose, the target of the acquisition) shall acquire or be subject to any Indebtedness or Liens that are not otherwise permitted hereunder;

(g) Borrower shall provide Bank with written notice of the proposed acquisition at least five (5) Business Days prior to the anticipated signing, commitment, or closing date of the proposed acquisition, whichever occurs first;

- (a) Borrower shall provide to the Bank not later than five (5) Business Days after the execution thereof, a copy of the executed purchase agreement or similar agreement with respect to any such acquisition;
- (b) such acquisition has been approved by the board of directors (or other equivalent legally governing body) of the Person to be acquired,
- (c) the entity or assets to be acquired in such acquisition shall not be subject to any Lien other (x) the first priority Liens granted in favor of Bank and (y) Permitted Liens;
- (d) all transactions related to such acquisition shall be consummated in all material respects in accordance with applicable law; and
- (e) Borrower shall provide to the Bank as soon as available but in any event not later than five (5) Business Days after the execution thereof, a copy of the executed purchase agreement or similar agreement with respect to any such acquisition.

Borrower shall provide to the Bank as soon as available but in any event not later than five (5) Business Days after the execution thereof a certificate of a Responsible Officer of Borrower, in form and substance reasonably satisfactory to Bank, certifying that all of the requirements set forth in this definition have been satisfied or will be satisfied on or prior to the consummation of such acquisition. Notwithstanding the foregoing and for the avoidance of doubt, in no event shall Borrower or any of its Subsidiaries assume any liabilities with respect to any acquisition, including without limitation, any Permitted Indebtedness, in excess of Fifteen Million Dollars (\$15,000,000) in aggregate outstanding at any time for such Permitted Acquisitions.

**"Permitted Call Spread Agreements"** means (a) any call option transaction (including, but not limited to, any bond hedge transaction or capped call transaction) pursuant to which the Borrower acquires an option requiring the counterparty thereto to deliver to the Borrower shares of common stock of the Borrower (or other securities or property following a merger event or other change of the common stock of the Borrower), the cash value thereof or a combination thereof from time to time upon exercise of such option entered into by the Borrower in connection with the issuance of Permitted Convertible Debt (such transaction, a **"Bond Hedge Transaction"**) and (b) any issued warrants to acquire common stock of the Borrower (or other securities or property following a merger event or other change of the common stock of the Borrower) (whether such warrant is settled in shares, cash or a combination thereof) issued by the Borrower in connection with the issuance of Permitted Convertible Debt and sold by Borrower substantially concurrently with any purchase by Borrower of a Bond Hedge Transaction and settled in (such transaction, a **"Warrant Transaction"**); *provided that* (i) the terms, conditions and covenants of each such call option transaction are customary for agreements of such type, as determined by the Board (or a committee thereof) in good faith, (ii) the purchase price for such Bond Hedge Transaction, less the proceeds received by the Borrower from the sale of any related Warrant Transaction, does not exceed the net proceeds received by the Borrower from the issuance of the related Permitted Convertible Indebtedness at the time of such purchase, and (iii) in the case of clause (b) above, such warrants would be classified as an equity instrument in accordance with GAAP.

**"Permitted Convertible Debt"** means any unsecured notes issued by the Borrower that are convertible into a fixed number (subject to customary anti-dilution adjustments, "make-whole" increases and other customary changes thereto) of shares of common stock of the Borrower (or other securities or property following a merger event or other change of the common stock of the Borrower), cash or any combination thereof (with the amount of such cash or such combination determined by reference to the market price of such common stock or such other securities); *provided that* such Indebtedness must satisfy each of the following conditions: (i) both immediately prior to and after giving effect (including pro forma effect) to the issuance thereof, no Default or Event of Default shall exist or result therefrom, (ii) such Indebtedness matures after, and does not require any scheduled amortization or other scheduled or otherwise required payments of principal prior to, or have a scheduled maturity date earlier than, the date that is ninety one (91) calendar days after the Term Loan Maturity Date and prior to that date, does not provide for or require any payments of principal or any other payments with the exception of semi-annual interest payments, obligations to settle conversions, redemption rights (which, for the avoidance of doubt,

will be subject to Section 6.7) and customary obligations to offer to repurchase the notes upon the occurrence of a "fundamental change", (iii) any cross-default or cross-acceleration event of default (each howsoever defined) provision contained therein that relates to indebtedness or other payment obligations of Borrower (or any of its Subsidiaries) (such indebtedness or other payment obligations, a "**Cross-Default Reference Obligation**") contains a cure period of at least thirty (30) calendar days (after written notice to the issuer of such Indebtedness by the trustee or to such issuer and such trustee by holders of at least 25% in aggregate principal amount of such Indebtedness then outstanding) before a default, event of default, acceleration or other event or condition under such Cross-Default Reference Obligation results in an event of default under such cross-default or cross-acceleration provision, (iv) the terms, conditions and covenants (other than pricing terms determined through a customary marketing process) of such Indebtedness must be customary for convertible Indebtedness of such type at the time of issuance (as determined by the Board, or a committee thereof, in good faith) and, (v) such Indebtedness is not guaranteed by any Subsidiary of the Borrower unless the Obligations are guaranteed by such Subsidiary on a secured basis. For the avoidance of doubt, and without limitation of the foregoing, Permitted Convertible Debt shall at all times be valued at the full stated principle amount thereof and shall not include any reduction or appreciation in value of the shares deliverable upon conversion thereof.

"**Permitted Foreign Subsidiary Accounts**" is defined in Section 5.9(a).

"**Permitted Hedging Agreement**" means any currency agreement, all rate swap transactions or other contract or arrangement designed solely to protect a Person against fluctuations in currency exchange rates and interest rate risk, and any confirmation executed in connection with any such agreement, contract, or arrangement, in each case, entered into by Borrower or any of its Subsidiaries solely to hedge or mitigate the risks of foreign exchange rate fluctuations and interest rate risk and not for any speculative or other purposes; *provided* that such agreement, contract or arrangement shall comply in all respects with the hedging policies or guidelines as are approved by the Board or as are approved by Bank (such approval not to be unreasonably withheld, delayed or conditioned); *provided further*, that all accrued and reasonably expected liabilities of Borrower or its Subsidiaries arising under Permitted Hedging Agreements shall not exceed One Million Dollars (\$1,000,000) in the aggregate at any time. For the avoidance of doubt, no Permitted Call Spread Agreement shall constitute a Permitted Hedging Agreement.

"**Permitted Indebtedness**" is:

- (a) Borrower's Indebtedness to Bank under this Agreement, the other Loan Documents and under any other agreement with Bank;
- (b) Indebtedness existing on the Effective Date which is shown on the Perfection Certificate;
- (c) Subordinated Debt;
- (d) unsecured Indebtedness to trade creditors incurred in the ordinary course of business;
- (e) Indebtedness incurred as a result of endorsing negotiable instruments received in the ordinary course of business;
- (f) Indebtedness secured by Liens permitted under clauses (a) and (c) of the definition of "Permitted Liens" hereunder;
- (g) other unsecured Indebtedness not otherwise permitted by Section 6.4 not exceeding Two Hundred Fifty Thousand Dollars (\$250,000.00) in the aggregate outstanding at any time;
- (f) Indebtedness with respect to credit cards maintained with American Express, not to exceed Five Hundred Thousand Dollars (\$500,000) outstanding at any time;
- (g) Permitted Hedging Agreements;

(h) intercompany Indebtedness by and among Borrower and its Subsidiaries (subject to "Permitted Investments" part (g)(i));

(i) Indebtedness in respect of letters of credit, bank guarantees and similar instruments issued for the account of Borrower and/or its Subsidiaries in the ordinary course of business not to exceed Seven Hundred Fifty Thousand Dollars (\$750,000) outstanding at any time;

(j) advances or deposits received in the ordinary course of business from customers or vendors;

(k) Indebtedness in respect of netting services, overdraft protections, payment processing, automatic clearinghouse arrangements, arrangements in respect of pooled deposit or sweep accounts, check endorsement guarantees, and otherwise in connection with deposit accounts or cash management services and Indebtedness arising in connection with automated clearing house transfer of funds or the use of other payment processing services;

(l) Indebtedness arising in connection with the financing of insurance premiums in the ordinary course of business not to exceed Seven Hundred Fifty Thousand Dollars (\$750,000) outstanding at any time;

(m) Indebtedness in respect of performance bonds, bid bonds, appeal bonds, surety bonds, completion guarantees and similar obligations arising in the ordinary course of business not to exceed Seven Hundred Fifty Thousand Dollars (\$750,000) in the aggregate outstanding at any time;

(n) Unsecured Indebtedness in connection with Permitted Acquisitions, not to exceed Fifteen Million Dollars (\$15,000,000) in aggregate outstanding at any time;

(o) Permitted Convertible Debt in aggregate principal amount not to exceed Two Hundred Fifty Million Dollars (\$250,000,000) in principal amount at any time outstanding;

(p) Indebtedness of Borrower's Subsidiaries in connection with the sale of Inventory by Borrower to its Subsidiaries in the ordinary course of business, which may from time to time be forgiven by Borrower;

(q) purchase price adjustments, indemnity payments and earn-out obligations in connection with any Permitted Acquisition (to the extent not in excess of the consideration limitations set forth in the definition thereof); and

(r) extensions, refinancings, modifications, amendments and restatements of any items of Permitted Indebtedness (a) through (s) above, provided that the principal amount thereof is not increased or the terms thereof are not modified to impose more burdensome terms upon Borrower or its Subsidiary, as the case may be.

**"Permitted Investments" are:**

(a) Investments (including, without limitation, Subsidiaries) existing on the Effective Date which are shown on the Perfection Certificate;

(b) (i) Investments consisting of cash and Cash Equivalents, and (ii) any other Investments permitted by Borrower's investment policy, as amended from time to time, provided that such investment policy (and any such amendment thereto) has been approved in writing by Bank, further provided that Bank hereby confirms approval of such investment policy delivered to Bank around the Effective Date;

- (c) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of Borrower's business;
- (d) Investments consisting of deposit and securities accounts (but only to the extent that Borrower or its Subsidiaries is permitted to maintain such accounts pursuant to Section 5.9 of this Agreement) in which Bank has a first priority perfected security interest (only if and to the extent required pursuant to Section 5.9 of this Agreement);
- (e) Investments accepted in connection with Transfers permitted by Section 6.1;
- (f) Investments consisting of the creation of a Subsidiary for the purpose of consummating a merger transactions and Permitted Acquisitions permitted by Section 6.3 of this Agreement, which is otherwise a Permitted Investment;
- (g) Investments by Borrower in Subsidiaries that are not borrowers hereunder (or Guarantors), not to exceed (i) (x) Seven Million Five Hundred Thousand Dollars (\$7,500,000) in the aggregate in any fiscal year; and (y) Three Million Dollars (\$3,000,000) in any fiscal quarter, plus (ii) the ongoing day-to-day operations of such Subsidiaries in the ordinary course of business, so long as such (part (ii)) Investments are (A) made on a cost-plus basis, or (B) otherwise in accordance with transfer pricing arrangements, or (C) are otherwise approved in advance in writing by Bank;
- (s) Investments by Borrower in any other co-borrower under this Agreement or Guarantor;
- (t) Investments consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the ordinary course of business, and (ii) loans to employees, officers, directors, partners, managers and members relating to the purchase of equity securities of Borrower or its Subsidiaries pursuant to employee equity purchase plans or similar agreements approved by the Board;
- (u) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the ordinary course of business;
- (v) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the ordinary course of business; provided that this paragraph (j) shall not apply to Investments of Borrower in any Subsidiary;
- (w) Cash investments of up to One Million Dollars (\$1,000,000) per fiscal year, plus non-cash Investments in joint ventures or strategic alliances in the ordinary course of Borrower's business consisting of the non-exclusive licensing of technology, the development of technology or the providing of technical support;
- (x) any Permitted Call Spread Agreements;
- (y) Permitted Acquisitions;
- (z) Investments not to exceed Five Million Dollars (\$5,000,000) per fiscal year to fund the expansion of Borrower and/or its Subsidiaries in (i) Japan, and/or (ii) any other jurisdiction as may be agreed by Bank (in its commercially reasonable discretion) and Borrower; and
- (aa) other Investments not otherwise enumerated in this defined term "Permitted Investments" not exceeding Five Hundred Thousand Dollars (\$500,000) in the aggregate during any fiscal year.

**"Permitted Liens"** are:

(a) Liens existing on the Effective Date which are shown on the Perfection Certificate or arising under this Agreement or the other Loan Documents;

(b) Liens for taxes, fees, assessments or other government charges or levies, either (i) not due and payable or (ii) being contested in good faith and for which Borrower maintains adequate reserves on Borrower's Books, provided that no notice of any such Lien has been filed or recorded under the Internal Revenue Code;

(c) purchase money Liens and equipment liens (i) on Equipment or software acquired or held by Borrower incurred for financing the acquisition of the Equipment or software securing no more than One Million Dollars (\$1,000,000) in the aggregate amount outstanding, or (ii) existing on Equipment or software when acquired, if the Lien is confined to the property and improvements and the proceeds of the Equipment or software;

(d) Liens of carriers, warehousemen, suppliers, or other Persons that are possessory in nature arising in the ordinary course of business so long as such Liens attach only to Inventory, securing liabilities in the aggregate amount not to exceed Two Hundred Fifty Thousand Dollars (\$250,000), and which are not delinquent or remain payable without penalty or which are being contested in good faith and by appropriate proceedings which proceedings have the effect of preventing the forfeiture or sale of the property subject thereto;

(e) Liens to secure payment of workers' compensation, employment insurance, old-age pensions, social security and other like obligations incurred in the ordinary course of business (other than Liens imposed by ERISA);

(f) Liens incurred in the extension, renewal or refinancing of the Indebtedness secured by Liens described in (a) through (c), but any extension, renewal or replacement Lien must be limited to the property encumbered by the existing Lien and the principal amount of the indebtedness may not increase;

(g) leases or subleases of real property granted in the ordinary course of Borrower's business (or, if referring to another Person, in the ordinary course of such Person's business), and leases, subleases, non-exclusive licenses or sublicenses of personal property (other than Intellectual Property) granted in the ordinary course of Borrower's business (or, if referring to another Person, in the ordinary course of such Person's business), if the leases, subleases, licenses and sublicenses do not prohibit granting Bank a security interest therein;

(ab) (i) non-exclusive licenses of Intellectual Property granted to third parties in the ordinary course of business, (ii) licenses of Intellectual Property that could not reasonably be expected to result in a legal transfer of title of the licensed property that may be exclusive in respects of territory (as to discreet geographical areas inside and outside of the United States), and (iii) licenses existing on the Effective Date and disclosed on the Perfection Certificate;

(ac) customary Liens of any bank in connection with statutory, common law and contractual rights of setoff and recoupment with respect to any deposit account or securities account of Borrower, provided that (i) Bank has a first priority perfected security interest in such account (if perfection is required pursuant to Section 5.9 of this Agreement), and (ii) such account is permitted to be maintained pursuant to Section 5.9 of this Agreement;

(ad) Liens arising from attachments or judgments, orders, or decrees in circumstances not constituting an Event of Default under Sections and 7.7;

(ae) deposits under real property leases that are made in the ordinary course of business not to exceed Seven Hundred Fifty Thousand Dollars (\$750,000) at any time;

(af) easements, rights-of-way, restrictions and other similar encumbrances affecting real property which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Person;



(ag) other Liens (not otherwise enumerated in this defined term) not exceeding One Hundred Thousand Dollars (\$100,000) in the aggregate outstanding at any time;

(ah) Liens in respect of performance bonds, bid bonds, appeal bonds, surety bonds, completion guarantees and similar obligations arising in the ordinary course of business not to exceed Seven Hundred Fifty Thousand Dollars (\$750,000) in the aggregate outstanding at any time; and

(ai) Liens on cash and Cash Equivalents securing obligations under Permitted Hedging Agreements.

**"Person"** is any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

**"Prepayment Fee"** is a fee due upon prepayment (whether voluntary or otherwise) of the Term Loan Advance in full equal to (i) one and a half percent (1.50%) of the aggregate original principal amount of the Term Loan Advance made by Bank to Borrower hereunder, if such prepayment occurs within eighteen (18) months of the Third Amendment Effective Date, (ii) zero percent (0.00%) of the aggregate original principal amount of the Term Loan Advance made by Bank to Borrower hereunder if such prepayment occurs on or at any time after the date that is eighteen (18) months after the Third Amendment Effective Date but prior to the Term Loan Maturity Date.

**"Prime Rate"** is set forth on Schedule I hereto.

**"Prime Rate Margin"** is set forth on Schedule I hereto.

**"Qualified Cash"** means the amount of the Borrower and its Subsidiaries cash and Cash Equivalents held with Bank and/or Banks' Affiliates and/or in accounts subject to a Control Agreement in favor of Bank;

**"Quarterly Financial Statements"** is defined in Section 5.3(c).

**"Redemption Conditions"** means, with respect to any redemption by the Borrower of any Permitted Convertible Debt, satisfaction of each of the following events: (a) no Event of Default shall exist or result therefrom, (b) both immediately before and after such redemption, Borrower's Qualified Cash shall be no less than the amount required to prepay the outstanding Obligations in full at the time of such redemption, including all outstanding principal of the Term Loans, the accrued and unpaid interest thereon, and the Prepayment Fee (provided, however, for the avoidance of doubt no such prepayment is required at such time), and (c) both immediately before and after such redemption, Borrower's Remaining Months Liquidity shall be no less than twelve (12).

**"Registered Organization"** is any "registered organization" as defined in the Code with such additions to such term as may hereafter be made.

**"Remaining Months Liquidity"** means Qualified Cash divided by Adjusted EBITDA (measured on a trailing twelve (12) month basis).

**"Representatives"** is defined in Section 11.8.

**"Responsible Officer"** is any of the Chief Executive Officer, President, Chief Financial Officer, Chief Legal Officer, and Controller of Borrower.

**"Restricted License"** is any material license or other material agreement with respect to which Borrower is the licensee (a) that prohibits or otherwise restricts Borrower from granting a security interest in Borrower's interest in such license or agreement or any other property, or (b) for which a default under or termination of could interfere with Bank's right to sell any material Collateral.

**"Sanctioned Person"** means a Person that: (a) is listed on any Sanctions list maintained by OFAC or any similar Sanctions list maintained by any other Governmental Authority having jurisdiction over Borrower; (b) is located, organized, or resident in any country, territory, or region that is the subject or target of Sanctions; or (c) is fifty percent (50.0%) or more owned or controlled by one (1) or more Persons described in clauses (a) and (b) hereof.

**"Sanctions"** means the economic sanctions laws, regulations, embargoes or restrictive measures administered, enacted or enforced by the United States government and any of its agencies, including, without limitation, OFAC and the U.S. State Department, or any other Governmental Authority having jurisdiction over Borrower.

**"SEC"** is the Securities and Exchange Commission, any successor thereto, and any analogous Governmental Authority.

**"Securities Account"** is any "securities account" as defined in the Code with such additions to such term as may hereafter be made.

**"Subordinated Debt"** is indebtedness incurred by Borrower or any of its Subsidiaries subordinated to all of Borrower's or any of its Subsidiaries' now or hereafter indebtedness to Bank (pursuant to a subordination, intercreditor, or other similar agreement in form and substance satisfactory to Bank entered into between Bank and the other creditor), on terms acceptable to Bank. For the avoidance of doubt, Permitted Convertible Debt shall not constitute Subordinated Debt.

**"Subsidiary"** is, as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock, partnership, membership, or other ownership interest or other equity securities having ordinary voting power (other than stock, partnership, membership, or other ownership interest or other equity securities having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person. Unless the context otherwise requires, each reference to a Subsidiary herein shall be a reference to a Subsidiary of Borrower or Guarantor.

**"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.

**"Term Loan Advance"** is defined in Section 1.1(a) of this Agreement.

**"Term Loan Amortization Date"** is set forth on Schedule I hereto.

**"Term Loan Availability Amount"** is set forth on Schedule I hereto.

**"Term Loan Maturity Date"** is set forth on Schedule I hereto.

**"Third Amendment Effective Date"** means November 8, 2024.

**"Trademarks"** means, with respect to any Person, any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of such Person connected with and symbolized by such trademarks.

**"Transfer"** is defined in Section 6.1.

**"USA Patriot Act"** means the "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001" (Public Law 107-56, signed into law on October 26, 2001), as amended from time to time.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

**BORROWER:**

**SI-BONE, INC.**

By: \_\_\_\_\_

Name: Anshul Maheshwari

Title: Chief Financial Officer

**BANK:**

**SILICON VALLEY BANK**

By: \_\_\_\_\_

Name: Matt Perry

Title: Managing Director

**[Signature Page to Loan and Security Agreement]**

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**SCHEDULE I**

**LSA PROVISIONS**

<b><u>LSA Section</u></b>	<b><u>LSA Provision</u></b>
1.1(a) – Term Loan – Availability	The initial Term Loan Advance must be in an amount equal to the initial Term Loan Availability Amount available on the Third Amendment Effective Date. After repayment, the Term Loan Advance (or any portion thereof) may not be reborrowed.
1.1(b) – Term Loan – Repayment	Commencing on the Term Loan Amortization Date, and continuing on each Payment Date thereafter until the Term Loan Advance is paid in full, Borrower shall repay the outstanding Term Loan Advance in (i) twenty-four (24) equal monthly installments of principal, which shall reduce to twelve (12) equal monthly installments of principal upon the occurrence of the Performance Milestone plus (ii) monthly payments of accrued interest in accordance with Section 1.2(a)(ii) at the rate set forth in Section 1.2(b)(ii).
1.2(a)(ii) – Interest Payments – Term Loan Advances	Interest on the outstanding principal amount of the Term Loan Advance is payable in arrears monthly (i) on each Payment Date commencing on the first Payment Date following the Funding Date of each such Term Loan Advance, (ii) on the date of any prepayment of the Term Loan Advance, and (iii) on the Term Loan Maturity Date.
1.2(b)(ii) – Interest Rate – Term Loan Advances	The outstanding principal amount of the Term Loan Advance shall accrue interest at a floating rate per annum equal to the greater of (A) four and one quarter of one percent (4.25%) and (B) the Prime Rate minus the applicable Prime Rate Margin, which interest shall be payable in accordance with Section 1.2(a)(ii).
1.2(e) – Interest Computation	Interest shall be computed on the basis of the actual number of days elapsed and a 360-day year for any Credit Extension outstanding.
12.2 – “Borrower”	“ <b>Borrower</b> ” means (i) <b>SI-BONE, INC.</b> , a Delaware corporation.
12.2 – “Effective Date”	“ <b>Effective Date</b> ” is August 12, 2021.
12.2 – “Payment Date”	“ <b>Payment Date</b> ” is the first (1st) calendar day of each month.

12.2 – "Prime Rate"	" <b>Prime Rate</b> " is the rate of interest per annum from time to time published in the money rates section of <u>The Wall Street Journal</u> or any successor publication thereto as the "prime rate" then in effect; provided that if such rate of interest, as set forth from time to time in the money rates section of <u>The Wall Street Journal</u> , becomes unavailable for any reason as determined by Bank, the "Prime Rate" shall mean the rate of interest per annum announced by Bank as its prime rate in effect at its principal office in the State of California (such Bank announced Prime Rate not being intended to be the lowest rate of interest charged by Bank in connection with extensions of credit to debtors); provided that, in the event such rate of interest is less than zero percent (0.0%) per annum, such rate shall be deemed to be zero percent (0.0%) per annum for purposes of this Agreement.
12.2 – "Prime Rate Margin"	" <b>Prime Rate Margin</b> " is for Term Loan Advances, one half of one percent (0.50%).
12.2 – "Term Loan Amortization Date"	" <b>Term Loan Amortization Date</b> " is October 1, 2027; provided that upon the occurrence of the Performance Milestone, the Term Loan Amortization Date shall become October 1, 2028.
12.2 – "Term Loan Availability Amount"	" <b>Term Loan Availability Amount</b> " is Thirty-Six Million Dollars (\$36,000,000).
12.2 – "Term Loan Maturity Date"	" <b>Term Loan Maturity Date</b> " is September 1, 2029.

**EXHIBIT A**

**COMPLIANCE STATEMENT**

TO: SILICON VALLEY BANK, A DIVISION OF FIRST-CITIZENS BANK & TRUST COMPANY Date: \_\_\_\_

FROM: SI-BONE, INC.

Under the terms and conditions of the Loan and Security Agreement between Borrower and Bank (as amended, modified, supplemented and/or restated from time to time, the " **Agreement**"), Borrower is in complete compliance for the period ending \_\_\_\_\_ with all required covenants except as noted below. Attached are the required documents evidencing such compliance, setting forth calculations prepared in accordance with GAAP consistently applied from one period to the next except as explained in an accompanying letter or footnotes (and except for with respect to unaudited financial statements for the absence of footnotes and subject to year-end audit adjustments). Capitalized terms used but not otherwise defined herein shall have the meanings given them in the Agreement.

**Please indicate compliance status by circling Yes/No under "Complies" column.**

<b><u>Reporting Covenants</u></b>	<b><u>Required</u></b>	<b><u>Complies</u></b>
Quarterly Financial Statements with Compliance Statement	Quarterly within 45 days and FYE within 90 days	Yes No
Annual financial statements (CPA Audited)	FYE within 180 days	Yes No
10-Q, 10-K and 8-K	Within 5 Business Days after filing with SEC	Yes No N/A
Board approved projections	FYE within 30 days and within 30 days, as amended/updated, in each case as approved by the Board	Yes No
Have there been any material amendments to the Operating Documents of Borrower? If yes, provide copies of any such amendments or changes with this Compliance Statement	N/A	Yes No

The following financial covenant analyses and information set forth in Schedule 1 attached hereto are true and correct as of the date of this Compliance Statement.

