

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

---

**Form 10-K**

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

For the fiscal year ended **June 30, 2016**  
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 **001-33383**

---

**Super Micro Computer, Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**77-0353939**  
(I.R.S. Employer  
Identification No.)

**980 Rock Avenue**  
**San Jose, CA 95131**  
(Address of principal executive offices, including zip code)  
**(408) 503-8000**  
(Registrant's telephone number, including area code)

---

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

Title of each class	Name of each exchange on which registered
Common Stock, \$0.001 par value per share	The NASDAQ Stock Market LLC

**Securities registered pursuant to section 12(g) of the Act:**

None

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

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

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§229.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

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

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

Large accelerated filer

Accelerated filer

Non-accelerated filer  (Do not check if a smaller reporting company)

Smaller reporting company

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

The aggregate market value of the registrant's Common Stock held by non-affiliates, based upon the closing price of the Common Stock on December 31, 2015, as reported by the NASDAQ Global Select Market, was \$1,312,866,144. Shares of Common Stock held by each executive officer and director and by each person who owns 5% or more of the outstanding Common Stock, based on filings with the Securities and Exchange Commission, have been excluded since such persons may be deemed affiliates. This determination of affiliate status is not necessarily a conclusive determination for other purposes.

As of August 18, 2016 there were 48,656,429 shares of the registrant's common stock, \$0.001 par value, outstanding, which is the only class of common stock of the registrant issued.

**DOCUMENTS INCORPORATED BY REFERENCE**

None

---

**SUPER MICRO COMPUTER, INC.**  
**ANNUAL REPORT ON FORM 10-K**  
**FOR THE FISCAL YEAR ENDED JUNE 30, 2016**

**TABLE OF CONTENTS**

	<u>Page</u>
<b>PART I</b>	
Item 1. <a href="#">Business</a>	<a href="#">2</a>
Item 1A. <a href="#">Risk Factors</a>	<a href="#">9</a>
Item 1B. <a href="#">Unresolved Staff Comments</a>	<a href="#">22</a>
Item 2. <a href="#">Properties</a>	<a href="#">22</a>
Item 3. <a href="#">Legal Proceedings</a>	<a href="#">22</a>
Item 4. <a href="#">Mine Safety Disclosures</a>	<a href="#">22</a>
<b>PART II</b>	
Item 5. <a href="#">Market for Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities</a>	<a href="#">23</a>
Item 6. <a href="#">Selected Financial Data</a>	<a href="#">24</a>
Item 7. <a href="#">Management’s Discussion and Analysis of Financial Condition and Results of Operations</a>	<a href="#">26</a>
Item 7A. <a href="#">Quantitative and Qualitative Disclosures about Market Risk</a>	<a href="#">41</a>
Item 8. <a href="#">Financial Statements and Supplementary Data</a>	<a href="#">42</a>
Item 9. <a href="#">Changes in and Disagreements with Accountants on Accounting and Financial Disclosure</a>	<a href="#">75</a>
Item 9A. <a href="#">Controls and Procedures</a>	<a href="#">75</a>
Item 9B. <a href="#">Other Information</a>	<a href="#">78</a>
<b>PART III</b>	
Item 10. <a href="#">Directors, Executive Officers and Corporate Governance</a>	<a href="#">78</a>
Item 11. <a href="#">Executive Compensation</a>	<a href="#">84</a>
Item 12. <a href="#">Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters</a>	<a href="#">95</a>
Item 13. <a href="#">Certain Relationships and Related Transactions and Director Independence</a>	<a href="#">97</a>
Item 14. <a href="#">Principal Accountant Fees and Services</a>	<a href="#">98</a>
<b>PART IV</b>	
Item 15. <a href="#">Exhibits and Financial Statement Schedules</a>	<a href="#">99</a>
<a href="#">Signatures</a>	<a href="#">100</a>

*Unless the context requires otherwise, the words “Super Micro,” “Supermicro,” “we,” “Company,” “us” and “our” in this document refer to Super Micro Computer, Inc. and where appropriate, our wholly owned subsidiaries. Supermicro, the Company logo and our other registered or common law trademarks, service marks, or trade names appearing in this Annual Report on Form 10-K are the property of Super Micro Computer, Inc. or its affiliates. Other trademarks, service marks, or trade names appearing in this Annual Report on Form 10-K are the property of their respective owners.*

## SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

*This Annual Report on Form 10-K contains “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934, as amended that involve risks and uncertainties. These statements relate to future events or our future financial performance. In some cases, you can identify forward-looking statements by terminology including “would,” “could,” “may,” “will,” “should,” “expect,” “intend,” “plan,” “anticipate,” “believe,” “estimate,” “predict,” “potential,” or “continue,” the negative of these terms or other comparable terminology. In evaluating these statements, you should specifically consider various factors, including the risks described below, under “Item 1A Risk Factors”, and in other parts of this Form 10-K as well as in our other filings with the SEC. Moreover, we operate in a very competitive and rapidly changing environment. New risks emerge from time to time. It is not possible for our management to predict all risks, nor can we assess the impact of all factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements we may make. In light of these risks, uncertainties and assumptions, the future events and trends discussed in this Annual Report on Form 10-K may not occur and actual results could differ materially and adversely from those anticipated or implied in the forward-looking statements.*

*We undertake no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise, except as required by law. We cannot guarantee future results, levels of activity, performance or achievements. Given these risks and uncertainties, readers are cautioned not to place undue reliance on such forward-looking statements.*

### PART I

#### Item 1. Business

##### Overview

We are a global leader in high performance, high efficiency server technology and innovation. We develop and provide end-to-end green computing solutions to the cloud computing, data center, enterprise IT, big data, high performance computing, or HPC, and Internet of Things, or IoT, embedded markets. Our solutions range from complete server, storage, blade and workstations to full racks, networking devices, server management software and technology support and services. We offer our customers a high degree of flexibility and customization by providing what we believe to be the industry’s broadest array of server configurations from which they can choose the optimal solution which fits their computing needs. Our server systems, subsystems and accessories are architecturally designed to provide high levels of reliability, quality and scalability, thereby enabling our customers to benefit from improvements in compute performance, density, thermal management and power efficiency which lead to lower overall total cost of ownership.

We perform the majority of our research and development efforts in-house, which increases the efficiency of communication and collaboration between design teams, streamlines the development process and reduces time-to-market. We have developed a set of design principles which allow us to aggregate individual industry standard components and materials to develop proprietary products, such as serverboards, chassis, power supplies, networking and storage devices. This building block approach allows us to provide a broad range of SKUs, and enables us to build and deliver application-optimized solutions based upon customers’ requirements. As of June 30, 2016, we offered over 4,950 SKUs, including SKUs for server and storage systems, serverboards, chassis, power supplies and other system accessories.

We conduct our operations principally from our Silicon Valley headquarters in California and subsidiaries in Taiwan and the Netherlands. We sell our server systems and server subsystems and accessories through our direct sales force as well as through distributors, including value added resellers and system integrators, and OEMs. During fiscal year 2016, our products were purchased by over 800 customers in 100 countries. We commenced operations in 1993 and have been profitable every year since inception. For fiscal years 2016, 2015 and 2014, our net sales were \$2,215.6 million, \$1,991.2 million and \$1,467.2 million, respectively, and our net income was \$72.0 million, \$101.9 million and \$54.2 million, respectively.

##### The Super Micro Solution

We develop and manufacture high performance server solutions based upon an innovative, modular and open architecture. Our primary competitive advantages arise from how we use our integrated internal research and development organization coupled with our deep understanding of complex computing requirements to develop the intellectual property used in our server solutions. These competitive advantages have enabled us to develop a set of design principles and performance specifications that meet industry standard Server System Infrastructure, or SSI, requirements and also incorporate the advanced

functionality and capabilities required by our customers. We believe that our approach provides us with greater flexibility to quickly and efficiently develop new server solutions that are optimized for our customers' specific application requirements. Our modular architectural approach has allowed us to offer our customers what we believe to be the industry's largest array of server systems and subsystems and accessories with performance optimized for their unique applications.

### ***Flexible and Customizable Server Solutions***

We provide flexible and customizable server solutions to address the specific application needs of our customers. Our design principles allow us to aggregate industry standard components and materials to develop optimized server subsystems and accessories, such as serverboards, chassis and power supplies to deliver a broad range of products with superior features. We believe this building block approach allows us to provide a broad range of optimized solution SKUs.

### ***Rapid Time-to-Market***

We are able to reduce the design and development time required to incorporate the latest technologies into the next generation application optimized server solutions. Our in-house design competencies, control of the design of many of the components used within our server systems and our building block architecture enable us to rapidly develop, build and test server systems, subsystems and accessories with unique configurations. As a result, when new technologies are brought to market, we are generally able to quickly design, integrate and assemble solutions with little need to re-engineer other portions of our solution. Our efficient design capabilities allow us to offer our customers server solutions incorporating the latest technology with a better price-to-performance ratio. We work closely with the leading microprocessor vendors and other hardware and software suppliers to coordinate the design of our new products with their product release schedules, thereby enhancing our ability to rapidly introduce new products incorporating the latest technology.

### ***Improved Power Efficiency and Thermal Management***

We leverage advanced technology and system design expertise to reduce the power consumption of our server, blade, workstation and storage systems. We believe that we are an industry leader in power saving technology. Our server solutions include many design innovations to optimize power consumption and manage heat dissipation. We have designed flexible power management systems which customize or eliminate components in an effort to reduce overall power consumption. We have developed proprietary power supplies that can be integrated across a wide range of server system form factors which can significantly enhance power efficiency. We have also developed technologies that are specifically designed to reduce the effects of heat dissipation from our servers. Our thermal management technology allows our products to achieve a better price-to-performance ratio while minimizing energy costs and reducing the risk of server malfunction caused by overheating. We have also developed power management software that controls power consumption of server clusters by policy-based administration.

### ***High Density Servers***

Our servers are designed to enable customers to maximize computing power while minimizing the physical space utilized. We offer server systems with up to four times the density of conventional solutions, which allows our customers to efficiently deploy our server systems in scale-out configurations. Through our industry leading technology, we can offer significantly more memory, hard disk drive storage and expansion slots than traditional server systems with a comparable server form factor. For example, our FatTwin solutions contain eight or four full feature DP hot-pluggable compute nodes with NVMe support in a 4U server. The 8-node configuration provides high density and computing power for those compute-demanding applications, while the 4-node configuration offers up to 8 hot-pluggable 3.5" HDDs per U for those applications that require high storage capacity within a compact setting. This high density design is well suited for our customers that require highly space efficient solutions.

### **Strategy**

Our objective is to be the leading provider of application optimized, high performance server, storage and networking solutions worldwide. Achieving this objective requires continuous development and innovation of our solutions with better price performance and architectural advantages compared with both our prior generation of solutions and the solutions of our competitors as well as solutions which expand the breadth of our coverage of data center needs. We believe that many of these product innovations are gaining momentum based on the strong year-over-year revenue growth across these next-generation products. We believe that our strategy and our ability to innovate and execute may enable us to maintain our relative competitive position in many of our product areas and improve our competitive position in others while providing us with several long-term growth opportunities. Key elements of our strategy include:

### ***Maintain Our Time-to-Market Advantage***

We believe one of our major competitive advantages is our ability to rapidly incorporate the latest computing innovations into our products. We intend to maintain our time-to-market advantage by continuing our investment in our research and development efforts to rapidly develop new proprietary server, storage and networking solutions based on industry standard components. We plan to continue to work closely with technology partners such as Intel Corporation ("Intel"), Advanced Micro Devices, Inc. ("AMD") and Nvidia Corporation ("Nvidia"), among others, to develop products that are compatible with the latest generation of industry standard technologies. We believe these efforts will allow us to continue to offer products that lead in price for performance as each generation of computing innovations becomes available.

### ***Expand Our Product Offerings***

We plan to increase the number of products in server, storage and networking solutions that we offer to our customers. We plan to continue to improve the energy efficiency of our products by enhancing our ability to deliver improved power and thermal management capabilities, as well as servers and subsystems and accessories that can operate in increasingly dense environments.

### ***Enhance Our Software Management Solutions***

We have introduced and also plan to continue developing additional server, storage and networking management software capabilities as well as partner with certain software suppliers for software solutions that are integrated with our server products to enable our customers to simplify and automate the deployment, configuration and monitoring of our servers.

### ***Expand Our Service & Support Offerings***

We intend to continue to expand our customer service and support offerings and enable our customers to purchase service and support together with our complete server systems as total solution packages around the world. Our service and support is designed to help our customers improve uptime, reduce costs and enhance the productivity of their investment in our products. We believe that continued enhancement of these offerings will support the continued growth of our business and increase our penetration with enterprise customers.

### ***Further Optimize Our Global Operating Structure***

We plan to continue to increase our overseas manufacturing capacity and logistics capabilities in the Netherlands and Taiwan and continue our effort toward optimizing the efficiency of our global tax structure by expanding our reach geographically in order to more efficiently serve our customers and lower our manufacturing and tax costs.

### ***Deepen Our Relationships with Suppliers and Manufacturers***

Our efficient supply chain and combined internal and outsourced manufacturing allow us to build systems to order that are customized, while minimizing costs. We plan to continue leveraging our relationships with suppliers and contract manufacturers in order to maintain and improve our cost structure as we benefit from economies of scale. We intend to continue to source non-core products from external suppliers. We also believe that as our solutions continue to gain greater market acceptance, we will generate growing and recurring business for our suppliers and contract manufacturers. We believe this increased volume will enable us to receive better pricing. We believe that a highly disciplined approach to cost control is critical to success in our industry. For example, we continue to maintain our warehousing capacity in Asia through our relationship with Ablecom Technology, Inc. ("Ablecom"), one of our major contract manufacturers and a related party, so that we continue to deliver products to our customers in Asia and elsewhere more quickly and in higher volumes.

## **Products**

We offer a broad range of application optimized server solutions, including storage, rackmount and blade server systems and subsystems and accessories which customers can use to build complete server systems.

### ***Server Systems***

We sell server systems in rackmount, standalone tower, blade, Twin and multi-node form factors. As of June 30, 2016, we offered over 1,200 different server systems. A summary of some of our server systems are listed below:

Our GPU/Xeon Phi optimized server systems in 1U, 2U, 4U, 7U and blade platforms achieve higher parallel processing capability with Intel's Many Integrated Core, or MIC, architecture based on Xeon Phi and are designed to provide high performance in calculation intensive applications.

Our IoT/embedded server systems are compact, smart, and secure products that reside on the edge of the network, connecting smart sensors and devices to the cloud over wireless or local networks (ex. LAN, WiFi, 3G, Zigbee and RF). These server systems are built on open architecture to ensure interoperability between systems, for ease of services deployment, and enable a broad ecosystem of solution providers. The IoT/embedded server systems enable users to securely aggregate, share, and filter data for analysis. These server systems help ensure that data generated by devices can travel securely and safely from the edge to the cloud and back - without replacing existing infrastructure.

Our MicroCloud server systems are high density, multi-node UP servers with up to 24 hot-pluggable nodes in a compact 3U form factor. MicroCloud integrates advanced technologies within a compact functional design to deliver high performance in environments with space and power limitations. These combined features provide a cost-effective solution for IT professionals implementing new hosting architectures for SMB and Public/Private Cloud Computing applications.

Our SuperBlades and MicroBlades are designed to share a common computing infrastructure, thereby saving additional space and power. We believe that our SuperBlade and MicroBlade server systems provide industry leading density, memory expandability, reliability, price-to-performance per square foot and energy saving server solutions for dedicated hosting, web front end, cloud computing services, content delivery and social networking.

Our SuperStorage solutions in 2U, 3U and 4U platforms provide high density storage solutions while leveraging high efficiency power to maximize performance-per watt savings to reduce total cost of ownership, or TCO, for enterprise Data Centers, Big Data and other high performance applications. For example, we introduced over 50 new All-Flash NVME systems that deliver better performance and efficiency than traditional storage solutions, and our Simply Double SuperStorage systems that include twice the number of hot-swap bays as 2U industry standard systems, offer up to twice the storage capacity and IOPs in the same amount of space.

Our Twin architecture series of server systems including 1U and 2U Twin, 2U Twin<sup>2</sup>, 1U and 2U TwinPro and 4U FatTwin are optimized for density, performance and efficiency for customers' storage, HPC and cloud computing requirements.

Our Ultra Server systems in 1U and 2U platforms are designed to deliver performance, flexibility, scalability, and serviceability that are ideal for demanding enterprise workloads. They allow enterprise IT professionals the ability to easily qualify a single server platform that can easily be reconfigured for varieties of applications, to reduce qualification time and to manage the need for excessive spares inventories.

Our Data Center Optimized (DCO) server systems deliver superior performance-per-watt to optimize data center TCO with an improved thermal architecture utilizing power efficient components and offset processors to help eliminate CPU preheating and support a 5+ year product life cycle.

Our internally developed switch products 1G/10G/40G/100G Ethernet, InfiniBand and Omni Path switches for rack-mount servers not only help us to offer more complete solutions for our customers, but also generate additional revenues.

Our SuperRack server solutions offer a wide range of flexible accessory options including front, rear and side expansion units to provide modular solutions for system configuration. Data center, HPC computing and server farm customers can use us as a one-stop shop for all of their IT hardware needs. Our SuperRack offers easy installation and rear access with no obstructions for hot-swap devices, user-friendly cabling and cable identification, and effortless integration of our high density server, storage and blade systems.

### ***Server Software Management Solutions***

Our remote system management solutions, such as our Server Management suite, or SSM, including Supermicro Power Management software, or SPM, Supermicro Command Manager, or SCM, Supermicro Update Manager, or SUM, and SuperDoctor 5, or SD5, have been designed for server farm or data centers' system administration and management. These remote management software utilities provide the ability to manage large-scale servers and storage in an organization's IT infrastructure. SPM is designed specifically for HPC/Data Center cluster deployment and management. We have also partnered with certain software suppliers for software solutions that are integrated with our server systems.

## ***Server Subsystems and Accessories***

We believe we offer the largest array of modular server subsystems and accessories or building blocks in the industry that are sold off-the-shelf or built-to-order. These components are the foundation of our server solutions and span product offerings from the entry-level single and dual processor server segment to the high-end multi-processor market. The majority of the subsystems and accessories we sell individually are optimized to work together and are ultimately integrated into complete server systems.

### *Serverboards*

We design our serverboards with the latest chipset, networking technologies and infrastructure software. Each serverboard is designed and optimized to adhere to specific physical, electrical and design requirements in order to work with certain combinations of chassis and power supplies and achieve maximum functionality. For our rackmount server systems, we not only adhere to SSI specifications, but our customized specifications provide an advanced set of features that increase the functionality and flexibility of our products. As of June 30, 2016, we offered more than 600 SKUs for serverboards.

### *Chassis and Power Supplies*

Our chassis are designed to efficiently house our servers while maintaining interoperability, adhering to industry standards and increasing output efficiency through power supply design. We believe that our latest generation of power supplies achieves the maximum power efficiency available in the industry. Our power design technology reduces power consumption by increasing power efficiency to greater than 96%, which we believe is among the most efficient available in the industry. Our server chassis come with hot-plug, heavy-duty fans, fan speed control and an advanced air shroud design to maximize airflow redundancy. Our Powerstick design provides the slim form factor of a redundant power supply that increases system computing and storage density across our multiple product lines. As of June 30, 2016, we offered more than 550 SKUs for chassis and power supplies.

### *Other System Accessories*

As part of our server component offerings, we also offer other system accessories that our customers may require or that we use to build our server solutions. These other products include, among others, microprocessors, memory and disk drives that generally are third party developed and manufactured products that we resell without modification. As of June 30, 2016, we offered more than 2,600 SKUs for other system accessories.

## ***Supermicro Global Services***

The Supermicro Global Services is comprised of customer support services and hardware enhanced services. Our customer support organization provides ongoing maintenance and technical support for our products through our website and 24-hour continuous direct phone based support. Our hardware enhanced services organization provides help desk services and product on-site support for our server systems. Both customer support services and hardware enhanced services develop and implement services solutions for our direct and OEM customers as well as our distributors. Service is provided to our customers directly or through approved distributors and third-party partners.

*Support Services:* Our customer support services offer market competitive warranties, generally from one (1) to three (3) years, and warranty upgrade options for products sold by our direct sales team and approved distributors.

*Hardware Enhanced Services:* Our strategic direct and OEM customers may purchase a variety of on-site support service plans. We offer several levels of on-site support that vary depending on specific services, response times, coverage hours and duration, repair priority levels, spare parts requirements, logistics, data privacy and security needs. Our services include server system integration, configuration and software upgrades and updates. We also perform the planning, identify service requirements, create and execute the project plan, conduct verification testing, training and provide technical documentation.

## **Research and Development**

Our products incorporate over 23 years of research and development experience. We perform the majority of our research and development efforts in-house, increasing the communication and collaboration between design teams to streamline the development process and reducing time-to-market. We continue to invest in reducing our design and manufacturing costs and improving the performance, cost effectiveness and thermal and space efficiency of our solutions.

Over the years, our research and development team has focused on the development of new and enhanced products that can support emerging protocols while continuing to accommodate legacy technologies. Much of our research and development activity is focused on the new product cycles of leading processor vendors. We work closely with Intel, AMD and NVIDIA among others, to develop products that are compatible with the latest generation of industry standard technologies under development. Our collaborative approach with the processor vendors allows us to coordinate the design of our new products with their product release schedules, thereby enhancing our ability to rapidly introduce new products incorporating the latest technology. We work closely with their respective development teams to optimize system performance and reduce system level issues. Similarly, we work very closely with our customers to identify their needs and develop our new product plans accordingly.

We believe that the combination of our focus on internal research and development activities, our close working relationships with customers and vendors and our modular design approach allow us to minimize time-to-market. Our latest introductions include our Simply Double storage portfolio of 2U 24 3.5" and 2U 48 2.5" drive servers. Ultra server design in 1U and 2U configurations, supporting up to 44 cores and 160W CPUs, 3TB of DDR4 memory in 24 DIMMs, 24 NVMe and 8 PCI-e 3.0 can be optimized for varieties of applications. MicroBlade design, a powerful and flexible extreme-density 3U/6U all-in-one total system, features 14/28 hot-swappable MicroBlade Modules supporting 112 ultra-low power Atom, or 56 UP or 28 DP Xeon processors with up to 4HDDs/SSDs. This architecture is an optimized, unified microserver, networking, storage, and remote management for cloud computing, dedicated hosting, web front end, content delivery and social networking applications.

As of June 30, 2016, we had 1,086 employees and 7 engineering consultants dedicated to research and development. Our total research and development expenses were \$124.0 million, \$100.3 million, and \$84.3 million for fiscal years 2016, 2015 and 2014, respectively.

## **Customers**

For fiscal year 2016, our products were purchased by over 800 customers, most of which are distributors, in 100 countries. In fiscal years 2016 and 2015, sales to SoftLayer, a division of IBM Corporation, represented 10.9% and 10.1%, respectively, of our total net sales. No customer represented greater than 10% of our total net sales for fiscal year 2014.

## **Sales and Marketing**

Our sales and marketing program is focused on a combination of our direct sales force and indirect sales channels. As of June 30, 2016, our sales and marketing organization consisted of 311 employees and 37 independent sales representatives in 18 locations worldwide.

We work with distributors, including resellers and system integrators, and OEMs to market and sell customized solutions to their end customers. We provide sales and marketing assistance and training to our distributors and OEMs, who in turn provide service and support to end customers. We intend to leverage our relationships with key distributors and OEMs to penetrate select industry segments where our products can provide a superior alternative to existing solutions. For a group of customers who do not normally purchase through distributors or OEMs, we have a direct sales approach.

We maintain close contact with our distributors and end customers. We often collaborate during the sales process with our distributors and the customer's technical point of contact to help determine the optimal system configuration for the customer's needs. Our interaction with distributors and end customers allows us to monitor customer requirements and develop new products to better meet end customer needs.

## *International Sales*

Product fulfillment and first level support for our international customers are provided by our distributors, OEMs and Supermicro Global Services. Our international sales efforts are supported both by our international offices in the Netherlands, Taiwan, China and Japan as well as by our United States sales organization. Sales to customers located outside of the United States represented 36.9%, 41.7% and 44.8% of net sales in fiscal years 2016, 2015 and 2014, respectively. Our long-lived assets located outside of the United States represented 24.0%, 23.8% and 27.9% of total long-lived assets in fiscal years 2016, 2015 and 2014, respectively. See Note 14 of Notes to our Consolidated Financial Statements in Item 8 of this Form 10-K for a summary of international sales and long-lived assets.



## Marketing

Our marketing programs are designed to inform existing and potential customers, the trade press, distributors and OEMs about the capabilities and benefits of using our products and solutions. Our marketing efforts support the sale and distribution of our products through direct sales and distribution channels. We rely on a variety of marketing vehicles, including advertising, public relations, web, social media, participation in industry trade shows and conferences to help gain market acceptance. We provide funds for cooperative marketing to our distributors. We also work closely with cooperative marketing programs, and benefit from market development funds, that our distributors and suppliers make available.

## Intellectual Property

We seek to protect our intellectual property rights with a combination of patents, trademark, copyright, trade secret laws and disclosure restrictions. We rely primarily on trade secrets, technical know-how and other unpatented proprietary information relating to our design and product development activities. We also enter into confidentiality and proprietary rights agreements with our employees, consultants and other third parties and control access to our designs, documentation and other proprietary information.

## Manufacturing and Quality Control

We use several third party suppliers and contract manufacturers for materials and sub-assemblies, such as serverboards, chassis, disk drives, power supplies, fans and computer processors. We believe that selectively using outsourced manufacturing services allows us to focus on our core competencies in product design and development and increases our operational flexibility. We believe our manufacturing strategy allows us to adjust manufacturing capacity in response to changes in customer demand and to rapidly introduce new products to the market. We use Ablecom for contract design and manufacturing coordination support. We work with Ablecom to optimize modular designs for our chassis and certain of our other components. Ablecom coordinates the manufacturing of chassis for us. In addition to providing a larger volume of contract manufacturing services for us, Ablecom continues to warehouse for us a number of components and subassemblies manufactured by multiple suppliers prior to shipment to our facilities in the United States, Europe and Asia.

Assembly, test and quality control of our servers are performed at our manufacturing facilities in San Jose, California, the Netherlands and Taiwan. Each of our facilities has been certified by Quality / Environmental Management System or, Q/EMS, according to ISO 9001 and ISO 14001 standards. Our suppliers and contract manufacturers are required to support the same standards in order to maintain consistent product and service quality and continuous improvement of quality and environmental performances.

We seek to maintain sufficient inventory such that most of the orders we receive can be filled within 14 days. We monitor our inventory on a continuous basis in order to be able to meet customer orders and to avoid inventory obsolescence. Due to our modular designs, our inventory can generally be used with multiple different products, further reducing the risk of inventory write-downs.

## Competition

The market for our products is highly competitive, rapidly evolving and subject to new technological developments, changing customer needs and new product introductions. In particular, in recent years the market has been subject to substantial change. We compete primarily with large vendors of X86 general purpose servers and components. In addition, we also compete with a number of smaller vendors who specialize in the sale of server components and systems. Over the last couple of years, we have experienced increased competition from Original Design Manufacturers, or ODMs, who benefit from very low cost manufacturing and are increasingly offering their own branded products. We believe our principal competitors include:

- Global technology vendors such as Dell Inc., Hewlett-Packard Enterprise, Lenovo, and Cisco;
- Original Design Manufacturers, or ODMs, such as Quanta Computer, Inc.

The principal competitive factors in our market include the following:

- first to market with new emerging technologies;
- flexible and customizable products to fit customers' objectives;
- high product performance, efficiency and reliability;
- early identification of emerging opportunities;

- cost-effectiveness;
- interoperability of products;
- scalability; and
- localized and responsive customer support on a worldwide basis.

We believe that we compete favorably with respect to most of these factors. However, most of our competitors have longer operating histories, significantly greater resources and greater name recognition. They may be able to devote greater resources to the development, promotion and sale of their products than we can, which could allow them to respond more quickly to new technologies and changes in customer needs.

## **Employees**

As of June 30, 2016, we employed 2,655 full time employees and 44 consultants, consisting of 1,086 employees in research and development, 311 employees in sales and marketing, 251 employees in general and administrative and 1,007 employees in manufacturing. Of these employees, 1,780 employees are based in our Silicon Valley facilities. We consider our highly qualified and motivated employees to be a key factor in our business success. Our employees are not represented by any collective bargaining organization and we have never experienced a work stoppage. We believe that our relations with our employees are good.

## **Corporate Information**

We were incorporated in California in September 1993. We reincorporated in Delaware in March 2007. Our common stock is listed on The NASDAQ Global Select Market under the symbol "SMCI." Our principal executive offices are located at 980 Rock Avenue, San Jose, CA 95131 and our telephone number is (408) 503-8000. Our website address is [www.supermicro.com](http://www.supermicro.com).

## **Available Information**

Our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and amendments to reports filed or furnished pursuant to Sections 13(a) and 15(d) of the Securities Exchange Act of 1934, as amended, or the Exchange Act, are available free of charge, on or through our website at [www.supermicro.com](http://www.supermicro.com), as soon as reasonably practicable after we electronically file such reports with, or furnish those reports to, the Securities and Exchange Commission or the SEC. Information contained on our website is not incorporated by reference in, or made part of this Annual Report on Form 10-K or our other filings with or reports furnished to the SEC. The SEC also maintains a website that contains our SEC filings. The address of the site is [www.sec.gov](http://www.sec.gov). Further, a copy of this Annual Report on Form 10-K is located at the SEC's Public Reference Room at 100 F Street, NE, Washington, D.C. 20549. Information on the operation of the Public Reference Room can be obtained by calling the SEC at 1-800-SEC-0330.

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

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

#### **Our quarterly operating results will likely fluctuate in the future, which could cause rapid declines in our stock price.**

As our business continues to grow, we believe that our quarterly operating results will be subject to greater fluctuation due to various factors, many of which are beyond our control. Factors that may affect quarterly operating results in the future include:

- Fluctuations based upon seasonality, with the quarters ending March 31 and September 30 typically being weaker;
- Fluctuations in the timing and size of large customer orders as larger customers and larger orders become an increasing percentage of our net sales;
- Variability of our margins based on our manufacturing capacity utilization, the mix of server systems, subsystems and accessories we sell and the percentage of our sales to internet data center cloud customers or certain geographical regions;
- Fluctuations in availability and costs associated with key components and other materials needed to satisfy customer requirements;
- The timing of the introduction of new products by leading microprocessor vendors and other suppliers;

- Fluctuations based upon changes in demand for and cost of storage solutions as such solutions become an increasing percentage of our net sales;
- Changes in our product pricing policies, including those made in response to new product announcements and pricing changes of our competitors;
- Mix of whether customer purchases are of full systems or subsystems and accessories and whether made directly or through indirect sales channels;
- The effect of mergers and acquisitions among our competitors, suppliers or partners;
- General economic conditions in our geographic markets; and
- Impact of regulatory changes on our cost of doing business.

Accordingly, it is difficult to accurately forecast our growth and results of operations on a quarterly basis. If we fail to meet expectations of investors or analysts, our stock price may fall rapidly and without notice. Furthermore, the fluctuation of quarterly operating results may render less meaningful period-to-period comparisons of our operating results, and you should not rely upon them as an indication of future performance.

**As we increasingly target larger customers and larger sales opportunities, our customer base may become more concentrated, our cost of sales may increase, our margins may be lower and our sales may be less predictable.**

As our business continues to grow, we have become increasingly dependent upon larger sales to maintain our rate of growth. In particular, in recent years, we have completed larger sales to leading cloud computing and data center companies. One of our customers accounted for 10.9% of our net sales in the fiscal year ended June 30, 2016. As customers buy our products in greater volumes and their business becomes a larger percentage of our net sales, we may grow increasingly dependent on those customers to maintain our growth. If our largest customers do not purchase our products at the levels, timeframes or geographies that we expect, our ability to maintain or grow our net sales will be adversely affected.

Increased sales to larger customers may also cause fluctuations in results of operations. Large orders are generally subject to intense competition and pricing pressure which can have an adverse impact on our margins and results of operations. Likewise, larger customers may seek to fulfill all or substantially all of their requirements in a single or a few orders, and not make another significant purchase for a substantial period of time. Accordingly, a significant increase in revenue during the period in which we recognize the revenue from a large customer may be followed by a period of time during which the customer purchases none or few of our products.

Additionally, as we and our partners focus increasingly on selling to larger customers and attracting larger orders, we expect greater costs of sales. Our sales cycle may become longer and more expensive, as larger customers typically spend more time negotiating contracts than smaller customers. Larger customers often seek greater levels of support in the implementation and use of our server solutions.

As a result of the above factors, our quarter-to-quarter results of operations may be subject to greater fluctuation and our stock price may be adversely affected.

**We may fail to meet publicly announced financial guidance or other expectations about our business, which would cause our stock to decline in value.**

We typically provide forward looking financial guidance when we announce our financial results from the prior quarter. We undertake no obligation to update such guidance at any time. Frequently in the past, our financial results have failed to meet the guidance we provided. There are a number of reasons why we have failed to meet guidance in the past and might fail again in the future, including, but not limited to, the factors described in these Risk Factors.

**If we are unable to favorably assess the effectiveness of our internal control over financial reporting, or if our independent auditors are unable to provide an unqualified attestation report on our internal control over financial reporting, our stock price could be adversely affected.**

In November 2015, our management determined, and the Audit Committee of our Board of Directors concurred, that a material weakness existed in our internal control over financial reporting related to the revenue recognition of contracts with extended product warranties. We identified errors related to revenue recognized prior to meeting the U.S. GAAP revenue

recognition criteria that impacted prior periods, including fiscal years 2013, 2014 and 2015 which were corrected in the three months ended September 30, 2015. We have improved our controls on revenue recognition of contracts with extended product warranties and remediated this material weakness as of June 30, 2016. While we have put controls in place to remediate the material weakness, we cannot assure that there will not be additional material weaknesses or significant deficiencies that we or our independent registered public accounting firm may identify. If we identify such issues or if we are unable to produce accurate and timely financial statements, our stock price may be adversely affected and we may be unable to maintain compliance with Nasdaq listing requirements.

Pursuant to Section 404 of the Sarbanes-Oxley Act of 2002, or Section 404, our management is required to report on the effectiveness of our internal control over financial reporting in our annual reports. In addition, our independent auditors must attest to and report on the effectiveness of our internal control over financial reporting. The rules governing the standards that must be met for management to assess our internal control over financial reporting are complex, and require significant documentation, testing and possible remediation. As a result, our efforts to comply with Section 404 have required the commitment of significant managerial and financial resources. As we are committed to maintaining high standards of public disclosure, our efforts to comply with Section 404 are ongoing, and we are continuously in the process of reviewing, documenting and testing our internal control over financial reporting, which will result in continued commitment of significant financial and managerial resources. Although we strive to maintain effective internal controls over financial reporting in order to prevent and detect material misstatements in our annual and quarterly financial statements and prevent fraud, we cannot assure that such efforts will be effective. If we fail to maintain effective internal controls in future periods, our operating results, financial position and stock price could be adversely affected.

**Increases in average selling prices for our server solutions have significantly contributed to our increases in net sales. Such prices are subject to decline if customers do not continue to purchase our latest generation products or additional components, which could harm our results of operations.**

Increases in average selling prices have significantly contributed to our increases in net sales. As with most electronics based products, average selling prices of servers typically are highest at the time of introduction of new products, which utilize the latest technology, and tend to decrease over time as such products become commoditized and are ultimately replaced by even newer generation products. As our business continues to grow, we may increasingly be subject to this industry risk. We cannot predict the timing or amount of any decline in the average selling prices of our server solutions that we may experience in the future. In some instances, our agreements with our distributors limit our ability to reduce prices unless we make such price reductions available to them, or price protect their inventory. If we are unable to decrease per unit manufacturing costs faster than the rate at which average selling prices continue to decline, our business, financial condition and results of operations will be harmed. In addition, our average selling prices have increased rapidly in recent periods as we have sold more products including additional components such as more memory and hard disk drive capacity. There is no assurance that our average selling prices will continue to increase and may decline due to decreased demand for, or lower prices of, the additional components that we sell with our server solutions.

**Our cost structure and ability to deliver server solutions to customers in a timely manner may be adversely affected by volatility of the market for core components and materials for our products.**

Prices of materials and core components utilized in the manufacture of our server solutions, such as serverboards, chassis, central processing units, or CPUs, memory and hard drives represent a significant portion of our cost of sales. We generally do not enter into long-term supply contracts for these materials and core components, but instead purchase these materials and components on a purchase order basis. Prices of these core components and materials are volatile, and, as a result, it is difficult to predict expense levels and operating results. In addition, if our business growth renders it necessary or appropriate to transition to longer term contracts with materials and core component suppliers, our costs may increase and our gross margins could correspondingly decrease.

Because we often acquire materials and core components on an as needed basis, we may be limited in our ability to effectively and efficiently respond to customer orders because of the then-current availability or the terms and pricing of materials and core components. Our industry has experienced materials shortages and delivery delays in the past, and we may experience shortages or delays of critical materials in the future. From time to time, we have been forced to delay the introduction of certain of our products or the fulfillment of customer orders as a result of shortages of materials and core components. For example, we were unable to fulfill certain orders in fiscal year 2010 due to component shortages, and our net sales were adversely impacted in fiscal year 2013 and 2012 by disk drive shortages resulting from flooding in Thailand. If shortages or delays arise, the prices of these materials and core components may increase or the materials and core components may not be available at all. In addition, in the event of shortages, some of our larger competitors may have greater abilities to obtain materials and core components due to their larger purchasing power. We may not be able to secure enough core

components or materials at reasonable prices or of acceptable quality to build new products to meet customer demand, which could adversely affect our business and financial results.

If we were to lose any of our current supply or contract manufacturing relationships, the process of identifying and qualifying a new supplier or contract manufacturer who will meet our quality and delivery requirements, and who will appropriately safeguard our intellectual property, may require a significant investment of time and resources, adversely affecting our ability to satisfy customer purchase orders and delaying our ability to rapidly introduce new products to market. Similarly, if any of our suppliers were to cancel, materially change contracts or commitments to us or fail to meet the quality or delivery requirements needed to satisfy customer demand for our products, whether due to shortages or other reasons, our reputation and relationships with customers could be damaged. We could lose orders, be unable to develop or sell some products cost-effectively or on a timely basis, if at all, and have significantly decreased revenues, margins and earnings, which would have a material adverse effect on our business.

**We may incur additional expenses and suffer lower margins if our expectations regarding long term hard disk drive commitments prove incorrect.**

Notwithstanding our general practice of not entering into long term supply contracts, as a result of severe flooding in Thailand during the first quarter of fiscal year 2012, we have entered into purchase agreements with selected suppliers of hard disk drives in order to ensure continuity of supply for these components. The hard disk drive purchase commitments totaled approximately \$110.5 million as of June 30, 2016, a decrease from \$185.7 million as of June 30, 2015 and will be paid through December 2016. Higher costs compared to the lower selling prices for these components incurred under these agreements contributed to our lower gross profit in fiscal year 2013 and if a similar event occurs in the future, our gross profit will likely be impacted. Our existing and any other similar future supply commitments that we may enter into expose us to risk for lower margins or loss on disposal of such inventory if our expectations of customer demand are incorrect and the market price of the material or component inventory decline. Likewise if we fail to enter into commitments we may be exposed to limited availability of supply or higher inventory costs which could result in lower net sales and adversely impact gross margin and net income.

**We may lose sales or incur unexpected expenses relating to insufficient, excess or obsolete inventory.**

As a result of our strategy to provide greater choice and customization of our products to our customers, we are required to maintain a high level of inventory. If we fail to maintain sufficient inventory, we may not be able to meet demand for our products on a timely basis, and our sales may suffer. If we overestimate customer demand for our products, we could experience excess inventory of our products and be unable to sell those products at a reasonable price, or at all. As a result, we may need to record higher inventory reserves. In addition, from time to time we assume greater inventory risk in connection with the purchase or manufacture of more specialized components in connection with higher volume sales opportunities. We have from time to time experienced inventory write downs associated with higher volume sales that were not completed as anticipated. We expect that we will experience such write downs from time to time in the future related to existing and future commitments. If we are later able to sell inventory with respect to which we have taken a reserve at a profit, it may increase the quarterly variances in our operating results. Additionally, the rapid pace of innovation in our industry could render significant portions of our existing inventory obsolete. Certain of our distributors and OEMs have rights to return products, limited to purchases over a specified period of time, generally within 60 to 90 days of the purchase, or to products in the distributor's or OEM's inventory at certain times, such as termination of the agreement or product obsolescence. Any returns under these arrangements could result in additional obsolete inventory. In addition, server systems, subsystems and accessories that have been customized and later returned by those of our customers and partners who have return rights or stock rotation rights may be unusable for other purposes or may require reformation at additional cost to be made ready for sale to other customers. Excess or obsolete inventory levels for these or other reasons could result in unexpected expenses or increases in our reserves against potential future charges which would adversely affect our business and financial results. For additional information regarding customer return rights, see "Management's Discussion and Analysis of Financial Condition and Results of Operations-Critical Accounting Policies-Inventory Valuation."

**We may encounter difficulties with our ERP systems.**

We have implemented a new enterprise resource planning, or ERP, system and have commenced using the new system in the United States in July 2015 and in Taiwan and the Netherlands in January 2016. We have incurred and expect to continue to incur additional expenses related to our implementation as we continue to enhance and develop our ERP system. Many companies have experienced delays and difficulties with the implementation of new or changed ERP systems that have had a negative effect on their business. Any future disruptions, delays or deficiencies in the design and implementation of our ERP system could result in potentially much higher costs than we currently anticipate and could adversely affect our ability to

provide services, fulfill contractual obligations, file reports with the SEC in a timely manner and/or otherwise operate our business, or otherwise impact our controls environment. Any of these consequences could have an adverse effect on our results of operations and financial condition.

**System security risks, data protection breaches, cyber-attacks and other related cyber-security issues could disrupt our internal operations or interfere with our products, and any such disruption could reduce our expected revenues, increase our expenses, damage our reputation and adversely affect our stock price.**

Experienced computer programmers and hackers may be able to penetrate our network and misappropriate or compromise our confidential information or that of third parties, create system disruptions or cause shutdowns. Computer programmers and hackers also may be able to develop and deploy viruses, worms, and other malicious software programs that attack our products or otherwise exploit any security vulnerabilities of our products. In addition, our hardware and software or third party components and software that we utilize in our products may contain defects in design or manufacture, including “bugs” and other problems that could unexpectedly interfere with the operation of the products. The costs to us to eliminate or alleviate cyber or other security problems, bugs, viruses, worms, malicious software programs and security vulnerabilities could be significant and, if our efforts to address these problems are not successful, this could result in interruptions, delays, cessation of service and loss of existing or potential customers that may impede our sales, manufacturing, distribution or other critical functions. Any claim that our products or systems are subject to a cyber-security risk, whether valid or not, could damage our reputation and adversely impact our revenues and results of operations.

We manage and store various proprietary information and sensitive or confidential data relating to our business as well as information from our suppliers and customers. Breaches of our or any of our third party suppliers’ security measures or the accidental loss, inadvertent disclosure or unapproved dissemination of proprietary information or sensitive or confidential data about us or our customers or suppliers, including the potential loss or disclosure of such information or data as a result of fraud, trickery or other forms of deception, could expose us or our customers or suppliers to a risk of loss or misuse of this information, result in litigation and potential liability for us, damage our brand and reputation or otherwise harm our business. In addition, the cost and operational consequences of implementing further data protection measures could be significant.

**If we do not successfully manage the expansion of our international manufacturing operations, our business could be harmed.**

Since inception we have conducted a substantial majority of our manufacturing operations in San Jose. We are continuing to work on increasing our utilization of manufacturing operations in Taiwan and in the Netherlands. The commencement or scaling of new manufacturing operations in new locations, particularly in other jurisdictions, entails additional risks and challenges. Difficulties associated with our implementation of a new global operating structure adversely impacted our results of operations and tax expenses in the quarter ended June 30, 2016. If we are unable to successfully ramp up these operations we may incur unanticipated costs, difficulties in making timely delivery of products or suffer other business disruptions which could adversely impact our results of operations.

**We may not be able to successfully manage our planned growth and expansion.**

Over time we expect to continue to make investments to pursue new customers and expand our product offerings to grow our business rapidly. We expect that our annual operating expenses will continue to increase as we invest in sales and marketing, research and development, manufacturing and production infrastructure, and strengthen customer service and support resources for our customers. Our failure to expand operational and financial systems timely or efficiently could result in additional operating inefficiencies, which could increase our costs and expenses more than we had planned and prevent us from successfully executing our business plan. We may not be able to offset the costs of operation expansion by leveraging the economies of scale from our growth in negotiations with our suppliers and contract manufacturers. Additionally, if we increase our operating expenses in anticipation of the growth of our business and this growth does not meet our expectations, our financial results will be negatively impacted.

If our business grows, we will have to manage additional product design projects, materials procurement processes, and sales efforts and marketing for an increasing number of SKUs, as well as expand the number and scope of our relationships with suppliers, distributors and end customers. If we fail to manage these additional responsibilities and relationships successfully, we may incur significant costs, which may negatively impact our operating results. Additionally, in our efforts to be first to market with new products with innovative functionality and features, we may devote significant research and development resources to products and product features for which a market does not develop quickly, or at all. If we are not able to predict market trends accurately, we may not benefit from such research and development activities, and our results of operations may suffer.

**Our future effective income tax rates could be affected by changes in the relative mix of our operations and income among different geographic regions and by proposed and enacted United States federal income tax legislation, which could affect our future operating results, financial condition and cash flows.**

We seek to structure our worldwide operations to take advantage of certain international tax planning opportunities and incentives. Our future effective income tax rates could be adversely affected if tax authorities challenge our international tax structure or if the relative mix of our United States and international income changes for any reason, or if United States or international tax laws were to change in the future. In particular, a substantial portion of our revenue is generated from customers located outside the United States. Foreign withholding taxes and United States income taxes have not been provided on undistributed earnings for certain non-United States subsidiaries, because such earnings are intended to be indefinitely reinvested in the operations of those subsidiaries. In the past, the administration has considered initiatives which could substantially reduce our ability to defer United States taxes including: limitations on deferral of United States taxation of foreign earnings eliminate utilization or substantially reduce our ability to claim foreign tax credits, and eliminate various tax deductions until foreign earnings are repatriated to the United States. If any of these proposals are constituted into law, they could have a negative impact on our financial position and results of operations. We cannot assure you that we will be able to lower our effective tax rate as a result of these activities nor that such rate will not increase in the future.

**The market in which we participate is highly competitive, and if we do not compete effectively, we may not be able to increase our market penetration, grow our net sales or improve our gross margins.**

The market for server solutions is intensely competitive and rapidly changing. Barriers to entry in our market are relatively low and we expect increased challenges from existing as well as new competitors. Some of our principal competitors offer server solutions at a lower price, which has resulted in pricing pressures on sales of our server solutions. We expect further downward pricing pressure from our competitors and expect that we will have to price some of our server solutions aggressively to increase our market share with respect to those products or geographies, particularly for internet data center customers and other large sale opportunities. If we are unable to maintain the margins on our server solutions, our operating results could be negatively impacted. In addition, if we do not develop new innovative server solutions, or enhance the reliability, performance, efficiency and other features of our existing server solutions, our customers may turn to our competitors for alternatives. In addition, pricing pressures and increased competition generally may also result in reduced sales, less efficient utilization of our manufacturing operations, lower margins or the failure of our products to achieve or maintain widespread market acceptance, any of which could have a material adverse effect on our business, results of operations and financial condition.

Our principal competitors include global technology companies such as Dell, Inc., Hewlett-Packard Enterprise, Lenovo and Cisco. In addition, we also compete with a number of other vendors who also sell application optimized servers, contract manufacturers and original design manufacturers, or ODMs, such as Quanta Computer Incorporated. ODMs sell server solutions marketed or sold under a third party brand.

Many of our competitors enjoy substantial competitive advantages, such as:

- Greater name recognition and deeper market penetration;
- Longer operating histories;
- Larger sales and marketing organizations and research and development teams and budgets;
- More established relationships with customers, contract manufacturers and suppliers and better channels to reach larger customer bases and larger sales volume allowing for better costs;
- Larger customer service and support organizations with greater geographic scope;
- A broader and more diversified array of products and services; and
- Substantially greater financial, technical and other resources.

Some of our current or potential ODM competitors are also currently or have in the past been suppliers to us. As a result, they may possess sensitive knowledge or experience which may be used against us competitively and/or which may require us to alter our supply arrangements or sources in a way which could adversely impact our cost of sales or results of operations.

Our competitors may be able to respond more quickly and effectively than we can to new or changing opportunities, technologies, standards or customer requirements. Competitors may seek to copy our innovations and use cost advantages from greater size to compete aggressively with us on price. Certain customers are also current or prospective competitors and as a result, assistance that we provide to them as customers may ultimately result in increased competitive pressure against us.

Furthermore, because of these advantages, even if our application optimized server solutions are more effective than the products that our competitors offer, potential customers might accept competitive products in lieu of purchasing our products. The challenges we face from larger competitors will become even greater if consolidation or collaboration between or among our competitors occurs in our industry. Also initiatives like the Open Compute Project, or OCP, a project to establish more industry standard data center configurations, could have the impact of supporting an approach which is less favorable to the flexibility and customization that we offer. These changes could have a significant impact on the market and impact our results of operations. For all of these reasons, we may not be able to compete successfully against our current or future competitors, and if we do not compete effectively, our ability to increase our net sales may be impaired.

**Any failure to adequately expand or retain our sales force will impede our growth.**

We expect that our direct sales force will continue to grow as larger customers increasingly require a direct sales approach. Competition for direct sales personnel with the advanced sales skills and technical knowledge we need is intense. Our ability to grow our revenue in the future will depend, in large part, on our success in recruiting, training, retaining and successfully managing sufficient qualified direct sales personnel. We have traditionally experienced much greater turnover in our sales and marketing personnel as compared to other departments and other companies. New hires require significant training and may take six months or longer before they reach full productivity. Our recent hires and planned hires may not become as productive as we would like, and we may be unable to hire sufficient numbers of qualified individuals in the future in the markets where we do business. If we are unable to hire, develop and retain sufficient numbers of productive sales personnel, sales of our server solutions will suffer.

**We must work closely with our suppliers to make timely new product introductions.**

We rely on our close working relationships with our suppliers, including Intel, AMD and Nvidia, to anticipate and deliver new products on a timely basis when new generation materials and core components are made available. Intel, AMD and Nvidia are the only suppliers of the microprocessors we use in our server systems. If we are not able to maintain our relationships with our suppliers or continue to leverage their research and development capabilities to develop new technologies desired by our customers, our ability to quickly offer advanced technology and product innovations to our customers would be impaired. We have no long term agreements that obligate our suppliers to continue to work with us or to supply us with products.

**Our suppliers' failure to improve the functionality and performance of materials and core components for our products may impair or delay our ability to deliver innovative products to our customers.**

We need our material and core component suppliers, such as Intel, AMD and Nvidia, to provide us with core components that are innovative, reliable and attractive to our customers. Due to the pace of innovation in our industry, many of our customers may delay or reduce purchase decisions until they believe that they are receiving best of breed products that will not be rendered obsolete by an impending technological development. Accordingly, demand for new server systems that incorporate new products and features is significantly impacted by our suppliers' new product introduction schedules and the functionality, performance and reliability of those new products. If our materials and core component suppliers fail to deliver new and improved materials and core components for our products, we may not be able to satisfy customer demand for our products in a timely manner, or at all. If our suppliers' components do not function properly, we may incur additional costs and our relationships with our customers may be adversely affected.

**As our business grows, we expect that we may be exposed to greater customer credit risks.**

Historically, we have offered limited credit terms to our customers. As our customer base expands, as our orders increase in size, and as we obtain more direct customers, we expect to offer increased credit terms and flexible payment programs to our customers. Doing so may subject us to increased credit risk, higher accounts receivable with longer days outstanding, and increases in charges or reserves, which could have a material adverse effect on our business, results of operations and financial condition.

**We rely on indirect sales channels for a significant percentage of our revenue and any disruption in these channels could adversely affect our sales.**

Sales of our products through third party distributors and resellers accounted for 44.8% , 50.3% and 54.1% of our net sales in fiscal years 2016 , 2015 and 2014 , respectively. We depend on our distributors to assist us in promoting market acceptance of our products and anticipate that a significant portion of our revenues will continue to result from sales through indirect channels. To maintain and potentially increase our revenue and profitability, we will have to successfully preserve and



expand our existing distribution relationships as well as develop new distribution relationships. Our distributors also sell products offered by our competitors and may elect to focus their efforts on these sales. If our competitors offer our distributors more favorable terms or have more products available to meet the needs of their customers, or utilize the leverage of broader product lines sold through the distributors, those distributors may de-emphasize or decline to carry our products. In addition, our distributors' order decision-making process is complex and involves several factors, including end customer demand, warehouse allocation and marketing resources, which can make it difficult to accurately predict total sales for the quarter until late in the quarter. We also do not control the pricing or discounts offered by distributors to end customers. To maintain our participation in distributors' marketing programs, in the past we have provided cooperative marketing arrangements or made short-term pricing concessions.

The discontinuation of cooperative marketing arrangements or pricing concessions could have a negative effect on our business. Our distributors could also modify their business practices, such as payment terms, inventory levels or order patterns. If we are unable to maintain successful relationships with distributors or expand our distribution channels or we experience unexpected changes in payment terms, inventory levels or other practices by our distributors, our business will suffer.

**Our direct sales efforts may create confusion for our end customers and harm our relationships with our distributors and OEMs.**

We expect our direct sales force to continue to grow as our business grows. As our direct sales force becomes larger, our direct sales efforts may lead to conflicts with our distributors and OEMs, who may view our direct sales efforts as undermining their efforts to sell our products. If a distributor or OEM deems our direct sales efforts to be inappropriate, the distributor or OEM may not effectively market our products, may emphasize alternative products from competitors, or may seek to terminate our business relationship. Disruptions in our distribution channels could cause our revenues to decrease or fail to grow as expected. Our failure to implement an effective direct sales strategy that maintains and expands our relationships with our distributors and OEMs could lead to a decline in sales and adversely affect our results of operations.

**Our research and development expenditures, as a percentage of our net sales, are considerably higher than many of our competitors and our earnings will depend upon maintaining revenues and margins that offset these expenditures.**

Our strategy is to focus on being consistently rapid-to-market with flexible and customizable server systems that take advantage of our own internal development and the latest technologies offered by microprocessor manufacturers and other component vendors. Consistent with this strategy, we spend higher amounts, as a percentage of revenues, on research and development costs than many of our competitors. If we cannot sell our products in sufficient volume and with adequate gross margins to compensate for such investment in research and development, our earnings may be materially and adversely affected.

**Our failure to deliver high quality server solutions could damage our reputation and diminish demand for our products.**

Our server solutions are critical to our customers' business operations. Our customers require our server solutions to perform at a high level, contain valuable features and be extremely reliable. The design of our server solutions is sophisticated and complex, and the process for manufacturing, assembling and testing our server solutions is challenging. Occasionally, our design or manufacturing processes may fail to deliver products of the quality that our customers require. For example, in the past a vendor provided us with a defective capacitor that failed under certain heavy use applications. As a result, our product needed to be repaired. Though the vendor agreed to pay for a large percentage of the costs of the repairs, we incurred costs in connection with the recall and diverted resources from other projects.

New flaws or limitations in our server solutions may be detected in the future. Part of our strategy is to bring new products to market quickly, and first-generation products may have a higher likelihood of containing undetected flaws. If our customers discover defects or other performance problems with our products, our customers' businesses, and our reputation, may be damaged. Customers may elect to delay or withhold payment for defective or underperforming server solutions, request remedial action, terminate contracts for untimely delivery, or elect not to order additional server solutions, which could result in an increase in our provision for doubtful accounts, an increase in collection cycles for accounts receivable or subject us to the expense and risk of litigation. We may incur expense in recalling, refurbishing or repairing defective server solutions. If we do not properly address customer concerns about our products, our reputation and relationships with our customers may be harmed. For all of these reasons, customer dissatisfaction with the quality of our products could substantially impair our ability to grow our business.

**Conflicts of interest may arise between us and Ablecom, and those conflicts may adversely affect our operations.**

We use Ablecom, a related party, for contract design and manufacturing coordination support. We work with Ablecom to optimize modular designs for our chassis and certain of other components. Our purchases from Ablecom represented 12.8% , 13.6% and 16.3% of our cost of sales for fiscal years 2016 , 2015 and 2014 , respectively. Ablecom’s sales to us constitute a substantial majority of Ablecom’s net sales. Ablecom is a privately-held Taiwan-based company.

Steve Liang, Ablecom’s Chief Executive Officer and largest shareholder, is the brother of Charles Liang, our President, Chief Executive Officer and Chairman of the Board. Charles Liang, and his spouse, Chiu-Chu (Sara) Liu Liang, our Vice President of Operations, Treasurer and director, jointly own 10.5% of Ablecom’s outstanding common stock, while Mr. Steve Liang and other family members own 36.0% of Ablecom’s outstanding common stock. Mr. and Mrs. Charles Liang, as directors, officers and significant stockholders of the Company, have considerable influence over the management of our business relationships. Accordingly, we may be disadvantaged by their economic interests as stockholders of Ablecom and their personal relationship with Ablecom’s Chief Executive Officer. We may not negotiate or enforce contractual terms as aggressively with Ablecom as we might with an unrelated party, and the commercial terms of our agreements may be less favorable than we might obtain in negotiations with third parties. If our business dealings with Ablecom are not as favorable to us as arms-length transactions, our results of operations may be harmed.

If Steve Liang ceases to have significant influence over Ablecom, or if those of our stockholders who hold shares of Ablecom cease to have a significant amount of the outstanding shares of Ablecom, the terms and conditions of our agreements with Ablecom may not be as favorable as those in our existing contracts. As a result, our costs could increase and adversely affect our margins and results of operations.

**Our relationship with Ablecom may allow us to benefit from favorable pricing which may result in reported results more favorable than we might report in the absence of our relationship.**

Although we generally re-negotiate the price of products that we purchase from Ablecom on a quarterly basis, pursuant to our agreements with Ablecom either party may re-negotiate the price of products for each order. As a result of our relationship with Ablecom, it is possible that Ablecom may in the future sell products to us at a price lower than we could obtain from an unrelated third party supplier. This may result in future reporting of gross profit as a percentage of net sales that is in excess of what we might have obtained absent our relationship with Ablecom.

**Our reliance on Ablecom could be subject to risks associated with our reliance on a limited source of contract manufacturing services and inventory warehousing.**

We continue to maintain our manufacturing relationship with Ablecom in Asia. In order to provide a larger volume of contract manufacturing services for us, Ablecom will continue to warehouse for us an increasing number of components and subassemblies manufactured by multiple suppliers prior to shipment to our facilities in the United States and Europe. We also anticipate that we will continue to lease office space from Ablecom in Taiwan to support the research and development efforts we are undertaking and continue to operate a joint management company with Ablecom to manage the common areas shared by us and Ablecom for our separately constructed manufacturing facilities in Taiwan.

If we or Ablecom fail to manage the contract manufacturing services and warehouse operations in Asia, we may experience delays in our ability to fulfill customer orders. Similarly, if Ablecom’s facility in Asia is subject to damage, destruction or other disruptions, our inventory may be damaged or destroyed, and we may be unable to find adequate alternative providers of contract manufacturing services in the time that we or our customers require. We could lose orders and be unable to develop or sell some products cost-effectively or on a timely basis, if at all.

Currently, we purchase contract manufacturing services primarily for our chassis and power supply products from Ablecom. If our commercial relationship with Ablecom were to deteriorate or terminate, establishing direct relationships with those entities supplying Ablecom with key materials for our products or identifying and negotiating agreements with alternative providers of warehouse and contract manufacturing services might take a considerable amount of time and require a significant investment of resources. Pursuant to our agreements with Ablecom and subject to certain exceptions, Ablecom has the exclusive right to be our supplier of the specific products developed under such agreements. As a result, if we are unable to obtain such products from Ablecom on terms acceptable to us, we may need to identify a new supplier, change our design and acquire new tooling, all of which could result in delays in our product availability and increased costs. If we need to use other suppliers, we may not be able to establish business arrangements that are, individually or in the aggregate, as favorable as the

terms and conditions we have established with Ablecom. If any of these things should occur, our net sales, margins and earnings could significantly decrease, which would have a material adverse effect on our business.