The following are the exceptions with respect to the statements above: (If no exceptions exist, state "No exceptions to note.")

By: \_\_\_\_  
Name: \_\_\_\_  
Title: \_\_\_\_

Received by: \_\_\_\_\_  
authorized signer

Date: \_\_\_\_\_

Verified: \_\_\_\_\_  
authorized signer

Date: \_\_\_\_\_

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**Schedule 1 to Compliance Statement**

**Financial Covenants of Borrower**

In the event of a conflict between this Schedule and the Agreement, the terms of the Agreement shall govern.

**I. Minimum Net Revenue** (Section 5.10)

Required: Commencing on June 30, 2025, Borrower shall achieve Net Revenue as required by Section 5.10 and set forth below (pursuant to the amendment(s) required under Section 5.10):

Measuring Period Ending	Minimum Net Revenue (measured on a trailing 6 month basis)
[ ]	\$[ ]
[ ]	\$[ ]
[ ]	\$[ ]
[ ]	\$[ ]

Actual: \$ \_\_\_\_\_

Is Borrower's Net Revenue (measured on a trailing 6 month basis) greater than or equal to the required amount for the corresponding measuring period set forth in the chart above?

☐ No, not in compliance      ☐ Yes, in compliance

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**EXHIBIT B**

**LOAN PAYMENT/ADVANCE REQUEST FORM**

**Deadline for same day processing is Noon Pacific Time**

fax to: Date: \_\_\_\_\_

**Loan Payment:**

SI-BONE, INC.

From Account # \_\_\_\_\_ To Account \_\_\_\_\_  
(Deposit Account #) (Loan Account #)

Principal \$ \_\_\_\_\_ and/or Interest \$ \_\_\_\_\_

Authorized Signature:\_\_\_ Phone Number: \_\_\_\_

Print Name/Title: \_\_\_\_

**Loan Advance:**

Complete *Outgoing Wire Request* section below if all or a portion of the funds from this loan advance are for an outgoing wire.

From Account # \_\_\_\_\_ To Account # \_\_\_\_\_  
(Loan Account #) (Deposit Account #)

Amount of Term Loan Advance \$ \_\_\_\_\_

All Borrower's representations and warranties in the Loan and Security Agreement are true, correct and complete in all material respects on the date of the request for an advance; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true and correct in all material respects as of such date:

Authorized Signature:\_\_\_ Phone Number: \_\_\_\_

Print Name/Title: \_\_\_\_

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**outgoing wire request:**

**Complete only if all or a portion of funds from the loan advance above is to be wired.**

Deadline for same day processing is noon, Pacific Time

Beneficiary Name: \_\_\_\_\_ Amount of Wire: \$\_\_

Beneficiary Bank: \_\_\_\_\_ Account Number: \_\_

City and State: \_\_

Beneficiary Bank Transit (ABA) #: \_\_ Beneficiary Bank Code (Swift, Sort, Chip, etc.): \_\_

**(For International Wire Only)**

Intermediary Bank: \_\_ Transit (ABA) #: \_\_

For Further Credit to: \_\_

Special Instruction: \_\_

*By signing below, I (we) acknowledge and agree that my (our) funds transfer request shall be processed in accordance with and subject to the terms and conditions set forth in the agreements(s) covering funds transfer service(s), which agreements(s) were previously received and executed by me (us).*

Authorized Signature: \_\_ 2<sup>nd</sup> Signature (if required): \_\_

Print Name/Title: \_\_ Print Name/Title: \_\_

Telephone #: \_\_ Telephone #: \_\_

EXHIBIT B

**LOAN AND SECURITY AGREEMENT**

This **LOAN AND SECURITY AGREEMENT** (this "**Agreement**") is dated as of the Effective Date between **SILICON VALLEY BANK**, a California corporation ("**Bank**"), and the borrower listed on Schedule I hereto ("**Borrower**"). The parties agree as follows:

**1. LOAN AND TERMS OF PAYMENT**

**1.1 Term Loan Advance.**

(a) Availability. Subject to the terms and conditions of this Agreement, on or about the FirstThird Amendment Effective Date ~~or~~, Bank shall make one (1) term loan advance to Borrower in an original principal amount equal to the Term Loan Availability Amount (the "**Term Loan Advance**") which shall be used to (i) refinance the Term Loan Advance (as defined in the Agreement prior to the FirstThird Amendment Effective Date) outstanding as of the FirstThird Amendment Effective Date, (ii) satisfy the Final Payment (as defined in the Agreement prior to the FirstThird Amendment Effective Date), which is with respect to the Term Loan Advance (as defined in the Agreement prior to the FirstThird Amendment Effective Date), and (iii) thereafter, used for working capital purposes. Bank and Borrower acknowledge and agree that prior to the FirstThird Amendment Effective Date, the amount Borrower accrued and owed to Bank in connection with the Final Payment (as defined in the Agreement prior to the FirstThird Amendment Effective Date) was TwoSeven Hundred Seventy-FourTwenty Thousand Nine-Hundred-Ninety Dollars ~~and 88/100 (\$274,999.88/720,000)~~. After repayment (in whole or in part), the Term Loan Advance may not be reborrowed.

~~Additionally, at any time during the applicable draw period agreed to by Borrower and Bank, Borrower may request that Bank make additional term loan advances available to Borrower in an aggregate original principal amount of up to Fifteen Million Dollars (\$15,000,000) (the "**Uncommitted Accordion**"). Bank, in its sole and absolute discretion, may grant or deny any such request from Borrower for a term loan advance under the Uncommitted Accordion. If, and only if, Bank, in its sole discretion, agrees to provide any additional term loan advance(s) to Borrower under the Uncommitted Accordion, each such term loan advance shall each be considered a "Term Loan Advance" hereunder and added to the definition thereof; provided that the terms of the making of any advance under the Uncommitted Accordion shall be outlined in an amendment to this Agreement to be entered into by the parties hereto.~~

(b) Repayment. Borrower shall repay the Term Loan Advance as set forth in Schedule I hereto. All outstanding principal and accrued and unpaid interest under the Term Loan Advance, and all other outstanding Obligations with respect to such Term Loan Advance, are due and payable in full on the Term Loan Maturity Date.

(c) Permitted Prepayment. Borrower shall have the option to prepay all, but not less than all, of the Term Loan Advance, provided Borrower (i) delivers written notice to Bank of its election to prepay the Term Loan Advance at least five (5) Business Days prior to such prepayment, and (ii) pays, on the date of such prepayment (A) the outstanding principal plus accrued and unpaid interest with respect to the Term Loan Advance, (B) the applicable Prepayment Fee, if any, and (C) ~~the Final Payment, and (D)~~ all other sums, if any, that shall have become due and payable with respect to the Term Loan Advance, including interest at the Default Rate with respect to any past due amounts.

(d) Mandatory Prepayment Upon an Acceleration. If the Term Loan Advance is accelerated by Bank following the occurrence and during the continuance of an Event of Default, Borrower shall immediately pay to Bank an amount equal to the sum of (i) all outstanding principal plus accrued and unpaid interest with respect to the Term Loan Advance, (ii) the applicable Prepayment Fee, if any, and (iii) ~~the Final Payment, and (iv)~~ all other

sums, if any, that shall have become due and payable with respect to the Term Loan Advance, including interest at the Default Rate with respect to any past due amounts.

**1.1.A Revolving Line.**

~~(a) Availability. Subject to the terms and conditions of this Agreement and to deduction of Reserves, Bank shall make Advances under the Revolving Line upon Borrower's request not exceeding the Availability Amount. Amounts borrowed under the Revolving Line may be prepaid or repaid as set forth on Schedule I hereto.~~

~~(b) Termination; Repayment. The Revolving Line terminates on the Revolving Line Maturity Date, at which time the outstanding principal amount of all Advances, the accrued and unpaid interest thereon, and all other outstanding Obligations relating to the Revolving Line shall be immediately due and payable.~~

**1.1.B Overadvances.** If, at any time, the sum of the aggregate outstanding principal amount of any Advances exceeds the lesser of (i) the Revolving Line or (ii) the Borrowing Base, Borrower shall immediately pay to Bank in cash the amount of such excess (such excess, the "**Overadvance**"). Without limiting Borrower's obligation to repay Bank any Overadvance, at Bank's sole option, Borrower shall pay Bank interest on the outstanding amount of any Overadvance, on demand, at a rate per annum equal to the rate that is otherwise applicable to Advances plus three percent (3.0%).

**1.2 Payment of Interest on the Credit Extensions.**

(a) Interest Payments.

~~(i) Advances. Interest on the principal amount of each Advance is payable as set forth on Schedule I hereto.~~

~~(ii) Term Loan Advances. Interest on the outstanding principal amount of each Term Loan Advance is payable as set forth on Schedule I hereto.~~

(b) Interest Rate.

~~(i) Advances. Subject to Section 1.2(c), the outstanding principal amount of any Advance shall accrue interest as set forth on Schedule I hereto.~~

(i) ~~(ii) Term Loan Advances~~ Advance. Subject to Section 1.2(c), the outstanding principal amount of the Term Loan Advance shall accrue interest as set forth on Schedule I hereto.

(i) ~~(iii) All-In Rate~~. Notwithstanding any terms in this Agreement to the contrary, if at any time the interest rate applicable to any Obligations is less than zero percent (0.0%), such interest rate shall be deemed to be zero percent (0.0%) for all purposes of this Agreement.

(c) Default Rate. Immediately upon the occurrence and during the continuance of an Event of Default, the outstanding Obligations shall bear interest at a rate per annum which is three percent (3.0%) above the rate that is otherwise applicable thereto (the "**Default Rate**"), unless Bank otherwise elects, in its sole discretion, to impose a lesser increase or no increase. Fees and expenses which are required to be paid by Borrower pursuant to the Loan Documents (including, without limitation, Bank Expenses) but are not paid when due shall bear interest until paid at a rate equal to the highest rate applicable to the Obligations. Payment or acceptance of the increased interest rate provided in this Section 1.2(c) is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Bank.

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(d) Adjustment to Interest Rate. Each change in the interest rate applicable to any amounts payable under the Loan Documents based on changes to the Prime Rate shall be effective on the effective date of any change to the Prime Rate and to the extent of such change.

(e) Interest Computation. Interest shall be computed as set forth on Schedule I hereto. In computing interest, the date of the making of any Credit Extension shall be included and the date of payment shall be excluded; provided, however, that if any Credit Extension is repaid on the same day on which it is made, such day shall be included in computing interest on such Credit Extension.

### 1.3 Fees and Expenses. Borrower shall pay to Bank:

(a) Prepayment Fee. The Prepayment Fee, if and when due hereunder, which shall be fully earned and non-refundable as of the applicable prepayment date; provided, however, if Borrower refinances the Term Loan Advance with another credit facility from Bank, Bank shall waive the Prepayment Fee;

(b) [Reserved]

~~(b) Final Payment. The Final Payment, when due hereunder, which shall be fully earned and non-refundable as of such date, provided however, for the avoidance of doubt, the Final Payment due under the terms of this original Agreement with respect to the original Term Loan Advances shall be pro-rated and accrued and payable only through the date such original Term Loan Advances are repaid on or around the First Amendment Effective Date, in accordance with Section 1.1(a);~~

~~(c) Revolving Line Commitment Fee. A fully earned, as of the First Amendment Effective Date, non-refundable commitment fee as set forth on Schedule I hereto; and~~

~~(d) Termination Fee. Upon termination of this Agreement or the termination of the Revolving Line for any reason prior to the Revolving Line Maturity Date, in addition to the payment of any other amounts then owing, a termination fee in an amount equal to One Hundred Fifty Thousand Dollars (\$150,000), which shall be fully earned and non-refundable as of such date; provided that no termination fee shall be charged if the credit facility hereunder is replaced with a new facility from Bank;~~

(c) ~~(e)~~ Bank Expenses. All Bank Expenses incurred through and after the ~~First~~Third Amendment Effective Date, when due (or, if no stated due date, upon demand by Bank). Borrower has paid to Bank a good faith deposit of ~~Seventy-Five~~Thirty-Five Thousand Dollars (~~\$75,000~~\$35,000) (the "**Good Faith Deposit**"), in connection with the ~~First~~Third Amendment, to initiate Bank's due diligence review process. The Good Faith Deposit will be applied to Bank Expenses as of the Effective Date.

Unless otherwise provided in this Agreement or in a separate writing by Bank, Borrower shall not be entitled to any credit, rebate, or repayment of any fees earned by Bank pursuant to this Agreement notwithstanding any termination of this Agreement or the suspension or termination of Bank's obligation to make loans and advances hereunder. Bank may deduct amounts owing by Borrower under the clauses of this Section 1.3 pursuant to the terms of Section 1.4(c). Bank shall provide Borrower written notice of deductions made pursuant to the terms of the clauses of this Section 1.3.

### 1.4 Payments; Application of Payments; Debit of Accounts.

(a) All payments (including prepayments) to be made by Borrower under any Loan Document shall be made in immediately available funds in Dollars, without setoff, counterclaim, or deduction, before 12:00 p.m. Pacific time on the date when due. Payments of principal and/or interest received after 12:00 p.m. Pacific time are considered received at the opening of business on the next Business Day. When a payment is due on a day that is not a Business Day, the payment shall be due the next Business Day, and additional fees or interest, as applicable, shall continue to accrue until paid.

(b) Subject to the payment terms of this Agreement and Section 8.4, Bank has the exclusive right in its reasonable discretion to determine the order and manner in which all payments with respect to the Obligations may be applied. Borrower shall have no right to specify the order or the accounts to which Bank shall allocate or apply any payments required to be made by Borrower to Bank or otherwise received by Bank under this Agreement when any such allocation or application is not specified elsewhere in this Agreement.

(c) Bank may debit the Designated Deposit Account (or if insufficient funds are contained therein, or if an Event of Default has occurred and is continuing, any of Borrower's other accounts at Bank), for principal and interest payments or any other amounts Borrower owes Bank when as and when due under this Agreement. These debits shall not constitute a set-off.

#### 1.5 Change in Circumstances.

(a) Increased Costs. If any Change in Law shall: (i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or advances, loans or other credit extended or participated in by, Bank, (ii) subject Bank to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes, and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitment, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto, or (iii) impose on Bank any other condition, cost or expense (other than Taxes) affecting this Agreement or Credit Extensions made by Bank, and the result of any of the foregoing shall be to increase the cost to Bank of making, converting to, continuing or maintaining any Credit Extension (or of maintaining its obligation to make any such Credit Extension), or to reduce the amount of any sum received or receivable by Bank hereunder (whether of principal, interest or any other amount) then, upon written request of Bank, Borrower shall promptly pay to Bank such additional amount or amounts as will compensate Bank for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If Bank determines that any Change in Law affecting Bank regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on Bank's capital as a consequence of this Agreement, ~~the Revolving Line~~, any term loan facility, or the Credit Extensions made by Bank to a level below that which Bank could have achieved but for such Change in Law (taking into consideration Bank's policies with respect to capital adequacy and liquidity), then from time to time upon written request of Bank, Borrower shall promptly pay to Bank such additional amount or amounts as will compensate Bank for any such reduction suffered.

(c) Delay in Requests. Failure or delay on the part of Bank to demand compensation pursuant to this Section 1.5 shall not constitute a waiver of Bank's right to demand such compensation; provided that Borrower compensate Bank pursuant to subsection (a) for any increased costs incurred or reductions suffered more than nine (9) months prior to the date that Bank notifies Borrower of the Change in Law giving rise to such increased costs or reductions (except that if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine (9) month period shall be extended to include the period of retroactive effect).

#### 1.6 Taxes.

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of Borrower under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by Applicable Law. If any Applicable Law (as determined in the commercially reasonable discretion of Borrower) requires the deduction or withholding of any Tax from any such payment by Borrower, then (i) Borrower shall be entitled to make such deduction or withholding, (ii) Borrower shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with Applicable Law, and (iii) if such Tax is an Indemnified Tax, the sum payable by Borrower shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 1.6) Bank receives an amount equal to the sum it would have received had no such deduction or withholding been made.

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(b) Payment of Other Taxes by Borrower. Without limiting the provisions of subsection (a) above, Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with Applicable Law.

(c) Tax Indemnification. Without limiting the provisions of subsections (a) and (b) above, Borrower shall, and does hereby, indemnify Bank, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 1.6) payable or paid by Bank or required to be withheld or deducted from a payment to Bank and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to Borrower by Bank shall be conclusive absent manifest error.

(d) Evidence of Payments. As soon as practicable after any payment of Taxes by Borrower to a Governmental Authority pursuant to this Section 1.6, Borrower shall deliver to Bank a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to Bank.

(e) Status of Bank. If Bank (including any assignee or successor) is entitled to an exemption from or reduction of withholding tax with respect to payments made under any Loan Document, it shall deliver to Borrower, at the time or times reasonably requested by Borrower, such properly completed and executed documentation reasonably requested by Borrower as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, Bank, if reasonably requested by Borrower, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by Borrower as will enable Borrower to determine whether or not Bank is subject to backup withholding or information reporting requirements. Without limiting the generality of the foregoing, Bank shall deliver whichever of IRS Form W-9, IRS Form W-8BEN-E, IRS Form W-8ECI or IRS Form W-8IMY is applicable, as well as any applicable supporting documentation or certifications. If a payment made to Bank under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if Bank 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), Bank shall deliver to Borrower at the time or times prescribed by law and at such time or times reasonably requested by Borrower 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 Borrower as may be necessary for Borrower to comply with its obligations under FATCA and to determine that Bank has complied with its obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of the preceding sentence, "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(f) Treatment of Certain Refunds. If Bank determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 1.6 (including by the payment of additional amounts pursuant to this Section 1.6), it shall pay to Borrower an amount equal to such refund (but only to the extent of indemnity payments made under this Section 1.6 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of Bank and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Borrower, upon the request of Bank, shall repay to Bank the amount paid over pursuant to this paragraph (f) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that Bank is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (f), in no event will Bank be required to pay any amount to Borrower pursuant to this paragraph (f) the payment of which would place Bank in a less favorable net after-Tax position than Bank would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph (f) shall not be construed to require Bank to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to Borrower or any other Person.

#### **1.7 Procedures for Borrowing.**

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~~(a) Advances. Subject to the prior satisfaction of all other applicable conditions to the making of an Advance set forth in this Agreement (which must be satisfied no later than 12:00 p.m. Pacific time on the applicable Funding Date), to obtain an Advance, Borrower (via an individual duly authorized by an Administrator) shall notify Bank (which notice shall be irrevocable) by 12:00 p.m. Pacific time on the Funding Date of the Advance. Such notice shall be made through Bank's online banking program, provided, however, if Borrower is not utilizing Bank's online banking program, then such notice shall be in a written format acceptable to Bank that is executed by an Authorized Signer. In connection with any such notification, Borrower shall deliver to Bank by electronic mail or through Bank's online banking program such reports and information, including without limitation, accounts receivable aging reports, as Bank may reasonably request. Bank shall have received satisfactory evidence that the Board has approved that such Authorized Signer may provide such notices and request Advances (which requirement may be deemed satisfied by the prior delivery of Borrowing Resolutions or a secretary's certificate that certifies as to such Board approval).~~

~~(a)~~ (b) Term Loan Advances. Subject to the prior satisfaction of all other applicable conditions to the making of the Term Loan Advance set forth in this Agreement (which must be satisfied no later than 12:00 p.m. Pacific time on the applicable Funding Date), to obtain the Term Loan Advance, Borrower shall notify Bank (which notice shall be irrevocable) by 12:00 p.m. Pacific time on the Funding Date of the Term Loan Advance. Such notice shall be made by electronic mail or by telephone and, together with any such notification, Borrower shall deliver to Bank by electronic mail a completed Payment/Advance Form executed by an Authorized Signer. Bank may rely on any telephone notice given by a person whom Bank reasonably believes is an Authorized Signer. Borrower will indemnify Bank for any loss Bank suffers due to such reasonable belief or reliance. Bank shall have received satisfactory evidence that the Board has approved that such Authorized Signer may provide such notices and request such Term Loan Advance (which requirement may be deemed satisfied by the prior delivery of Borrowing Resolutions or a secretary's certificate that certifies as to such Board approval).

~~(b)~~ (e) Bank shall credit proceeds of a Credit Extension to the Designated Deposit Account. Bank may make ~~Advances and~~ Term Loan Advances under this Agreement based on instructions from an Authorized Signer or without instructions if such ~~Advances or~~ Term Loan Advances are necessary to meet Obligations which have become due.

## **2. CONDITIONS OF CREDIT EXTENSIONS**

**2.1 Conditions Precedent to Initial Credit Extension.** Bank's obligation to make the initial Credit Extension is subject to the condition precedent that Bank shall have received, in form and substance satisfactory to Bank, such documents, and completion of such other matters, as Bank may reasonably deem necessary or appropriate, including, without limitation:

(a) duly executed Loan Documents;

(b) a duly executed Control Agreement with U.S. Bank;

(c) the Operating Documents of Borrower and its Subsidiaries and long-form good standing certificates of Borrower certified by the Secretary of State of the State of Delaware and the Secretary of State (or equivalent agency) of each other jurisdiction in which Borrower is qualified to conduct business, in each case as of a date no earlier than thirty (30) days prior to the Effective Date;

(d) a certificate duly executed by a Responsible Officer or secretary of Borrower with respect to Borrower's (i) Operating Documents and (ii) Borrowing Resolutions;

~~(e) a duly executed payoff letter from Solar Capital;~~

~~(f) evidence that (i) the Liens securing Indebtedness owed by Borrower to Solar Capital will be terminated and (ii) the documents and/or filings evidencing the perfection of such Liens, including without~~

~~limitation any financing statements and/or control agreements, have or will, concurrently with the initial Credit Extension, be terminated;~~

~~(e) — (g)~~ certified copies, dated as of a recent date, of searches for financing statement filed in the central filing office of the State of Delaware, accompanied by written evidence (including any UCC termination statements) that the Liens indicated in any such financing statements either constitute Permitted Liens or have been or, in connection with the initial Credit Extension, will be terminated or released;

(f) ~~(h)~~ a duly executed Perfection Certificate of Borrower;

~~(i) a duly executed landlord's consent in favor of Bank for Borrower's leased location at 471 El Camino Real, Suite 101, Santa Clara, CA 95050;~~

~~(j) a legal opinion of Borrower's counsel dated as of the Effective Date;~~

~~(k) with respect to initial Advance, a completed Borrowing Base Certificate;~~

~~(l) the completion of the Initial Audit with respect to the initial Advance;~~

(l) ~~(m)~~ evidence satisfactory to Bank that the insurance policies and endorsements required by Section 5.8 hereof are in full force and effect, together with appropriate evidence showing lender loss payable and additional insured clauses or endorsements in favor of Bank; and

(m) ~~(n)~~ payment of the fees and Bank Expenses then due as specified in Section 1.3 hereof.

**2.2 Conditions Precedent to all Credit Extensions.** Bank's obligation to make each Credit Extension, including the initial Credit Extension, is subject to the following conditions precedent:

(a) receipt of Borrower's Credit Extension request and the related materials and documents as required by and in accordance with Section 1.7;

(b) the representations and warranties in this Agreement shall be true and correct in all material respects as of the date of any Credit Extension request and as of the Funding Date of each Credit Extension; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true and correct in all material respects as of such date, and no Default or Event of Default shall have occurred and be continuing or result from the Credit Extension. Each Credit Extension is Borrower's representation and warranty on that date that the representations and warranties in this Agreement remain true and correct in all material respects; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true and correct in all material respects as of such date; and

(c) a Material Adverse Change shall not have occurred.

**2.3 Covenant to Deliver.**

(a) Borrower shall deliver to Bank each item required to be delivered to Bank under this Agreement as a condition precedent to any Credit Extension. A Credit Extension made prior to the receipt by Bank of any such item shall not constitute a waiver by Bank of Borrower's obligation to deliver such item, and the making of any Credit Extension in the absence of a required item shall be in Bank's sole discretion.

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### **3. CREATION OF SECURITY INTEREST**

#### **3.1 Grant of Security Interest.**

(a) Borrower hereby grants Bank, to secure the payment and performance in full of all of the Obligations, a continuing security interest in, and pledges to Bank, the Collateral, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof.

(b) Borrower acknowledges that it previously has entered, or may in the future enter, into Bank Services Agreements with Bank. Regardless of the terms of any Bank Services Agreement, Borrower agrees that any amounts Borrower owes Bank thereunder shall be deemed to be Obligations hereunder and that it is the intent of Borrower and Bank to have all such Obligations secured by the first priority perfected security interest in the Collateral granted herein (subject to Permitted Liens).

**3.2 Authorization to File Financing Statements.** Borrower hereby authorizes Bank to file financing statements covering the Collateral, without notice to Borrower, with all jurisdictions deemed necessary or appropriate by Bank to perfect or protect Bank's interest or rights hereunder, including a notice that any disposition of the Collateral, by either Borrower or any other Person, in contravention of the terms of this Agreement shall be deemed to violate the rights of Bank under the Code. Such financing statements may indicate the Collateral

**3.3 Termination.** If this Agreement is terminated, Bank's Lien in the Collateral shall continue until the Obligations (other than inchoate indemnity obligations) are repaid in full in cash. Upon payment in full in cash of the Obligations (other than inchoate indemnity obligations) and at such time as Bank's obligation to make Credit Extensions has terminated, Bank shall, at Borrower's sole cost and expense, promptly terminate its security interest in the Collateral and all rights therein shall automatically revert to Borrower, and Bank shall, upon request from Borrower and at Borrower's sole cost and expense, promptly deliver to Borrower written evidence of the termination of such liens and any other documents reasonably necessary to terminate such liens. In the event (a) all Obligations (other than inchoate indemnity obligations), except for Bank Services, are satisfied in full, and (b) this Agreement is terminated, Bank shall terminate the security interest granted herein upon Borrower providing cash collateral acceptable to Bank in its commercially reasonable discretion for Bank Services, if any. In the event such Bank Services consist of outstanding Letters of Credit, Borrower shall provide to Bank cash collateral in an amount equal to at least (i) one hundred and five percent (105.0%) of the face amount of all such Letters of Credit denominated in Dollars and (ii) one hundred and fifteen percent (115.0%) of the Dollar Equivalent of the face amount of all such Letters of Credit denominated in a Foreign Currency, plus, in each case, all interest, fees, and costs due or estimated by Bank to become due in connection therewith, to secure all of the Obligations relating to such Letters of Credit.