**Our growth into markets outside the United States exposes us to risks inherent in international business operations.**

We market and sell our systems and components both domestically and outside the United States. We intend to expand our international sales efforts, especially into Asia and are expanding our business operations in Europe and Asia, particularly in Taiwan, the Netherlands, China and Japan. In particular, we have and continue to make substantial investments for the purchase of land and the development of new facilities in Taiwan to accommodate our expected growth. Our international expansion efforts may not be successful. Our international operations expose us to risks and challenges that we would otherwise not face if we conducted our business only in the United States, such as:

- Heightened price sensitivity from customers in emerging markets;
- Our ability to establish local manufacturing, support and service functions, and to form channel relationships with resellers in non-United States markets;
- Localization of our systems and components, including translation into foreign languages and the associated expenses;
- Compliance with multiple, conflicting and changing governmental laws and regulations;
- foreign currency fluctuations;
- Limited visibility into sales of our products by our distributors;
- Laws favoring local competitors;
- Weaker legal protections of intellectual property rights and mechanisms for enforcing those rights;
- Market disruptions created by public health crises in regions outside the United States, such as Avian flu, SARS and other diseases;
- Difficulties in staffing and managing foreign operations, including challenges presented by relationships with workers' councils and labor unions; and
- Changing regional economic and political conditions.

These factors could limit our future international sales or otherwise adversely impact our operations or our results of operations.

**We have in the past entered into plea and settlement agreements with the government relating to violations of export control and related laws; if we fail to comply with laws and regulations restricting dealings with sanctioned countries, we may be subject to future civil or criminal penalties, which may have a material adverse effect on our business or ability to do business outside the United States.**

In 2006, we entered into certain plea and settlement agreement with government agencies relating to export control and related law violations for activities that occurred in the 2001 to 2003 time frame. We believe we are currently in compliance in all material respects with applicable export related laws and regulations. However, if our export compliance program is not effective, or if we are subject to any future claims regarding violation of export control and economic sanctions laws, we could be subject to civil or criminal penalties, which could lead to a material fine or other sanctions, including loss of export privileges, that may have a material adverse effect on our business, financial condition, results of operation and future prospects. In addition, these plea and settlement agreements and any future violations could have an adverse impact on our ability to sell our products to United States federal, state and local government and related entities.

**Any failure to protect our intellectual property rights, trade secrets and technical know-how could impair our brand and our competitiveness.**

Our ability to prevent competitors from gaining access to our technology is essential to our success. If we fail to protect our intellectual property rights adequately, we may lose an important advantage in the markets in which we compete. Trademark, patent, copyright and trade secret laws in the United States and other jurisdictions as well as our internal confidentiality procedures and contractual provisions are the core of our efforts to protect our proprietary technology and our brand. Our patents and other intellectual property rights may be challenged by others or invalidated through administrative process or litigation, and we may initiate claims or litigation against third parties for infringement of our proprietary rights. Such administrative proceedings and litigation are inherently uncertain and divert resources that could be put towards other business priorities. We may not be able to obtain a favorable outcome and may spend considerable resources in our efforts to defend and protect our intellectual property.

Furthermore, legal standards relating to the validity, enforceability and scope of protection of intellectual property rights are uncertain. Effective patent, trademark, copyright and trade secret protection may not be available to us in every country in which our products are available. The laws of some foreign countries may not be as protective of intellectual property rights as those in the United States, and mechanisms for enforcement of intellectual property rights may be inadequate.

Accordingly, despite our efforts, we may be unable to prevent third parties from infringing upon or misappropriating our intellectual property and using our technology for their competitive advantage. Any such infringement or misappropriation could have a material adverse effect on our business, results of operations and financial condition.

**Resolution of claims that we have violated or may violate the intellectual property rights of others could require us to indemnify our customers, resellers or vendors, redesign our products, or pay significant royalties to third parties, and materially harm our business.**

Our industry is marked by a large number of patents, copyrights, trade secrets and trademarks and by frequent litigation based on allegations of infringement or other violation of intellectual property rights. Our primary competitors have substantially greater numbers of issued patents than we have which may position us less favorably in the event of any claims or litigation with them. Other third-parties have in the past sent us correspondence regarding their intellectual property or filed claims that our products infringe or violate third parties' intellectual property rights. In addition, increasingly non-operating companies are purchasing patents and bringing claims against technology companies. We have been subject to several such claims and may be subject to such claims in the future.

Successful intellectual property claims against us from others could result in significant financial liability or prevent us from operating our business or portions of our business as we currently conduct it or as we may later conduct it. In addition, resolution of claims may require us to redesign our technology, to obtain licenses to use intellectual property belonging to third parties, which we may not be able to obtain on reasonable terms, to cease using the technology covered by those rights, and to indemnify our customers, resellers or vendors. Any claim, regardless of its merits, could be expensive and time consuming to defend against, and divert the attention of our technical and management resources.

**If we lose Charles Liang, our President, Chief Executive Officer and Chairman, or any other key employee or are unable to attract additional key employees, we may not be able to implement our business strategy in a timely manner.**

Our future success depends in large part upon the continued service of our executive management team and other key employees. In particular, Charles Liang, our President, Chief Executive Officer and Chairman of the Board, is critical to the overall management of our company as well as to the development of our culture and our strategic direction. Mr. Liang co-founded our company and has been our Chief Executive Officer since our inception. His experience in running our business and his personal involvement in key relationships with suppliers, customers and strategic partners are extremely valuable to our company. We currently do not have a succession plan for the replacement of Mr. Liang if it were to become necessary. Additionally, we are particularly dependent on the continued service of our existing research and development personnel because of the complexity of our products and technologies. Our employment arrangements with our executives and employees do not require them to provide services to us for any specific length of time, and they can terminate their employment with us at any time, with or without notice, without penalty. The loss of services of any of these executives or of one or more other key members of our team could seriously harm our business.

To execute our growth plan, we must attract additional highly qualified personnel, including additional engineers and executive staff. Competition for qualified personnel is intense, especially in Silicon Valley, where we are headquartered. We have experienced in the past and may continue to experience difficulty in hiring and retaining highly skilled employees with appropriate qualifications. In particular, we are currently working to add personnel in our finance, accounting and general administration departments, which have historically had limited budgets and staffing. If we are unable to attract and integrate additional key employees in a manner that enables us to scale our business and operations effectively, or if we do not maintain competitive compensation policies to retain our employees, our ability to operate effectively and efficiently could be limited.

**Backlog does not provide a substantial portion of our net sales in any quarter.**

Our net sales are difficult to forecast because we do not have sufficient backlog of unfilled orders to meet our quarterly net sales targets at the beginning of a quarter. Rather, a majority of our net sales in any quarter depend upon customer orders that we receive and fulfill in that quarter. Because our expense levels are based in part on our expectations as to future net sales and to a large extent are fixed in the short term, we might be unable to adjust spending in time to compensate for any

shortfall in net sales. Accordingly, any significant shortfall of revenues in relation to our expectations would harm our operating results.

**Our business and operations are especially subject to the risks of earthquakes and other natural catastrophic events.**

Our corporate headquarters, including our most significant research and development and manufacturing operations, are located in the Silicon Valley area of Northern California, a region known for seismic activity. We have also established significant manufacturing and research and development operations in Taiwan which is also subject to seismic activity risks. We do not currently have a comprehensive disaster recovery program and as a result, a significant natural disaster, such as an earthquake, could have a material adverse impact on our business, operating results, and financial condition. Although we are in the process of preparing such a program, there is no assurance that it will be effective in the event of such a disaster.

**Our operations involve the use of hazardous and toxic materials, and we must comply with environmental laws and regulations, which can be expensive, and may affect our business and operating results.**

We are subject to federal, state and local regulations relating to the use, handling, storage, disposal and human exposure to hazardous and toxic materials. If we were to violate or become liable under environmental laws in the future as a result of our inability to obtain permits, human error, accident, equipment failure or other causes, we could be subject to fines, costs, or civil or criminal sanctions, face third party property damage or personal injury claims or be required to incur substantial investigation or remediation costs, which could be material, or experience disruptions in our operations, any of which could have a material adverse effect on our business. In addition, environmental laws could become more stringent over time imposing greater compliance costs and increasing risks and penalties associated with violations, which could harm our business.

We also face increasing complexity in our product design as we adjust to new and future requirements relating to the materials composition of our products, including the restrictions on lead and other hazardous substances applicable to specified electronic products placed on the market in the European Union (Restriction on the Use of Hazardous Substances Directive 2002/95/EC, also known as the RoHS Directive). We are also subject to laws and regulations such as California's "Proposition 65" which requires that clear and reasonable warnings be given to consumers who are exposed to certain chemicals deemed by the State of California to be dangerous, such as lead. We expect that our operations will be affected by other new environmental laws and regulations on an ongoing basis. Although we cannot predict the ultimate impact of any such new laws and regulations, they will likely result in additional costs, and could require that we change the design and/or manufacturing of our products, any of which could have a material adverse effect on our business.

We are also subject to the regulations concerning the supply of minerals coming from the conflict zones in and around the Democratic Republic of Congo. This newer United States legislation includes disclosure requirements regarding the use of conflict minerals mined from the Democratic Republic of Congo and adjoining countries and procedures regarding a manufacturer's efforts to prevent the sourcing of such conflict minerals. The implementation of these requirements could affect the sourcing and availability of minerals used in the manufacture of semiconductor or other devices. As a result, there may only be a limited pool of suppliers who provide conflict-free metals, and we cannot assure you that we will be able to obtain products in sufficient quantities or at competitive prices.

**Risks Related to Owning Our Stock**

**The trading price of our common stock is likely to be volatile, and you might not be able to sell your shares at or above the price at which you purchased the shares.**

The trading prices of technology company securities historically have been highly volatile and the trading price of our common stock has been and is likely to continue to be subject to wide fluctuations. Factors, in addition to those outlined elsewhere in this filing, that may affect the trading price of our common stock include:

- Actual or anticipated variations in our operating results, including failure to achieve previously provided guidance;
- Announcements of technological innovations, new products or product enhancements, strategic alliances or significant agreements by us or by our competitors;
- Changes in recommendations by any securities analysts that elect to follow our common stock;
- The financial projections we may provide to the public, any changes in these projections or our failure to meet these projections;
- The loss of a key customer;

- The loss of key personnel;
- Technological advancements rendering our products less valuable;
- Lawsuits filed against us;
- Changes in operating performance and stock market valuations of other companies that sell similar products;
- Price and volume fluctuations in the overall stock market;
- Market conditions in our industry, the industries of our customers and the economy as a whole; and
- Other events or factors, including those resulting from war, incidents of terrorism or responses to these events.

**Future sales of shares by existing stockholders could cause our stock price to decline.**

Attempts by existing stockholders to sell substantial amounts of our common stock in the public market could cause the trading price of our common stock to decline significantly. All of our shares are eligible for sale in the public market, including shares held by directors, executive officers and other affiliates, sales of which are subject to volume limitations under Rule 144 under the Securities Act. In addition, shares subject to outstanding options and reserved for future issuance under our stock option plans are eligible for sale in the public market to the extent permitted by the provisions of various vesting agreements. If these additional shares are sold, or if it is perceived that they will be sold in the public market, the trading price of our common stock could decline.

**If securities analysts do not publish research or reports about our business or if they downgrade our stock, the price of our stock could decline.**

The research and reports that industry or financial analysts publish about us or our business likely have an effect on the trading price of our common stock. If an industry analyst decides not to cover our company, or if an industry analyst decides to cease covering our company at some point in the future, we could lose visibility in the market, which in turn could cause our stock price to decline. If an industry analyst downgrades our stock, our stock price would likely decline rapidly in response.

**The concentration of our capital stock ownership with insiders will likely limit your ability to influence corporate matters.**

As of August 18, 2016, our executive officers, directors, current five percent or greater stockholders and affiliated entities together beneficially owned 44.4% of our common stock, net of treasury stock. As a result, these stockholders, acting together, will have significant influence over all matters that require approval by our stockholders, including the election of directors and approval of significant corporate transactions. Corporate action might be taken even if other stockholders oppose them. This concentration of ownership might also have the effect of delaying or preventing a change of control of our company that other stockholders may view as beneficial.

**Provisions of our certificate of incorporation and bylaws and Delaware law might discourage, delay or prevent a change of control of our company or changes in our management and, as a result, depress the trading price of our common stock.**

Our certificate of incorporation and bylaws contain provisions that could discourage, delay or prevent a change in control of our company or changes in our management that the stockholders of our company may deem advantageous. These provisions:

- establish a classified board of directors so that not all members of our board are elected at one time;
- require super-majority voting to amend some provisions in our certificate of incorporation and bylaws;
- authorize the issuance of “blank check” preferred stock that our board could issue to increase the number of outstanding shares and to discourage a takeover attempt;
- limit the ability of our stockholders to call special meetings of stockholders;
- prohibit stockholder action by written consent, which requires all stockholder actions to be taken at a meeting of our stockholders;
- provide that the board of directors is expressly authorized to adopt, or to alter or repeal our bylaws; and
- establish advance notice requirements for nominations for election to our board or for proposing matters that can be acted upon by stockholders at stockholder meetings.

In addition, we are subject to Section 203 of the Delaware General Corporation Law, which, subject to some exceptions, prohibits “business combinations” between a Delaware corporation and an “interested stockholder,” which is

generally defined as a stockholder who becomes a beneficial owner of 15% or more of a Delaware corporation's voting stock for a three-year period following the date that the stockholder became an interested stockholder. Section 203 could have the effect of delaying, deferring or preventing a change in control that our stockholders might consider to be in their best interests.

These anti-takeover defenses could discourage, delay or prevent a transaction involving a change in control of our company. These provisions could also discourage proxy contests and make it more difficult for stockholders to elect directors of their choosing and cause us to take corporate actions other than those stockholders desire.

**We do not expect to pay any cash dividends for the foreseeable future.**

We do not anticipate that we will pay any cash dividends to holders of our common stock in the foreseeable future. Accordingly, investors must rely on sales of their common stock after price appreciation, which may never occur, as the only way to realize any future gains on their investment. Investors seeking cash dividends in the foreseeable future should not purchase our common stock.

**Item 1B. Unresolved Staff Comments**

Not applicable.

**Item 2. Properties**

Our principal executive offices, research and development center and production operations are located in San Jose, California where we own approximately 1,046,000 square feet of office and manufacturing space which is subject to existing term loans and revolving line of credit with \$63.1 million remaining outstanding as of June 30, 2016 . We lease approximately 247,000 square feet of warehouse in Fremont, California under a lease that expires in 2020 , lease approximately 46,000 square feet of office space in San Jose, California under two leases, which expire at various dates through 2017 , and lease approximately 5,000 square feet of office in Jersey City, New Jersey under a lease that expires in 2020 . Our European headquarters for manufacturing and service operations is located in Den Bosch, the Netherlands where we lease approximately 151,000 square feet of office and manufacturing space under five leases, which expire at various dates through 2025 . In Asia, our manufacturing facilities are located in Taoyuan County, Taiwan where we own approximately 211,000 square feet of office and manufacturing space on 7.0 acres of land. These manufacturing facilities are subject to an existing term loan with \$20.4 million remaining outstanding as of June 30, 2016 . Our research and development center and service operations in Asia are located in an approximately 76,000 square feet facility in Taipei, Taiwan under seven leases that expire at various dates through 2018 . We lease approximately 3,000 square feet of office space in Shanghai and Beijing, China under two leases that expire at various dates through 2018 , for sales and service operations. In addition, we lease approximately 2,000 square feet of office space in Japan under one lease, which expires in 2018 .

Additionally, we own 36 acres of land in San Jose, California on which we plan to develop and construct a total of five multi-function buildings that will serve as our Green Computing Park. We remodeled one existing warehouse with approximately 312,000 square feet of storage space and completed the construction of a new manufacturing and warehouse building with approximately 182,000 square feet of manufacturing space in August 2015. In fiscal year 2016, we continued to engage several contractors for the development and construction of improvements on the property. We plan to complete the construction of a second new manufacturing and warehouse building in the fourth quarter of fiscal year 2017. We financed this development through our operating cash flows and additional borrowings from banks. Refer to Note 7 for a discussion of the Company's short-term and long-term obligations.

We believe that our existing properties, including both owned and leased, are in good condition and are suitable for the conduct of our business.

**Item 3. Legal Proceedings**

From time to time, we have been involved in various legal proceedings arising from the normal course of business activities. We defend ourselves vigorously against any such claims. In management's opinion, the resolution of any pending matters will not have a material adverse effect on our consolidated financial condition, results of operations, or liquidity.

**Item 4. Mine Safety Disclosures**

Not applicable.

## PART II

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

#### Market Information

Our common stock trades on The NASDAQ Global Select Market under the symbol "SMCI". The following table sets forth for the periods indicated the high and low sale prices of our common stock as reported by The NASDAQ Global Select Market.

	High	Low
<b>Fiscal Year 2015:</b>		
First Quarter	\$ 29.42	\$ 24.17
Second Quarter	\$ 36.53	\$ 22.85
Third Quarter	\$ 41.13	\$ 32.76
Fourth Quarter	\$ 37.77	\$ 28.77
	High	Low
<b>Fiscal Year 2016:</b>		
First Quarter	\$ 30.25	\$ 24.24
Second Quarter	\$ 31.82	\$ 22.32
Third Quarter	\$ 34.08	\$ 21.52
Fourth Quarter	\$ 34.49	\$ 23.78

#### Holders

As of August 18, 2016, there were 26 registered stockholders of record of our common stock. Because most of our shares are held by brokers and other institutions on behalf of stockholders, we are unable to estimate the total number of beneficial stockholders represented by these holders of record.

#### Dividend Policy

We have never declared or paid cash dividends on our capital stock. We intend to retain any future earnings and do not expect to pay any dividends in the foreseeable future.

#### Equity Compensation Plan

Please see Part III, Item 12 of this report for disclosure relating to our equity compensation plans.

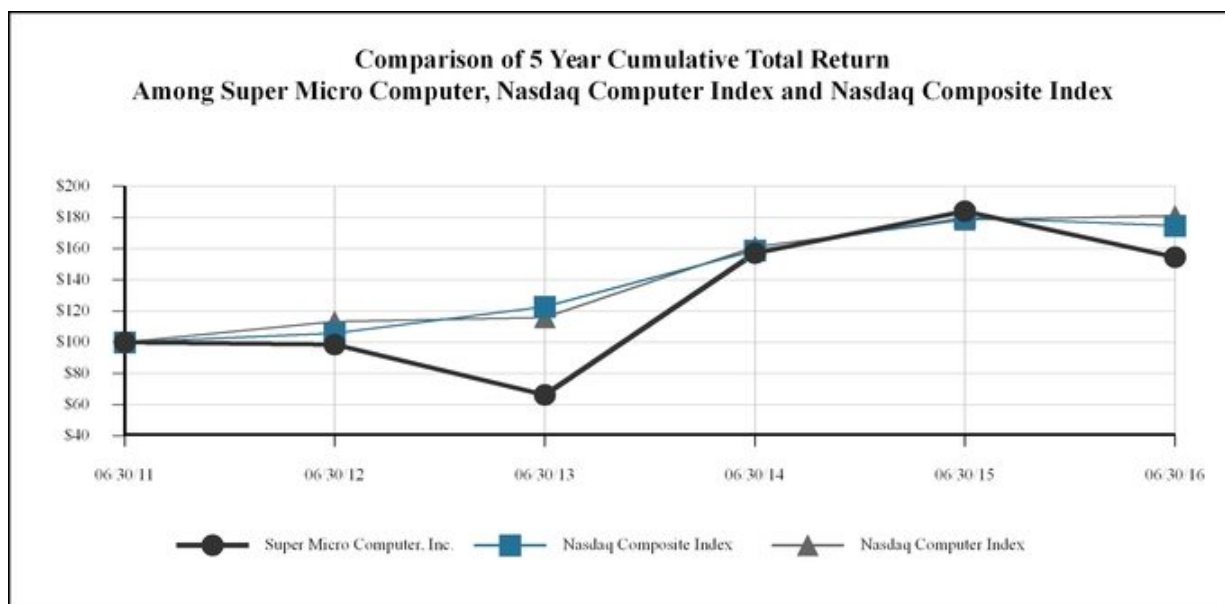
#### Stock Performance Graph

*This performance graph shall not be deemed "soliciting material" or to be "filed" with the SEC for purposes of Section 18 of the Exchange Act, or otherwise subject to the liabilities under that Section, and shall not be deemed to be incorporated by reference into any filing of Super Micro Computer, Inc. under the Securities Act of 1933, as amended, or the Exchange Act.*

The following graph compares our cumulative five-year total stockholder return on our common stock with the cumulative return of the NASDAQ Computer Index and the NASDAQ Composite Index, which both include our common stock, for the comparable period.



The graph reflects an investment of \$100 (with reinvestment of all dividends, if any) in our common stock, the NASDAQ Computer Index and the NASDAQ Composite Index, on June 30, 2011 and its relative performance tracked through June 30, 2016. The stockholder return shown on the graph below is not necessarily indicative of future performance, and we do not make or endorse any predictions as to future stockholder returns.



	6/30/2011	6/30/2012	6/30/2013	6/30/2014	6/30/2015	6/30/2016
Super Micro Computer, Inc.	100.00	98.57	66.13	157.05	183.84	154.44
NASDAQ Composite Index	100.00	105.82	122.71	158.94	179.80	174.60
NASDAQ Computer Index	100.00	113.27	115.80	161.05	178.46	180.97

**Recent Sales of Unregistered Securities**

None.

**Issuer Purchases of Equity Securities**

None.

**Item 6. Selected Financial Data**

The following selected consolidated financial data is qualified by reference to, and should be read in conjunction with, our Consolidated Financial Statements and notes thereto in Part II, Item 8 and “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in Part II, Item 7, of this Annual Report on Form 10-K. Our historical results are not necessarily indicative of the results to be expected in any future period.

	Fiscal Years Ended June 30,				
	2016	2015	2014	2013	2012
	(in thousands, except per share data)				
<b>Consolidated Statements of Operations Data:</b>					
Net sales	\$ 2,215,573	\$ 1,991,155	\$ 1,467,202	\$ 1,162,561	\$ 1,013,874
Cost of sales	1,884,048	1,670,924	1,241,657	1,002,508	848,457
Gross profit	331,525	320,231	225,545	160,053	165,417
Operating expenses:					
Research and development	123,994	100,257	84,257	75,208	64,223
Sales and marketing	62,841	48,851	38,012	33,785	33,308
General and administrative	37,840	24,377	23,017	23,902	21,872
Total operating expenses	224,675	173,485	145,286	132,895	119,403
Income from operations	106,850	146,746	80,259	27,158	46,014
Interest and other income, net	171	115	92	48	54
Interest expense	(1,594)	(965)	(757)	(610)	(717)
Income before income tax provision	105,427	145,896	79,594	26,596	45,351
Income tax provision	33,406	44,033	25,437	5,317	15,498
Net income	\$ 72,021	\$ 101,863	\$ 54,157	\$ 21,279	\$ 29,853
Net income per share:					
Basic	\$ 1.50	\$ 2.19	\$ 1.24	\$ 0.50	\$ 0.72
Diluted	\$ 1.39	\$ 2.03	\$ 1.16	\$ 0.48	\$ 0.67
Shares used in per share calculation:					
Basic	47,917	46,434	43,599	41,992	40,890
Diluted	51,836	50,094	46,512	43,907	44,152
Stock-based compensation:					
Cost of sales	\$ 1,098	\$ 901	\$ 941	\$ 953	\$ 783
Research and development	10,178	8,643	6,783	6,527	5,542
Sales and marketing	1,841	1,553	1,260	1,541	1,469
General and administrative	3,014	2,602	2,078	2,340	2,458
Total stock-based compensation	\$ 16,131	\$ 13,699	\$ 11,062	\$ 11,361	\$ 10,252

	As of June 30,				
	2016	2015	2014	2013	2012
	(in thousands)				
<b>Consolidated Balance Sheet Data:</b>					
Cash and cash equivalents	\$ 180,964	\$ 95,442	\$ 96,872	\$ 93,038	\$ 80,826
Working capital	574,384	460,308	343,195	281,528	261,404
Total assets	1,165,600	1,089,809	796,325	632,257	589,103
Long-term obligations, net of current portion(1)	80,603	16,617	16,208	16,869	30,244
Total stockholders' equity	721,379	619,085	469,231	373,724	338,351

(1) \$40.0 million, \$0.9 million, \$3.7 million, \$6.5 million and \$9.3 million of our long-term obligations, net of current portion consisted of revolving lines of credit and term loans at June 30, 2016, 2015, 2014, 2013 and 2012, respectively.

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

*The following discussion should be read in conjunction with the consolidated financial statements and related notes which appear elsewhere in this Annual Report on Form 10-K. This discussion contains forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from those anticipated in these forward-looking statements as a result of various factors, including those discussed below and elsewhere in this Annual Report on Form 10-K, particularly under the heading "Risk Factors."*

### Overview

We are a global leader in high performance, high efficiency server technology and innovation. We develop and provide end-to-end green computing solutions to the cloud computing, data center, enterprise IT, big data, HPC and IoT/embedded markets. Our solutions range from complete server, storage, blade and workstations to full racks, networking devices, server management software and technology support and services. For fiscal years 2016, 2015 and 2014, our net sales were \$2,215.6 million, \$1,991.2 million and \$1,467.2 million, respectively. The increase in our net sales in fiscal year 2016 compared with fiscal year 2015 was primarily due to increased sales of our server systems optimized for OEM/direct customers and cloud/internet data center computing. For fiscal years 2016, 2015 and 2014, net sales of application optimized servers were \$1,525.6 million, \$1,213.6 million and \$740.8 million, respectively, and net sales of subsystems and accessories were \$690.0 million, \$777.5 million and \$726.4 million, respectively. In fiscal year 2016, we experienced strong growth in sales of our complete systems including ultra, data center optimized servers, Twin family of servers, storage and IoT/embedded servers. The percentage of our net sales represented by sales of complete server systems increased to 68.9% in fiscal year 2016 from 60.9% in fiscal year 2015.

We commenced operations in 1993 and have been profitable every year since inception. For fiscal years 2016, 2015 and 2014, our net income was \$72.0 million, \$101.9 million and \$54.2 million, respectively. Our decrease in net income in fiscal year 2016 was primarily attributable to higher operating expenses from headcount increase to support our business growth and the recording of a \$9.3 million out-of-period adjustment relating to extended warranty revenue in the three months ended September 30, 2015. The deferred revenue for the extended warranty will be recognized ratably through fiscal year 2019. The impact on net income from this out-of-period adjustment was \$5.9 million pertaining to prior periods through June 30, 2015.

We sell our server systems and server subsystems and accessories through our direct sales force as well as through distributors and OEMs. For fiscal years 2016, 2015 and 2014, we derived 55.2%, 49.7%, 45.9%, respectively, of our net sales from products sold to OEMs/direct customers and 44.8%, 50.3% and 54.1%, respectively, of our net sales from products sold to distributors. Sales to Softlayer, a division of IBM Corporation, represented 10.9% and 10.1% of our net sales in fiscal years 2016 and 2015, respectively. None of our customers accounted for 10% or more of our net sales in fiscal year 2014. For fiscal years 2016, 2015 and 2014, we derived 63.1%, 58.3% and 55.2%, respectively, of our net sales from customers in the United States.

We perform the majority of our research and development efforts in-house. For fiscal years 2016, 2015 and 2014, research and development expenses represented 5.6%, 5.0% and 5.7% of our net sales, respectively.

We use several suppliers and contract manufacturers to design and manufacture components in accordance with our specifications, with most final assembly and testing performed at our manufacturing facility in San Jose, California. During fiscal year 2016, we have continued to increase manufacturing and service operations in Taiwan and the Netherlands primarily to support our Asian and European customers and have continued to work on improving our utilization of our overseas manufacturing capacity. One of our key suppliers is Ablecom, a related party, which supplies us with contract design and manufacturing support. For fiscal years 2016, 2015 and 2014, our purchases from Ablecom represented 12.8%, 13.6% and 16.3% of our cost of sales, respectively. Ablecom's sales to us constitute a substantial majority of Ablecom's net sales. We continue to maintain our manufacturing relationship with Ablecom in Asia in an effort to reduce our cost of sales. In addition to providing a large volume of contract manufacturing services for us, Ablecom continues to warehouse for us a number of components and subassemblies manufactured by multiple suppliers prior to shipment to our facilities in the United States and Europe. We typically negotiate the price of products that we purchase from Ablecom on a quarterly basis; however, either party may re-negotiate the price of products with each order. As a result of our relationship with Ablecom, it is possible that Ablecom may in the future sell products to us at a price higher or lower than we could obtain from an unrelated third party supplier. This may result in our future reporting of gross profit as a percentage of net sales that is less than or in excess of what we might have obtained absent our relationship with Ablecom.

In order to continue to increase our net sales and profits, we believe that we must continue to develop flexible and customizable server solutions and be among the first to market with new features and products. We must also continue to expand our software and customer service and support offerings, particularly as we increasingly focus on larger enterprise sales. We measure our financial success based on various indicators, including growth in net sales, gross profit as a percentage of net sales, operating income as a percentage of net sales, levels of inventory, and days sales outstanding, or DSOs. In connection with these efforts, we monitor daily and weekly sales and shipment reports. Among the key non-financial indicators of our success is our ability to rapidly introduce new products and deliver the latest application optimized server solutions. In this regard, we work closely with microprocessor and other component vendors to take advantage of new technologies as they are introduced. Historically, our ability to introduce new products rapidly has allowed us to benefit from the introduction of new microprocessors and as a result we monitor the introduction cycles of Intel, AMD and Nvidia carefully. This also impacts our research and development expenditures.

#### *Other Financial Highlights*

The following is a summary of other financial highlights of fiscal year 2016 :

- Net cash provided by (used in) operating activities was \$107.5 million , \$(44.6) million and \$6.5 million in fiscal year 2016 , 2015 and 2014 , respectively. Our cash and cash equivalents, together with our investments, were \$183.7 million at the end of fiscal year 2016 , compared with \$98.1 million at the end of fiscal year 2015 . The increase in our cash and cash equivalents, together with our investments at the end of fiscal year 2016 was primarily due to \$107.5 million of cash provided by our operating activities and \$12.2 million of proceeds from the exercise of stock options, partially offset by \$34.1 million of purchases of property and equipment, of which \$16.7 million was related to property and equipment of manufacturing buildings at our Green Computing Park in San Jose, California, and \$3.4 million was related to the implementation of a new ERP system for the United States headquarters and our subsidiaries.
- Days sales outstanding in accounts receivable (“DSO”) at the end of fiscal year 2016 was 50 days, compared with 48 days at the end of fiscal year 2015 .
- Our inventory balance was \$449.0 million at the end of fiscal year 2016 , compared with \$463.5 million at the end of fiscal year 2015 . Days sales of inventory (“DSI”) at the end of fiscal year 2016 was 87 days, compared with 84 days at the end of fiscal year 2015 .
- Our purchase commitments with contract manufacturers and suppliers were \$334.0 million at the end of fiscal year 2016 and \$378.3 million at the end of fiscal year 2015 . Included in the non-cancellable commitments are hard disk drive purchase commitments totaling approximately \$110.5 million , which have terms expiring through December 2016 . See Note 12 of Notes to our Consolidated Financial Statements in Item 8 of this Form 10-K for a discussion of purchase commitments.

#### **Fiscal Year**

Our fiscal year ends on June 30. References to fiscal year 2016 , for example, refer to the fiscal year ended June 30, 2016 .

#### **Revenues and Expenses**

*Net sales.* Net sales consist of sales of our server solutions, including server systems, subsystems and accessories. The main factors which impact our net sales are unit volumes shipped and average selling prices. The prices for server systems range widely depending upon the configuration, and the prices for our subsystems and accessories vary based on the type. As with most electronics-based products, average selling prices typically are highest at the time of introduction of new products which utilize the latest technology and tend to decrease over time as such products mature in the market and are replaced by next generation products.

*Cost of sales.* Cost of sales primarily consists of the costs to manufacture our products, including the costs of materials, contract manufacturing, shipping, personnel and related expenses including stock based compensation, equipment and facility expenses, warranty costs and inventory excess and obsolete provisions. The primary factors that impact our cost of sales are the mix of products sold and cost of materials, which include raw material costs, shipping costs and salary and benefits related to production. Cost of sales as a percentage of net sales may increase over time if decreases in average selling prices are not offset by corresponding decreases in our costs. Our cost of sales, as a percentage of net sales, is generally lower

on server systems than on subsystems and accessories, but generally higher in the case of sales of server systems to internet data system customers. Our cost of sales as a percentage of net sales is also impacted by the extent to which we are able to efficiently utilize our expanding manufacturing capacity. Because we generally do not have long-term fixed supply agreements, our cost of sales is subject to change based on market conditions.

*Research and development expenses.* Research and development expenses consist of the personnel and related expenses including stock based compensation of our research and development teams, and materials and supplies, consulting services, third party testing services and equipment and facility expenses related to our research and development activities. All research and development costs are expensed as incurred. We occasionally receive non-recurring engineering, or NRE, funding from certain suppliers and customers. Under these programs, we are reimbursed for certain research and development costs that we incur as part of the joint development of our products and those of our suppliers and customers. These amounts offset a portion of the related research and development expenses and have the effect of reducing our reported research and development expenses.

*Sales and marketing expenses.* Sales and marketing expenses consist primarily of salaries, stock based compensation and incentive bonuses for our sales and marketing personnel, costs for tradeshows, independent sales representative fees and marketing programs. From time to time, we receive cooperative marketing funding from certain suppliers. Under these programs, we are reimbursed for certain marketing costs that we incur as part of the joint promotion of our products and those of our suppliers. These amounts offset a portion of the related expenses and have the effect of reducing our reported sales and marketing expenses. Similarly, we from time to time offer our distributors cooperative marketing funding. To the extent the funding is not recorded as contra-revenue, it has the effect of increasing our expenses. The timing, magnitude and estimated usage of our programs and those of our suppliers can result in significant variations in reported sales and marketing expenses from period to period. Spending on cooperative marketing, either by us or our suppliers, typically increases in connection with significant product releases by us or our suppliers.

*General and administrative expenses.* General and administrative expenses consist primarily of general corporate costs, including personnel expenses, financial reporting, corporate governance and compliance and outside legal, audit and tax fees.

*Interest and other income, net .* Interest and other income, net consist primarily of interest earned on our investment and cash balances.

*Interest expense .* Interest expense represents interest expense on our term loans and lines of credit.

*Income tax provision.* Our income tax provision is based on our taxable income generated in the jurisdictions in which we operate, primarily the United States, Taiwan and the Netherlands. Our effective tax rate differs from the statutory rate primarily due to research and development tax credits and the domestic production activities deduction which were partially offset by the impact of state taxes, stock option expenses and unrecognized tax benefits. A reconciliation of the federal statutory income tax rate to our effective tax rate is set forth in Note 11 of Notes to Consolidated Financial Statements.

### **Critical Accounting Policies**

Our discussion and analysis of our financial condition and results of operations are based upon our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amount of assets, liabilities, revenues and expenses. We evaluate our estimates on an on-going basis, including those related to allowances for doubtful accounts and sales returns, inventory valuations, income taxes, warranty obligations, stock-based compensation and impairment of short-term and long-term investments. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances, the results of which form the basis for making the judgments we make about the carrying values of assets and liabilities that are not readily apparent from other sources. Because these estimates can vary depending on the situation, actual results may differ from the estimates.

We believe the following are our most critical accounting policies as they require our more significant judgments in the preparation of our financial statements.

*Revenue recognition.* We recognize revenue from sales of products when persuasive evidence of an arrangement exists, shipment has occurred and title has transferred, the sales price is fixed or determinable, collection of the resulting receivable is reasonably assured, and all significant obligations have been met. Generally this occurs at the time of shipment when risk of loss and title has passed to the customer if all other revenue recognition criteria have been met. Our standard

arrangement with our customers includes a signed purchase order or contract, 30 to 60 days payment terms, Ex-works terms, except for a few customers who have free-on-board destination terms, for which revenue is recognized when the products arrive at the destination if all other revenue recognition criteria have been met. We also have a few customers who have acceptance provisions for which revenue is recognized when customers provide the necessary acceptance. We generally do not provide for non-warranty rights of return except for products which have “Out-of-box” failure, where customers could return these products for credit within 30 days of receiving the items. Certain distributors and OEMs customers are also permitted to return products in unopened boxes, limited to purchases over a specified period of time, generally within 60 to 90 days of the purchase, or to products in the distributor’s or OEM’s inventory at certain times (such as the termination of the agreement or product obsolescence). To estimate reserves for future sales returns, we regularly review our history of actual returns for each major product line. We also communicate regularly with our distributors to gather information about end customer satisfaction, and to determine the volume of inventory in the channel. Reserves for future returns are adjusted as necessary, based on returns experience, returns expectations and communication with our distributors.

*Probability of collection is assessed on a customer-by-customer basis.* Customers are subjected to a credit review process that evaluates the customers’ financial position and ability to pay. If it is determined from the outset of an arrangement that collection is not probable based upon the review process, the customers are required to pay cash in advance of shipment. We also make estimates of the uncollectibility of accounts receivables, analyzing accounts receivable and historical bad debts, customer concentration, customer-credit-worthiness, current economic trends and changes in customer payment terms to evaluate the adequacy of the allowance for doubtful accounts. On a quarterly basis, we evaluate aged items in the accounts receivable aging report and provide an allowance in an amount we deem adequate for doubtful accounts. If a major customer’s creditworthiness deteriorates, if actual defaults are higher than our historical experience, or if other circumstances arise, our estimates of the recoverability of amounts due to us could be overstated, and additional allowances could be required, which could have an adverse impact on our reported operating expenses. We provide for price protection to certain distributors. We assess the market competition and product technology obsolescence, and make price adjustments based on our judgment. Upon each announcement of price reductions, the accrual for price protection is calculated based on our distributors’ inventory on hand. Such reserves are recorded as a reduction to revenue at the time we reduce the product prices.

*Multiple-element arrangements.* Our multiple-element product offerings include server systems with embedded software and support, which are considered separate units of accounting.

We allocate revenue to each element in a multiple-element arrangement based upon their relative selling price. When applying the relative selling price method, we determine the selling price for each deliverable using vendor-specific objective evidence (“VSOE”) of selling price, if it exists, or third-party evidence (“TPE”) of selling price. If neither VSOE nor TPE of selling price exist for a deliverable, we use our best estimate of selling price for that deliverable. Revenue allocated to each element is then recognized when all the revenue recognition criteria are met for each element.

We determine VSOE based on its normal pricing and discounting practices for the specific product or service when sold separately. In determining VSOE, we require that a substantial majority of the selling prices for a product or service fall within a reasonably narrow pricing range.

In most instances, we are not able to establish VSOE for all deliverables in an arrangement with multiple elements. This may be due to the infrequently selling each element separately, not pricing products within a narrow range, or only having a limited sales history. When VSOE cannot be established, we attempt to establish the selling price for each element based on TPE. TPE is determined based on competitor prices for similar deliverables when sold separately. Generally, our product solutions differ from that of our peers and contain a significant level of customization and differentiation such that the comparable pricing of products with similar functionality cannot be obtained. Furthermore, we are unable to reliably determine what similar competitor products’ selling prices are on a stand-alone basis. Therefore, we are typically unable to determine TPE.

When we are unable to establish selling price using VSOE or TPE, we use estimated selling price (“ESP”) in our allocation of the arrangement consideration. The objective of ESP is to determine the price at which we would transact a sale if the product or service were sold on a stand-alone basis. ESP is generally used for offerings that are not typically sold on a stand-alone basis or for new or highly customized offerings.

We determine ESP for a product by considering multiple factors including, but not limited to, geographies, customer types, internal costs, gross margin objectives and pricing practices. The determination of ESP is made through consultation with and approval by our management.

We regularly review VSOE, TPE and ESP, as well as the establishment and updates of these estimates. There was no material impact on revenues during fiscal year 2016 nor do we expect a material impact in the near term from changes in VSOE, TPE or ESP.

*Services revenue.* Services revenue mainly consists of extended warranty and on-site services. Extended warranty and on-site services are offered as part of multiple-element arrangements. Revenue related to extended warranty and on-site services is deferred and recognized ratably over the contractual period. These service contracts are typically one to five years in length. Service revenue has been less than 10% of net sales for all periods presented and is not separately disclosed.

*Product warranties.* We offer product warranties ranging from 15 to 39 months against any defective product. We accrue for estimated returns of defective products at the time revenue is recognized, based on historical warranty experience and recent trends. We monitor warranty obligations and may make revisions to our warranty reserve if actual costs of product repair and replacement are significantly higher or lower than estimated. Accruals for anticipated future warranty costs are charged to cost of sales and included in accrued liabilities. The liability for product warranties was \$5.8 million as of June 30, 2016, compared with \$7.7 million as of June 30, 2015. The provision for warranty reserve was \$17.5 million, \$15.8 million and \$14.2 million in fiscal years 2016, 2015 and 2014, respectively. The change in estimated liability for pre-existing warranties was \$(2.1) million, \$(0.2) million and \$0.4 million in fiscal years 2016, 2015 and 2014, respectively. As a result of our increase in cost of servicing warranty claims from our increase in net sales in fiscal year 2016 and 2015, the provision for warranty reserve increased \$1.7 million and \$1.6 million in fiscal years 2016 and 2015, respectively. If in future periods, we experience or anticipate an increase or decrease in warranty claims as a result of new product introductions or change in unit volumes compared with our historical experience, or if the cost of servicing warranty claims is greater or lesser than expected, we intend to adjust our estimates accordingly.

*Inventory valuation.* Inventory is valued at the lower of cost or market. We evaluate inventory on a quarterly basis for lower of cost or market and excess and obsolescence and, as necessary, write down the valuation of units based upon the number of units that are unlikely to be sold. This evaluation takes into account matters including expected demand, historical usage and sales, anticipated sales price, product obsolescence and other factors. If actual future demand for our products is less than currently forecasted, additional inventory adjustments may be required. Once a reserve is established, it is maintained until the product to which it relates is sold or scrapped. If a unit that has been written down is subsequently sold, the cost associated with the revenue from this unit is reduced to the extent of the write down, resulting in an increase in gross profit. We monitor the extent to which previously written down inventory is sold at amounts greater or less than carrying value, and based on this analysis, adjust our estimate for determining future write downs. If in future periods, we experience or anticipate a change in recovery rate compared with our historical experience, our gross margin would be affected. Our provision for inventory was \$9.3 million, \$5.9 million and \$2.3 million in fiscal years 2016, 2015 and 2014, respectively.

*Accounting for income taxes.* We account for income taxes under an asset and liability approach. Deferred income taxes reflect the impact of temporary differences between assets and liabilities recognized for financial reporting purposes and such amounts recognized for income tax reporting purposes, net of operating loss carry-forwards and other tax credits measured by applying currently enacted tax laws. Valuation allowances are provided when necessary to reduce deferred tax assets to an amount that is more likely than not to be realized.

We recognize the tax liability for uncertain income tax positions on the income tax return based on a two-step process. The first step is to determine whether it is more likely than not that each income tax position would be sustained upon examination by the tax authority. The second step is to estimate and measure the tax benefit as the amount that has a greater than 50% likelihood of being realized upon ultimate settlement with the tax authority. Estimating these amounts requires us to determine the probability of various possible outcomes. We evaluate these uncertain tax positions on a quarterly basis. This evaluation is based on the consideration of several factors, including changes in facts or circumstances, changes in applicable tax law, settlement of issues under audit and new exposures. If we later determine that our exposure is lower or that the liability is not sufficient to cover our revised expectations, we adjust the liability and effect a related change in our tax provision during the period in which we make such determination. See Note 11 of Notes to Consolidated Financial Statements for the impact on our consolidated financial statements.

*Stock-based compensation.* We measure and recognize compensation expense for all share-based awards made to employees and non-employee members of our Board of Directors including employee stock options and restricted stock units. We are required to estimate the fair value of share-based awards on the date of grant. The value of awards that are ultimately expected to vest is recognized as an expense over the requisite service periods. The fair value of our restricted stock units is based on the closing market price of our common stock on the date of grant. We estimated the fair value of stock options granted using a Black-Scholes option-pricing model and a single option award approach. This model requires us to make estimates and assumptions with respect to the expected term of the option, the expected volatility of the price of our common

stock and the expected forfeiture rate. The fair value is then amortized on a straight-line basis over the requisite service periods of the awards, which is generally the vesting period.

The expected term represents the period that our stock-based awards are expected to be outstanding and was determined based on a combination of our peer group and our historical experience. The expected volatility is based on a combination of our implied and historical volatility. In addition, forfeitures of share-based awards are estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates. We use historical data to estimate pre-vesting option and restricted stock unit forfeitures and record stock-based compensation expense only for those awards that are expected to vest.

Compensation expense for options and restricted stock units granted to employees was \$16.1 million, \$13.7 million and \$11.1 million for fiscal years 2016, 2015 and 2014, respectively. As of June 30, 2016, the total unrecognized compensation cost, adjusted for estimated forfeitures, related to unvested stock options and restricted stock units to employees and non-employee members of our Board of Directors, was \$37.5 million, which is expected to be recognized as an expense over a weighted-average period of approximately 2.29 years. See Note 10 of Notes to our Consolidated Financial Statements for additional information.

*Variable interest entities.* We have concluded that Ablecom is a variable interest entity in accordance with applicable accounting standards and guidance; however, we are not the primary beneficiary of Ablecom and therefore, we do not consolidate Ablecom. In performing our analysis, we considered our explicit arrangements with Ablecom including the supplier and distributor arrangements. Also, as a result of the substantial related party relationship between the two companies, we considered whether any implicit arrangements exist that would cause us to protect those related parties' interests in Ablecom from suffering losses. We determined that no implicit arrangements exist with Ablecom or its shareholders. Such an arrangement would be inconsistent with the fiduciary duty that we have towards our stockholders who do not own shares in Ablecom.

We and Ablecom jointly established Super Micro Asia Science and Technology Park, Inc. ("Management Company") in Taiwan to manage the common areas shared by us and Ablecom for our separately constructed manufacturing facilities. Each company contributed \$168,000 and own 50% of the Management Company. Although the operations of the Management Company are independent of us, through governance rights, we have the ability to direct the Management Company's business strategies. Therefore, we have concluded that the Management Company is a variable interest entity of us as we are the primary beneficiary of the Management Company. As of June 30, 2016, the accounts of the Management Company have been consolidated with our accounts, and a noncontrolling interest has been recorded for Ablecom's interests in the net assets and operations of the Management Company. In fiscal years 2016, 2015 and 2014, \$20,000, \$(11,000) and \$(6,000) of net income (loss) attributable to Ablecom's interest was included in our general and administrative expenses in the consolidated statements of operations, respectively.

## Results of Operations

### Net Sales

The following table presents net sales by product type for fiscal years 2016, 2015 and 2014 (dollars in millions):

	Years Ended June 30,			2016 over 2015 Change		2015 over 2014 Change	
	2016	2015	2014	\$	%	\$	%
Server systems	\$ 1,525.6	\$ 1,213.6	\$ 740.8	\$ 312.0	25.7 %	\$ 472.8	63.8%
<i>Percentage of total net sales</i>	68.9%	60.9%	50.5%				
Subsystems and accessories	690.0	777.5	726.4	(87.5)	(11.3)%	51.1	7.0%
<i>Percentage of total net sales</i>	31.1%	39.1%	49.5%				
Total net sales	\$ 2,215.6	\$ 1,991.2	\$ 1,467.2	\$ 224.4	11.3 %	\$ 524.0	35.7%



The following table presents unit sales and average selling price by product type for fiscal years 2016 , 2015 and 2014 (units in thousands):

	Years Ended June 30,			2016 over 2015 Change	2015 over 2014 Change
	2016	2015	2014	%	%
<b>Server systems:</b>					
Unit sales	357	314	262	13.7 %	19.8%
Average selling price	\$ 4,273	\$ 3,865	\$ 2,827	10.6 %	36.7%
<b>Subsystems and accessories:</b>					
Unit sales	4,125	4,733	4,458	(12.8)%	6.2%
Average selling price	\$ 167	\$ 164	\$ 163	1.8 %	0.6%

Fiscal Year 2016 compared with Fiscal Year 2015

The increase in our net sales in fiscal year 2016 compared with fiscal year 2015 was primarily due to continued increased sales of our products optimized for OEM/direct customers and cloud/internet data center computing who increasingly are purchasing complete server systems from us offset in part by a \$9.3 million out-of-period adjustment relating to extended warranty revenue which was recognized in the three prior fiscal year period ended June 30, 2015 and deferred in the three months ended September 30, 2015. The year-over-year growth in net sales of our server systems in fiscal year 2016 was due primarily to an increase in the average selling price of our server systems and to a lesser extent an increase in the unit volumes of server systems. The average selling prices of our server systems increase d primarily due to higher sales of our complete server systems which offer higher density computing and more memory and hard disk drive capacity. The increase in the sales of these complete systems include our ultra, data center optimized servers, Twin family of servers, storage and IoT/embedded servers.

The year-over-year decrease in net sales and unit sales of our subsystems and accessories in fiscal year 2016 was primarily due to a lower sales of hard disk drives and memory bundled with our server solutions to our distributors and system integrators as we are continuing to promote our sales of complete server systems to our OEM and direct customers.

Fiscal Year 2015 compared with Fiscal Year 2014

The increase in our net sales in fiscal year 2015 compared with fiscal year 2014 was primarily due to continued increased sales of our products optimized for OEM, internet data center cloud computing and enterprise verticals. The year-over-year growth in net sales of our server systems in fiscal year 2015 was due primarily to an increase in the average selling price of our server systems and to a lesser extent an increase in unit volumes of server systems. The average selling prices of our server systems increased primarily due to an increase in average selling prices of our complete server systems which offer higher density computing and more memory and hard disk drive capacity. The increase in the sales of these complete systems include our storage servers and our Twin family of servers and to a lesser extent our GPU/Xeon Phi servers. Net sales also increased as a result of an increase in customers purchasing our software and service together with our complete systems as total solution packages.

The year-over-year growth in net sales and unit sales of our subsystems and accessories in fiscal year 2015 was primarily due to a higher sales of hard disk drives and memory bundled with our server solutions to our distributors and system integrators who increasingly are purchasing additional accessories from us and completing the final assembly themselves.

The following table presents the percentages of net sales from products sold to distributors and OEMs and direct customers for fiscal years 2016 , 2015 and 2014 :

	Years Ended June 30,			2016 over 2015 Change	2015 over 2014 Change
	2016	2015	2014	%	%
Distributors	44.8%	50.3%	54.1%	(5.5)%	(3.8)%
OEMs and direct customers	55.2%	49.7%	45.9%	5.5 %	3.8 %
Total net sales	100.0%	100.0%	100.0%		

The following table presents percentages of net sales by geographic region for fiscal years 2016 , 2015 and 2014 :

	Years Ended June 30,			2016 over 2015 Change		2015 over 2014 Change	
	2016	2015	2014	%		%	
United States	63.1%	58.3%	55.2%	4.8 %		3.1 %	
Europe	17.4%	19.0%	21.6%	(1.6)%		(2.6)%	
Asia	14.6%	16.4%	20.4%	(1.8)%		(4.0)%	
Others	4.9%	6.3%	2.8%	(1.4)%		3.5 %	
Total net sales	100.0%	100.0%	100.0%				

### Cost of Sales and Gross Margin

Cost of sales and gross margin for fiscal years 2016 , 2015 and 2014 , are as follows (dollars in millions):

	Years Ended June 30,			2016 over 2015 Change		2015 over 2014 Change	
	2016	2015	2014	\$	%	\$	%
Total cost of sales	\$ 1,884.0	\$ 1,670.9	\$ 1,241.7	\$ 213.1	12.8 %	\$ 429.3	34.6%
Total gross profit	331.5	320.2	225.5	11.3	3.5 %	94.7	42.0%
Total gross margin	15.0%	16.1%	15.4%	(1.1)%		0.7%	

### Fiscal Year 2016 compared with Fiscal Year 2015

The year-over-year increase in absolute dollars of cost of sales in fiscal year 2016 compared to fiscal year 2015 was primarily attributable to the increase in net sales, an increase of \$3.4 million in provision for inventory reserve and an increase of \$1.7 million in provision for warranty reserve. In fiscal year 2016 , we recorded a \$9.3 million expense, net of recovery, or 0.4% of net sales, related to the inventory provision as compared to \$5.9 million, or 0.3% of net sales, in fiscal year 2015 . The increase in the inventory provision was primarily due to higher inventory reserves for specific products.

In fiscal year 2016 , we recorded a \$17.5 million expense, or 0.8% of net sales, related to the provision for warranty reserve as compared to a \$15.8 million expense, or 0.8% of net sales, in fiscal year 2015 . The increase in the provision for warranty reserve was primarily due to higher cost of servicing warranty claims from higher net sales in fiscal year 2016 . If in future periods we experience or anticipate an increase or decrease in warranty claims as a result of new product introductions or change in unit volumes compared with our historical experience, or if the cost of servicing warranty claims is greater or lesser than expected, our gross margin would be affected.

The year-over-year decrease in the gross margin percentage in fiscal year 2016 compared to fiscal year 2015 was primarily due to significant lower gross margins from sales of our subsystem and accessories, lower utilization of manufacturing capacity and the recording of a \$9.3 million out-of-period adjustment relating to extended warranty revenue which was recognized in the three fiscal year period ended June 30, 2015, offset in part by higher sales of our complete server systems such as storage servers which have a higher gross margin. Gross margin percentage for fiscal year 2016 would have been 15.3% without this out-of-period adjustment.

### Fiscal Year 2015 compared with Fiscal Year 2014

The year-over-year increase in absolute dollars of cost of sales in fiscal year 2015 compared to fiscal year 2014 was primarily attributable to the increase in net sales, an increase of \$3.7 million in provision for inventory reserve and an increase of \$1.6 million in provision for warranty reserve. In fiscal year 2015, we recorded a \$5.9 million expense, net of recovery, or 0.3% of net sales, related to the inventory provision as compared to \$2.3 million, or 0.2% of net sales, in fiscal year 2014. The increase in the inventory provision was primarily due to higher inventory reserves for specific products.

In fiscal year 2015, we recorded a \$15.8 million expense, or 0.8% of net sales, related to the provision for warranty reserve as compared to a \$14.2 million expense, or 1.0% of net sales, in fiscal year 2014. The increase in the provision for warranty reserve was primarily due to higher cost of servicing warranty claims from higher net sales in fiscal year 2015.

The year-over-year increase in the gross margin percentage in fiscal year 2015 compared to fiscal year 2014 was primarily due to lower costs resulting from an increase in the mix of complete server system sales with higher margin, the increased scale of our business and higher utilization of our manufacturing facilities in Taiwan, offset by higher sales to internet data center customers, which generally have a lower gross margin.

## Operating Expenses

Operating expenses for fiscal years 2016 , 2015 and 2014 are as follows (dollars in millions):

	Years Ended June 30,			2016 over 2015 Change		2015 over 2014 Change	
	2016	2015	2014	\$	%	\$	%
Research and development	\$ 124.0	\$ 100.3	\$ 84.3	\$ 23.7	23.7%	\$ 16.0	19.0%
<i>Percentage of total net sales</i>	5.6%	5.0%	5.7%				
Sales and marketing	62.8	48.9	38.0	14.0	28.6%	10.8	28.5%
<i>Percentage of total net sales</i>	2.8%	2.5%	2.6%				
General and administrative	37.8	24.4	23.0	13.5	55.2%	1.4	5.9%
<i>Percentage of total net sales</i>	1.7%	1.2%	1.6%				
Total operating expenses	224.7	\$ 173.5	\$ 145.3	\$ 51.2	29.5%	\$ 28.2	19.4%
<i>Percentage of total net sales</i>	10.1%	8.7%	9.9%				

*Research and development expenses.* Research and development expenses increased by \$23.7 million , or 23.7% in fiscal year 2016 compared to fiscal year 2015 . Research and development expenses were 5.6% and 5.0% of net sales for fiscal year 2016 and 2015 , respectively. The increase in absolute dollars was driven primarily by an increase of \$17.3 million in compensation and benefits including stock-based compensation expense, an increase of \$4.4 million in development expenses for prototype materials and no value added tax refund of \$2.8 million on research and development expenses which we received in fiscal year 2015.

Research and development expenses increased by \$16.0 million, or 19.0% in fiscal year 2015 compared to fiscal year 2014. Research and development expenses were 5.0% and 5.7% of net sales for fiscal year 2015 and 2014, respectively. The increase in absolute dollars was driven primarily by an increase of \$18.1 million in compensation and benefits including stock-based compensation expense, an increase of \$1.7 million in development expenses for prototype materials, partially offset by \$3.2 million in non-recurring engineering funding from certain suppliers and customers and a \$2.8 million value added tax refund on research and development expenses. The decrease as a percentage of net sales was primarily due to the increase in net sales in fiscal year 2015.

Research and development expenses include stock-based compensation expense of \$10.2 million , \$8.6 million and \$6.8 million for fiscal year 2016 , 2015 and 2014 , respectively.

Our compensation and benefit expense in research and development continues to increase resulting from annual salary increases and growth in research and development personnel related to expanded product development initiatives in the United States and in Taiwan. We continue to believe that focused investments in research and development are critical to our future growth and competitive position in the marketplace. Our investments in this area will directly relate to enhancement of our current product line, development of new products that achieve market acceptance, and our ability to meet an expanding range of customer requirements. As such, we expect to continue to spend on current and future product development efforts.

*Sales and marketing expenses.* Sales and marketing expenses increased by \$14.0 million , or 28.6% in fiscal year 2016 compared to fiscal year 2015 . Sales and marketing expenses were 2.8% and 2.5% of net sales for fiscal year 2016 and 2015 , respectively. The increase in absolute dollars was primarily due to an increase of \$8.0 million in compensation and benefits including stock based compensation, resulting primarily from growth in sales and marketing personnel, an increase of \$3.6 million in advertising, marketing promotional and trade show expenses, and a decrease of \$1.1 million in marketing cooperative funding from certain suppliers.

Sales and marketing expenses increased by \$10.8 million, or 28.5% in fiscal year 2015 compared to fiscal year 2014. Sales and marketing expenses were 2.5% and 2.6% of net sales for fiscal year 2015 and 2014, respectively. The increase in absolute dollars was primarily due to an increase of \$7.8 million in compensation and benefits resulting primarily from growth in sales and marketing personnel and an increase of \$2.9 million in advertising, marketing promotional and trade show expenses. The decrease as a percentage of net sales was primarily due to the increase in net sales in fiscal year 2015.

Sales and marketing expenses include stock-based compensation expense of \$1.8 million, \$1.6 million and \$1.3 million for fiscal year 2016, 2015 and 2014, respectively.

*General and administrative expenses.* General and administrative expenses increased by \$13.5 million, or 55.2% in fiscal year 2016 compared to fiscal year 2015. General and administrative expenses were 1.7% and 1.2% of net sales for fiscal year 2016 and 2015, respectively. The increase in absolute dollars was primarily due to an increase of \$7.6 million in compensation and benefits including stock-based compensation expense, an increase of \$4.1 million in legal, audit and accounting expenses and an increase of \$1.0 million in bad debt expenses.

General and administrative expenses increased by \$1.4 million, or 5.9% in fiscal year 2015 compared to fiscal year 2014. General and administrative expenses were 1.2% and 1.6% of net sales for fiscal year 2015 and 2014, respectively. The increase in absolute dollars was primarily due to an increase of \$2.3 million in compensation and benefits including stock-based compensation expense, a decrease of \$0.7 million in miscellaneous income relating to the settlement of our outstanding accounts payable with one vendor in the prior year offset in part by an increase of \$1.1 million in foreign currency transaction gain and a decrease of \$1.0 million in bad debt expenses. The decrease as a percentage of net sales was primarily due to the increase in net sales in fiscal year 2015.

General and administrative expenses include stock-based compensation expense of \$3.0 million, \$2.6 million and \$2.1 million for fiscal year 2016, 2015 and 2014, respectively.