### **4. REPRESENTATIONS AND WARRANTIES**

Borrower represents and warrants as follows:

#### **4.1 Due Organization, Authorization; Power and Authority.**

(a) Borrower and each of its Subsidiaries are each duly existing and in good standing as a Registered Organization in their respective jurisdiction of formation and are qualified and licensed to do business and is in good standing in any other jurisdiction in which the conduct of their respective business or their ownership of property requires that they be qualified except where the failure to do so could not reasonably be expected to have a material adverse effect on Borrower's business or operations.

(b) All information set forth on the Perfection Certificate pertaining to Borrower and each of its Subsidiaries is true and correct in all material respects (it being understood and agreed that Borrower may from time to time update certain information in the Perfection Certificate after the ~~First~~Third Amendment Effective Date to the extent permitted by one or more specific provisions in this Agreement and the Perfection Certificate shall be deemed to be updated to the extent such notice is provided to Bank of such permitted update).

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(c) The execution, delivery and performance by Borrower and each of its Subsidiaries of the Loan Documents to which it is a party have been duly authorized, and do not (i) conflict with any of Borrower's or any such Subsidiary's organizational documents, (ii) contravene, conflict with, constitute a default under or violate any material Applicable Law, (iii) contravene, conflict with or violate any applicable order, writ, judgment, injunction, decree, determination or award of any Governmental Authority by which Borrower or any of its Subsidiaries or any of their property or assets may be bound or affected, (iv) require any action by, filing, registration, or qualification with, or Governmental Approval from, any Governmental Authority (except such Governmental Approvals which have already been obtained and are in full force and effect), or (v) conflict with, contravene, constitute a default or breach under, or result in or permit the termination or acceleration of, any material agreement by which Borrower or any of its Subsidiaries is bound, or applicable consents or waivers have been obtained. Neither Borrower nor any of its Subsidiaries are in default under any material agreement to which it is a party or by which it is bound in which the default could reasonably be expected to have a material adverse effect on Borrower's or any of its Subsidiary's business or operations (taken as a whole).

#### 4.2 Collateral.

(a) The security interest granted herein is and shall at all times continue to be a first priority perfected security interest in the Collateral (subject to Permitted Liens). Borrower has good title to, rights in, and the power to transfer each item of the Collateral upon which it purports to grant a Lien hereunder, free and clear of any and all Liens except Permitted Liens.

(b) Borrower has no Collateral Accounts at or with any bank or financial institution other than Bank or Bank's Affiliates except for the Collateral Accounts described in the Perfection Certificate delivered to Bank in connection herewith and which Borrower has taken such actions as are necessary to give Bank a perfected security interest therein, to the extent that perfection is required pursuant to the terms of Section 5.9(c). The Accounts are bona fide, existing obligations of the Account Debtors.

(c) The Collateral is not in the possession of any third party bailee (such as a warehouse) except as otherwise provided in the Perfection Certificate or as permitted pursuant to Section 6.2 (other than laptops and other portable electronic items used in the ordinary course of business). None of the components of the Collateral shall be maintained at locations other than as provided in the Perfection Certificate or as permitted pursuant to Section 6.2 (other than laptops and other portable electronic items used in the ordinary course of business).

(d) All Inventory is in all material respects of good and marketable quality, free from material defects.

(e) Borrower owns, or possesses the right to use to the extent reasonably necessary in its business, all Intellectual Property, licenses and other intangible assets that are used in the conduct of its business operations as now operated, except to the extent that such failure to own or possess the right to use such asset would not reasonably be expected to have a material adverse effect on Borrower's business or operations, and no such asset, to the best knowledge of Borrower, conflicts with the valid Intellectual Property, license, or intangible asset of any other Person to the extent that such conflict could reasonably be expected to have a material adverse effect on Borrower's business or operations.

(f) Except as noted on the Perfection Certificate (as updated from time to time in accordance with this Agreement) or for which notice has been given to Bank pursuant to and in accordance with Section 5.11(b), Borrower is not a party to, nor is it bound by, any Restricted License.

#### 4.3 ~~Accounts Receivable~~Reserved.

~~(a) For each Account included in the most recent Borrowing Base Statement, on the date such related Advance is requested and made, such Account shall be an Eligible Account.~~

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~~(b) All statements made and all unpaid balances appearing in all invoices, instruments and other documents evidencing the Eligible Accounts are and shall be true and correct and all such invoices, instruments and other documents, and all of Borrower's Books are genuine and in all respects what they purport to be. All sales and other transactions underlying or giving rise to each Eligible Account shall comply in all material respects with all Applicable Law. Borrower has no knowledge of any actual or imminent Insolvency Proceeding of any Account Debtor whose accounts are Eligible Accounts in any Borrowing Base Statement. To Borrower's knowledge, all signatures and endorsements on all documents, instruments, and agreements relating to all Eligible Accounts are genuine, and all such documents, instruments and agreements are legally enforceable in accordance with their terms.~~

**4.4 Litigation.** Other than as set forth on the Perfection Certificate delivered around the ~~First~~**Third** Amendment Effective Date, and as disclosed to Bank pursuant to Section 5.3, there are no actions, investigations or proceedings pending or, to the knowledge of any Responsible Officer, threatened in writing by or against Borrower or any of its Subsidiaries that could reasonably be expected to result in liability of more than, individually or in the aggregate, Seven Hundred Fifty Thousand Dollars (\$750,000).

**4.5 Financial Statements; Financial Condition.** All consolidated financial statements for Borrower and any of its Subsidiaries delivered to Bank by submission to the Financial Statement Repository or otherwise submitted to Bank fairly present in all material respects Borrower's consolidated financial condition and Borrower's consolidated results of operations as of the dates thereof and for the periods covered thereby, subject, in the case of unaudited financial statements, to normal year-end adjustments and the absence of footnote disclosures. There has not been any material deterioration in Borrower's consolidated financial condition since the date of the most recent financial statements submitted to the Financial Statement Repository or otherwise submitted to Bank.

**4.6 Solvency.** The fair salable value of Borrower's consolidated assets (including goodwill minus disposition costs) exceeds the fair value of Borrower's liabilities; Borrower is not left with unreasonably small capital after the transactions in this Agreement; and Borrower and Borrower and each of its Subsidiaries (taken as a whole) are able to pay their debts (including trade debts) as they mature.

**4.7 Regulatory Compliance.** Borrower is not an "investment company" or a company "controlled" by an "investment company" under the Investment Company Act of 1940, as amended. Borrower is not engaged as one of its important activities in extending credit for margin stock (under Regulations X, T and U of the Federal Reserve Board of Governors). Borrower and each of its Subsidiaries (a) have complied in all material respects with all Applicable Law, and (b) have not violated any Applicable Law the violation of which could reasonably be expected to have a material adverse effect on Borrower's business or operations. Borrower and each of its Subsidiaries have duly complied with, and their respective facilities, business, assets, property, leaseholds, real property and Equipment are in compliance with, Environmental Laws, except where the failure to do so could not reasonably be expected to have a material adverse effect on Borrower's business or operations; there have been no outstanding citations, notices or orders of non-compliance issued to Borrower or any of its Subsidiaries or relating to their respective facilities, businesses, assets, property, leaseholds, real property or Equipment under such Environmental Laws Borrower and each of its Subsidiaries have obtained all consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all Governmental Authorities that are necessary to continue their respective businesses as currently conducted, except where the failure to obtain or make or file the same would not reasonably be expected to have a material adverse effect on Borrower's business or operations.

**4.8 Subsidiaries; Investments.** Borrower does not own any stock, partnership, or other ownership interest or other equity securities except for Permitted Investments.

**4.9 Tax Returns and Payments; Pension Contributions.**

(a) Borrower and each of its Subsidiaries have timely filed, or submitted extensions for, all required tax returns and reports, and Borrower and each of its Subsidiaries have timely paid, or submitted extensions for, all foreign, federal, state and local taxes, assessments, deposits and contributions owed by Borrower and each of its Subsidiaries except (i) to the extent such taxes are being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as such reserve or other appropriate provision, if any, as shall

be required in conformity with GAAP shall have been made therefor, or (ii) if such taxes, assessments, deposits and contributions do not, individually or in the aggregate, exceed Fifty Thousand Dollars (\$50,000). Borrower is unaware of any claims or adjustments proposed for any of Borrower's or any of its Subsidiary's prior tax years which could result in additional taxes becoming due and payable by Borrower or any of its Subsidiaries in excess of Fifty Thousand Dollars (\$50,000) in the aggregate.

(b) Borrower and each of its Subsidiaries have paid all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms, and neither Borrower nor any of its Subsidiaries has withdrawn from participation in, and has not permitted partial or complete termination of, or permitted the occurrence of any other event with respect to, any such plan which could reasonably be expected to result in any material liability of Borrower or any of its Subsidiaries, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other Governmental Authority.

**4.10 Full Disclosure.** No written representation, warranty or other statement of Borrower or any of its Subsidiaries in any report, certificate or written statement submitted to the Financial Statement Repository or otherwise submitted to Bank, as of the date such representation, warranty, or other statement was made, taken together with all such written reports, written certificates and written statements submitted to the Financial Statement Repository or otherwise submitted to Bank, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained in the reports, certificates or written statements not misleading in light of the circumstances under which they were made (it being recognized by Bank that the projections and forecasts provided by Borrower or any of its Subsidiaries in good faith and based upon reasonable assumptions are not viewed as facts and that actual results during the period or periods covered by such projections and forecasts may differ from the projected or forecasted results).

**4.11 Sanctions.** Neither Borrower nor any of its Subsidiaries is: (a) in violation of any Sanctions; or (b) a Sanctioned Person. Neither Borrower nor any of its Subsidiaries, or, to Borrower's knowledge, its directors, officers, employees, agents or Affiliates: (i) conducts any business or engages in any transaction or dealing with any Sanctioned Person, including making or receiving any contribution of funds, goods or services to or for the benefit of any Sanctioned Person; (ii) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to any Sanctions; (iii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Sanctions; or (iv) otherwise engages in any transaction that could cause Bank to violate any Sanctions.

## **5. AFFIRMATIVE COVENANTS**

Borrower shall do all of the following:

**5.1 Use of Proceeds.** Cause the proceeds of the Credit Extensions to be used solely as follows: ( ~~a) for Credit Extensions that occur prior to the First Amendment Effective Date, (i) as working capital, (ii) to fund its general business purposes, or (iii) repayment and payoff of Solar Capital and not for personal, family, household or agricultural purposes, and (b) for Credit Extensions that occur on or after the First Amendment Effective Date,~~ (x) as working capital, (y) to fund its general business purposes, or (z) repayment of all Obligations constituting Term Loan Advances (as defined in the Agreement prior to the FirstThird Amendment Effective Date) outstanding immediately prior to the FirstThird Amendment Effective Date.

### **5.2 Government Compliance.**

(a) Maintain its and all of its Subsidiaries' legal existence (except as permitted under Section 6.3 with respect to Subsidiaries only) and good standing in their respective jurisdictions of formation and maintain qualification in each jurisdiction in which the failure to so qualify would reasonably be expected to have a material adverse effect on Borrower's business or operations. Borrower shall comply, and have each Subsidiary comply, in all material respects, with all material laws, ordinances and regulations to which it is subject.

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(b) Obtain all of the Governmental Approvals necessary for the performance by Borrower and each of its Subsidiaries of their obligations under the Loan Documents to which it is a party, including any grant of a security interest in the Collateral to Bank. Borrower shall promptly provide copies of any such obtained Governmental Approvals to Bank upon Bank's request.

**5.3 Financial Statements, Reports.** Deliver to Bank by submitting to the Financial Statement Repository:

~~(a) Borrowing Base Statement.~~ Only when Advances are outstanding or are being requested by Borrower, a Borrowing Base Statement (and any schedules related thereto and including any other information reasonably requested by Bank with respect to Borrower's Accounts) (i) no later than Friday of each week when a Streamline Period is not in effect, (ii) within thirty (30) days after the end of each month when a Streamline Period is in effect, and (iii) with each request for an Advance;

~~(b) Accounts Receivable Information.~~ Only when Advances are outstanding or are being requested by Borrower, within thirty (30) days after the end of each month, (i) monthly accounts receivable agings, aged by invoice date, (ii) monthly accounts payable agings, aged by invoice date, and outstanding or held check registers, if any, (iii) monthly reconciliations of accounts receivable agings (aged by invoice date), transaction reports, Deferred Revenue report, and general ledger;

(a) ~~(e)~~ Quarterly Financial Statements. No later than forty-five (45) days after the last day of each of the first three fiscal quarters of Borrower's fiscal year, a company prepared consolidated and consolidating balance sheet and income statement covering Borrower's and each of its Subsidiary's operations for such quarter in a form reasonably acceptable to Bank (the "Quarterly Financial Statements"); provided that year-end Quarterly Financial Statements shall be delivered no later than ninety (90) days after the last day of each fiscal year of Borrower;

(b) ~~(d)~~ Compliance Statement. Within forty-five (45) days after the last day of each of the first three fiscal quarters of Borrower (and no later than ninety (90) days after the last day of each fiscal year of Borrower), together with the statements set forth in Section 5.3(c), a duly completed Compliance Statement, confirming that as of the end of such month, Borrower was in full compliance with all of the terms and conditions of this Agreement, and setting forth calculations showing compliance with the financial covenants set forth in this Agreement and such other information as Bank may reasonably request, except as noted therein;

(c) ~~(e)~~ Annual Operating Budget and Financial Projections. Within thirty (30) days after the end of each fiscal year of Borrower, and within thirty (30) days of any material updates or amendments thereto, (i) annual operating budgets (including income statements, balance sheets and cash flow statements, by month) for the then-current fiscal year of Borrower, and (ii) annual financial projections for the then-current fiscal year (on a quarterly basis), in each case as approved by the Board, together with any material related business forecasts for the subsequent two (2) fiscal years which were used in the preparation of such annual financial projections;

(d) ~~(f)~~ Annual Audited Financial Statements. As soon as available, and in any event within one hundred and eighty (180) days following the end of Borrower's fiscal year, audited consolidated financial statements prepared under GAAP, consistently applied, together with an unqualified opinion on the financial statements from an independent certified public accounting firm reasonably acceptable to Bank;

(e) ~~(g)~~ SEC Filings. In the event that Borrower or any of its Subsidiaries becomes subject to the reporting requirements under the Exchange Act within five (5) Business Days of filing, notification of the filing and copies of all periodic and other reports, proxy statements and other materials filed by Borrower and/or any of its Subsidiaries or any Guarantor with the SEC, any Governmental Authority succeeding to any or all of the functions of the SEC or with any national securities exchange, or distributed to its shareholders, as the case may be. Documents required to be delivered pursuant to the terms hereof (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which Borrower or any of its Subsidiaries posts such documents, or provides a link

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thereto, on Borrower's or any of its Subsidiaries' website on the internet at Borrower's or any of its Subsidiaries' website address; provided, however, Borrower shall notify Bank in writing within five (5) Business Days (which may be by electronic mail) of the posting of any such documents;

(f) ~~(f)~~ Security Holder and Subordinated Debt Holder Reports. Within five (5) Business Days of delivery, copies of all material statements, reports and notices made generally available to Borrower's security holders or to any holders of Subordinated Debt (solely in their capacities as security holders or holders of Subordinated Debt and not in any other role);

(g) ~~(g)~~ Beneficial Ownership Information. Prompt written notice of any changes to the beneficial ownership information set out in Section 14 of the Perfection Certificate. Borrower understands and acknowledges that Bank relies on such true, accurate and up-to-date beneficial ownership information to meet Bank's regulatory obligations to obtain, verify and record information about the beneficial owners of its legal entity customers;

(h) ~~(h)~~ Legal Action Notice. Prompt written notice upon becoming aware of any legal actions, investigations or proceedings pending or threatened in writing against Borrower or any of its Subsidiaries (not otherwise already disclosed on the Perfection Certificate delivered around the ~~First~~Third Amendment Effective Date) that could reasonably be expected to result in damages or costs to Borrower or any of its Subsidiaries of, individually or in the aggregate, Seven Hundred Fifty Thousand Dollars (\$750,000) or more;

(i) ~~(i)~~ Tort Claim Notice. If Borrower shall acquire a commercial tort claim with a value that could reasonably be expected to exceed Five Hundred Thousand Dollars (\$500,000), Borrower shall promptly notify Bank in a writing signed by Borrower of the general details thereof and, if so requested by Bank, grant to Bank in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance reasonably satisfactory to Bank;

(j) ~~(j)~~ Government Filings. Within five (5) Business Days after the same are sent by Borrower or received by Borrower, copies of all material correspondence, reports, documents and other filings by Borrower or any of its Subsidiaries with any Governmental Authority regarding compliance with or maintenance of Governmental Approvals or Applicable Law, in each case that could reasonably be expected to have a material effect on any of the Governmental Approvals material to the business of Borrower;

(k) ~~(m)~~ Registered Organization. If Borrower is not a Registered Organization as of the Effective Date but later becomes one, promptly notify Bank of such occurrence and provide Bank with Borrower's organizational identification number;

(l) ~~(n)~~ Default. Prompt written notice of the occurrence of a Default or Event of Default; and

(m) ~~(o)~~ Other Information. Promptly, from time to time, such other financial information regarding Borrower or any of its Subsidiaries or compliance with the terms of any Loan Documents as reasonably requested by Bank.

Any submission by Borrower of a Compliance Statement, or any other financial statement submitted to the Financial Statement Repository pursuant to this Section 5.3 or otherwise submitted to Bank shall be deemed to be a representation by Borrower that (i) as of the date of such Compliance Statement, or other financial statement, the information and calculations set forth therein are true and correct in all material respects, (ii) as of the end of the compliance period set forth in such submission, Borrower is in complete compliance with all required covenants except as noted in such Compliance Statement, or other financial statement, as applicable, except as noted in such Compliance Statement or other financial statement, as applicable; (iii) as of the date of such submission, no Events of Default have occurred or are continuing, (iv) all representations and warranties other than any representations or warranties that are made as of a specific date in Section 4 remain true and correct in all material respects as of the

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date of such submission except as noted in such Compliance Statement, or other financial statement, as applicable, (v) as of the date of such submission, Borrower and each of its Subsidiaries has timely filed all required tax returns and reports, and Borrower has timely paid all foreign, federal, state and local taxes, assessments, deposits and contributions owed by Borrower except as otherwise permitted pursuant to the terms of Section 4.9, and (vi) as of the date of such submission, no Liens have been levied or claims made against Borrower or any of its Subsidiaries relating to unpaid employee payroll or benefits of which Borrower has not previously provided written notification to Bank.

#### 5.4 ~~Accounts Receivable~~Reserved.

~~(a) Schedules and Documents Relating to Accounts.~~ Only when Advances are outstanding or are being requested by Borrower, Borrower shall deliver to Bank transaction reports and schedules of collections, as provided in Section 5.3(b), on Bank's standard forms; provided, however, that Borrower's failure to execute and deliver the same shall not affect or limit Bank's Lien and other rights in all of Borrower's Accounts, nor shall Bank's failure to advance or lend against a specific Account affect or limit Bank's Lien and other rights therein. If requested by Bank, Borrower shall furnish Bank with copies (or, at Bank's request, originals) of all contracts, orders, invoices, and other similar documents, and all shipping instructions, delivery receipts, bills of lading, and other evidence of delivery, for any goods the sale or disposition of which gave rise to such Accounts. In addition, Borrower shall deliver to Bank, on its request, the originals of all instruments, chattel paper, security agreements, guarantees and other documents and property evidencing or securing any Accounts, in the same form as received, with all necessary indorsements, and copies of all credit memos.

~~(b) Disputes.~~ Borrower shall promptly notify Bank of all disputes or claims relating to Accounts that continue for more than thirty (30) days and are with respect to an amount in excess of Two Hundred Thousand Dollars (\$200,000) in the aggregate at such time. Borrower may forgive (completely or partially), compromise, or settle any Account for less than payment in full, or agree to do any of the foregoing so long as (i) Borrower does so in good faith, in a commercially reasonable manner, in the ordinary course of business, in arm's-length transactions, and reports the same to Bank in the regular reports provided to Bank; (ii) no Event of Default has occurred and is continuing; and (iii) there shall not be an Overadvance after taking into account all such discounts, settlements and forgiveness.

~~(c) Collection of Accounts.~~ Within sixty (60) days of the First Amendment Effective Date, Borrower shall direct Account Debtors to deliver or transmit all proceeds of Accounts into a lockbox account, or such other "blocked account" as specified by Bank (either such account, the "Cash Collateral Account"). Whether or not an Event of Default has occurred and is continuing, Borrower shall immediately deliver all payments on and proceeds of Accounts to the Cash Collateral Account. Subject to Bank's right to maintain a reserve pursuant to Section 5.4(d), all amounts received in the Cash Collateral Account shall be (i) when a Streamline Period is not in effect, applied to immediately reduce the Obligations under the Revolving Line (unless Bank, in its sole discretion, at times when an Event of Default exists, elects not to so apply such amounts), or (ii) when a Streamline Period is in effect, transferred by Bank on a daily basis to Borrower's operating account with Bank. Borrower hereby authorizes Bank to transfer to the Cash Collateral Account any amounts that Bank reasonably determines are proceeds of the Accounts (provided that Bank is under no obligation to do so and this allowance shall in no event relieve Borrower of its obligations hereunder).

~~(d) Reserves.~~ Notwithstanding any terms in this Agreement to the contrary, at times when a Default or an Event of Default exists, Bank may hold any proceeds of the Accounts and any amounts in the Cash Collateral Account that are not applied to the Obligations pursuant to Section 5.4(c) above (including amounts otherwise required to be transferred to Borrower's operating account with Bank) as a reserve to be applied to any Obligations regardless of whether such Obligations are then due and payable.

~~(e) Returns.~~ Provided no Event of Default has occurred and is continuing, if any Account Debtor returns any Inventory to Borrower, Borrower shall promptly (i) determine the reason for such return, (ii) issue a credit memorandum to the Account Debtor in the appropriate amount in accordance with Borrower's customary business practices, and (iii) provide a copy of such credit memorandum to Bank, upon request from Bank. In the event any attempted return occurs after the occurrence and during the continuance of any Event of Default,

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~~Borrower shall hold the returned Inventory in trust for Bank, and immediately notify Bank of the return of the Inventory.~~

~~(f) Verifications; Confirmations; Credit Quality; Notifications.~~ Bank may, from time to time, (i) verify and confirm directly with the respective Account Debtors the validity, amount and other matters relating to the Accounts, either in the name of Borrower or Bank or such other name as Bank may choose, and notify any Account Debtor of Bank's security interest in such Account and/or (ii) conduct a credit check of any Account Debtor to approve any such Account Debtor's credit.

~~(g) No Liability.~~ Bank shall not be responsible or liable for any shortage or discrepancy in, damage to, or loss or destruction of, any goods, the sale or other disposition of which gives rise to an Account, or for any error, act, omission, or delay of any kind occurring in the settlement, failure to settle, collection or failure to collect any Account, or for settling any Account in good faith for less than the full amount thereof, nor shall Bank be deemed to be responsible for any of Borrower's obligations under any contract or agreement giving rise to an Account. Nothing herein shall, however, relieve Bank from liability for its own gross negligence or willful misconduct.

**5.5 — Remittance of Proceeds.** Except as otherwise provided in Section 5.4(c) and Section 7.1, deliver, in kind, all proceeds arising from the disposition of any Collateral to Bank in the original form in which received by Borrower not later than the following Business Day after receipt by Borrower, to be applied to the Obligations (a) prior to an Event of Default, pursuant to the terms of Section 5.4(c) hereof, and (b) after the occurrence and during the continuance of an Event of Default, pursuant to the terms of Section 8.4 hereof; provided that, if no Event of Default has occurred and is continuing, Borrower shall not be obligated to remit to Bank the proceeds of the sale of worn out or obsolete Equipment disposed of by Borrower in good faith in an arm's length transaction for an aggregate purchase price of One Hundred Thousand Dollars (\$100,000) or less (for all such transactions in any fiscal year). Borrower agrees that it will not commingle proceeds of Collateral with any of Borrower's other funds or property, but will hold such proceeds separate and apart from such other funds and property and in an express trust for Bank. Nothing in this Section 5.5 limits the restrictions on disposition of Collateral set forth elsewhere in this Agreement. Reserved.

#### **5.6 Taxes; Pensions.**

(a) Timely file, and require each of its Subsidiaries to timely file (in each case, unless subject to a valid extension), all required tax returns and reports and timely pay, and require each of its Subsidiaries to timely pay, or file extensions for, all foreign, federal, state and local taxes, assessments, deposits and contributions owed by Borrower and each of its Subsidiaries, except for (deferred payment of any taxes contested pursuant to the terms of Section 4.9(a) hereof, and shall deliver to Bank, on demand, appropriate certificates attesting to such payments, and pay, and require each of its Subsidiaries to pay, all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms.