### Interest and Other Expense, Net

Interest and other expense, net for fiscal year 2016, 2015 and 2014 are as follows (dollars in millions):

	Years Ended June 30,			2016 over 2015 Change		2015 over 2014 Change	
	2016	2015	2014	\$	%	\$	%
Interest and other income, net	\$ 0.2	\$ 0.1	\$ 0.1	\$ 0.1	48.7%	\$ —	25.0%
Interest expense	(1.6)	(1.0)	(0.8)	(0.6)	65.2%	(0.2)	27.5%
Interest and other expense, net	\$ (1.4)	\$ (0.9)	\$ (0.7)	\$ (0.6)	67.4%	\$ (0.2)	27.8%

*Interest and other expense, net.* Interest and other expense, net increased by \$0.6 million in fiscal year 2016 compared to fiscal year 2015 and increased by \$0.2 million in fiscal year 2015 compared to fiscal year 2014. The increases were primarily due to higher interest expense on debt.

### Provision for Income Taxes

Provision for income taxes and effective tax rates for fiscal years 2016, 2015 and 2014 are as follows (dollars in millions):

	Years Ended June 30,			2016 over 2015 Change		2015 over 2014 Change	
	2016	2015	2014	\$	%	\$	%
Provision for Income Taxes	\$ 33.4	\$ 44.0	\$ 25.4	\$ (10.6)	(24.1)%	\$ 18.6	73.1%
<i>Percentage of total net sales</i>	1.5%	2.2%	1.7%				
Effective tax rate	31.7%	30.2%	32.0%				

*Provision for income taxes.* Provision for income taxes decreased by \$10.6 million, or 24.1% in fiscal year 2016 compared to fiscal year 2015. The effective tax rate was 31.7% and 30.2% for fiscal years 2016 and 2015, respectively. The lower income tax provision for fiscal year 2016 was primarily attributable to our lower operating income. The effective tax rate for fiscal year 2016 was higher primarily due to the lower foreign rate benefits and foreign unrecognized tax benefits offset in part by the increase in federal research and development credit as a result of the enactment of the Protecting Americans from Tax Hikes ("PATH") Act of 2015.

Provision for income taxes increased by \$18.6 million, or 73.1% in fiscal year 2015 compared to fiscal year 2014. The effective tax rate was 30.2% and 32.0% for fiscal year 2015 and 2014, respectively. The higher income tax provision for fiscal year 2015 was primarily attributable to our higher operating income. The effective tax rate for fiscal year 2015 was lower primarily due to the release of unrecognized tax benefits due to the lapse of statute of limitations, reinstatement of the United

States federal research and development tax credits, higher income taxed by foreign jurisdictions with lower tax rates and lower add back for stock compensation expenses.

## Liquidity and Capital Resources

Since our inception, we have financed our growth primarily with funds generated from operations and from the proceeds of our initial public offering. In addition, we have, from time to time, utilized borrowing facilities, particularly in relation to the financing of real property acquisitions. Our cash and cash equivalents and short-term investments were \$181.0 million and \$95.5 million as of June 30, 2016 and 2015, respectively. Our cash in foreign locations was \$46.5 million and \$26.3 million at June 30, 2016 and 2015, respectively. It is management's intention to reinvest the undistributed foreign earnings indefinitely in foreign operations.

*Operating Activities.* Net cash provided by (used in) operating activities was \$107.5 million, \$(44.6) million and \$6.5 million for fiscal years 2016, 2015 and 2014, respectively.

Net cash provided by our operating activities for fiscal year 2016 was primarily due to our net income of \$72.0 million, a decrease in accounts receivable of \$32.4 million, an increase in other long term liabilities of \$24.9 million, stock-based compensation expense of \$16.1 million, depreciation expense of \$13.3 million, provision for inventory of \$9.3 million and an increase in accrued liabilities of \$9.0 million, which were partially offset by a decrease in accounts payable of \$54.3 million and an increase in prepaid expenses and other assets of \$8.2 million.

Net cash used in our operating activities for fiscal year 2015 was primarily due to an increase in inventory of \$153.6 million and an increase in accounts receivable of \$110.2 million, which were partially offset by our net income of \$101.9 million, an increase in accounts payable of \$75.5 million, stock-based compensation expense of \$13.7 million, an increase in net income taxes payable of \$12.0 million, an increase in accrued liabilities of \$9.6 million, depreciation expense of \$8.1 million and provision for inventory of \$5.9 million.

Net cash provided by our operating activities for fiscal year 2014 was primarily due to our net income of \$54.2 million, an increase in accounts payable of \$46.3 million, stock-based compensation expense of \$11.1 million, an increase in net income taxes payable of \$10.9 million, depreciation expense of \$6.4 million and an increase in accrued liabilities of \$3.3 million, provision for inventory of \$2.3 million, which were partially offset by an increase in accounts receivable of \$64.9 million, an increase in inventory of \$63.9 million and the excess tax benefits from stock-based compensation of \$3.0 million.

The decrease for fiscal year 2016 in accounts receivable was primarily due to lower sales volume in the fourth quarter of fiscal year 2016. The decrease for fiscal year 2016 in inventory and accounts payable was primarily due to anticipated lower sales volume in the first quarter of fiscal year 2017. We anticipate that accounts receivable, inventory and accounts payable will increase to the extent we continue to grow our product lines and our business in fiscal year 2016.

The increase for fiscal year 2014 and 2015 in accounts receivable was primarily due to an increase in our sales late in the fourth quarter. The increase for fiscal year 2014 and 2015 in inventory and accounts payable was primarily due to higher purchases to support the anticipated level of growth in our net sales in fiscal year 2015.

*Investing activities.* Net cash used in our investing activities was \$35.1 million, \$36.2 million and \$40.2 million for fiscal years 2016, 2015 and 2014, respectively. In fiscal year 2016, of the net cash used in our investing activities, \$34.1 million was related to the purchase of property, plant and equipment, of which \$16.7 million was related to property and equipment of manufacturing buildings at our Green Computing Park in San Jose, California, and \$3.4 million was related to the implementation of a new ERP system for the United States headquarters and our subsidiaries. We plan to continue the development and construction of improvements to our properties through fiscal year 2017. We anticipate investing approximately \$17.0 million through April 2017 to complete the construction of a second manufacturing facility and the remodel of our office building. We plan to finance this development through our operating cash flows and additional borrowings from banks.

In fiscal year 2015, the \$35.1 million included in net cash used in our investing activities was related to the purchase of property, plant and equipment including \$21.8 million related to the development and construction of improvements to our first manufacturing building and warehouse at our Green Computing Park in San Jose, California, which was completed in August 2015 and \$4.8 million related to the implementation of a new ERP system.

In fiscal year 2014, the \$40.6 million included in net cash used in our investing activities was related to the purchase of property, plant and equipment including \$30.2 million related to the real property purchased in San Jose, California in October 2013, offset in part by the termination of the certificates of deposits for \$0.4 million, which were pledged as security for a value added tax examination required by tax authorities of Taiwan.

*Financing activities.* Net cash provided by our financing activities was \$13.1 million, \$80.1 million and \$37.2 million for fiscal years 2016, 2015 and 2014, respectively. In fiscal year 2016, we borrowed an additional \$34.2 million under our revolving lines of credit from Bank of America and CTBC Bank and repaid \$34.1 million in loans. Further, we received \$12.2 million related to the proceeds from the exercise of stock options in fiscal year 2016.

In fiscal year 2015, we borrowed an additional \$84.9 million under our revolving line of credit from Bank of America and CTBC Bank and repaid \$36.0 million in loans. Further, we received \$23.3 million related to the proceeds from the exercise of stock options in fiscal year 2015.

In fiscal year 2014, we received \$23.9 million related to the proceeds from the exercise of stock options. We withheld shares and paid the minimum tax withholding for restricted stock awards of \$0.7 million in fiscal year 2014. Further, we borrowed an additional \$6.8 million under the line of credit from Bank of America, borrowed \$7.0 million from the CTBC Bank secured term loan, and borrowed \$3.5 million of our CTBC Bank revolving line of credit and repaid \$6.3 million in loans in fiscal year 2014.

In fiscal year 2016, 2015 and 2014, \$2.9 million, \$8.1 million and \$3.0 million was related to the excess tax benefits from stock-based compensation, respectively. We expect the net cash provided by financing activities will increase throughout fiscal year 2017 as we intend to obtain additional financing from banks for our working capital requirements.

We expect to experience continued growth in our working capital requirements and capital expenditures as we continue to expand our business. Our long-term future capital requirements will depend on many factors, including our level of revenues, the timing and extent of spending to support our product development efforts, the expansion of sales and marketing activities, the timing of our introductions of new products, the costs to ensure access to adequate manufacturing capacity and the continuing market acceptance of our products. We intend to fund this continued expansion through cash generated by operations and by drawing on the revolving credit facility or through other debt financing. However we cannot be certain whether such financing will be available on commercially reasonable or otherwise favorable terms or that such financing will be available at all. We anticipate that working capital and capital expenditures will constitute a material use of our cash resources. We have sufficient cash on hand to continue to operate for at least the next 12 months.

*Other factors affecting liquidity and capital resources*

#### Activities under Revolving Lines of Credit and Term Loans

##### Bank of America

In June 2015, we entered into an amendment to our existing credit agreement with Bank of America, which provided for (i) a \$65.0 million revolving line of credit facility and (ii) a five-year \$14.0 million term loan facility. The term loan is secured by three buildings located in San Jose, California and the principal and interest are payable monthly through September 30, 2016 with an interest rate at the LIBOR rate plus 1.50% per annum. In May 2016, we extended the revolving line of credit to mature on June 30, 2016.

In June 2016, we entered into a new credit agreement with Bank of America, which provided for (i) a \$55.0 million revolving line of credit facility including a \$5.0 million letter of credit sublimit that matures on June 30, 2017 and (ii) a five-year \$50.0 million term loan facility. This revolving line of credit facility replaces the existing revolving line of credit facility with Bank of America. This additional term loan is secured by seven buildings located in San Jose, California and property, plant and equipment and inventory in those buildings. The principal and interest of the term loan are payable monthly through June 30, 2021 with an interest rate at the LIBOR rate plus 1.25% per annum.

The interest rate for the revolving line of credit under the above credit agreements with Bank of America is at the LIBOR rate plus 1.25% per annum. The LIBOR rate was 0.46% at June 30, 2016. The letter of credit is charged at 1.25% per annum. In July 2016, we received \$50.0 million term loan proceeds from Bank of America under the new credit agreement with interest rate at 1.71% per annum and paid down the outstanding amounts under the revolving line of credit with Bank of America. As of June 30, 2016, we have reclassified \$50.0 million of our line of credit to long-term loan.

In June 2016, we also entered into a separate credit agreement with Bank of America, which provided for a revolving line of credit of \$10.0 million for our Taiwan subsidiary that matures on June 30, 2017. The interest rate of the revolving line of credit is equal to a minimum of 0.9% per annum plus the lender's cost of fund.

As of June 30, 2016 and 2015, the total outstanding borrowings under the Bank of America term loan was \$0.9 million and \$3.7 million, respectively. The total outstanding borrowings under the Bank of America lines of credit was \$62.2 million and \$59.7 million as of June 30, 2016 and 2015, respectively. The interest rates for these loans ranged from 1.02% to 1.96% per annum at June 30, 2016 and 0.79% to 1.68% per annum at June 30, 2015, respectively. As of June 30, 2016, the unused revolving lines of credit and term loan amount under Bank of America under the new credit agreements were \$2.8 million and \$50.0 million, respectively.

#### CTBC Bank

In November 2015, we entered into an amendment to the existing credit agreement with CTBC Bank Co., Ltd ("CTBC Bank") that provides for (i) a 12-month NTD \$700 million or \$22.0 million U.S. dollar equivalent term loan secured by the land and building located in Bade, Taiwan with an interest rate equal to the lender's established NTD interest rate plus 0.25% per annum which is adjusted monthly and (ii) a 12-month revolving line of credit up to 80.0% of eligible accounts receivable in an aggregate amount of up to \$17.0 million with an interest rate equal to the lender's established USD interest rate plus 0.30% per annum which is adjusted monthly. The total borrowings allowed under the credit agreement are capped at NT \$1.0 billion or \$30.3 million U.S. dollar equivalent. In January 2016, we extended the revolving line of credit to mature on March 31, 2016.

In April 2016, we entered into a new credit agreement with CTBC Bank that provides for (i) a 12-month NTD \$700.0 million or \$21.6 million U.S. dollar equivalent term loan facility secured by the land and building located in Bade, Taiwan with an interest rate equal to the lender's established NTD interest rate plus 0.25% per annum which is adjusted monthly. This term loan facility also includes a 12-month customs bond up to NTD \$100.0 million or \$3.1 million U.S. dollar equivalent with an annual fee equal to 0.5% per annum, and (ii) a 12-month revolving line of credit up to 80.0% of eligible accounts receivable in an aggregate amount of up to \$40.0 million with an interest rate equal to the lender's established USD interest rate plus 0.30% per annum which is adjusted monthly. The total borrowings allowed under the credit agreement are capped at \$40.0 million. The credit agreement matures on March 31, 2017.

The total outstanding borrowings under the CTBC Bank term loan was denominated in Taiwanese dollars and was translated into U.S. dollars of \$20.4 million and \$21.3 million as of June 30, 2016 and 2015, respectively. At June 30, 2016 and 2015, the total outstanding borrowings under the CTBC Bank revolving line of credit was \$10.1 million and \$9.7 million, respectively, in U.S. dollars. The interest rate for these loans were ranged from 0.90% and 1.25% at June 30, 2016 and 0.82% and 1.16% per annum at June 30, 2015. At June 30, 2016, available for future borrowing under this credit agreement was \$9.5 million.

#### Covenant Compliance

The new credit agreement with Bank of America contain customary representations and warranties and customary affirmative and negative covenants applicable to us and our subsidiaries. The new credit agreement contain certain financial covenants, including the following:

- Not to incur on a consolidated basis, a net loss before taxes and extraordinary items for any two consecutive fiscal quarters;
- The Consolidated Leverage Ratio, as defined in the agreement, as of the end of any fiscal quarter, measured for the most recently completed twelve (12) months of the Company, shall not be greater than 2.00;
- The domestic unencumbered liquid assets, as defined in the agreement, maintained in accounts within the United States shall have an aggregate market value of not less than \$30,000,000, measured quarterly as of the last day of each fiscal quarter.

As of June 30, 2016, our total assets of \$934.6 million collateralized the line of credit with Bank of America under the new credit agreement which represent the total assets of the United States headquarter company, except for seven buildings located in San Jose, California and property, plant and equipment and inventory in those buildings. As of June 30, 2016, total assets collateralizing the term loan with Bank of America were \$59.3 million. As of June 30, 2016, we were in compliance with all financial covenants associated with the term loan and lines of credit with Bank of America under the new credit agreement.

As of June 30, 2016, the net book value of land and building located in Bade, Taiwan collateralizing the term loan with CTBC Bank was \$26.8 million. There are no financial covenants associated with the term loan with CTBC Bank.

### Contract Manufacturers

In fiscal year 2016, we paid our contract manufacturers within 40 to 74 days of invoice and Ablecom between 48 to 90 days of invoice. Ablecom is one of our major contract manufacturers and a related party. As of June 30, 2016 and 2015 amounts owed to Ablecom by us were approximately \$39.2 million and \$59.0 million, respectively.

### Share Repurchase Program

In July 2016, our Board of Directors adopted a program to repurchase from time to time at management's discretion up to \$100,000,000 of our common stock in the open market or in private transactions during the next twelve months at prevailing market prices. Repurchases will be made under the program using our own cash resources. This share repurchase program does not obligate us to acquire any particular amount of common stock, and it may be suspended at any time at our discretion. In July 2016, we purchased 513,194 shares of our common stock in the open market at a weighted average price of \$19.97 per share for approximately \$10.3 million.

### **Contractual Obligations**

The following table describes our contractual obligations as of June 30, 2016:

	Payments Due by Period				Total
	Less Than 1 Year	1 to 3 Years	3 to 5 Years	More Than 5 Years	
	(in thousands)				
Operating leases	\$ 4,271	\$ 7,622	\$ 5,399	\$ 2,631	\$ 19,923
Capital leases, including interest	261	429	132	—	822
Debt, including interest (1)	54,370	21,041	20,358	—	95,769
Purchase commitments (2)	334,010	—	—	—	334,010
<b>Total (3)</b>	<b>\$ 392,912</b>	<b>\$ 29,092</b>	<b>\$ 25,889</b>	<b>\$ 2,631</b>	<b>\$ 450,524</b>

- (1) Amount reflects total anticipated cash payments, including anticipated interest payments based on the interest rate at June 30, 2016.
- (2) Amount reflects total gross purchase commitments under our manufacturing arrangements with third-party contract manufacturers or vendors. Our purchase obligations included \$110.5 million of hard disk drive purchase commitments at June 30, 2016, which will be paid through December 2016. See Note 12 of Notes to our Consolidated Financial Statements in Item 8 of this Form 10-K for a discussion of purchase commitments.
- (3) The table above excludes liabilities for deferred revenue of \$35.4 million and unrecognized tax benefits and related interest and penalties accrual of \$16.1 million. We have not provided a detailed estimate of the payment timing of unrecognized tax benefits due to the uncertainty of when the related tax settlements will become due. See Note 11 of Notes to our Consolidated Financial Statements in Item 8 of this Form 10-K for a discussion of income taxes.

We expect to fund our remaining contractual obligations from our ongoing operations and existing cash and cash equivalents on hand.

### **Recently Issued Accounting Pronouncements**

In May 2014, the Financial Accounting Standards Board ("FASB") issued new accounting guidance related to revenue recognition. This new standard replaces all current U.S. GAAP guidance on revenue, eliminates all industry-specific guidance and provides a unified model in determining when and how revenue is recognized. The core principle is that a company should recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. Further, in March 2016, the FASB issued an amendment to the accounting guidance related to revenue from contracts with customers - principal versus agent considerations. In April 2016, the FASB issued an amendment to the accounting guidance related to revenue from contracts with customers - identifying performance obligations and licensing. This guidance can be applied either retrospectively or as a cumulative-effect adjustment as of the date of adoption. Early adoption is permitted for annual periods beginning after December 15, 2016. The new standard is effective for us on July 1, 2018. We are currently evaluating the timing of our



adoption and the impact of adopting the new revenue guidance on our financial statement disclosures, results of operations and financial position.

In April 2015, the FASB issued an amendment to the accounting guidance related to presentation of debt issuance costs. The amendment requires that debt issuance costs related to a recognized debt liability be presented in the balance sheet as a direct deduction from the carrying amount of that debt liability, consistent with debt discounts. In August 2015, the FASB issued an amendment to the accounting guidance related to presentation and subsequent measurement of debt issuance costs associated with line-of-credit arrangements. The amendment clarified that an entity may defer and present debt issuance costs associated with line-of-credit arrangements as an asset and subsequently amortize the deferred debt issuance costs ratably over the term of the line-of-credit arrangement, regardless of whether there are any outstanding borrowings on the line-of-credit arrangement. The amendment is effective for us on July 1, 2016. We are currently evaluating the effect the amendment to the guidance will have on our financial statement disclosures, results of operations and financial position.

In July 2015, the FASB issued an amendment to the authoritative guidance related to inventory measurement. The amendment requires entities to measure inventory at the lower of cost and net realizable value thereby simplifying the current guidance under which an entity must measure inventory at the lower of cost or market. The amendment is effective for us on July 1, 2017. We are currently evaluating the effect the amendment to the guidance will have on our financial statement disclosures, results of operations and financial position.

In November 2015, the FASB issued an amendment to the accounting guidance related to balance sheet classification of deferred taxes. The amendment requires that all deferred tax assets and liabilities be classified as noncurrent in a classified balance sheet. Early adoption is permitted as of the beginning of an interim or annual reporting period. The amendment is effective for us on July 1, 2017. We have adopted this guidance on a prospective basis for the fiscal year ended June 30, 2016. Adoption of this guidance resulted in a reclassification of our net current deferred tax asset of \$17.9 million to the net non-current deferred tax asset in our Consolidated Balance Sheet as of June 30, 2016. No prior periods were retrospectively adjusted.

In February 2016, the FASB issued an amendment to the accounting guidance related to leases. The amendment will supersede the existing lease guidance, including on-balance sheet recognition of operating leases for lessees. This amendment should be applied using a modified retrospective approach and is effective for us on July 1, 2018. Early adoption is permitted. We are currently evaluating the effect the guidance will have on our financial statement disclosures, results of operations and financial position.

In March 2016, the FASB issued new accounting guidance on the accounting for certain aspects of share-based payments to employees, including the accounting for income taxes, forfeitures, and statutory tax withholding requirements, as well as classification in the statement of cash flows. This guidance is effective for us on July 1, 2017. We are currently evaluating the effect the guidance will have on our financial statement disclosures, results of operations and financial position.

#### **Off-Balance Sheet Arrangements**

We do not have any off-balance sheet arrangements.

**Item 7A. Quantitative and Qualitative Disclosure about Market Risk**

**Interest Rate Risk**

The primary objectives of our investment activities are to preserve principal, provide liquidity and maximize income without significantly increasing the risk. Some of the securities we invest in are subject to market risk. This means that a change in prevailing interest rates may cause the fair value of the investment to fluctuate. To minimize this risk, we maintain our portfolio of cash equivalents and short-term investments in money market funds and certificates of deposit. Our long-term investments include auction rate securities, which have been classified as long-term due to the lack of a liquid market for these securities. Since our results of operations are not dependent on investments, the risk associated with fluctuating interest rates is limited to our investment portfolio, and we believe that a 10% change in interest rates would not have a significant impact on our results of operations. As of June 30, 2016, our investments were in money market funds, certificates of deposits and auction rate securities.

We are exposed to changes in interest rates as a result of our borrowings under our term loan and revolving lines of credit. The interest rates for the term loans and the revolving lines of credit ranged from 0.90% to 1.96% at June 30, 2016 and 0.79% to 1.68% at June 30, 2015, respectively. Based on the outstanding principal indebtedness of \$93.6 million under our credit facilities as of June 30, 2016, we believe that a 10% change in interest rates would not have a significant impact on our results of operations.

**Foreign Currency Risk**

To date, our international customer and supplier agreements have been denominated primarily in U.S. dollars, and accordingly, we have limited exposure to foreign currency exchange rate fluctuations from customer agreements, and do not currently engage in foreign currency hedging transactions. However, the functional currency of our operations in the Netherlands and Taiwan is the U.S. dollar and our local accounts including financing arrangements are denominated in the local currency in the Netherlands and Taiwan, respectively, and thus we are subject to foreign currency exchange rate fluctuations associated with re-measurement to U.S. dollars. Such fluctuations have not been significant historically. Foreign exchange gain (loss) for fiscal years 2016, 2015 and 2014 was \$1.5 million, \$0.7 million and \$(0.4) million, respectively.

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

**INDEX TO CONSOLIDATED FINANCIAL STATEMENTS**

	<u>Page</u>
<a href="#">Report of Independent Registered Public Accounting Firm</a>	<a href="#">43</a>
<a href="#">Consolidated Balance Sheets</a>	<a href="#">44</a>
<a href="#">Consolidated Statements of Operations</a>	<a href="#">45</a>
<a href="#">Consolidated Statements of Comprehensive Income</a>	<a href="#">46</a>
<a href="#">Consolidated Statements of Stockholders' Equity</a>	<a href="#">47</a>
<a href="#">Consolidated Statements of Cash Flows</a>	<a href="#">48</a>
<a href="#">Notes to Consolidated Financial Statements</a>	<a href="#">49</a>

**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

To the Board of Directors and Stockholders of  
Super Micro Computer, Inc.  
San Jose, California

We have audited the accompanying consolidated balance sheets of Super Micro Computer, Inc. and subsidiaries (the “Company”) as of June 30, 2016 and 2015 , and the related consolidated statements of operations, comprehensive income, stockholders’ equity, and cash flows for each of the three years in the period ended June 30, 2016 . These financial statements are the responsibility of the Company’s management. Our responsibility is to express an opinion on these financial statements based on our audits.

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

In our opinion, such consolidated financial statements present fairly, in all material respects, the financial position of Super Micro Computer, Inc. and subsidiaries as of June 30, 2016 and 2015 , and the results of their operations and their cash flows for each of the three years in the period ended June 30, 2016 , in conformity with accounting principles generally accepted in the United States of America.

As discussed in Note 9 to the consolidated financial statements, the Company has significant purchases from and sales to a related party.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the Company’s internal control over financial reporting as of June 30, 2016 , based on the criteria established in *Internal Control—Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated August 26, 2016 expressed an unqualified opinion on the Company’s internal control over financial reporting.

/s/ Deloitte & Touche LLP  
San Jose, California  
August 26, 2016

**SUPER MICRO COMPUTER, INC.**  
**CONSOLIDATED BALANCE SHEETS**  
(in thousands, except share amounts)

	June 30, 2016	June 30, 2015
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 180,964	\$ 95,442
Accounts receivable, net of allowances of \$2,721 and \$1,628 at June 30, 2016 and 2015, respectively (including amounts receivable from a related party of \$4,678 and \$13,186 at June 30, 2016 and 2015, respectively)	288,941	322,594
Inventory	448,980	463,493
Deferred income taxes-current	—	17,863
Prepaid income taxes	5,682	7,507
Prepaid expenses and other current assets	13,435	7,516
Total current assets	938,002	914,415
Long-term investments	2,643	2,633
Property, plant and equipment, net	187,949	163,038
Deferred income taxes-noncurrent	28,460	4,497
Other assets	8,546	5,226
Total assets	\$ 1,165,600	\$ 1,089,809
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Accounts payable (including amounts due to a related party of \$39,152 and \$59,015 at June 30, 2016 and 2015, respectively)	\$ 249,239	\$ 299,774
Accrued liabilities	55,618	46,743
Income taxes payable	5,172	14,111
Short-term debt and current portion of long-term debt	53,589	93,479
Total current liabilities	363,618	454,107
Long-term debt-net of current portion	40,000	933
Other long-term liabilities	40,603	15,684
Total liabilities	444,221	470,724
Commitments and contingencies (Note 12)		
Stockholders' equity:		
Common stock and additional paid-in capital, \$0.001 par value		
Authorized shares: 100,000,000		
Issued shares: 48,999,717 and 47,873,744 at June 30, 2016 and 2015, respectively	277,339	247,081
Treasury stock (at cost), 445,028 shares at June 30, 2016 and 2015	(2,030)	(2,030)
Accumulated other comprehensive loss	(85)	(80)
Retained earnings	445,971	373,950
Total Super Micro Computer, Inc. stockholders' equity	721,195	618,921
Noncontrolling interest	184	164
Total stockholders' equity	721,379	619,085
Total liabilities and stockholders' equity	\$ 1,165,600	\$ 1,089,809

See accompanying notes to consolidated financial statements.

**SUPER MICRO COMPUTER, INC.**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**  
(in thousands, except per share amounts)

	Years Ended June 30,		
	2016	2015	2014
Net sales (including related party sales of \$19,453, \$58,013 and \$14,576 in fiscal years 2016, 2015 and 2014, respectively)	\$ 2,215,573	\$ 1,991,155	\$ 1,467,202
Cost of sales (including related party purchases of \$241,836, \$227,562 and \$201,848 in fiscal years 2016, 2015 and 2014, respectively)	1,884,048	1,670,924	1,241,657
Gross profit	331,525	320,231	225,545
Operating expenses:			
Research and development	123,994	100,257	84,257
Sales and marketing	62,841	48,851	38,012
General and administrative	37,840	24,377	23,017
Total operating expenses	224,675	173,485	145,286
Income from operations	106,850	146,746	80,259
Interest and other income, net	171	115	92
Interest expense	(1,594)	(965)	(757)
Income before income tax provision	105,427	145,896	79,594
Income tax provision	33,406	44,033	25,437
Net income	\$ 72,021	\$ 101,863	\$ 54,157
Net income per common share:			
Basic	\$ 1.50	\$ 2.19	\$ 1.24
Diluted	\$ 1.39	\$ 2.03	\$ 1.16
Weighted-average shares used in calculation of net income per common share:			
Basic	47,917	46,434	43,599
Diluted	51,836	50,094	46,512

See accompanying notes to consolidated financial statements.

**SUPER MICRO COMPUTER, INC.**  
**CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME**  
**(in thousands)**

	Years Ended June 30,		
	2016	2015	2014
Net income	\$ 72,021	\$ 101,863	\$ 54,157
Other comprehensive income, net of tax:			
Foreign currency translation loss	(11)	(9)	—
Unrealized gains (loss) on investments	6	(8)	6
Total other comprehensive income (loss)	(5)	(17)	6
Comprehensive income	\$ 72,016	\$ 101,846	\$ 54,163

See accompanying notes to consolidated financial statements.

**SUPER MICRO COMPUTER, INC.**  
**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY**  
(in thousands, except share amounts)

	Common Stock and Additional Paid-In Capital		Treasury Stock		Accumulated Other Comprehensive Income (Loss)	Retained Earnings	Non-controlling Interest	Total Stockholders' Equity
	Shares	Amount	Shares	Amount				
Balance at June 30, 2013	42,744,500	\$ 157,712	(445,028)	\$ (2,030)	\$ (69)	\$ 217,930	\$ 181	\$ 373,724
Exercise of stock options	2,863,878	23,928	—	—	—	—	—	23,928
Issuance of restricted stock awards, net of taxes	131,558	(681)	—	—	—	—	—	(681)
Stock-based compensation	—	11,062	—	—	—	—	—	11,062
Tax benefit resulting from stock option transactions	—	7,041	—	—	—	—	—	7,041
Unrealized gain on investments	—	—	—	—	6	—	—	6
Net income	—	—	—	—	—	54,157	(6)	54,151
Balance at June 30, 2014	45,739,936	199,062	(445,028)	(2,030)	(63)	272,087	175	469,231
Exercise of stock options	2,124,401	23,338	—	—	—	—	—	23,338
Issuance of restricted stock units, net of taxes	9,407	(175)	—	—	—	—	—	(175)
Stock-based compensation	—	13,699	—	—	—	—	—	13,699
Tax benefit resulting from stock option and restricted stock unit transactions	—	11,157	—	—	—	—	—	11,157
Unrealized loss on investments	—	—	—	—	(8)	—	—	(8)
Translation adjustments	—	—	—	—	(9)	—	—	(9)
Net income	—	—	—	—	—	101,863	(11)	101,852
Balance at June 30, 2015	47,873,744	247,081	(445,028)	(2,030)	(80)	373,950	164	619,085
Exercise of stock options	1,013,430	12,186	—	—	—	—	—	12,186
Issuance of restricted stock units, net of taxes	112,543	(1,786)	—	—	—	—	—	(1,786)
Stock-based compensation	—	16,131	—	—	—	—	—	16,131
Tax benefit resulting from stock option and restricted stock unit transactions	—	3,727	—	—	—	—	—	3,727
Unrealized gain on investments	—	—	—	—	6	—	—	6
Translation adjustments	—	—	—	—	(11)	—	—	(11)
Net income	—	—	—	—	—	72,021	20	72,041
Balance at June 30, 2016	48,999,717	\$ 277,339	(445,028)	\$ (2,030)	\$ (85)	\$ 445,971	\$ 184	\$ 721,379

See accompanying notes to consolidated financial statements.



**SUPER MICRO COMPUTER, INC.**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(in thousands)

	Years Ended June 30,		
	2016	2015	2014
<b>OPERATING ACTIVITIES:</b>			
Net income	\$ 72,021	\$ 101,863	\$ 54,157
Reconciliation of net income to net cash provided by (used in) operating activities:			
Depreciation and amortization	13,282	8,133	6,364
Stock-based compensation expense	16,131	13,699	11,062
Excess tax benefits from stock-based compensation	(2,855)	(8,089)	(2,992)
Allowance for doubtful accounts	1,278	326	1,476
Provision for inventory	9,313	5,928	2,254
Exchange gain	(1,233)	(675)	(96)
Deferred income taxes	(6,133)	632	65
Changes in operating assets and liabilities:			
Accounts receivable, net (including changes in related party balances of \$8,508, \$(12,565) and \$353 in fiscal years 2016, 2015, 2014, respectively)	32,375	(110,182)	(64,874)
Inventory	5,200	(153,584)	(63,921)
Prepaid expenses and other assets	(8,210)	(2,741)	618
Accounts payable (including changes in related party balances of \$(19,863), \$10,046 and \$(1,479) in fiscal years 2016, 2015 and 2014, respectively)	(54,301)	75,520	46,298
Income taxes payable, net	(3,260)	11,951	10,880
Accrued liabilities	9,027	9,551	3,293
Other long-term liabilities	24,874	3,032	1,954
Net cash provided by (used in) operating activities	<u>107,509</u>	<u>(44,636)</u>	<u>6,538</u>
<b>INVESTING ACTIVITIES:</b>			
Purchases of property, plant and equipment	(34,108)	(35,100)	(40,567)
Change in restricted cash	(1,020)	(416)	406
Investment in a privately held company	—	(661)	—
Net cash used in investing activities	<u>(35,128)</u>	<u>(36,177)</u>	<u>(40,161)</u>
<b>FINANCING ACTIVITIES:</b>			
Proceeds from debt	34,200	84,900	17,354
Repayment of debt	(34,100)	(36,000)	(6,320)
Proceeds from exercise of stock options	12,186	23,338	23,928
Excess tax benefits from stock-based compensation	2,855	8,089	2,992
Payment of obligations under capital leases	(189)	(134)	(47)
Advances (payments) under receivable financing arrangements	(21)	33	(4)
Minimum tax withholding paid on behalf of employees for restricted stock awards / units	(1,786)	(175)	(681)
Net cash provided by financing activities	<u>13,145</u>	<u>80,051</u>	<u>37,222</u>
Effect of exchange rate fluctuations on cash	(4)	(668)	235
Net increase (decrease) in cash and cash equivalents	85,522	(1,430)	3,834
Cash and cash equivalents at beginning of year	95,442	96,872	93,038
Cash and cash equivalents at end of year	<u>\$ 180,964</u>	<u>\$ 95,442</u>	<u>\$ 96,872</u>
Supplemental disclosure of cash flow information:			
Cash paid for interest	\$ 1,632	\$ 933	\$ 757
Cash paid for taxes, net of refunds	\$ 36,951	\$ 30,671	\$ 13,096
Non-cash investing and financing activities:			
Equipment purchased under capital leases	\$ 299	\$ 442	\$ 283
Accrued costs for property, plant and equipment purchases	\$ 10,888	\$ 6,826	\$ 2,021

See accompanying notes to consolidated financial statements.



**SUPER MICRO COMPUTER, INC.  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**Note 1. Summary of Significant Accounting Policies**

***Organization***

Super Micro Computer, Inc. (“Super Micro Computer”) was incorporated in 1993. Super Micro Computer is a global leader in server technology and green computing innovation. Super Micro Computer develops and provides high performance server solutions based upon an innovative, modular and open-standard architecture. Super Micro Computer has operations primarily in San Jose, California, the Netherlands, Taiwan, China and Japan.

***Basis of Presentation***

The consolidated financial statements reflect the consolidated balance sheets, results of operations and cash flows of Super Micro Computer, Inc. and its wholly-owned subsidiaries (collectively, the “Company”). All intercompany accounts and transactions have been eliminated in consolidation.

The Company consolidates its investment in Super Micro Asia Science and Technology Park, Inc. as it is variable interest entity and the Company is the primary beneficiary. The noncontrolling interest is presented as a separate component from the Company's equity in the equity section of the Consolidated Balance Sheets. Net income attributable to the noncontrolling interest is not presented separately in the Consolidated Statements of Operations and is included in the general and administrative expenses as the amount is not material for any of the fiscal periods presented.

***Use of Estimates***

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America (“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 at the date of the financial statements and the reported amounts of revenues and expenses during the reporting periods. Such estimates include, but are not limited to: allowances for doubtful accounts and sales returns, inventory valuation, product warranty accruals, stock-based compensation, impairment of long-term investments and income taxes. Actual results could differ from those estimates.

***Fair Value of Financial Instruments***

The Company accounts for certain assets and liabilities at fair value. Accounts receivable and accounts payable are carried at cost, which approximates fair value due to the short maturity of these instruments. Cash equivalents and long-term investments are carried at fair value. Short-term and long-term debt is carried at amortized cost, which approximates its fair value based on borrowing rates currently available to the Company for loans with similar terms. The hierarchy below lists three levels of fair value based on the extent to which inputs used in measuring fair value are observable in the market. The Company categorizes each of its fair value measurements in one of these three levels based on the lowest level input that is significant to the fair value measurement in its entirety. These levels are:

- Level 1 - Unadjusted quoted prices in active markets that are accessible at the measurement date for identical, unrestricted assets or liabilities;
- Level 2 - Quoted prices in markets that are not active or financial instruments for which all significant inputs are observable, either directly or indirectly; and
- Level 3 - Prices or valuations that require inputs that are both significant to the fair value measurement and unobservable.

***Cash and Cash Equivalents***

The Company considers all highly liquid instruments with an original maturity of three months or less from the date of purchase to be cash equivalents. Cash equivalents consist primarily of money market funds and certificates of deposits with maturities of less than three months.

**SUPER MICRO COMPUTER, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

**Long-term Investments**

The Company classifies its long-term investments in auction-rate securities ("auction rate securities") as long-term available-for-sale investments. Auction rate securities consist of municipal securities. The discounted cash flow model is used to estimate the fair value of the auction rate securities. These investments are recorded in the Consolidated Balance Sheets at fair value. Unrealized gains and losses on these investments are included as a component of accumulated other comprehensive income, net of tax.

**Inventory**

Inventory is valued at the lower of cost or market. Inventory consists of raw materials (principally components), work in process (principally products being assembled) and finished goods. Market value represents net realizable value for finished goods and work in process and replacement value of raw materials and parts. The Company evaluates inventory on a quarterly basis for lower of cost or market and excess and obsolescence and, as necessary, writes down the valuation of units based upon the usage and sales, anticipated sales price, product obsolescence and other factors. If actual future demand for the Company's products is less than currently forecasted, additional inventory adjustments may be required. Once a reserve is established, it is maintained until the product to which it relates is sold or scrapped. If a unit that has been written down is subsequently sold, the cost associated with the revenue from this unit is reduced to the extent of the write down, resulting in an increase in gross profit. The Company monitors the extent to which previously written down inventory is sold at amounts greater or less than carrying value, and based on this analysis, adjusts its estimate for determining future write downs. If in future periods, the Company experiences or anticipates a change in recovery rate compared with its historical experience, its gross margin would be affected. During fiscal years 2016, 2015 and 2014, the Company recorded a provision for lower of cost or market and excess and obsolete inventory totaling \$9,313,000, \$5,928,000 and \$2,254,000, respectively.

**Property, Plant and Equipment**

Property, plant and equipment is recorded at cost and depreciated using the straight-line method over the estimated useful lives of the related assets as follows:

Machinery and equipment	3 to 7 years
Furniture and fixtures	5 years
Software	3 to 5 years
Buildings	39 years
Building improvements	20 years
Land improvements	15 years
Leasehold improvements	shorter of lease term or estimated useful life

For assets acquired and financed under capital leases, the present value of the future minimum lease payments is recorded at the date of acquisition as property and equipment with the corresponding amount recorded as a capital lease obligation, and the amortization is computed on a straight-line basis over the shorter of lease term or estimated useful life.

**Other Assets**

As of June 30, 2016, other assets consist primarily of a long-term deferred service costs of \$3,498,000, restricted cash of \$1,851,000, investments in privately held companies of \$1,411,000, deposits of \$910,000 and a long-term prepaid royalty license of \$748,000. As of June 30, 2016, restricted cash consists primarily of certificates of deposits pledged as security for one irrevocable letter of credit required in connection with a warehouse lease in Fremont, California, two deposits to an escrow account required by the Company's worker's compensation program, one deposit required for the Company's bonded warehouse set up in Taiwan, four deposits to bank guarantees for import duty required by the customs authority in Taiwan and bank guarantees in connection with office leases in the Netherlands.

As of June 30, 2015, other assets consist primarily of a long-term deferred service costs of \$1,490,000, investments in a privately held companies of \$1,411,000, a long-term prepaid royalty license of \$997,000 and restricted cash of \$840,000.

**SUPER MICRO COMPUTER, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

**Long-Lived Assets**

The Company evaluates its long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. When the sum of the undiscounted future net cash flows expected to result from the use of the asset and its eventual disposition is less than its carrying amount, an impairment loss would be measured based on the fair value of the asset compared to the carrying amount. No impairment charge has been recorded in any of the periods presented.

**Revenue Recognition**

The Company recognizes revenue from sales of products when persuasive evidence of an arrangement exists, shipment has occurred and title has transferred, the sales price is fixed or determinable, collection of the resulting receivable is reasonably assured, and all significant obligations have been met. Generally this occurs at the time of shipment when risk of loss and title has passed to the customer if all other revenue recognition criteria have been met. The Company's standard arrangement with its customers includes a signed purchase order or contract, 30 to 60 days payment terms, Ex-works terms, except for a few customers who have free-on-board destination terms, for which revenue is recognized when the products arrive at the destination if all other revenue recognition criteria have been met. The Company also has a few customers who have acceptance provisions for which revenue is recognized when customers provide the necessary acceptance. The Company generally does not provide for non-warranty rights of return except for products which have "Out-of-box" failure, where customers could return these products for credit within 30 days of receiving the items. Certain distributors and OEMs are also permitted to return products in unopened boxes, limited to purchases over a specified period of time, generally within 60 to 90 days of the purchase, or to products in the distributor's or OEM's inventory at certain times (such as the termination of the agreement or product obsolescence). To estimate reserves for future sales returns, the Company regularly reviews its history of actual returns for each major product line. The Company also communicates regularly with our distributors to gather information about end customer satisfaction, and to determine the volume of inventory in the channel. Reserves for future returns are adjusted as necessary, based on returns experience, returns expectations and communication with distributors.

Probability of collection is assessed on a customer-by-customer basis. Customers are subjected to a credit review process that evaluates the customers' financial position and ability to pay. If it is determined from the outset of an arrangement that collection is not probable based upon the review process, the customers are required to pay cash in advance of shipment. The Company also makes estimates of the uncollectibility of accounts receivable, analyzing accounts receivable and historical bad debts, customer concentrations, customer-credit-worthiness, current economic trends and changes in customer payment terms to evaluate the adequacy of the allowance for doubtful accounts. On a quarterly basis, the Company evaluates aged items in the accounts receivable aging report and provides an allowance in an amount the Company deems adequate for doubtful accounts. Our provision for bad debt was \$1,278,000, \$326,000 and \$1,476,000 in fiscal years 2016, 2015 and 2014, respectively. If a major customer's creditworthiness deteriorates, if actual defaults are higher than the Company's historical experience, or if other circumstances arise, the Company's estimates of the recoverability of amounts due to the Company could be overstated, and additional allowances could be required, which could have an adverse impact on its reported operating expenses. The Company provides for price protection to certain distributors. The Company assesses the market competition and product technology obsolescence, and makes price adjustments based on its judgment. Upon each announcement of price reductions, the accrual for price protection is calculated based on the distributors' inventory on hand. Such reserves are recorded as a reduction to revenue at the time the Company reduces the product prices.

*Multiple-element arrangements.* The Company's multiple-element product offerings include server systems with embedded software and support, which are considered separate units of accounting.

The Company allocates revenue to each element in a multiple-element arrangement based upon their relative selling price. When applying the relative selling price method, the Company determines the selling price for each deliverable using vendor-specific objective evidence ("VSOE") of selling price, if it exists, or third-party evidence ("TPE") of selling price. If neither VSOE nor TPE of selling price exist for a deliverable, the Company uses its best estimate of selling price for that deliverable. Revenue allocated to each element is then recognized when all the revenue recognition criteria are met for each element.

The Company determines VSOE based on its normal pricing and discounting practices for the specific product or service when sold separately. In determining VSOE, the Company requires that a substantial majority of the selling prices for a product or service fall within a reasonably narrow pricing range.

## SUPER MICRO COMPUTER, INC.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

In most instances, the Company is not able to establish VSOE for all deliverables in an arrangement with multiple elements. This may be due to the Company infrequently selling each element separately, not pricing products within a narrow range, or only having a limited sales history. When VSOE cannot be established, the Company attempts to establish the selling price for each element based on TPE. TPE is determined based on competitor prices for similar deliverables when sold separately. Generally, the Company's product solutions differ from that of its peers and contain a significant level of customization and differentiation such that the comparable pricing of products with similar functionality cannot be obtained. Furthermore, the Company is unable to reliably determine what similar competitor products' selling prices are on a stand-alone basis. Therefore, the Company is typically unable to determine TPE.

When the Company is unable to establish selling price using VSOE or TPE, the Company uses estimated selling price ("ESP") in its allocation of the arrangement consideration. The objective of ESP is to determine the price at which the Company would transact a sale if the product or service were sold on a stand-alone basis. ESP is generally used for offerings that are not typically sold on a stand-alone basis or for new or highly customized offerings.

The Company determines ESP for a product by considering multiple factors including, but not limited to, geographies, customer types, internal costs, gross margin objectives and pricing practices. The determination of ESP is made through consultation with and approval by the Company's management.

The Company regularly reviews VSOE, TPE and ESP, as well as the establishment and updates of these estimates. There was no material impact on revenues during fiscal year 2016 nor does the Company expect a material impact in the near term from changes in VSOE, TPE or ESP.

*Services revenue.* Services revenue mainly consists of extended warranty and on-site services. Extended warranty and on-site services are offered as part of multiple-element arrangements. Revenue related to extended warranty and on-site services is deferred and recognized ratably over the contractual period. These service contracts are typically one to five years in length. Service revenue has been less than 10% of net sales for all periods presented and is not separately disclosed.

**Cost of Sales**

Cost of sales primarily consists of the costs of materials, contract manufacturing, in-bound shipping, personnel and related expenses including stock based compensation, equipment and facility expenses, warranty costs and provision for lower of cost or market and excess and obsolete inventory.

**Product Warranties**

The Company offers product warranties ranging from 15 to 39 months against any defective products. The Company accrues for estimated returns of defective products at the time revenue is recognized based on historical warranty experience and recent trends. The Company monitors warranty obligations and may make revisions to its warranty reserve if actual costs of product repair and replacement are significantly higher or lower than estimated. Accruals for anticipated future warranty costs are charged to cost of sales and included in accrued liabilities and other long-term liabilities. If in future periods the Company experiences or anticipates an increase or decrease in warranty claims as a result of new product introductions or changes in unit volumes compared with its historical experience, or if the cost of servicing warranty claims is greater or lesser than expected, the Company intends to adjust its estimates accordingly. The following table presents for the years ended June 30, 2016, 2015 and 2014, the reconciliation of the changes in accrued warranty costs which is included as a component of accrued liabilities (in thousands):

	Years Ended June 30,		
	2016	2015	2014
Balance, beginning of year	\$ 7,700	\$ 7,083	\$ 6,472
Provision for warranty	17,470	15,771	14,175
Costs charged to accrual	(17,245)	(14,950)	(13,950)
Change in estimated liability for pre-existing warranties	(2,109)	(204)	386
Balance, end of year	\$ 5,816	\$ 7,700	\$ 7,083

**SUPER MICRO COMPUTER, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

**Software Development Costs**

Software development costs are included in research and development and are expensed as incurred. Software development costs are capitalized beginning when technological feasibility has been established and ending when a product is available for general release to customers. To date, the period between achieving technological feasibility and the issuance of such software has been short and software development costs qualifying for capitalization have been insignificant.

**Research and Development**

Research and development costs are expensed as incurred and consist primarily of salaries, consulting services, other direct expenses and other engineering expenses. The Company occasionally receives funding from certain suppliers and customers towards its development efforts. Such amounts are recorded as a reduction of research and development expenses and were \$6,904,000 , \$6,318,000 and \$3,132,000 for the years ended June 30, 2016 , 2015 and 2014 , respectively.

**Cooperative Marketing Arrangements**

The Company has arrangements with resellers of its products to reimburse the resellers for cooperative marketing costs meeting specified criteria. The Company accrues the cooperative marketing costs based on these arrangements and its estimate for resellers' claims for marketing activities. The Company records marketing costs meeting such specified criteria within sales and marketing expenses in the consolidated statements of operations. For those marketing costs that do not meet the specified criteria, the amounts are recorded as a reduction to sales in the consolidated statements of operations.

Total cooperative marketing costs charged to sales and marketing expenses for the years ended June 30, 2016 , 2015 and 2014 , were \$2,506,000 , \$1,995,000 and \$2,058,000 , respectively. Total amounts recorded as reductions to sales for the years ended June 30, 2016 , 2015 and 2014 , were \$3,879,000 , \$4,200,000 and \$2,829,000 , respectively.

**Advertising Costs**

Advertising costs are expensed as incurred. Total advertising and promotional expenses, including cooperative marketing payments, were \$10,477,000 , \$7,263,000 and \$5,183,000 for the years ended June 30, 2016 , 2015 and 2014 , respectively.

**Stock-Based Compensation**

The Company measures and recognizes compensation expense for all share-based awards made to employees and non-employee members of the Board of Directors, including employee stock options and restricted stock units. The Company is required to estimate the fair value of share-based awards on the date of grant. The value of awards that are ultimately expected to vest is recognized as an expense over the requisite service periods. The fair value of our restricted stock units is based on the closing market price of the Company's common stock on the date of grant. The Company estimated the fair value of stock options granted using a Black-Scholes option pricing model and a single option award approach. This model requires the Company to make estimates and assumptions with respect to the expected term of the option and the expected volatility of the price of the Company's common stock. The fair value is then amortized on a straight-line basis over the requisite service periods of the awards, which is generally the vesting period.

The expected term represents the period that the Company's stock-based awards are expected to be outstanding and was determined based on a combination of the Company's peer group and historical experience. The expected volatility is based on a combination of the Company's implied and historical volatility. In addition, forfeitures of share-based awards are estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates. The Company uses historical data to estimate pre-vesting option and restricted stock unit forfeitures and record stock-based compensation expense only for those awards that are expected to vest.

**Shipping and Handling Fees**

The Company incurred shipping costs of \$2,535,000 , \$2,090,000 and \$1,605,000 for the years ended June 30, 2016 , 2015 and 2014 , respectively, which were included in sales and marketing expenses.

**SUPER MICRO COMPUTER, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

***Income Taxes***

The Company accounts for income taxes under an asset and liability approach. Deferred income taxes reflect the impact of temporary differences between assets and liabilities recognized for financial reporting purposes and such amounts recognized for income tax reporting purposes, net operating loss carry-forwards and other tax credits measured by applying currently enacted tax laws. Valuation allowances are provided when necessary to reduce deferred tax assets to an amount that is more likely than not to be realized.

The Company recognizes the tax liability for uncertain income tax positions on the income tax return based on the two-step process. The first step is to determine whether it is more likely than not that each income tax position would be sustained upon audit. The second step is to estimate and measure the tax benefit as the amount that has a greater than 50% likelihood of being realized upon ultimate settlement with the tax authority. Estimating these amounts requires the Company to determine the probability of various possible outcomes. The Company evaluates these uncertain tax positions on a quarterly basis. This evaluation is based on the consideration of several factors, including changes in facts or circumstances, changes in applicable tax law, settlement of issues under audit and new exposures. If the Company later determines that its exposure is lower or that the liability is not sufficient to cover its revised expectations, the Company adjusts the liability and effects a related change in its tax provision during the period in which the Company makes such determination.

***Foreign Currency Translation***

The functional currency of the Company's international subsidiaries is the U.S. dollar. Monetary assets and liabilities of the Company's international subsidiaries that are denominated in the local currency are remeasured into U.S. dollars at period-end exchange rates. Non-monetary assets and liabilities that are denominated in the local currency are remeasured into U.S. dollars at the historical rates. Revenue and expenses that are denominated in the local currency are remeasured into U.S. dollars at the average exchange rates during the period. Accordingly, remeasurement of foreign currency accounts and foreign exchange transaction gains and losses, which have not been material, are reflected in the consolidated statements of operations.

***Net Income Per Common Share***

In fiscal years 2016 and 2015, basic net income per common share is computed by dividing net income by the weighted-average number of shares of common stock outstanding during the period. Diluted net income per common share is computed by dividing net income by the weighted-average number of shares of common stock outstanding during the period increased to include the number of additional shares of common stock that would have been outstanding if the potentially dilutive securities had been issued. Potentially dilutive securities include outstanding stock options and unvested restricted stock units.

In fiscal year 2014, the Company had restricted share awards outstanding which were subject to repurchase and settled in shares of common stock upon vesting. Such awards had the nonforfeitable right to receive dividends on an equal basis with common stock and therefore were considered participating securities that must be included in the calculation of net income per share using the two-class method. Under the two-class method, basic and diluted net income per common share was determined by calculating net income per share for common stock and participating securities based on participation rights in undistributed earnings. Diluted net income per common share was calculated by adjusting outstanding shares, assuming any dilutive effects of stock incentive awards calculated using the treasury stock method.

Under the treasury stock method, an increase in the fair market value of the Company's common stock results in a greater dilutive effect from outstanding stock options and restricted stock units. Additionally, the exercise of employee stock options and the vesting of restricted stock units results in a further dilutive effect on net income per share.



**SUPER MICRO COMPUTER, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

The computation of basic and diluted net income per common share is as follows (in thousands, except per share amounts):

	Years Ended June 30,		
	2016	2015	2014
<i>Basic net income per common share calculation</i>			
Net income	\$ 72,021	\$ 101,863	\$ 54,157
Less: Undistributed earnings allocated to participating securities	—	—	(36)
Net income attributable to common shares—basic	\$ 72,021	\$ 101,863	\$ 54,121
Weighted-average number of common shares used to compute basic net income per common share	47,917	46,434	43,599
Basic net income per common share	\$ 1.50	\$ 2.19	\$ 1.24
<i>Diluted net income per common share calculation</i>			
Net income	\$ 72,021	\$ 101,863	\$ 54,157
Less: Undistributed earnings allocated to participating securities	—	—	(34)
Net income attributable to common shares—diluted	\$ 72,021	\$ 101,863	\$ 54,123
Weighted-average number of common shares used to compute basic net income per common share	47,917	46,434	43,599
Dilutive effect of options and restricted stock units to purchase common stock	3,919	3,660	2,913
Weighted-average number of common shares used to compute diluted net income per common share	51,836	50,094	46,512
Diluted net income per common share	\$ 1.39	\$ 2.03	\$ 1.16

For the years ended June 30, 2016, 2015 and 2014, the Company had stock options and restricted stock units outstanding that could potentially dilute basic earnings per share in the future, but were excluded from the computation of diluted net income per share in the periods presented, as their effect would have been anti-dilutive. The anti-dilutive common share equivalents resulting from outstanding equity awards were 1,196,000, 3,805,000 and 3,465,000 for the years ended June 30, 2016, 2015 and 2014, respectively.

#### ***Certain Significant Risks and Uncertainties***

The Company operates in the high technology industry and is subject to a number of risks, some of which are beyond the Company's control, that could have a material adverse effect on the Company's business, operating results, and financial condition. These risks include variability and uncertainty of revenues and operating results; product obsolescence; geographic concentration; international operations; dependence on key personnel; competition; intellectual property claims and litigation; management of growth; and limited sources of supply.

#### ***Concentration of Supplier Risk***

Certain raw materials used by the Company in the manufacture of its products are available from a limited number of suppliers. Shortages could occur in these essential materials due to an interruption of supply or increased demand in the industry. One supplier accounted for 35.2%, 28.7%, and 23.4% of total purchases for the years ended June 30, 2016, 2015 and 2014, respectively. Ablecom, a related party of the Company as noted in Note 9, accounted for 11.5%, 12.6% and 16.1% of total purchases for the years ended June 30, 2016, 2015 and 2014, respectively.

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

Financial instruments which potentially subject the Company to concentration of credit risk consist primarily of cash and cash equivalents and long-term investments and accounts receivable. In fiscal years 2016 and 2015, one customer accounted for 10.9% and 10.1%, respectively, of net sales. No single customer accounted for 10% or more of net sales in fiscal year 2014. No customer accounted for 10% or more of accounts receivable as of June 30, 2016 and 2015.

## SUPER MICRO COMPUTER, INC.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

***Recently Issued Accounting Pronouncements***

In May 2014, the Financial Accounting Standards Board (“FASB”) issued new accounting guidance related to revenue recognition. This new standard replaces all current U.S. GAAP guidance on revenue, eliminates all industry-specific guidance and provides a unified model in determining when and how revenue is recognized. The core principle is that a company should recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. Further, in March 2016, the FASB issued an amendment to the accounting guidance related to revenue from contracts with customers - principal versus agent considerations. In April 2016, the FASB issued an amendment to the accounting guidance related to revenue from contracts with customers - identifying performance obligations and licensing. This guidance can be applied either retrospectively or as a cumulative-effect adjustment as of the date of adoption. Early adoption is permitted for annual periods beginning after December 15, 2016. The new standard is effective for the Company on July 1, 2018. The Company is currently evaluating the effect the guidance will have on the Company's financial statement disclosures, results of operations and financial position.

In April 2015, the FASB issued an amendment to the accounting guidance related to presentation of debt issuance costs. The amendment requires that debt issuance costs related to a recognized debt liability be presented in the balance sheet as a direct deduction from the carrying amount of that debt liability, consistent with debt discounts. In August 2015, the FASB issued an amendment to the accounting guidance related to presentation and subsequent measurement of debt issuance costs associated with line-of-credit arrangements. The amendment clarified that an entity may defer and present debt issuance costs associated with line-of-credit arrangements as an asset and subsequently amortize the deferred debt issuance costs ratably over the term of the line-of-credit arrangement, regardless of whether there are any outstanding borrowings on the line-of-credit arrangement. The amendment is effective for the Company on July 1, 2016. The Company is currently evaluating the effect the amendment to the guidance will have on the Company's financial statement disclosures, results of operations and financial position.

In July 2015, the FASB issued an amendment to the authoritative guidance related to inventory measurement. The amendment requires entities to measure inventory at the lower of cost and net realizable value thereby simplifying the current guidance under which an entity must measure inventory at the lower of cost or market. The amendment is effective for the Company on July 1, 2017. The Company is currently evaluating the effect the amendment to the guidance will have on the Company's financial statement disclosures, results of operations and financial position.

In November 2015, the FASB issued an amendment to the accounting guidance related to balance sheet classification of deferred taxes. The amendment requires that all deferred tax assets and liabilities be classified as noncurrent in a classified balance sheet. Early adoption is permitted as of the beginning of an interim or annual reporting period. The amendment is effective for the Company on July 1, 2017. The Company has adopted this guidance on a prospective basis for the fiscal year ended June 30, 2016. Adoption of this guidance resulted in a reclassification of our net current deferred tax asset of \$17,869,000 to the net non-current deferred tax asset in our Consolidated Balance Sheet as of June 30, 2016. No prior periods were retrospectively adjusted.

In February 2016, the FASB issued an amendment to the accounting guidance related to leases. The amendment will supersede the existing lease guidance, including on-balance sheet recognition of operating leases for lessees. This amendment should be applied using a modified retrospective approach and is effective for the Company on July 1, 2018. Early adoption is permitted. The Company is currently evaluating the effect the guidance will have on its financial statement disclosures, results of operations and financial position.

In March 2016, the FASB issued new accounting guidance on the accounting for certain aspects of share-based payment to employees, including the accounting for income taxes, forfeitures, and statutory tax withholding requirements as well as classification in the statement of cash flows. This guidance is effective for us on July 1, 2017. The Company is currently evaluating the effect the guidance will have on its financial statement disclosures, results of operations and financial position.

**SUPER MICRO COMPUTER, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

**Note 2. Fair Value Disclosure**

The financial assets of the Company measured at fair value on a recurring basis are included in cash equivalents and long-term investments. The Company's money market funds are classified within Level 1 of the fair value hierarchy as the determination of their fair values is based on quoted market prices for the identical underlying securities in active markets. The Company's long-term auction rate securities investments are classified within Level 3 of the fair value hierarchy as the determination of their fair values was not based on observable inputs as of June 30, 2016 and 2015. Refer to Note 1 for a discussion of the Company's policies regarding the fair value hierarchy. The Company has used a discounted cash flow model to estimate the fair value of the auction rate securities as of June 30, 2016 and 2015. The material factors used in preparing the discounted cash flow model are (i) the discount rate utilized to present value the cash flows, (ii) the time period until redemption and (iii) the estimated rate of return.

The following table sets forth the Company's cash equivalents and long-term investments as of June 30, 2016 and 2015 which are measured at fair value on a recurring basis by level within the fair value hierarchy. These are classified based on the lowest level of input that is significant to the fair value measurement (in thousands):

<b>June 30, 2016</b>	<b>Level 1</b>	<b>Level 2</b>	<b>Level 3</b>	<b>Asset at Fair Value</b>
Money market funds	\$ 315	\$ —	\$ —	\$ 315
Auction rate securities	—	—	2,643	2,643
<b>Total assets measured at fair value</b>	<b>\$ 315</b>	<b>\$ —</b>	<b>\$ 2,643</b>	<b>\$ 2,958</b>

<b>June 30, 2015</b>	<b>Level 1</b>	<b>Level 2</b>	<b>Level 3</b>	<b>Asset at Fair Value</b>
Money market funds	\$ 310	\$ —	\$ —	\$ 310
Auction rate securities	—	—	2,633	2,633
<b>Total assets measured at fair value</b>	<b>\$ 310</b>	<b>\$ —</b>	<b>\$ 2,633</b>	<b>\$ 2,943</b>

The above table excludes \$180,426,000 and \$94,901,000 of cash and \$2,133,000 and \$1,130,000 of certificates of deposit held by the Company as of June 30, 2016 and 2015, respectively. There were no transfers between Level 1, Level 2 or Level 3 securities in fiscal year 2016 and 2015.

The following table provides a reconciliation of the Company's financial assets measured at fair value on a recurring basis, consisting of long-term auction rate securities, using significant unobservable inputs (Level 3) for fiscal years 2016 and 2015 (in thousands):

	<b>Years Ended June 30,</b>	
	<b>2016</b>	<b>2015</b>
Balance as of beginning of year	\$ 2,633	\$ 2,647
Total realized gains or (losses) included in net income	—	—
Total unrealized gains or (losses) included in other comprehensive income	10	(14)
Sales and settlements at par	—	—
Transfers in and/or out of Level 3	—	—
<b>Balance as of end of year</b>	<b>\$ 2,643</b>	<b>\$ 2,633</b>

**SUPER MICRO COMPUTER, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

The following is a summary of the Company's long-term investments as of June 30, 2016 and 2015 (in thousands):

	June 30, 2016			
	Amortized Cost	Gross Unrealized Holding Gains	Gross Unrealized Holding Losses	Fair Value
Auction rate securities	\$ 2,750	\$ —	\$ (107)	\$ 2,643

	June 30, 2015			
	Amortized Cost	Gross Unrealized Holding Gains	Gross Unrealized Holding Losses	Fair Value
Auction rate securities	\$ 2,750	\$ —	\$ (117)	\$ 2,633

The Company measures the fair value of outstanding debt for disclosure purposes on a recurring basis. As of June 30, 2016 and 2015, short-term and long-term debt of \$93,589,000 and \$94,412,000, respectively, are reported at amortized cost. This outstanding debt is classified as Level 2 as it is not actively traded and is valued using a discounted cash flow model that uses observable market inputs. Based on the discounted cash flow model, the fair value of the outstanding debt approximates amortized cost.

**Note 3. Accounts Receivable Allowances**

The Company has established an allowance for doubtful accounts and an allowance for sales returns. The allowance for doubtful accounts is based upon the credit risk of specific customers, historical trends related to past losses and other relevant factors. The Company also provides its customers with product return rights. A provision for such returns is provided for in the same period that the related sales are recorded based upon contractual return rights and historical trends. Accounts receivable allowances as of June 30, 2016, 2015 and 2014, consisted of the following (in thousands):

	Beginning Balance	Charged to Cost and Expenses	Deductions	Ending Balance
Allowance for doubtful accounts:				
Year ended June 30, 2016	\$ 1,198	\$ 1,278	\$ (135)	\$ 2,341
Year ended June 30, 2015	1,474	326	(602)	1,198
Year ended June 30, 2014	1,562	1,476	(1,564)	1,474
Allowance for sales returns				
Year ended June 30, 2016	\$ 430	\$ 10,877	\$ (10,927)	\$ 380
Year ended June 30, 2015	448	9,383	(9,401)	430
Year ended June 30, 2014	404	8,985	(8,941)	448

**Note 4. Inventory**

Inventory as of June 30, 2016 and 2015 consisted of the following (in thousands):

	June 30,	
	2016	2015
Finished goods	\$ 351,209	\$ 384,647
Work in process	19,105	23,214
Purchased parts and raw materials	78,666	55,632
Total inventory	<u>\$ 448,980</u>	<u>\$ 463,493</u>

**Note 5. Property, Plant, and Equipment**

Property, plant and equipment as of June 30, 2016 and 2015 consisted of the following (in thousands):

	June 30,	
	2016	2015
Land (1)	\$ 70,454	\$ 63,962
Buildings (1)	71,665	51,959
Building and leasehold improvements (1)	10,941	8,323
Buildings construction in progress (1)	15,803	25,572
Machinery and equipment	53,282	40,689
Furniture and fixtures	10,364	7,421
Purchased software (2)	13,920	3,343
Purchased software construction in progress (2)	532	8,567
	<u>246,961</u>	<u>209,836</u>
Accumulated depreciation and amortization	(59,012)	(46,798)
Property, plant and equipment, net	<u>\$ 187,949</u>	<u>\$ 163,038</u>

(1) In connection with the purchase of property located in San Jose, California for the Company's Green Computing Park, the Company continues to engage several contractors for the development and construction of improvements on the property. The first manufacturing building at this location was completed in August 2015. In fiscal year 2016, the Company also engaged a contractor for the construction of improvements on leasehold property located in the Netherlands, which was completed in October 2015.

(2) The Company completed its implementation of a new enterprise resource planning, or ERP, system for its United States headquarters on July 5, 2015 and for its subsidiaries in Taiwan and the Netherlands in January 2016. The Company has capitalized the costs of the new ERP software and certain expenses associated directly with the implementation of the ERP system and began to depreciate these costs in fiscal year 2016.

**SUPER MICRO COMPUTER, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

**Note 6. Accrued Liabilities**

Accrued liabilities as of June 30, 2016 and 2015 consisted of the following (in thousands):

	June 30,	
	2016	2015
Accrued payroll and related expenses	\$ 16,015	\$ 15,141
Customer deposits	6,265	6,314
Accrued warranty costs	5,816	7,700
Accrued cooperative marketing expenses	7,300	5,690
Deferred revenue (1)	13,418	4,989
Others	6,804	6,909
<b>Total accrued liabilities</b>	<b>\$ 55,618</b>	<b>\$ 46,743</b>

(1) As of June 30, 2016 and 2015, deferred revenue consist primarily of a deferred extended warranty and on-site service revenue of \$12,746,000 and \$4,085,000 , respectively.

**Note 7. Short-term and Long-term Obligations**

Short-term and long-term obligations as of June 30, 2016 and 2015 consisted of the following (in thousands):

	June 30,	
	2016	2015
<b>Line of credit:</b>		
Bank of America (1)	\$ 62,199	\$ 59,699
CTBC Bank	10,100	9,700
<b>Total lines of credit</b>	<b>72,299</b>	<b>69,399</b>
<b>Term loans:</b>		
Bank of America	933	3,733
CTBC Bank	20,357	21,280
<b>Total term loans</b>	<b>21,290</b>	<b>25,013</b>
<b>Total debt</b>	<b>93,589</b>	<b>94,412</b>
Current portion	(53,589)	(93,479)
<b>Long-term portion</b>	<b>\$ 40,000</b>	<b>\$ 933</b>

(1) In July 2016, \$50,000,000 of the revolving line of credit was refinanced to a five -year term loan under the new credit agreement with Bank of America and was reclassified to long-term loan as of June 30, 2016.

*Activities under Revolving Lines of Credit and Term Loans**Bank of America*

In June 2015, the Company entered into an amendment to the existing credit agreement with Bank of America N.A. ("Bank of America") which provided for (i) a \$65,000,000 revolving line of credit facility that would have matured on November 15, 2015 and (ii) a five -year \$14,000,000 term loan facility. The term loan is secured by three buildings located in San Jose, California and the principal and interest are payable monthly through September 30, 2016 with an interest rate at the LIBOR rate plus 1.50% per annum. The Company extended the revolving line of credit to mature on June 30, 2016.

## SUPER MICRO COMPUTER, INC.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

In June 2016, the Company entered into a new credit agreement with Bank of America, which provided for (i) a \$55,000,000 revolving line of credit facility including a \$5,000,000 letter of credit sublimit that matures on June 30, 2017 and (ii) a five-year \$50,000,000 term loan facility. This revolving line of credit facility replaced the existing revolving line of credit facility with Bank of America. This additional term loan is secured by seven buildings located in San Jose, California and the property, plant and equipment and the inventory in those buildings. The principal and interest of the term loan are payable monthly through June 30, 2021 with an interest rate at the LIBOR rate plus 1.25% per annum.

The interest rate for the revolving line of credit under the above credit agreements with Bank of America is at the LIBOR rate plus 1.25% per annum. The LIBOR rate was 0.46% at June 30, 2016. The letter of credit is charged at 1.25% per annum. In July 2016, the Company received \$50,000,000 term loan proceeds from Bank of America under the new credit agreement with an interest rate at 1.71% per annum and paid down the outstanding amounts under the revolving line of credit with Bank of America.

In June 2016, the Company also entered into a separate credit agreement with Bank of America, which provided for a revolving line of credit of \$10.0 million for the Taiwan subsidiary that matures on June 30, 2017. The interest rate of the revolving line of credit is equal to a minimum of 0.9% per annum plus the lender's cost of fund.

As of June 30, 2016 and 2015, the total outstanding borrowings under the Bank of America term loan was \$933,000 and \$3,733,000, respectively. The total outstanding borrowings under the Bank of America lines of credit was \$62,199,000 and \$59,699,000 as of June 30, 2016 and 2015, respectively. The interest rates for these loans ranged from 1.02% to 1.96% per annum at June 30, 2016 and from 0.79% to 1.68% per annum at June 30, 2015, respectively. As of June 30, 2016, the unused revolving lines of credit and term loan amount with Bank of America under the new credit agreements were \$2,801,000 and \$50,000,000, respectively.

CTBC Bank

In November 2015, the Company entered into an amendment to the existing credit agreement with CTBC Bank Co., Ltd ("CTBC Bank") that provides for (i) a 12-month NTD \$700,000,000 or \$22,017,000 U.S. dollar equivalent term loan secured by the land and building located in Bade, Taiwan with an interest rate equal to the lender's established NTD interest rate plus 0.25% per annum which is adjusted monthly and (ii) a 12-month revolving line of credit up to 80.0% of eligible accounts receivable in an aggregate amount of up to \$17,000,000 with an interest rate equal to the lender's established USD interest rate plus 0.30% per annum which is adjusted monthly. The total borrowings allowed under the credit agreement are capped at NTD \$1,000,000,000 or \$30,340,000 U.S. dollar equivalent. In January 2016, the Company extended the revolving line of credit to mature on March 31, 2016.

In April 2016, the Company entered into a credit agreement with CTBC Bank Co., Ltd that provides for (i) a 12-month NTD \$700,000,000 or \$21,620,000 U.S. dollar equivalent term loan facility secured by the land and building located in Bade, Taiwan with an interest rate equal to the lender's established NTD interest rate plus 0.25% per annum which is adjusted monthly. This term loan facility also includes a 12-month customs bond up to NTD \$100,000,000 or \$3,089,000 U.S. dollar equivalent with an annual fee equal to 0.5% per annum, and (ii) a 12-month revolving line of credit up to 80.0% of eligible accounts receivable in an aggregate amount of up to \$40,000,000 with an interest rate equal to the lender's established USD interest rate plus 0.30% per annum which is adjusted monthly. The total borrowings allowed under the credit agreement are capped at \$40,000,000. The credit agreement matures on March 31, 2017.

The total outstanding borrowings under the CTBC Bank term loan was denominated in Taiwanese dollars and was translated into U.S. dollars of \$20,357,000 and \$21,280,000 at June 30, 2016 and 2015, respectively. At June 30, 2016 and 2015, the total outstanding borrowings under the CTBC Bank revolving line of credit was \$10,100,000 and \$9,700,000, respectively, in U.S. dollars. The interest rate for these loans ranged from 0.90% and 1.25% at June 30, 2016 and 0.82% and 1.16% per annum at June 30, 2015. At June 30, 2016, available for future borrowing under this credit agreement was \$9,543,000.

Covenant Compliance

The new credit agreement with Bank of America contain customary representations and warranties and customary affirmative and negative covenants applicable to the Company and its subsidiaries. The new credit agreement contain certain financial covenants, including the following:

**SUPER MICRO COMPUTER, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

- Not to incur on a consolidated basis, a net loss before taxes and extraordinary items for any two consecutive fiscal quarters;
- The Consolidated Leverage Ratio, as defined in the agreement, as of the end of any fiscal quarter, measured for the most recently completed twelve (12) months of the Company, shall not be greater than 2.00;
- The domestic unencumbered liquid assets, as defined in the agreement, maintained in accounts within the United States shall have an aggregate market value of not less than \$30,000,000, measured quarterly as of the last day of each fiscal quarter.

As of June 30, 2016, total assets of \$934,625,000 collateralized the line of credit with Bank of America under the new credit agreement, which represent the total assets of the United States headquarter company, except for seven buildings located in San Jose, California and property, plant and equipment and inventory in those buildings. As of June 30, 2016, total assets collateralizing the term loan with Bank of America under the new credit agreement were \$59,258,000. As of June 30, 2015, the total assets of \$1,045,408,000 collateralized the line of credits with Bank of America which represents all the assets of the Company except for three buildings purchased in San Jose, California in June 2010 and the land and building located in Bade, Taiwan. As of June 30, 2015, total assets collateralizing the term loan with Bank of America was \$17,354,000. As of June 30, 2016, the Company was in compliance with all financial covenants associated with the credit agreements with Bank of America.

As of June 30, 2016 and 2015, the land and building located in Bade, Taiwan with a value of \$26,804,000 and \$27,047,000, respectively, collateralized the term loan with CTBC Bank. There are no financial covenants associated with the term loan with CTBC Bank at June 30, 2016.

#### *Debt Maturities*

The following table as of June 30, 2016, summarizes future minimum principal payments on the Company's debts excluding capital leases (in thousands):

<b><u>Fiscal Years Ending June 30,</u></b>		
2017	\$	53,589
2018		10,000
2019		10,000
2020		10,000
2021		10,000
Thereafter		—
<b>Total</b>	<b>\$</b>	<b>93,589</b>

In July 2016, the Company received \$50,000,000 term loan proceeds from Bank of America and paid down the outstanding amounts under the revolving line of credit with Bank of America. The above table presents the future minimum principal payments on the Company's debts based on the latest credit agreements with Bank of America and CTBC Bank as of June 30, 2016.



**SUPER MICRO COMPUTER, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

**Note 8. Other Long-term Liabilities**

Other long-term liabilities as of June 30, 2016 and 2015 consisted of the following (in thousands):

	June 30,	
	2016	2015
Deferred revenue-net of current portion (1)	\$ 21,940	\$ 4,276
Accrued unrecognized tax benefits including related interests and penalties-net of current portion	16,056	10,184
Accrued warranty costs-net of current portion	1,313	—
Others	1,294	1,224
<b>Total other long-term liabilities</b>	<b>\$ 40,603</b>	<b>\$ 15,684</b>

(1) As of June 30, 2016 and 2015, deferred revenue-net of current portion consist primarily of a deferred extended warranty and on-site service revenue of \$21,265,000 and \$4,276,000 , respectively.

**Note 9. Related-party and Other Transactions**

**Ablecom Technology Inc.** —Ablecom, a Taiwan corporation, together with one of its subsidiaries, Compuware (collectively “Ablecom”), is one of the Company’s major contract manufacturers. Ablecom’s ownership of Compuware is below 50% but Compuware remains a related party as Ablecom still has significant influence over its operations. Ablecom’s chief executive officer, Steve Liang, is the brother of Charles Liang, the Company’s President, Chief Executive Officer and Chairman of the Board of Directors. Ablecom owns approximately 0.3% of the Company’s common stock. Charles Liang and his wife, also an officer of the Company, collectively own approximately 10.5% of Ablecom, while Steve Liang and other family members own approximately 36.0% of Ablecom at June 30, 2016 .

The Company has product design and manufacturing services agreements (“product design and manufacturing agreements”) and a distribution agreement (“distribution agreement”) with Ablecom.

Under the product design and manufacturing agreements, the Company outsources a portion of its design activities and a significant part of its manufacturing of components such as server chassis to Ablecom. Ablecom agrees to design products according to the Company’s specifications. Additionally, Ablecom agrees to build the tools needed to manufacture the products. The Company has agreed to pay for Ablecom's cost of chassis and related product tooling and engineering services and will pay for those items when the work has been completed.

Under the distribution agreement, Ablecom purchases server products from the Company for distribution in Taiwan. The Company believes that the pricing and terms under the distribution agreement are similar to the pricing and terms of distribution arrangements the Company has with similar, third party distributors.

Ablecom’s net sales to the Company and its net sales of the Company’s products to others comprise a substantial majority of Ablecom’s net sales. For the years ended June 30, 2016 , 2015 and 2014 , the Company purchased products from Ablecom totaling \$241,836,000 , \$227,562,000 and \$201,848,000 , respectively. For the years ended June 30, 2016 , 2015 and 2014 , the Company sold products to Ablecom totaling \$19,453,000 , \$58,013,000 and \$14,576,000 , respectively.

Amounts owed to the Company by Ablecom as of June 30, 2016 and 2015 , were \$4,678,000 and \$13,186,000 , respectively. Amounts owed to Ablecom by the Company as of June 30, 2016 and 2015 , were \$39,152,000 and \$59,015,000 , respectively. In fiscal year 2016 , the Company paid Ablecom the majority of invoiced dollars between 48 and 90 days of invoice date. For the years ended June 30, 2016 , 2015 and 2014 , the Company paid \$9,085,000 , \$5,851,000 and \$6,906,000 , respectively, for tooling assets and miscellaneous costs to Ablecom.

The Company’s exposure to loss as a result of its involvement with Ablecom is limited to (a) potential losses on its purchase orders in the event of an unforeseen decline in the market price and/or demand of the Company’s products such that the Company incurs a loss on the sale or cannot sell the products and (b) potential losses on outstanding accounts receivable from Ablecom in the event of an unforeseen deterioration in the financial condition of Ablecom such that Ablecom defaults on its payable to the Company. Outstanding purchase orders with Ablecom were \$62,782,000 and \$67,261,000 at June 30, 2016

## SUPER MICRO COMPUTER, INC.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

and 2015, respectively, representing the maximum exposure to loss relating to (a) above. The Company does not have any direct or indirect guarantees of losses of Ablecom.

In May 2012, the Company and Ablecom jointly established Super Micro Asia Science and Technology Park, Inc. ("Management Company") in Taiwan to manage the common areas shared by the Company and Ablecom for their separately constructed manufacturing facilities. Each company contributed \$168,000 and owns 50% of the Management Company. Although the operations of the Management Company are independent of the Company, through governance rights, the Company has the ability to direct the Management Company's business strategies. Therefore, the Company has concluded that the Management Company is a variable interest entity of the Company as the Company is the primary beneficiary of the Management Company. The accounts of the Management Company are consolidated with the accounts of the Company, and a noncontrolling interest has been recorded for the Ablecom's interests in the net assets and operations of the Management Company. The Management Company had no business operations as of June 30, 2012. For the years ended June 30, 2016, 2015 and 2014, \$20,000, \$(11,000) and \$(6,000) of net income (loss) attributable to Ablecom's interest was included in the Company's general and administrative expenses in the consolidated statements of operations.

**Note 10. Stock-based Compensation and Stockholders' Equity*****Share Repurchase Program***

In July 2016, the Company's Board of Directors adopted a program to repurchase from time to time at management's discretion up to \$100,000,000 of the Company's common stock in the open market or in private transactions during the next twelve months at prevailing market prices. Repurchases will be made under the program using the Company's own cash resources. This share repurchase program does not obligate the Company to acquire any particular amount of common stock, and it may be suspended at any time at the Company's discretion. In July 2016, the Company purchased 513,194 shares of the Company's common stock in the open market at a weighted average price of \$19.97 for \$10,259,000.

***Equity Incentive Plan***

In January 2016, the Board of Directors approved the 2016 Equity Incentive Plan (the "2016 Plan") and reserved for issuance 4,700,000 shares of common stock for awards of stock options, stock appreciation rights, restricted stock, restricted stock units and other equity-based awards. The 2016 Plan was approved by the stockholders of the Company and became effective on March 8, 2016. As of such date, 8,696,444 shares of common stock were reserved for outstanding awards under the Company's 2006 Equity Incentive Plan (the "2006" Plan). Such awards remained outstanding under the 2006 Plan following the adoption of the 2016 Plan, although no further awards will be granted under the 2006 Plan. Up to 2,800,000 shares subject to awards that remained outstanding under the 2006 Plan but that are forfeited in the future will become available for use under the 2016 Plan. In addition, 1,153,412 shares of common stock originally reserved for issuance under the 2006 Plan were cancelled upon the adoption of the 2016 Plan. Under the 2016 Plan, the exercise price per share for incentive stock options granted to employees owning shares representing more than 10% of the Company at the time of grant cannot be less than 110% of the fair value of the underlying share on grant date. Nonqualified stock options and incentive stock options granted to all other persons shall be granted at a price not less than 100% of the fair value. Options generally expire ten years after the date of grant. Stock options and restricted stock units generally vest over four years; 25% at the end of one year and one sixteenth per quarter thereafter. As of June 30, 2016, the Company had 4,294,003 authorized shares available for future issuance under the 2016 Plan.

***Determining Fair Value***

The Company's fair value of restricted stock units is based on the closing market price of the Company's common stock on the date of grant. The Company estimates the fair value of stock options granted using the Black-Scholes-option-pricing formula and a single option award approach. This fair value is then amortized ratably over the requisite service periods of the awards, which is generally the vesting period.

**Expected Term**—The Company's expected term represents the period that the Company's stock-based awards are expected to be outstanding and was determined based on a combination of the Company's peer group and the Company's historical experience.

**Expected Volatility**—Expected volatility is based on a combination of the Company's implied and historical volatility.

**SUPER MICRO COMPUTER, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

Expected Dividend—The Black-Scholes valuation model calls for a single expected dividend yield as an input and the Company has no plans to pay dividends.

Risk-Free Interest Rate—The risk-free interest rate used in the Black-Scholes valuation method is based on the United States Treasury zero coupon issues in effect at the time of grant for periods corresponding with the expected term of option.

Estimated Forfeitures—The estimated forfeiture rate is based on the Company's historical forfeiture rates and the estimate is revised in subsequent periods if actual forfeitures differ from the estimate.

The fair value of stock option grants for the years ended June 30, 2016, 2015 and 2014 was estimated on the date of grant using the Black-Scholes option pricing model with the following assumptions:

	Years Ended June 30,		
	2016	2015	2014
Risk-free interest rate	1.37% - 1.57%	1.35% - 1.76%	1.53% - 1.90%
Expected life	5.31 - 5.33 years	5.40 - 5.44 years	5.49 - 5.58 years
Dividend yield	—%	—%	—%
Volatility	46.65% - 50.89%	46.93% - 49.31%	43.48% - 50.07%
Weighted-average fair value	\$ 12.07	\$ 12.72	\$ 7.23

The following table shows total stock-based compensation expense included in the consolidated statements of operations for the years ended June 30, 2016, 2015 and 2014 (in thousands):

	Years Ended June 30,		
	2016	2015	2014
Cost of sales	\$ 1,098	\$ 901	\$ 941
Research and development	10,178	8,643	6,783
Sales and marketing	1,841	1,553	1,260
General and administrative	3,014	2,602	2,078
Stock-based compensation expense before taxes	16,131	13,699	11,062
Income tax impact	(4,503)	(3,791)	(2,426)
Stock-based compensation expense, net	\$ 11,628	\$ 9,908	\$ 8,636

The cash flows resulting from the tax benefits for tax deductions resulting from the exercise of stock options and vesting of restricted stock units in excess of the compensation expense recorded for those options (excess tax benefits) issued or modified since July 1, 2006 are classified as cash from financing activities. Excess tax benefits for stock options issued prior to July 1, 2006 are classified as cash from operating activities. The Company had \$3,727,000, \$11,157,000 and \$7,041,000 of excess tax benefits recorded in additional paid-in capital in the years ended June 30, 2016, 2015 and 2014, respectively. The Company had excess tax benefits classified as cash from financing activities of \$2,855,000, \$8,089,000 and \$2,992,000 in the years ended June 30, 2016, 2015 and 2014, respectively, for options issued since July 1, 2006.

As of June 30, 2016, the Company's total unrecognized compensation cost related to non-vested stock-based awards granted to employees and non-employee directors was \$ 37,533,000, which will be recognized over a weighted-average vesting period of approximately 2.29 years.

**SUPER MICRO COMPUTER, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

**Stock Option Activity**

The following table summarizes stock option activity during the years ended June 30, 2016 , 2015 and 2014 under all plans:

	Options Outstanding	Weighted Average Exercise Price per Share	Weighted Average Remaining Contractual Term (in Years)	Aggregate Intrinsic Value (in thousands)
Balance as of June 30, 2013 (8,731,818 shares exercisable at weighted average exercise price of \$9.66 per share)	12,206,178	\$ 10.83		
Granted (weighted average fair value of \$7.23)	1,808,006	15.87		
Exercised	(2,863,878)	8.36		
Forfeited	(244,704)	14.25		
Balance as of June 30, 2014 (7,558,631 shares exercisable at weighted average exercise price of \$11.05 per share)	10,905,602	12.24		
Granted (weighted average fair value of \$12.72)	1,093,920	28.28		
Exercised	(2,124,401)	10.99		
Forfeited	(172,278)	18.68		
Balance as of June 30, 2015 (7,208,475 shares exercisable at weighted average exercise price of \$12.24 per share)	9,702,843	14.21		
Granted (weighted average fair value of \$12.07)	316,580	26.86		
Exercised	(1,013,430)	12.03		
Forfeited	(45,126)	19.45		
Balance as of June 30, 2016	<u>8,960,867</u>	\$ 14.88	5.20	\$ 93,661
Options vested and expected to vest at June 30, 2016	8,887,498	\$ 14.79	5.18	\$ 93,566
Options vested and exercisable at June 30, 2016	7,495,131	\$ 13.35	4.63	\$ 87,796

The total pretax intrinsic value of options exercised during the years ended June 30, 2016 , 2015 and 2014 was \$18,016,000 , \$48,077,000 and \$30,165,000 , respectively.

**SUPER MICRO COMPUTER, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

Additional information regarding options outstanding as of June 30, 2016, is as follows:

Range of Exercise Prices	Options Outstanding			Options Vested and Exercisable	
	Number Outstanding	Weighted-Average Remaining Contractual Term (Years)	Weighted-Average Exercise Price Per Share	Number Exercisable	Weighted-Average Exercise Price Per Share
\$4.63 - 7.91	933,694	2.41	\$ 6.29	933,694	\$ 6.29
7.94 - 9.24	924,705	3.29	8.61	908,080	8.60
9.72 - 10.66	1,309,468	3.69	10.39	1,245,451	10.41
10.68 - 12.50	907,879	5.36	11.78	846,813	11.79
12.68 - 14.23	1,307,560	5.20	13.76	1,138,326	13.69
15.22 - 17.29	923,677	5.51	16.32	923,677	16.32
17.69 - 18.93	1,134,968	6.36	18.56	829,328	18.57
20.70 - 26.75	1,125,706	8.01	24.83	562,044	24.04
27.28 - 37.06	357,710	8.99	32.80	84,593	35.09
39.19	35,500	8.62	39.19	23,125	39.19
\$4.63 - \$39.19	<u>8,960,867</u>	5.20	\$ 14.88	<u>7,495,131</u>	\$ 13.35

**Restricted Stock Unit Activity**

In January 2015, the Company began to grant restricted stock units to employees. The Company grants restricted stock units to certain employees as part of its regular employee equity compensation review program as well as to selected new hires. Restricted stock units are share awards that entitle the holder to receive freely tradable shares of the Company's common stock upon vesting.

The following table summarizes restricted stock unit activity during the years ended June 30, 2016 and 2015 under all plans:

	Restricted Stock Units Outstanding	Weighted Average Grant-Date Fair Value per Share	Aggregate Intrinsic Value (in thousands)
Balance as of June 30, 2014	—	\$ —	
Granted	374,720	\$ 35.82	
Vested	(14,685)	\$ 35.23	
Forfeited	(56,711)	\$ 34.90	
Balance as of June 30, 2015	303,324	\$ 36.02	
Granted	845,870	\$ 28.45	
Vested	(177,707)	\$ 31.80	
Forfeited	(44,504)	\$ 29.72	
Balance as of June 30, 2016	<u>926,983</u>	\$ 30.23	\$ 23,036

The total pretax intrinsic value of restricted stock units vested was \$4,872,743 and \$486,000 for the years ended June 30, 2016 and 2015, respectively. In fiscal years 2016 and 2015, upon vesting, 177,707 and 14,685 shares of restricted stock units were partially net share-settled such that the Company withheld 65,164 and 5,278 shares, respectively, with value equivalent to the employees' minimum statutory obligation for the applicable income and other employment taxes, and remitted the cash to the appropriate taxing authorities. The total shares withheld were based on the value of the restricted stock units on their respective vesting dates as determined by the Company's closing stock price. Total payments for the employees' tax

## SUPER MICRO COMPUTER, INC.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

obligations to taxing authorities were \$1,786,000 and \$175,000 for the years ended June 30, 2016 and 2015 , respectively, and are reflected as a financing activity within the consolidated statements of cash flows. These net-share settlements had the effect of share repurchases by the Company as they reduced and retired the number of shares that would have otherwise been issued as a result of the vesting and did not represent an expense to the Company. Pursuant to the terms of the 2016 Plan, shares withheld in connection with net-share settlements are returned to the 2016 Plan and are available for future grants under the 2016 Plan.

**Restricted Stock Awards**

Restricted stock awards are share awards that provide the rights to a set number of shares of the Company’s stock on the grant date. In August 2008, the Compensation Committee of the Board of Directors of the Company (the “Committee”) approved the terms of an agreement (the “Option Exercise Agreement”) with Charles Liang, a director and President and Chief Executive Officer of the Company, pursuant to which Mr. Liang exercised a fully vested option previously granted to him for the purchase of 925,000 shares. The option was exercised using a “net-exercise” procedure in which he was issued a number of shares representing the spread between the option exercise price and the then current market value of the shares subject to the option ( 898,205 shares based upon the market value as of the date of exercise). The shares issued upon exercise of the option are subject to vesting over five years . Vesting of the shares subject to the award may accelerate in certain circumstances pursuant to the terms of the Option Exercise Agreement. The Company determined that there is no incremental fair value of the option exchanged for the awards. The awards were fully vested as of June 30, 2014.

**Restricted Stock Award Activity**

The following table summarizes the Company’s restricted stock award activity for the year ended June 30, 2014 :

	Restricted Stock Awards	
	Number of Shares	Weighted Average Grant Date Fair Value Per Share
Nonvested stock at June 30, 2013	179,641	\$ 10.66
Granted	3,500	14.23
Vested	(183,141)	10.73
Forfeited	—	—
Nonvested stock at June 30, 2014	—	—

The Company had no restricted stock award activity for the years ended June 30, 2016 and 2015 . The total pretax intrinsic value of restricted stock awards vested was \$ 1,965,000 for the year ended June 30, 2014 . In fiscal year 2014 , upon vesting, 183,141 shares of restricted stock awards were partially net share-settled such that the Company withheld 51,583 shares with value equivalent to the minimum statutory obligation for the applicable income and other employment taxes, and remitted the cash to the appropriate taxing authorities. The total shares withheld were based on the value of the restricted stock awards on their vesting date as determined by the Company’s closing stock price. Total payments for an officer’s tax obligations to the taxing authorities were \$ 681,000 for the year ended June 30, 2014 , and are reflected as a financing activity within the consolidated statements of cash flows. These net-share settlements had the effect of share repurchases by the Company as they reduced and retired the number of shares that would have otherwise been issued as a result of the vesting and did not represent an expense to the Company. There are no unvested restricted stock awards at June 30, 2016 and 2015 .

**SUPER MICRO COMPUTER, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

**Note 11. Income Taxes**

The components of income before income tax provision for the years ended June 30, 2016 , 2015 and 2014 are as follows (in thousands):

	Years Ended June 30,		
	2016	2015	2014
United States	\$ 94,335	\$ 118,083	\$ 66,152
Foreign	11,092	27,813	13,442
Income before income tax provision	<u>\$ 105,427</u>	<u>\$ 145,896</u>	<u>\$ 79,594</u>

The income tax provision for the years ended June 30, 2016 , 2015 and 2014 , consists of the following (in thousands):

	Years Ended June 30,		
	2016	2015	2014
Current:			
Federal	\$ 28,556	\$ 33,496	\$ 20,102
State	1,954	1,980	624
Foreign	10,843	10,960	5,252
	<u>41,353</u>	<u>46,436</u>	<u>25,978</u>
Deferred:			
Federal	(6,890)	(1,989)	122
State	(1,080)	70	(472)
Foreign	23	(484)	(191)
	<u>(7,947)</u>	<u>(2,403)</u>	<u>(541)</u>
Income tax provision	<u>\$ 33,406</u>	<u>\$ 44,033</u>	<u>\$ 25,437</u>

The Company's net deferred tax assets as of June 30, 2016 and 2015 consist of the following (in thousands):

	June 30,	
	2016	2015
Warranty accrual	\$ 2,213	\$ 2,493
Marketing fund accrual	1,792	1,163
Inventory valuation	12,214	10,158
Stock-based compensation	5,186	4,800
Accrued vacation and bonus	2,544	1,230
Payable to foreign subsidiaries	1,824	1,716
Deferred revenue	3,221	425
Other	2,514	1,003
Total deferred income tax assets	<u>31,508</u>	<u>22,988</u>
Deferred tax liabilities-depreciation and other	(3,048)	(628)
Deferred income tax assets-net	<u>\$ 28,460</u>	<u>\$ 22,360</u>

**SUPER MICRO COMPUTER, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

The cumulative undistributed earnings of our foreign subsidiaries of \$42,515,000 at June 30, 2016 are considered to be indefinitely reinvested and accordingly, no provisions for federal and state income taxes have been provided thereon. The Company determined that the calculation of the amount of unrecognized deferred tax liability related to these cumulative unremitted earnings was not practicable. Upon distribution of those earnings in the form of dividends or otherwise, the Company would be subject to both United States income taxes (subject to an adjustment for foreign tax credits) and withholding taxes payable to various foreign countries.

The following is a reconciliation for the years ended June 30, 2016, 2015 and 2014, of the statutory rate to the Company's effective federal tax rate:

	Years Ended June 30,		
	2016	2015	2014
Tax at statutory rate	35.0 %	35.0 %	35.0 %
State income tax, net of federal tax benefit	3.3	3.0	3.3
Foreign tax rate differences	0.6	(3.0)	(2.5)
Research and development tax credit	(7.2)	(3.4)	(4.0)
Qualified production activity deduction	(2.8)	(1.3)	(1.8)
Stock based compensation	2.3	2.2	4.5
Uncertain tax positions	(1.6)	(0.7)	(2.1)
Subpart F income inclusion	(2.9)	(2.9)	(3.9)
Foreign withholding tax	3.3	3.0	4.1
Federal tax return to provision adjustment	0.4	0.2	(0.7)
Other	1.3	(1.9)	0.1
Effective tax rate	31.7 %	30.2 %	32.0 %

As of June 30, 2016, the Company had state research and development tax credit carryforwards of \$9,898,000. The state research and development tax credits will carryforward indefinitely to offset future state income taxes. \$6,837,000 of the state research and development tax credit carryforwards were attributable to excess tax deductions from stock option exercises, and were not included in the deferred tax assets shown above. The benefit of these carryforwards will be credited to equity when realized.



**SUPER MICRO COMPUTER, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

The following table summarizes the activity related to the unrecognized tax benefits (in thousands):

	<b>Gross* Unrecognized Income Tax Benefits</b>
Balance at June 30, 2013	\$ 8,089
Gross increases:	
For current year's tax positions	3,120
For prior years' tax positions	132
Gross decreases:	
Settlements and releases due to the lapse of statutes of limitations	(1,726)
For prior year' tax positions	—
Balance at June 30, 2014	9,615
Gross increases:	
For current year's tax positions	3,855
For prior years' tax positions	793
Gross decreases:	
Settlements and releases due to the lapse of statutes of limitations	(971)
For prior years' tax positions	—
Balance at June 30, 2015	13,292
Gross increases:	
For current year's tax positions	6,167
For prior years' tax positions	2,074
Gross decreases:	
Settlements and releases due to the lapse of statutes of limitations	(2,138)
For prior years' tax positions	—
Balance at June 30, 2016	\$ 19,395

\* excludes interest, penalties, federal benefit of state reserves

The total amount of unrecognized tax benefits that would affect the effective tax rate, if recognized, is \$16,723,000 and \$10,971,000 as of June 30, 2016 and 2015, respectively.

The Company's policy is to include interest and penalties related to unrecognized tax benefits within the provision for taxes in the consolidated statements of operations. As of June 30, 2016 and 2015, the Company had accrued \$1,042,000 and \$898,000 for the payment of interest and penalties relating to unrecognized tax benefits, respectively. During fiscal years 2016, 2015 and 2014, there was no material change in the total amount of the liability for accrued interest and penalties related to the unrecognized tax benefits.

The Company is subject to United States federal income tax as well as income taxes in many state and foreign jurisdictions. The 2012 and 2013 federal tax returns are currently under the IRS examination. The Company has responded to Information Document Requests ("IDRs"), issued by the Internal Revenue Service ("IRS"). No adjustment has been proposed by the IRS as of June 30, 2016. The Company is also currently under audit in Taiwan. The Taiwan Tax Authority issued income tax assessments for tax years 2013 and 2014 related to the local income tax exemption regime which the Company has participated in. The Company is currently in the process of appeals. While management believes that the Company has adequately provided reserves for all uncertain tax positions, amounts asserted by tax authorities could be greater or less than the Company's current position. Accordingly, the Company's provision on federal, state and foreign tax related matters to be recorded in the future may change as revised estimates are made or the underlying matters are settled or otherwise resolved.

## SUPER MICRO COMPUTER, INC.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The federal statute of limitations remain open in general for tax years 2012 through 2015. The state statute of limitations remain open in general for tax years 2011 through 2015. The statute of limitations in major foreign jurisdictions remain open for examination in general for tax years 2009 through 2015. The Company does not expect its unrecognized tax benefits to change materially over the next 12 months.

**Note 12. Commitments and Contingencies**

**Litigation and Claims** — The Company is involved in various legal proceedings arising from the normal course of business activities. The Company defends itself vigorously against any such claims. In management's opinion, the resolution of any matters will not have a material adverse effect on the Company's consolidated financial condition, results of operations or liquidity.

**Purchase Commitments** — The Company has agreements to purchase certain units of inventory and non-inventory items through fiscal year 2017. As of June 30, 2016, these remaining non-cancellable commitments were \$334,010,000 compared to \$378,341,000 as of June 30, 2015.

Included in the above non-cancellable commitments are hard disk drive purchase commitments totaling approximately \$110,505,000, which will be paid through December 2016. The Company entered into purchase agreements with selected suppliers of hard disk drives in order to ensure continuity of supply for these components. The agreements provide for some variation in the amount of units the Company is required to purchase and the suppliers may modify the purchase price for these components due to significant changes in market or component supply conditions. Product mix for these components may be negotiated quarterly and the purchase price for these components will be reviewed quarterly with the suppliers. The Company has been negotiating the purchase price with the suppliers on an ongoing basis based upon market rates.

**Lease Commitments** — The Company leases offices and equipment under noncancelable operating leases which expire at various dates through 2025. In addition, the Company leases certain of its equipment under capital leases. The future minimum lease commitments under all leases are as follows (in thousands):

<b>Year ending:</b>	<b>Balance as of</b>	
	<b>Capital Leases</b>	<b>Operating Leases</b>
June 30, 2017	\$ 261	\$ 4,271
June 30, 2018	234	3,924
June 30, 2019	195	3,698
June 30, 2020	94	3,737
June 30, 2021	38	1,662
Thereafter	—	2,631
Total minimum lease payments	822	\$ 19,923
Less: Amounts representing interest	71	
Present value of minimum lease payments	751	
Less: Long-term portion	524	
Current portion	\$ 227	

Rent expense for the years ended June 30, 2016, 2015 and 2014, was \$4,560,000, \$3,729,000 and \$3,477,000, respectively.

**Note 13. Retirement Plans**

The Company sponsors a 401(k) savings plan for eligible United States employees and their beneficiaries. Contributions by the Company are discretionary, and no contributions have been made by the Company for the years ended June 30, 2016, 2015 and 2014.

Beginning in March 2003, employees of Super Micro Computer, B.V. have the option to deduct a portion of their gross wages and invest the amount in a defined contribution plan. The Company has agreed to match 10% of the amount that is deducted monthly from employees' wages. Similar to contributions into a 401(k) plan, the Company's obligation is limited to the contributions made to the contribution plan. Investment risk and investment rewards are assumed by the employees and not by the Company. For the years ended June 30, 2016, 2015 and 2014, the Company's matching contribution was \$250,000, \$200,000 and \$198,000, respectively.

The Company maintains a defined benefit pension plan for Super Micro Computer, Taiwan that covers all eligible employees within Taiwan. Pension plan benefits are based primarily on participants' compensation and years of service credited as specified under the terms of Taiwan's plan. The funding policy is consistent with the local requirements of Taiwan. The Company's obligation is limited to the contributions made to the pension plan. Plan assets of the funded defined benefit pension plan are deposited into a government-managed account in which the Company has no control over investment strategy. For the years ended June 30, 2016, 2015 and 2014, the Company's contribution was \$1,003,000, \$862,000 and \$740,000, respectively.

**Note 14. Segment Reporting**

The Company operates in one operating segment that develops and provides high performance server solutions based upon an innovative, modular and open-standard architecture. The Company's chief operating decision maker is the Chief Executive Officer.

International net sales are based on the country and region to which the products were shipped. The following is a summary for the years ended June 30, 2016, 2015 and 2014, of net sales by geographic region (in thousands):

	Years Ended June 30,		
	2016	2015	2014
Net sales:			
United States	\$ 1,398,405	\$ 1,160,651	\$ 809,250
Europe	385,819	378,323	316,760
Asia	324,208	326,912	299,403
Other	107,141	125,269	41,789
	<u>\$ 2,215,573</u>	<u>\$ 1,991,155</u>	<u>\$ 1,467,202</u>

The following is a summary of long-lived assets, excluding financial instruments, deferred tax assets, other assets, goodwill and intangible assets (in thousands):

	June 30,		
	2016	2015	2014
<b>Long-lived assets:</b>			
United States	\$ 142,764	\$ 124,292	\$ 94,119
Asia	42,052	37,695	36,123
Europe	3,133	1,051	347
	<u>\$ 187,949</u>	<u>\$ 163,038</u>	<u>\$ 130,589</u>

**SUPER MICRO COMPUTER, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

The following is a summary of net sales by product type (in thousands):

	Years Ended June 30,					
	2016		2015		2014	
	Amount	Percent of Net Sales	Amount	Percent of Net Sales	Amount	Percent of Net Sales
Server systems	\$ 1,525,570	68.9%	\$ 1,213,608	60.9%	\$ 740,789	50.5%
Subsystems and accessories	690,003	31.1%	777,547	39.1%	726,413	49.5%
<b>Total</b>	<b>\$ 2,215,573</b>	<b>100.0%</b>	<b>\$ 1,991,155</b>	<b>100.0%</b>	<b>\$ 1,467,202</b>	<b>100.0%</b>

Subsystems and accessories are comprised of serverboards, chassis and accessories. Server systems constitute an assembly of subsystems and accessories done by the Company. In fiscal year 2016 and 2015, one customer represented 10.9% and 10.1% of the Company's total net sales, respectively, and no customer represented greater than 10% of the Company's total net sales for the year ended June 30, 2014. No country other than the United States represent greater than 10% of the Company's total net sales for any of the years ended June 30, 2016, 2015 and 2014. No customer accounted for 10% or more of the Company's accounts receivable as of June 30, 2016, 2015 and 2014.

**Note 15. Quarterly Financial Data (Unaudited)**

The following table presents the Company's unaudited consolidated quarterly financial data. This information has been prepared on a basis consistent with that of the audited consolidated financial statements. The Company believes that all necessary adjustments, consisting of normal recurring accruals and adjustments, have been included to present fairly the quarterly financial data. The Company's quarterly results of operations for these periods are not necessarily indicative of future results of operations.

	Three Months Ended			
	Sep. 30, 2015	Dec. 31, 2015	Mar. 31, 2016	Jun. 30, 2016
	(In thousands, except per share data)			
Net sales	\$ 519,618	\$ 638,964	\$ 532,721	\$ 524,270
Gross profit	\$ 72,215	\$ 106,362	\$ 79,152	\$ 73,796
Net income	\$ 13,699	\$ 34,689	\$ 16,662	\$ 6,971
Net income per common share:				
Basic	\$ 0.29	\$ 0.73	\$ 0.35	\$ 0.14
Diluted	\$ 0.27	\$ 0.67	\$ 0.32	\$ 0.13

	Three Months Ended			
	Sep. 30, 2014	Dec. 31, 2014	Mar. 31, 2015	Jun. 30, 2015
	(In thousands, except per share data)			
Net sales	\$ 443,322	\$ 503,014	\$ 471,225	\$ 573,594
Gross profit	\$ 69,193	\$ 84,452	\$ 76,820	\$ 89,766
Net income	\$ 20,863	\$ 31,242	\$ 23,056	\$ 26,702
Net income per common share:				
Basic	\$ 0.46	\$ 0.68	\$ 0.49	\$ 0.56
Diluted	\$ 0.42	\$ 0.61	\$ 0.44	\$ 0.51

**Note 16. Prior Period Adjustment Recorded in Current Period**

In November 2015, the Company identified errors to revenue recognized in the consolidated financial statements for the fiscal years ended June 30, 2013, 2014 and 2015. The Company determined that certain contracts for extended warranties on products in multiple element arrangements were incorrectly recorded as revenue at the time of sale of the product instead of being deferred and amortized over the contractual warranty period. To quantify the amount of these errors, the Company determined a best estimated selling price for the extended warranty contracts based on amounts separately priced for these contracts on customer invoices. The cumulative impact of this prior period error as of June 30, 2015 was an overstatement of net sales and net income by \$9,259,000 and \$5,926,000, respectively for the three-year period then ended.

The Company assessed the materiality of these errors on the consolidated financial statements for each of the fiscal years ended June 30, 2013, 2014 and 2015, and concluded not to correct those financial statements because the errors were not material to any of these periods. The Company also concluded that recording an out-of-period correction to the consolidated financial statements for the fiscal year ended June 30, 2016 would not be material. Consequently, the out-of-period correction of these errors was recorded in the first quarter ended September 30, 2015 by reducing net sales by \$9,259,000 and net income by \$5,926,000, respectively.

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

None.

**Item 9A. Controls and Procedures**

*Evaluation of Effectiveness of Disclosure Controls and Procedures*

We are committed to maintaining disclosure controls and procedures designed to ensure that information required to be disclosed in our periodic reports filed under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow for timely decisions regarding required disclosure.

Under the supervision and with the participation of our management, including our Chief Executive Officer and our Chief Financial Officer, we evaluated the effectiveness of our disclosure controls and procedures, as such term is defined in Rule 13a-15(e) and 15d-15(e) promulgated under the Exchange Act. The evaluation considered the procedures designed to ensure that information required to be disclosed by us in the reports filed or submitted by us under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission rules and forms and is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure. Based on that evaluation, our Chief Executive Officer and our Chief Financial Officer concluded that our disclosure controls and procedures were effective at a reasonable assurance level as of June 30, 2016.

*Changes in Internal Control over Financial Reporting*

There were no changes in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) identified in connection with the evaluation described in this Item 9A that occurred during the fourth quarter of fiscal year 2016 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

*Remediation of Prior Year Material Weakness*

As disclosed in our fiscal year 2015 Form 10-K/A, in November 2015 our management determined that we had a material weakness in the design of our internal controls related to recording revenue. Since that time, with the oversight of our management and audit committee, we have taken steps to remediate the material weakness to ensure that proper extended warranty and any other deliverables in our bill of materials are tracked and related revenue deferrals are recorded. The following steps have been implemented and performed:

- Initiation of a review of extended warranty and any other deliverables in our bill of materials for all products;

- Increased oversight and monitoring by our management of extended warranty and other deliverables in our bill of materials for any new products; and
- Documenting and tracking extended warranty and other deliverables in our contract matrix to ensure proper revenue recognition.

Our management believes the foregoing efforts have effectively remediated the material weakness as these procedures have been implemented for a sufficient period of time beginning in the first half of fiscal year 2016 and we have completed our testing of the design and operating effectiveness of these above procedures as of June 30, 2016. As we continue to evaluate and work to improve our internal control over financial reporting, our management may execute additional measures to enhance the overall design of our internal controls.

### ***Inherent Limitations on Internal Control***

A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of management override or improper acts, if any, have been detected. These inherent limitations include the realities that judgments in decision making can be faulty, and that breakdowns can occur because of simple errors or mistakes. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of the control. The design of any system of controls is also based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Because of the inherent limitations in a cost-effective control system, misstatements due to management override, error or improper acts may occur and not be detected. Any resulting misstatement or loss may have an adverse and material effect on our business, financial condition and results of operations.

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

Our management is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act). Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we conducted an evaluation of the effectiveness of our internal control over financial reporting based on the criteria set forth in *Internal Control – Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework). Based on our evaluation, our management has concluded that our internal control over financial reporting was effective as of June 30, 2016 to provide reasonable assurance regarding the reliability of financial reporting and preparation of consolidated financial statements for external reporting purposes in accordance with United States generally accepted accounting principles. The effectiveness of our internal control over financial reporting as of June 30, 2016 has been audited by Deloitte & Touche LLP, an independent registered public accounting firm, and their opinion is stated in their report which is included in this Annual Report on Form 10-K.

**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

To the Board of Directors and Stockholders of  
Super Micro Computer, Inc.  
San Jose, California

We have audited the internal control over financial reporting of Super Micro Computer, Inc. and subsidiaries (the “Company”) as of June 30, 2016, based on the criteria established in *Internal Control—Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission. The Company’s management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management’s Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the Company’s internal control over financial reporting based on our audit.

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

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

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

In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of June 30, 2016, based on the criteria established in *Internal Control—Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated financial statements as of and for the year ended June 30, 2016 of the Company and our report dated August 26, 2016 expressed an unqualified opinion on those financial statements and included an explanatory paragraph relating to significant related party transactions.

/s/ Deloitte & Touche LLP  
San Jose, California  
August 26, 2016

**Item 9B. Other Information**

None.

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

Our executive officers and directors and their ages and their positions as of August 18, 2016, are as follows:

<b>Name</b>	<b>Age</b>	<b>Position(s)</b>
Charles Liang	58	President, Chief Executive Officer and Chairman of the Board
Howard Hideshima	57	Senior Vice President, Chief Financial Officer
Phidias Chou	58	Senior Vice President, Worldwide Sales
Yih-Shyan (Wally) Liaw	61	Senior Vice President of International Sales, Corporate Secretary and Director
Chiu-Chu (Sara) Liu Liang	54	Senior Vice President of Operations, Treasurer and Director
Laura Black(1)(4)	54	Director
Michael S. McAndrews(1)(4)	63	Director
Hwei-Ming (Fred) Tsai(1)(2)(3)(4)	60	Director
Sherman Tuan(2)(3)(4)	62	Director

(1) Member of the Audit Committee

(2) Member of the Compensation Committee

(3) Member of the Nominating and Corporate Governance Committee

(4) Determined by the Board of Directors to be “independent” as defined by applicable listing standards of The NASDAQ Stock Market

**Executive Officers**

*Charles Liang* founded Super Micro and has served as our President, Chief Executive Officer and Chairman of the Board since our inception in September 1993. Mr. Liang has been developing server system architectures and technologies for the past two decades. From July 1991 to August 1993, Mr. Liang was President and Chief Design Engineer of Micro Center Computer Inc., a high-end motherboard design and manufacturing company. From January 1988 to April 1991, Mr. Liang was Senior Design Engineer and Project Leader for Chips & Technologies, Inc., a chipset technology company, and Suntek Information International Group, a system and software development company. Mr. Liang has been granted many server technology patents. Mr. Liang holds an M.S. in Electrical Engineering from the University of Texas at Arlington and a B.S. in Electrical Engineering from National Taiwan University of Science & Technology in Taiwan. Our Nominating and Corporate Governance Committee (“Governance Committee”) concluded that Mr. Liang should serve on the Board based on his skills, experience and qualifications in managing technology businesses, his technical expertise, and his long familiarity with the Company’s business.

*Howard Hideshima* has served as our Senior Vice President, Chief Financial Officer since May 2014 and our Chief Financial Officer since May 2006. From November 2005 to May 2006, Mr. Hideshima was Vice President of Finance at Force10 Networks, Inc., a network equipment company, and from July 2004 to November 2005, he served as Director of Finance for that company. From April 2001 to June 2004, Mr. Hideshima was Chief Financial Officer and Vice President of Finance and Administration at Virtual Silicon Technology, Inc., a semiconductor intellectual property company. From January 2000 to March 2001, he served as Chief Financial Officer at Internet Corporation, an Internet services company. From January 1999 to December 1999, he was Vice President of Finance and from July 1997 to December 1999 Chief Accounting Officer at ESS Technology, Inc., a fabless semiconductor company. Mr. Hideshima holds an M.B.A. from San Francisco State University and a B.S. in Business Administration from the University of California at Berkeley.

*Phidias Chou* has served as our Senior Vice President, Worldwide Sales since May 2014 and Vice President, Worldwide Sales from September 2008 to April 2014. Mr. Chou served as our Vice President of Sales, Regional and Strategic



Account from July 2006 to August 2008 and served as our Senior Director of Sales from August 2000 to July 2006. From April 1996 to August 2000, Mr. Chou was General Manager at US Sertek, a subsidiary of Acer, Inc., a PC and server company. From July 1992 to April 1996, he was Director of Sales and from October 1987 to July 1992, he was PC Product Manager at Acer Taiwan. Mr. Chou received an M.B.A. from Chung Yuan Christian University and a B.S. in Mechanical Engineering from National Chung Hsing University.

*Yih-Shyan (Wally) Liaw* co-founded Super Micro and has served as our Senior Vice President of International Sales since May 2014 and Corporate Secretary and a member of our board of directors since our inception in September 1993. Mr. Liaw was our Vice President of International Sales from September 1993 to April 2014. From 1988 to 1991, Mr. Liaw was Vice President of Engineering at Great Tek, a computer company. Mr. Liaw holds an M.S. in Computer Engineering from University of Arizona, an M.S. in Electrical Engineering from Tatung Institute of Technology in Taiwan, and a B.S. degree from Taiwan Provincial College of Marine and Oceanic Technology. Our Governance Committee concluded that Mr. Liaw should serve on the Board based on his skills, experience and qualifications in managing technology businesses, his technical expertise and his long familiarity with the Company's business.

*Chiu-Chu (Sara) Liu Liang* co-founded Super Micro and has served as Senior Vice President of Operations since May 2014 and Treasurer and a member of our board of directors since our inception in September 1993. Ms. Liang was Vice President of Operations from September 1993 to April 2014. From 1985 to 1993, Ms. Liang held finance and operational positions for several companies, including Micro Center Computer Inc. Ms. Liang holds a B.S. in Accounting from Providence University in Taiwan. Ms. Liang is married to Mr. Charles Liang, our Chairman, President and Chief Executive Officer. Our Governance Committee concluded that Ms. Liang should serve on the Board based on her skills, experience, her general expertise in business and accounting and her long familiarity with the Company's business.

### **Non-Management Directors**

*Laura Black* has been a member of our board of directors since April 2012. Since March 1999, she has served as a Managing Director of Needham & Company, LLC, a full service investment banking firm. At Needham, she has raised public and private equity capital for numerous technology companies and served as strategic financial advisor on multiple M&A transactions. From July 1995 to February 1999, she served as a Managing Director and Corporate Finance at Black & Company, a regional investment bank subsequently acquired by Wells Fargo Van Kasper. From July 1993 to June 1995, Ms. Black served as a Director for TRW Avionics & Surveillance Group where she evaluated acquisition candidates, managed direct investments and raised venture capital to back spin-off companies. From August 1983 to August 1992, she worked at TRW as an electrical engineer designing spread spectrum communication systems. Ms. Black holds a BSEE from University of California at Davis, a MSEE from Santa Clara University and a MS Management from Stanford. Our Governance Committee concluded that Ms. Black should serve on the Board based on her skills, experience and qualifications in capital finance, her financial literacy and her familiarity with technology businesses.

*Michael S. McAndrews* has been a member of our board of directors since February 2015. Mr. McAndrews has served as a Principal of Abbott, Stringham & Lynch, an accounting firm serving the Silicon Valley, since September 2013. From June 2002 to June 2013, he served as a Partner at PricewaterhouseCoopers LLP, a multinational professional services network, where he provided tax planning and consulting services to multinational public companies, private companies and their owners and emerging businesses in a variety of industries including high-technology, manufacturing, food processing and wholesale/retail distribution. From November 1979 to June 2002, he worked for Arthur Andersen and Company, a global professional services firm. He served as Partner from 1993 to 2002 where he focused primarily on providing tax planning and compliance services to high technology companies ranging in size from start-ups to large multinational public companies. Mr. McAndrews is a certified public accountant with an active license in California and holds a Bachelor of Science in Commerce, Accounting degree from Santa Clara University. Our Governance Committee concluded that Mr. McAndrews should serve on the Board based on his skills, experience, his financial literacy and his familiarity with technology businesses.

*Hwei-Ming (Fred) Tsai* has been a member of our board of directors since August 2006. Mr. Tsai has served as an independent director of ANZ Bank (Taiwan) Limited, a wholly owned subsidiary of Australia and New Zealand Banking Group Limited since September 2013. Mr. Tsai has also been an independent business consultant since January 2010. Mr. Tsai served as Executive Vice President and Chief Financial Officer of SinoPac Bancorp, a financial holding company based in Los Angeles, California from February 2001 and August 2005, respectively, to December 2009. He also served as Senior Executive Vice President of Far East National Bank, a commercial bank that is held by SinoPac Bancorp from December 2002 to December 2009. Mr. Tsai received a Master in Professional Accounting from the University of Texas at Austin and a B.A. in Accounting from National Taiwan University in Taiwan. Our Governance Committee concluded that Mr. Tsai should serve on the Board based on his skills, experience and qualifications in capital finance, his financial literacy and his familiarity with the Company's business.

*Sherman Tuan* has been a member of our board of directors since February 2007. Mr. Tuan is founder of PurpleComm, Inc. (doing business as 9x9.tv), a platform for connected TV, where he has served as Chief Executive Officer since January 2005 and Chairman of the Board since June 2003. From September 1999 to May 2002, he was director of Metromedia Fiber Network, Inc., a fiber optical networking infrastructure provider. Mr. Tuan was co-founder of AboveNet Communications, Inc., an internet connectivity solutions provider, where he served as President from March 1996 to January 1998, Chief Executive Officer from March 1996 to May 2002 and director from March 1996 to September 1999. Mr. Tuan holds a degree in Electrical Engineering from Feng-Chia University in Taiwan. Our Governance Committee concluded that Mr. Tuan should serve on the Board based on his skills, experience and qualifications in managing technology businesses, his technical expertise, and his familiarity with the Company's business.

Except for Mr. Charles Liang and Ms. Chiu-Chu (Sara) Liu Liang who are married, there are no other family relationships among any of our directors or executive officers.

### **Composition of the Board**

The authorized number of directors of the Company is seven. There are currently seven directors. Our amended and restated certificate of incorporation provides for a classified board of directors divided into three classes. The members of each class are elected to serve a three-year term with the term of office for each class ending in consecutive years. Vacancies may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director. Alternatively, the board of directors, at its option, may reduce the number of directors.