(b) To the extent Borrower or any of its Subsidiaries defers payment of any contested taxes in excess of Fifty Thousand Dollars (\$50,000), (i) notify Bank in writing of the commencement of, and any material development in, the proceedings, and (ii) post bonds or take any other steps required to prevent the Governmental Authority levying such contested taxes from obtaining a Lien upon any of the Collateral that is other than a "Permitted Lien."

**5.7 Access to Collateral; Books and Records.** At reasonable times, on five (5) Business Days' notice (provided no notice is required if an Event of Default has occurred and is continuing), Bank, or its agents, shall have the right to inspect the Collateral and the right to audit and copy Borrower's Books. ~~The Initial Audit shall be completed within ninety (90) days after the First Amendment Effective Date, and Borrower shall cooperate with Bank in order to timely complete same. Thereafter, (i) when Streamline Period is in effect, such~~ Such inspections and audits shall be conducted no more often than once every twelve (12) months, ~~unless an Event of Default has occurred and is continuing, in which case such inspections and audits shall occur as often as Bank shall determine is necessary and (ii) when Streamline Period is not in effect, such inspections and audits shall be~~

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~~conducted no more often than once every six (6) months (or as frequently as Bank determines in its sole discretion that conditions warrant)~~—, unless an Event of Default has occurred and is continuing, in which case such inspections and audits shall occur as often as Bank shall determine is necessary. The foregoing inspections and audits shall be conducted at Borrower's expense and the charge therefor shall be One Thousand Dollars (\$1,000) per person per day (or such higher amount as shall represent Bank's then-current standard charge for the same), plus reasonable out-of-pocket expenses. In the event Borrower and Bank schedule an audit more than eight (8) days in advance, and Borrower cancels or seeks to or reschedules the audit with less than eight (8) days written notice to Bank, then (without limiting any of Bank's rights or remedies) Borrower shall pay Bank a fee of Two Thousand Dollars (\$2,000) plus any out-of-pocket expenses incurred by Bank to compensate Bank for the anticipated costs and expenses of the cancellation or rescheduling.

#### 5.8 Insurance.

(a) Keep its business and the Collateral insured for risks and in amounts standard for companies in Borrower's industry and location and as Bank may reasonably request. Insurance policies shall be in a form, with financially sound and reputable insurance companies that are not Affiliates of Borrower, and in amounts that are reasonably satisfactory to Bank.

(b) All property policies shall have a lender's loss payable endorsement showing Bank as lender loss payee. All liability policies shall show, or have endorsements showing, Bank as an additional insured. Bank shall be named as lender loss payee and/or additional insured with respect to any such insurance providing coverage in respect of any Collateral.

(c) Ensure that proceeds payable under any property policy are, at Bank's option, payable to Bank on account of the Obligations. Notwithstanding the foregoing, (a) so long as no Event of Default has occurred and is continuing, Borrower shall have the option of applying the proceeds of any casualty policy up to One Million Dollars (\$1,000,000) in the aggregate for all losses under all casualty policies in any one year, toward the replacement or repair of destroyed or damaged property; provided that any such replaced or repaired property (i) shall be of equal or like value as the replaced or repaired Collateral and (ii) shall be deemed Collateral in which Bank has been granted a first priority security interest, and (b) after the occurrence and during the continuance of an Event of Default, all proceeds payable under such casualty policy shall, at the option of Bank, be payable to Bank on account of the Obligations.

(d) At Bank's request, Borrower shall deliver certified copies of insurance policies and evidence of all premium payments. Each provider of any such insurance required under this Section 5.8 shall agree, by endorsement upon the policy or policies issued by it or by independent instruments furnished to Bank, that it will give Bank twenty (20) days (or ten (10) days' prior written notice in the event of cancellation due to non-payment of premium) prior written notice before any such policy or policies shall be materially altered or canceled. If Borrower fails to obtain insurance as required under this Section 5.8 or to pay any amount or furnish any required proof of payment to third persons and Bank, Bank may make all or part of such payment or obtain such insurance policies required in this Section 5.8, and take any action under the policies Bank deems prudent.

#### 5.9 Accounts.

(a) Maintain ~~all of~~ Borrower's, any of its Subsidiaries', and any Guarantor's primary banking relationship (including primary operating accounts) with Bank or Bank's Affiliates such that consolidated account balances of Borrower and its Subsidiaries and Guarantors maintained with Bank or Bank's Affiliates represent an amount equal to or greater than the greater of (i) fifty percent (50.0%) of the aggregate Dollar Equivalent value of all cash and Cash Equivalents of Borrower and its Subsidiaries and Guarantors, and (ii) the amount equal to one hundred and ten percent (110.0%) of the aggregate outstanding amount under the Term Loan (the minimum percentages set forth in clause (i) and (ii) of this Section 5.9(a) collectively referred to as the "Minimum Banking Requirements"); provided, however, and subject to the Minimum Banking Requirements, Borrower may maintain its other "primary" operating accounts with PNC Bank used in the ordinary course of Borrower's business and subject, at all times, to a Control Agreement in favor of Bank. Additionally, and for the

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avoidance of doubt, so long as Borrower is in compliance with the Minimum Banking Requirements, Borrower may maintain other Collateral Accounts outside of Bank, subject at all times to the Control Agreement requirements set forth in Section 5.9(c) hereof. Notwithstanding the foregoing, (x) if the aggregate amount of unrestricted and unencumbered cash held by Borrower is less than one hundred and ten percent (110.0%) of the aggregate outstanding amount under the Term Loan, Borrower shall maintain all of its, any of its Subsidiaries' and any Guarantor's operating accounts, depository accounts and excess cash with Bank or Bank's Affiliates, ~~other than~~ other than de minimis amounts requisite to maintaining outside accounts in good standing, except that Borrower's Foreign Subsidiaries may maintain accounts with third parties other than Bank, provided the aggregate value of such accounts is subject to the terms of Section 6.11 (collectively the "Permitted Foreign Subsidiary Accounts").

(b) In addition to the foregoing, Borrower, any Subsidiary of Borrower and any Guarantor, shall obtain any business credit card, Letter of Credit, FX Contract, and cash management services exclusively from Bank, except (i) third party credit cards, as permitted in the defined term "Permitted Indebtedness" part ~~(g)~~ (h); (ii) Borrower's Foreign Subsidiaries may maintain the foregoing bank services with third parties other than Bank, (iii) to the extent that Bank does not have such services in foreign locations, Borrower and its Subsidiaries may maintain the foregoing foreign banking services with third parties other than Bank, and (iv) Borrower may maintain and permit to exist online payment processors used in the ordinary course of business with third parties other than Bank.

(c) In addition to and without limiting the restrictions in (a), Borrower shall provide Bank five (5) days prior written notice before establishing any Collateral Account at or with any bank or financial institution other than Bank or Bank's Affiliates. For each Collateral Account that Borrower at any time maintains, Borrower shall cause the applicable bank or financial institution (other than Bank) at or with which any Collateral Account is maintained to execute and deliver a Control Agreement or other appropriate instrument with respect to such Collateral Account to perfect Bank's Lien in such Collateral Account in accordance with the terms hereunder which Control Agreement may not be terminated without the prior written consent of Bank. The provisions of the previous sentence shall not apply to (i) deposit accounts exclusively used for payroll, payroll taxes, and other employee wage and benefit payments to or for the benefit of Borrower's employees and identified to Bank by Borrower as such, and (ii) the Permitted Foreign Subsidiary Accounts.

**5.10 Financial Covenant (Net Revenue).** ~~When a Financial Covenant Measuring Period is in effect Commencing on June 30, 2025,~~ Borrower shall achieve Net Revenue (measured in accordance with GAAP on a trailing six (6) month basis), tested quarterly on the last day of each calendar quarter, in an amount equal to or greater than the levels to be agreed upon between Borrower and Bank with respect to which Borrower hereby agrees: (i) shall be documented in an amendment to this Agreement, in form and substance acceptable to Bank, which amendment shall be executed no later than: (x) for the fiscal year ending on December 31, 2025, the earlier to occur of 1) the date when Borrower's unrestricted cash and Cash Equivalent held with Bank and Bank's Affiliates is equal to or falls below [\*\*\*] Dollars, and 2) ~~May 31~~ September 30, 2025, with Borrower's failure to enter into such amendment to this Agreement to reset such covenant levels on or prior to such date being an immediate and non-curable Event of Default hereunder; and (y) for the fiscal year ending on December 31, 2026 and any fiscal year after that, February 28<sup>th</sup> of each year beginning with February 28, 2026, with Borrower's failure to enter into such amendment to this Agreement to reset such covenant levels on or prior to February 28<sup>th</sup> of each year being an immediate and non-curable Event of Default hereunder; (ii) shall be based on Borrower's projections delivered to Bank in accordance with Section 5.3(e) hereof and acceptable to Bank in its commercially reasonable discretion with such projections for Borrower's 2025 fiscal year showing a year-over-year growth satisfactory to Bank in its sole discretion. Notwithstanding the foregoing, such Net Revenue covenant will not be tested for a certain calendar quarter if (1) Borrower's unrestricted and unencumbered (except for Liens in favor of Bank) cash and Cash Equivalents held at Bank and Bank's Affiliates is equal to or greater than [\*\*\*] Dollars, or (2) Borrower achieves Adjusted EBITDA (calculated on a trailing six (6) month basis) of equal to or greater than [\*\*\*] Dollars.

#### **5.11 Protection of Intellectual Property Rights.**

(a) (i) Use commercially reasonable efforts to protect, defend and maintain the validity and enforceability of Borrower's and each Subsidiary's Intellectual Property, except to the extent that such failure to do so would not reasonably be expected to have a material adverse effect on Borrower's business or operations or that

such Intellectual Property does not have material value; (ii) promptly advise Bank in writing of infringements or any other event that could reasonably be expected to materially and adversely affect the value Borrower's and each Subsidiary's Intellectual Property that has material value; and (iii) not allow any Intellectual Property material to Borrower's or any Subsidiary's business to be abandoned, forfeited or dedicated to the public without Bank's written consent.

(b) Provide written notice to Bank within thirty (30) days of entering or becoming bound by any Restricted License (other than over-the-counter software that is commercially available to the public). Borrower shall take such commercially reasonable steps as Bank requests to obtain the consent of, or waiver by, any person whose consent or waiver is necessary for (i) any such Restricted License to be deemed "Collateral" and for Bank to have a security interest in it that might otherwise be restricted or prohibited by law or by the terms of any such Restricted License, whether now existing or entered into in the future, and (ii) Bank to have the ability in the event of a liquidation of any Collateral to dispose of such Collateral in accordance with Bank's rights and remedies under this Agreement and the other Loan Documents.

**5.12 Litigation Cooperation.** From the date hereof and continuing through the termination of this Agreement, make available to Bank, without expense to Bank, Borrower and its officers, employees and agents and Borrower's books and records, to the extent that Bank may deem them reasonably necessary to prosecute or defend any third-party suit or proceeding instituted by or against Bank with respect to any Collateral or relating to Borrower.

**5.13 Reserved.**

**5.14 Formation or Acquisition of Subsidiaries.** Notwithstanding and without limiting the negative covenants contained in Sections 6.3 and 6.7 hereof, at the time that Borrower or any Guarantor forms any Subsidiary or acquires any Subsidiary after the Effective Date (including, without limitation, pursuant to a Division), Borrower and such Guarantor shall (a) cause such new Subsidiary to provide to Bank a joinder to this Agreement to become a co-borrower hereunder or a guaranty to become a Guarantor hereunder (as determined by Bank in its sole discretion), together with documentation, all in form and substance satisfactory to Bank (including being sufficient to grant Bank a first priority Lien (subject to Permitted Liens) in and to the assets of such newly formed or acquired Subsidiary that constitute Collateral), (b) provide to Bank appropriate certificates and powers and financing statements, pledging (i) all of the direct or beneficial ownership interest in such new Subsidiary, in form and substance reasonably satisfactory to Bank; and (c) provide to Bank all other documentation in form and substance reasonably satisfactory to Bank, including one or more opinions of counsel satisfactory to Bank, which in its opinion is appropriate with respect to the execution and delivery of the applicable documentation referred to above. Any document, agreement, or instrument executed or issued pursuant to this Section 5.14 shall be a Loan Document.

**5.15 Inventory; Returns.** Keep all Inventory in good and marketable condition, free from material defects. Returns and allowances between Borrower and its Account Debtors shall follow Borrower's customary practices as they exist at the Effective Date. Borrower shall promptly notify Bank of all returns, recoveries, disputes and claims that involve more than Two Hundred Fifty Thousand Dollars (\$250,000) (measured as to any single return, recovery, dispute or claim, and not in the aggregate at such time).

**5.16 Further Assurances.** Execute any further instruments and take such further action as Bank reasonably requests to perfect, protect, ensure the priority of or continue Bank's Lien on the Collateral or to affect the purposes of this Agreement.

**5.17 Sanctions.** (a) Not, and not permit any of its Subsidiaries to, engage in any of the activities described in Section 4.11 in the future; (b) not, and not permit any of its Subsidiaries to, become a Sanctioned Person; (c) ensure that the proceeds of the Obligations are not used to violate any Sanctions; and (d) deliver to Bank any certification or other evidence requested from time to time by Bank in its sole discretion, confirming each such Person's compliance with this Section 5.17. In addition, have implemented, and will consistently apply while this Agreement is in effect, reasonable procedures to ensure that the representations and warranties in Section 4.11 remain true and correct while this Agreement is in effect.

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#### **5.18 Post-Closing Obligations.**

~~(a) As soon as possible, but in any event not later than the date that is thirty (30) days after the First Amendment Effective Date, Borrower shall deliver to Bank evidence satisfactory to Bank that the insurance policies and endorsements required by Section 5.8 hereof are in full force and effect, together with appropriate evidence showing lender loss payable and additional insured clauses or endorsements in favor of Bank.~~

~~(b) As soon as possible, but in any event not later than the date that is five (5) days after the First Amendment Effective Date, Borrower shall deliver to Bank a duly executed Control Agreement with U.S. Bank.~~

#### **6. NEGATIVE COVENANTS**

Borrower shall not do any of the following without Bank's prior written consent:

**6.1 Dispositions.** Convey, sell, lease, transfer, assign, or otherwise dispose of (including, without limitation, pursuant to a Division) (collectively, " **Transfer**"), or permit any of its Subsidiaries to Transfer, all or any part of its business or property, except for Transfers (a) of Inventory in the ordinary course of business; (b) of worn-out, surplus or obsolete Equipment that is, in the reasonable judgment of Borrower, no longer economically practicable to maintain or useful in the ordinary course of business of Borrower; (c) consisting of Permitted Liens and Permitted Investments; (d) consisting of the sale or issuance of any stock, partnership, membership, or other ownership interest or other equity securities of Borrower permitted under Section 6.2 of this Agreement; (e) consisting of Borrower's or its Subsidiaries' use or transfer of money or Cash Equivalents in a manner that is not prohibited by the terms of this Agreement or the other Loan Documents, including without limitation cash returns or refunds of customer payments; (f) of non-exclusive licenses for the use of the property of Borrower or its Subsidiaries in the ordinary course of business, and other licenses permitted pursuant to part (h) of the defined Permitted Liens; (g) other Transfers not to exceed One Hundred Thousand Dollars (\$100,000) in any twelve (12) month period; and (h) other Transfers in which Borrower will receive cash proceeds in an amount equal to no less than seventy-five percent (75%) of such other Transfer consideration (fixed or contingent) paid or payable to Borrower or its Subsidiary.

For the avoidance of doubt, none of (a) the sale of any Permitted Convertible Indebtedness, (b) the sale of any Warrant Transaction, (c) the purchase of any Bond Hedge Transaction or (d) the performance by Borrower of its obligations under any Permitted Convertible Indebtedness, any Warrant Transaction or any Bond Hedge Transaction (including the settlement or termination of any Bond Hedge Transaction or Warrant Transaction) shall constitute a Transfer.

**6.2 Changes in Business, Management, Control, or Business Locations.** (a) Engage in or permit any of its Subsidiaries to engage in any business other than the businesses currently engaged in by Borrower and such Subsidiary, as applicable, or reasonably related thereto; (b) liquidate or dissolve or permit any of its Subsidiaries to liquidate or dissolve (unless such Subsidiary's assets are transferred to Borrower); (c) fail to provide notice to Bank of any Key Person departing from or ceasing to be employed by Borrower within seven (7) Business Days after such Key Person's departure from Borrower; (d) permit, allow or suffer to occur any Change in Control; (e) without at least ten (10) days prior written notice to Bank, (i) add any new offices or business locations, including warehouses (unless such new offices or business locations contain less than Two Hundred Thousand Dollars (\$200,000) in Borrower's assets or property) or deliver any portion of the Collateral valued, individually or in the aggregate, in excess of Two Hundred Thousand Dollars (\$200,000) to a bailee at a location other than to a bailee and at a location already disclosed in the Perfection Certificate, or (f) without at least twenty (20) days prior written notice to Bank (i) change its jurisdiction of organization, (ii) change its organizational structure or type, (iii) change its legal name, or, (iv) change any organizational number (if any) assigned by its jurisdiction of organization. If Borrower intends to add any new offices or business locations, including warehouses, containing in excess of Two Hundred Thousand Dollars (\$200,000) of Borrower's assets or property, then Borrower will cause the landlord of any such new offices or business locations, including warehouses, to execute and deliver a landlord consent in form and substance reasonably satisfactory to Bank. If Borrower intends to deliver any portion of the Collateral valued, individually or in the aggregate, in excess of Two Hundred Thousand Dollars (\$200,000) to a bailee, and Bank and

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such bailee are not already parties to a bailee agreement governing both the Collateral and the location to which Borrower intends to deliver the Collateral, then Borrower will cause such bailee to execute and deliver a bailee agreement in form and substance reasonably satisfactory to Bank. For the avoidance of doubt, no landlord or bailee waivers shall be required for or with respect to any foreign locations of Borrower or its Subsidiaries.

**6.3 Mergers or Acquisitions.** Merge or consolidate, or permit any of its Subsidiaries to merge or consolidate, with any other Person, or acquire, or permit any of its Subsidiaries to acquire, all or substantially all of the stock, partnership, membership, or other ownership interest or other equity securities or property of another Person (including, without limitation, by the formation of any Subsidiary or pursuant to a Division), except (i) if (a) Borrower has complied with the notice requirements applicable to prepayments hereunder, and (b) prior to or contemporaneously with the closing of such transaction, all Obligations are paid in full in cash, and all of Bank's obligations to lend to Borrower under this Agreement are terminated, and/or (iii) Permitted Acquisitions. A Subsidiary may merge or consolidate into another Subsidiary or into Borrower.

**6.4 Indebtedness.** Create, incur, assume, or be liable for any Indebtedness, or permit any Subsidiary to do so, other than Permitted Indebtedness.

**6.5 Encumbrance.** Create, incur, allow, or suffer to exist any Lien on any of its property, or assign or convey any right to receive income, including the sale of any Accounts, or permit any of its Subsidiaries to do so, in each case as to the foregoing except for Permitted Liens, permit any Collateral not to be subject to the first priority security interest granted herein, other than Permitted Liens, or enter into any agreement, document, instrument or other arrangement (except with or in favor of Bank) with any Person which directly or indirectly prohibits or has the effect of prohibiting Borrower or any Subsidiary from assigning, mortgaging, pledging, granting a security interest in or upon, or encumbering any of Borrower's or any Subsidiary's Intellectual Property, except as is otherwise permitted in Section 6.1 hereof and the definition of "Permitted Liens" herein.

**6.6 Maintenance of Collateral Accounts.** Maintain any Collateral Account except pursuant to the terms of Section 5.9(c).

**6.7 Distributions; Investments.** (a) Pay any dividends or make any distribution or payment or redeem, retire or purchase any stock, partnership, membership, or other ownership interest or other equity securities, provided that Borrower may (i) convert any of its convertible securities into other securities pursuant to the terms of such convertible securities or otherwise in exchange thereof, (ii) pay dividends solely in common stock or equity interests, (iii) repurchase the stock of former employees, officers, directors or consultants pursuant to stock repurchase agreements or termination of employment or service or repurchases pursuant to rights of first refusal in Borrower's bylaws, so long as an Event of Default does not exist at the time of any such repurchase and would not exist after giving effect to any such repurchase; provided the aggregate amount of all such repurchases shall not exceed Five Hundred Thousand Dollars (\$500,000) per fiscal year, (iv) pay cash distributions in lieu of issuing fractional shares; provided the aggregate amount of all such payments shall not exceed Two Hundred Thousand Dollars (\$200,000) per fiscal year, (v) distribute equity securities to former or current employees, officers, consultants or directors pursuant to the exercise of employee stock options approved by the Board, (vi) pay, in connection with any Permitted Acquisition by Borrower or any of its Subsidiaries, (A) the receipt or acceptance of the return to Borrower or any of its Subsidiaries of stock or equity interests of Borrower constituting a portion of the purchase price consideration in settlement of indemnification claims, or as a result of a purchase price adjustment (including earn-outs or similar obligations) and (B) payments or distributions to equity holders pursuant to appraisal rights required under requirements of law; (vii) the distribution of rights pursuant to any shareholder rights plan or the redemption of such rights for nominal consideration in accordance with the terms of any shareholder rights plan, and (viii) for the avoidance of doubt, Subsidiaries of Borrower shall be permitted to, directly or indirectly, pay dividends or make distributions to other Subsidiaries or to Borrower, or (b) directly or indirectly make any Investment (including, without limitation, by the formation of any Subsidiary) other than Permitted Investments, or permit any of its Subsidiaries to do so.

Notwithstanding the foregoing, or anything to the contrary herein, and for the avoidance of doubt, this Section 6.7 shall not prohibit (i) the conversion by holders of (including any cash payment upon conversion), or required

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payment of any principal or premium on, or required payment of any interest with respect to, any Permitted Convertible Debt, in each case, in accordance with the terms of the indenture governing such Permitted Convertible Debt; *provided* that the preceding sentence shall only allow principal payments with respect to any repurchase in connection with the redemption of Permitted Convertible Debt upon satisfaction of a condition related to the stock price of the Borrower's common stock if the Redemption Conditions are satisfied in respect of such redemption; *provided further* that, to the extent both (a) the aggregate amount of cash payable upon conversion or redemption of any Permitted Convertible Debt (excluding any required payment of interest with respect to such Permitted Convertible Debt and excluding any payment of cash in lieu of a fractional share due upon conversion thereof) exceeds the aggregate principal amount thereof and (b) such conversion or redemption does not trigger or correspond to an exercise or early unwind or settlement of a corresponding portion of the Bond Hedge Transactions constituting Permitted Call Spread Agreements relating to such Permitted Convertible Debt (including, for the avoidance of doubt, the case where there is no Bond Hedge Transaction constituting a Permitted Call Spread Agreement relating to such Permitted Convertible Debt), the payment of such excess cash (any such payment, a "**Cash Excess Payment**") shall not be permitted by this clause (i); and (ii) any required payment with respect to (including, for the avoidance of doubt, the payment of the relevant premium for the purchase thereof), or required early unwind or settlement of, any Permitted Call Spread Agreement, in each case, in accordance with the terms of the agreement governing such Permitted Call Spread Agreement; *provided* that, to the extent cash is required to be paid under a Warrant Transaction as a result of the election of "cash settlement" (or substantially equivalent term) as the "settlement method" (or substantially equivalent term) thereunder by the Borrower (or its Affiliate) (including in connection with the exercise and/or early unwind or settlement thereof), the payment of such cash shall not be permitted by this clause (ii). Notwithstanding the foregoing, the Borrower may repurchase, exchange or induce the conversion of Permitted Convertible Debt by delivery of shares of the Borrower's common stock and/or a different series of Permitted Convertible Debt (which series (i) matures after, and does not require any scheduled amortization or other scheduled payments of principal prior to, the analogous date under the indenture governing the Permitted Convertible Debt that are so repurchased, exchanged or converted and (ii) has terms, conditions and covenants that are commercially reasonable to the Borrower (as determined by the Borrower in good faith) (any such series of Permitted Convertible Debt, "**Refinancing Convertible Debt**") and/or by payment of cash (x) in lieu of any fractional shares, (y) in respect of accrued and unpaid interest of such Permitted Convertible Debt and (z) additional cash in an amount that does not exceed the proceeds received by the Borrower from the substantially concurrent issuance of shares of the Borrower's common stock and/or a Refinancing Convertible Debt plus the net cash proceeds, if any, received by the Borrower pursuant to the related exercise or early unwind or termination of the related Permitted Call Spread Agreements pursuant to the immediately following proviso; *provided* that, substantially concurrently with, or a commercially reasonable period of time before or after, the related settlement date for the Permitted Convertible Debt that is so repurchased, exchanged or converted, the Borrower shall (and, for the avoidance of doubt, shall be permitted under this Section 7.7 to) exercise or unwind or terminate early (whether in cash, shares or any combination thereof) the portion of the Permitted Call Spread Agreements, if any, corresponding to such Permitted Convertible Debt that is so repurchased, exchanged or converted.

**6.8 Transactions with Affiliates.** Directly or indirectly enter into or permit to exist any material transaction with any Affiliate of Borrower, except for (a) transactions that are in the ordinary course of Borrower's business, upon fair and reasonable terms that are no less favorable to Borrower than would be obtained in an arm's length transaction with a non-affiliated Person; (b) sales of Borrower's equity securities to the then-existing investors of Borrower in connection with a bona fide equity financing by the Board so long as such sale shall not result in a violation of the Change of Control provision in Section 6.2, (c) debt financings from Borrower's investors so long as all such Indebtedness shall constitute Subordinated Debt, (d) reasonable and customary compensation arrangements and benefit plans for officers, and other employees of Borrower approved by the Board, (e) reasonable and customary compensation arrangements for fees and costs paid to members of the Board in the ordinary course of business, and (f) Investments of the type described in and permitted under clauses (g) and/or (h) of the definition of "Permitted Investments" herein.