The current composition of the board is:

Class I Directors (terms expiring at the 2016 annual meeting)	Charles Liang Sherman Tuan
Class II Directors (terms expiring at the 2017 annual meeting)	Yih-Shyan (Wally) Liaw Laura Black Michael S. McAndrews
Class III Directors (terms expiring at the 2018 annual meeting)	Chiu-Chu (Sara) Liu Liang Hwei-Ming (Fred) Tsai

## **CORPORATE GOVERNANCE**

### **Corporate Governance Guidelines**

We have adopted "Corporate Governance Guidelines" to help ensure that the board of directors is independent from management, appropriately performs its function as the overseer of management, and that the interests of the board of directors and management align with the interests of the stockholders. The "Corporate Governance Guidelines" are available at [www.Supermicro.com](http://www.Supermicro.com) by first clicking on "About Us" and then "Investor Relations" and then "Corporate Governance."

### **Code of Ethics**

We have adopted a "Code of Business Conduct and Ethics" that is applicable to all directors and employees and embodies our principles and practices relating to the ethical conduct of our business and our long-standing commitment to honesty, fair dealing and full compliance with all laws affecting our business. The "Code of Business Conduct and Ethics" is available at [www.Supermicro.com](http://www.Supermicro.com) by first clicking on "About Us" and then "Investor Relations" and then "Corporate Governance". Any substantive amendment or waiver of the Code relating to executive officers or directors will be made only after approval by a committee comprised of a majority of our independent directors and will be promptly disclosed on our website within four business days.

### **Director Independence**

The rules of NASDAQ generally require that a majority of the members of a listed company's board of directors be independent. In addition, the listing rules generally require that, subject to specified exceptions, each member of a listed company's audit committee, compensation committee, and nominating and corporate governance committees be independent.

Audit Committee members must also satisfy the independence criteria set forth in Rule 10A-3 under the Securities Exchange Act of 1934, as amended (the "Exchange Act") and the listing requirements of The NASDAQ Stock Market. In addition, compensation committee members must satisfy the independence criteria set forth in Rule 10C-1 under the Exchange Act and the listing requirements of The NASDAQ Stock Market.

The board affirmatively determines the independence of each director and nominee for election as a director in accordance with guidelines it has adopted, which include all elements of independence set forth in applicable NASDAQ listing standards. Our director independence standards are set forth in our "Corporate Governance Guidelines" available at the website noted above.

Based on these standards, our board of directors has determined that four of its current seven members, Hwei-Ming (Fred) Tsai, Laura Black, Michael S. McAndrews and Sherman Tuan, are "independent directors" under the applicable rules and regulations of the SEC and the listing requirements and rules of The NASDAQ Stock Market.

### **Executive Sessions**

Non-management directors meet in executive session without management present each time the board holds its regularly scheduled meetings.

### **Communications with the Board of Directors**

The board of directors welcomes the submission of any comments or concerns from stockholders or other interested parties. If you wish to send any communications to the board of directors, you may use one of the following methods:

- Write to the board at the following address:  
Board of Directors  
Super Micro Computer, Inc.  
c/o Robert Aeschliman, General Counsel  
980 Rock Avenue  
San Jose, California 95131
- E-mail the board of directors at [BODInquiries@supermicro.com](mailto:BODInquiries@supermicro.com)

Communications that are intended specifically for the independent directors or non-management directors should be sent to the e-mail address or street address noted above, to the attention of the "Independent Directors".

## **MEETINGS AND COMMITTEES OF THE BOARD**

### **Board Meetings**

Each director is expected to devote sufficient time, energy and attention to ensure diligent performance of his or her duties and to attend all board and committee meetings. We encourage, but do not require, each board member to attend our annual meeting of stockholders. Five of our directors attended our annual meeting of stockholders held during fiscal 2016. The board of directors held four meetings during fiscal year 2016, each of which were regularly scheduled meetings. The board of directors also acted by written consent one time during fiscal year 2016. All directors attended at least 75% of the meetings of the board of directors and of the committees on which they served during the time they served as a director in fiscal year 2016.

### **Board Leadership Structure**

Our Chairman, Charles Liang, is also our CEO. The Board and our Nominating and Corporate Governance Committee (the "Governance Committee") believe that it is appropriate for Mr. Liang to serve as both the CEO and Chairman due to the relatively small size of our Board, and the fact that Mr. Liang is the founder of the Company with extensive experience in our industry. The Company does not currently have a lead independent director.

### **Board Role in the Oversight of Risk**

Our Board exercises oversight over our risk management activities, requesting and receiving reports from management. The board of directors exercises this oversight responsibility directly and through its committees. Our Board has delegated primary responsibility for oversight of risks relating to financial controls and reporting to our Audit Committee,

which in turn reports to the full Board on such matters as appropriate. The Audit Committee also assists the Board in oversight of certain Company risks, particularly in the areas of internal controls, financial reporting and review of related party transactions.

Our management with oversight from our Compensation Committee has reviewed its compensation policies and practices with respect to risk-taking incentives and risk management, and does not believe that potential risks arising from its compensation policies or practices are reasonably likely to have a material adverse effect on the Company.

### Committees of the Board of Directors

The board has three standing committees to facilitate and assist the board of directors in discharging its responsibilities: the Audit Committee, the Compensation Committee and the Governance Committee. In accordance with applicable NASDAQ listing standards, each of these committees is comprised solely of non-employee, independent directors. The charter for each committee is available at [www.Supermicro.com](http://www.Supermicro.com) by first clicking on “About Us” and then “Investor Relations” and then “Corporate Governance”. The charter of each committee also is available in print to any stockholder who requests it. The following table sets forth the current members of each of the standing board committees:

<u>Audit Committee</u>	<u>Compensation Committee</u>	<u>Nominating and Corporate Governance Committee</u>
Laura Black (1)	Sherman Tuan(1)	Hwei-Ming (Fred) Tsai(1)
Michael S. McAndrews	Hwei-Ming (Fred) Tsai	Sherman Tuan
Hwei-Ming (Fred) Tsai		

(1) Committee Chairperson

### Audit Committee

The Audit Committee has three members. The Audit Committee met seven times in fiscal year 2016, four of which were regularly scheduled quarterly meetings and three of which were special meetings. Our board has determined that each member of our Audit Committee meets the requirements for independence under the applicable listing standards of NASDAQ and the rules of the SEC. Our board of directors has also determined that each member of our Audit Committee is an “audit committee financial expert” as defined under applicable SEC rules.

As outlined more specifically in the Audit Committee charter, the Audit Committee has, among other duties, the following responsibilities:

- The appointment, compensation and retention of our independent auditors, and the review and evaluation of the auditors’ qualifications, independence and performance;
- Oversees the auditors’ audit work and reviews and pre-approves all audit and non-audit services that may be performed by them;
- Reviews and approves the planned scope of our annual audit;
- Monitors the rotation of partners of the independent auditors on our engagement team as required by law;
- Reviews our financial statements and discusses with management and the independent auditors the results of the annual audit and the review of our quarterly financial statements;
- Reviews our critical accounting policies and estimates;
- Oversees the adequacy of our financial controls;
- Reviews annually the audit committee charter and the committee’s performance;
- Reviews and approves all related-party transactions; and
- Establishes and oversees procedures for the receipt, retention and treatment of complaints regarding accounting, internal controls or auditing matters and oversees enforcement, compliance and remedial measures under our Code of Business Conduct and Ethics; and
- Reviews and evaluates, at least annually, the adequacy of the audit committee charter and recommend any proposed changes to the board of directors for approval.

## **Compensation Committee**

The Compensation Committee has two members and met four times in fiscal year 2016 . The Compensation Committee is comprised solely of non-employee directors. Our board has determined that each member of our Compensation Committee meets the requirements for independence under the applicable listing standards of NASDAQ.

As outlined more specifically in the Compensation Committee charter, the Compensation Committee has, among other duties, the following responsibilities:

- Periodically reviews and advises our board concerning the Company's overall compensation philosophy, policies and plans, including a review of both regional and industry compensation practices and trends;
- Reviews and approves corporate goals and objectives relevant to compensation of the chief executive officer and other executive officers;
- Evaluates the performance of the chief executive officer and other executive officers in light of those goals and objectives;
- Reviews and approves the compensation of the chief executive officer and other executive officers;
- Administers the issuance of restricted stock grants, stock options and other awards to executive officers and directors under our stock plans; and
- Reviews and evaluates, at least annually, the performance of the compensation committee and its members, including compliance of the compensation committee with its charter and the adequacy of the compensation committee charter.

## **Nominating and Corporate Governance Committee**

The Governance Committee has two members and met four times in fiscal year 2016 . The Governance Committee is comprised solely of non-employee directors. Our board has determined that each member of our Governance Committee meets the requirements for independence under the applicable listing standards of NASDAQ.

As outlined more specifically in the Governance Committee charter, the Governance Committee has, among other duties, the following responsibilities:

- Identifies individuals qualified to become directors;
- Recommends to our board of directors director nominees for each election of directors;
- Develops and recommends to our board of directors criteria for selecting qualified director candidates;
- Considers committee member qualifications, appointment and removal;
- Recommends corporate governance guidelines applicable to us;
- Provides oversight in the evaluation of our board of directors and each committee;
- Coordinates and reviews board and committee charters for consistency and adequacy under applicable rules, and make recommendations to the board for any proposed changes; and
- Periodically reviews scope of responsibilities of the Governance Committee and the committee's performance of its duties.

## **Compensation Committee Interlocks and Insider Participation**

None of the members of the Compensation Committee is a current or former officer or employee of the Company or had any relationship with the Company requiring disclosure. In addition, during fiscal year 2016 , none of our executive officers served as a member of the board of directors or compensation committee of any other entity that has one or more executive officers who served on our board of directors or Compensation Committee.

## **Section 16(a) Beneficial Ownership Reporting Compliance**

The members of our board of directors, our executive officers and persons who hold more than 10% of our outstanding common stock are subject to the reporting requirements of Section 16(a) of the Exchange Act, which require them to file reports with respect to their ownership of our common stock and their transactions in our common stock. Based upon (i) the copies of Section 16(a) reports that we received from such persons for their fiscal year 2016 transactions in our common stock and their common stock holdings and (ii) the written representations received from one or more of such persons that no annual Form 5 reports were required to be filed by them for fiscal year 2016 , we believe that all reporting requirements under Section 16(a) were met in a timely manner by the persons who were executive officers, members of the board of directors or

greater than 10% stockholders during such fiscal year, other than one late report made by Phidias Chou with respect to one transaction.

**Item 11. Executive Compensation**

**EXECUTIVE COMPENSATION**

**Compensation Discussion and Analysis**

***Process Overview***

The Compensation Committee of the board of directors discharges the board of directors' responsibilities relating to compensation of all of our executive officers. The Compensation Committee is comprised of two non-employee directors, both of whom are independent pursuant to the applicable listing rules of NASDAQ, Rule 16b-3 under the Exchange Act, and Section 162(m) of the Internal Revenue Code ("Code").

The agenda for meetings is determined by the Chair of the Compensation Committee with the assistance of Howard Hideshima, our Chief Financial Officer. Committee meetings are regularly attended by Mr. Hideshima and Robert Aeschliman, our General Counsel. However, Mr. Hideshima does not attend the portion of meetings during which his own performance or compensation is being discussed. Mr. Hideshima and Mr. Aeschliman support the Compensation Committee in its work by providing information relating to our financial plans, performance assessments of our executive officers and other personnel-related data. In addition, the Compensation Committee has the authority under its charter to hire, terminate and approve fees for advisors, consultants and agents as it deems necessary to assist in the fulfillment of its responsibilities. In July 2015, as part of making an overall assessment of each individual's role and performance, and structuring our compensation programs for fiscal year 2016, the Compensation Committee reviewed recommendations of management as well as publicly available peer group compensation data.

***Compensation Philosophy and Objectives***

It is the Compensation Committee's philosophy to link the named executive officers' compensation to corporate performance. The base salary, quarterly bonuses and stock option grants of the named executive officers are determined in part by the Compensation Committee reviewing data on prevailing compensation practices of comparable technology companies with whom we compete for executive talent, and evaluating such information in connection with our corporate goals and compensation practices. The Company's compensation philosophy has been unchanged over the last several years.

The Compensation Committee considers various sources of competitive data when determining executive compensation levels, including compensation data from a sampling of public companies and public compensation surveys. For fiscal year 2016, the sample of companies consisted of the following companies:

Brocade Communications Systems, Inc.	Infinera Corporation
Cray, Inc.	NetApp, Inc.
Extreme Networks, Inc.	Netgear, Inc.

In selecting the companies for inclusion in the sample, the following factors were considered: industry, net revenues, operating income and whether the company may compete against us for executive talent. These companies ranged in annual revenue from approximately \$552.9 million to \$6.1 billion. In addition to gathering data specific to the above listed companies, the Compensation Committee also reviewed public surveys of compensation practices.

The Compensation Committee does not seek to specifically benchmark compensation based upon the sample companies reviewed nor does the Compensation Committee employ any other formulaic process in making compensation decisions. Rather the Compensation Committee uses its subjective judgment based upon a review of all information, including an annual review for each officer of his or her level of responsibility, contributions to our financial results and our overall performance. The Compensation Committee makes a generalized assessment of these factors and this information is not weighted in any specific manner.

We believe that our current compensation arrangements for several of our executive officers, including our Chief Executive Officer, are significantly below typical compensation levels for similar positions at comparable companies. This is principally due to the high level of Company stock ownership held by such persons. As we continue to grow, we may need to increase our recruiting of new

executives from outside of the Company. This in turn may require us to pay higher compensation closer to or in excess of that typical paid by comparable companies.

Finally, we believe that creating stockholder value requires not only managerial talent but active participation by all employees. In recognition of this, we try to minimize the number of compensation arrangements that are distinct or exclusive to our executive officers. We currently provide base salary, quarterly bonuses and long-term equity incentive compensation to a considerable number of our domestic employees and international employees, in addition to our executive officers.

### ***The Role of Stockholder Say-on-Pay Votes***

Our board of directors, the Compensation Committee, and our management value the opinions of our stockholders. At our annual meeting of stockholders held on February 13, 2014 (the "2013 Annual Meeting"), we provided our stockholders the opportunity to vote to approve, on an advisory basis, the compensation of the Company's named executive officers as disclosed in the proxy statement for our 2013 Annual Meeting. At the meeting, 35,521,057 shares or approximately 98.1% of the stockholders who voted on the "say-on-pay" proposal approved the compensation of our named executive officers, while only 514,344 or approximately 1.4% voted against (with approximately 155,954 shares or 0.4% abstaining). 4,727,490 shares held by brokers were not voted with respect to this proposal. Although the advisory stockholder vote on executive compensation is non-binding, the Compensation Committee has considered and will continue to consider, the outcome of the vote when making future compensation decisions for named executive officers. In determining and deciding on executive compensation for fiscal year 2016, our Compensation Committee took into account the results of the 2013 Annual Meeting stockholder advisory vote to approve executive compensation, particularly the strong support expressed by the Company's stockholders, as one of the many factors considered in deciding that the Company's compensation policies and procedures for 2016 should largely remain consistent with our policies and procedures in prior years.

### ***Role of Executive Officers in the Compensation Process***

Management provides recommendations to the Compensation Committee on issues such as compensation program design, and evaluations of executive and Company performance. In fiscal year 2016, the Compensation Committee also had access to competitive data collected by management. While the Compensation Committee carefully considers all recommendations made by members of management, ultimate authority for all compensation decisions regarding our executive officers rests with the Compensation Committee.

In addition, the Company evaluates the use of a compensation consultant each year, but currently does not feel that it is necessary to engage a compensation consultant as part of the Company's compensation process.

### ***Fiscal Year 2016 Executive Officer Compensation Components***

For fiscal year 2016, the principal components of compensation for our executive officers were:

- Base salary;
- Quarterly bonus; and
- Equity-Based Incentive Compensation.

*Base Salary.* Base salaries for our executive officers other than the Chief Executive Officer are determined annually by the Compensation Committee based upon recommendations by our chief executive officer, taking into account such factors as salary norms in comparable companies and publicly available data regarding compensation increases in the industry, a subjective assessment of the nature of the position and an annual review of the contribution and experience of each executive officer. For the Chief Executive Officer, the Compensation Committee considers substantially the same sort of information, as well as the size of the Company and the Chief Executive Officer's overall stock ownership.

### ***Fiscal Year 2016 Executive Officer Compensation***

In July 2015, the Compensation Committee met to review the base salaries of our executive officers for fiscal year 2016. In determining base salaries for fiscal year 2016, the Compensation Committee decided to increase the base salary of our executive officers other than the Chief Executive Officer after taking into account the recommendations of our Chief Executive Officer and taking into account such factors as salary norms in comparable companies and publicly available data regarding compensation increases in the industry, a subjective assessment of the nature of each position and an annual review of the contribution and experience of each executive officer. For the Chief Executive Officer, the Compensation Committee considered substantially the same sort of information, as well as the size of the Company and the Chief Executive Officer's stock ownership, and determined to increase the base salary of the Chief Executive Officer. Based upon its review, the Compensation Committee approved increases in base salaries for our executive officers set forth below. The base salary increases were comparable to the average percentage base salary increases granted to our employees generally.

	<b>Principal Position</b>	<b>2015 Base Salary</b>	<b>2016 Base Salary</b>	<b>Base Salary % Change</b>
Charles Liang	President, Chief Executive Officer and Chairman of the Board	\$ 331,963	\$ 365,160	10.0%
Howard Hideshima	Senior Vice President and Chief Financial Officer	\$ 300,956	\$ 322,023	7.0%
Phidias Chou	Senior Vice President, Worldwide Sales	\$ 273,635	\$ 287,317	5.0%
Yih-Shyan (Wally) Liaw	Senior Vice President, International Sales, Corporate Secretary and Director	\$ 222,216	\$ 233,327	5.0%
Chiu-Chu (Sara) Liu Liang	Senior Vice President of Operations, Chief Administration Officer, Treasurer, and Director	\$ 216,505	\$ 238,156	10.0%

**Quarterly Bonus.** Our cash bonus program seeks to motivate executive officers to work effectively to achieve our financial performance objectives and to reward them when such objectives are met. Quarterly bonuses for executive officers are subject to approval by the Compensation Committee. Bonuses are not awarded based upon any specific plan or formula, but are subjectively determined based upon our performance during the quarter and the individual's contributions. Historically these bonuses have ranged from zero to an amount equal to two weeks of base salary. For fiscal year 2016, approximately one week of base salary was granted to our Senior Vice President, Worldwide Sales and no bonus were granted to other executive officers.

**Equity-Based Incentive Compensation.** Stock options and other equity-based awards are an important component of the total compensation of executive officers. We believe that equity-based awards align the interests of each executive with those of our stockholders. They also provide executive officers a significant, long-term interest in our success and help retain key executive officers in a competitive market for executive talent. Our 2016 Equity Incentive Plan authorizes the Compensation Committee to grant stock options and other equity-based awards to executive officers. The number of shares owned by, or subject to equity-based awards held by, each executive officer is periodically reviewed and additional awards are considered based upon a generalized assessment of past performance of the executive and the relative holdings of other executive officers. The stock options and restricted stock unit awards granted to executive officers by the Compensation Committee generally vest over periods of four years, and stock options expire no later than ten years from the date of grant.

In fiscal year 2016, the Compensation Committee approved grants of additional stock options and restricted stock units to Mr. Chou, Mr. Liaw and Mrs. Liang, as part of the Compensation Committee's review of all employee grant levels.

#### **Stock Ownership Guidelines**

We currently do not require our directors or executive officers to own a particular amount of our common stock. The Committee is satisfied that stock and option holdings among our directors and executive officers are sufficient at this time to provide motivation and to align this group's interests with those of our stockholders. Our insider trading policy prohibits any of our directors, executive officers, employees or contractors from engaging in any transactions in publicly-traded options, such as puts and calls, and other derivative securities, including any hedging or similar transaction, with respect to our common stock.

#### **Stock Retention Policy**

We have adopted a stock retention policy which requires that our Chief Executive Officer hold a significant portion of the shares of our common stock acquired under our equity incentive plan for at least 36 months. Under the policy, the Chief Executive Officer must retain at least 50% of all "net" shares received ("net" shares means those shares remaining after the sale or withholding of shares in payment of the exercise price, if applicable, and withholding taxes) for at least 36 months following the date on which an equity award is vested, settled or exercised.

#### **Recoupment Policy**

We established a Recoupment Policy that is applicable to our executive officers. Under the policy, if we are required to prepare an accounting restatement due to material noncompliance with the financial reporting requirements under United States securities laws, the Compensation Committee shall be entitled to recover from any current or former executive officer any excess incentive-based compensation received by such person during the three year period prior to the date on which we are required to prepare the restatement. This policy applies to both equity-based and cash-based incentive compensation awards. The "excess compensation" is the difference between the actual amount that was paid, and the amount that would have been paid under the restated financial results.



## **Other Benefits**

### *Health and Welfare Benefits*

Our executive officers receive the same health and welfare benefits as are offered to our other employees, including medical, dental, vision, life, accidental death and dismemberment, disability, flexible spending accounts and holiday pay. The same contribution amounts, percentages and plan design provisions are applicable to all employees.

### *Retirement Program*

Our executive officers may participate in the same tax-qualified, employee-funded 401(k) plan that is offered to all our other employees. We currently have no Supplemental Executive Retirement Plan, or SERP, obligations. We do not offer any defined benefit retirement plans to our executive officers.

### *Perquisites*

We do not provide special benefits or other perquisites to any of our executive officers.

### *Employment Arrangements, Severance and Change of Control Benefits*

We have not entered into employment agreements with any of our named executive officers. Mr. Hideshima, Mr. Chou and Ms. Liang have signed offer letters which provide for at-will employment. The offer letters provide for salary, stock options and right to participate in our employee benefit plans. We do not have any written employment arrangements with Messrs. Liang and Liaw. We do not have any arrangements with any of our executive officers that provide for any severance benefits in the event of termination or change of control.

### *Tax and Accounting Treatment of Compensation*

In our review and establishment of compensation programs and payments, we consider, but do not place great emphasis on, the anticipated accounting and tax treatment of our compensation programs on us and our executive officers. While we may consider accounting and tax treatment, these factors alone are not dispositive. Among other factors that receive greater consideration are the net costs to us and our ability to effectively administer executive compensation in the short and long-term interests of stockholders under a proposed compensation arrangement.

We have endeavored to structure the performance-based incentive elements of executive compensation to meet the requirements for deductibility under Section 162(m). The Committee does not believe that compensation decisions should be constrained by how much compensation is deductible for federal tax purposes. Accordingly, the Committee is not limited to paying compensation under plans that are qualified under Section 162(m) and the Committee's ability to retain flexibility in this regard may, in certain circumstance, outweigh the advantages of qualifying all compensation as deductible under Section 162(m).

The Committee will continue to assess the impact of Section 162(m) on its compensation practices and determine what further action, if any, is appropriate.

We account for equity compensation paid to our employees in accordance with Accounting Standards Codification Topic 718, Stock Compensation ("ASC Topic 718"), which requires us to estimate and record expenses for each award of equity compensation over the service period of the award.

We intend that our plans, arrangements and agreements will be structured and administered in a manner that complies with the requirements of Section 409A of the Code. Participation in, and compensation paid under our plans, arrangements and agreements may, in certain instances, result in the deferral of compensation that is subject to the requirements of Section 409A. If our plans, arrangements and agreements as administered fail to meet certain requirements under Section 409A, compensation earned thereunder may be subject to immediate taxation and tax penalties.

## **Summary**

The Committee believes that our compensation philosophy and programs are designed to foster a performance-oriented culture that aligns our executive officers' interests with those of our stockholders. The Committee also believes that the compensation of our executive officers is both appropriate and responsive to the goal of building stockholder value.

***Compensation Committee Report***

The Committee has reviewed and discussed the Compensation Discussion and Analysis (“CD&A”) with the Company’s management. Based on this review and these discussions, the Committee recommended to the board of directors that the CD&A be included in this filing.

*This report has been furnished by the Compensation Committee.*

Sherman Tuan, Chair  
Hwei-Ming (Fred) Tsai

**Summary Compensation Table**

The following table sets forth information concerning the compensation earned during the fiscal years ended 2016, 2015 and 2014 by our Chief Executive Officer, our Chief Financial Officer, and our three other most highly-compensated executive officers. We refer to these officers as our “named executive officers.”

**SUMMARY COMPENSATION TABLE**

Name and Principal Position	Year	Salary (\$)	Bonus \$(1)	Stock Awards (\$)	Option Awards \$(2)	Non-Equity Incentive Plan Compensation (\$)	Change in Pension Value and Nonqualified Deferred Compensation Earnings \$(3)	All Other Compensation \$(4)	Total (\$)
Charles Liang <i>President, Chief Executive Officer and Chairman of the Board</i>	2016	363,776	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 363,776
	2015	331,963	7,607	—	2,607,616	—	—	35,565	2,982,751
	2014	312,793	—	—	—	—	—	17,505	330,298
Howard Hideshima <i>Senior Vice President and Chief Financial Officer</i>	2016	321,146	—	—	—	—	—	1,500	322,646
	2015	300,956	6,990	—	403,580	—	—	14,860	726,386
	2014	286,173	2,593	—	—	—	—	9,839	298,605
Phidias Chou <i>Senior Vice President, Worldwide Sales</i>	2016	286,747	3,416	137,160	138,000	—	—	—	565,323
	2015	273,635	6,446	—	—	—	—	26,643	306,724
	2014	257,396	2,341	—	225,577	—	—	14,042	499,356
Yih-Shyan (Wally) Liaw <i>Senior Vice President, International Sales, Corporate Secretary and Director</i>	2016	232,864	—	109,959	105,089	—	—	—	447,912
	2015	222,216	5,422	—	—	—	—	25,055	252,693
	2014	206,122	1,867	—	202,899	—	—	11,196	422,084
Chiu-Chu (Sara) Liu Liang <i>Senior Vice President of Operations, Treasurer and Director</i>	2016	237,253	—	110,484	113,961	—	—	—	461,698
	2015	216,505	5,309	—	—	—	—	14,041	235,855
	2014	200,357	1,814	—	174,800	—	—	5,806	382,777

(1) Amounts disclosed under “Bonus” reflect the cash bonuses earned by the named executive officers.

(2) The dollar amount reported in the Option Awards column represents the grant date fair value of each award calculated in accordance with FASB ASC Topic 718, excluding the estimates of service-based forfeiture and using the Black Scholes option-pricing model. Assumptions used in the calculation of these amounts were included in Item 8, Financial Statements and Supplementary Data, and Note 10 of Notes to our audited Consolidated Financial Statements for the fiscal year 2016 included in our Annual Report on Form 10-K.

(3) The Company does not have a defined benefit plan or a non-qualified deferred compensation plan.

(4) Amount reflects vacation and sick pay.

## Grants of Plan-Based Awards

The following table provides information concerning all plan-based awards granted during fiscal year 2016 to our named executive officers:

### GRANTS OF PLAN-BASED AWARDS

Name	Grant Date	Estimated Future Payouts Under Non-Equity Incentive Plan Awards			All Other Stock Awards: Number of Shares of Stock or Units (#)	All Other Option Awards: Number of Securities Underlying Options (#)	Exercise or Base Price of Option Awards (\$/Sh)	Grant Date Fair Value of Stock and Option Awards \$(1)
		Threshold (\$)	Target (\$)	Maximum (\$)				
Phidias Chou	10/21/2015	—	—	—	5,400 (2)	—	\$ —	\$ 137,160
Phidias Chou	10/21/2015	—	—	—	—	7,130 (3)	25.40	81,995
Phidias Chou	10/21/2015	—	—	—	—	4,870 (4)	25.40	56,005
Yih-Shyan (Wally) Liaw	4/27/2016	—	—	—	3,830 (5)	—	—	109,959
Yih-Shyan (Wally) Liaw	4/27/2016	—	—	—	—	3,390 (6)	28.71	41,912
Yih-Shyan (Wally) Liaw	4/27/2016	—	—	—	—	5,110 (7)	28.71	63,177
Chiu-Chu (Sara) Liu Liang	1/27/2016	—	—	—	4,050 (8)	—	—	110,484
Chiu-Chu (Sara) Liu Liang	1/27/2016	—	—	—	—	9,000 (9)	27.28	113,961

(1) Represents the fair value of each stock option and award as of the date of grant, computed in accordance with ASC Topic 718.

(2) These time-based restricted stock units vest at the rate of 25% on November 10, 2016 and 1/16th per quarter thereafter, such that the shares will be fully vested on November 10, 2019 .

(3) These non-qualified stock options vest at the rate of 25% on September 13, 2016 and 1/16th per quarter thereafter, such that the shares will be fully vested on September 13, 2019 .

(4) These incentive stock options vest at the rate of 25% on September 13, 2016 and 1/16th per quarter thereafter, such that the shares will be fully vested on September 13, 2019 .

(5) These time-based restricted stock units vest at the rate of 25% on May 10, 2017 and 1/16th per quarter thereafter, such that the shares will be fully vested on May 10, 2020 .

(6) These non-qualified stock options vest at the rate of 25% on March 29, 2017 and 1/16th per quarter thereafter, such that the shares will be fully vested on March 29, 2020 .

(7) These incentive stock options vest at the rate of 25% on March 29, 2017 and 1/16th per quarter thereafter, such that the shares will be fully vested on March 29, 2020 .

(8) These time-based restricted stock units vest at the rate of 25% on February 10, 2017 and 1/16th per quarter thereafter, such that the shares will be fully vested on February 10, 2020 .

(9) These non-qualified stock options vest at the rate of 25% on December 12, 2016 and 1/16th per quarter thereafter, such that the shares will be fully vested on December 12, 2019 .

## Outstanding Equity Awards at Fiscal Year-End 2016

The following table provides information concerning the outstanding equity-based awards as of June 30, 2016 , and the option exercise price and expiration dates for each award, held by each of our named executive officers.

Name	Option Awards				Stock Awards	
	Number of Securities Underlying Unexercised Options (#) Exercisable	Number of Securities Underlying Unexercised Options (#) Unexercisable	Option Exercise Price (\$)	Option Expiration Date	Number of shares or units of stock that have not vested (#)	Market value of shares or units of stock that have not vested (\$)(1)
Charles Liang	720,000 (2)	—	\$ 10.66	3/4/2019		
	132,000 (3)	—	\$ 18.59	4/25/2021		
	202,352 (4)	28,908 (4)	\$ 20.70	1/21/2023		
	62,530	104,220 (5)	\$ 35.07	1/19/2025		
Howard Hideshima	19,198 (6)	—	\$ 13.89	11/17/2016		
	21,428 (6)	—	\$ 13.89	11/17/2016		
	22,500 (7)	—	\$ 10.19	4/26/2017		
	56,614 (8)	—	\$ 13.61	8/2/2020		
	10,886 (8)	—	\$ 13.61	8/2/2020		
	37,810 (9)	—	\$ 12.50	8/6/2022		
	8,690 (9)	—	\$ 12.50	8/6/2022		
	13,370 (10)	13,370 (10)	\$ 26.75	8/4/2024		
	3,630 (10)	3,630 (10)	\$ 26.75	8/4/2024		
Phidias Chou	17,500 (11)	—	\$ 5.53	4/29/2019		
	31,030 (12)	—	\$ 8.36	10/26/2019		
	18,970 (12)	—	\$ 8.36	10/26/2019		
	32,850 (13)	—	\$ 15.22	10/24/2021		
	6,150 (13)	—	\$ 15.22	10/24/2021		
	11,843 (14)	5,384 (14)	\$ 14.23	10/21/2023		
	11,530 (14)	5,243 (14)	\$ 14.23	10/21/2023		
	—	7,130 (15)	\$ 25.40	10/21/2025		
	—	4,870 (15)	\$ 25.40	10/21/2025		
				5,400 (16)	134,190	
Yih-Shyan (Wally) Liaw	10,635 (17)	—	\$ 7.46	4/28/2018		
	30,275 (17)	—	\$ 7.46	4/28/2018		
	10,079 (18)	—	\$ 13.61	8/2/2020		
	7,671 (18)	—	\$ 13.61	8/2/2020		
	18,313 (19)	—	\$ 17.29	4/23/2022		
	8,687 (19)	—	\$ 17.29	4/23/2022		
	8,694 (20)	6,764 (20)	\$ 18.93	4/21/2024		
	4,241 (20)	3,301 (20)	\$ 18.93	4/21/2024		
	—	3,390 (21)	\$ 28.71	4/27/2026		
—	5,110 (21)	\$ 28.71	4/27/2026			
				3,830 (22)	95,176	
Chiu-Chu (Sara) Liu Liang	20,300 (11)	—	\$ 5.53	4/29/2019		
	19,615 (23)	—	\$ 11.81	1/25/2020		
	20,985 (23)	—	\$ 11.81	1/25/2020		
	29,000 (24)	—	\$ 17.09	1/23/2022		
	14,375 (25)	8,625 (25)	\$ 17.96	1/20/2024		
	—	9,000 (26)	\$ 27.28	1/27/2026		
				4,050 (27)	100,643	

- (1) Represents the fair market value per share of our common stock June 30, 2016 (\$24.85) multiplied by the number of shares underlying RSUs that had not vested as of June 30, 2016.
- (2) Options vested at the rate of 25% on November 1, 2009 and 1/16th per quarter thereafter, such that the shares were fully vested on November 1, 2012 .
- (3) Options vested at the rate of 25% on April 25, 2012 and 1/16th per quarter thereafter, such that the shares were fully vested on April 25, 2015 .
- (4) Options vested at the rate of 25% on November 1, 2013 and 1/16th per quarter thereafter, such that the shares will be fully vested on November 1, 2016 .
- (5) Options vested at the rate of 25% on November 1, 2015 and 1/16th per quarter thereafter, such that the shares will be fully vested on November 1, 2018 .
- (6) Options vested at the rate of 25% on May 8, 2007 and 1/16th per quarter thereafter, such that the shares were fully vested on May 8, 2010 .
- (7) Options vested at the rate of 25% on April 26, 2008 and 1/16th per quarter thereafter, such that the shares were fully vested on April 26, 2011 .
- (8) Options vested at the rate of 25% on May 8, 2011 and 1/16th per quarter thereafter, such that the shares were fully vested on May 8, 2014 .
- (9) Options vested at the rate of 25% on May 7, 2013 and 1/16th per quarter thereafter, such that the shares were fully vested on May 7, 2016 .
- (10) Options vested at the rate of 25% on May 8, 2015 and 1/16th per quarter thereafter, such that the shares will be fully vested on May 8, 2018 .
- (11) Options vested at the rate of 25% on April 29, 2010 and 1/16th per quarter thereafter, such that the shares were fully vested on April 29, 2013 .
- (12) Options vested at the rate of 25% on July 1, 2010 and 1/16th per quarter thereafter, such that the shares were fully vested on July 1, 2013 .
- (13) Options vested at the rate of 25% on July 1, 2012 and 1/16th per quarter thereafter, such that the shares were fully vested on July 1, 2015 .
- (14) Options vested at the rate of 25% on September 13, 2014 and 1/16th per quarter thereafter, such that the shares will be fully vested on September 13, 2017 .
- (15) Options vest at the rate of 25% on September 13, 2016 and 1/16th per quarter thereafter, such that the shares will be fully vested on September 13, 2019 .
- (16) RSUs vest at the rate of 25% on November 10, 2016 and 1/16th per quarter thereafter, such that the shares will be fully vested on November 10, 2019 .
- (17) Options vested at the rate of 25% on March 30, 2009 and 1/16th per quarter thereafter, such that the shares were fully vested on March 30, 2012 .
- (18) Options vested at the rate of 25% on August 2, 2011 and 1/16th per quarter thereafter, such that the shares were fully vested on August 2, 2014 .
- (19) Options vested at the rate of 25% on March 29, 2013 and 1/16th per quarter thereafter, such that the shares were fully vested on March 29, 2016 .
- (20) Options vested at the rate of 25% on March 30, 2015 and 1/16th per quarter thereafter, such that the shares will be fully vested on March 30, 2018 .
- (21) Options vest at the rate of 25% on March 29, 2017 and 1/16th per quarter thereafter, such that the shares will be fully vested on March 29, 2020 .
- (22) RSUs vest at the rate of 25% on May 10, 2017 and 1/16th per quarter thereafter, such that the shares will be fully vested on May 10, 2020 .
- (23) Options vested at the rate of 25% on December 12, 2010 and 1/16th per quarter thereafter, such that the shares were fully vested on December 12, 2013 .
- (24) Options vested at the rate of 25% on December 12, 2012 and 1/16th per quarter thereafter, such that the shares were fully vested on December 12, 2015 .
- (25) Options vested at the rate of 25% on December 12, 2014 and 1/16th per quarter thereafter, such that the shares will be fully vested on December 12, 2017 .
- (26) Options vest at the rate of 25% on December 12, 2016 and 1/16th per quarter thereafter, such that the shares will be fully vested on December 12, 2019 .
- (27) RSUs vest at the rate of 25% on February 10, 2017 and 1/16th per quarter thereafter, such that the shares will be fully vested on February 10, 2020 .

**Option Exercises and Stock Vested During Fiscal Year 2016**

The following table sets forth the dollar amounts realized pursuant to the exercise or vesting of equity-based awards by our named executive officers during fiscal year 2016 .

<u>Name</u>	<u>Option Awards</u>		<u>Stock Awards</u>	
	<u>Number of Shares Acquired on Exercise (#)</u>	<u>Value Realized on Exercise (\$)(1)</u>	<u>Number of Shares Acquired on Vesting (#)</u>	<u>Value Realized on Vesting (\$)(2)</u>
Charles Liang	—	\$ —	—	\$ —
Howard Hideshima	40,624	\$ 626,078	—	\$ —
Phidias Chou	10,000	\$ 237,799	—	\$ —
Yih-Shyan (Wally) Liaw	20,000	\$ 494,333	—	\$ —
Chiu-Chu (Sara) Liu Liang	—	\$ —	—	\$ —

(1) Based on the difference between the closing price of our common stock on the date of exercise and the exercise price.

(2) The value is the closing price of our common stock on the date of vesting, multiplied by the number of shares vested.

**Director Compensation**

Under our director compensation policy, we reimburse non-employee directors for reasonable expenses in connection with attendance at board and committee meetings. Our non-employee directors receive an annual retainer of \$40,000, payable quarterly. In addition, the Chairperson of our Audit Committee receives an annual retainer of \$25,000, the Chairperson of each of our Compensation Committee and Nominating and Corporate Governance Committee receives an annual retainer of \$5,000 and each director serving in a non-chairperson capacity on our standing board committees receives an annual retainer of \$2,500 per committee, payable quarterly.

Non-employee directors also are eligible to receive stock options under our 2016 Equity Incentive Plan. Under the policy, non-employee directors are granted an initial option to purchase 18,000 shares upon first becoming a member of our board of directors. A non-employee director serving as Chairperson of the Audit Committee receives an additional initial grant of an option to purchase 12,000 shares. Non-employee directors serving as Chairperson of the Compensation or Nominating and Corporate Governance Committees receive an additional initial grant of an option to purchase 2,000 shares. Each of these initial options vests and becomes exercisable over four years, with the first 25% of the shares subject to each initial option vesting on the first anniversary of the date of grant and the remainder vesting quarterly thereafter. Immediately after each of our annual meetings of stockholders, each non-employee director is granted an option to purchase 4,500 shares of our common stock, the Audit Committee Chairperson is granted an additional annual option to purchase 3,000 shares of our common stock and the Chairperson of each of the Compensation and Nominating and Corporate Governance Committees is granted an additional annual option to purchase 500 shares of our common stock. These options will vest and become exercisable on the first anniversary of the date of grant or immediately prior to our annual meeting of stockholders, if earlier.

The options granted to non-employee directors have a per share exercise price equal to 100% of the fair market value of the underlying shares on the date of grant, and will become fully vested if we are subject to a change of control. Annual grants will be reduced proportionally if the person did not serve for the full year after the annual grant.

The following table shows for the fiscal year ended June 30, 2016 certain information with respect to the compensation of all of our non-employee directors:

**DIRECTOR COMPENSATION**

<b>Name</b>	<b>Fees Earned or Paid in Cash (\$)(1)</b>	<b>Stock Awards (\$)</b>	<b>Option Awards (\$)(2)</b>	<b>Non-Equity Incentive Plan Compensation (\$)</b>	<b>Change in Pension Value and Non-qualified Deferred Compensation Earnings (\$)</b>	<b>All Other Compensation (\$)</b>	<b>Total (\$)</b>
Laura Black	\$ 65,000	—	\$ 105,737	—	—	—	\$ 170,737
Michael McAndrews	\$ 42,500	—	\$ 63,442	—	—	—	\$ 105,942
Hwei-Ming (Fred) Tsai	\$ 50,000	—	\$ 70,491	—	—	—	\$ 120,491
Sherman Tuan	\$ 47,500	—	\$ 70,491	—	—	—	\$ 117,991

- (1) This column represents annual director fees, non-employee committee chairman fees and other committee member fees earned in fiscal year 2016 .
- (2) The dollar amount in this column represents the grant date fair value of each award calculated in accordance with FASB ASC Topic 718, excluding the estimates of service-based forfeiture and using the Black Scholes option-pricing model. Assumptions used in the calculation of these amounts were included in Item 8, Financial Statements and Supplementary Data, and Note 10 of Notes to our audited Consolidated Financial Statements for the fiscal year 2016 included in our Annual Report on Form 10-K.

The table below sets forth the aggregate number of option awards held by our non-employee directors as of June 30, 2016 .

<b>Name</b>	<b>Option Awards</b>
Laura Black	24,000
Michael McAndrews	22,500
Hwei-Ming (Fred) Tsai	60,000
Sherman Tuan	64,500



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

**Security Ownership of Certain Beneficial Owners and Management**

The following table sets forth certain information known to us regarding beneficial ownership of our common stock as of August 18, 2016 by:

- each of the named executive officers;
- each of our directors;
- all directors and executive officers as a group; and
- all person known to us beneficially own 5% or more of our outstanding common stock.

<b>Name and Address of Beneficial Owner(1)</b>	<b>Amount and Nature of Beneficial Ownership(2)</b>	<b>Percent of Common Stock Outstanding(3)</b>
<b>Executive Officers and Directors:</b>		
Charles Liang(4)	8,913,570	17.9%
Howard Hideshima(5)	196,250	*
Phidias Chou(5)	134,998	*
Chiu-Chu (Sara) Liang(6)	8,913,570	17.9%
Yih-Shyan (Wally) Liaw(7)	2,242,386	4.6%
Laura Black(5)	16,500	*
Michael S. McAndrews(5)	6,750	*
Hwei-Ming (Fred) Tsai(8)	306,000	*
Sherman Tuan(5)	59,500	*
All directors and executive officers as a group (9 persons)(9)	11,875,954	23.5%
<b>5% Holders Not Listed Above:</b>		
BlackRock, Inc.(10)	3,457,156	7.1%
FMR LLC(11)	3,917,139	8.1%
The Vanguard Group(12)	3,139,239	6.5%

\* Represents beneficial ownership of less than one percent of the outstanding shares of common stock

- (1) Except as otherwise indicated, to our knowledge the persons named in this table have sole voting and investment power with respect to all shares of Common Stock shown as beneficially owned by them, subject to community property laws applicable and to the information contained in the footnotes to this table.
- (2) Under the SEC rules, a person is deemed to be the beneficial owner of shares that can be acquired by such person within 60 days upon the exercise of options.
- (3) Calculated on the basis of 48,656,429 shares of common stock outstanding as of August 18, 2016, provided that any additional shares of Common Stock that a stockholder has the right to acquire within 60 days after August 18, 2016 are deemed to be outstanding for the purposes of calculating that stockholder's percentage of beneficial ownership.
- (4) Includes 1,141,758 shares issuable upon the exercise of options exercisable within 60 days after August 18, 2016. Also includes 3,180,387 shares jointly held by Mr. Liang and his spouse, 1,703,468 shares of which are pledged as security for a personal credit line, 850,000 shares held by Mr. Liang which are pledged as security for a personal credit line, 15,000 shares held by Green Earth Charitable Trust, for which Mrs. Liang serves as trustee, 495,620 shares held directly by Mrs. Liang and 105,712 shares issuable upon the exercise of options held by Mrs. Liang and exercisable within 60 days after August 18, 2016. See footnote 6.
- (5) Consists of shares issuable upon the exercise of options exercisable within 60 days after August 18, 2016.
- (6) Includes 105,712 shares issuable upon the exercise of options exercisable within 60 days after August 18, 2016. Also includes 3,180,387 shares jointly held by Mr. Liang and his spouse, 1,703,468 shares of which are pledged as security for a personal credit line, 15,000 shares held by Green Earth Charitable Trust, 3,975,093 shares held by Charles Liang, Mrs. Liang's spouse, 850,000 shares of which are pledged as security for a personal credit line, and 1,141,758 shares issuable upon the exercise of options held by Mr. Liang and exercisable within 60 days after August 18, 2016. See footnote 4.

- (7) Includes 100,033 shares issuable upon the exercise of options exercisable within 60 days after August 18, 2016 . 2,054,340 shares held by Liaw Family Trust, for which Mr. Liaw and his spouse serve as trustees, 19,836 shares held by Mr. Liaw’s daughters and 68,177 shares held by Mrs. Liaw.
- (8) Includes 55,000 shares issuable upon the exercise of options exercisable within 60 days after August 18, 2016 .
- (9) Includes 1,816,501 shares issuable upon the exercise of options exercisable within 60 days after August 18, 2016 .
- (10) The information with respect to the holdings of entities affiliated with BlackRock, Inc. ("BlackRock") is based solely on Schedule 13G/A filed on January 22, 2016 by BlackRock. BlackRock has the sole power to vote or to direct the vote of 3,375,388 of such shares. BlackRock has the sole power to dispose or to direct the disposition of all of such shares. The address for BlackRock is 55 East 52nd Street, New York, New York 10055.
- (11) The information with respect to the holdings of FMR LLC ("FMR") is based solely on Schedule 13G filed on February 12, 2016 by FMR. FMR has the sole power to dispose or to direct the disposition of all of such shares. FMR has the sole power to vote of to direct the vote of 166,981 of such shares. The address for FMR is 245 Summer Street, Boston, Massachusetts 02210.
- (12) The information with respect to the holdings of entities affiliated with The Vanguard Group ("Vanguard") is based solely on Schedule 13G filed on February 10, 2016 by Vanguard. Vanguard has the sole power to dispose of or to direct the disposition of 3,057,098 of such shares and shared power to dispose or to direct the disposition of 82,141 of such shares. Vanguard has the sole power to vote or direct to vote of 80,741 of such shares and shared power to vote or direct to vote of 3,700 of such shares. The address for Vanguard is 100 Vanguard Blvd, Malvern, Pennsylvania 19355.

**Equity Compensation Plan Information**

We currently maintain three compensation plans that provide for the issuance of our Common Stock to officers and other employees, directors and consultants. These consist of the 1998 Stock Option Plan, the 2006 Equity Incentive Plan and the 2016 Equity Incentive Plan, all of which have been approved by our stockholders. We no longer grant any equity-based awards under the 1998 Stock Option Plan and the 2006 Equity Incentive Plan. The following table sets forth information regarding outstanding options and restricted stock units and shares reserved and remaining available for future issuance under the foregoing plans as of June 30, 2016 :

<b>Plan Category</b>	<b>Number of shares to be issued upon exercise of outstanding options, warrants and rights (a)(1)</b>	<b>Weighted-average exercise price of outstanding options, warrants and rights (b)(2)(3)</b>	<b>Number of shares remaining available for future issuance under equity compensation plans (excluding shares reflected in column (a)) (c)</b>
Equity compensation plans approved by stockholders	9,887,850	\$ 14.88	4,294,003 (1)
Equity compensation plans not approved by stockholders	—	—	—
<b>Total</b>	<b>9,887,850</b>	<b>\$ 14.88</b>	<b>4,294,003</b>

- (1) This number includes 8,960,867 shares subject to outstanding options and 926,983 shares subject to outstanding RSU awards.
- (2) The weighted average exercise price is calculated based solely on the exercise prices of the outstanding options and does not reflect the shares that will be issued upon the vesting of outstanding awards of RSUs, which have no exercise price.
- (3) The weighted-average remaining contractual term of our outstanding options as of June 30, 2016 was 5.20 years.

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

**CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS AND DIRECTOR INDEPENDENCE**

**Procedures for Approval of Related Person Transactions**

Pursuant to our Audit Committee charter, the Audit Committee has the responsibility for the review, approval or ratification of any related person transactions; provided that if the matter or transaction involves employment or compensation terms for services to our company, including retention or payment provisions relating to expert services, then it is presented to the Compensation Committee. In approving or rejecting a proposed transaction, our Audit Committee will consider the relevant facts and circumstances available and deemed relevant, including, but not limited to the risks, costs and benefits to us, the terms of the transaction, the availability of other sources for comparable services or products, and, if applicable, the impact on a director's independence. Our Audit Committee shall approve only those transactions that, in light of known circumstances are not inconsistent with the Company's best interests, as the Audit Committee determines in the good faith exercise of its discretion. In addition, we annually require each of our directors and executive officers to complete a directors' and officers' questionnaire that elicits information about related party transactions as such term is defined by SEC rules and regulations. These procedures are intended to determine whether any such related party transaction impairs the independence of a director or presents a conflict of interest on the part of a director, employee or officer.

**Transactions with Related Parties, Promoters and Certain Control Persons**

***Director and Officer Indemnification***

We have entered into agreements to indemnify our directors and executive officers to the fullest extent permitted under Delaware law. In addition, our certificate of incorporation contains provisions limiting the liability of our directors and our bylaws contain provisions requiring us to indemnify our officers and directors.

***Equity-Based Awards***

Please see the "Grants of Plan-Based Awards" table and the "Director Compensation" table above for information on stock option and restricted stock unit grants to our directors and named executive officers in fiscal year 2016 .

***Transactions with Ablecom Technology Inc.***

Ablecom Technology Inc.—Ablecom, a Taiwan corporation, together with one of its subsidiaries, Compuware (collectively "Ablecom"), is one of our major contract manufacturers. Ablecom's ownership of Compuware is below 50% but Compuware remains a related party as Ablecom still has significant influence over the operations. Ablecom's chief executive officer, Steve Liang, is the brother of Charles Liang, our President, Chief Executive Officer and Chairman of the board of directors, and owns approximately 0.3% of our common stock. Charles Liang served as a Director of Ablecom during our fiscal 2006, but is no longer serving in such capacity. In addition, Charles Liang and his wife, also an officer of ours, collectively own approximately 10.5% of Ablecom, while Steve Liang and other family members own approximately 36.0% and 36.0% of Ablecom at June 30, 2016 and 2015 , respectively.

We have product design and manufacturing services agreements ("product design and manufacturing agreements") and a distribution agreement ("distribution agreement") with Ablecom.

Under the product design and manufacturing agreements, we outsource a portion of our design activities and a significant part of our manufacturing of components such as server chassis to Ablecom. Ablecom agrees to design products according to our specifications. Additionally, Ablecom agrees to build the tools needed to manufacture the products. We have agreed to pay for the cost of chassis and related product tooling and engineering services and will pay for those items when the work has been completed.

Under the distribution agreement, Ablecom purchases server products from us for distribution in Taiwan. We believe that the pricing and terms under the distribution agreement are similar to the pricing and terms of distribution arrangements we have with similar, third party distributors.

Ablecom's net sales to us and its net sales of our products to others comprise a substantial majority of Ablecom's net sales. For fiscal year 2016 , 2015 and 2014 , we purchased products from Ablecom totaling \$241,836,000 , \$227,562,000 and

\$201,848,000 , respectively. For fiscal year 2016 , 2015 and 2014 , we sold products to Ablecom totaling \$19,453,000 , \$58,013,000 and \$14,576,000 , respectively.

Amounts owed to us by Ablecom as of June 30, 2016 and 2015 , were \$4,678,000 and \$13,186,000 , respectively. Amounts owed to Ablecom by us as of June 30, 2016 and 2015 , were \$39,152,000 and \$59,015,000 , respectively. In fiscal year 2016 , we have paid Ablecom the majority of invoiced dollars between 48 and 90 days of invoice. For the years ended June 30, 2016 , 2015 and 2014 , we paid \$9,085,000 , \$5,851,000 and \$6,906,000 , respectively, for tooling assets and miscellaneous costs to Ablecom.

Our exposure to loss as a result of our involvement with Ablecom is limited to (a) potential losses on our purchase orders in the event of an unforeseen decline in the market price and/or demand of our products such that we incur a loss on the sale or cannot sell the products and (b) potential losses on outstanding accounts receivable from Ablecom in the event of an unforeseen deterioration in the financial condition of Ablecom such that Ablecom defaults on its payable to us. Outstanding purchase orders with Ablecom were \$62,782,000 and \$67,261,000 at June 30, 2016 and 2015 , respectively, representing the maximum exposure to loss relating to (a) above. We do not have any direct or indirect guarantees of losses of Ablecom.

In May 2012, we and Ablecom jointly established Super Micro Asia Science and Technology Park, Inc. ("Management Company") in Taiwan to manage the common areas shared by us and Ablecom for their separately constructed manufacturing facilities. Each company contributed \$168,000 and own 50% of the Management Company. Although the operations of the Management Company are independent of us, through governance rights, we have the ability to direct the Management Company's business strategies. Therefore, we have concluded that the Management Company is a variable interest entity of us as we are the primary beneficiary of the Management Company. The accounts of the Management Company are consolidated with the accounts of us, and a noncontrolling interest has been recorded for the Ablecom's interests in the net assets and operations of the Management Company. The Management Company had no business operations as of June 30, 2012. In fiscal year 2016 , 2015 and 2014 , \$20,000 , \$(11,000) and \$(6,000) of net income (loss) attributable to Ablecom's interest was included in the Company's general and administrative expenses in the consolidated statements of operations.

#### Item 14. Principal Accounting Fees and Services

The Audit Committee appointed Deloitte & Touche LLP as our independent registered public accounting firm for the fiscal year 2016 .

#### Independent Registered Public Accounting Firm Fees and Services

The following table sets forth the aggregate audit fees billed to us by our independent registered public accounting firm, Deloitte & Touche LLP, the member firms of Deloitte Touche Tohmatsu, and their respective affiliates (collectively, "Deloitte"), and fees paid to Deloitte for services in the fee categories indicated below during the fiscal years 2016 and 2015 . The Audit Committee has considered the scope and fee arrangements for all services provided by Deloitte, taking into account whether the provision of non-audit services is compatible with maintaining Deloitte's independence, and has pre-approved 100% of the services described below.

	Fiscal Year Ended	
	June 30, 2016	June 30, 2015
Audit Fees(1)	\$ 2,427,000	\$ 1,797,000
Audit-Related Fees	—	—
Tax Fees	—	—
All Other Fees	—	—
Total	\$ 2,427,000	\$ 1,797,000

(1) Audit fees consist of the aggregate fees for professional services rendered for the audit of our fiscal years 2016 and 2015 consolidated financial statements, review of interim consolidated financial statements and certain statutory audits.

## **Audit Committee Pre-Approval Policies and Procedures**

The Audit Committee has determined that all services performed by Deloitte & Touche LLP are compatible with maintaining the independence of Deloitte & Touche LLP. The Audit Committee's policy on approval of services performed by the independent registered public accounting firm is to pre-approve all audit and permissible non-audit services to be provided by the independent registered public accounting firm during the fiscal year. The Audit Committee reviews each non-audit service to be provided and assesses the impact of the service on the firm's independence.

### **PART IV**

#### **Item 15. Exhibits and Financial Statement Schedules**

##### *(a) 1. Financial Statements*

See Index to Consolidated Financial Statements in Item 8 of this Annual Report on Form 10-K, which is incorporated herein by reference.

##### *2. Financial Statement Schedules*

All financial statement schedules have been omitted because they are either not applicable or the required information is shown in the consolidated financial statements or notes thereto.

##### *3. Exhibits*

See the Exhibit Index which follows the signature page of this Annual Report on Form 10-K, which is incorporated herein by reference.

##### *(b) Exhibits*

See Item 15(a)(3) above.

##### *(c) Financial Statement Schedules*

See Item 15(a)(2) above.

**SIGNATURES**

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

SUPER MICRO COMPUTER, INC.

Date: August 26, 2016

/s/ C HARLES L IANG

---

**Charles Liang**  
**President, Chief Executive Officer and Chairman of the**  
**Board**  
**(Principal Executive Officer)**

**POWER OF ATTORNEY**

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Charles Liang and Howard Hideshima, jointly and severally, his attorney-in-fact, each with the full power of substitution, for such person, in any and all capacities, to sign any and all amendments to this Annual Report on Form 10-K, and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact and agent full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he might do or could do in person hereby ratifying and confirming all that each of said attorneys-in-fact and agents, or his substitute, may do or cause to be done by virtue hereof.