**6.9 Subordinated Debt.** Except as expressly permitted under the terms of the subordination, intercreditor, or other similar agreement to which any Subordinated Debt is subject: (a) make or permit any payment on such Subordinated Debt; (b) amend any provision in any document relating to such Subordinated Debt which would increase the amount thereof, or (c) provide for earlier or greater principal, interest, or other payments thereon,

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or adversely affect the subordination thereof to Obligations owed to Bank in contravention of the terms of such the subordination, intercreditor, or other similar agreement.

**6.10 Compliance.** (a) Become an "investment company" or a company controlled by an "investment company", under the Investment Company Act of 1940, as amended, or undertake as one of its important activities extending credit to purchase or carry margin stock (as defined in Regulation U of the Board of Governors of the Federal Reserve System), or use the proceeds of any Credit Extension for that purpose; (b)(i) fail to meet the minimum funding requirements of ERISA, (ii) permit a Reportable Event or Prohibited Transaction, as defined in ERISA, to occur, (iii) fail to comply with the Federal Fair Labor Standards Act or (iv) violate any other law or regulation, if the foregoing subclauses (i) through (iv), individually or in the aggregate, could reasonably be expected to have a material adverse effect on Borrower's business or operations, or permit any of its Subsidiaries to do so; or (c) withdraw or permit any Subsidiary to withdraw from participation in, permit partial or complete termination of, or permit the occurrence of any other event with respect to, any present pension, profit sharing and deferred compensation plan which could reasonably be expected to result in any material liability of Borrower, including any material liability to the Pension Benefit Guaranty Corporation or its successors or any other Governmental Authority.

**6.11 Cash and Cash Equivalents held by Foreign Subsidiaries .** The aggregate value of cash and Cash Equivalents held by all Foreign Subsidiaries of Borrower to exceed Two Million Five Hundred Thousand Dollars (\$2,500,000) for more than five (5) Business Days in each calendar month.

**6.12 Value of Assets held by Foreign Subsidiaries.** The aggregate value of the assets owned by the Foreign Subsidiaries of Borrower shall not exceed twenty percent (20%) of the aggregate value of all assets owned by the Borrower and its Subsidiaries.

**6.13 Redemption of Permitted Convertible Debt.** Exercise any redemption right with respect to any Permitted Convertible Debt upon satisfaction of a condition related to the stock price of the Borrower's common stock, unless the Redemption Conditions are satisfied in respect of such redemption.

## **7. EVENTS OF DEFAULT**

Any one of the following shall constitute an event of default (an " **Event of Default**") under this Agreement:

**7.1 Payment Default.** Borrower fails to (a) make any payment of principal or interest on any Credit Extension on its due date, or (b) pay any other Obligations within three (3) Business Days after such Obligations are due and payable (which three (3) Business Day cure period shall not apply to payments due on the ~~Revolving Line Maturity Date or~~ Term Loan Maturity Date), in each unless such late payment is due to Bank's failure to auto-debit such payment when sufficient funds were contained in the Designated Deposit Account (or if insufficient funds are contained therein, or if an Event of Default has occurred and is continuing, any of Borrower's other accounts at Bank). During the cure period, the failure to make or pay any payment specified under clause (b) hereunder is not an Event of Default (but no Credit Extension will be made during the cure period);

### **7.2 Covenant Default.**

(a) Borrower fails or neglects to perform any obligation in Section 5 (other than Sections 5.2 (Government Compliance), 5.12 (Litigation Cooperation), 5.15 (Inventory; Returns) and 5.16 (Further Assurances)) or violates any covenant in Section 6; or

(b) Borrower fails or neglects to perform, keep, or observe any other term, provision, condition, covenant or agreement contained in this Agreement or any Loan Documents, and as to any default (other than those specified in this Section 7) under such other term, provision, condition, covenant or agreement that can be cured, has failed to cure the default within ten (10) days after the occurrence thereof; provided, however, that if the default cannot by its nature be cured within the ten (10) day period or cannot after diligent attempts by Borrower be

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cured within such ten (10) day period, and such default is likely to be cured within a reasonable time, then Borrower shall have an additional period (which shall not in any case exceed thirty (30) days) to attempt to cure such default, and within such reasonable time period the failure to cure the default shall not be deemed an Event of Default (but no Credit Extensions shall be made during such cure period). Cure periods provided under this section shall not apply, among other things, to financial covenants or any other covenants that are required to be satisfied, completed or tested by a date certain or any covenants set forth in clause (a) above;

**7.3 Material Adverse Change.** A Material Adverse Change occurs;

**7.4 Attachment; Levy; Restraint on Business.**

(a) (i) The service of process seeking to attach, by trustee or similar process, any funds of Borrower or any Subsidiary with a value in excess of Two Hundred Thousand Dollars (\$200,000), or (ii) a notice of lien or levy in an amount in excess of Two Hundred Thousand Dollars (\$200,000), is filed against any of Borrower's or any of its Subsidiaries' assets by any Governmental Authority, and the same under subclauses (i) and (ii) hereof are not, within fifteen (15) days after the occurrence thereof, discharged or stayed (whether through the posting of a bond or otherwise); provided, however, no Credit Extensions shall be made during any fifteen (15) day cure period; or

(b) (i) any material portion of Borrower's or any of its Subsidiaries' assets with a value in excess of Two Hundred Thousand Dollars (\$200,000), is attached, seized, levied on, or comes into possession of a trustee or receiver, or (ii) any court order enjoins, restrains, or prevents Borrower or any of its Subsidiaries from conducting all or any material part of its business;

**7.5 Insolvency.** (a) Borrower or Borrower and of its Subsidiaries (taken as a whole) is unable to pay its debts (including trade debts) as they become due or otherwise becomes insolvent; (b) Borrower or any of its Subsidiaries begins an Insolvency Proceeding; or (c) an Insolvency Proceeding is begun against Borrower or any of its Subsidiaries and is not dismissed or stayed within forty-five (45) days (but no Credit Extensions shall be made while any of the conditions described in clause (a) exist and/or until any Insolvency Proceeding is dismissed);

**7.6 Other Agreements.** There is, under any agreement to which Borrower, any of Borrower's Subsidiaries, or any Guarantor is a party with a third party or parties, (a) any default by Borrower (after applicable grace and/or cure periods) resulting in a right by such third party or parties, whether or not exercised, to accelerate the maturity of any Indebtedness in an amount individually or in the aggregate in excess of Five Hundred Thousand Dollars (\$500,000); or (b) any breach or default by Borrower, any of Borrower's Subsidiaries, or Guarantor the result of which could reasonably be expected to have a material adverse effect on Borrower's, any of Borrower's Subsidiaries', or any Guarantor's business or operations (taken as a whole)

**7.7 Judgments; Penalties.** One or more fines, penalties or final judgments, orders or decrees for the payment of money in an amount, individually or in the aggregate, of at least Five Hundred Thousand Dollars (\$500,000)(not covered by independent third-party insurance as to which liability has been accepted by such insurance carrier) shall be rendered against Borrower or any of its Subsidiaries by any Governmental Authority, and the same are not, within ten (10) days after the entry, assessment or issuance thereof, discharged, satisfied or paid, or after execution thereof, or stayed pending appeal, or such judgments are not discharged, satisfied or paid prior to the expiration of any such stay (provided that no Credit Extensions will be made prior to the discharge, satisfaction, payment, or stay of such fine, penalty, judgment, order or decree);

**7.8 Misrepresentations.** Borrower or any of its Subsidiaries or any Responsible Person acting for Borrower or any of its Subsidiaries knowingly makes any representation, warranty, or other statement now or later in this Agreement, any Loan Document or in any writing delivered to Bank or to induce Bank to enter this Agreement or any Loan Document, and such representation, warranty, or other statement is incorrect in any material respect when made (it being agreed and acknowledged by Bank that the projections and forecasts provided by Borrower or any of its Subsidiaries in good faith and based upon reasonable assumptions are not viewed as facts and

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that actual results during the period or periods covered by such projections and forecasts may differ from the projected or forecasted results);

**7.9 Subordinated Debt.** If: (a) any document, instrument, or agreement evidencing any Subordinated Debt shall for any reason be revoked or invalidated or otherwise cease to be in full force and effect (other than in accordance with the terms of such document, instrument or agreement) or any Person (other than Bank)) shall be in breach thereof or contest in any manner the validity or enforceability thereof or deny that it has any further liability or obligation thereunder; (b) a default or event of default (however defined) has occurred under any document, instrument, or agreement evidencing any Subordinated Debt, which default shall not have been cured or waived within any applicable grace period; or (c) the Obligations shall for any reason be subordinated or shall not have the priority contemplated by the applicable subordination or intercreditor agreement;

**7.10 Lien Priority.** There is a material impairment in the perfection or priority of Bank's security interest in the Collateral (unless such failure is caused by Bank's gross negligence or willful misconduct);

**7.11 Guaranty.** (a) Any guaranty of any Obligations terminates or ceases for any reason to be in full force and effect (except due to termination in accordance with the terms of such guaranty); (b) any Guarantor does not perform any material obligation or covenant under any guaranty of the Obligations; (c) any circumstance described in Sections 7.3, 7.4, 7.5, 7.6, 7.7, or 7.8 of this Agreement occurs with respect to any Guarantor (subject to the applicable cure and grace periods herein), (d) the death, liquidation, winding up, or termination of existence of any Guarantor; or (e) a material impairment in the perfection or priority of Bank's Lien in the collateral provided by Guarantor or in the value of such collateral ; or

**7.12 Governmental Approvals.** Any Governmental Approval shall have been (a) revoked, rescinded, suspended, modified in an adverse manner or not renewed in the ordinary course for a full term or (b) subject to any decision by a Governmental Authority that designates a hearing with respect to any applications for renewal of any of such Governmental Approval or that could result in the Governmental Authority taking any of the actions described in clause (a) above, and such decision or such revocation, rescission, suspension, modification or non-renewal (i) causes, or could reasonably be expected to cause, a Material Adverse Change, or (ii) materially and adversely affects the legal qualifications of Borrower or any of its Subsidiaries to hold such Governmental Approval in any applicable jurisdiction and such revocation, rescission, suspension, modification or non-renewal could reasonably be expected to materially and adversely affect the status of or legal qualifications of Borrower or any of its Subsidiaries to hold any Governmental Approval in any other jurisdiction that is material to the operation of Borrower's business.

## **8. BANK'S RIGHTS AND REMEDIES**

**8.1 Rights and Remedies.** Upon the occurrence and during the continuance of an Event of Default, Bank may, without notice or demand, do any or all of the following:

(a) declare all Obligations immediately due and payable (but if an Event of Default described in Section 7.5 occurs all Obligations are immediately due and payable without any action by Bank);

(b) stop advancing money or extending credit for Borrower's benefit under this Agreement or under any other agreement between Borrower and Bank;

(c) demand that Borrower (i) deposit cash with Bank in an amount equal to at least (A) one hundred and five percent (105.0%) of the aggregate face amount of any Letters of Credit denominated in Dollars remaining undrawn, and (B) one hundred and fifteen percent (115.0%) of the Dollar Equivalent of the aggregate face amount of any Letters of Credit denominated in a Foreign Currency remaining undrawn (plus, in each case, all interest, fees, and costs due or estimated by Bank to become due in connection therewith), to secure all of the Obligations relating to such Letters of Credit, as collateral security for the repayment of any future drawings under such Letters of Credit, and Borrower shall forthwith deposit and pay such amounts, and (ii) pay in advance all letter of credit fees scheduled to be paid or payable over the remaining term of any Letters of Credit;

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(d) terminate any FX Contracts (it being understood and agreed that (i) Bank is not obligated to deliver the currency which Borrower has contracted to receive under any FX Contract, and Bank may cover its exposure for any FX Contracts by purchasing or selling currency in the interbank market as Bank deems appropriate; (ii) Borrower shall be liable for all losses, damages, costs, margin obligations and expenses incurred by Bank arising from Borrower's failure to satisfy its obligations under any FX Contract or the execution of any FX Contract; and (iii) Bank shall not be liable to Borrower for any gain in value of a FX Contract that Bank may obtain in covering Borrower's breach);

(e) verify the amount of, demand payment of and performance under, and collect any Accounts and General Intangibles, settle or adjust disputes and claims directly with Account Debtors for amounts on terms and in any order that Bank considers advisable, and notify any Person owing Borrower money of Bank's security interest in such funds;

(f) make any payments and do any acts it considers necessary or reasonable to protect the Collateral and/or its security interest in the Collateral. Borrower shall assemble the Collateral if Bank requests and make it available as Bank designates. Bank may enter premises where the Collateral is located, take and maintain possession of any part of the Collateral, and pay, purchase, contest, or compromise any Lien which appears to be prior or superior to its security interest and pay all expenses incurred. Borrower grants Bank a license to enter and occupy any of its premises, without charge, to exercise any of Bank's rights or remedies;

(g) apply to the Obligations any (i) balances and deposits of Borrower it holds, or (ii) amount held by Bank owing to or for the credit or the account of Borrower;

(h) ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell the Collateral. For use solely upon the occurrence and during the continuation of an Event of Default, Bank is hereby granted a non-exclusive, royalty-free license or other right to use, without charge, Borrower's labels, Patents, Copyrights, mask works, rights of use of any name, trade secrets, trade names, Trademarks, and advertising matter, or any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Bank's exercise of its rights under this Section 8.1, Borrower's rights under all licenses and all franchise agreements inure to Bank's benefit;

(i) place a "hold" on any account maintained with Bank and/or deliver a notice of exclusive control, any entitlement order, or other directions or instructions pursuant to any Control Agreement or similar agreements providing control of any Collateral;

(j) demand and receive possession of Borrower's Books; and

(k) exercise all rights and remedies available to Bank under the Loan Documents or at law or equity, including all remedies provided under the Code or any Applicable Law (including disposal of the Collateral pursuant to the terms thereof).

**8.2 Power of Attorney.** Borrower hereby irrevocably appoints Bank as its true and lawful attorney-in-fact, (a) exercisable only following the occurrence and during the continuance of an Event of Default, to: (i) endorse Borrower's name on any checks, payment instruments, or other forms of payment or security; (ii) sign Borrower's name on any invoice or bill of lading for any Account or drafts against Account Debtors; (iii) demand, collect, sue, and give releases to any Account Debtor for monies due, settle and adjust disputes and claims about the Accounts directly with Account Debtors, and compromise, prosecute, or defend any action, claim, case, or proceeding about any Collateral (including filing a claim or voting a claim in any bankruptcy case in Bank's or Borrower's name, as Bank chooses); (iv) make, settle, and adjust all claims under Borrower's insurance policies; (v) pay, contest or settle any Lien, charge, encumbrance, security interest, or other claim in or to the Collateral, or any judgment based thereon, or otherwise take any action to terminate or discharge the same; and (vi) transfer the Collateral into the name of Bank or a third party as the Code permits; and (b) regardless of whether an Event of Default has occurred, to sign Borrower's name on any documents necessary to perfect or continue the perfection of Bank's security interest in the Collateral. Bank's foregoing appointment as Borrower's attorney in fact, and all of

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Bank's rights and powers, coupled with an interest, are irrevocable until such time as all Obligations (other than inchoate indemnity obligations) have been paid in full in cash, Bank is under no further obligation to make Credit Extensions and the Loan Documents have been terminated. Bank shall not incur any liability in connection with or arising from the exercise of such power of attorney and shall have no obligation to exercise any of the foregoing rights and remedies.

**8.3 Protective Payments.** If Borrower fails to obtain the insurance called for by Section 5.8 or fails to pay any premium thereon or fails to pay any other amount which Borrower is obligated to pay under this Agreement or any other Loan Document or which may be required to preserve the Collateral, Bank may obtain such insurance or make such payment, and all amounts so paid by Bank are Bank Expenses and immediately due and payable, bearing interest at the then highest rate applicable to the Obligations, and secured by the Collateral. Bank will make reasonable efforts to provide Borrower with notice of Bank obtaining such insurance at the time it is obtained or within a reasonable time thereafter. No payments by Bank are deemed an agreement to make similar payments in the future or Bank's waiver of any Event of Default.

**8.4 Application of Payments and Proceeds.** If an Event of Default has occurred and is continuing, Bank shall have the right to apply in any order any funds in its possession, whether from Borrower account balances, payments, proceeds realized as the result of any collection of Accounts or other disposition of the Collateral, or otherwise, to the Obligations in such order as Bank shall determine in its sole discretion. Any surplus shall be paid to Borrower or other Persons legally entitled thereto; Borrower shall remain liable to Bank for any deficiency. Following the occurrence and during the continuation of an Event of Default, if Bank, in its commercially reasonable discretion, directly or indirectly, enters into a deferred payment or other credit transaction with any purchaser at any sale of Collateral, Bank shall have the option, exercisable at any time, of either reducing the Obligations by the principal amount of the purchase price or deferring the reduction of the Obligations until the actual receipt by Bank of cash therefor.

**8.5 Bank's Liability for Collateral.** Bank's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession or under its control, under Section 9-207 of the Code or otherwise, shall be to deal with it in the same manner as Bank deals with its own property consisting of similar instruments or interests. Borrower bears all risk of loss, damage or destruction of the Collateral.

**8.6 No Waiver; Remedies Cumulative.** Bank's failure, at any time or times, to require strict performance by Borrower of any provision of this Agreement or any other Loan Document shall not waive, affect, or diminish any right of Bank thereafter to demand strict performance and compliance herewith or therewith. No waiver hereunder shall be effective unless signed by the party granting the waiver and then is only effective for the specific instance and purpose for which it is given. Bank's rights and remedies under this Agreement and the other Loan Documents are cumulative. Bank has all rights and remedies provided under the Code, by law, or in equity. Bank's exercise of one right or remedy is not an election and shall not preclude Bank from exercising any other remedy under this Agreement or other remedy available at law or in equity, and Bank's waiver of any Event of Default is not a continuing waiver. Bank's delay in exercising any remedy is not a waiver, election, or acquiescence.

**8.7 Demand Waiver.** Borrower waives demand, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees held by Bank on which Borrower is liable.

## **9. NOTICES**

All notices, consents, requests, approvals, demands, or other communication by any party to this Agreement or any other Loan Document must be in writing and shall be deemed to have been validly served, given, or delivered: (a) upon the earlier of actual receipt and three (3) Business Days after deposit in the U.S. mail, first class, registered or certified mail return receipt requested, with proper postage prepaid; (b) upon transmission, when sent by electronic mail; (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid; or (d) when delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be

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notified and sent to the address or email address indicated below; provided that, for clause (b), if such notice, consent, request, approval, demand or other communication is not sent during the normal business hours of the recipient, it shall be deemed to have been sent at the opening of business on the next Business Day of the recipient. Bank or Borrower may change its mailing or electronic mail address by giving the other party written notice thereof in accordance with the terms of this Section 9.

If to Borrower: SI-Bone, Inc.  
471 El Camino Real, Suite 101  
Santa Clara, CA 95050  
Attn: Laura Francis, CEO; and  
Anshul Maheshwari, CFO  
Email: lfrancis@si-bone.com; and  
Anshul.Maheshwari@si-bone.com

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

Cooley LLP  
~~55 Hudson Yards~~ [3175 Hanover Street](#)  
~~New York, New York, 10001-2157~~ [Palo Alto, CA 94304](#)  
Attn: ~~Patriek Flanagan~~ [Matthew Hemington](#)  
Email: ~~pflanagan~~ [mhemington@cooley.com](#)

If to Bank: Silicon Valley Bank, [a division of First-Citizens Bank & Trust Company](#)  
505 Howard Street, Floor 3  
San Francisco, CA 94105  
Attn: Mark Davis  
Email: mdavis@svb.com

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

DLA Piper LLP (US)  
~~401 B Street~~ [4365 Executive Drive](#) Suite ~~1700~~ [1100](#)  
San Diego, California ~~92101~~ [92121-2133](#)

Attn: ~~Matt Schwartz~~ [Parker Zangoei](#), Esq.  
Email: ~~matt.schwartz@us.dlapiper.com~~ [parker.zangoei@us.dlapiper.com](#)

#### **10. CHOICE OF LAW, VENUE AND JURY TRIAL WAIVER; JUDICIAL REFERENCE**

Except as otherwise expressly provided in any of the Loan Documents, California law governs the Loan Documents without regard to principles of conflicts of law that would require the application of the laws of another jurisdiction. Borrower and Bank each irrevocably and unconditionally submit to the exclusive jurisdiction of the State and Federal courts in Santa Clara County, California; provided, however, that nothing in this Agreement shall be deemed to operate to preclude Bank from bringing suit or taking other legal action in any other jurisdiction with respect to the Loan Documents or to realize on the Collateral or any other security for the Obligations, or to enforce a judgment or other court order in favor of Bank. Borrower expressly, irrevocably and unconditionally submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and Borrower hereby irrevocably and unconditionally waives, to the fullest extent permitted by Applicable Law, any objection that it may have based upon lack of personal jurisdiction, improper venue, or forum non conveniens and hereby irrevocably and unconditionally consents to the granting of such legal or equitable relief as is deemed appropriate by such court. Borrower hereby waives personal service of the summons, complaints, and other process issued in such action or suit and agrees that service of such summons, complaints, and other process may be made by registered or certified

mail addressed to Borrower at the address set forth in, or subsequently provided by Borrower in accordance with, Section 9 of this Agreement and that service so made shall be deemed completed upon the earlier to occur of Borrower's actual receipt thereof or three (3) days after deposit in the U.S. mails, proper postage prepaid.

**TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER AND BANK EACH WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY CONTEMPLATED TRANSACTION UNDER THIS AGREEMENT, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR THE PARTIES HERETO TO ENTER INTO THIS AGREEMENT. EACH PARTY HERETO HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.**

WITHOUT INTENDING IN ANY WAY TO LIMIT THE PARTIES' AGREEMENT TO WAIVE THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY, if the above waiver of the right to a trial by jury is not enforceable, the parties hereto agree that any and all disputes or controversies of any nature between them arising at any time shall be decided by a reference to a private judge, mutually selected by the parties (or, if they cannot agree, by the Presiding Judge of the Santa Clara County, California Superior Court) appointed in accordance with California Code of Civil Procedure Section 638 (or pursuant to comparable provisions of federal law if the dispute falls within the exclusive jurisdiction of the federal courts), sitting without a jury, in Santa Clara County, California; and the parties hereby submit to the jurisdiction of such court. The reference proceedings shall be conducted pursuant to and in accordance with the provisions of California Code of Civil Procedure Sections 638 through 645.1, inclusive. The private judge shall have the power, among others, to grant provisional relief, including without limitation, entering temporary restraining orders, issuing preliminary and permanent injunctions and appointing receivers. All such proceedings shall be closed to the public and confidential and all records relating thereto shall be permanently sealed. If during the course of any dispute, a party desires to seek provisional relief, but a judge has not been appointed at that point pursuant to the judicial reference procedures, then such party may apply to the Santa Clara County, California Superior Court for such relief. The proceeding before the private judge shall be conducted in the same manner as it would be before a court under the rules of evidence applicable to judicial proceedings. The parties shall be entitled to discovery which shall be conducted in the same manner as it would be before a court under the rules of discovery applicable to judicial proceedings. The private judge shall oversee discovery and may enforce all discovery rules and orders applicable to judicial proceedings in the same manner as a trial court judge. The parties agree that the selected or appointed private judge shall have the power to decide all issues in the action or proceeding, whether of fact or of law, and shall report a statement of decision thereon pursuant to California Code of Civil Procedure Section 644(a). Nothing in this paragraph shall limit the right of any party at any time to exercise self-help remedies, foreclose against collateral, or obtain provisional remedies. The private judge shall also determine all issues relating to the applicability, interpretation, and enforceability of this paragraph.

This Section 10 shall survive the termination of this Agreement and the repayment of all Obligations.

#### **11. GENERAL PROVISIONS**

**11.1 Termination Prior to ~~Revolving-Line-Maturity-Date-or~~ Term Loan Maturity Date; Survival.** All covenants, representations and warranties made in this Agreement shall continue in full force until this Agreement has terminated pursuant to its terms and all Obligations (other than inchoate indemnity obligations) have been satisfied. So long as Borrower has satisfied the Obligations (other than inchoate indemnity obligations, and any other obligations which, by their terms, are to survive the termination of this Agreement and the repayment of all Obligations, and any Obligations under Bank Services Agreements that are cash collateralized in accordance with Section 3.1 of this Agreement), this Agreement may be terminated prior to the ~~Revolving-Line-Maturity-Date-and-the~~ Term Loan Maturity Date by Borrower, effective three (3) Business Days after written notice of termination is given to Bank. Those obligations that are expressly specified in this Agreement as surviving this Agreement's termination and the repayment of all Obligations shall continue to survive notwithstanding this Agreement's termination and the repayment of all Obligations.

**11.2 Successors and Assigns.** This Agreement binds and is for the benefit of the successors and permitted assigns of each party. Borrower may not assign or transfer this Agreement or any rights or obligations

under it without Bank's prior written consent (which may be granted or withheld in Bank's sole discretion) and any other attempted assignment or transfer by Borrower shall be null and void. Bank has the right, without the consent of or notice to Borrower, to sell, transfer, assign, negotiate, or grant participation in all or any part of, or any interest in, Bank's obligations, rights, and benefits under this Agreement and the other Loan Documents. Notwithstanding the foregoing, or anything to the contrary herein, so long as no Event of Default shall have occurred and is continuing, Bank shall not assign its interest in the Loan Documents to any Person who is (a) a competitor of Borrower, whether as an operating company or direct or indirect parent with voting control over such operating company, or (b) a vulture fund or distressed debt fund.

### 11.3 Indemnification.

(a) General Indemnification. Borrower shall indemnify, defend and hold Bank and its Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of Bank and its Affiliates (each, an "**Indemnified Person**") harmless against: all losses, claims, damages, liabilities and related expenses (including Bank Expenses and the reasonable fees, charges and disbursements of any counsel for any Indemnified Person) (collectively, "**Claims**") arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, (ii) any Credit Extension or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or release of hazardous materials on or from any property owned or operated by Borrower or any of its Subsidiaries, or any environmental liability related in any way to Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by Borrower, and regardless of whether any Indemnified Person is a party thereto; provided that such indemnity shall not, as to any Indemnified Person, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnified Person. All amounts due under this Section 11.3 shall be payable promptly after demand therefor.

(b) Waiver of Consequential Damages, Etc. To the fullest extent permitted by Applicable Law, Borrower shall not assert, and hereby waives, any claim against any Indemnified Person, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) or any loss of profits arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Credit Extension, or the use of the proceeds thereof. No Indemnified Person shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

This Section 11.3 shall survive the termination of this Agreement and the repayment of all Obligations until all statutes of limitation with respect to the Claims, losses, and expenses for which indemnity is given shall have run.

**11.4 Time of Essence.** Time is of the essence for the performance of all Obligations in this Agreement.

**11.5 Severability of Provisions.** Each provision of this Agreement is severable from every other provision in determining the enforceability of any provision.

**11.6 Amendments in Writing; Waiver; Integration.** No purported amendment or modification of any Loan Document, or waiver, discharge or termination of any obligation under any Loan Document, shall be effective unless, and only to the extent, expressly set forth in a writing signed by each party hereto. Without limiting the generality of the foregoing, no oral promise or statement, nor any action, inaction, delay, failure to require performance or course of conduct shall operate as, or evidence, an amendment, supplement or waiver or have any other effect on any Loan Document. Any waiver granted shall be limited to the specific circumstance expressly described in it, and shall not apply to any subsequent or other circumstance, whether similar or dissimilar, or give



rise to, or evidence, any obligation or commitment to grant any further waiver. The Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of the Loan Documents merge into the Loan Documents.

**11.7 Counterparts.** This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, is an original, and all taken together, constitute one Agreement. Delivery of an executed signature page of this Agreement by electronic mail transmission shall be effective as delivery of a manually executed counterpart hereof.

**11.8 Confidentiality.** Bank agrees to maintain the confidentiality of Information (as defined below), except that Information may be disclosed (a) to Bank's Subsidiaries and Affiliates and their respective employees, directors, agents, attorneys, accountants and other professional advisors (collectively, "**Representatives**") and, together with Bank, collectively, "**Bank Entities**"), provided that such Bank Entities are subject to the same confidentiality provisions herein; (b) to prospective transferees, assignees, credit providers or purchasers of Bank's interests under or in connection with this Agreement and their Representatives (provided, however, Bank shall use obtain any such prospective transferee's, assignee's, credit provider's, purchaser's or their Representatives' agreement to the terms of this provision or substantially similar terms); (c) as required by law, regulation, subpoena, or other order; (d) to Bank's regulators or as otherwise required or requested in connection with Bank's examination or audit; (e) in connection with the exercise of remedies under the Loan Documents or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder; and (f) to third-party service providers of Bank so long as such service providers have executed a confidentiality agreement with Bank with terms no less restrictive than those contained herein. "**Information**" means all information received from Borrower and its agents regarding Borrower or its business, in each case other than information that is either: (i) in the public domain or in Bank's possession when disclosed to Bank, or becomes part of the public domain (other than as a result of its disclosure by Bank in violation of this Agreement) after disclosure to Bank; or (ii) disclosed to Bank by a third party, if Bank does not know that the third party is prohibited from disclosing the information.

**11.9 Electronic Execution of Documents.** The words "execution," "signed," "signature" and words of like import in any Loan Document shall be deemed to include electronic signatures, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity and enforceability as a manually executed signature or the use of a paper-based recordkeeping systems, as the case may be, to the extent and as provided for in any Applicable Law, including, without limitation, any state law based on the Uniform Electronic Transactions Act.

**11.10 Right of Setoff.** Borrower hereby grants to Bank a Lien and a right of setoff as security for all Obligations to Bank, whether now existing or hereafter arising upon and against all deposits, credits, collateral and property, now or hereafter in the possession, custody, safekeeping or control of Bank or any entity under the control of Bank (including a subsidiary of Bank) or in transit to any of them, and other obligations owing to Bank or any such entity. At any time after the occurrence and during the continuance of an Event of Default, without demand or notice, Bank may setoff the same or any part thereof and apply the same to any liability or Obligation of Borrower even though unmatured and regardless of the adequacy of any other collateral securing the Obligations. ANY AND ALL RIGHTS TO REQUIRE BANK TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES THE OBLIGATIONS, PRIOR TO EXERCISING ITS RIGHT OF SETOFF WITH RESPECT TO SUCH DEPOSITS, CREDITS OR OTHER PROPERTY OF BORROWER, ARE HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED.

**11.11 Captions and Section References.** The headings used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement. Unless indicated otherwise, section references herein are to sections of this Agreement.

**11.12 Construction of Agreement.** The parties hereto mutually acknowledge that they and their attorneys have participated in the preparation and negotiation of this Agreement. In cases of uncertainty this Agreement shall be construed without regard to which of the parties caused the uncertainty to exist.

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**11.13 Relationship.** The relationship of the parties to this Agreement is determined solely by the provisions of this Agreement. The parties do not intend to create any agency, partnership, joint venture, trust, fiduciary or other relationship with duties or incidents different from those of parties to an arm's-length contract.

**11.14 Third Parties.** Nothing in this Agreement, whether express or implied, is intended to: (a) confer any benefits, rights or remedies under or by reason of this Agreement on any Persons other than the express parties to it and their respective permitted successors and assigns; (b) relieve or discharge the obligation or liability of any Person not an express party to this Agreement; or (c) give any Person not an express party to this Agreement any right of subrogation or action against any party to this Agreement.

**11.15 Anti-Terrorism Law.** Bank hereby notifies Borrower that, pursuant to the requirements of Anti-Terrorism Law, Bank may be required to obtain, verify and record information that identifies Borrower, which information may include the name and address of Borrower and other information that will allow Bank to identify Borrower in accordance with Anti-Terrorism Law. Borrower hereby agrees to take any action necessary to enable Bank to comply with the requirements of Anti-Terrorism Law.

## **12. ACCOUNTING TERMS AND OTHER DEFINITIONS**

### **12.1 Accounting and Other Terms.**

(a) Accounting terms not defined in this Agreement shall be construed following GAAP, except for non-compliance with FAS 123R with respect to monthly financial statements. Calculations and determinations must be made following GAAP (except for (a) non-compliance with FAS 123R with respect to monthly financial statement), provided that if at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either Borrower or Bank shall so request, Borrower and Bank shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP; provided, further, that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) Borrower shall provide Bank financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

(b) As used in the Loan Documents: (i) the words "shall" or "will" are mandatory, the word "may" is permissive, the word "or" is not exclusive, the words "includes" and "including" are not limiting, the singular includes the plural, and numbers denoting amounts that are set off in brackets are negative; (ii) the term "continuing" in the context of an Event of Default means that the Event of Default has not been remedied (if capable of being remedied) or waived; and (iii) whenever a representation or warranty is made to Borrower's knowledge or awareness, to the "best of" Borrower's knowledge, or with a similar qualification, knowledge or awareness means the actual knowledge, after reasonable investigation, of any Responsible Officer.

**12.2 Definitions.** Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in this Section 12.2. All other terms contained in this Agreement, unless otherwise indicated, shall have the meaning provided by the Code to the extent such terms are defined therein. As used in this Agreement, the following capitalized terms have the following meanings:

**"Account"** is, as to any Person, any "account" of such Person as "account" is defined in the Code with such additions to such term as may hereafter be made, and includes, without limitation, all accounts receivable and other sums owing to such Person.

**"Account Debtor"** is any "account debtor" as defined in the Code with such additions to such term as may hereafter be made.

**"Adjusted EBITDA"** shall mean, for Borrower and its Subsidiaries, with respect to any period, the sum of (a) Net Income, *plus* (b) to the extent deducted or added to the calculation of Net Income, (i) Interest income,

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Interest Expenses, (ii) depreciation expense and amortization expense, (iii) income tax expense, (iv) non-cash stock compensation, and (v) any other one-time restructuring or non-cash charges.

~~"Adjusted Quick Ratio" is the ratio of (a) Quick Assets to (b) the sum of (i) Current Liabilities minus (ii) the current portion of Deferred Revenue.~~

"Administrator" is an individual that is named:

(a) as an "Administrator" in the "SVB Online Services" form completed by Borrower with the authority to determine who will be authorized to use SVB Online Services (as defined in Bank's Online Banking Agreement as in effect from time to time) on behalf of Borrower; and

(b) as an Authorized Signer of Borrower in an approval by the Board.

~~"Advance" or "Advances" means a revolving credit loan (or revolving credit loans) under the Revolving Line.~~

"Affiliate" is, with respect to any Person, each other Person that owns or controls directly or indirectly the Person, any Person that controls or is controlled by or is under common control with the Person, and each of that Person's senior executive officers, directors, partners and, for any Person that is a limited liability company, that Person's managers and members.

"Agreement" is defined in the preamble hereof.

"Anti-Terrorism Law" means any law relating to terrorism or money-laundering, including Executive Order No. 13224 and the USA Patriot Act.

"Applicable Law" means all applicable provisions of constitutions, laws, statutes, ordinances, rules, treaties, regulations, permits, licenses, approvals, interpretations and orders of courts or Governmental Authorities and all orders and decrees of all courts and arbitrators.

"Authorized Signer" means any individual listed in Borrower's Borrowing Resolution who is authorized to execute the Loan Documents, including making (and executing if applicable) any Credit Extension request, on behalf of Borrower.

~~"Availability Amount" is the lesser of (a) the Revolving Line or (b) the Borrowing Base, minus the sum of all outstanding principal amounts of any Advances.~~

"Bank" is defined in the preamble hereof.

"Bank Entities" is defined in Section 11.8.

"Bank Expenses" are all reasonable audit fees, costs and reasonable expenses (including reasonable, out-of-pocket and documented attorneys' fees and expenses) for preparing, amending, negotiating, administering, defending and enforcing the Loan Documents (including, without limitation, those incurred in connection with appeals or Insolvency Proceedings) or otherwise incurred with respect to Borrower or any Guarantor.

"Bank Services" are any products, credit services, and/or financial accommodations previously, now, or hereafter provided to Borrower or any of its Subsidiaries by Bank or any Bank Affiliate, including, without limitation, any letters of credit, cash management services (including, without limitation, merchant services, direct deposit of payroll, business credit cards, and check cashing services), interest rate swap arrangements, and foreign exchange services as any such products or services may be identified in Bank's various agreements related thereto (each, a "Bank Services Agreement").

"Bank Services Agreement" is defined in the definition of Bank Services.

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"Board" is Borrower's board of directors or equivalent governing body.

"Borrower" is set forth on Schedule I hereto.

"Borrower's Books" are all Borrower's books and records including ledgers, federal and state tax returns, records regarding Borrower's assets or liabilities, the Collateral, business operations or financial condition, and all computer programs or storage or any equipment containing such information.

~~"Borrowing Base" is eighty percent (80%) of Eligible Accounts, as determined by Bank from Borrower's most recent Borrowing Base Statement; provided, however, that Bank has the right to decrease the foregoing percentages in its commercially reasonable discretion to mitigate the impact of events, conditions, contingencies, or risks which would reasonably be expected to adversely affect the Collateral or its value, following thirty (30) days prior written notice to Borrower.~~

~~"Borrowing Base Statement" is that certain statement of the value of certain Collateral in the form specified by Bank to Borrower from time to time.—~~

"Borrowing Resolutions" are, with respect to any Person, those resolutions adopted by such Person's board of directors (and, if required under the terms of such Person's Operating Documents, stockholders) and delivered by such Person to Bank approving the Loan Documents to which such Person is a party and the transactions contemplated thereby, together with a certificate executed by its secretary on behalf of such Person certifying (a) such Person has the authority to execute, deliver, and perform its obligations under each of the Loan Documents to which it is a party, (b) that set forth as a part of or attached as an exhibit to such certificate is a true, correct, and complete copy of the applicable resolutions then in full force and effect authorizing and ratifying the execution, delivery, and performance by such Person of the Loan Documents to which it is a party, (c) the name(s) of the Person(s) authorized to execute the Loan Documents, including making (and executing if applicable) any Credit Extension request, on behalf of such Person, together with a sample of the true signature(s) of such Person(s), and (d) that Bank may conclusively rely on such certificate unless and until such Person shall have delivered to Bank a further certificate canceling or amending such prior certificate.

"Business Day" is a day other than a Saturday, Sunday or other day on which commercial banks in the State of California are authorized or required by law to close, except that if any determination of a "Business Day" shall relate to an FX Contract, the term "Business Day" shall be a FX Business Day.

~~"Cash Collateral Account" is defined in Section 5.4(c).-~~

"Cash Equivalents" are (a) marketable direct obligations issued or unconditionally guaranteed by the United States or any agency or any State thereof having maturities of not more than one (1) year from the date of acquisition; (b) commercial paper maturing no more than one (1) year after its creation and having the highest rating from either Standard & Poor's Ratings Group or Moody's Investors Service, Inc.; (c) Bank's certificates of deposit issued maturing no more than one (1) year after issue; (d) long-term securities having a rating minimum of A-/A3 from either Standard & Poor's Ratings Group or Moody's Investors Service, Inc.; and (e) money market funds at least ninety-five percent (95.0%) of the assets of which constitute Cash Equivalents of the kinds described in clauses (a) through (d) of this definition.

"Change in Control" means (a) at any time, any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act), shall become, or obtain rights (whether by means of warrants, options or otherwise) to become, the "beneficial owner" (as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act), directly or indirectly, of forty-nine percent (49.0%) or more of the ordinary voting power for the election of directors, partners, managers and members, as applicable, of Borrower (determined on a fully diluted basis) other than by the sale of Borrower's equity securities in a public offering or to venture capital or private equity investors so long as Borrower identifies to Bank the venture capital or private equity investors at least seven (7) Business Days prior to the closing of the transaction and provides to Bank a description of the material terms of the transaction; (b) during any period of twelve (12) consecutive months, a majority of the members of the Board of Borrower cease to be composed of individuals (i) who were members of that board or equivalent governing body on

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the first (1st) day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body; or (c) at any time, Borrower shall cease to own and control, of record and beneficially, directly or indirectly, one hundred percent (100.0%) of each class of outstanding stock, partnership, membership, or other ownership interest or other equity securities of each Subsidiary of Borrower free and clear of all Liens (except Permitted Liens and except dissolutions or transfers permitted pursuant to Sections 6.2 and 6.3 of this Agreement).

**"Change in Law"** means the occurrence, after the Effective Date, of: (a) the adoption or taking effect of any law, rule, regulation or treaty; (b) any change in Applicable Law 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 promulgated by Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

**"Claims"** is defined in Section 11.3.

**"Code"** is the Uniform Commercial Code, as the same may, from time to time, be enacted and in effect in the State of California; provided, that, to the extent that the Code is used to define any term herein or in any Loan Document and such term is defined differently in different Articles or Divisions of the Code, the definition of such term contained in Article or Division 9 shall govern; provided further, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, or priority of, or remedies with respect to, Bank's Lien on any Collateral is governed by the Uniform Commercial Code in effect in a jurisdiction other than the State of California, the term "Code" shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies and for purposes of definitions relating to such provisions.

**"Collateral"** consists of all of Borrower's right, title and interest in and to the following personal property:

(a) (i) all goods, Accounts (including health-care receivables), Equipment, Inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, General Intangibles (except as provided below), commercial tort claims, documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts, certificates of deposit, fixtures, letters of credit rights (whether or not the letter of credit is evidenced by a writing), securities, securities accounts, securities entitlements and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located; and (ii) all Borrower's Books relating to the foregoing, and any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

(b) Notwithstanding the foregoing, the Collateral does not include any of the following (now existing or hereafter arising, owned or created):

(i) any Intellectual Property; provided, however, the Collateral shall include all Accounts and all proceeds of Intellectual Property. If a judicial authority (including a U.S. Bankruptcy Court) would hold that a security interest in the underlying Intellectual Property is necessary to have a security interest in such Accounts and such property that are proceeds of Intellectual Property, then the Collateral shall automatically, and effective as of the Effective Date, include the Intellectual Property to the extent necessary to permit perfection of Bank's security

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interest in such Accounts and such other property of Borrower that are proceeds of the Intellectual Property; and

(ii) any interest of Borrower as a lessee or sublessee under a real property lease or an Equipment lease if Borrower is prohibited by the terms of such lease from granting a security interest in such lease or under which such an assignment or Lien would cause a default to occur under such lease (but only to the extent that such prohibition is enforceable under all applicable laws including, without limitation, the Code); provided, however, that upon termination of such prohibition, such interest shall immediately become Collateral without any action by Borrower or Bank.

(c) Pursuant to the terms of a certain negative pledge arrangement with Bank, Borrower has agreed not to encumber any of its Intellectual Property in contravention of the terms of such pledge agreement without Bank's prior written consent.

**"Collateral Account"** is any Deposit Account, Securities Account, or Commodity Account.

**"Commodity Account"** is any "commodity account" as defined in the Code with such additions to such term as may hereafter be made.

**"Compliance Statement"** is that certain statement in the form attached hereto as Exhibit A.

**"Connection Income Taxes"** means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

**"Contingent Obligation"** is, for any Person, any direct or indirect liability of that Person for (a) any direct or indirect guaranty by such Person of any indebtedness, lease, dividend, letter of credit, credit card or other obligation of another, (b) any other obligation endorsed, co-made, discounted or sold with recourse by that Person, or for which that Person is directly or indirectly liable; (c) any obligations for undrawn letters of credit for the account of that Person; and (d) all obligations from any interest rate, currency or commodity swap agreement, interest rate cap or collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices; but "Contingent Obligation" does not include endorsements in the ordinary course of business or any Permitted Call Spread Agreement(s). The amount of a Contingent Obligation is the stated or determined amount of the primary obligation for which the Contingent Obligation is made or, if not determinable, the maximum reasonably anticipated liability for it determined by the Person in good faith; but the amount may not exceed the maximum of the obligations under any guarantee or other support arrangement.

**"Control Agreement"** is any control agreement entered into among the depository institution at which Borrower maintains a Deposit Account or the securities intermediary or commodity intermediary at which Borrower maintains a Securities Account or a Commodity Account, Borrower, and Bank pursuant to which Bank obtains control (within the meaning of the Code) over such Deposit Account, Securities Account, or Commodity Account.

**"Copyrights"** are any and all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret.

**"Credit Extension"** is any ~~Advance, Overadvance,~~ Letter of Credit, FX Contract, amount utilized for cash management services, Term Loan Advance, or any other extension of credit under the Loan Documents by Bank for Borrower's benefit.

**"Currency"** is coined money and such other banknotes or other paper money as are authorized by law and circulate as a medium of exchange.

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~~"Current Liabilities" are (a) all obligations and liabilities of Borrower to Bank, plus (b) without duplication of (a) the aggregate amount of Borrower's Total Liabilities that mature within one (1) year (including, for the avoidance of doubt, all Obligations of Borrower to Bank under the Term Loan Advances that mature within one year and Revolving Advances that mature within one year).~~

"Default" means any event which with notice or passage of time or both, would constitute an Event of Default.

"Default Rate" is defined in Section 1.2(c).

~~"Deferred Revenue" is all amounts received or invoiced in advance of performance under contracts and not yet recognized as revenue.~~

"Deposit Account" is any "deposit account" as defined in the Code with such additions to such term as may hereafter be made.

"Designated Deposit Account" is the deposit account with account number xxx-xxxx-9905, established by Borrower with Bank for purposes of receiving Credit Extensions.

"Division" means, in reference to any Person which is an entity, the division of such Person into two (2) or more separate Persons, with the dividing Person either continuing or terminating its existence as part of such division, including, without limitation, as contemplated under Section 18-217 of the Delaware Limited Liability Company Act for limited liability companies formed under Delaware law, Section 17-220 of the Delaware Revised Uniform Limited Partnership Act for limited partnerships formed under Delaware law, or any analogous action taken pursuant to any other Applicable Law with respect to any corporation, limited liability company, partnership or other entity.

"Dollar Equivalent" is, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in a Foreign Currency, the equivalent amount therefor in Dollars as determined by Bank at such time on the basis of the then-prevailing rate of exchange in San Francisco, California, for sales of the Foreign Currency for transfer to the country issuing such Foreign Currency.

"Dollars," "dollars" or use of the sign "\$" means only lawful money of the United States and not any other currency, regardless of whether that currency uses the "\$" sign to denote its currency or may be readily converted into lawful money of the United States.

"Effective Date" is set forth on Schedule I hereto.

~~"Eligible Accounts" means Accounts owing to Borrower which arise in the ordinary course of Borrower's business that meet all Borrower's representations and warranties in Section 4.3, that have been, at the option of Bank, confirmed in accordance with Section 5.4(f) of this Agreement, and are due and owing from Account Debtors deemed creditworthy by Bank in its commercially reasonable discretion. Bank reserves the right, at any time after the First Amendment Effective Date, in its commercially reasonable discretion in each instance, to adjust any of the criteria set forth below and to establish new criteria, following thirty (30) days prior written notice to Borrower. Unless Bank otherwise agrees in writing, Eligible Accounts shall not include:~~

~~(a) Accounts (i) for which the Account Debtor is Borrower's Affiliate, officer, employee, investor, or agent, or (ii) that are intercompany Accounts;—~~

~~(b) Accounts that the Account Debtor has not paid within ninety (90) days of invoice date regardless of invoice payment period terms;—~~

~~(c) Accounts with credit balances over ninety (90) days from invoice date, to the extent of such credit balances;—~~

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~~(d) Accounts owing from an Account Debtor that exceed Two Hundred Fifty Thousand Dollars (\$250,000) if fifty percent (50.0%) or more of the Accounts owing from such Account Debtor have not been paid within ninety (90) days of invoice date;~~

~~(e) Accounts owing from an Account Debtor (i) which does not have its principal place of business in the United States or (ii) whose billing address (as set forth in the applicable invoice for such Account) is not in the United States, unless in the case of both (i) and (ii) such Accounts are otherwise approved by Bank in writing; provided, however, that Bank hereby approves the Accounts relating to Device Technologies Belrose which is located in Australia;~~

~~(f) Accounts billed from and/or payable to Borrower outside of the United States (sometimes called foreign invoiced accounts);—~~

~~(g) Accounts in which Bank does not have a first priority, perfected security interest under all Applicable Law, other than Device Technologies Belrose which is located in Australia (solely relative to any failure to obtain a first priority, perfected security interest in any foreign jurisdiction, including Australia);~~

~~(h) Accounts billed and/or payable in a Currency other than Dollars;—~~

~~(i) Accounts owing from an Account Debtor to the extent that Borrower is indebted or obligated in any manner to the Account Debtor (as creditor, lessor, supplier or otherwise—sometimes called “contra” accounts, accounts payable, customer deposits or credit accounts), but only to the extent of such Indebtedness or obligations;~~

~~(j) Accounts with or in respect of accruals for marketing allowances, incentive rebates, price protection, cooperative advertising and other similar marketing credits, unless otherwise approved by Bank in writing, but only to the extent of such credits;~~

~~(k) Accounts owing from an Account Debtor which is a United States government entity or any department, agency, or instrumentality thereof unless Borrower has assigned its payment rights to Bank and the assignment has been acknowledged under the Federal Assignment of Claims Act of 1940, as amended;~~

~~(l) Accounts with customer deposits and/or with respect to which Borrower has received an upfront payment, to the extent of such customer deposit and/or upfront payment;—~~

~~(m) Accounts for demonstration or promotional equipment, or in which goods are consigned, or sold on a “sale guaranteed”, “sale or return”, “sale on approval”, or other terms if Account Debtor’s payment may be conditional;~~

~~(n) Accounts owing from an Account Debtor where goods or services have not yet been rendered to the Account Debtor (sometimes called memo billings or pre billings);—~~

~~(o) Accounts subject to contractual arrangements between Borrower and an Account Debtor where payments shall be scheduled or due according to completion or fulfillment requirements (sometimes called contracts accounts receivable, progress billings, milestone billings, or fulfillment contracts);~~

~~(p) Accounts owing from an Account Debtor the amount of which may be subject to withholding based on the Account Debtor’s satisfaction of Borrower’s complete performance (but only to the extent of the amount withheld; sometimes called retainage billings);~~

~~(q) Accounts subject to trust provisions, subrogation rights of a bonding company, or a statutory trust;—~~

~~(r) Accounts owing from an Account Debtor that has been invoiced for goods that have not been shipped to the Account Debtor unless Bank, Borrower, and the Account Debtor have entered into an agreement~~

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acceptable to Bank wherein the Account Debtor acknowledges that (i) it has title to and has ownership of the goods wherever located, (ii) a bona fide sale of the goods has occurred, and (iii) it owes payment for such goods in accordance with invoices from Borrower (sometimes called "bill and hold" accounts);

~~(s) Accounts for which the Account Debtor has not been invoiced;~~

~~(t) Accounts that represent non-trade receivables or that are derived by means other than in the ordinary course of Borrower's business;—~~

~~(u) Accounts for which Borrower has permitted Account Debtor's payment to extend beyond ninety (90) days (including Accounts with a due date that is more than ninety (90) days from invoice date);~~

~~(v) Accounts arising from chargebacks, debit memos or other payment deductions taken by an Account Debtor;—~~

~~(w) Accounts arising from product returns and/or exchanges (sometimes called "warranty" or "RMA" accounts);—~~

~~(x) Accounts in which the Account Debtor disputes liability or makes any claim (but only up to the disputed or claimed amount), or if the Account Debtor is subject to an Insolvency Proceeding (whether voluntary or involuntary), or becomes insolvent, or goes out of business;~~

~~(y) Accounts owing from an Account Debtor, whose total obligations to Borrower exceed twenty-five percent (25.0%) of all Accounts, only for the amounts that exceed that percentage, unless Bank approves in writing; and~~

~~(z) Accounts for which Bank in its sole discretion determines collection to be doubtful, including, without limitation, accounts represented by "refreshed" or "recycled" invoices;—~~

"**Environmental Laws**" means any Applicable Law (including any permits, concessions, grants, franchises, licenses, agreements or governmental restrictions) relating to pollution or the protection of health, safety or the environment or the release of any materials into the environment (including those related to hazardous materials, air emissions, discharges to waste or public systems and health and safety matters).