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

<b>Signature</b>	<b>Title</b>	<b>Date</b>
<u>/s/ CHARLES LIANG</u> <b>Charles Liang</b>	President, Chief Executive Officer and Chairman of the Board (Principal Executive Officer)	August 26, 2016
<u>/s/ HOWARD HIDESHIMA</u> <b>Howard Hideshima</b>	Senior Vice President, Chief Financial Officer (Principal Financial and Accounting Officer)	August 26, 2016
<u>/s/ YIH-SHYAN (WALLY) LIAW</u> <b>Yih-Shyan (Wally) Liaw</b>	Senior Vice President of International Sales, Corporate Secretary and Director	August 26, 2016
<u>/s/ CHIU-CHU (SARA) LIU LIANG</u> <b>Chiu-Chu (Sara) Liu Liang</b>	Senior Vice President of Operations, Treasurer and Director	August 26, 2016
<u>/s/ LAURA BLACK</u> <b>Laura Black</b>	Director	August 26, 2016
<u>/s/ MICHAEL S. MCANDREWS</u> <b>Michael S. McAndrews</b>	Director	August 26, 2016
<u>/s/ HWEI-MING (FRED) TSAI</u> <b>Hwei-Ming (Fred) Tsai</b>	Director	August 26, 2016
<u>/s/ SHERMAN TUAN</u> <b>Sherman Tuan</b>	Director	August 26, 2016

**EXHIBIT INDEX**

<b>Exhibit Number</b>	<b>Description</b>
3.3	Amended and Restated Certificate of Incorporation of Super Micro Computer, Inc.(1)
3.4	Amended and Restated Bylaws of Super Micro Computer, Inc.(1)
4.1	Specimen Stock Certificate for Shares of Common Stock of Super Micro Computer, Inc.(1)
10.1*	Amended 1998 Stock Option Plan(1)
10.2*	Form of Incentive Stock Option Agreement under 1998 Stock Option Plan(1)
10.3*	Form of Nonstatutory Stock Option Agreement under 1998 Stock Option Plan(1)
10.4*	Form of Nonstatutory Stock Option Agreement outside the 1998 Stock Option Plan(1)
10.5*	2006 Equity Incentive Plan(1)
10.6*	Form of Option Agreement under Super Micro Computer, Inc. 2006 Equity Incentive Plan(1)
10.7*	Form of Restricted Stock Agreement under Super Micro Computer, Inc. 2006 Equity Incentive Plan(1)
10.8*	Form of Restricted Stock Unit Agreement under Super Micro Computer, Inc. 2006 Equity Incentive Plan(1)
10.9*	Form of Directors' and Officers' Indemnity Agreement(1)
10.10*	Offer Letter for Chiu-Chu (Sara) Liu Liang(1)
10.11*	Offer Letter for Alex Hsu(1)
10.12*	Offer Letter for Howard Hideshima(1)
10.13*	Director Compensation Policy(1)
10.14	Product Manufacturing Agreement dated January 8, 2007 between Super Micro Computer, Inc. and Ablecom Technology Inc.(1)
10.15*	Form of Notice of Grant of Stock Option under 2006 Equity Incentive Plan(2)
10.16*	Form of Notice of Grant of Restricted Stock under 2006 Equity Incentive Plan(2)
10.17*	Form of Notice of Grant of Restricted Stock Unit under 2006 Equity Incentive Plan(2)
10.18	Agreement of Purchase and Sale(3)
10.19*	Stock Option Exercise Notice and Restricted Stock Purchase Agreement—Charles Liang(4)
10.20*	Stock Option Exercise Notice and Restricted Stock Purchase Agreement—Chiu-Chu Liang(5)
10.21*	Stock Option Exercise Notice and Restricted Stock Purchase Agreement—Shiow-Meei Liaw(5)
10.22	Agreement of Purchase and Sale of Properties on Fox Lane and Fox Drive, San Jose, California(6)
10.23	Business Loan Agreement dated as of June 17, 2010, by and between Super Micro Computer, Inc. and Bank of America(7)
10.24	Amendment No.1 to Loan Agreement, dated August 15, 2011 between Super Micro Computer, Inc. and Bank of America (9)
10.25	Amendment No. 2 to Loan Agreement, dated October 4, 2011 between Super Micro Computer, Inc. and Bank of America (9)
10.26*	2006 Equity Incentive Plan, as amended(8)
10.27	Purchase and Sale Agreement on Ridder Park Drive, San Jose, California(10)
10.28	Addendum 1 to Purchase and Sale Agreement on Ridder Park Drive, San Jose, California(10)
10.29	Amendment No. 3 to Loan Agreement, dated September 30, 2013 between Super Micro Computer, Inc. and Bank of America(11)
10.30	Summary of Credit Facility, dated November 5, 2013 between Super Micro Computer, Inc. and CTBC Bank (11)
10.31	Extension of Loan Agreement with Bank of America, N.A., dated November 13, 2014(12)
10.32	Summary of Credit Facility, dated December 1, 2014 between Super Micro Computer, Inc. and CTBC Bank (12)
10.33	Amendment No. 4 to Loan Agreement, dated June 19, 2015 between Super Micro Computer, Inc. and Bank of America(13)
10.34	Extension of Loan Agreement with Bank of America, N.A., dated November 13, 2015(14)
10.35	Extension of Credit Agreement with CTBC Bank dated January 29, 2016(15)



10.36	2016 Equity Incentive Plan(16)
10.37	Form of Notice of Grant of Stock Option under 2016 Equity Incentive Plan(17)
10.38	Form of Stock Option Agreement Under 2016 Equity Incentive Plan(17)
10.39	Form of Notice of Grant of Restricted Stock Units under 2016 Equity Incentive Plan(17)
10.40	Form of Restricted Stock Units Agreement under 2016 Equity Incentive Plan(17)
10.41	Extension of Loan Agreement with Bank of America, N.A., dated March 14, 2016(18)
10.42	Extension of Loan Agreement with Bank of America, N.A., dated April 26, 2016(18)
10.43	Summary of Credit Facility, dated April 1, 2016 between Super Micro Computer, Inc. and CTBC Bank(18)
10.44+	Extension of Loan Agreement with Bank of America, N.A., dated May 27, 2016
10.45+	Credit Agreement dated as of June 30, 2016 between Super Micro Computer, Inc. and Bank of America
21.1	Subsidiaries of Super Micro Computer, Inc.(15)
23.1+	Consent of Independent Registered Public Accounting Firm
24.1+	Power of Attorney (included in signature pages)
31.1+	Certification of Charles Liang, President and CEO Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2+	Certification of Howard Hideshima, CFO and Secretary Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1+	Certification of Charles Liang, President and CEO Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002(19)
32.2+	Certification of Howard Hideshima, CFO and Secretary Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002(19)
101.INS+	XBRL Instance Document
101.SCH+	XBRL Taxonomy Extension Schema Document
101.CAL+	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF+	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB+	XBRL Taxonomy Extension Label Linkbase Document
101.PRE+	XBRL Taxonomy Extension Presentation Linkbase Document

---

+ Filed herewith

- (1) Incorporated by reference to the same number exhibit filed with the Registrant's Registration Statement on Form S-1 (Registration No. 333-138370), declared effective by the Securities and Exchange Commission on March 28, 2007.
  - (2) Incorporated by reference to the Company's Registration Statement on Form S-8 (Commission File No. 333-142404) filed with the Securities and Exchange Commission on April 27, 2007.
  - (3) Incorporated by reference to Exhibit 10.1 from the Company's current report on Form 8-K (Commission File No. 001-33383) filed with the Securities and Exchange Commission on June 29, 2007.
  - (4) Incorporated by reference to the Company's Annual Report on Form 10-K (Commission File No. 001-33383) filed with the Securities and Exchange Commission on September 2, 2008.
  - (5) Incorporated by reference to the Company's current report on Form 8-K (Commission File No. 001-33383) filed with the Securities and Exchange Commission on December 2, 2008.
  - (6) Incorporated by reference to the Company's Quarterly Report on Form 10-Q (Commission File No. 001-33383) filed with the Securities and Exchange Commission on May 7, 2010.
  - (7) Incorporated by reference to Exhibit 10.34 from the Company's Annual Report on Form 10-K (Commission File No. 001-33383) filed with the Securities and Exchange Commission on September 7, 2010.
  - (8) Incorporated by reference to Appendix A from the Company's Definitive Proxy Statement on Schedule 14A (Commission File No. 001-33383) filed with the Securities and Exchange Commission on January 18, 2011.
  - (9) Incorporated by reference to the Company's Quarterly Report on Form 10-Q (Commission File No. 001-33383) filed with the Securities and Exchange Commission on November 7, 2011.
  - (10) Incorporated by reference to the Company's current report on Form 8-K (Commission File No. 001-33383) filed with the Securities and Exchange Commission on September 24, 2013.
  - (11) Incorporated by reference to the Company's Quarterly Report on Form 10-Q (Commission File No. 001-33383) filed with the Securities and Exchange Commission on November 7, 2013.
  - (12) Incorporated by reference to the Company's Quarterly Report on Form 10-Q (Commission File No. 001-33383) filed with the Securities and Exchange Commission on February 9, 2015.
-

[Table of Contents](#)

- (13) Incorporated by reference to the Company's Annual Report on Form 10-K (Commission File No. 001-33383) filed with the Securities and Exchange Commission on September 10, 2015.
- (14) Incorporated by reference to the Company's Quarterly Report on Form 10-Q (Commission File No. 001-33383) filed with the Securities and Exchange Commission on November 16, 2015.
- (15) Incorporated by reference to the Company's Quarterly Report on Form 10-Q (Commission File No. 001-33383) filed with the Securities and Exchange Commission on February 4, 2016.
- (16) Incorporated by reference to the Company's current report on Form 8-K (Commission File No. 001-33383) filed with the Securities and Exchange Commission on March 14, 2016.
- (17) Incorporated by reference to the Company's Form S-8 (Commission File No. 333-210881) filed with the Securities and Exchange Commission on April 22, 2016.
- (18) Incorporated by reference to the Company's Quarterly Report on Form 10-Q (Commission File No. 001-33383) filed with the Securities and Exchange Commission on May 6, 2016.
- (19) The certifications attached as Exhibit 32.1 and 32.2 accompany the Annual Report on Form 10-K pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and shall not be deemed "filed" by Super Micro Computer, Inc. for purposes of Section 18 of the Securities Exchange Act of 1934, as amended.
- \* Management contract, or compensatory plan or arrangement



May 27, 2016

Super Micro Computer, Inc.  
980 Rock Avenue  
San Jose, California 95131  
Attention: Legal Department

Re: Extension of Maturity Date

Ladies and Gentlemen:

Reference is made to that certain Loan Agreement dated as of June 17, 2010 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Loan Agreement"), between Bank of America, N.A. ("Bank") and Super Micro Computer, Inc., a Delaware corporation ("Borrower"). Capitalized terms used and not otherwise defined herein shall have the ascribed meanings as set forth in the Loan Agreement.

Currently the maturity date of the credit accommodations provided by Bank to Borrower pursuant to the Loan Agreement as set forth in the first sentence of Section 1.2 of the Loan Agreement is May 31, 2016 ("Maturity Date"). Borrower has requested that the Maturity Date be extended and Bank has agreed to extend the Maturity Date to June 30, 2016.

Notwithstanding the terms and conditions set forth in the Loan Agreement, Borrower and Bank hereby agree that the date "May 31, 2016" in the first sentence of Section 1.2 of the Loan Agreement is changed to "June 30, 2016".

The extension and agreements set forth herein shall be limited precisely as written and shall not be deemed to be an extension or an agreement to any other act by Borrower which is prohibited by the Loan Agreement. Except as specifically provided above, the extension and agreements set forth herein shall not constitute a waiver or modification of any of the terms of the Loan Agreement.

Regards,

**BANK OF AMERICA, N.A.**

By: /S/ Thomas R.  
Sullivan

Name: Thomas R.  
Sullivan

Title: Senior Vice  
President

Acknowledged and agreed to  
this 30 day of May, 2016:

**SUPER MICRO COMPUTER, INC.,**  
a Delaware corporation

By: /S/ Howard Hideshima

Name: Howard Hideshima

Title: CFO

CREDIT AGREEMENT

Dated as of June 30, 2016

among

SUPER MICRO COMPUTER, INC.,  
as the Company,

SUPER MICRO COMPUTER B.V. as Designated Borrower,

CERTAIN SUBSIDIARIES OF THE BORROWER FROM TIME TO TIME PARTY HERETO,  
as the Guarantors,

BANK OF AMERICA, N.A.,  
as Administrative Agent, Swingline Lender and  
L/C Issuer,

and

THE LENDERS PARTY HERETO

BANK OF AMERICA MERRILL LYNCH,  
as Sole Lead Arranger and Sole Bookrunner

---

---

## TABLE OF CONTENTS

	Page
ARTICLE I DEFINITIONS AND ACCOUNTING TERMS	1
1.01 Defined Terms.	1
1.02 Other Interpretive Provisions.	30
1.03 Accounting Terms.	30
1.04 Rounding.	31
1.05 Times of Day.	31
1.06 Letter of Credit Amounts.	31
1.07 UCC Terms.	31
1.08 Rates.	32
ARTICLE II COMMITMENTS AND CREDIT EXTENSIONS	32
2.01 Loans.	32
2.02 Borrowings, Conversions and Continuations of Loans.	33
2.03 Letters of Credit.	35
2.04 Swingline Loans.	43
2.05 Prepayments.	46
2.06 Termination or Reduction of Commitments.	47
2.07 Repayment of Loans.	48
2.08 Interest and Default Rate.	49
2.09 Fees.	49
2.10 Computation of Interest and Fees; Retroactive Adjustments of Applicable Rate.	50
2.11 Evidence of Debt.	50
2.12 Payments Generally; Administrative Agent's Clawback.	51
2.13 Sharing of Payments by Lenders.	53
2.14 Cash Collateral.	54
2.15 Defaulting Lenders.	55
2.16 Designated Borrower.	57
ARTICLE III TAXES, YIELD PROTECTION AND ILLEGALITY	58
3.01 Taxes.	58
3.02 Illegality.	62
3.03 Inability to Determine Rates.	63
3.04 Increased Costs; Reserves on Eurodollar Rate Loans.	64
3.05 Compensation for Losses.	65
3.06 Mitigation Obligations; Replacement of Lenders.	66
3.07 Survival.	66
ARTICLE IV CONDITIONS PRECEDENT TO CREDIT EXTENSIONS	67
4.01 Conditions of Initial Credit Extension.	67
4.02 Conditions to all Credit Extensions.	69
ARTICLE V REPRESENTATIONS AND WARRANTIES	69
5.01 Existence, Qualification and Power.	70

---

5.02	Authorization; No Contravention.	70
5.03	Governmental Authorization; Other Consents.	70
5.04	Binding Effect.	70
5.05	Financial Statements; No Material Adverse Effect.	71
5.06	Litigation.	71
5.07	No Default.	71
5.08	Ownership of Property.	72
5.09	Environmental Compliance.	72
5.10	Insurance.	72
5.11	Taxes.	73
5.12	ERISA Compliance.	73
5.13	Margin Regulations; Investment Company Act.	73
5.14	Disclosure.	74
5.15	Compliance with Laws.	74
5.16	Solvency.	74
5.17	Casualty, Etc.	74
5.18	Sanctions Concerns and Anti-Corruption Laws.	75
5.19	Responsible Officers.	75
5.20	Subsidiaries; Equity Interests; Loan Parties.	75
5.21	Collateral Representations.	76
5.22	Regulation H.	77
5.23	Reserved.	77
5.24	Reserved.	77
5.25	Reserved.	77
5.26	Representations as to Foreign Obligor.	77
ARTICLE VI AFFIRMATIVE COVENANTS		78
6.01	Financial Statements.	78
6.02	Certificates; Other Information.	79
6.03	Notices.	82
6.04	Payment of Obligations.	82
6.05	Preservation of Existence, Etc.	82
6.06	Maintenance of Properties.	83
6.07	Maintenance of Insurance.	83
6.08	Compliance with Laws.	83
6.09	Books and Records.	84
6.10	Inspection Rights.	84
6.11	Use of Proceeds.	84
6.12	Material Contracts.	84
6.13	Covenant to Guarantee Obligations.	84
6.14	Covenant to Give Security.	85
6.15	Further Assurances.	85
6.16	Reserved.	86
6.17	Reserved.	86

---

6.18	Compliance with Environmental Laws.	86
6.19	Preparation of Environmental Reports.	86
6.20	Approvals and Authorizations.	87
6.21	Anti-Corruption Laws.	87
ARTICLE VII NEGATIVE COVENANTS		87
7.01	Liens.	87
7.02	Indebtedness.	90
7.03	Investments.	91
7.04	Fundamental Changes.	92
7.05	Dispositions.	93
7.06	Restricted Payments.	93
7.07	Change in Nature of Business.	94
7.08	Transactions with Affiliates.	94
7.09	Burdensome Agreements.	95
7.10	Use of Proceeds.	95
7.11	Financial Covenants.	95
7.12	Reserved.	96
7.13	Amendments of Organization Documents; Fiscal Year; Legal Name, State of Formation; Form of Entity and Accounting Changes.	96
7.14	Sale and Leaseback Transactions.	96
7.15	Prepayments, Etc. of Indebtedness.	96
7.16	Reserved.	96
7.17	Sanctions.	96
7.18	Anti-Corruption Laws.	97
ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES		97
8.01	Events of Default.	97
8.02	Remedies upon Event of Default.	99
8.03	Application of Funds.	100
ARTICLE IX ADMINISTRATIVE AGENT		101
9.01	Appointment and Authority.	101
9.02	Rights as a Lender.	101
9.03	Exculpatory Provisions.	102
9.04	Reliance by Administrative Agent.	103
9.05	Delegation of Duties.	103
9.06	Resignation of Administrative Agent.	103
9.07	Non-Reliance on Administrative Agent and Other Lenders.	104
9.08	No Other Duties, Etc.	105
9.09	Administrative Agent May File Proofs of Claim; Credit Bidding.	105
9.10	Collateral and Guaranty Matters.	106
9.11	Secured Cash Management Agreements and Secured Hedge Agreements.	107
ARTICLE X CONTINUING GUARANTY		107
10.01	Guaranty.	107
10.02	Rights of Lenders.	108

---



10.03	Certain Waivers.	108
10.04	Obligations Independent.	108
10.05	Subrogation.	109
10.06	Termination; Reinstatement.	109
10.07	Stay of Acceleration.	109
10.08	Condition of Borrower.	109
10.09	Appointment of Borrower.	109
10.10	Right of Contribution.	110
10.11	Keepwell.	110
10.12	Additional Guarantor Waivers and Agreements.	110
ARTICLE XI MISCELLANEOUS		111
11.01	Amendments, Etc.	111
11.02	Notices; Effectiveness; Electronic Communications.	113
11.03	No Waiver; Cumulative Remedies; Enforcement.	115
11.04	Expenses; Indemnity; Damage Waiver.	115
11.05	Payments Set Aside.	117
11.06	Successors and Assigns.	117
11.07	Treatment of Certain Information; Confidentiality.	122
11.08	Right of Setoff.	123
11.09	Interest Rate Limitation.	124
11.10	Counterparts; Integration; Effectiveness.	124
11.11	Survival of Representations and Warranties.	124
11.12	Severability.	124
11.13	Replacement of Lenders.	125
11.14	Governing Law; Jurisdiction; Etc.	125
11.15	Waiver of Jury Trial.	126
11.16	Subordination.	127
11.17	No Advisory or Fiduciary Responsibility.	127
11.18	Electronic Execution.	128
11.19	USA PATRIOT Act Notice.	128
11.20	Time of the Essence.	128
11.21	ENTIRE AGREEMENT.	128
11.22	Judgment Currency	128

---

## CREDIT AGREEMENT

This **CREDIT AGREEMENT** is entered into as of June 30, 2016, among **SUPER MICRO COMPUTER, INC.**, a Delaware corporation (the “Company”), the Guarantors (defined herein), **SUPER MICRO COMPUTER B.V.**, a private limited liability company ( *besloten vennootschap met beperkte aansprakelijkheid* ) formed under the laws of the Netherlands and registered with the Trade Register of the Dutch Chamber of Commerce under number 17102792, as the “Designated Borrower” hereunder and not as a Guarantor (in such capacity, the “Designated Borrower” and, together with the Company, the “Borrowers” and each a “Borrower”), the Lenders (defined herein), and **BANK OF AMERICA, N.A.**, as Administrative Agent, Swingline Lender and L/C Issuer.

### PRELIMINARY STATEMENTS:

**WHEREAS**, the Loan Parties (as hereinafter defined) have requested that the Lenders, the Swingline Lender and the L/C Issuer make loans and other financial accommodations to the Loan Parties in an aggregate amount of up to \$105,000,000.

**WHEREAS**, the Lenders, the Swingline Lender and the L/C Issuer have agreed to make such loans and other financial accommodations to the Loan Parties on the terms and subject to the conditions set forth herein.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I

### DEFINITIONS AND ACCOUNTING TERMS

#### 1.01 Defined Terms.

As used in this Agreement, the following terms shall have the meanings set forth below:

“Acquisition” means the acquisition, whether through a single transaction or a series of related transactions, of (a) a majority of the Voting Stock or other controlling ownership interest in another Person (including the purchase of an option, warrant or convertible or similar type security to acquire such a controlling interest at the time it becomes exercisable by the holder thereof), whether by purchase of such equity or other ownership interest or upon the exercise of an option or warrant for, or conversion of securities into, such equity or other ownership interest, or (b) assets of another Person which constitute all or substantially all of the assets of such Person or of a division, line of business or other business unit of such Person.

“Additional Secured Obligations” means (a) all obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements and (b) all costs and expenses incurred in connection with enforcement and collection of the foregoing, including the reasonable fees, charges and disbursements of counsel, in each case whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding; provided that Additional Secured Obligations of a Loan Party shall exclude any Excluded Swap Obligations with respect to such Loan Party.

---

“ Administrative Agent ” means Bank of America in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

“ Administrative Agent’s Office ” means the Administrative Agent’s address and, as appropriate, account as set forth on Schedule 1.01(a), or such other address or account as the Administrative Agent may from time to time notify the Borrower and the Lenders.

“ Administrative Questionnaire ” means an Administrative Questionnaire in substantially the form of Exhibit A or any other form approved by the Administrative Agent.

“ Affiliate ” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“ Aggregate Commitments ” means the Commitments of all the Lenders.

“ Agreement ” means this Credit Agreement.

“ Agreement Currency ” has the meaning specified in Section 11.22.

“ Applicable Percentage ” means (a) in respect of the Term Facility, with respect to any Term Lender at any time, the percentage (carried out to the ninth decimal place) of the Term Facility represented by (i) on or prior to the Closing Date, such Term Lender’s Term Commitment at such time and (ii) thereafter, the outstanding principal amount of such Term Lender’s Term Loans at such time, and (b) in respect of the Revolving Facility, with respect to any Revolving Lender at any time, the percentage (carried out to the ninth decimal place) of the Revolving Facility represented by such Revolving Lender’s Revolving Commitment at such time, subject to adjustment as provided in Section 2.15. If the Commitment of all of the Lenders to make Loans and the obligation of the L/C Issuer to make L/C Credit Extensions have been terminated pursuant to Section 8.02, or if the Commitments have expired, then the Applicable Percentage of each Lender in respect of the applicable Facility shall be determined based on the Applicable Percentage of such Lender in respect of such Facility most recently in effect, giving effect to any subsequent assignments. The Applicable Percentage of each Lender in respect of each Facility is set forth opposite the name of such Lender on Schedule 1.01(b) or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

“ Applicable Rate ” means, for an day, the rate per annum equal to (i) 1.25% for Revolving Loans and the Term Loan bearing interest at the Eurodollar Rate, (ii) 0.25% for Revolving Loans and Term Loan bearing interest at the Base Rate, and (iii) 1.25% for the Letter of Credit Fee.

“ Applicable Revolving Percentage ” means with respect to any Revolving Lender at any time, such Revolving Lender’s Applicable Percentage in respect of the Revolving Facility at such time.

“ Appropriate Lender ” means, at any time, (a) with respect to any Facility, a Lender that has a Commitment with respect to such Facility or holds a Loan under such Facility at such time, (b) with respect to the Letter of Credit Sublimit, (i) the L/C Issuer and (ii) if any Letters of Credit have been issued pursuant to Section 2.03, the Revolving Lenders and (c) with respect to the Swingline Sublimit, (i) the Swingline Lender and (ii) if any Swingline Loans are outstanding pursuant to Section 2.04(a), the Revolving Lenders.

“ Approved Fund ” means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“Arranger” means Bank of America, N.A., an affiliate of Merrill Lynch, Pierce, Fenner & Smith Incorporated, in its capacity as sole lead arranger and sole bookrunner.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 11.06(b)), and accepted by the Administrative Agent, in substantially the form of Exhibit B or any other form (including an electronic documentation form generated by use of an electronic platform) approved by the Administrative Agent.

“Attributable Indebtedness” means, on any date, in respect of any Capitalized Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP.

“Audited Financial Statements” means the audited Consolidated balance sheet of the Company and its Subsidiaries for the fiscal year ended June 30, 2015, and the related Consolidated statements of income or operations, shareholders’ equity and cash flows for such fiscal year of the Company and its Subsidiaries, including the notes thereto.

“Authorization to Share Insurance Information” means the authorization substantially in the form of Exhibit Q (or such other form as required by each of the Loan Party’s insurance companies).

“Availability Period” means in respect of the Revolving Facility, the period from and including the Closing Date to the earliest of (i) the Maturity Date for the Revolving Facility, (ii) the date of termination of the Revolving Commitments pursuant to Section 2.06, and (iii) the date of termination of the Commitment of each Revolving Lender to make Revolving Loans and of the obligation of the L/C Issuer to make L/C Credit Extensions pursuant to Section 8.02.

“Bank of America” means Bank of America, N.A. and its successors.

“Base Rate” means for any day a fluctuating rate of interest per annum equal to the highest of (a) the Federal Funds Rate plus 0.50%, (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its “prime rate,” and (c) the Eurodollar Rate plus 1.00%, subject to the interest rate floors set forth therein; provided that if the Base Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement. The “prime rate” is a rate set by Bank of America based upon various factors including Bank of America’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such prime rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change.

“Base Rate Loan” means a Revolving Loan or a Term Loan that bears interest based on the Base Rate.

“Borrower” and “Borrowers” each has the meaning specified in the introductory paragraph hereto.

“Borrower Materials” has the meaning specified in Section 6.02.

“Borrowing” means a Revolving Borrowing, a Swingline Borrowing or a Term Borrowing, as the context may require.

“ Business Day ” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Administrative Agent’s Office is located and, if such day relates to any Eurodollar Rate Loan, means any such day that is also a London Banking Day.

“ Capitalized Leases ” means all leases that have been or should be, in accordance with GAAP, recorded as capitalized leases.

“ Cash Collateralize ” means, to pledge and deposit with or deliver to the Administrative Agent, for the benefit of one or more of the L/C Issuers or Swingline Lender (as applicable) or the Lenders, as collateral for L/C Obligations, the Obligations in respect of Swingline Loans, or obligations of the Revolving Lenders to fund participations in respect of either thereof (as the context may require), (a) cash or deposit account balances, (b) backstop letters of credit entered into on terms, from issuers and in amounts satisfactory to the Administrative Agent and the applicable L/C Issuer, and/or (c) if the Administrative Agent and the applicable L/C Issuer or Swingline Lender shall agree, in their sole discretion, other credit support, in each case, in Dollars and pursuant to documentation in form and substance satisfactory to the Administrative Agent and such L/C Issuer or Swingline Lender (as applicable). “ Cash Collateral ” shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

“ Cash Equivalents ” means any of the following types of Investments, to the extent owned by the Company or any of its Subsidiaries free and clear of all Liens (other than Permitted Liens):

(a) readily marketable obligations issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof having maturities of not more than three hundred sixty days (360) days from the date of acquisition thereof; provided that the full faith and credit of the United States is pledged in support thereof;

(b) time deposits with, or insured certificates of deposit or bankers’ acceptances of, any commercial bank that (i) (A) is a Lender or (B) is organized under the laws of the United States, any state thereof or the District of Columbia or is the principal banking subsidiary of a bank holding company organized under the laws of the United States, any state thereof or the District of Columbia, and is a member of the Federal Reserve System, (ii) issues (or the parent of which issues) commercial paper rated as described in clause (c) of this definition and (iii) has combined capital and surplus of at least \$500,000,000, in each case with maturities of not more than three hundred sixty days (360) days from the date of acquisition thereof;

(c) commercial paper issued by any Person organized under the laws of any state of the United States and rated at least “Prime-1” (or the then equivalent grade) by Moody’s or at least “A-1” (or the then equivalent grade) by S&P, in each case with maturities of not more than three hundred sixty days (360) days from the date of acquisition thereof;

(d) Investments, classified in accordance with GAAP as current assets of the Company or any of its Subsidiaries, in money market investment programs registered under the Investment Company Act of 1940, which are administered by financial institutions that have the highest rating obtainable from either Moody’s or S&P, and the portfolios of which are limited solely to Investments of the character, quality and maturity described in clauses (a), (b) and (c) of this definition;

(e) fully collateralized repurchase agreements with a term of not more than thirty (30) days for securities described in clauses (a) and (b) above and entered into with financial institutions satisfying the criteria described in clause (b) above;

(f) other comparable short-term investments in the ordinary course of business utilized by Foreign Subsidiaries or by the Company in connection with operations outside of the United States (including (a) obligations of the national government of any country that is a member of the Organization for Economic Co-operation and Development, in each case maturing within one year after the date of investment therein, (b) certificates of deposit of, bankers acceptances of, or time deposits with, any commercial bank which is organized and existing under the laws a country that is a member of the Organization for Economic Co-operation and Development (any such bank being an “Approved Foreign Bank”), and in each case with maturities of not more than 365 days from the date of acquisition and (c) the equivalent of demand deposit accounts which are maintained with an Approved Foreign Bank); and

(g) investments in the ordinary course of business in accordance with the investment policy of the Company in the form delivered to the Administrative Agent prior to the Closing Date or as amended from time to time with Administrative Agent’s prior written consent (which consent shall not be unreasonably withheld or delayed).

“Cash Management Agreement” means any agreement that is not prohibited by the terms hereof to provide treasury or cash management services, including deposit accounts, overnight draft, credit cards, debit cards, p-cards (including purchasing cards and commercial cards), funds transfer, automated clearinghouse, zero balance accounts, returned check concentration, controlled disbursement, lockbox, account reconciliation and reporting and trade finance services and other cash management services.

“Cash Management Bank” means any Person in its capacity as a party to a Cash Management Agreement that, at the time it enters into a Cash Management Agreement with a Loan Party or any Subsidiary, is a Lender or an Affiliate of a Lender, in its capacity as a party to such Cash Management Agreement (even if such Person ceases to be a Lender or such Person’s Affiliate ceased to be a Lender); provided, however, that for any of the foregoing to be included as a “Secured Cash Management Agreement” on any date of determination by the Administrative Agent, the applicable Cash Management Bank (other than the Administrative Agent or an Affiliate of the Administrative Agent) must have delivered a Secured Party Designation Notice to the Administrative Agent prior to such date of determination.

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980.

“CERCLIS” means the Comprehensive Environmental Response, Compensation and Liability Information System maintained by the U.S. Environmental Protection Agency.

“CFC” means a Person that is a controlled foreign corporation under Section 957 of the Code.

“Change in Law” means the occurrence, after the Closing Date, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel

Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

“ Change of Control ” means the occurrence of any of the following in any transaction or even or series of related transactions or events:

(a) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, except that a person or group shall be deemed to have “beneficial ownership” of all securities that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an “option right”)), directly or indirectly, of thirty five percent (35)% or more of the Equity Interests of the Company entitled to vote for members of the board of directors or equivalent governing body of the Company on a fully-diluted basis (and taking into account all such securities that such “person” or “group” has the right to acquire pursuant to any option right); or

(b) during any period of twelve (12) consecutive months, a majority of the members of the board of directors or other equivalent governing body of the Company cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first 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.

“ Closing Date ” means the date hereof.

“ Code ” means the Internal Revenue Code of 1986.

“ Collateral ” means all of the “ Collateral ” and “ Mortgaged Property ” referred to in the Collateral Documents and all of the other property that is or is intended under the terms of the Collateral Documents to be subject to Liens in favor of the Administrative Agent for the benefit of the Secured Parties.

“ Collateral Documents ” means, collectively, the Security Agreement, the Mortgages, any related Mortgaged Property Support Documents, each Joinder Agreement, each of the mortgages, collateral assignments, security agreements, pledge agreements or other similar agreements delivered to the Administrative Agent pursuant to Section 6.14, and each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Administrative Agent for the benefit of the Secured Parties.

“ Commitment ” means a Term Commitment or a Revolving Commitment, as the context may require.

“ Commodity Exchange Act ” means the Commodity Exchange Act (7 U.S.C. § 1 *et seq.* ), as amended from time to time, and any successor statute.

“Company” has the meaning specified in the introductory paragraph hereto.

“Compliance Certificate” means a certificate substantially in the form of Exhibit C.

“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.

“Consolidated” means, when used with reference to financial statements or financial statement items of the Company and its Subsidiaries or any other Person, such statements or items on a consolidated basis in accordance with the consolidation principles of GAAP.

“Consolidated EBITDA” means, for any period, the sum of the following determined on a Consolidated basis, without duplication, for the Company and its Subsidiaries in accordance with GAAP, (a) Consolidated Net Income for the most recently completed Measurement Period plus (b) the following to the extent deducted in calculating such Consolidated Net Income (without duplication): (i) Consolidated Interest Charges, (ii) the provision for federal, state, local and foreign income taxes payable, (iii) depreciation and amortization expense (iv) all non-cash losses (less gains) in respect of Swap Contracts, (v) fees and expenses incurred in connection with the negotiation, execution and delivery on the Closing Date (or after the Closing Date in the case of Loan Documents delivered after the Closing Date pursuant to Section 6.22) of the Loan Documents, (vi) fees, settlement costs and expenses incurred in connection with any litigation involving the Company or one of its Subsidiaries to the extent all such fees, costs and expenses do not, in the aggregate, exceed the Threshold Amount, for such Measurement Period, and (vii) non-cash charges and losses (excluding any such non-cash charges or losses to the extent (A) there were cash charges with respect to such charges and losses in past accounting periods or (B) there is a reasonable expectation that there will be cash charges with respect to such charges and losses in future accounting periods less (c) without duplication and to the extent reflected as a gain or otherwise included in the calculation of Consolidated Net Income for such period (i) non-cash gains (excluding any such non-cash gains to the extent (A) there were cash gains with respect to such gains in past accounting periods or (B) there is a reasonable expectation that there will be cash gains with respect to such gains in future accounting periods).

“Consolidated Funded Indebtedness” means, as of any date of determination, for the Company and its Subsidiaries on a Consolidated basis, the sum, without duplication, of (a) the outstanding principal amount of all obligations, whether current or long-term, for borrowed money (including Obligations hereunder) and all obligations evidenced by bonds, debentures, notes, loan agreements or other similar instruments; (b) all purchase money Indebtedness; (c) the maximum amount available to be drawn under issued and outstanding letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties, surety bonds and similar instruments; (d) all obligations, other than intercompany items, in respect of the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business and accrued expenses in the ordinary course of business); (e) all Attributable Indebtedness; (f) all obligations to purchase, redeem, retire, defease or otherwise make any payment prior to the Maturity Date in respect of any Disqualified Stock or any warrant, right or option to acquire such Disqualified Stock, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends on such Disqualified Stock; (g) [reserved]; and (h) all Indebtedness of the types referred to in clauses (a) through (g) above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which the Company or a Subsidiary is a general partner or joint venturer, unless such Indebtedness is expressly made non-recourse to the Company or such Subsidiary.

“Consolidated Interest Charges” means, for any Measurement Period, the sum of (a) all interest, premium payments, debt discount, fees, charges and related expenses in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in



each case to the extent treated as interest in accordance with GAAP, (b) all interest paid or payable with respect to discontinued operations and (c) the portion of rent expense under Capitalized Leases that is treated as interest in accordance with GAAP, in each case, of or by the Company and its Subsidiaries on a Consolidated basis for the most recently completed Measurement Period.

“Consolidated Leverage Ratio” means, as of any date of determination, the ratio of (a) Consolidated Funded Indebtedness as of such date to (b) Consolidated EBITDA for the most recently completed Measurement Period.

“Consolidated Net Income” means, at any date of determination, the net income (or loss) of the Company and its Subsidiaries on a Consolidated basis for the most recently completed Measurement Period; provided that Consolidated Net Income shall exclude (a) extraordinary gains and extraordinary losses for such Measurement Period, (b) the net income of any Subsidiary during such Measurement Period to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary of such income is not permitted by operation of the terms of its Organization Documents or any agreement, instrument or Law applicable to such Subsidiary during such Measurement Period, and (c) any income (or loss) for such Measurement Period of any Person if such Person is not a Subsidiary, except that the equity of the Company or any of its Subsidiaries in the net income of any such Person for such Measurement Period shall be included in Consolidated Net Income up to the aggregate amount of cash actually distributed by such Person during such Measurement Period to the Company or a Subsidiary as a dividend or other distribution (and in the case of a dividend or other distribution to a Subsidiary, such Subsidiary is not precluded from further distributing such amount to the Company as described in clause (b) of this proviso).

“Consolidated Profitability” means, at any date of determination, the profitability before taxes and extraordinary items (in each case, as determined under GAAP) for the Company and its Subsidiaries on a Consolidated basis.

“Contractual Obligation” means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“Credit Extension” means each of the following: (a) a Borrowing and (b) an L/C Credit Extension.

“CRR” means Regulation (EU) no. 575/2013 of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending regulation (EU) No. 648/2012.

“CTCB Indebtedness” means the Indebtedness of SMC Taiwan, SMC Netherlands and any other Excluded Subsidiary arising under the General Agreement for Omnibus Credit Lines by and among SMC Netherlands, SMC Taiwan and CTBC Bank Co., Ltd. providing the credit and bank facilities summarized in the Company’s filings with the SEC, and the other documents, instruments and agreements related thereto, each as amended, modified, extended or restated from time to time.

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

“ Default ” means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

“ Default Rate ” means (a) with respect to any Obligation for which a rate is specified, a rate per annum equal to two percent (2%) in excess of the rate otherwise applicable thereto and (b) with respect to any Obligation for which a rate is not specified or available, a rate per annum equal to the Base Rate plus the Applicable Rate for Revolving Loans that are Base Rate Loans plus two percent (2%), in each case, to the fullest extent permitted by applicable Law.

“ Defaulting Lender ” means, subject to Section 2.15(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two (2) Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Company in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, the L/C Issuer, the Swingline Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swingline Loans) within two (2) Business Days of the date when due, (b) has notified the Company, the Administrative Agent, the L/C Issuer or the Swingline Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by the Administrative Agent or the Company, to confirm in writing to the Administrative Agent and the Company that it will comply with its prospective funding obligations hereunder ( provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Company), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above, and the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.15(b)) as of the date established therefor by the Administrative Agent in a written notice of such determination, which shall be delivered by the Administrative Agent to the Company, the L/C Issuer, the Swingline Lender and each other Lender promptly following such determination.

“ Designated Borrower ” has the meaning specified in the introductory paragraph hereto.

“ Designated Borrower Loan ” means a Revolving Loan requested by and disbursed directly to the Designated Borrower.

“ Designated Borrower Share ” means, as applicable, (a) with respect to Secured Obligations directly arising from Designated Borrower Loans, one hundred percent (100%), (b) with respect to L/C Obligations directly arising from Letters of Credit issued to and for the benefit of the Designated Borrower, one hundred percent (100%), (c) with respect to Term Loans and any Revolving Loans to or for the benefit of the Company or any other Borrower, zero percent (0%), and (d) with respect to all other Secured Obligations, the maximum percentage of such obligations which may be repaid by Designated Borrower without creating a tax liability for any Borrower under Section 956 of the Code or otherwise.

“ Designated Jurisdiction ” means any country or territory to the extent that such country or territory is the subject of any Sanction.

“ Disposition ” or “ Dispose ” means the sale, transfer, license, lease or other disposition (including any Sale and Leaseback Transaction) of any property by any Loan Party or Material Subsidiary (or the granting of any option or other right to do any of the foregoing), including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith, but excluding any Involuntary Disposition and excluding any issuance by such Person of its own Equity Interests.

“ Disqualified Stock ” means with respect to any Person, any Equity Interest issued by that Person, that, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event (other than a Change in Control or similar event), (a) matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable (other than solely for Equity Interests which are not otherwise Disqualified Stock), pursuant to a sinking fund obligation or otherwise or (b) is convertible into or exchangeable (unless at the sole option of the issuer thereof) for (i) debt securities or (ii) any Equity Interest referred to in clause (a) above, in each case at any time prior to the date that is ninety (90) days after the Maturity Date.

“ Dollar ” and “ \$ ” mean lawful money of the United States.

“ Domestic Unencumbered Liquidity ” means, cash and Cash Equivalents (which can be converted into cash in 5 days) of Company, maintained in accounts within the United States, which are subject to Agent’s perfected Liens for the benefit of the Lenders, and no other Liens, other than Permitted Liens.

“ Domestic Subsidiary ” means a Subsidiary that is not a Foreign Subsidiary.

“ Eligible Assignee ” means any Person that meets the requirements to be an assignee under Section 11.06 (subject to such consents, if any, as may be required under Section 11.06(b)(iii)).

“ Environmental Laws ” means any and all federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any hazardous materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

“ Environmental Liability ” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Company, any other Loan Party or any of their respective Subsidiaries directly or indirectly resulting from or based

upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“ Environmental Permit ” means any permit, approval, identification number, license or other authorization required under any Environmental Law.

“ Equity Interests ” means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

“ ERISA ” means the Employee Retirement Income Security Act of 1974.

“ ERISA Affiliate ” means any trade or business (whether or not incorporated) under common control with the Company within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

“ ERISA Event ” means (a) a Reportable Event with respect to a Pension Plan; (b) the withdrawal of the Company or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such entity was a “substantial employer” as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by the Company or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Pension Plan amendment as a termination under Section 4041 or 4041A of ERISA; (e) the institution by the PBGC of proceedings to terminate a Pension Plan; (f) any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (g) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Company or any ERISA Affiliate or (i) a failure by the Company or any ERISA Affiliate to meet all applicable requirements under the Pension Funding Rules in respect of a Pension Plan, whether or not waived, or the failure by the Company or any ERISA Affiliate to make any required contribution to a Multiemployer Plan.

“ Eurodollar Rate ” means:

(a) for any Interest Period with respect to a Eurodollar Rate Loan, the rate per annum equal to the London Interbank Offered Rate (“ LIBOR ”), or a comparable or successor rate which rate is approved by the Administrative Agent, as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) (in such case, the “ LIBOR Rate ”) at or about 8:00 a.m., London time, two (2) Business Days prior to the commencement

of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period; and

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to the LIBOR Rate, at or about 8:00 a.m., London time, two (2) Business Days prior to such date for Dollar deposits with a term of one (1) month commencing that day;

provided that: (i) to the extent a comparable or successor rate is approved by the Administrative Agent in connection herewith, the approved rate shall be applied in a manner consistent with market practice; provided, further that to the extent such market practice is not administratively feasible for the Administrative Agent, such approved rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent and (ii) if the Eurodollar Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement.

“Eurodollar Rate Loan” means a Revolving Loan or a Term Loan that bears interest at a rate based on clause (a) of the definition of “Eurodollar Rate.”

“Event of Default” has the meaning specified in Section 8.01.

“Excluded Property” means, with respect to any Loan Party, (a) (i) any owned, licensed or leased real property other than the Mortgaged Property to the extent securing the Secured Obligations, and (ii) any personal property which is located outside of the United States, (b) any personal property (including motor vehicles) for which a perfected Lien thereon is not effected by filing of a UCC financing statement, (c) Intellectual Property, (d) the Equity Interests of any Excluded Subsidiary, (e) any leasehold interest of any Loan Party in personal property, (f) any assets as to which the Administrative Agent and the Borrower agree that the cost of obtaining a security interest therein is excessive in view of the benefits to be obtained therefrom by the holders of the Obligations, and (g) any and all assets and properties of each Excluded Subsidiary.

“Excluded Foreign Subsidiary” means any Subsidiary of the Company that is (a) a CFC, (b) any Subsidiary, including any Domestic Subsidiary, of a CFC or (c) a Foreign Subsidiary Holding Company.

“Excluded Subsidiary” means (a) any Subsidiary that is not a Wholly-Owned Subsidiary of the Company, (b) any Subsidiary that is prohibited by applicable Law from guaranteeing the Secured Obligations or if guaranteeing the Secured Obligations would require governmental (including regulatory) consent, approval or could result in adverse tax consequences as reasonably determined by the Company, (c) any Excluded Foreign Subsidiary, and (d) any Immaterial Subsidiary. The parties acknowledge and agree that the Designated Borrower is an Excluded Subsidiary.

“Excluded Swap Obligation” means, with respect to any Loan Party, any Swap Obligation if, and to the extent that, all or a portion of the Guaranty of such Loan Party of, or the grant by such Loan Party of a Lien to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation thereof) by virtue of such Loan Party’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act (determined after giving effect to Section 10.11 and any other “keepwell, support or other agreement for the benefit of such Loan Party and any and all guarantees of such Loan Party’s Swap Obligations by other Loan Parties) at the time the Guaranty of such Loan Party, or grant by such Loan Party of a Lien, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a Master Agreement governing more than one Swap Contract, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to Swap Contracts for which such Guaranty or Lien is or becomes excluded in accordance with the first sentence of this definition.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to any Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Company under Section 11.13) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to Section 3.01(a)(ii), (a)(iii) or (c), amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its Lending Office, (c) Taxes attributable to such Recipient’s failure to comply with Section 3.01(e) and (d) any U.S. federal withholding Taxes imposed pursuant to FATCA. Notwithstanding anything to the contrary contained in this definition, “Excluded Taxes” shall not include any withholding tax imposed at any time on payments made by or on behalf of a Designated Borrower to any Lender hereunder or under any other Loan Document, provided that such Lender shall have complied with Section 3.01(e).

“Facility” means the Term Facility or the Revolving Facility, as the context may require.

“Facility Termination Date” means the date as of which all of the following shall have occurred: (a) the Aggregate Commitments have terminated, (b) all Obligations have been paid in full (other than contingent indemnification obligations and other obligations that survive termination of this Agreement), and (c) all Letters of Credit have terminated or expired (other than Letters of Credit as to which other arrangements with respect thereto satisfactory to the Administrative Agent and the L/C Issuer shall have been made).

“FASB ASC” means the Accounting Standards Codification of the Financial Accounting Standards Board.

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code.

“Federal Funds Rate” means, for any day, the rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to Bank of America on such day on such transactions as determined by the Administrative Agent.

“Fee Letter” means the letter agreement, dated as of even date herewith, between the Company and the Administrative Agent.

“Foreign Borrower” means any Borrower that is not a U.S. Borrower.

“Foreign Lender” means, with respect to any Borrower (a) if such Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if the Borrower is not a U.S. Person, a Lender that is resident or organized under the laws of a jurisdiction other than that in which the Borrower is resident for tax purposes. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

“Foreign Obligor” means a Loan Party that is a Foreign Subsidiary.

“Foreign Subsidiary” means any Subsidiary that is organized under the laws of a jurisdiction other than the United States, a State thereof or the District of Columbia.

“Foreign Subsidiary Holding Company” means, as of any time of determination, a Domestic Subsidiary of the Company that, at such time (i) holds Equity Interests of one or more Foreign Subsidiaries, (ii) conducts no material business or financial operations other than those related or incidental to its ownership of Foreign Subsidiaries, (iii) has no material Indebtedness other than Intercompany Debt, and (iv) holds no material assets other than such Equity Interests, Intercompany Debt and assets incidental to the ownership of such Equity Interests and Intercompany Debt.

“FRB” means the Board of Governors of the Federal Reserve System of the United States.

“Flood Hazard Property” means any Mortgaged Property that is in an area designated by the Federal Emergency Management Agency as having special flood or mudslide hazards.

“Fronting Exposure” means, at any time there is a Defaulting Lender that is a Revolving Lender, (a) with respect to the L/C Issuer, such Defaulting Lender’s Applicable Percentage of the outstanding L/C Obligations other than L/C Obligations as to which such Defaulting Lender’s participation obligation has been reallocated to other Revolving Lenders or Cash Collateralized in accordance with the terms hereof, and (b) with respect to the Swingline Lender, such Defaulting Lender’s Applicable Percentage of Swingline Loans other than Swingline Loans as to which such Defaulting Lender’s participation obligation has been reallocated to other Revolving Lenders or Cash Collateralized in accordance with the terms hereof.

“Fund” means any Person (other than a natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

“Funding Indemnity Letter” means a funding indemnity letter, substantially in the form of Exhibit N.

“GAAP” means generally accepted accounting principles in the United States set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the accounting profession) including, without limitation, the FASB Accounting Standards Codification, that are applicable to the circumstances as of the date of determination, consistently applied and subject to Section 1.03.

“Governmental Authority” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing,

regulatory or administrative powers or functions of or pertaining to government (including , without limitation, any supra-national bodies such as the European Union or the European Central Bank).

“ Guarantee ” means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness of the kind described in clauses (a) through (g) of the definition thereof or other obligation payable or performable by another Person (the “ primary obligor ”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness of the kind described in clauses (a) through (g) of the definition thereof or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed or expressly undertaken by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith; provided that in no event shall the amount of any Guarantee of the type described in clause (b) above exceed the fair market value of such Person’s interest in the property subject to such Lien. The term “ Guarantee ” as a verb has a corresponding meaning.

“ Guaranteed Obligations ” has the meaning set forth in Section 10.01.

“ Guarantors ” means, collectively, the Domestic Subsidiaries of the Company as are or may from time to time become parties to this Agreement pursuant to Section 6.13, in each case other than any Excluded Subsidiary. The Designated Borrower shall not be deemed a Guarantor hereunder for any purpose.

“ Guaranty ” means, collectively, the Guarantee made by the Guarantors under Article X in favor of the Secured Parties, together with each other guaranty delivered pursuant to Section 6.13.

“ Hazardous Materials ” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, natural gas, natural gas liquids, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, toxic mold, infectious or medical wastes and all other substances, wastes, chemicals, pollutants, contaminants or compounds of any nature in any form regulated pursuant to any Environmental Law because of their hazardous, dangerous or deleterious properties or characteristics.

“ Hedge Bank ” means any Person in its capacity as a party to a Swap Contract that, at the time it enters into a Swap Contract not prohibited under Article VI or VII, is a Lender or an Affiliate of a Lender, in its capacity as a party to such Swap Contract (even if such Person ceases to be a Lender or such Person’s Affiliate ceased to be a Lender); provided, in the case of a Secured Hedge Agreement with a Person who is no longer a Lender (or Affiliate of a Lender), such Person shall be considered a Hedge Bank only through the stated termination date (without extension or renewal) of such Secured Hedge Agreement and provided further that for any of the foregoing to be included as a “Secured Hedge Agreement” on any date of determination by the Administrative Agent, the applicable Hedge Bank (other



than the Administrative Agent or an Affiliate of the Administrative Agent) must have delivered a Secured Party Designation Notice to the Administrative Agent prior to such date of determination.

“Honor Date” has the meaning set forth in Section 2.03(c).

“Immaterial Subsidiary” means any Subsidiary that, together with its Subsidiaries and all other Immaterial Subsidiaries, collectively, account for less than 20.0% of Consolidated EBITDA or Total Assets of the Company and its Subsidiaries for the Measurement Period ended on the last day of the most recently ended fiscal quarter of the Company for which financial statements have been delivered pursuant to Section 6.01(b).

“Indebtedness” means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP (except as otherwise specified):

- (a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;
- (b) the maximum amount of all direct or contingent obligations of such Person arising under letters of credit, bankers' acceptances, bank guaranties, surety bonds and similar instruments;
- (c) net obligations of such Person under any Swap Contract;
- (d) all obligations, other than intercompany items, of such Person to pay the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business);
- (e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;
- (f) all Attributable Indebtedness in respect of Capitalized Leases of such Person;
- (g) all obligations of such the Company to purchase, redeem, retire, defease or otherwise acquire for value any of its Disqualified Stock; and
- (h) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date.

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

“Indemnitees” has the meaning specified in Section 11.04(b).

“Information” has the meaning specified in Section 11.07.

“Intellectual Property” has the meaning set forth in the Security Agreement.

“Intercompany Debt” means unsecured Indebtedness among the Company and its Wholly-Owned Subsidiaries or among one or more Wholly-Owned Subsidiaries.

“Interest Payment Date” means the last Business Day of each month and the Maturity Date of the Facility under which such Loan is made (with Swingline Loans being deemed made under the Revolving Facility for purposes of this definition).

“Interest Period” means, as to each Eurodollar Rate Loan, the period commencing on the date such Eurodollar Rate Loan is disbursed or converted to or continued as a Eurodollar Rate Loan and ending on the date one (1), two (2), three (3) or six (6) months thereafter (, as selected by the Company in its Loan Notice; provided that:

(a) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

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

(c) no Interest Period shall extend beyond the Maturity Date of the Facility under which such Loan was made.

“Investment” means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or interest in, another Person (including any partnership or joint venture interest in such other Person and any arrangement pursuant to which the investor guaranties Indebtedness of such other Person), or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person which constitute all or substantially all of the assets of such Person or of a division, line of business or other business unit of such Person. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment. For the avoidance of doubt, the term “Investments” shall not include: (i) third-party trade receivables, (ii) intercompany trade receivables among Loan Parties and their Subsidiaries, (iii) intercompany payables resulting from unreimbursed costs related to the allocation of shared employees and services, and (iv) intercompany receivables among any Loan Party and any of its Subsidiaries recorded as intercompany journal entries in connection with transfer pricing, cost-sharing and similar arrangements, in each case incurred in the ordinary course of such Person’s business.

“Involuntary Disposition” means any loss of, damage to or destruction of, or any condemnation or other taking for public use of, any property of any Loan Party or any Subsidiary.

“IRS” means the United States Internal Revenue Service.

“ISP” means, with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice, Inc. (or such later version thereof as may be in effect at the time of issuance).

“Issuer Documents” means with respect to any Letter of Credit, the Letter of Credit Application, and any other document, agreement and instrument entered into by the L/C Issuer and the Company (or any Subsidiary) or in favor of the L/C Issuer and relating to such Letter of Credit.

“Joinder Agreement” means a joinder agreement substantially in the form of Exhibit D executed and delivered in accordance with the provisions of Section 6.13.

“Judgment Currency” has the meaning specified in Section 11.22.

“Laws” means, collectively, all international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“L/C Advance” means, with respect to each Revolving Lender, such Lender’s funding of its participation in any L/C Borrowing in accordance with its Applicable Revolving Percentage.

“L/C Borrowing” means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made or refinanced as a Revolving Borrowing.

“L/C Credit Extension” means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase of the amount thereof.

“L/C Issuer” means Bank of America in its capacity as issuer of Letters of Credit hereunder, or any successor issuer of Letters of Credit hereunder.

“L/C Obligations” means, as at any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts (including all L/C Borrowings). For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

“Lender” means each of the Persons identified as a “Lender” on the signature pages hereto, each other Person that becomes a “Lender” in accordance with this Agreement and, their successors and permitted assigns and, unless the context requires otherwise, includes the Swingline Lender.

“Lending Office” means, as to the Administrative Agent, the L/C Issuer or any Lender, the office or offices of such Person described as such in such Person’s Administrative Questionnaire, or such other office or offices as such Person may from time to time notify the Company and the Administrative Agent; which office may include any Affiliate of such Person or any domestic or foreign branch of such Person or such Affiliate.

“Letter of Credit” means any standby letter of credit issued hereunder.

“Letter of Credit Application” means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the L/C Issuer.

“Letter of Credit Expiration Date” means the day that is seven (7) days prior to the Maturity Date then in effect for the Revolving Facility (or, if such day is not a Business Day, the next preceding Business Day).

“Letter of Credit Fee” has the meaning specified in Section 2.03(h).

“Letter of Credit Sublimit” means an amount equal to the lesser of (a) \$5,000,000 and (b) the Revolving Facility. The Letter of Credit Sublimit is part of, and not in addition to, the Revolving Facility.

“LIBOR” has the meaning specified in the definition of Eurodollar Rate.

“Lien” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or otherwise), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property and any financing lease having substantially the same economic effect as any of the foregoing).

“Loan” means an extension of credit by a Lender to a Borrower under Article II in the form of a Term Loan, a Revolving Loan or a Swingline Loan.

“Loan Documents” means, collectively, (a) this Agreement, (b) the Notes, (c) the Guaranty, (d) the Collateral Documents, (e) the Fee Letter, (f) each Issuer Document, (g) each Joinder Agreement, (h) any agreement creating or perfecting rights in Cash Collateral pursuant to the provisions of Section 2.14 and (i) all other certificates, agreements, documents and instruments executed and delivered, in each case, by or on behalf of any Loan Party pursuant to the foregoing (but specifically excluding any Secured Hedge Agreement or any Secured Cash Management Agreement); provided, however, that for purposes of Section 11.01, “Loan Documents” shall mean this Agreement, the Guaranty and the Collateral Documents.

“Loan Notice” means a notice of (a) a Borrowing, (b) a conversion of Loans from one Type to the other, or (c) a continuation of Eurodollar Rate Loans, pursuant to Section 2.02(a), which shall be substantially in the form of Exhibit E or such other form as may be approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer of the Company.

“Loan Parties” means, collectively, the Company, the Designated Borrower and each Guarantor.

“London Banking Day” means any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

“Master Agreement” has the meaning set forth in the definition of “Swap Contract.”

“Material Adverse Effect” means (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties, liabilities (actual or contingent), financial condition Company and its Subsidiaries taken as a whole; (b) a material impairment of the ability of any Loan Party to perform its obligations under any Loan Document to which it is a party; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party.

“ Material Contract ” means (a) the agreements, contracts and other documents as filed with the SEC as exhibits to the Company's Form 10-K for the fiscal year ended December 31, 2015, whether actually attached as an exhibit or incorporated by reference to any earlier filings with the SEC, (b) any of the Company's Forms 10-K or Forms 10-Q and all exhibits attached thereto whether actually attached as an exhibit or incorporated by reference to any earlier filings with the SEC filed after the date hereof, in each case, in accordance with Item 601(b)(4) and Item 601(b)(10) (or their equivalents) of Regulation S-K, as promulgated under the Securities Exchange Act of 1934 as amended, (c) any Form 8-K, Form S-3 or Form S-4 and all exhibits attached thereto whether actually attached as an exhibit or incorporated by reference to any earlier filings with the SEC filed after the date hereof and (d) any "material contract" as defined in Item 601(b)(10) of SEC Regulation S-K, in each case, other than (x) employment or compensation related agreements, including agreements relating to stock option grants to employees, consultants and directors, and (y) agreements that have been filed with the SEC but that have been assigned or terminated or as to which no Loan Party has any continuing obligations and is owed no further consideration or performance by the other parties thereto, in each case, prior to the date of this Agreement.

“ Material Subsidiary ” means any Subsidiary that is not an Immaterial Subsidiary.

“ Maturity Date ” means (a) with respect to the Revolving Facility, June 30, 2017 and (b) with respect to the Term Facility, June 30, 2021; provided, however, that, in each case, if such date is not a Business Day, the Maturity Date shall be the next preceding Business Day.

“ Measurement Period ” means, at any date of determination, the most recently completed twelve (12) months of the Company.

“ Minimum Collateral Amount ” means, at any time, (a) with respect to Cash Collateral consisting of cash or deposit account balances provided to reduce or eliminate Fronting Exposure during any period when a Lender constitutes a Defaulting Lender, an amount equal to 105% of the Fronting Exposure of the L/C Issuer with respect to Letters of Credit issued and outstanding at such time, (b) with respect to Cash Collateral consisting of cash or deposit account balances provided in accordance with the provisions of Section 2.14(a)(i), (a)(ii) or (a)(iii), an amount equal to 105% of the Outstanding Amount of all L/C Obligations, and (c) otherwise, an amount determined by the Administrative Agent and the L/C Issuer in their sole discretion.

“ Moody's ” means Moody's Investors Service, Inc. and any successor thereto.

“ Mortgage ” or “ Mortgages ” means, individually and collectively, as the context requires, that certain Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing, dated as of June 30, 2016, by the Company in favor of Administrative Agent, as amended from time to time.

“ Mortgaged Property ” means any owned property of a Loan Party listed on Schedule 5.21(g)(i).

“ Mortgaged Property Support Documents ” means with respect to any real property subject to a Mortgage, the deliveries and documents described on Schedule 1.01(e) attached hereto.

“ Multiemployer Plan ” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which the Company or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five (5) plan years, has made or been obligated to make contributions.

“ Multiple Employer Plan ” means a Plan which has two or more contributing sponsors (including the Company or any ERISA Affiliate) at least two of whom are not under common control, as such a plan is described in Section 4064 of ERISA.

“ Non-Consenting Lender ” means any Lender that does not approve any consent, waiver or amendment that (a) requires the approval of all Lenders or all affected Lenders in accordance with the terms of Section 11.01 and (b) has been approved by the Required Lenders.

“ Non-Defaulting Lender ” means, at any time, each Lender that is not a Defaulting Lender at such time.

“ Non-Extension Notice Date ” has the meaning specified in Section 2.03(b)(iv).

“ Non-Public Lender ” means: (i) until interpretation of “public” as referred to in the CRR by the relevant authority/ies: an entity that provides repayable funds to SMC Netherlands for a minimum initial amount of EUR 100,000 (or its equivalent in another currency) or an entity otherwise qualifying as not forming part of the public; and (ii) following the publication of an interpretation of “public” as referred to in the CRR by the relevant authority/ies: such amount or such criterion as a result of which such entity shall qualify as not forming part of the public.

“ Note ” means a Term Note or a Revolving Note, as the context may require.

“ Notice of Loan Prepayment ” means a notice of prepayment with respect to a Loan, which shall be substantially in the form of Exhibit R or such other form as may be approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer.

“ NPL ” means the National Priorities List under CERCLA.

“ Obligations ” means (a) all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan, or Letter of Credit and (b) all costs and expenses incurred in connection with enforcement and collection of the foregoing, including the fees, charges and disbursements of counsel, in each case whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof pursuant to any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding; provided that Obligations of a Loan Party shall exclude any Excluded Swap Obligations with respect to such Loan Party.

“ OFAC ” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“ Officer’s Certificate ” means a certificate substantially the form of Exhibit L or any other form approved by the Administrative Agent.

“ Organization Documents ” means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement or limited liability company agreement (or equivalent or comparable documents with respect to any non-U.S. jurisdiction); (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization (or equivalent or comparable documents with respect

to any non-U.S. jurisdiction) and (d) with respect to all entities, any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization (or equivalent or comparable documents with respect to any non-U.S. jurisdiction).

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

“ Other Taxes ” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 3.06).

“ Outstanding Amount ” means (a) with respect to Term Loans, Revolving Loans and Swingline Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Term Loans, Revolving Loans and Swingline Loans, as the case may be, occurring on such date; and (b) with respect to any L/C Obligations on any date, the amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements by the Company of Unreimbursed Amounts.

“ Participant ” has the meaning specified in Section 11.06(d).

“ Participant Register ” has the meaning specified in Section 11.06(d).

“ PBGC ” means the Pension Benefit Guaranty Corporation.

“ Pension Act ” means the Pension Protection Act of 2006.

“ Pension Funding Rules ” means the rules of the Code and ERISA regarding minimum required contributions (including any installment payment thereof) to Pension Plans and set forth in, with respect to plan years ending prior to the effective date of the Pension Act, Section 412 of the Code and Section 302 of ERISA, each as in effect prior to the Pension Act and, thereafter, Section 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

“ Pension Plan ” means any employee pension benefit plan (including a Multiple Employer Plan or a Multiemployer Plan) that is maintained or is contributed to by the Company and any ERISA Affiliate and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code.

“ Permitted Liens ” has the meaning set forth in Section 7.01.

“ Permitted Transfers ” means (a) Dispositions of inventory in the ordinary course of business; (b) Dispositions of property to the Company or any Subsidiary; provided, that if the transferor of such property is a Loan Party then the transferee thereof must be a Loan Party; (c) Dispositions of accounts receivable in connection with the collection or compromise thereof; (d) licenses, sublicenses, leases or subleases granted to others not interfering in any material respect with the business of the Company and its Subsidiaries; (e) Dispositions of surplus, obsolete or worn out property no longer used or useful in the conduct of business of any Loan Party and its Subsidiaries; (f) Permitted Liens; (g) Investments permitted under Section 7.03; (h) the abandonment of intellectual property that is, in the reasonable judgment the Company or its Subsidiaries, no longer economically practicable or commercially desirable to maintain or useful in the conduct of the business of the Company and its Subsidiaries; (i) Disposition of cash or Cash Equivalents in the ordinary course of business and conversion of cash or Cash Equivalents into cash or other Cash Equivalents, (j) any Involuntary Disposition; and (l) other Dispositions in an aggregate amount not to exceed the Threshold Amount in any fiscal year.

“ Person ” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“ Plan ” means any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Plan), maintained for employees of the Company or any ERISA Affiliate or any such Plan to which the Company or any ERISA Affiliate is required to contribute on behalf of any of its employees.

“ Platform ” has the meaning specified in Section 6.02.

“ Pledged Equity ” has the meaning specified in the Security Agreement.

“ Prior Agreement ” means that certain Loan Agreement dated as of June 17, 2010 by and between Bank of America and Borrower, as amended, restated or otherwise modified prior to the Closing Date.

“ Pro Forma Basis ” and “ Pro Forma Effect ” means, for any Disposition of all or substantially all of a division or a line of business, whether actual or proposed, for purposes of determining compliance with the financial covenants set forth in Section 7.11, each such transaction or proposed transaction shall be deemed to have occurred on and as of the first day of the relevant Measurement Period, and the following pro forma adjustments shall be made:

(a) in the case of an actual or proposed Disposition, all income statement items (whether positive or negative) attributable to the line of business or the Person subject to such Disposition shall be excluded from the results of the Company and its Subsidiaries for such Measurement Period;

(b) in the case of an actual or proposed Acquisition, income statement items (whether positive or negative) attributable to the property, line of business or the Person subject to such Acquisition shall be included in the results of the Company and its Subsidiaries for such Measurement Period;

(c) interest accrued during the relevant Measurement Period on, and the principal of, any Indebtedness repaid or to be repaid or refinanced in such transaction shall be excluded from the results of the Company and its Subsidiaries for such Measurement Period; and

(d) any Indebtedness actually or proposed to be incurred or assumed in such transaction shall be deemed to have been incurred as of the first day of the applicable Measurement Period, and interest thereon shall be deemed to have accrued from such day on such Indebtedness at the applicable rates provided therefor (and in the case of interest that does or would accrue at a formula or floating rate, at the rate in effect at the time of determination)



and shall be included in the results of the Company and its Subsidiaries for such Measurement Period.

“Pro Forma Compliance” means, with respect to any transaction, that such transaction does not cause, create or result in a Default after giving Pro Forma Effect, based upon the results of operations for the most recently completed Measurement Period to (a) such transaction and (b) all other transactions which are contemplated or required to be given Pro Forma Effect hereunder that have occurred on or after the first day of the relevant Measurement Period.

“Public Lender” has the meaning specified in Section 6.02.

“Qualified ECP Guarantor” means, at any time, each Loan Party with total assets exceeding \$10,000,000 or that qualifies at such time as an “eligible contract participant” under the Commodity Exchange Act and can cause another Person to qualify as an “eligible contract participant” at such time under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

“Qualifying Control Agreement” means an agreement, among a Loan Party (other than any Excluded Subsidiary), a depository institution or securities intermediary and the Administrative Agent, which agreement is in form and substance reasonably acceptable to the Administrative Agent and which provides the Administrative Agent with “control” (as such term is used in Article 9 of the UCC) over the deposit account(s) or securities account(s) described therein.

“Recipient” means the Administrative Agent, any Lender, the L/C Issuer or any other recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder.

“Reduction Amount” has the meaning set forth in Section 2.05(b)(viii).

“Register” has the meaning specified in Section 11.06(c).

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person’s Affiliates.

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA, other than events for which the thirty (30) day notice period has been waived.

“Request for Credit Extension” means (a) with respect to a Borrowing, conversion or continuation of Term Loans or Revolving Loans, a Loan Notice, (b) with respect to an L/C Credit Extension, a Letter of Credit Application, and (c) with respect to a Swingline Loan, a Swingline Loan Notice.

“Required Lenders” means, at any time, at least two (2) Lenders having Total Credit Exposures representing more than 50% of the Total Credit Exposures of all Lenders. The Total Credit Exposure of any Defaulting Lender shall be disregarded in determining Required Lenders at any time; provided that, the amount of any participation in any Swingline Loan and Unreimbursed Amounts that such Defaulting Lender has failed to fund that have not been reallocated to and funded by another Lender shall be deemed to be held by the Lender that is the Swingline Lender or L/C Issuer, as the case may be, in making such determination.

“Resignation Effective Date” has the meaning set forth in Section 9.06.

“ Responsible Officer ” means the chief executive officer, president, chief financial officer, treasurer, assistant treasurer or controller of a Loan Party, solely for purposes of the delivery of incumbency certificates pursuant to Section 4.01, the secretary or any assistant secretary of a Loan Party and, solely for purposes of notices given pursuant to Article II, any other officer or employee of the applicable Loan Party so designated by any of the foregoing officers in a notice to the Administrative Agent or any other officer or employee of the applicable Loan Party designated in or pursuant to an agreement between the applicable Loan Party and the Administrative Agent. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party. To the extent reasonably requested by the Administrative Agent, each Responsible Officer will provide an incumbency certificate and to the extent reasonably requested by the Administrative Agent, appropriate authorization documentation, in form and substance satisfactory to the Administrative Agent.

“ Restricted Payment ” means (a) any dividend or other distribution, direct or indirect, on account of any shares (or equivalent) of any class of Equity Interests of the Company or any of its Subsidiaries, now or hereafter outstanding, (b) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares (or equivalent) of any class of Equity Interests of the Company or any of its Subsidiaries, now or hereafter outstanding, and (c) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of Equity Interests of any Loan Party or any of its Subsidiaries, now or hereafter outstanding.

“ Revolving Borrowing ” means a borrowing consisting of simultaneous Revolving Loans of the same Type and, in the case of Eurodollar Rate Loans, having the same Interest Period made by each of the Revolving Lenders pursuant to Section 2.01(b).

“ Revolving Commitment ” means, as to each Revolving Lender, its obligation to (a) make Revolving Loans to the Borrowers pursuant to Section 2.01(b), (b) purchase participations in L/C Obligations, and (c) purchase participations in Swingline Loans, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender’s name on Schedule 1.01(b) under the caption “Revolving Commitment” or opposite such caption in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement. The Revolving Commitment of all of the Revolving Lenders on the Closing Date shall be \$55,000,000.

“ Revolving Exposure ” means, as to any Lender at any time, the aggregate principal amount at such time of its outstanding Revolving Loans and such Lender’s participation in L/C Obligations and Swingline Loans at such time.

“ Revolving Facility ” means, at any time, the aggregate amount of the Revolving Lenders’ Revolving Commitments at such time.

“ Revolving Lender ” means, at any time, (a) so long as any Revolving Commitment is in effect, any Lender that has a Revolving Commitment at such time or (b) if the Revolving Commitments have terminated or expired, any Lender that has a Revolving Loan or a participation in L/C Obligations or Swingline Loans at such time.

“ Revolving Loan ” has the meaning specified in Section 2.01(b).

“Revolving Note” means a promissory note made by each Borrower in favor of a Revolving Lender evidencing Revolving Loans or Swingline Loans, as the case may be, made by such Revolving Lender, substantially in the form of Exhibit G.

“S&P” means Standard & Poor’s Financial Services LLC, a subsidiary of The McGraw-Hill Companies, Inc., and any successor thereto.

“Sale and Leaseback Transaction” means, with respect to any Loan Party or any Subsidiary, any arrangement, directly or indirectly, with any Person whereby such Loan Party or such Subsidiary shall sell or transfer any property used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property being sold or transferred.

“Sanction(s)” means any sanction administered or enforced by the United States Government (including, without limitation, OFAC), the United Nations Security Council, the European Union, Her Majesty’s Treasury (“HMT”) or other relevant sanctions authority.

“SEC” means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

“Secured Cash Management Agreement” means any Cash Management Agreement between the any Loan Party and any of its Subsidiaries and any Cash Management Bank.

“Secured Hedge Agreement” means any interest rate, currency, foreign exchange, or commodity Swap Contract required by or not prohibited under Article VI or VII between any Loan Party and any of its Subsidiaries and any Hedge Bank.

“Secured Obligations” means all Obligations and all Additional Secured Obligations.

“Secured Parties” means, collectively, the Administrative Agent, the Lenders, the L/C Issuer, the Hedge Banks, the Cash Management Banks, the Indemnitees and each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 9.05.

“Secured Party Designation Notice” means a notice from any Lender or an Affiliate of a Lender substantially in the form of Exhibit H.

“Securities Act” means the Securities Act of 1933, including all amendments thereto and regulations promulgated thereunder.

“Security Agreement” means the security and pledge agreement, dated as of the Closing Date, executed in favor of the Administrative Agent by each of the Loan Parties, other than Excluded Subsidiaries.

“SMC Netherlands” means SUPER MICRO COMPUTER B.V., a limited liability company formed under the laws of the Netherlands.

“SMC Taiwan” means Super Micro Computer Taiwan Inc., a company formed under the laws of Taiwan.

“Solvency Certificate” means a solvency certificate in substantially in the form of Exhibit I.

“Solvent” and “Solvency” mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the property of such Person (on a going concern basis) is greater than the total amount of liabilities, including contingent liabilities, of such Person, (b) the present fair saleable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay such debts and liabilities as they mature, (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person’s property would constitute an unreasonably small capital, and (e) such Person is able to pay its debts and liabilities, contingent obligations and other commitments as they mature in the ordinary course of business. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

“Specified Loan Party” means any Loan Party that is not then an “eligible contract participant” under the Commodity Exchange Act (determined prior to giving effect to Section 10.11).

“Subsidiary” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of Voting Stock is at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person and in relation to financial statements of the Designated Borrower, (i) a group company ( *groepsmaatschappij* ) as defined in section 2:24b of the Dutch Civil Code and (ii) any company which is proportionally consolidated in the consolidated financial statements of a Designated Borrower. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Company.

“Swap Contract” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement.

“Swap Obligations” means with respect to any Loan Party any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act.

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

“Swingline Borrowing” means a borrowing of a Swingline Loan pursuant to Section 2.04.

“Swingline Lender” means Bank of America in its capacity as provider of Swingline Loans, or any successor swingline lender hereunder.

“Swingline Loan” has the meaning specified in Section 2.04(a).

“Swingline Loan Notice” means a notice of a Swingline Borrowing pursuant to Section 2.04(b), which shall be substantially in the form of Exhibit J or such other form as approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer of the Company.

“Swingline Sublimit” means an amount equal to the lesser of (a) \$10,000,000 and (b) the Revolving Facility. The Swingline Sublimit is part of, and not in addition to, the Revolving Facility.

“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 Borrowing” means a borrowing consisting of simultaneous Term Loans of the same Type and, in the case of Eurodollar Rate Loans, having the same Interest Period made by each of the Term Lenders pursuant to Section 2.01(a).

“Term Commitment” means, as to each Term Lender, its obligation to make Term Loans to the Company pursuant to Section 2.01(a) in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Term Lender’s name on Schedule 1.01(b) under the caption “Term Commitment” or opposite such caption in the Assignment and Assumption pursuant to which such Term Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement. The Term Commitment of all of the Term Lenders on the Closing Date shall be \$50,000,000.

“Term Facility” means, at any time, (a) on or prior to the Closing Date, the aggregate amount of the Term Commitments at such time and (b) thereafter, the aggregate principal amount of the Term Loans of all Term Lenders outstanding at such time.

“Term Lender” means (a) at any time on or prior to the Closing Date, any Lender that has a Term Commitment at such time, and (b) at any time after the Closing Date, any Lender that holds Term Loans at such time.

“Term Loan” means an advance made by any Term Lender under the Term Facility.

“Term Note” means a promissory note made by the Company in favor of a Term Lender evidencing Term Loans made by such Term Lender, substantially in the form of Exhibit K.

“Threshold Amount” means \$10,000,000.

“ Total Assets ” means the total assets of the Company and its Subsidiaries on a consolidated basis in accordance with GAAP, as shown on the most recent balance sheet of the Borrower delivered pursuant to Section 6.01(a) or (b).

“ Total Credit Exposure ” means, as to any Lender at any time, the unused Commitments, Revolving Exposure and Outstanding Amount of all Term Loans of such Lender at such time.

“ Total Revolving Outstandings ” means the aggregate Outstanding Amount of all Revolving Loans, Swingline Loans and L/C Obligations.

“ Type ” means, with respect to a Loan, its character as a Base Rate Loan or a Eurodollar Rate Loan.

“ UCC ” means the Uniform Commercial Code as in effect in the State of New York; provided that, if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, “ UCC ” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

“ UCP ” means, with respect to any Letter of Credit, the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce (“ ICC ”) Publication No. 600 (or such later version thereof as may be in effect at the time of issuance).

“ United States ” and “ U.S. ” mean the United States of America.

“ Unreimbursed Amount ” has the meaning specified in Section 2.03(c)(i).

“ U.S. Borrower ” means any Borrower that that is organized under the laws of one of the states of the United States and that is not an Excluded Subsidiary.

“ U.S. Loan Party ” means any Loan Party that is organized under the laws of one of the states of the United States and that is not an Excluded Subsidiary.

“ U.S. Person ” means any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

“ U.S. Tax Compliance Certificate ” has the meaning specified in Section 3.01(e)(ii)(B)(3).

“ Voting Stock ” means, with respect to any Person, Equity Interests issued by such Person the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or persons performing similar functions) of such Person, even though the right to so vote has been suspended by the happening of such contingency. All of the Equity Interests in SMC Netherlands shall be deemed to be Voting Stock.

“ Wholly-Owned Subsidiary ” of a Person means any Subsidiary of such Person, all of the Equity Interests of which (other than directors’ qualifying shares required by law or shares in a Foreign Subsidiary held by nationals of the country in which such Foreign Subsidiary is organized, in each case, as required by law) are owned by such Person, either directly or through one or more Wholly-Owned Subsidiaries of such Person.

## **1.02 Other Interpretive Provisions**

With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including the Loan Documents and any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, amended and restated, modified, extended, restated, replaced or supplemented from time to time (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and permitted assigns, (iii) the words “hereto,” “herein,” “hereof” and “hereunder,” and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Preliminary Statements, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Preliminary Statements, Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory rules, regulations, orders and provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified, extended, restated, replaced or supplemented from time to time, and (vi) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights. Any and all references to “Borrower” regardless of whether preceded by the term a, any, each of, all, and/or, or any other similar term shall be deemed to refer, as the context requires, to each and every (and/or any one or all) parties constituting a Borrower, individually and/or in the aggregate.

(b) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including;” the words “to” and “until” each mean “to but excluding;” and the word “through” means “to and including.”

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

## **1.03 Accounting Terms**

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein. Notwithstanding the

foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Company and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 on financial liabilities shall be disregarded.

(b) Changes in GAAP. 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 the Company or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Company shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided 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) the Company shall provide to the Administrative Agent and the Lenders 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.

(c) Pro Forma Treatment. Each Disposition of all or substantially all of a line of business, and each Acquisition, by the Company and its Subsidiaries that is consummated during any Measurement Period shall, for purposes of determining compliance with the financial covenants set forth in Section 7.11 and for purposes of determining the Applicable Rate, be given Pro Forma Effect as of the first day of such Measurement Period.

#### **1.04 Rounding**

Any financial ratios required to be maintained by the Company pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

#### **1.05 Times of Day**

Unless otherwise specified, all references herein to times of day shall be references to Pacific time (daylight or standard, as applicable).

#### **1.06 Letter of Credit Amounts**

Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the stated amount of such Letter of Credit in effect at such time; provided, however, that with respect to any Letter of Credit that, by its terms or the terms of any Issuer Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

**1.07 Dutch Terms**. In any Loan Document, where it relates to a company incorporated under the laws of the Netherlands, a reference to:

(a) a security interest includes any mortgage ( *hypotheek* ), pledge ( *pandrecht* ), retention-of-title arrangement ( *recht van retentie* ), right to reclaim goods ( *recht van reclame* ), privilege ( *voorrecht* ) and, in general, any right in rem ( *beperkt recht* ) created for the purpose of granting security ( *goederenrechtelijk zekerheidsrecht* );



(b) a director in relation to a Designated Borrower, means a managing director ( *bestuurder* ) and board of directors means its managing board ( *bestuur* );

(c) a receiver or trustee in bankruptcy includes a *curator* ;

(d) an attachment includes a *beslag* and attaching or taking possession of (any of those terms) includes *beslag leggen* ;

(e) gross negligence means *grove schuld* ;

(f) indemnify means *vrijwaren* ;

(g) negligence means *schuld* ;

(h) wilful misconduct means *opzet* ; and

(i) in relation to any procedure or step taken in the Netherlands, legal proceedings or other procedures shall also mean:

(i) a bankruptcy ( *faillissement* ), suspension of payments ( *surséance van betaling* ), emergency procedure ( *noodregeling* ) or any other procedure having the effect that any relevant entity to which it applies loses the free management or ability to dispose of its property (irrespective of whether that procedure is provisional or final; and

(ii) a dissolution ( *ontbinding* ) or any other procedure having the effect that the relevant entity to which it applies ceases to exist.

#### **1.08 UCC Terms**

Terms defined in the UCC in effect on the Closing Date and not otherwise defined herein shall, unless the context otherwise indicates, have the meanings provided by those definitions. Subject to the foregoing, the term “UCC” refers, as of any date of determination, to the UCC then in effect.

#### **1.09 Rates**

The Administrative Agent does not warrant, nor accept responsibility, nor shall the Administrative Agent have any liability with respect to the administration, submission or any other matter related to the rates in the definition of “Eurodollar Rate” or with respect to any comparable or successor rate thereto.

## **ARTICLE II**

### **COMMITMENTS AND CREDIT EXTENSIONS**

#### **2.01 Loans**

(a) Term Borrowing. Subject to the terms and conditions set forth herein, each Term Lender severally agrees to make a single loan to the Company, in Dollars, on the Closing

Date not to exceed such Term Lender's Applicable Percentage of the Term Facility. The Term Borrowing shall consist of Term Loans made simultaneously by the Term Lenders in accordance with their respective Applicable Percentage of the Term Facility. Term Borrowings repaid or prepaid may not be reborrowed. Term Loans may be Base Rate Loans or Eurodollar Rate Loans, as further provided herein; provided, however, any Term Borrowing made on the Closing Date or any of the three (3) Business Days following the Closing Date shall be made as Base Rate Loans unless the Company delivers a Funding Indemnity Letter not less than three (3) Business Days prior to the date of such Term Borrowing.

(b) Revolving Borrowings. Subject to the terms and conditions set forth herein, each Revolving Lender severally agrees to make loans (each such loan, a "Revolving Loan") to the Company or the Designated Borrower, as applicable, in Dollars, from time to time, on any Business Day during the Availability Period, in an aggregate amount not to exceed at any time outstanding the amount of such Lender's Revolving Commitment; provided, however, that after giving effect to any Revolving Borrowing, (i) the Total Revolving Outstandings shall not exceed the Revolving Facility, and (ii) the Revolving Exposure of any Lender shall not exceed such Revolving Lender's Revolving Commitment. Within the limits of each Revolving Lender's Revolving Commitment, and subject to the other terms and conditions hereof, the Borrowers may borrow Revolving Loans, prepay under Section 2.05, and reborrow under this Section 2.01(b). Revolving Loans may be Base Rate Loans or Eurodollar Rate Loans, as further provided herein; provided, however, any Revolving Borrowings made on the Closing Date or any of the three (3) Business Days following the Closing Date shall be made as Base Rate Loans unless Borrowers deliver a Funding Indemnity Letter not less than three (3) Business Days prior to the date of such Revolving Borrowing.

## **2.02 Borrowings, Conversions and Continuations of Loans**

(a) Notice of Borrowing. Each Borrowing, each conversion of Loans from one Type to the other, and each continuation of Eurodollar Rate Loans shall be made upon a Borrower's irrevocable notice to the Administrative Agent, which may be given by: (A) telephone or (B) a Loan Notice; provided that any telephonic notice must be confirmed immediately by delivery to the Administrative Agent of a Loan Notice. Each such Loan Notice must be received by the Administrative Agent not later than 8:00 a.m. (i) three (3) Business Days prior to the requested date of any Borrowing of, conversion to or continuation of Eurodollar Rate Loans or of any conversion of Eurodollar Rate Loans to Base Rate Loans, and (ii) on the requested date of any Borrowing of Base Rate Loans. Each Borrowing of, conversion to or continuation of Eurodollar Rate Loans shall be in a principal amount of \$1,000,000 or a whole multiple of \$500,000 in excess thereof (or, in connection with any conversion or continuation of a Term Loan, if less, the entire principal thereof then outstanding). Except as provided in Sections 2.03(c) and 2.04(c), each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof (or, in connection with any conversion or continuation of a Term Loan, if less, the entire principal thereof then outstanding). Each Loan Notice and each telephonic notice shall specify (A) the applicable Facility and whether the Borrower is requesting a Borrowing, a conversion of Loans from one Type to the other, or a continuation of Loans, as the case may be, under such Facility, (B) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (C) the principal amount of Loans to be borrowed, converted or continued, (D) the Type of Loans to be borrowed or to which existing Loans are to be converted, (E) if applicable, whether the Loan is to be made to the Designated Borrower, and (F) if applicable, the duration of the Interest Period with respect thereto. If the Borrower fails to specify a Type of Loan in a Loan Notice or if the Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Loans shall be made as, or converted to, Base Rate Loans.

Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurodollar Rate Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of Eurodollar Rate Loans in any such Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one (1) month. Notwithstanding anything to the contrary herein, a Swingline Loan may not be converted to a Eurodollar Rate Loan.

(b) Advances. Following receipt of a Loan Notice for a Facility, the Administrative Agent shall promptly notify each Appropriate Lender of the amount of its Applicable Percentage under such Facility of the applicable Loans, and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Appropriate Lender of the details of any automatic conversion to Base Rate Loans described in Section 2.02(a). In the case of a Borrowing, each Appropriate Lender shall make the amount of its Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 10:00 a.m. on the Business Day specified in the applicable Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 4.02 (and, if such Borrowing is the initial Credit Extension, Section 4.01), the Administrative Agent shall make all funds so received available to the Company, in the case of a Borrowing request by the Company, or to the Designated Borrower, in the case of a Borrowing request by the Designated Borrower in like funds as received by the Administrative Agent either by (i) crediting the account of the Company, in the case of a Borrowing request by the Company, or to the Designated Borrower, in the case of a Borrowing request by the Designated Borrower, on the books of Bank of America with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the applicable Borrower; provided, however, that if, on the date a Loan Notice with respect to a Revolving Borrowing is given by a given Borrower, there are L/C Borrowings of such Borrower outstanding, then the proceeds of such Revolving Borrowing, first, shall be applied to the payment in full of any such L/C Borrowings, and second, shall be made available to such Borrower as provided above.

(c) Eurodollar Rate Loans. Except as otherwise provided herein, a Eurodollar Rate Loan may be continued or converted only on the last day of an Interest Period for such Eurodollar Rate Loan. During the existence of an Event of Default, no Loans may be requested as, converted to or continued as Eurodollar Rate Loans without the consent of the Required Lenders.

(d) Notice of Interest Rates. The Administrative Agent shall promptly notify the Borrowers and the Lenders of the interest rate applicable to any Interest Period for Eurodollar Rate Loans upon determination of such interest rate. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrowers and the Lenders of any change in Bank of America's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(e) Interest Periods. After giving effect to all Term Borrowings, all conversions of Term Loans from one Type to the other, and all continuations of Term Loans as the same Type, there shall not be more than four (4) Interest Periods in effect in respect of the Term Facility. After giving effect to all Revolving Borrowings, all conversions of Revolving Loans from one Type to the other, and all continuations of Revolving Loans as the same Type, there shall not be more than four(4) Interest Periods in effect in respect of the Revolving Facility.

(f) Cashless Settlement Mechanism. Notwithstanding anything to the contrary in this Agreement, any Lender may exchange, continue or rollover all or the portion of its Loans in connection with any refinancing, extension, loan modification or similar transaction permitted

by the terms of this Agreement, pursuant to a cashless settlement mechanism approved by the Borrower, the Administrative Agent and such Lender.

## **2.03 Letters of Credit**

### **(a) The Letter of Credit Commitment**

(i) Subject to the terms and conditions set forth herein, (A) the L/C Issuer agrees, in reliance upon the agreements of the Revolving Lenders set forth in this Section, (1) from time to time on any Business Day during the period from the Closing Date until the Letter of Credit Expiration Date, to issue Letters of Credit in Dollars for the account of the Company, any Designated Borrower or any of their respective Subsidiaries, and to amend or extend Letters of Credit previously issued by it, in accordance with Section 2.03(b), and (2) to honor drawings under the Letters of Credit; and (B) the Revolving Lenders severally agree to participate in Letters of Credit issued for the account of the Company or its Subsidiaries and any drawings thereunder; provided that after giving effect to any L/C Credit Extension with respect to any Letter of Credit, (x) the Total Revolving Outstandings shall not exceed the Revolving Facility, (y) the Revolving Exposure of any Revolving Lender shall not exceed such Lender's Revolving Commitment, and (z) the Outstanding Amount of the L/C Obligations shall not exceed the Letter of Credit Sublimit. Each request by the a Borrower for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by such Borrower that the L/C Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, the Borrowers' ability to obtain Letters of Credit shall be fully revolving, and accordingly the Borrowers may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed.

(ii) The L/C Issuer shall not issue any Letter of Credit if:

(A) subject to Section 2.03(b)(iv), the expiry date of the requested Letter of Credit would occur more than twelve (12) months after the date of issuance or last extension, unless the Required Lenders have approved such expiry date; or

(B) the expiry date of the requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless (x) all the Revolving Lenders have approved such expiry date, or (y) such Letter of Credit is cash collateralized on terms and pursuant to arrangements satisfactory to the L/C Issuer.

(iii) The L/C Issuer shall not be under any obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the L/C Issuer from issuing the Letter of Credit, or any Law applicable to the L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the L/C Issuer shall prohibit, or request that the L/C Issuer refrain from, the issuance of letters of credit generally or the Letter of Credit in particular or shall impose upon the L/C Issuer with respect to the Letter of Credit any restriction, reserve or capital requirement

(for which the L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon the L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which the L/C Issuer in good faith deems material to it;

(B) the issuance of the Letter of Credit would violate one or more policies of the L/C Issuer applicable to letters of credit generally;

(C) except as otherwise agreed by the Administrative Agent and the L/C Issuer, the Letter of Credit is in an initial stated amount less than \$250,000;

(D) the Letter of Credit is to be denominated in a currency other than Dollars; or

(E) any Revolving Lender is at that time a Defaulting Lender, unless the L/C Issuer has entered into arrangements, including the delivery of Cash Collateral, satisfactory to the L/C Issuer (in its sole discretion) with the Borrowers or such Revolving Lender to eliminate the L/C Issuer's actual or potential Fronting Exposure (after giving effect to Section 2.15(a)(iv)) with respect to the Defaulting Lender arising from either the Letter of Credit then proposed to be issued or that Letter of Credit and all other L/C Obligations as to which the L/C Issuer has actual or potential Fronting Exposure, as it may elect in its sole discretion.

(iv) The L/C Issuer shall not amend any Letter of Credit if the L/C Issuer would not be permitted at such time to issue the Letter of Credit in its amended form under the terms hereof.

(v) The L/C Issuer shall be under no obligation to amend any Letter of Credit if (A) the L/C Issuer would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment to the Letter of Credit.

(vi) The L/C Issuer shall act on behalf of the Revolving Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and the L/C Issuer shall have all of the benefits and immunities (A) provided to the Administrative Agent in Article IX with respect to any acts taken or omissions suffered by the L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term "Administrative Agent" as used in Article IX included the L/C Issuer with respect to such acts or omissions, and (B) as additionally provided herein with respect to the L/C Issuer.

(b) Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit.

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Company or the Designated Borrower delivered to the L/C Issuer (with a copy to the Administrative Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of the Company and/or such Subsidiary, as required by the L/C Issuer. Such Letter of Credit Application may

be sent by fax transmission, by United States mail, by overnight courier, by electronic transmission using the system provided by the L/C Issuer, by personal delivery or by any other means acceptable to the L/C Issuer. Such Letter of Credit Application must be received by the L/C Issuer and the Administrative Agent not later than 8:00 a.m. at least two (2) Business Days (or such later date and time as the Administrative Agent and the L/C Issuer may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the L/C Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; (G) the purpose and nature of the requested Letter of Credit; (H) whether the Letter of Credit is to be issued for the account of the Designated Borrower or the Company, and (I) such other matters as the L/C Issuer may require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the L/C Issuer (1) the Letter of Credit to be amended; (2) the proposed date of amendment thereof (which shall be a Business Day); (3) the nature of the proposed amendment; and (4) such other matters as the L/C Issuer may require. Additionally, the Borrowers shall furnish to the L/C Issuer and the Administrative Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as the L/C Issuer or the Administrative Agent may require.

(ii) Promptly after receipt of any Letter of Credit Application, the L/C Issuer will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has received a copy of such Letter of Credit Application from the applicable Borrowers and, if not, the L/C Issuer will provide the Administrative Agent with a copy thereof. Unless the L/C Issuer has received written notice from any Revolving Lender, the Administrative Agent or any Loan Party, at least one (1) Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in Article IV shall not then be satisfied, then, subject to the terms and conditions hereof, the L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of the applicable Borrower or Borrowers (or the applicable Subsidiary) or enter into the applicable amendment, as the case may be, in each case in accordance with the L/C Issuer's usual and customary business practices. Immediately upon the issuance of each Letter of Credit, each Revolving Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the L/C Issuer a risk participation in such Letter of Credit in an amount equal to the product of such Revolving Lender's Applicable Revolving Percentage times the amount of such Letter of Credit.

(iii) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the L/C Issuer will also deliver to the Borrowers and the Administrative Agent a true and complete copy of such Letter of Credit or amendment.

(iv) If the Borrowers so request in any applicable Letter of Credit Application, the L/C Issuer may, in its sole discretion, agree to issue a standby Letter of Credit that has automatic extension provisions (each, an "Auto-Extension Letter of Credit"); provided that any such Auto-Extension Letter of Credit must permit the L/C

Issuer to prevent any such extension at least once in each twelve (12) month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the “Non-Extension Notice Date”) in each such twelve (12) month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the L/C Issuer, the Borrowers shall not be required to make a specific request to the L/C Issuer for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Revolving Lenders shall be deemed to have authorized (but may not require) the L/C Issuer to permit the extension of such Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date; provided, however, that the L/C Issuer shall not permit any such extension if (A) the L/C Issuer has determined that it would not be permitted, or would have no obligation at such time to issue such Letter of Credit in its revised form (as extended) under the terms hereof (by reason of the provisions of clause (ii) or (iii) of Section 2.03(a) or otherwise), or (B) it has received notice (which may be by telephone or in writing) on or before the day that is seven (7) Business Days before the Non-Extension Notice Date (1) from the Administrative Agent that the Required Lenders have elected not to permit such extension or (2) from the Administrative Agent, any Revolving Lender or the Borrowers that one or more of the applicable conditions specified in Section 4.02 is not then satisfied, and in each such case directing the L/C Issuer not to permit such extension.

(c) Drawings and Reimbursements; Funding of Participations.

(i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the L/C Issuer shall notify the Borrowers and the Administrative Agent thereof. Not later than 8:00 a.m. on the date of any payment by the L/C Issuer under a Letter of Credit (each such date, an “Honor Date”), the Borrowers shall reimburse the L/C Issuer through the Administrative Agent in an amount equal to the amount of such drawing provided, that the Borrower has received notice of such payment by 10:00 a.m. on such Honor Date, otherwise the Borrower shall make such payment not later than 11:00 a.m. on the following Business Day (together with interest thereon); provided, however, the Designated Borrower shall not be obligated to reimburse more than the Designated Borrower Share of such Letter of Credit. If the Borrowers fail to so reimburse the L/C Issuer by such time, the Administrative Agent shall promptly notify each Revolving Lender of the Honor Date, the amount of the unreimbursed drawing (the “Unreimbursed Amount”), and the amount of such Revolving Lender’s Applicable Revolving Percentage thereof. In such event, the Borrowers shall be deemed to have requested a Revolving Borrowing of Base Rate Loans (provided that in no event shall such Base Rate Loan be deemed to be a Revolving Borrowing by the Designated Borrower unless the applicable Letter of Credit was requested by and for the account of the Designated Borrower) to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.02 for the principal amount of Base Rate Loans, but subject to the amount of the unutilized portion of the Revolving Commitments and the conditions set forth in Section 4.02 (other than the delivery of a Loan Notice). If the Unreimbursed Amount is paid on the Honor Date with a Revolving Loan, no Default shall be deemed to have occurred. Any notice given by the L/C Issuer or the Administrative Agent pursuant to this Section 2.03(c)(i) may be given by telephone if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(ii) Each Revolving Lender shall upon any notice pursuant to Section 2.03(c)(i) make funds available (and the Administrative Agent may apply Cash Collateral provided for this purpose) for the account of the L/C Issuer at the Administrative Agent's Office in an amount equal to its Applicable Revolving Percentage of the Unreimbursed Amount not later than 10:00 a.m. on the Business Day specified in such notice by the Administrative Agent, whereupon, subject to the provisions of Section 2.03(c)(iii), each Revolving Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the Borrowers in such amount. The Administrative Agent shall remit the funds so received to the L/C Issuer.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Revolving Borrowing of Base Rate Loans because the conditions set forth in Section 4.02 cannot be satisfied or for any other reason, the Borrowers shall be deemed to have incurred from the L/C Issuer an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced (provided that in no event shall the Designated Borrower be deemed to have incurred such L/C Borrowing or be liable in any respect for such L/C Borrowing unless the applicable Unreimbursed Amount is in respect of a Letter of Credit that was requested by and for the account of the Designated Borrower), which L/C Borrowing shall be due and payable on demand (together with interest) and, at the election of the Required Lenders, shall bear interest at the Default Rate. In such event, each Revolving Lender's payment to the Administrative Agent for the account of the L/C Issuer pursuant to Section 2.03(c)(ii) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this Section.

(iv) Until each Revolving Lender funds its Revolving Loan or L/C Advance pursuant to this Section 2.03(c) to reimburse the L/C Issuer for any amount drawn under any Letter of Credit, interest in respect of such Lender's Applicable Revolving Percentage of such amount shall be solely for the account of the L/C Issuer.

(v) Each Revolving Lender's obligation to make Revolving Loans or L/C Advances to reimburse the L/C Issuer for amounts drawn under Letters of Credit, as contemplated by this Section 2.03(c), shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the L/C Issuer, the Company, any Subsidiary or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default; or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Revolving Lender's obligation to make Revolving Loans pursuant to this Section 2.03(c) is subject to the conditions set forth in Section 4.02 (other than delivery by the Borrowers of a Loan Notice). No such making of an L/C Advance shall relieve or otherwise impair the obligation of the Borrowers to reimburse the L/C Issuer for the amount of any payment made by the L/C Issuer under any Letter of Credit, together with interest as provided herein (provided that in no event shall the Designated Borrower be liable in any respect for any such reimbursement obligations unless the applicable Unreimbursed Amount is in respect of a Letter of Credit that was requested by and for the account of the Designated Borrower).

(vi) If any Revolving Lender fails to make available to the Administrative Agent for the account of the L/C Issuer any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.03(c) by the time specified in Section 2.03(c)(ii), then, without limiting the other provisions of this Agreement, the



L/C Issuer shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the L/C Issuer at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the L/C Issuer in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the L/C Issuer in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Revolving Loan included in the relevant Revolving Borrowing or L/C Advance in respect of the relevant L/C Borrowing, as the case may be. A certificate of the L/C Issuer submitted to any Revolving Lender (through the Administrative Agent) with respect to any amounts owing under this Section 2.03(c)(vi) shall be conclusive absent manifest error.

(d) Repayment of Participations.

(i) At any time after the L/C Issuer has made a payment under any Letter of Credit and has received from any Revolving Lender such Lender's L/C Advance in respect of such payment in accordance with Section 2.03(c), if the Administrative Agent receives for the account of the L/C Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the Borrowers or otherwise, including proceeds of Cash Collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to such Lender its Applicable Revolving Percentage thereof in the same funds as those received by the Administrative Agent.

(ii) If any payment received by the Administrative Agent for the account of the L/C Issuer pursuant to Section 2.03(c)(i) is required to be returned under any of the circumstances described in Section 11.05 (including pursuant to any settlement entered into by the L/C Issuer in its discretion), each Revolving Lender shall pay to the Administrative Agent for the account of the L/C Issuer its Applicable Revolving Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Obligations Absolute. Other than the conditions that the Designated Borrower shall not be liable in any respect for Letters of Credit that were not requested by and for the account of the Designated Borrower, the obligation of the Borrowers to reimburse the L/C Issuer for each drawing under each Letter of Credit and to repay each L/C Borrowing shall otherwise be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other Loan Document;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that the Company or any Subsidiary may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the L/C Issuer or any other Person, whether in connection with this Agreement or by such Letter of Credit, the transactions

contemplated hereby or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, endorsement, certificate or other document presented under or in connection with such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) waiver by the L/C Issuer of any requirement that exists for the L/C Issuer's protection and not the protection of the Borrowers or any waiver by the L/C Issuer which does not in fact materially prejudice the Borrowers;

(v) honor of a demand for payment presented electronically even if such Letter of Credit requires that demand be in the form of a draft;

(vi) any payment made by the L/C Issuer in respect of an otherwise complying item presented after the date specified as the expiration date of, or the date by which documents must be received under, such Letter of Credit if presentation after such date is authorized by the UCC, the ISP or the UCP, as applicable;

(vii) any payment by the L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by the L/C Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law; or

(viii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Company or any of its Subsidiaries.

The Borrowers shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with the Borrowers' instructions or other irregularity, the Borrowers will immediately notify the L/C Issuer. The Borrowers shall be conclusively deemed to have waived any such claim against the L/C Issuer and its correspondents unless such notice is given as aforesaid.

(f) Role of L/C Issuer. Each Lender and the Borrowers agree that, in paying any drawing under a Letter of Credit, the L/C Issuer shall not have any responsibility to obtain any document (other than any sight or time draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the L/C Issuer, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the L/C Issuer shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Revolving Lenders or the Required Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document. The Borrowers hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided, however, that this assumption is not

intended to, and shall not, preclude the Borrowers' pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the L/C Issuer, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the L/C Issuer shall be liable or responsible for any of the matters described in Section 2.03(e); provided, however, that anything in such clauses to the contrary notwithstanding, the Borrowers may have a claim against the L/C Issuer, and the L/C Issuer may be liable to the Borrowers, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by the Borrowers which the Borrowers prove, as determined by a final non-appealable judgment of a court of competent jurisdiction, were caused by the L/C Issuer's willful misconduct or gross negligence or the L/C Issuer's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight or time draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, the L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and the L/C Issuer shall not be responsible for the validity or sufficiency of any instrument transferring, endorsing or assigning or purporting to transfer, endorse or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason. The L/C Issuer may send a Letter of Credit or conduct any communication to or from the beneficiary via the Society for Worldwide Interbank Financial Telecommunication ("SWIFT") message or overnight courier, or any other commercially reasonable means of communicating with a beneficiary.

(g) Applicability of ISP and UCP; Limitation of Liability. Unless otherwise expressly agreed by the L/C Issuer and the Borrowers when a Letter of Credit is issued the rules of the ISP shall apply to each standby Letter of Credit. Notwithstanding the foregoing, the L/C Issuer shall not be responsible to the Borrowers for, and the L/C Issuer's rights and remedies against the Borrowers shall not be impaired by, any action or inaction of the L/C Issuer required or permitted under any law, order, or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including the Law or any order of a jurisdiction where the L/C Issuer or the beneficiary is located, the practice stated in the ISP or UCP, as applicable, or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade - International Financial Services Association (BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such law or practice.

(h) Letter of Credit Fees. The Borrowers shall pay to the Administrative Agent for the account of each Revolving Lender in accordance, subject to Section 2.15, with its Applicable Revolving Percentage a Letter of Credit fee (the "Letter of Credit Fee") for each Letter of Credit equal to the Applicable Rate for the Letter of Credit Fee times the daily amount available to be drawn under such Letter of Credit. Letter of Credit Fees shall be (1) due and payable on the first Business Day following each fiscal quarter end, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand and (2) computed on a quarterly basis in arrears. Notwithstanding the foregoing, in no event shall the Designated Borrower be liable in any respect for any Letter of Credit Fee with respect to any Letter of Credit that was not requested by and for the account of the Designated Borrower. If there is any change in the Applicable Rate during any quarter, the daily amount available to be drawn under each Letter of Credit shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect.

(i) Documentary and Processing Charges Payable to L/C Issuer. The Borrowers (other than the Designated Borrower) shall pay with respect to all Letters of Credit, and the Designated Borrower shall pay with respect to Letters of Credit requested by and for the account of the Designated Borrower directly to the L/C Issuer for its own account a fronting fee with respect to each Letter of Credit, at the rate per annum specified in the Fee Letter, computed on the daily amount available to be drawn under such Letter of Credit on a quarterly basis in arrears. Such fronting fee shall only apply in the event there are two (2) or more Lenders and shall be due and payable on or prior to the date that is ten (10) Business Days following each fiscal quarter end, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. In addition, the Borrowers (other than the Designated Borrower) shall pay with respect to all Letters of Credit, and the Designated Borrower shall pay with respect to Letters of Credit requested by and for the account of the Designated Borrower, directly to the L/C Issuer for its own account the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of the L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

(j) Conflict with Issuer Documents. In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall control.

(k) Letters of Credit Issued for Subsidiaries. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary, the Company shall be obligated to reimburse the L/C Issuer hereunder for any and all drawings under such Letter of Credit. The Company hereby acknowledge that the issuance of Letters of Credit for the account of Subsidiaries inures to the benefit of the Company, and that the Company's business derives substantial benefits from the businesses of such Subsidiaries.

#### **2.04 Swingline Loans**

(a) The Swingline. Subject to the terms and conditions set forth herein, the Swingline Lender, in reliance upon the agreements of the other Lenders set forth in this Section, may in its sole discretion make loans to the Company (each such loan, a "Swingline Loan"). Each such Swingline Loan may be made, subject to the terms and conditions set forth herein, to the Company, in Dollars, from time to time on any Business Day. During the Availability Period in an aggregate amount not to exceed at any time outstanding the amount of the Swingline Sublimit, notwithstanding the fact that such Swingline Loans, when aggregated with the Applicable Revolving Percentage of the Outstanding Amount of Revolving Loans and L/C Obligations of the Lender acting as Swingline Lender, may exceed the amount of such Lender's Revolving Commitment; provided, however, that (i) after giving effect to any Swingline Loan, (A) the Total Revolving Outstandings shall not exceed the Revolving Facility at such time, and (B) the Revolving Exposure of any Revolving Lender at such time shall not exceed such Lender's Revolving Commitment, (ii) the Company shall not use the proceeds of any Swingline Loan to refinance any outstanding Swingline Loan, and (iii) the Swingline Lender shall not be under any obligation to make any Swingline Loan if it shall determine (which determination shall be conclusive and binding absent manifest error) that it has, or by such Credit Extension may have, Fronting Exposure. Within the foregoing limits, and subject to the other terms and conditions hereof, the Company may borrow under this Section, prepay under Section 2.05, and reborrow under this Section. Each Swingline Loan shall bear interest only at a rate based on the Base

Rate plus the Applicable Rate. Immediately upon the making of a Swingline Loan, each Revolving Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Swingline Lender a risk participation in such Swingline Loan in an amount equal to the product of such Revolving Lender's Applicable Revolving Percentage times the amount of such Swingline Loan.

(b) Borrowing Procedures.

(i) Each Swingline Borrowing shall be made upon the Company's irrevocable notice to the Swingline Lender and the Administrative Agent, which may be given by: (A) telephone or (B) a Swingline Loan Notice; provided that any telephonic notice must be confirmed immediately by delivery to the Swingline Lender and the Administrative Agent of a Swingline Loan Notice. Each such Swingline Loan Notice must be received by the Swingline Lender and the Administrative Agent not later than 10:00 a.m. on the requested borrowing date, and shall specify (i) the amount to be borrowed, which shall be a minimum of \$100,000, and (ii) the requested date of the Borrowing (which shall be a Business Day). Promptly after receipt by the Swingline Lender of any Swingline Loan Notice, the Swingline Lender will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has also received such Swingline Loan Notice and, if not, the Swingline Lender will notify the Administrative Agent (by telephone or in writing) of the contents thereof. Unless the Swingline Lender has received notice (by telephone or in writing) from the Administrative Agent (including at the request of any Revolving Lender) prior to 11:00 a.m. on the date of the proposed Swingline Borrowing (A) directing the Swingline Lender not to make such Swingline Loan as a result of the limitations set forth in the first proviso to the first sentence of Section 2.04(a), or (B) that one or more of the applicable conditions specified in Article IV is not then satisfied, then, subject to the terms and conditions hereof, the Swingline Lender may, make the amount of its Swingline Loan available to the Company.

(c) Refinancing of Swingline Loans.

(i) The Swingline Lender at any time in its sole discretion may request, on behalf of the Company (which hereby irrevocably authorizes the Swingline Lender to so request on its behalf), that each Revolving Lender make a Base Rate Loan in an amount equal to such Lender's Applicable Revolving Percentage of the amount of Swingline Loans then outstanding. Such request shall be made in writing (which written request shall be deemed to be a Loan Notice for purposes hereof) and in accordance with the requirements of Section 2.02, without regard to the minimum and multiples specified therein for the principal amount of Base Rate Loans, but subject to the unutilized portion of the Revolving Facility and the conditions set forth in Section 4.02. The Swingline Lender shall furnish the Company with a copy of the applicable Loan Notice promptly after delivering such notice to the Administrative Agent. Each Revolving Lender shall make an amount equal to its Applicable Revolving Percentage of the amount specified in such Loan Notice available to the Administrative Agent in immediately available funds (and the Administrative Agent may apply Cash Collateral available with respect to the applicable Swingline Loan) for the account of the Swingline Lender at the Administrative Agent's Office not later than 10:00 a.m. on the day specified in such Loan Notice, whereupon, subject to Section 2.04(c)(ii), each Revolving Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the Company in such amount. The Administrative Agent shall remit the funds so received to the Swingline Lender.

(ii) If for any reason any Swingline Loan cannot be refinanced by such a Revolving Borrowing in accordance with Section 2.04(c)(i), the request for Base Rate Loans submitted by the Swingline Lender as set forth herein shall be deemed to be a request by the Swingline Lender that each of the Revolving Lenders fund its risk participation in the relevant Swingline Loan and each Revolving Lender's payment to the Administrative Agent for the account of the Swingline Lender pursuant to Section 2.04(c)(i) shall be deemed payment in respect of such participation.

(iii) If any Revolving Lender fails to make available to the Administrative Agent for the account of the Swingline Lender any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.04(c) by the time specified in Section 2.04(c)(i), the Swingline Lender shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Swingline Lender at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the Swingline Lender in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Swingline Lender in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Revolving Loan included in the relevant Revolving Borrowing or funded participation in the relevant Swingline Loan, as the case may be. A certificate of the Swingline Lender submitted to any Lender (through the Administrative Agent) with respect to any amounts owing under this clause (iii) shall be conclusive absent manifest error.

(iv) Each Revolving Lender's obligation to make Revolving Loans or to purchase and fund risk participations in Swingline Loans pursuant to this Section 2.04(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the Swingline Lender, the Borrowers or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided however, that each Revolving Lender's obligation to make Revolving Loans pursuant to this Section 2.04(c) is subject to the conditions set forth in Section 4.02 (other than delivery by the Borrowers of a Loan Notice). No such funding of risk participations shall relieve or otherwise impair the obligation of the Borrowers (other than the Designated Borrower) to repay Swingline Loans, together with interest as provided herein.

(d) Repayment of Participations.

(i) At any time after any Revolving Lender has purchased and funded a risk participation in a Swingline Loan, if the Swingline Lender receives any payment on account of such Swingline Loan, the Swingline Lender will distribute to such Revolving Lender its Applicable Revolving Percentage thereof in the same funds as those received by the Swingline Lender.

(ii) If any payment received by the Swingline Lender in respect of principal or interest on any Swingline Loan is required to be returned by the Swingline Lender under any of the circumstances described in Section 11.05 (including pursuant to any settlement entered into by the Swingline Lender in its discretion), each Revolving Lender shall pay to the Swingline Lender its Applicable Revolving Percentage thereof on

demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned, at a rate per annum equal to the Federal Funds Rate. The Administrative Agent will make such demand upon the request of the Swingline Lender. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Interest for Account of Swingline Lender. The Swingline Lender shall be responsible for invoicing the Borrowers (other than the Designated Borrower) for interest on the Swingline Loans. Until each Revolving Lender funds its Base Rate Loan or risk participation pursuant to this Section to refinance such Revolving Lender's Applicable Revolving Percentage of any Swingline Loan, interest in respect of such Applicable Revolving Percentage shall be solely for the account of the Swingline Lender.

(f) Payments Directly to Swingline Lender. The Company shall make all payments of principal and interest in respect of the Swingline Loans directly to the Swingline Lender.

## **2.05 Prepayments**

### (a) Optional

(i) The Borrowers may, upon notice to the Administrative Agent pursuant to delivery to the Administrative Agent of a Notice of Loan Prepayment, at any time or from time to time voluntarily prepay Term Loans and Revolving Loans in whole or in part without premium or penalty subject to Section 3.05; provided that, unless otherwise agreed by the Administrative Agent, (A) such notice must be received by the Administrative Agent not later than 8:00 a.m. (1) three (3) Business Days prior to any date of prepayment of Eurodollar Rate Loans and (2) on the date of prepayment of Base Rate Loans; (B) any prepayment of Eurodollar Rate Loans shall be in a principal amount of \$1,000,000 or a whole multiple of \$500,000 in excess thereof; and (C) any prepayment of Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Type(s) of Loans to be prepaid and, if Eurodollar Rate Loans are to be prepaid, the Interest Period(s) of such Loans. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's ratable portion of such prepayment (based on such Lender's Applicable Percentage in respect of the relevant Facility). If such notice is given by the Borrowers, the Borrowers shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of principal shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05. Each prepayment of the outstanding Term Loans pursuant to this Section 2.05(a) shall be applied pro rata to the principal repayment installments thereof. Subject to Section 2.15, such prepayments shall be paid to the Lenders in accordance with their respective Applicable Percentages in respect of each of the relevant Facilities.

(ii) The Borrowers may, upon notice to the Swingline Lender pursuant to delivery to the Swingline Lender of a Notice of Loan Prepayment (with a copy to the Administrative Agent), at any time or from time to time, voluntarily prepay Swingline Loans in whole or in part without premium or penalty; provided that, unless otherwise agreed by the Swingline Lender, (A) such notice must be received by the Swingline Lender and the Administrative Agent not later than 10:00 a.m. on the date of the

prepayment, and (B) any such prepayment shall be in a minimum principal amount of \$100,000 or a whole multiple of \$100,000 in excess hereof (or, if less, the entire principal thereof then outstanding). Each such notice shall specify the date and amount of such prepayment. If such notice is given by the Borrowers, the Borrowers shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of principal shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05.

(b) Mandatory.

(i) Revolving Outstandings. If for any reason the Total Revolving Outstandings at any time exceed the Revolving Facility at such time, the Borrowers (other than the Designated Borrower) shall immediately prepay Revolving Loans, Swingline Loans and L/C Borrowings (together with all accrued but unpaid interest thereon) and/or Cash Collateralize the L/C Obligations in an aggregate amount equal to such excess; provided, however, that the Borrowers shall not be required to Cash Collateralize the L/C Obligations pursuant to this Section 2.05(b)(i) unless, after the prepayment of the Revolving Loans and Swingline Loans, the Total Revolving Outstandings exceed the Revolving Facility at such time.

(ii) Application of Other Payments. Except as otherwise provided in Section 2.15, prepayments of the Revolving Facility made pursuant to this Section 2.05(b), first, shall be applied ratably to the L/C Borrowings and the Swingline Loans, second, shall be applied to the outstanding Revolving Loans, and, third, shall be used to Cash Collateralize the remaining L/C Obligations. Upon the drawing of any Letter of Credit that has been Cash Collateralized, the funds held as Cash Collateral shall be applied (without any further action by or notice to or from the Borrowers or any other Loan Party or any Defaulting Lender that has provided Cash Collateral) to reimburse the L/C Issuer or the Revolving Lenders, as applicable. Notwithstanding the foregoing, prepayments of the Revolving Facility by the Designated Borrower shall be applied only with respect to Secured Obligations arising in respect of Designated Borrower Loans and Letters of Credit requested by and for the account of the Designated Borrower, with any excess returned to the Designated Borrower.

Within the parameters of the applications set forth above, prepayments pursuant to this Section 2.05(b) shall be applied first to Base Rate Loans and then to Eurodollar Rate Loans in direct order of Interest Period maturities. All prepayments under this Section 2.05(b) shall be subject to Section 3.05, but otherwise without premium or penalty, and shall be accompanied by interest on the principal amount prepaid through the date of prepayment.

**2.06 Termination or Reduction of Commitments**.

(a) Optional. The Borrowers may, upon notice to the Administrative Agent, terminate the Revolving Facility, the Letter of Credit Sublimit or the Swingline Sublimit, or from time to time permanently reduce the Revolving Facility, the Letter of Credit Sublimit or the Swingline Sublimit; provided that (i) any such notice shall be received by the Administrative Agent not later than 8:00 a.m. five (5) Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of \$10,000,000 or any whole multiple of \$1,000,000 in excess thereof and (iii) the Borrowers shall not terminate or reduce (A) the Revolving Facility if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Revolving Outstandings would exceed the Revolving Facility, (B) the Letter



of Credit Sublimit if, after giving effect thereto, the Outstanding Amount of L/C Obligations not fully Cash Collateralized hereunder would exceed the Letter of Credit Sublimit, or (C) the Swingline Sublimit if, after giving effect thereto and to any concurrent prepayments hereunder, the Outstanding Amount of Swingline Loans would exceed the Letter of Credit Sublimit.

(b) Mandatory.

(i) The aggregate Term Commitments shall be automatically and permanently reduced to zero on the date of the Term Borrowing.

(ii) If after giving effect to any reduction or termination of Revolving Commitments under this Section 2.06, the Letter of Credit Sublimit or the Swingline Sublimit exceeds the Revolving Facility at such time, the Letter of Credit Sublimit or the Swingline Sublimit, as the case may be, shall be automatically reduced by the amount of such excess.

(c) Application of Commitment Reductions; Payment of Fees. The Administrative Agent will promptly notify the Lenders of any termination or reduction of the Letter of Credit Sublimit, Swingline Sublimit or the Revolving Commitment under this Section 2.06. Upon any reduction of the Revolving Commitments, the Revolving Commitment of each Revolving Lender shall be reduced by such Lender's Applicable Revolving Percentage of such reduction amount. All fees in respect of the Revolving Facility accrued until the effective date of any termination of the Revolving Facility shall be paid on the effective date of such termination.

**2.07 Repayment of Loans**.

(a) Term Loans. The Company shall repay to the Term Lenders the aggregate principal amount of all Term Loans outstanding on the last day of each month commencing on July 31, 2016 in the amount of \$833,333.33 per month (which amounts shall be reduced as a result of the application of prepayments in accordance with the order of priority set forth in Section 2.05), unless accelerated sooner pursuant to Section 8.02; provided, however, that (i) the final principal repayment installment of the Term Loans shall be repaid on the Maturity Date for the Term Facility and in any event shall be in an amount equal to the aggregate principal amount of all Term Loans outstanding on such date and (ii) (A) if any principal repayment installment to be made by the Company (other than principal repayment installments on Eurodollar Rate Loans) shall come due on a day other than a Business Day, such principal repayment installment shall be due on the next succeeding Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be and (B) if any principal repayment installment to be made by the Company on a Eurodollar Rate Loan shall come due on a day other than a Business Day, such principal repayment installment shall be extended to the next succeeding Business Day unless the result of such extension would be to extend such principal repayment installment into another calendar month, in which event such principal repayment installment shall be due on the immediately preceding Business Day.

(b) Revolving Loans. The Borrowers shall repay to the Revolving Lenders on the Maturity Date for the Revolving Facility the aggregate principal amount of all Revolving Loans outstanding on such date; provided, however, the Designated Borrower shall not be required to pay more than the Designated Borrower Share of the Revolving Loans.

(c) Swingline Loans. The Company shall repay each Swingline Loan on the earlier to occur of (i) the date ten (10) Business Days after such Loan is made and (ii) the Maturity Date for the Revolving Facility.

## **2.08 Interest and Default Rate**

(a) Interest. Subject to the provisions of Section 2.08(b), (i) each Eurodollar Rate Loan under a Facility shall bear interest on the outstanding principal amount thereof for each Interest Period from the applicable borrowing date at a rate per annum equal to the Eurodollar Rate for such Interest Period plus the Applicable Rate for such Facility; (ii) each Base Rate Loan under a Facility shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate for such Facility; and (iii) each Swingline Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate for the Revolving Facility. To the extent that any calculation of interest or any fee required to be paid under this Agreement shall be based on (or result in) a calculation that is less than zero, such calculation shall be deemed zero for purposes of this Agreement.

### **(b) Default Rate**

(i) If any amount of principal of any Loan is not paid when due, whether at stated maturity, by acceleration or otherwise, such amount (at the request of Required Lenders) shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(ii) If any amount (other than principal of any Loan) payable by the Borrowers under any Loan Document is not paid when due, whether at stated maturity, by acceleration or otherwise, then upon the request of the Required Lenders such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iii) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest Payments. Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

## **2.09 Fees**

In addition to certain fees described in subsections (h) and (i) of Section 2.03:

(a) Commitment Fee. The Borrowers shall pay to the Administrative Agent for the account of each Revolving Lender in accordance with its Applicable Revolving Percentage, a commitment fee equal to 0.30% times the actual daily amount by which the Revolving Facility exceeds the sum of (i) the Outstanding Amount of Revolving Loans and (ii) the Outstanding Amount of L/C Obligations. The commitment fee shall accrue at all times during the Availability Period, including at any time during which one or more of the conditions in Article IV is not met, and shall be due and payable quarterly in arrears on the last Business Day of each March, June, September, and December commencing with the first such date to occur after the Closing

Date, and on the last day of the Availability Period for the Revolving Facility. If the Company maintains an average daily balance of at least \$32,500,000 in one or more deposit accounts with Bank of America during the period for which the Commitment Fee is calculated, then the Borrowers are not obligated to pay any portion of the commitment fee calculated with respect to that period. The Commitment Fee shall be calculated quarterly in arrears. Notwithstanding anything to the contrary herein or the other Loan Documents, in no event shall the Designated Borrower have any liability for more than its share of the Commitment Fee as determined by Company and reported on each Compliance Certificate.

(b) Other Fees.

(i) The Borrowers shall pay to the Administrative Agent, fees in the amounts and at the times specified in the Fee Letter. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

(ii) The Borrowers shall pay to the Lenders, such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

(iii) Notwithstanding anything to the contrary herein or the other Loan Documents, in no event shall the Designated Borrower have any liability for more than the Designated Borrower Share of such other fees.