"**Equipment**" is all "equipment" as defined in the Code with such additions to such term as may hereafter be made, and includes without limitation all machinery, fixtures, goods, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing.

"**ERISA**" is the Employee Retirement Income Security Act of 1974, as amended, and its regulations.

"**Event of Default**" is defined in Section 7.

"**Exchange Act**" is the Securities Exchange Act of 1934, as amended.

"**Excluded Taxes**" means any of the following Taxes imposed on or with respect to Bank or required to be withheld or deducted from a payment to Bank, (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 Bank being organized under the laws of, or having its principal office or its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) U.S. federal withholding Taxes imposed on amounts payable to or for the account of Bank with respect to an applicable interest in a Credit Extension pursuant to a law in effect on the date on which (i) Bank acquires such interest in the Credit Extensions or (ii) Bank changes its lending office, except in each case to the extent that, pursuant to Section 1.6, amounts with respect to such Taxes were payable either to Bank's assignor immediately before Bank became a party hereto or to Bank immediately before it changed its lending office, (c) Taxes attributable to Bank's failure to comply

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with Section 1.6(e) and/or any reporting and delivery requirements, and (d) any withholding Taxes imposed under FATCA.

"**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), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Internal Revenue Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Internal Revenue Code.

~~"**Final Payment**" is a payment (in addition to and not a substitution for the regular monthly payments of principal plus accrued interest) due on the earliest to occur of (a) the Term Loan Maturity Date, (b) the repayment of the Term Loan Advance in full, (c) as required pursuant to Section 1.1(c) or 1.1(d), or (d) the termination of this Agreement, in an amount equal to the original aggregate principle amount of the Term Loan Advance extended by Bank to Borrower multiplied by two percent (2.0%).~~

~~"**Financial Covenant Measuring Period**" is any period of time (a) commencing on the later to occur of (i) the date on which the aggregate value of the Borrower's unrestricted and unencumbered (except for Liens in favor of Bank) cash and Cash Equivalents held at Bank and Bank's Affiliates falls below [\*\*\*] Dollars, and (ii) January 1, 2025 and (b) terminating on the date on which Borrower has achieved two (2) consecutive quarters of Adjusted EBITDA greater than [\*\*\*] Dollars. After the termination of a Financial Covenant Measuring Period, if both (X) Borrower's Adjusted EBITDA is equal to or less than [\*\*\*] Dollars any such fiscal quarter and (Y) the aggregate value of the Borrower's unrestricted and unencumbered (except for Liens in favor of Bank) cash and Cash Equivalents held at Bank and Bank's Affiliates is less than [\*\*\*] Dollars, then a new Financial Covenant Measuring Period shall start and shall not terminate until Borrower again achieves Adjusted EBITDA Balance greater than [\*\*\*] Dollars for two (2) new consecutive quarters.~~

"**Financial Statement Repository**" is L43f1c@svb.com or such other means of collecting information approved and designated by Bank after providing notice thereof to Borrower from time to time.

"**First Amendment Effective Date**" means January 6, 2023.

"**Foreign Currency**" is the lawful money of a country other than the United States.

"**Foreign Subsidiary**" is a Subsidiary that is not an entity organized under the laws of the United States or any territory thereof or the District of Columbia.

"**Funding Date**" is any date on which a Credit Extension is made to or for the account of Borrower which shall be a Business Day.

"**FX Business Day**" is any day when (a) Bank's Foreign Exchange Department is conducting its normal business and (b) the Foreign Currency being purchased or sold by Borrower is available to Bank from the entity from which Bank shall buy or sell such Foreign Currency.

"**FX Contract**" is any foreign exchange contract by and between Borrower and Bank under which Borrower commits to purchase from or sell to Bank a specific amount of Foreign Currency at a set price or on a specified date.

"**GAAP**" is generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other Person as may be approved by a significant segment of the accounting profession, which are applicable to the circumstances as of the date of determination (except for with respect to unaudited financial statements for the absence of footnotes and subject to year-end audit adjustments).

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**"General Intangibles"** is all "general intangibles" as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation, all Intellectual Property, claims, income and other tax refunds, security and other deposits, payment intangibles, contract rights, options to purchase or sell real or personal property, rights in all litigation presently or hereafter pending (whether in contract, tort or otherwise), insurance policies (including without limitation key man, property damage, and business interruption insurance), payments of insurance and rights to payment of any kind.

**"Good Faith Deposit"** is defined in Section 1.3.

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

**"Governmental Authority"** is any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, any securities exchange and any self-regulatory organization.

**"Guarantor"** is any Person providing a Guaranty in favor of Bank with respect to the Obligations.

**"Guaranty"** is any guarantee of all or any part of the Obligations, as the same may from time to time be amended, restated, modified or otherwise supplemented.

**"Indebtedness"** is (a) indebtedness for borrowed money or the deferred price of property or services, such as reimbursement and other obligations for surety bonds and letters of credit, (b) obligations evidenced by notes, bonds, debentures or similar instruments, (c) capital lease obligations, (d) Contingent Obligations and (e) other short- and long-term obligations under debt agreements, lines of credit and extensions of credit, provided, however, that in no event shall obligations under any Permitted Call Spread Agreement constitute Indebtedness.

**"Indemnified Person"** is defined in Section 11.3.

**"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 Borrower under any Loan Document and (b) to the extent not otherwise described in clause (a), Other Taxes.

**"Information"** is defined in Section 11.8.

~~**"Initial Audit"** is Bank's inspection of Borrower's Accounts, the Collateral, and Borrower's Books, with results satisfactory to Bank in its sole discretion.~~

**"Insolvency Proceeding"** is any proceeding by or against any Person under the United States Bankruptcy Code, or any other bankruptcy or insolvency law, including assignments for the benefit of creditors, compositions, extensions generally with its creditors, or proceedings seeking reorganization, arrangement, receivership or other relief.

**"Intellectual Property"** means, with respect to any Person, all of such Person's right, title, and interest in and to the following, whether now owned or hereafter acquired or created:

- (a) its Copyrights, Trademarks and Patents;
  - (b) any and all trade secrets and trade secret rights, including, without limitation, any rights to unpatented inventions, know-how and operating manuals;
  - (c) licenses any and all source code;
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(d) any and all design rights which may be available to such Person;

(e) any and all claims for damages by way of past, present and future infringement of any of the foregoing, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the Intellectual Property rights identified above; and

(f) all amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents.

**"Interest Expense"** means for any fiscal period, interest expense (whether cash or non-cash) determined in accordance with GAAP for the relevant period ending on such date, including, in any event, interest expense with respect to any Credit Extension and other Indebtedness of Borrower and its Subsidiaries, including, without limitation or duplication, all commissions, discounts, or related amortization and other fees and charges with respect to letters of credit and bankers' acceptance financing and the net costs associated with interest rate swap, cap, and similar arrangements, and the interest portion of any deferred payment obligation (including leases of all types).

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

**"Inventory"** is all **"inventory"** as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products, including without limitation such inventory as is temporarily out of Borrower's custody or possession or in transit and including any returned goods and any documents of title representing any of the above.

**"Investment"** is any beneficial ownership interest in any Person (including stock, partnership, membership, or other ownership interest or other equity securities), and any loan, advance or capital contribution to any Person.

**"Key Person"** is each of Borrower's (i) Chief Executive Officer, and (ii) Chief Financial Officer, as of the Effective Date.

**"Letter of Credit"** is a standby or commercial letter of credit issued by Bank upon request of Borrower based upon an application, guarantee, indemnity, or similar agreement.

**"Lien"** is a claim, mortgage, deed of trust, levy, attachment charge, pledge, hypothecation, security interest or other encumbrance of any kind, whether voluntarily incurred or arising by operation of law or otherwise against any property.

**"Loan Documents"** are, collectively, this Agreement and any schedules, exhibits, certificates, notices, and any other documents related to this Agreement, the Perfection Certificate, the Control Agreement, any Bank Services Agreement, any subordination agreement, any note, or notes or guaranties executed by Borrower or any Guarantor, landlord waivers and consents, bailee waivers and consents, and any other present or future agreement by Borrower and/or any Guarantor with or for the benefit of Bank in connection with this Agreement or Bank Services, all as amended, restated, or otherwise modified in accordance with the terms thereof.

**"Material Adverse Change"** is (a) a material impairment in the perfection or priority of Bank's Lien in the Collateral or in the value of such Collateral; (b) a material adverse change in the business, operations, or condition (financial or otherwise) of Borrower; or (c) a material impairment of the prospect of repayment of any portion of the Obligations when such Obligations are due.

**"Minimum Banking Requirements"** is defined in Section 5.9(a).

**"Net Income"** means, as calculated on a consolidated basis for Borrower and its Subsidiaries for any period as at any date of determination, the net profit (or loss), after provision for taxes, of Borrower and its Subsidiaries for such period taken as a single accounting period.

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"**Net Revenue**" means, for any period as of any date of determination, Borrower's net revenue calculated in accordance with GAAP.

"**Obligations**" are Borrower's obligations to pay when due any debts, principal, interest, fees, Bank Expenses, the ~~Termination Fee (if applicable), the Revolving Line Commitment Fee, the~~ Prepayment Fee (if applicable), the Final Payment ~~(if applicable)~~, and other amounts Borrower owes Bank now or later, whether under this Agreement, or the other Loan Documents, or otherwise, including, without limitation, all obligations relating to Bank Services and interest accruing after Insolvency Proceedings begin and debts, liabilities, or obligations of Borrower assigned to Bank, and to perform Borrower's duties under the Loan Documents (but in all cases excluding any equity interests of Bank and/or its Affiliates in Borrower).

"**OFAC**" is the Office of Foreign Assets Control of the United States Department of the Treasury and any successor thereto.

"**Operating Documents**" are, for any Person, such Person's formation documents, as certified by the Secretary of State (or equivalent agency) of such Person's jurisdiction of organization on a date that is no earlier than thirty (30) days prior to the ~~FirstThird~~ Amendment Effective Date, and, (a) if such Person is a corporation, its bylaws in current form, (b) if such Person is a limited liability company, its limited liability company agreement (or similar agreement), and (c) if such Person is a partnership or limited partnership, its partnership agreement or limited partnership agreement (or similar agreement), each of the foregoing with all current amendments or modifications thereto.

"**Other Connection Taxes**" means, with respect to Bank, Taxes imposed as a result of a present or former connection between Bank and the jurisdiction imposing such Tax (other than connections arising from Bank 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 Credit Extension or Loan Document).

"**Other Taxes**" means all present or future stamp, court, documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment.

~~"Overadvance" is defined in Section 1.1.B-~~

"**Patents**" means all patents, patent applications and like protections including without limitation improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same.

"**Payment/Advance Form**" is that certain form in the form attached hereto as Exhibit B.

"**Payment Date**" is set forth on Schedule I hereto.

"**Perfection Certificate**" is the updated Perfection Certificate delivered by Borrower on or around the ~~FirstThird~~ Amendment Effective Date in connection with this Agreement.

"Performance Milestone" means Borrower's delivery to Bank of evidence reasonably satisfactory to Bank in its commercially reasonable discretion, confirming that Borrower has achieved Adjusted EBITDA of at least [\*\*\*] Dollars for the trailing six (6) month period ending on June 30, 2027.

"**Permitted Acquisition**" or "**Permitted Acquisitions**" means an acquisition by Borrower or any Subsidiary of any Intellectual Property or all or substantially all of the assets of, all of the ownership interests in, or a business line, product line (including rights in respect of any medical device) or unit or division of another Person (including any foreign corporations) for cash consideration (including any purchase price adjustments, indemnity payments and earn-out obligations in connection therewith) up to Ten Million Dollars (\$10,000,000) in any fiscal year (or such greater amount as may be agreed with the prior written consent of Bank); *provided* that, with respect to

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each such acquisition, each of the following conditions shall have been satisfied (or waived by Bank, acting in its commercially reasonable discretion):

- (a) no Event of Default shall have occurred and be continuing or would result from the consummation of the proposed acquisition and Bank has received evidence that Borrower is in compliance with all terms and conditions of this Agreement on a pro forma basis after giving effect to such acquisition,
- (b) such acquired Person or assets shall be in a similar line of business as is conducted by Borrower as of the Effective Date (or a line of business reasonably related thereto),
- (c) such acquisition shall not cause the focus or locations of Borrower's and its Subsidiaries' operations (when taken as a whole) to be located outside of the United States,
- (d) such acquisition shall not constitute a hostile acquisition,
- (e) any Person acquired as a result of such acquisition shall become a secured Guarantor (or co-borrower) subject to the terms herein, within fifteen (15) Business Days of the consummation of such acquisition,
- (f) in connection with such acquisition, neither Borrower nor any of its subsidiaries (including for this purpose, the target of the acquisition) shall acquire or be subject to any Indebtedness or Liens that are not otherwise permitted hereunder;
- (g) Borrower shall provide Bank with written notice of the proposed acquisition at least five (5) Business Days prior to the anticipated signing, commitment, or closing date of the proposed acquisition, whichever occurs first;
- (h) Borrower shall provide to the Bank not later than five (5) Business Days after the execution thereof, a copy of the executed purchase agreement or similar agreement with respect to any such acquisition;
- (i) such acquisition has been approved by the board of directors (or other equivalent legally governing body) of the Person to be acquired,
- (j) the entity or assets to be acquired in such acquisition shall not be subject to any Lien other (x) the first priority Liens granted in favor of Bank and (y) Permitted Liens;
- (k) all transactions related to such acquisition shall be consummated in all material respects in accordance with applicable law; and
- (l) Borrower shall provide to the Bank as soon as available but in any event not later than five (5) Business Days after the execution thereof, a copy of the executed purchase agreement or similar agreement with respect to any such acquisition.

Borrower shall provide to the Bank as soon as available but in any event not later than five (5) Business Days after the execution thereof a certificate of a Responsible Officer of Borrower, in form and substance reasonably satisfactory to Bank, certifying that all of the requirements set forth in this definition have been satisfied or will be satisfied on or prior to the consummation of such acquisition. Notwithstanding the foregoing and for the avoidance of doubt, in no event shall Borrower or any of its Subsidiaries assume any liabilities with respect to any acquisition, including without limitation, any Permitted Indebtedness, in excess of Fifteen Million Dollars (\$15,000,000) in aggregate outstanding at any time for such Permitted Acquisitions.

**"Permitted Call Spread Agreements"** means (a) any call option transaction (including, but not limited to, any bond hedge transaction or capped call transaction) pursuant to which the Borrower acquires an option requiring the counterparty thereto to deliver to the Borrower shares of common stock of the Borrower (or other securities or

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property following a merger event or other change of the common stock of the Borrower), the cash value thereof or a combination thereof from time to time upon exercise of such option entered into by the Borrower in connection with the issuance of Permitted Convertible Debt (such transaction, a **"Bond Hedge Transaction"**) and (b) any issued warrants to acquire common stock of the Borrower (or other securities or property following a merger event or other change of the common stock of the Borrower) (whether such warrant is settled in shares, cash or a combination thereof) issued by the Borrower in connection with the issuance of Permitted Convertible Debt and sold by Borrower substantially concurrently with any purchase by Borrower of a Bond Hedge Transaction and settled in (such transaction, a **"Warrant Transaction"**); *provided* that (i) the terms, conditions and covenants of each such call option transaction are customary for agreements of such type, as determined by the Board (or a committee thereof) in good faith, (ii) the purchase price for such Bond Hedge Transaction, less the proceeds received by the Borrower from the sale of any related Warrant Transaction, does not exceed the net proceeds received by the Borrower from the issuance of the related Permitted Convertible Indebtedness at the time of such purchase, and (iii) in the case of clause (b) above, such warrants would be classified as an equity instrument in accordance with GAAP.

**"Permitted Convertible Debt"** means any unsecured notes issued by the Borrower that are convertible into a fixed number (subject to customary anti-dilution adjustments, "make-whole" increases and other customary changes thereto) of shares of common stock of the Borrower (or other securities or property following a merger event or other change of the common stock of the Borrower), cash or any combination thereof (with the amount of such cash or such combination determined by reference to the market price of such common stock or such other securities); *provided* that such Indebtedness must satisfy each of the following conditions: (i) both immediately prior to and after giving effect (including pro forma effect) to the issuance thereof, no Default or Event of Default shall exist or result therefrom, (ii) such Indebtedness matures after, and does not require any scheduled amortization or other scheduled or otherwise required payments of principal prior to, or have a scheduled maturity date earlier than, the date that is ninety one (91) calendar days after the Term Loan Maturity Date and prior to that date, does not provide for or require any payments of principal or any other payments with the exception of semi-annual interest payments, obligations to settle conversions, redemption rights (which, for the avoidance of doubt, will be subject to Section 6.7) and customary obligations to offer to repurchase the notes upon the occurrence of a "fundamental change", (iii) any cross-default or cross-acceleration event of default (each howsoever defined) provision contained therein that relates to indebtedness or other payment obligations of Borrower (or any of its Subsidiaries) (such indebtedness or other payment obligations, a **"Cross-Default Reference Obligation"**) contains a cure period of at least thirty (30) calendar days (after written notice to the issuer of such Indebtedness by the trustee or to such issuer and such trustee by holders of at least 25% in aggregate principal amount of such Indebtedness then outstanding) before a default, event of default, acceleration or other event or condition under such Cross-Default Reference Obligation results in an event of default under such cross-default or cross-acceleration provision, (iv) the terms, conditions and covenants (other than pricing terms determined through a customary marketing process) of such Indebtedness must be customary for convertible Indebtedness of such type at the time of issuance (as determined by the Board, or a committee thereof, in good faith) and, (v) such Indebtedness is not guaranteed by any Subsidiary of the Borrower unless the Obligations are guaranteed by such Subsidiary on a secured basis. For the avoidance of doubt, and without limitation of the foregoing, Permitted Convertible Debt shall at all times be valued at the full stated principle amount thereof and shall not include any reduction or appreciation in value of the shares deliverable upon conversion thereof.

**"Permitted Foreign Subsidiary Accounts"** is defined in Section 5.9(a).

**"Permitted Hedging Agreement"** means any currency agreement, all rate swap transactions or other contract or arrangement designed solely to protect a Person against fluctuations in currency exchange rates and interest rate risk, and any confirmation executed in connection with any such agreement, contract, or arrangement, in each case, entered into by Borrower or any of its Subsidiaries solely to hedge or mitigate the risks of foreign exchange rate fluctuations and interest rate risk and not for any speculative or other purposes; *provided* that such agreement, contract or arrangement shall comply in all respects with the hedging policies or guidelines as are approved by the Board or as are approved by Bank (such approval not to be unreasonably withheld, delayed or conditioned); *provided further*, that all accrued and reasonably expected liabilities of Borrower or its Subsidiaries arising under Permitted Hedging Agreements shall not exceed One Million Dollars (\$1,000,000) in the aggregate at

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any time. For the avoidance of doubt, no Permitted Call Spread Agreement shall constitute a Permitted Hedging Agreement.

**"Permitted Indebtedness"** is:

- (a) Borrower's Indebtedness to Bank under this Agreement, the other Loan Documents and under any other agreement with Bank;
  - (b) Indebtedness existing on the Effective Date which is shown on the Perfection Certificate;
  - (c) Subordinated Debt;
  - (d) unsecured Indebtedness to trade creditors incurred in the ordinary course of business;
  - (e) Indebtedness incurred as a result of endorsing negotiable instruments received in the ordinary course of business;
  - (f) Indebtedness secured by Liens permitted under clauses (a) and (c) of the definition of "Permitted Liens" hereunder;
  - (g) other unsecured Indebtedness not otherwise permitted by Section 6.4 not exceeding Two Hundred Fifty Thousand Dollars (\$250,000.00) in the aggregate outstanding at any time;
  - (h) Indebtedness with respect to credit cards maintained with American Express, not to exceed Five Hundred Thousand Dollars (\$500,000) outstanding at any time;
  - (i) Permitted Hedging Agreements;
  - (j) intercompany Indebtedness by and among Borrower and its Subsidiaries (subject to "Permitted Investments" part (g)(i));
  - (k) Indebtedness in respect of letters of credit, bank guarantees and similar instruments issued for the account of Borrower and/or its Subsidiaries in the ordinary course of business not to exceed Seven Hundred Fifty Thousand Dollars (\$750,000) outstanding at any time;
  - (l) advances or deposits received in the ordinary course of business from customers or vendors;
  - (m) Indebtedness in respect of netting services, overdraft protections, payment processing, automatic clearinghouse arrangements, arrangements in respect of pooled deposit or sweep accounts, check endorsement guarantees, and otherwise in connection with deposit accounts or cash management services and Indebtedness arising in connection with automated clearing house transfer of funds or the use of other payment processing services;
  - (n) Indebtedness arising in connection with the financing of insurance premiums in the ordinary course of business not to exceed Seven Hundred Fifty Thousand Dollars (\$750,000) outstanding at any time;
  - (o) Indebtedness in respect of performance bonds, bid bonds, appeal bonds, surety bonds, completion guarantees and similar obligations arising in the ordinary course of business not to exceed Seven Hundred Fifty Thousand Dollars (\$750,000) in the aggregate outstanding at any time;
  - (p) Unsecured Indebtedness in connection with Permitted Acquisitions, not to exceed Fifteen Million Dollars (\$15,000,000) in aggregate outstanding at any time;
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(q) Permitted Convertible Debt in aggregate principal amount not to exceed Two Hundred Fifty Million Dollars (\$250,000,000) in principal amount at any time outstanding;

(r) Indebtedness of Borrower's Subsidiaries in connection with the sale of Inventory by Borrower to its Subsidiaries in the ordinary course of business, which may from time to time be forgiven by Borrower;

(s) purchase price adjustments, indemnity payments and earn-out obligations in connection with any Permitted Acquisition (to the extent not in excess of the consideration limitations set forth in the definition thereof); and

(t) extensions, refinancings, modifications, amendments and restatements of any items of Permitted Indebtedness (a) through (s) above, provided that the principal amount thereof is not increased or the terms thereof are not modified to impose more burdensome terms upon Borrower or its Subsidiary, as the case may be.

**"Permitted Investments" are:**

(a) Investments (including, without limitation, Subsidiaries) existing on the Effective Date which are shown on the Perfection Certificate;

(b) (i) Investments consisting of cash and Cash Equivalents, and (ii) any other Investments permitted by Borrower's investment policy, as amended from time to time, provided that such investment policy (and any such amendment thereto) has been approved in writing by Bank, further provided that Bank hereby confirms approval of such investment policy delivered to Bank around the Effective Date;

(c) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of Borrower's business;

(d) Investments consisting of deposit and securities accounts (but only to the extent that Borrower or its Subsidiaries is permitted to maintain such accounts pursuant to Section 5.9 of this Agreement) in which Bank has a first priority perfected security interest (only if and to the extent required pursuant to Section 5.9 of this Agreement);

(e) Investments accepted in connection with Transfers permitted by Section 6.1;

(f) Investments consisting of the creation of a Subsidiary for the purpose of consummating a merger transactions and Permitted Acquisitions permitted by Section 6.3 of this Agreement, which is otherwise a Permitted Investment;

(g) Investments by Borrower in Subsidiaries that are not borrowers hereunder (or Guarantors), not to exceed (i) (x) Seven Million Five Hundred Thousand Dollars (\$7,500,000) in the aggregate in any fiscal year; and (y) Three Million Dollars (\$3,000,000) in any fiscal quarter, plus (ii) the ongoing day-to-day operations of such Subsidiaries in the ordinary course of business, so long as such (part (ii)) Investments are (A) made on a cost-plus basis, or (B) otherwise in accordance with transfer pricing arrangements, or (C) are otherwise approved in advance in writing by Bank;

(h) Investments by Borrower in any other co-borrower under this Agreement or Guarantor;

(i) Investments consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the ordinary course of business, and (ii) loans to employees, officers, directors, partners, managers and members relating to the purchase of equity securities of Borrower or its Subsidiaries pursuant to employee equity purchase plans or similar agreements approved by the Board;

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(j) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the ordinary course of business;

(k) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the ordinary course of business; provided that this paragraph (j) shall not apply to Investments of Borrower in any Subsidiary;

(l) Cash investments of up to One Million Dollars (\$1,000,000) per fiscal year, plus non-cash Investments in joint ventures or strategic alliances in the ordinary course of Borrower's business consisting of the non-exclusive licensing of technology, the development of technology or the providing of technical support;

(m) any Permitted Call Spread Agreements;

(n) Permitted Acquisitions;

(o) Investments not to exceed Five Million Dollars (\$5,000,000) per fiscal year to fund the expansion of Borrower and/or its Subsidiaries in (i) Japan, and/or (ii) any other jurisdiction as may be agreed by Bank (in its commercially reasonable discretion) and Borrower; and

(p) other Investments not otherwise enumerated in this defined term "Permitted Investments" not exceeding Five Hundred Thousand Dollars (\$500,000) in the aggregate during any fiscal year.

**"Permitted Liens" are:**

(a) Liens existing on the Effective Date which are shown on the Perfection Certificate or arising under this Agreement or the other Loan Documents;

(b) Liens for taxes, fees, assessments or other government charges or levies, either (i) not due and payable or (ii) being contested in good faith and for which Borrower maintains adequate reserves on Borrower's Books, provided that no notice of any such Lien has been filed or recorded under the Internal Revenue Code;

(c) purchase money Liens and equipment liens (i) on Equipment or software acquired or held by Borrower incurred for financing the acquisition of the Equipment or software securing no more than One Million Dollars (\$1,000,000) in the aggregate amount outstanding, or (ii) existing on Equipment or software when acquired, if the Lien is confined to the property and improvements and the proceeds of the Equipment or software;

(d) Liens of carriers, warehousemen, suppliers, or other Persons that are possessory in nature arising in the ordinary course of business so long as such Liens attach only to Inventory, securing liabilities in the aggregate amount not to exceed Two Hundred Fifty Thousand Dollars (\$250,000), and which are not delinquent or remain payable without penalty or which are being contested in good faith and by appropriate proceedings which proceedings have the effect of preventing the forfeiture or sale of the property subject thereto;

(e) Liens to secure payment of workers' compensation, employment insurance, old-age pensions, social security and other like obligations incurred in the ordinary course of business (other than Liens imposed by ERISA);

(f) Liens incurred in the extension, renewal or refinancing of the Indebtedness secured by Liens described in (a) through (c), but any extension, renewal or replacement Lien must be limited to the property encumbered by the existing Lien and the principal amount of the indebtedness may not increase;

(g) leases or subleases of real property granted in the ordinary course of Borrower's business (or, if referring to another Person, in the ordinary course of such Person's business), and leases, subleases, non-exclusive licenses or sublicenses of personal property (other than Intellectual Property) granted in the ordinary

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course of Borrower's business (or, if referring to another Person, in the ordinary course of such Person's business), if the leases, subleases, licenses and sublicenses do not prohibit granting Bank a security interest therein;

(h) (i) non-exclusive licenses of Intellectual Property granted to third parties in the ordinary course of business, (ii) licenses of Intellectual Property that could not reasonably be expected to result in a legal transfer of title of the licensed property that may be exclusive in respects of territory (as to discreet geographical areas inside and outside of the United States), and (iii) licenses existing on the Effective Date and disclosed on the Perfection Certificate;

(i) customary Liens of any bank in connection with statutory, common law and contractual rights of setoff and recoupment with respect to any deposit account or securities account of Borrower, provided that (i) Bank has a first priority perfected security interest in such account (if perfection is required pursuant to Section 5.9 of this Agreement), and (ii) such account is permitted to be maintained pursuant to Section 5.9 of this Agreement;

(j) Liens arising from attachments or judgments, orders, or decrees in circumstances not constituting an Event of Default under Sections and 7.7;

(k) deposits under real property leases that are made in the ordinary course of business not to exceed Seven Hundred Fifty Thousand Dollars (\$750,000) at any time;

(l) easements, rights-of-way, restrictions and other similar encumbrances affecting real property which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Person;

(m) other Liens (not otherwise enumerated in this defined term) not exceeding One Hundred Thousand Dollars (\$100,000) in the aggregate outstanding at any time;

(n) Liens in respect of performance bonds, bid bonds, appeal bonds, surety bonds, completion guarantees and similar obligations arising in the ordinary course of business not to exceed Seven Hundred Fifty Thousand Dollars (\$750,000) in the aggregate outstanding at any time; and

(o) Liens on cash and Cash Equivalents securing obligations under Permitted Hedging Agreements.

"Person" is any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

"Prepayment Fee" is a fee due upon prepayment (whether voluntary or otherwise) of the Term Loan Advance in full equal to (i) one and a half percent (1.50%) of the aggregate original principal amount of the Term Loan Advance made by Bank to Borrower hereunder, if such prepayment occurs within eighteen (18) months of the Third Amendment Effective Date, (ii) zero percent (0.00%) of the aggregate original principal amount of the Term Loan Advance made by Bank to Borrower hereunder if such prepayment occurs on or at any time after the date that is eighteen (18) months after the Third Amendment Effective Date but prior to the Term Loan Maturity Date ~~-equal to two percent (2.00%) of the aggregate principal amount of the Term Loan Advance being prepaid on such date, provided, however, that no such Prepayment Fee is accrued or payable to Bank, and such Prepayment Fee is waived by Bank (i) with respect to the Term Loan Advance (as defined in the Agreement prior to the First Amendment Effective Date) prepaid on or around the First Amendment Effective Date, and (ii) if any such prepaid Term Loan Advance is refinanced through a new credit facility provided by Bank.~~

"Prime Rate" is set forth on Schedule I hereto.

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"**Prime Rate Margin**" is set forth on Schedule I hereto.

"**Qualified Cash**" means the amount of the Borrower and its Subsidiaries cash and Cash Equivalents held with Bank and/or Banks' Affiliates and/or in accounts subject to a Control Agreement in favor of Bank;

"**Quarterly Financial Statements**" is defined in Section 5.3(c).

~~"**Quick Assets**" is, on any date, Borrower's unrestricted and unencumbered cash and Cash Equivalents, including, for the avoidance of doubt, balances in the Cash Collateral Account, and Eligible Accounts.~~

"**Redemption Conditions**" means, with respect to any redemption by the Borrower of any Permitted Convertible Debt, satisfaction of each of the following events: (a) no Event of Default shall exist or result therefrom, (b) both immediately before and after such redemption, Borrower's Qualified Cash shall be no less than the amount required to prepay the outstanding Obligations in full at the time of such redemption, including all outstanding principal of the Term Loans, the accrued and unpaid interest thereon, ~~the Final Payment,~~ and the Prepayment Fee (provided, however, for the avoidance of doubt no such prepayment is required at such time), and (c) both immediately before and after such redemption, Borrower's Remaining Months Liquidity shall be no less than twelve (12).

"**Registered Organization**" is any "registered organization" as defined in the Code with such additions to such term as may hereafter be made.

"**Remaining Months Liquidity**" means Qualified Cash divided by Adjusted EBITDA (measured on a trailing twelve (12) month basis).

"**Representatives**" is defined in Section 11.8.

~~"**Reserves**" means, as of any date of determination, such amounts as Bank may from time to time establish and revise in its commercially reasonable discretion, reducing the amount of Advances and other financial accommodations which would otherwise be available to Borrower (a) to reflect events, conditions, contingencies or risks which, as determined by Bank in its commercially reasonable discretion, do or may adversely affect (i) the Collateral or any other property which is security for the Obligations or its value (including without limitation any increase in delinquencies of Accounts), (ii) the assets, business or prospects of Borrower or any Guarantor, or (iii) the security interests and other rights of Bank in the Collateral (including the enforceability, perfection and priority thereof); or (b) to reflect Bank's reasonable belief that any collateral report or financial information furnished by or on behalf of Borrower or any Guarantor to Bank is or may have been incomplete, inaccurate or misleading in any material respect; or (c) in respect of any state of facts which Bank determines in its commercially reasonable discretion constitutes a Default or an Event of Default.~~

"**Responsible Officer**" is any of the Chief Executive Officer, President, Chief Financial Officer, Chief Legal Officer, and Controller of Borrower.

"**Restricted License**" is any material license or other material agreement with respect to which Borrower is the licensee (a) that prohibits or otherwise restricts Borrower from granting a security interest in Borrower's interest in such license or agreement or any other property, or (b) for which a default under or termination of could interfere with Bank's right to sell any material Collateral.

~~"**Revolving Line**" is set forth on Schedule I hereto.~~

~~"**Revolving Line Maturity Date**" is set forth on Schedule I hereto.~~

"**Sanctioned Person**" means a Person that: (a) is listed on any Sanctions list maintained by OFAC or any similar Sanctions list maintained by any other Governmental Authority having jurisdiction over Borrower; (b) is located, organized, or resident in any country, territory, or region that is the subject or target of Sanctions; or (c) is

fifty percent (50.0%) or more owned or controlled by one (1) or more Persons described in clauses (a) and (b) hereof.

"**Sanctions**" means the economic sanctions laws, regulations, embargoes or restrictive measures administered, enacted or enforced by the United States government and any of its agencies, including, without limitation, OFAC and the U.S. State Department, or any other Governmental Authority having jurisdiction over Borrower.

"**SEC**" is the Securities and Exchange Commission, any successor thereto, and any analogous Governmental Authority.

"**Securities Account**" is any "securities account" as defined in the Code with such additions to such term as may hereafter be made.

~~"**Streamline Balance**" is defined in the definition of Streamline Period.~~

~~"**Streamline Period**" is, on and after the First Amendment Effective Date, provided no Event of Default has occurred and is continuing, the period (a) commencing on the first (1st) day of the month following the day that Borrower provides to Bank a written report that Borrower has, for the immediately preceding month, measured at month end (only when Advances are outstanding or are being requested by Borrower), as determined by Bank in its commercially reasonable discretion, an Adjusted Quick Ratio in an amount as of such measurement date of greater than or equal to 1.50 to 1.00 (the "**Streamline Balance**"); and (b) terminating on the earlier to occur of (i) the occurrence of an Event of Default, and (ii) the first month end measured thereafter in which Borrower fails to maintain the Streamline Balance, as determined by Bank in its commercially reasonable discretion. Upon the termination of a Streamline Period, Borrower shall maintain the Streamline Balance each month end for one (1) fiscal quarter, as determined by Bank in its commercially reasonable discretion, prior to entering into a subsequent Streamline Period. Borrower shall give Bank prior written notice of Borrower's election to enter into any such Streamline Period, and each such Streamline Period shall commence on the first (1st) day of the monthly period following the date Bank determines, in its commercially reasonable discretion, that the Streamline Balance has been achieved.~~

"**Subordinated Debt**" is indebtedness incurred by Borrower or any of its Subsidiaries subordinated to all of Borrower's or any of its Subsidiaries' now or hereafter indebtedness to Bank (pursuant to a subordination, intercreditor, or other similar agreement in form and substance satisfactory to Bank entered into between Bank and the other creditor), on terms acceptable to Bank. For the avoidance of doubt, Permitted Convertible Debt shall not constitute Subordinated Debt.

"**Subsidiary**" is, as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock, partnership, membership, or other ownership interest or other equity securities having ordinary voting power (other than stock, partnership, membership, or other ownership interest or other equity securities having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person. Unless the context otherwise requires, each reference to a Subsidiary herein shall be a reference to a Subsidiary of Borrower or Guarantor.

"**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.

"**Term Loan Advance**" is defined in Section 1.1(a) of this Agreement.

"**Term Loan Amortization Date**" is set forth on Schedule I hereto.

"**Term Loan Availability Amount**" is set forth on Schedule I hereto.

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"Term Loan Maturity Date" is set forth on Schedule I hereto.

"Third Amendment Effective Date" means November 8, 2024.

~~"Termination Fee" is defined in Section 1.2(e).~~

~~"Total Liabilities" is on any day, obligations that should, under GAAP, be classified as liabilities on Borrower's consolidated balance sheet, including all Indebtedness, but excluding all Subordinated Debt.~~

"Trademarks" means, with respect to any Person, any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of such Person connected with and symbolized by such trademarks.

"Transfer" is defined in Section 6.1.

~~"Uncommitted Accordion" is defined in Section 1.1(a) of this Agreement.~~

"USA Patriot Act" means the "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001" (Public Law 107-56, signed into law on October 26, 2001), as amended from time to time.

[Signature page follows]

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

**BORROWER:**

**SI-BONE, INC.**

By: \_\_\_\_\_

Name: Anshul Maheshwari

Title: Chief Financial Officer

**BANK:**

**SILICON VALLEY BANK**

By: \_\_\_\_\_

Name: ~~Mark Davis~~Matt Perry

Title: ~~Vice President~~Managing Director

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**SCHEDULE I**

**LSA PROVISIONS**

<b>LSA Section</b>	<b>LSA Provision</b>
<del>1.1A(a) — Revolving Line — Availability</del>	<del>Amounts borrowed under the Revolving Line may be prepaid or repaid and, prior to the Revolving Line Maturity Date, reborrowed, subject to the applicable terms and conditions precedent herein, without penalty or premium.</del>
1.1(a) – Term Loan – Availability	The initial Term Loan Advance must be in an amount equal to the initial Term Loan Availability Amount available on the <del>First</del> <u>Third</u> Amendment Effective Date <del>(excluding the Uncommitted Accordion, for the avoidance of doubt)</del> . After repayment, the Term Loan Advance (or any portion thereof) may not be reborrowed.
1.1(b) – Term Loan – Repayment	Commencing on the Term Loan Amortization Date, and continuing on each Payment Date thereafter until the Term Loan Advance is paid in full, Borrower shall repay the outstanding Term Loan Advance in (i) <del>thirty</del> <u>twenty-four (24)</u> equal monthly installments of principal, <u>which shall reduce to twelve (12) equal monthly installments of principal upon the occurrence of the Performance Milestone</u> plus (ii) monthly payments of accrued interest in accordance with Section 1.2(a)(ii) at the rate set forth in Section 1.2(b)(ii).
<del>1.2(a)(i) — Interest Payments — Advances</del>	<del>Interest on the outstanding principal amount of each Advance is payable in arrears monthly (A) on each Payment Date, (B) on the date of any prepayment and (C) on the Revolving Line Maturity Date.</del>
1.2(a)(ii) – Interest Payments – Term Loan Advances	Interest on the outstanding principal amount of the Term Loan Advance is payable in arrears monthly (i) on each Payment Date commencing on the first Payment Date following the Funding Date of each such Term Loan Advance, (ii) on the date of any prepayment of the Term Loan Advance, and (iii) on the Term Loan Maturity Date.
<del>1.2(b)(i) — Interest Rate — Advances</del>	<del>The outstanding principal amount of any Advance shall accrue interest at a floating rate per annum equal to the greater of (A) six and one quarter of one percent (6.25%) and (B) the Prime Rate plus the applicable Prime Rate Margin, which interest shall be payable in accordance with Section 1.2(a)(i).</del>
1.2(b)(ii) – Interest Rate – Term Loan Advances	The outstanding principal amount of the Term Loan Advance shall accrue interest at a floating rate per annum equal to the greater of (A) <del>six</del> <u>four</u> and <del>three-quarters</del> <u>one quarter</u> of one percent ( <del>6.75</del> <u>4.25</u> %) and (B) the Prime Rate <del>plus</del> <u>minus</u> the applicable Prime Rate Margin, which interest shall be payable in accordance with Section 1.2(a)(ii).



1.2(e) – Interest Computation	Interest shall be computed on the basis of the actual number of days elapsed and a 360-day year for any Credit Extension outstanding.
<del>1.3(e) – Revolving Line Commitment Fee</del>	<del>A fully earned, non-refundable commitment fee of (i) Seventy-Five Thousand Dollars (\$75,000) on the First Amendment Effective Date, (ii) Seventy-Five Thousand Dollars (\$75,000) on the first anniversary of the First Amendment Effective Date, and (iii) Thirty-Seven Thousand Five Hundred (\$37,500) on the second anniversary of the First Amendment Effective Date.</del>
12.2 – “Borrower”	“ <b>Borrower</b> ” means (i) <b>SI-BONE, INC.</b> , a Delaware corporation.
12.2 – “Effective Date”	“ <b>Effective Date</b> ” is August 12, 2021.
12.2 – “Payment Date”	“ <b>Payment Date</b> ” is <del>(a) with respect to Term Loan Advances,</del> the first (1st) calendar day of each month <del>and (b) with respect to Advances, the last calendar day of each month.</del>
12.2 – “Prime Rate”	“ <b>Prime Rate</b> ” is the rate of interest per annum from time to time published in the money rates section of <u>The Wall Street Journal</u> or any successor publication thereto as the “prime rate” then in effect; provided that if such rate of interest, as set forth from time to time in the money rates section of <u>The Wall Street Journal</u> , becomes unavailable for any reason as determined by Bank, the “Prime Rate” shall mean the rate of interest per annum announced by Bank as its prime rate in effect at its principal office in the State of California (such Bank announced Prime Rate not being intended to be the lowest rate of interest charged by Bank in connection with extensions of credit to debtors); provided that, in the event such rate of interest is less than zero percent (0.0%) per annum, such rate shall be deemed to be zero percent (0.0%) per annum for purposes of this Agreement.
12.2 – “Prime Rate Margin”	“ <b>Prime Rate Margin</b> ” is <del>(a) for Advances, (i) zero percent (0.00%), and (b) for Term Loan Advances, one half of one percent (0.50%).</del>
<del>12.2 – “Revolving Line”</del>	<del>“<b>Revolving Line</b>” is an aggregate principal amount equal to Fifteen Million Dollars (\$15,000,000).</del>
12.2 – “Term Loan Amortization Date”	“ <b>Term Loan Amortization Date</b> ” is <u>July</u> <del>October</del> 1, <del>2025</del> <u>2027</u> ; <u>provided that upon the occurrence of the Performance Milestone, the Term Loan Amortization Date shall become October 1, 2028.</u>
<del>12.2 – “Revolving Line Maturity Date”</del>	<del>“<b>Revolving Line Maturity Date</b>” is the date that is thirty (30) months after the First Amendment Effective Date.</del>

12.2 – “Term Loan Availability Amount”	<b>“Term Loan Availability Amount”</b> is Thirty-Six Million Dollars (\$36,000,000); <del>provided however, upon Borrower’s request, if Bank, in its sole and absolute discretion, grant Borrower’s request to make the Uncommitted Accordion available to Borrower, then “Term Loan Availability Amount” shall mean an aggregate principal amount equal to Fifty-One Million Dollars (\$51,000,000).</del>
12.2 – “Term Loan Maturity Date”	<b>“Term Loan Maturity Date”</b> is <del>December</del> <a href="#">September</a> 1, <del>2027</del> <a href="#">2029</a> .

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**EXHIBIT A**

**COMPLIANCE STATEMENT**

TO: SILICON VALLEY BANK, A DIVISION OF FIRST-CITIZENS BANK & TRUST COMPANY Date: \_\_\_\_  
FROM: SI-BONE, INC.

Under the terms and conditions of the Loan and Security Agreement between Borrower and Bank (as amended, modified, supplemented and/or restated from time to time, the " **Agreement**"), Borrower is in complete compliance for the period ending \_\_\_\_\_ with all required covenants except as noted below. Attached are the required documents evidencing such compliance, setting forth calculations prepared in accordance with GAAP consistently applied from one period to the next except as explained in an accompanying letter or footnotes (and except for with respect to unaudited financial statements for the absence of footnotes and subject to year-end audit adjustments). Capitalized terms used but not otherwise defined herein shall have the meanings given them in the Agreement.

**Please indicate compliance status by circling Yes/No under "Complies" column.**

<b>Reporting Covenants</b>	<b>Required</b>	<b>Complies</b>
Quarterly Financial Statements with Compliance Statement	Quarterly within 45 days and FYE within 90 days	Yes No
Annual financial statements (CPA Audited)	FYE within 180 days	Yes No
10-Q, 10-K and 8-K	Within 5 Business Days after filing with SEC	Yes No N/A
Board approved projections	FYE within 30 days and within 30 days, as amended/updated, in each case as approved by the Board	Yes No
<del>Borrowing Base Reports</del>	<del>When Advances are outstanding or are being requested, weekly on Friday of each week if an Streamline Period is not in effect; monthly within 30 days of month End if and Streamline Period is in effect; and with each Advance</del>	<del>Yes No</del>
<del>A/R &amp; A/P Agings and Deferred Revenue reports</del>	<del>When Advances are outstanding or are being requested, monthly within 30 days</del>	<del>Yes No</del>
Have there been any material amendments to the Operating Documents of Borrower? If yes, provide copies of any such amendments or changes with this Compliance Statement	N/A	Yes No

<del>Streamline Period (Measured only when Advances are outstanding or are being requested by Borrower)</del>	<del>Applies</del>
<del>Adjusted Quick Ratio <math>\geq</math> 1.50 to 1.00</del>	<del>Yes No</del>
<del>Adjusted Quick Ratio <math>&lt;</math> 1.50 to 1.00</del>	<del>Yes No</del>

The following are the exceptions with respect to the statements above: (If no exceptions exist, state "No exceptions to note.")

Compliance Status: Yes No

**Schedule 1 to Compliance Statement**

**Financial Covenants of Borrower**

In the event of a conflict between this Schedule and the Agreement, the terms of the Agreement shall govern.

I. **Minimum Net Revenue** (Section 5.10)

Required: ~~When a Financial Covenant Measuring Period is in effect~~ Commencing on June 30, 2025, Borrower shall achieve Net Revenue as required by Section 5.10 and set forth below (pursuant to the amendment(s) required under Section 5.10):

Measuring Period Ending	Minimum Net Revenue (measured on a trailing 6 month basis)
[]	\$[]
[]	\$[]
[]	\$[]
[]	\$[]

Actual: \$ \_\_\_\_\_

Is Borrower's Net Revenue (measured on a trailing 6 month basis) greater than or equal to the required amount for the corresponding measuring period set forth in the chart above?

☐ No, not in compliance      ☐ Yes, in compliance

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**EXHIBIT B**

**LOAN PAYMENT/ADVANCE REQUEST FORM**

**Deadline for same day processing is Noon Pacific Time**

fax to: Date: \_\_\_\_\_

**Loan Payment:**

SI-BONE, INC.

From Account # \_\_\_\_\_ To Account \_\_\_\_\_  
(Deposit Account #) (Loan Account #)

Principal \$ \_\_\_\_\_ and/or Interest \$ \_\_\_\_\_

Authorized Signature:\_\_\_ Phone Number: \_\_

Print Name/Title: \_\_

**Loan Advance:**

Complete *Outgoing Wire Request* section below if all or a portion of the funds from this loan advance are for an outgoing wire.

From Account # \_\_\_\_\_ To Account # \_\_\_\_\_  
(Loan Account #) (Deposit Account #)

Amount of Term Loan Advance \$ \_\_\_\_\_

All Borrower's representations and warranties in the Loan and Security Agreement are true, correct and complete in all material respects on the date of the request for an advance; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true and correct in all material respects as of such date:

Authorized Signature:\_\_\_ Phone Number: \_\_

Print Name/Title: \_\_

**outgoing wire request:**

**Complete only if all or a portion of funds from the loan advance above is to be wired.**

Deadline for same day processing is noon, Pacific Time

Beneficiary Name: \_\_\_\_\_ Amount of Wire: \$\_\_

Beneficiary Bank: \_\_\_\_\_ Account Number: \_\_

City and State: \_\_

Beneficiary Bank Transit (ABA) #: \_\_ Beneficiary Bank Code (Swift, Sort, Chip, etc.): \_\_  
**(For International Wire Only)**

Intermediary Bank: \_\_ Transit (ABA) #: \_\_

For Further Credit to: \_\_

Special Instruction: \_\_

*By signing below, I (we) acknowledge and agree that my (our) funds transfer request shall be processed in accordance with and subject to the terms and conditions set forth in the agreements(s) covering funds transfer service(s), which agreements(s) were previously received and executed by me (us).*

Authorized Signature: \_\_ 2<sup>nd</sup> Signature (if required): \_\_

Print Name/Title: \_\_ Print Name/Title: \_\_

Telephone #: \_\_ Telephone #: \_\_







**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER**  
**Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

I, Laura A. Francis, certify that:

1. I have reviewed this Form 10-Q of SI-BONE, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) 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 that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ Laura A. Francis

Date: November 12, 2024

\_\_\_\_\_  
Laura A. Francis  
Chief Executive Officer  
(Principal Executive Officer)

**CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER**  
**Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

I, Anshul Maheshwari, certify that:

1. I have reviewed this Form 10-Q of SI-BONE, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) 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 that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 12, 2024

\_\_\_\_\_  
/s/ Anshul Maheshwari  
Anshul Maheshwari  
Chief Financial Officer  
(Principal Financial and Accounting Officer)

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER AND PRINCIPAL FINANCIAL OFFICER

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

Pursuant to the requirement set forth in Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended, (the "Exchange Act") and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. §1350), Laura A. Francis, Chief Executive Officer of SI-BONE, Inc. (the "Company"), and Anshul Maheshwari, Chief Financial Officer of the Company, each hereby certifies that, to the best of his or her knowledge:

- 1. The Company's Quarterly Report on Form 10-Q for the period ended September 30, 2024, to which this Certification is attached as Exhibit 32.1 (the "Periodic Report"), fully complies with the requirements of Section 13(a) or Section 15(d) of the Exchange Act; and
- 2. The information contained in the Periodic Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 12, 2024

/s/ Laura A. Francis

Laura A. Francis

Chief Executive Officer

(Principal Executive Officer)

Date: November 12, 2024

/s/ Anshul Maheshwari

Anshul Maheshwari

Chief Financial Officer

(Principal Financial and Accounting Officer)

This certification accompanies the Form 10-Q to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of SI-BONE, Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Form 10-Q), irrespective of any general incorporation language contained in such filing.