**2.10 Computation of Interest and Fees; Retroactive Adjustments of Applicable Rate**

(a) Computation of Interest and Fees. All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to the Eurodollar Rate) shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365 day year). Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(a), bear interest for one (1) day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

**2.11 Evidence of Debt**

(a) Maintenance of Accounts. The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrowers and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrowers hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrowers shall execute and deliver to such Lender (through the Administrative Agent) a Note,

which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

(b) Maintenance of Records. In addition to the accounts and records referred to in Section 2.11(a), each Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Lender of participations in Letters of Credit and Swingline Loans. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

## **2.12 Payments Generally; Administrative Agent's Clawback**

(a) General. All payments to be made by the Borrowers shall be made free and clear of and without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrowers hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in immediately available funds not later than 11:00 a.m. on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage in respect of the relevant Facility (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 11:00 a.m., shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. Subject to Section 2.07(a) and as otherwise specifically provided for in this Agreement, if any payment to be made by the Borrowers shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of Eurodollar Rate Loans (or, in the case of any Borrowing of Base Rate Loans, prior to 9:00 a.m. on the date of such Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 (or, in the case of a Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02) and may, in reliance upon such assumption, make available to the Borrowers a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrowers severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to the Borrowers to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by the Borrowers, the interest rate applicable to Base Rate Loans. If the Borrowers and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrowers the amount of such interest paid by the Borrowers for such period. If such Lender pays its share of the applicable

Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrowers shall be without prejudice to any claim a Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(i) Payments by Borrowers; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from a Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the L/C Issuer hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Appropriate Lenders or the L/C Issuer, as the case may be, the amount due. In such event, if a Borrower has not in fact made such payment, then each of the Appropriate Lenders or the L/C Issuer, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or the L/C Issuer, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

A notice of the Administrative Agent to any Lender or the Borrowers with respect to any amount owing under this subsection (b) shall be conclusive, absent manifest error.

(c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrowers by the Administrative Agent because the conditions to the applicable Credit Extension set forth in Article IV are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Term Loans and Revolving Loans, to fund participations in Letters of Credit and Swingline Loans and to make payments pursuant to Section 11.04(c) are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any payment under Section 11.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under Section 11.04(c).

(e) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

(f) Pro Rata Treatment. Except to the extent otherwise provided herein: (i) each Borrowing (other than Swingline Borrowings) shall be made from the Appropriate Lenders, each payment of fees under Section 2.09 and 2.03 shall be made for account of the Appropriate Lenders, and each termination or reduction of the amount of the Commitments shall be applied to the respective Commitments of the Lenders, pro rata according to the amounts of their respective Commitments; (ii) each Borrowing shall be allocated pro rata among the Lenders

according to the amounts of their respective Commitments (in the case of the making of Revolving Loans) or their respective Loans that are to be included in such Borrowing (in the case of conversions and continuations of Loans); (iii) each payment or prepayment of principal of Loans by the Borrowers shall be made for account of the Appropriate Lenders pro rata in accordance with the respective unpaid principal amounts of the Loans held by them; and (iv) each payment of interest on Loans by the Borrowers shall be made for account of the Appropriate Lenders pro rata in accordance with the amounts of interest on such Loans then due and payable to the respective Appropriate Lenders.

### **2.13 Sharing of Payments by Lenders**

If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of (a) Obligations in respect of any of the Facilities due and payable to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations due and payable to such Lender at such time to (ii) the aggregate amount of the Obligations in respect of the Facilities due and payable to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations in respect of the Facilities due and payable to all Lenders hereunder and under the other Loan Documents at such time obtained by all the Lenders at such time or (b) Obligations in respect of any of the Facilities owing (but not due and payable) to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations owing (but not due and payable) to such Lender at such time to (ii) the aggregate amount of the Obligations in respect of the Facilities owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations in respect of the Facilities owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time obtained by all of the Lenders at such time, then, in each case under clauses (a) and (b) above, the Lender receiving such greater proportion shall (A) notify the Administrative Agent of such fact, and (B) purchase (for cash at face value) participations in the Loans and subparticipations in L/C Obligations and Swingline Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of Obligations in respect of the Facilities then due and payable to the Lenders or owing (but not due and payable) to the Lenders, as the case may be, provided that:

(a) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(b) the provisions of this Section shall not be construed to apply to (x) any payment made by or on behalf of the Borrowers pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), (y) the application of Cash Collateral provided for in Section 2.14, or (z) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or subparticipations in L/C Obligations or Swingline Loans to any assignee or participant, other than an assignment to any Loan Party or any Affiliate thereof (as to which the provisions of this Section shall apply).

Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation.

## **2.14 Cash Collateral**

(a) Certain Credit Support Events. If (i) the L/C Issuer has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Borrowing, (ii) as of the Letter of Credit Expiration Date, any L/C Obligation for any reason remains outstanding, (iii) the Borrowers shall be required to provide Cash Collateral pursuant to Section 2.05 or 8.02(c), or (iv) there shall exist a Defaulting Lender, the Borrowers shall immediately (in the case of clause (iii) above) or within one (1) Business Day (in all other cases) following any request by the Administrative Agent or the L/C Issuer, provide Cash Collateral in an amount not less than the applicable Minimum Collateral Amount (determined in the case of Cash Collateral provided pursuant to clause (iv) above, after giving effect to Section 2.15(a)(iv) and any Cash Collateral provided by the Defaulting Lender).

(b) Grant of Security Interest. The Company, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to (and subjects to the control of) the Administrative Agent, for the benefit of the Administrative Agent, the L/C Issuer and the Lenders, and agrees to maintain, a first priority security interest in all such cash, deposit accounts and all balances therein, and all other property so provided as collateral pursuant hereto, and in all proceeds of the foregoing, all as security for the obligations to which such Cash Collateral may be applied pursuant to Section 2.14(c). If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent or the L/C Issuer as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, the Company will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency. All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in one or more blocked, non-interest bearing deposit accounts at Bank of America. The Company shall pay on demand therefor from time to time all customary account opening, activity and other administrative fees and charges in connection with the maintenance and disbursement of Cash Collateral.

(c) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under any of this Section 2.14 or Sections 2.03, 2.05, 2.15 or 8.02 in respect of Letters of Credit shall be held and applied to the satisfaction of the specific L/C Obligations, obligations to fund participations therein (including, as to Cash Collateral provided by a Revolving Lender that is a Defaulting Lender, any interest accrued on such obligation) and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may be provided for herein.

(d) Release. Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure or to secure other obligations shall be released promptly following (i) the elimination of the applicable Fronting Exposure or other obligations giving rise thereto (including by the termination of Defaulting Lender status of the applicable Revolving Lender (or, as appropriate, its assignee following compliance with Section 11.06(b)(vi))) or (ii) the determination by the Administrative Agent and the L/C Issuer that there exists excess Cash Collateral; provided, however, (A) any such release shall be without prejudice to, and any disbursement or other transfer of Cash Collateral shall be and remain subject to, any other Lien conferred under the Loan Documents and the other applicable provisions of the Loan Documents,

and (B) the Person providing Cash Collateral and the L/C Issuer may agree that Cash Collateral shall not be released but instead held to support future anticipated Fronting Exposure or other obligations.

## **2.15 Defaulting Lenders**

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

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of "Required Lenders" and Section 11.01.

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 11.08 shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to the L/C Issuer or Swingline Lender hereunder; third, to Cash Collateralize the L/C Issuer's Fronting Exposure with respect to such Defaulting Lender in accordance with Section 2.14; fourth, as the Borrowers may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; fifth, if so determined by the Administrative Agent and the Borrowers, to be held in a deposit account and released pro rata in order to (A) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (B) Cash Collateralize the L/C Issuer's future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with Section 2.14; sixth, to the payment of any amounts owing to the Lenders, the L/C Issuer or Swingline Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the L/C Issuer or the Swingline Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; seventh, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrowers as a result of any judgment of a court of competent jurisdiction obtained by the Borrowers against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and eighth, to such Defaulting Lender or as otherwise as may be required under the Loan Documents in connection with any Lien conferred thereunder or directed by a court of competent jurisdiction; provided that if (1) such payment is a payment of the principal amount of any Loans or L/C Borrowings in respect of which such Defaulting Lender has not fully funded its appropriate share, and (2) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Obligations owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or L/C Obligations owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in L/C Obligations and Swingline Loans are held by the Lenders pro rata in accordance with the Commitments hereunder without giving effect



to Section 2.15(a)(v). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.15(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees.

(A) Fees. No Defaulting Lender shall be entitled to receive any fee payable under Section 2.09(a) for any period during which that Lender is a Defaulting Lender (and the Borrowers shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(B) Letter of Credit Fees. Each Defaulting Lender shall be entitled to receive Letter of Credit Fees for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Applicable Revolving Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 2.14.

(C) Defaulting Lender Fees. With respect to any Letter of Credit Fee not required to be paid to any Defaulting Lender pursuant to clause (A) or (B) above, the Borrowers shall (1) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in L/C Obligations that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (2) pay to the L/C Issuer the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such L/C Issuer's Fronting Exposure to such Defaulting Lender, and (3) not be required to pay the remaining amount of any such fee.

(iv) Reallocation of Applicable Revolving Percentages to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in L/C Obligations and Swingline Loans shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Applicable Revolving Percentages (calculated without regard to such Defaulting Lender's Commitment) but only to the extent that such reallocation does not cause the aggregate Revolving Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Commitment. No reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(v) Cash Collateral, Repayment of Swingline Loans. If the reallocation described in clause (a)(v) above cannot, or can only partially, be effected, the Borrowers shall, without prejudice to any right or remedy available to it hereunder or under applicable Law, (A) first, prepay Swingline Loans in an amount equal to the Swingline Lender's Fronting Exposure and (B) second, Cash Collateralize the L/C Issuer's Fronting Exposure in accordance with the procedures set forth in Section 2.14.

(b) Defaulting Lender Cure. If the Borrowers, the Administrative Agent, Swingline Lender and the L/C Issuer agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit and Swingline Loans to be held on a pro rata basis by the Lenders in accordance with their Applicable Percentages (without giving effect to Section 2.15(a)(iv)), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrowers while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

## **2.16 Designated Borrower.**

(a) Designated Borrower. As of the Closing Date, SMC Netherlands is the only Designated Borrower hereunder. Prior to any other Subsidiary becoming a Designated Borrower, the Administrative Agent and such Lenders shall have received such supporting resolutions, incumbency certificates, and other documents or information, in form, content and scope reasonably satisfactory to the Administrative Agent, as may be required by the Administrative Agent, and Notes signed by such new Borrowers to the extent any Lender so requires.

(b) Obligations. Except as otherwise provided herein, the Secured Obligations of the Borrowers shall be joint and several in nature regardless of which such Person actually receives Credit Extensions hereunder or the amount of such Credit Extensions received or the manner in which the Administrative Agent, the L/C Issuer or any Lender accounts for such Credit Extensions on its books and records. Notwithstanding anything contained to the contrary herein or in any Loan Document, (A) no Foreign Borrower shall be obligated with respect to any Secured Obligations of any U.S. Borrower or of any Domestic Subsidiary, (B) the Secured Obligations owed by Foreign Borrowers shall be several, and not joint, with the Secured Obligations of the U.S. Borrowers, (C) no Excluded Subsidiary shall be obligated as a Guarantor under Article X or otherwise with respect to the Secured Obligations of any U.S. Borrower or any Domestic Subsidiary, and (D) no Excluded Subsidiary shall be required to grant a Lien on, or otherwise pledge, any of its assets or properties as security for any of the Secured Obligations or be a party to any Collateral Document.

(c) Appointment. The Designated Borrower hereby irrevocably appoints the Company to act as its agent for all purposes of this Agreement and the other Loan Documents and agrees that (i) the Company may execute such documents on behalf of Designated Borrower as the Company deems appropriate in its sole discretion and Designated Borrower shall be obligated by all of the terms of any such document executed on its behalf, (ii) any notice or communication delivered by the Administrative Agent or the Lender to the Company shall be deemed delivered to Designated Borrower and (iii) the Administrative Agent or the Lenders may accept, and be permitted to rely on, any document, instrument or agreement executed by the Company on behalf of each of the Loan Parties.

## ARTICLE III

### TAXES, YIELD PROTECTION AND ILLEGALITY

#### 3.01 Taxes.

(a) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.

(i) Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable Laws. If any applicable Laws (as determined in the good faith discretion of the Administrative Agent) require the deduction or withholding of any Tax from any such payment by the Administrative Agent or a Loan Party, then the Administrative Agent or such Loan Party shall be entitled to make such deduction or withholding, upon the basis of the information and documentation to be delivered pursuant to subsection (e) below.

(ii) If any Loan Party or the Administrative Agent shall be required by the Code to withhold or deduct any Taxes, including both United States federal backup withholding and withholding taxes, from any payment, then (A) the Administrative Agent shall withhold or make such deductions as are determined by the Administrative Agent to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) the Administrative Agent shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with the Code, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Loan Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(iii) If any Loan Party or the Administrative Agent shall be required by any applicable Laws other than the Code to withhold or deduct any Taxes from any payment, then (A) such Loan Party or the Administrative Agent, as required by such Laws, shall withhold or make such deductions as are determined by it to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) such Loan Party or the Administrative Agent, to the extent required by such Laws, shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with such Laws, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Loan Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) Payment of Other Taxes by the Loan Parties. Without limiting the provisions of subsection (a) above, the Loan Parties shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(c) Tax Indemnifications.

(i) Each of the Loan Parties shall, and does hereby, jointly and severally indemnify each Recipient, and shall make payment in respect thereof within thirty (30) 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 3.01) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrowers by a Lender or the L/C Issuer (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender or the L/C Issuer, shall be conclusive absent manifest error. The Company shall also, and does hereby indemnify the Administrative Agent, and shall make payment in respect thereof within thirty (30) days after demand therefor, for any amount which a Lender or the L/C Issuer for any reason fails to pay indefeasibly to the Administrative Agent as required pursuant to Section 3.01(c)(ii) below.

(ii) Each Lender and the L/C Issuer shall, and does hereby, severally indemnify and shall make payment in respect thereof within ten (10) days after demand therefor, (A) the Administrative Agent against any Indemnified Taxes attributable to such Lender or the L/C Issuer (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (B) the Administrative Agent and the Loan Parties, as applicable, against any Taxes attributable to such Lender's failure to comply with the provisions of Section 11.06(d) relating to the maintenance of a Participant Register and (C) the Administrative Agent and the Loan Parties, as applicable, against any Excluded Taxes attributable to such Lender or the L/C Issuer, in each case, that are payable or paid by the Administrative Agent or a Loan Party in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such 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 any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender and the L/C Issuer hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender or the L/C Issuer, as the case may be, under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this clause (ii).

(d) Evidence of Payments. As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority, as provided in this Section 3.01, the Borrowers shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) Status of Lenders; Tax Documentation.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrowers and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrowers or the Administrative Agent as

will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrowers or the Administrative Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by the Borrowers or the Administrative Agent as will enable the Borrowers or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 3.01(e)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that the Borrower is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to the Borrowers and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrowers or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrowers and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN-E (or W-8BEN, as applicable) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN-E (or W-8BEN, as applicable) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) executed originals of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit M-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the applicable Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C)

of the Code (a “ U.S. Tax Compliance Certificate ”) and (y) executed copies of IRS Form W-8BEN-E (or W-8BEN, as applicable); or

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN-E (or W-8BEN, as applicable), a U.S. Tax Compliance Certificate substantially in the form of Exhibit M-2 or Exhibit M-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit M-4 on behalf of each such direct and indirect partner;

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

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrowers and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrowers or the Administrative Agent such documentation prescribed by applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrowers or the Administrative Agent as may be necessary for the Borrowers and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender’s obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), “FATCA” shall include any amendments made to FATCA after the date of this Agreement.

(iii) Each Lender agrees that if any form or certification it previously delivered pursuant to this Section 3.01 expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrowers and the Administrative Agent in writing of its legal inability to do so.

(f) Treatment of Certain Refunds. Unless required by applicable Laws, at no time shall the Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender or the L/C Issuer, or have any obligation to pay to any Lender or the L/C Issuer, any refund of Taxes withheld or deducted from funds paid for the account of such Lender or the L/

C Issuer, as the case may be. If any Recipient determines, in its sole discretion exercised in good faith, that it has received a refund (whether received in the form of a cash payment or in the form of a credit against Taxes otherwise owed) of any Taxes as to which it has been indemnified by any Loan Party or with respect to which any Loan Party has paid additional amounts pursuant to this Section 3.01, it shall pay to such Loan Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by such Loan Party under this Section 3.01 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by such Recipient, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that each Loan Party, upon the request of the Recipient, agrees to repay the amount paid over to such Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Recipient in the event the Recipient is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this subsection, in no event will the applicable Recipient be required to pay any amount to such Loan Party pursuant to this subsection the payment of which would place the Recipient in a less favorable net after-Tax position than such Recipient 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 subsection shall not be construed to require any Recipient to make available its tax returns (or any other information relating to its taxes that it deems confidential) to any Loan Party or any other Person.

(g) Survival. Each party's obligations under this Section 3.01 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender or the L/C Issuer, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

### **3.02 Illegality**

If any Lender determines that (a) any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its Lending Office to perform any of its obligations hereunder or to make, maintain or fund or charge interest with respect to any Credit Extension or to determine or charge interest rates based upon the Eurodollar Rate, or (b) any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to the Borrowers through the Administrative Agent, (i) any obligation of such Lender to issue, make, maintain, fund or charge interest with respect to any such Credit Extension or continue Eurodollar Rate Loans or to convert Base Rate Loans to Eurodollar Rate Loans shall be suspended, and (ii) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Eurodollar Rate component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurodollar Rate component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrowers that the circumstances giving rise to such determination no longer exist; provided, that, with respect to clause (b), such Lender is treating other similarly situated borrowers in the same manner. Upon receipt of such notice, (i) the Borrowers shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Eurodollar Rate Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurodollar Rate component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Rate Loans and (ii) if such notice asserts the illegality of such Lender determining or charging interest

rates based upon the Eurodollar Rate, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Eurodollar Rate component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the Eurodollar Rate. Notwithstanding the foregoing, and despite the illegality for such a Lender to make, maintain or fund Eurodollar Rate Loans or Base Rate Loans as to which the interest rate determined by reference to the Eurodollar Rate, that Lender shall remain committed to make Base Rate Loans subject to the terms and conditions of this Agreement (the interest rate on which is determined without reference to the Eurodollar Rate component of the Base Rate) and shall be entitled to recover interest at the Base Rate. Upon any such prepayment or conversion, the Borrowers shall also pay accrued interest on the amount so prepaid or converted.

### **3.03 Inability to Determine Rates**

(a) If in connection with any request for a Eurodollar Rate Loan or a conversion to or continuation thereof, (i) the Administrative Agent determines that (A) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such Eurodollar Rate Loan, or (B) adequate and reasonable means do not exist for determining the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan or in connection with an existing or proposed Base Rate Loan (in each case with respect to clause (i), “Impacted Loans”), or (ii) the Administrative Agent or the Required Lenders determine that for any reason Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will promptly so notify the Borrowers and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Eurodollar Rate Loans shall be suspended (to the extent of the affected Eurodollar Rate Loans or Interest Periods), and (y) in the event of a determination described in the preceding sentence with respect to the Eurodollar Rate component of the Base Rate, the utilization of the Eurodollar Rate component in determining the Base Rate shall be suspended, in each case until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrowers may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar Rate Loans (to the extent of the affected Eurodollar Rate Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein.

(b) Notwithstanding the foregoing, if the Administrative Agent has made the determination described in clause (a)(i) of this Section, the Administrative Agent in consultation with the Borrowers and the Required Lenders, may establish an alternative interest rate for the Impacted Loans, in which case, such alternative rate of interest shall apply with respect to the Impacted Loans until (1) the Administrative Agent revokes the notice delivered with respect to the Impacted Loans under clause (a)(i) of this Section, (2) the Administrative Agent or the Required Lenders notify the Administrative Agent and the Borrowers that such alternative interest rate does not adequately and fairly reflect the cost to the Lenders of funding the Impacted Loans, or (3) any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to such alternative rate of interest or to determine or charge interest rates based upon such rate or any Governmental Authority has imposed material restrictions on the authority of such Lender to do any of the foregoing and provides the Administrative Agent and the Borrowers written notice thereof.



### **3.04 Increased Costs; Reserves on Eurodollar Rate Loans**

(a) Increased Costs Generally. 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 credit extended or participated in by, any Lender (except any reserve requirement contemplated by Section 3.04(e)) or the L/C Issuer;

(ii) subject any Recipient 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, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or the L/C Issuer or the London interbank market any other condition, cost or expense affecting this Agreement or Eurodollar Rate Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making, converting to, continuing or maintaining any Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or the L/C Issuer of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or the L/C Issuer hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or the L/C Issuer, the Borrowers will pay (or cause the applicable Designated Borrower to pay) to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender or the L/C Issuer determines that any Change in Law affecting such Lender or the L/C Issuer or any Lending Office of such Lender or such Lender's or the L/C Issuer's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or the L/C Issuer's capital or on the capital of such Lender's or the L/C Issuer's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit or Swingline Loans held by, such Lender, or the Letters of Credit issued by the L/C Issuer, to a level below that which such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the L/C Issuer's policies and the policies of such Lender's or the L/C Issuer's holding company with respect to capital adequacy), then from time to time the Borrowers will pay (or cause the applicable Designated Borrower to pay) to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender or the L/C Issuer setting forth the amount or amounts necessary to compensate such Lender or the L/C Issuer or its holding company, as the case may be, as specified in subsection (a), (b) or (c) of this Section and delivered to the Borrowers shall be conclusive absent manifest error. The Borrowers shall pay (or cause the Designated Borrower to pay) such Lender or the L/C Issuer, as the case may be, the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Reserves on Eurodollar Rate Loans. The Borrowers shall pay (or cause the Designated Borrower to pay) to each Lender, (i) as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including eurocurrency funds or deposits (currently known as “Eurocurrency liabilities”), additional interest on the unpaid principal amount of each Eurodollar Rate Loan equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive), and (ii) as long as such Lender shall be required to comply with any reserve ratio requirement or analogous requirement of any central banking or financial regulatory authority imposed in respect of the maintenance of the Commitments or the funding of the Loans, such additional costs (expressed as a percentage per annum and rounded upwards, if necessary, to the nearest five decimal places) equal to the actual costs allocated to such Commitment or Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive), which in each case shall be due and payable on each date on which interest is payable on such Loan, provided the Borrowers shall have received at least ten (10) days’ prior notice (with a copy to the Administrative Agent) of such additional interest or costs from such Lender. If a Lender fails to give notice ten (10) days prior to the relevant Interest Payment Date, such additional interest shall be due and payable ten (10) days from receipt of such notice.

(e) Delay in Requests. Failure or delay on the part of any Lender or the L/C Issuer to demand compensation pursuant to the foregoing provisions of this Section 3.04 shall not constitute a waiver of such Lender’s or the L/C Issuer’s right to demand such compensation, provided that the Borrowers shall not be required to compensate a Lender or the L/C Issuer pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine (9) months prior to the date that such Lender or the L/C Issuer, as the case may be, notifies the Borrowers of the Change in Law giving rise to such increased costs or reductions and of such Lender’s or the L/C Issuer’s intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine (9) month period referred to above shall be extended to include the period of retroactive effect thereof).

### **3.05 Compensation for Losses**

Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrowers shall promptly compensate (or cause the Designated Borrower to compensate) such Lender for and hold such Lender harmless from any actual and direct loss, cost or expense incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by the Borrowers (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by the Borrowers or the Designated Borrower; or

(c) any assignment of a Eurodollar Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrowers pursuant to Section 11.13;

including any loss of anticipated profits and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. The Borrowers shall also pay (or cause the applicable Designated Borrower to pay) any customary administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by the Borrowers (or the applicable Designated Borrower) to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each Eurodollar Rate Loan made by it at the Eurodollar Rate for such Loan by a matching deposit or other borrowing in the London interbank eurodollar market for a comparable amount and for a comparable period, whether or not such Eurodollar Rate Loan was in fact so funded.

### **3.06 Mitigation Obligations; Replacement of Lenders**

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or requires the Borrowers to pay any Indemnified Taxes or additional amounts to any Lender, the L/C Issuer, or any Governmental Authority for the account of any Lender or the L/C Issuer pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then at the request of the Borrowers, such Lender or the L/C Issuer shall, as applicable, use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender or the L/C Issuer, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender or the L/C Issuer, as the case may be, to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender or the L/C Issuer, as the case may be. The Borrowers hereby agree to pay (or cause the Designated Borrower to pay) all reasonable costs and expenses incurred by any Lender or the L/C Issuer in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrowers are required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01 and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with Section 3.06(a), the Borrowers may replace such Lender in accordance with Section 11.13.

### **3.07 Survival**

All of the Borrowers' obligations under this Article III shall survive termination of the Aggregate Commitments, repayment of all other Obligations hereunder, resignation of the Administrative Agent and the Facility Termination Date.

## ARTICLE IV

### CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

#### 4.01 Conditions of Initial Credit Extension.

The obligation of the L/C Issuer and each Lender to make its initial Credit Extension hereunder is subject to satisfaction of the following conditions precedent:

(a) Execution of Credit Agreement; Loan Documents. The Administrative Agent shall have received (i) counterparts of this Agreement, executed by a Responsible Officer of each Loan Party and a duly authorized officer of each Lender, (ii) for the account of each Lender requesting a Note, a Note executed by a Responsible Officer of the Company and a Note executed by a Responsible Officer of the Designated Borrower, (iii) counterparts of the Security Agreement, each Mortgage and any related Mortgaged Property Support Document and each other Collateral Document required to be delivered on the Closing Date, executed by a Responsible Officer of the Company and (iv) counterparts of any other Loan Document required to be delivered on the Closing Date, executed by a Responsible Officer of the applicable Loan Party and a duly authorized officer of each other Person party thereto.

(b) Officer's Certificate. The Administrative Agent shall have received an Officer's Certificate dated the Closing Date, certifying as to the Organization Documents of each Loan Party (which, to the extent filed with a Governmental Authority, shall be certified as of a recent date by such Governmental Authority), the resolutions of the governing body of each Loan Party, the good standing (if applicable), existence or its equivalent of each Loan Party and of the incumbency (including specimen signatures) of the Responsible Officers of each Loan Party.

(c) Legal Opinions of Counsel. The Administrative Agent shall have received an opinion of DLA Piper LLP (US), special New York counsel to the Company, dated the Closing Date and addressed to the Administrative Agent and the Lenders, in form and substance reasonably acceptable to the Administrative Agent; provided that no opinions shall be required with respect to Foreign Subsidiaries, assets located outside of the United States, Intellectual Property or non-U.S. Laws.

(d) Financial Statements. The Administrative Agent and the Lenders shall have received copies of the financial statements referred to in Section 5.05.

(e) Personal Property Collateral. The Administrative Agent shall have received, in form and substance reasonably satisfactory to the Administrative Agent:

(i) (A) searches of UCC filings in the jurisdiction of incorporation or formation, as applicable, of each Loan Party and each jurisdiction where any Collateral is located or where a filing would need to be made in order to perfect the Administrative Agent's security interest in the Collateral, copies of the financing statements on file in such jurisdictions and evidence that no Liens exist other than Permitted Liens and (B) tax lien, judgment and bankruptcy searches;

(ii) searches of ownership of material Intellectual Property in the appropriate governmental offices and such patent/trademark/copyright filings as reasonably requested by the Administrative Agent in order to perfect the Administrative Agent's security interest in the Intellectual Property;

(iii) completed UCC financing statements for each appropriate jurisdiction as is necessary, in the Administrative Agent's sole discretion, to perfect the Administrative Agent's security interest in the Collateral;

(f) Real Property Collateral.

(i) The Administrative Agent shall have received, in form and substance satisfactory to the Administrative Agent and the Lenders all Mortgaged Property Support Documents with respect to each Mortgaged Property.

(ii) Completed "Life-of-Loan" Federal Emergency Management Agency Standard Flood Hazard Determination with respect to each Mortgaged Property (together with a notice about special flood hazard area status and flood disaster assistance duly executed by each Loan Party relating thereto).

(g) Liability, Casualty, Property, Terrorism and Business Interruption Insurance. The Administrative Agent shall have received copies of insurance policies, declaration pages, certificates, and endorsements of insurance or insurance binders evidencing liability, casualty, property, terrorism and business interruption insurance meeting the requirements set forth herein or in the Collateral Documents or as required by the Administrative Agent, including, without limitation, (i) standard flood hazard determination forms and (ii) if any property is located in a special flood hazard area (A) notices to (and confirmations of receipt by) such Loan Party as to the existence of a special flood hazard and, if applicable, the unavailability of flood hazard insurance under the National Flood Insurance Program and (B) evidence of applicable flood insurance, if available, in each case in such form, on such terms and in such amounts as required by The National Flood Insurance Reform Act of 1994 or as otherwise required by the Administrative Agent. The Loan Parties shall have delivered to the Administrative Agent an Authorization to Share Insurance Information.

(h) Solvency Certificate. The Administrative Agent shall have received a Solvency Certificate signed by a Responsible Officer of the Company as to the financial condition, solvency and related matters of the Company and its Subsidiaries, after giving effect to the initial borrowings under the Loan Documents and the other transactions contemplated hereby.

(i) Financial Condition Certificate. The Administrative Agent shall have received a certificate or certificates executed by a Responsible Officer of the Company as of the Closing Date, as to certain financial matters, substantially in the form of Exhibit P.

(j) Material Contracts. The Administrative Agent shall have received access to true and complete copies of all Material Contracts, together with all exhibits and schedules.

(k) Loan Notice. The Administrative Agent shall have received a Loan Notice with respect to the Loans to be made on the Closing Date.

(l) Existing Indebtedness of the Loan Parties. All of the existing Indebtedness for borrowed money of the Company and its Subsidiaries (other than Indebtedness permitted to exist pursuant to Section 7.02) shall be repaid in full and all security interests related thereto shall be terminated on or prior to the Closing Date.

(m) Consents. The Administrative Agent shall have received evidence that all members, boards of directors, governmental, shareholder and material third party consents and approvals necessary in connection with the entering into of this Agreement have been obtained.

(n) Fees and Expenses. The Administrative Agent and the Lenders shall have received all fees and expenses, if any, owing pursuant to the Fee Letter and Section 2.09.

(o) Due Diligence. The Lenders shall have completed a due diligence investigation of the Company and its Subsidiaries in scope, and with results, satisfactory to the Lenders.

Without limiting the generality of the provisions of the last paragraph of Section 9.03, for purposes of determining compliance with the conditions specified in this Section, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

#### **4.02 Conditions to all Credit Extensions**

The obligation of each Lender and the L/C Issuer to honor any Request for Credit Extension (other than a Loan Notice requesting only a conversion of Loans to another Type, or a continuation of Eurodollar Rate Loans) is subject to the following conditions precedent:

(a) Representations and Warranties. The representations and warranties of the Company and each other Loan Party contained in Article II, Article V or any other Loan Document, shall (i) with respect to representations and warranties that contain a materiality qualification, be true and correct on and as of the date of such Credit Extension and (ii) with respect to representations and warranties that do not contain a materiality qualification, be true and correct in all material respects on and as of the date of such Credit Extension, and except that for purposes of this Section 4.02, the representations and warranties contained in Sections 5.05(a) and (b) shall be deemed to refer to the most recent statements furnished pursuant to Sections 6.01(a) and (b), respectively.

(b) Default. No Default shall exist, or would result from such proposed Credit Extension or from the application of the proceeds thereof.

(c) Request for Credit Extension. The Administrative Agent and, if applicable, the L/C Issuer or the Swingline Lender shall have received a Request for Credit Extension in accordance with the requirements hereof.

Each Request for Credit Extension (other than a Loan Notice requesting only a conversion of Loans to another Type, or a continuation of Eurodollar Rate Loans) submitted by the Borrowers shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(a) and (b) have been satisfied on and as of the date of the applicable Credit Extension.

## **ARTICLE V**

### **REPRESENTATIONS AND WARRANTIES**

Each Loan Party represents and warrants to the Administrative Agent and the Lenders, as of the date made or deemed made, that:

**5.01 Existence, Qualification and Power**

Each Loan Party and each of its Subsidiaries (a) is duly organized or formed, validly existing and, as applicable, in good standing (if applicable) under the Laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, and (c) is duly qualified and is licensed and, as applicable, in good standing (if applicable) under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (b)(i) or (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect. The copy of the Organization Documents of each Loan Party provided to the Administrative Agent pursuant to the terms of this Agreement is a true and correct copy of each such document, each of which is valid and in full force and effect.

**5.02 Authorization; No Contravention**

The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is or is to be a party have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of any of such Person's Organization Documents; (b) conflict with or result in any material breach or contravention of, or the creation of any Lien under (other than any Lien created under the Loan Documents), or require any payment to be made under (i) any material Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject except for conflicts or breaches which could not reasonably be expected to have a Material Adverse Effect; or (c) violate in any material respect any Law, where such violation could reasonably be expected to have a Material Adverse Effect.

**5.03 Governmental Authorization; Other Consents**

No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with (a) the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, (b) the grant by any Loan Party of the Liens granted by it pursuant to the Collateral Documents, (c) the perfection or maintenance of the Liens created under the Collateral Documents (including the first priority nature thereof) or (d) the exercise by the Administrative Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Collateral Documents, other than (i) authorizations, approvals, actions, notices and filings which have been duly obtained, (ii) , authorizations, approvals, actions, notices and filings contemplated by the Collateral Documents, (iii) notices and filings which customarily are required in connection with the exercise of remedies in respect of the Collateral and (iv) those approvals, consents, exemptions, authorizations, actions, notices or filings the failure of which to obtain, take, give or make could not be reasonably expected to have a Material Adverse Effect

**5.04 Binding Effect**

This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement constitutes,

and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principals of equity.

**5.05 Financial Statements; No Material Adverse Effect**

(a) Audited Financial Statements. Except as noted on Schedule 5.05(a), the Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present, in all material respects, the financial condition of the Company and its Subsidiaries as of the date thereof and their results of operations, cash flows and changes in shareholder's equity for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) to the extent required by GAAP, show all material indebtedness and other liabilities, direct or contingent, of the Company and its Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and Indebtedness.

(b) Quarterly Financial Statements. Except as noted on Schedule 5.05(a), the unaudited Consolidated balance sheet of the Company and its Subsidiaries dated December 31, 2015, and the related Consolidated statements of income or operations, shareholders' equity and cash flows for the fiscal quarter ended on that date (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present, in all material respects, the financial condition of the Company and its Subsidiaries as of the date thereof and their results of operations, cash flows and changes in shareholders' equity for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments.

(c) Material Adverse Effect. Since the date of the balance sheet included in the Audited Financial Statements, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

(d) Forecasted Financials. The Consolidated forecasted balance sheet, statements of income and cash flows of the Company and its Subsidiaries delivered pursuant to Section 4.01 or Section 6.01 were prepared in good faith on the basis of the assumptions believed by management of the Company to be reasonable as of the date so furnished (it being understood that projections are subject to uncertainties and contingencies and that actual results during the period or periods covered by such projections may differ materially from such projections).

**5.06 Litigation**

Except as noted in Schedule 5.06 or as disclosed to the Administrative Agent in writing or as included in materials filed with the SEC, there are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Company, threatened in writing, at law, in equity, in arbitration or before any Governmental Authority, by or against any Loan Party or any Subsidiary or against any of their properties or revenues that (a) purport to affect or pertain to this Agreement or any other Loan Document or any of the transactions contemplated hereby, or (b) either individually or in the aggregate could reasonably be expected to have a Material Adverse Effect.

**5.07 No Default**



Neither any Loan Party nor any Subsidiary thereof is in default under or with respect to, or a party to, any Contractual Obligation that could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

#### **5.08 Ownership of Property**

Each Loan Party and each of its Subsidiaries has good record and marketable title in fee simple (or the equivalent under local law or regulation) to, or valid leasehold interests in, all real property necessary or used in the ordinary conduct of its business, except for Permitted Liens and such defects in title as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

#### **5.09 Environmental Compliance**

(a) The Loan Parties and their respective Subsidiaries conduct in the ordinary course of business a review of the effect of existing Environmental Laws and claims alleging potential liability or responsibility for violation of any Environmental Law on their respective businesses, operations and properties, and as a result thereof the Loan Parties have reasonably concluded that such Environmental Laws and claims could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Except as noted on Schedule 5.09(b), none of the Mortgaged Properties currently owned or operated by any Loan Party is listed or proposed for listing on the NPL or on the CERCLIS or any analogous foreign, state or local list or is adjacent to any such property; there are no and, to the knowledge of the Loan Parties, have never have been any underground or above-ground storage tanks or any surface impoundments, septic tanks, pits, sumps or lagoons in which Hazardous Materials are being or have been treated, stored or disposed on any Mortgaged Property currently owned or operated by any Loan Party or any of its Subsidiaries; to the knowledge of the Loan Parties there is no asbestos or asbestos-containing material on any Mortgaged Property currently owned or operated by any Loan Party or any of its Subsidiaries; and Hazardous Materials have not been released, discharged or disposed of on any property currently owned or operated by any Loan Party or any of its Subsidiaries.

(c) Neither any Loan Party nor any of its Subsidiaries is undertaking, and has not completed, either individually or together with other potentially responsible parties, any investigation or assessment or remedial or response action relating to any actual or threatened release, discharge or disposal of Hazardous Materials at any site, location or operation located in the United States, either voluntarily or pursuant to the order of any Governmental Authority or the requirements of any Environmental Law; and all Hazardous Materials generated, used, treated, handled or stored at, or transported to or from, any property currently owned or operated by any Loan Party or any of its Subsidiaries in the United States have been disposed of in a manner not reasonably expected to result in material liability to any Loan Party or any of its Subsidiaries.

#### **5.10 Insurance**

The properties of the Company and its Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of the Company, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the applicable Loan Party or the applicable Subsidiary operates. The general liability, casualty, property, terrorism and business interruption insurance coverage

of the Loan Parties as in effect on the Closing Date, and as of the last date such Schedule was required to be updated in accordance with Section 6.02, is outlined as to carrier, policy number, expiration date, type, amount and deductibles on Schedule 5.10 and such insurance coverage complies with the requirements set forth in this Agreement and the other Loan Documents.

#### **5.11 Taxes**

Each Loan Party and its Subsidiaries have filed all federal, state and other material tax returns and reports required to be filed (or timely extensions therefor), and have paid all federal, state and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP. There is no proposed tax assessment against any Loan Party or any Subsidiary that would, if made, have a Material Adverse Effect, nor is there any tax sharing agreement applicable to the Company or any Subsidiary.

#### **5.12 ERISA Compliance**

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other federal or state laws. Each Pension Plan that is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination letter or is subject to a favorable opinion letter from the IRS to the effect that the form of such Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the IRS to be exempt from federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the IRS. To the best knowledge of the Loan Parties, nothing has occurred that would prevent or cause the loss of such tax-qualified status.

(b) There are no pending or, to the best knowledge of the Loan Parties, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) (i) No ERISA Event has occurred, and no Loan Party nor any ERISA Affiliate is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan or Multiemployer Plan; (ii) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is 60% or higher and no Loan Party nor any ERISA Affiliate knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage for any such plan to drop below 60% as of the most recent valuation date; (iii) no Loan Party nor any ERISA Affiliate has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid; (iv) neither the Company nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA; and (v) no Pension Plan has been terminated by the plan administrator thereof nor by the PBGC, and no event or circumstance has occurred or exists that could reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Pension Plan.

#### **5.13 Margin Regulations; Investment Company Act**

(a) Margin Regulations. The Borrowers are not engaged and will not engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock. Following the application of the proceeds of each Borrowing or drawing under each Letter of Credit, not more than twenty-five percent (25%) of the value of the assets (either of the Company only or of the Company and its Subsidiaries on a Consolidated basis) subject to the provisions of Section 7.01 or Section 7.05 or subject to any restriction contained in any agreement or instrument between the Borrowers and any Lender or any Affiliate of any Lender relating to Indebtedness and within the scope of Section 8.01(e) will be margin stock.

(b) Investment Company Act. None of the Company, any Person Controlling the Company, or any Subsidiary is or is required to be registered as an “investment company” under the Investment Company Act of 1940.

#### **5.14 Disclosure**

The Borrowers have disclosed to the Administrative Agent and the Lenders all material agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries or any other Loan Party is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No report, financial statement, certificate or other information furnished (whether in writing or orally) by or on behalf of any Loan Party to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case as modified or supplemented by other information so furnished), taken as a whole, contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information, each Loan Party represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time and the Administrative Agent and the Lenders recognize and acknowledge that such projected financial information is not to be viewed as facts and that actual results during the period or periods covered by such projections may differ from the projected results and such differences may be material.

#### **5.15 Compliance with Laws**

Each Loan Party and each Subsidiary thereof is in compliance in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

#### **5.16 Solvency**

As of the Closing Date, each Loan Parties and their Subsidiaries, taken as a whole, are Solvent.

#### **5.17 Casualty**

Neither any material properties of any Loan Party or any of its Subsidiaries nor any real estate securing the Secured Obligations are affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy or other

casualty (whether or not covered by insurance) that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

**5.18 Sanctions Concerns and Anti-Corruption Laws.**

(a) Sanctions Concerns. No Loan Party, nor any Subsidiary, nor, to the knowledge of the Loan Parties and their Subsidiaries, any director, officer, employee, agent, affiliate or representative thereof, is an individual or entity that is, or is owned or controlled by any individual or entity that is (i) currently the subject or target of any Sanctions, (ii) included on OFAC's List of Specially Designated Nationals, HMT's Consolidated List of Financial Sanctions Targets and the Investment Ban List, or any similar list enforced by any other relevant sanctions authority or (iii) located, organized or resident in a Designated Jurisdiction.

(b) Anti-Corruption Laws. The Loan Parties and their Subsidiaries have conducted their business in compliance with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other similar anti-corruption legislation in other jurisdictions, and have instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

**5.19 Responsible Officers.**

Set forth on Schedule 1.01(c) are Responsible Officers, holding the offices indicated next to their respective names, as of the Closing Date and as of the last date such Schedule was required to be updated in accordance with Section 6.02 and such Responsible Officers are the duly elected and qualified officers of such Loan Party and are duly authorized to execute and deliver, on behalf of the respective Loan Party, this Agreement, the Notes and the other Loan Documents.

**5.20 Subsidiaries; Equity Interests; Loan Parties.**

(a) Subsidiaries, Joint Ventures, Partnerships and Equity Investments. Set forth on Schedule 5.20(a), is the following information which is true and complete in all respects as of the Closing Date and as of the last date such Schedule was required to be updated in accordance with Section 6.02: (i) a complete and accurate list of all Subsidiaries of the Loan Parties as of the Closing Date and as of the last date such Schedule was required to be updated in accordance with Section 6.02, (ii) the number of shares of each class of Equity Interests in each Subsidiary outstanding, (iii) the number and percentage of outstanding shares of each class of Equity Interests owned by the Loan Parties and their Subsidiaries, and (iv) the class or nature of such Equity Interests (i.e. voting, non-voting, preferred, etc.). The outstanding Equity Interests in all Subsidiaries are validly issued, fully paid and non-assessable and are owned free and clear of all Liens. There are no outstanding subscriptions, options, warrants, calls, rights or other agreements or commitments (other than stock options granted to employees or directors and directors' qualifying shares) of any nature relating to the Equity Interests of any Loan Party or any Subsidiary thereof, except as contemplated in connection with the Loan Documents.

(b) Loan Parties. Set forth on Schedule 5.20(b) is a complete and accurate list of all Loan Parties, showing as of the Closing Date, or as of the last date such Schedule was required to be updated in accordance with Section 6.02 (as to each Loan Party) (i) the exact legal name, (ii) any former legal names of such Loan Party in the four (4) months prior to the Closing Date, (iii) the jurisdiction of its incorporation or organization, as applicable, (iv) the type of organization, (v) the jurisdictions in which such Loan Party is qualified to do business, (vi) the address of its chief executive office, (vii) the address of its principal place of business, (viii) its U.S. federal taxpayer identification number or, in the case of any non-U.S. Loan Party that does

not have a U.S. taxpayer identification number, its unique identification number issued to it by the jurisdiction of its incorporation or organization, (ix) the organization identification number, and (x) ownership information (e.g. publicly held or if private or partnership, the owners and partners of each of the Loan Parties).

## **5.21 Collateral Representations**

(a) Collateral Documents. The provisions of the Collateral Documents are effective to create in favor of the Administrative Agent for the benefit of the Secured Parties a legal, valid and enforceable first priority Lien (subject to Permitted Liens) on all right, title and interest of the respective U.S. Loan Parties in the Collateral described therein.

(b) Intellectual Property. Set forth on Schedule 5.21(b), as of the Closing Date and as of the last date such Schedule was required to be updated in accordance with Section 6.02, is a list of all registered or issued Intellectual Property (including all applications for registration and issuance) owned by each of the U.S. Loan Parties or that each of the U.S. Loan Parties has the right to (including the name/title, current owner, registration or application number, and registration or application date).

(c) Documents, Instrument, and Tangible Chattel Paper. Set forth on Schedule 5.21(c), as of the Closing Date and as of the last date such Schedule was required to be updated in accordance with Section 6.02, is a description of all Documents, Instruments, and Tangible Chattel Paper (other than Documents, Instruments and Tangible Chattel Paper issued or outstanding in the ordinary course of business) of the U.S. Loan Parties, in each case with an aggregate value in excess of \$500,000.

(d) Deposit Accounts, Electronic Chattel Paper, Letter-of-Credit Rights, and Securities Accounts.

(i) Set forth on Schedule 5.21(d)(i) or Schedule 6.14, as of the Closing Date and as of the last date such Schedule was required to be updated in accordance with Section 6.02, is a description of all Deposit Accounts and Securities Accounts of the U.S. Loan Parties (other than (A) deposit and securities accounts of Excluded Subsidiaries, (B) other deposit and securities accounts where that the balance in any such account under this clause (B), individually or in the aggregate, does not exceed \$500,000, and (C) accounts maintained with or through Administrative Agent), including the name of (A) the applicable U.S. Loan Party, (B) in the case of a Deposit Account, the depository institution and whether such account is a zero balance account or a payroll account, and (B) in the case of a Securities Account, the Securities Intermediary or issuer.

(ii) Set forth on Schedule 5.21(d)(ii), as of the Closing Date and as of the last date such Schedule was required to be updated in accordance with Section 6.02, is a description of all Electronic Chattel Paper (as defined in the UCC) and Letter-of-Credit Rights (as defined in the UCC) of the U.S. Loan Parties (other than those arising in the ordinary course of business), including the name of (A) the applicable U.S. Loan Party, (B) in the case of Electronic Chattel Paper (as defined in the UCC), the account debtor and (B) in the case of Letter-of-Credit Rights (as defined in the UCC), the issuer or nominated person, as applicable.

(e) Commercial Tort Claims. Set forth on Schedule 5.21(e), as of the Closing Date and as of the last date such Schedule was required to be updated in accordance with Section 6.02,

is a description of all Commercial Tort Claims of the Company with a value individually in excess of \$500,000, or the Threshold Amount in the aggregate (detailing such Commercial Tort Claim in such detail as reasonably requested by the Administrative Agent).

(f) Pledged Equity Interests. Set forth on Schedule 5.21(f), as of the Closing Date and as of the last date such Schedule was required to be updated in accordance with Section 6.02, is a list of all Pledged Equity (detailing the Grantor (as defined in the Security Agreement), the Person whose Equity Interests are pledged, the number of shares of each class of Equity Interests, the certificate number (if any) and percentage ownership of outstanding shares of each class of Equity Interests and the class or nature of such Equity Interests (i.e. voting, non-voting, preferred, etc.).

(g) Properties. Set forth on Schedule 5.21(g)(i), as of the Closing Date and as of the last date such Schedule was required to be updated in accordance with Section 6.02, is a list of all Mortgaged Properties (including (i) the name of the Loan Party owning such Mortgaged Property, (ii) [reserved] (iii) the property address, (iv) the city, county, state and zip code which such Mortgaged Property is located. Set forth on Schedule 5.21(g)(ii), as of the Closing Date and as of the last date such Schedule was required to be updated in accordance with Section 6.02, is a list of (A) each headquarter location of the Loan Parties, (B) each other location where any significant administrative or governmental functions are regularly performed, (C) each other location where the Loan Parties maintain any tangible books or records and (D) each location where any personal property Collateral is located at any premises owned or leased by a Loan Party (in each case, including (1) an indication if such location is leased or owned, (2), if leased, the name of the lessor, and if owned, the name of the Loan Party owning such property, and (3) the address of such property (including, the city, county, state and zip code).

(h) Material Contracts. Set forth on the most recent annual report on Form 10K, is a complete and accurate list of all Material Contracts of the Company and its Subsidiaries.

## **5.22 Regulation H.**

No Mortgaged Property is a Flood Hazard Property unless the Administrative Agent shall have received the following: (a) the applicable Loan Party's written acknowledgment of receipt of written notification from the Administrative Agent (i) as to the fact that such Mortgaged Property is a Flood Hazard Property, (ii) as to whether the community in which each such Flood Hazard Property is located is participating in the National Flood Insurance Program and (iii) such other flood hazard determination forms, notices and confirmations thereof as requested by the Administrative Agent and (b) copies of insurance policies or certificates of insurance of the applicable Loan Party evidencing flood insurance reasonably satisfactory to the Administrative Agent and naming the Administrative Agent as loss payee on behalf of the Lenders. All flood hazard insurance policies required hereunder have been obtained and remain in full force and effect, and the premiums thereon have been paid in full.

**5.23 [Reserved].**

**5.24 [Reserved].**

**5.25 [Reserved].**

**5.26 Representations as to Foreign Obligors.** Each of the Company and each Foreign Obligor represents and warrants to the Administrative Agent and the Lenders that:

(a) Such Foreign Obligor is subject to civil and commercial Laws with respect to its obligations under this Agreement and the other Loan Documents to which it is a party (collectively as to such Foreign Obligor, the “ Applicable Foreign Obligor Documents ”), and the execution, delivery and performance by such Foreign Obligor of the Applicable Foreign Obligor Documents constitute and will constitute private and commercial acts and not public or governmental acts. Neither such Foreign Obligor nor any of its property has any immunity from jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) under the laws of the jurisdiction in which such Foreign Obligor is organized and existing in respect of its obligations under the Applicable Foreign Obligor Documents.

(b) The Applicable Foreign Obligor Documents are in proper legal form under the Laws of the jurisdiction in which such Foreign Obligor is organized and existing for the enforcement thereof against such Foreign Obligor under the Laws of such jurisdiction, and to ensure the legality, validity, enforceability, priority or admissibility in evidence of the Applicable Foreign Obligor Documents. It is not necessary to ensure the legality, validity, enforceability, priority or admissibility in evidence of the Applicable Foreign Obligor Documents that the Applicable Foreign Obligor Documents be filed, registered or recorded with, or executed or notarized before, any court or other authority in the jurisdiction in which such Foreign Obligor is organized and existing or that any registration charge or stamp or similar tax be paid on or in respect of the Applicable Foreign Obligor Documents or any other document, except for (i) any such filing, registration, recording, execution or notarization as has been made or is not required to be made until the Applicable Foreign Obligor Document or any other document is sought to be enforced and (ii) any charge or tax as has been timely paid.

(c) There is no tax, levy, impost, duty, fee, assessment or other governmental charge, or any deduction or withholding, imposed by any Governmental Authority in or of the jurisdiction in which such Foreign Obligor is organized and existing either (i) on or by virtue of the execution or delivery of the Applicable Foreign Obligor Documents or (ii) on any payment to be made by such Foreign Obligor pursuant to the Applicable Foreign Obligor Documents, except for Excluded Taxes and except as has been disclosed to the Administrative Agent.

(d) The execution, delivery and performance of the Applicable Foreign Obligor Documents executed by such Foreign Obligor are, under applicable foreign exchange control regulations of the jurisdiction in which such Foreign Obligor is organized and existing, not subject to any notification or authorization except (i) such as have been made or obtained or (ii) such as cannot be made or obtained until a later date ( provided that any notification or authorization described in clause (ii) shall be made or obtained as soon as is reasonably practicable).

## ARTICLE VI

### AFFIRMATIVE COVENANTS

Each of the Loan Parties hereby covenants and agrees that on the Closing Date and thereafter until the Facility Termination Date, such Loan Party shall, and shall (except in the case of the covenants in Sections 6.01, 6.02, 6.03, 6.14 and 6.19) cause each of its Material Subsidiaries to:

#### **6.01 Financial Statements**

Deliver to the Administrative Agent for further distribution to the Lenders:

(a) Audited Financial Statements. As soon as available, but in any event within one-hundred twenty (120) days after the end of each fiscal year of the Company, a Consolidated and consolidating balance sheet of the Company and its Subsidiaries as at the end of such fiscal year, and the related Consolidated and consolidating statements of income or operations, changes in shareholders' equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, (i) such Consolidated statements to be audited and accompanied by a report and opinion of an independent certified public accountant of nationally recognized standing or an accountant otherwise reasonably acceptable to the Administrative Agent, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit, and (ii) such consolidating statements to be certified by the chief executive officer, chief financial officer, treasurer or controller that is a Responsible Officer of the Company to the effect that such statements are fairly stated in all material respects when considered in relation to the Consolidated financial statements of the Company and its Subsidiaries.

(b) Quarterly Financial Statements. As soon as available, but in any event within forty-five (45) days after the end of each of the first three (3) fiscal quarters of each fiscal year of the Company, a Consolidated balance sheet of the Company and its Subsidiaries as at the end of such fiscal quarter, and the related Consolidated statements of income or operations, changes in shareholders' equity and cash flows for such fiscal quarter and for the portion of the Company's fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP certified by the chief executive officer, chief financial officer, treasurer or controller who is a Responsible Officer of the Company as fairly presenting, in all material respects, the financial condition, results of operations, shareholders' equity and cash flows of the Company and its Subsidiaries, subject only to normal year-end audit adjustments and the absence of footnotes and such consolidating statements to be certified by the chief executive officer, chief financial officer, treasurer or controller that is a Responsible Officer of the Company to the effect that such statements are fairly stated in all material respects when considered in relation to the Consolidated financial statements of the Company and its Subsidiaries.

(c) Business Plan and Budget. As soon as available, but in any event within ninety (90) days after the end of each fiscal year of the Company, an annual business plan and budget of the Company and its Subsidiaries on a Consolidated basis, including forecasts prepared by management of the Company (it being understood that the form of business plan and budget of the Company and its Subsidiaries provided by the Company prior to the Closing Date is satisfactory to the Administrative Agent), of Consolidated balance sheets and statements of income or operations and cash flows of the Company and its Subsidiaries on a quarterly basis for the immediately following fiscal year.

As to any information contained in materials furnished pursuant to Section 6.02(g), the Company shall not be separately required to furnish such information under Section 6.01(a) or (b) above, but the foregoing shall not be in derogation of the obligation of the Company to furnish the information and materials described in Sections 6.01(a) and (b) above at the times specified therein.

## **6.02 Certificates; Other Information**

Deliver to the Administrative Agent for further distribution to the Lenders, in form and detail reasonably satisfactory to the Administrative Agent and the Required Lenders:



(a) [Reserved].

(b) Compliance Certificate. Concurrently with the delivery of the financial statements referred to in Sections 6.01(a) and (b), a duly completed Compliance Certificate signed by the chief executive officer, chief financial officer, treasurer or controller which is a Responsible Officer of the Company. Delivery of the Compliance Certificate may be by electronic communication including fax or email and shall be deemed to be an original and authentic counterpart thereof for all purposes.

(c) Updated Schedules. Concurrently with the delivery of the Compliance Certificate referred to in Section 6.02(b), the following updated Schedules to this Agreement (which may be attached to the Compliance Certificate) to the extent required to make the representation related to such Schedule true and correct in all material respects as of the date of such Compliance Certificate: Schedules 1.01(c), 5.10, 5.20(a), 5.20(b), 5.21(b), 5.21(c), 5.21(d)(i), 5.21(d)(ii), 5.21(e), 5.21(f), 5.21(g)(i), 5.21(g)(ii).

(d) Reserved.

(e) Changes in Entity Structure. Within thirty (30) days after the end of each fiscal quarter during which there is any merger, consolidation, dissolution or other change in entity structure of any Material Subsidiary of a Loan Party, provide an updated organizational chart to the Administrative Agent. Provide notice to the Administrative Agent, not less than ten (10) days prior (or such extended period of time as agreed to by the Administrative Agent) of any (i) change in any Loan Party's legal name, state of organization, or organizational existence, (ii) merger or consolidation in which a Borrower is not the surviving entity and (iii) dissolution or other change in entity structure of a Loan Party.

(f) [Reserved].

(g) Annual Reports; Etc. Promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of the Company, and copies of all annual, regular, periodic and special reports and registration statements which the Company files with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934, or with any national securities exchange, and in any case not otherwise required to be delivered to the Administrative Agent pursuant hereto.

(h) Debt Securities Statements and Reports. Promptly after the furnishing thereof, copies of any statement or report furnished to any holder of debt securities of any Loan Party having an aggregate outstanding principal amount in excess of the Threshold Amount pursuant to the terms of any indenture, loan or credit or similar agreement and not otherwise required to be furnished to the Lenders pursuant to Section 6.01 or any other clause of this Section.

(i) SEC Notices. Promptly, and in any event within five (5) Business Days after receipt thereof by any Loan Party or any Subsidiary thereof, copies of each notice or other correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation or possible investigation or other inquiry by such agency regarding financial or other operational results of any Loan Party or any Subsidiary thereof that could reasonably be expected to have a Material Adverse Effect, if and only to the extent that such Loan Party or Subsidiary may provide such information in accordance with applicable Law.

(j) Notices. Not later than five (5) Business Days after receipt thereof by any Loan Party or any Subsidiary thereof, copies of all notices, requests and other documents (including amendments, waivers and other modifications) so received under or pursuant to any instrument, indenture, loan or credit or similar agreement relating to outstanding Indebtedness greater than the Threshold Amount and regarding or related to any breach or default by any party thereto or any other event that could reasonably be expected to have a Material Adverse Effect and, from time to time upon request by the Administrative Agent, such information and reports regarding such instruments, indentures and loan and credit and similar agreements as the Administrative Agent may reasonably request.

(k) Environmental Notice. Promptly after any Loan Party or any Subsidiary becomes aware of the assertion or occurrence thereof, notice of any action or proceeding against or of any noncompliance by any Loan Party or any of its Subsidiaries with any Environmental Law or Environmental Permit that could (i) reasonably be expected to have a Material Adverse Effect or (ii) cause any property described in the Mortgages to be subject to any restrictions on ownership, occupancy, use or transferability under any Environmental Law.

Documents required to be delivered pursuant to Section 6.01(a) or (b) or Section 6.02(g), (h) or (i) (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 (a) on which a Borrower posts such documents, or provides a link thereto on the Borrower's website on the Internet at the website address listed on Schedule 1.01(a); or (b) on which such documents are posted on the Borrowers' behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that: the Borrowers shall notify the Administrative Agent and each Lender (by fax transmission or e-mail transmission) of the posting of any such documents and, upon request, provide to the Administrative Agent by e-mail electronic versions (i.e., soft copies) of such documents. The Administrative Agent shall have no obligation to request the delivery of or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrowers with any such request by a Lender for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

The Borrowers hereby acknowledge that (A) if there is more than one Lender, the Administrative Agent and/or an Affiliate thereof will, at the reasonable request of the Borrower, make available to the Lenders and the L/C Issuer materials and/or information provided by or on behalf of the Borrowers hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on IntraLinks, Syndtrak, ClearPar or a substantially similar electronic transmission system (the "Platform") and (B) certain of the Lenders (each, a "Public Lender") may have personnel who do not wish to receive material non-public information with respect to the Company or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. The Borrowers hereby agree that it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (1) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (2) by marking Borrower Materials "PUBLIC," the Borrowers shall be deemed to have authorized the Administrative Agent, any Affiliate thereof, the Arranger, the L/C Issuer and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Borrowers or their securities for purposes of United States federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 11.07); (3) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information;" and (4) the Administrative Agent and any Affiliate thereof and the Arranger shall be entitled

to treat any Borrower Materials that are not marked “PUBLIC” as being suitable only for posting on a portion of the Platform not designated “Public Side Information. Notwithstanding the foregoing, the Borrower shall be under no obligation to mark any Borrower Materials “PUBLIC.”

### **6.03 Notices**

Promptly, but in any event within four (4) Business Days after a Responsible Officer of the Company becomes aware thereof, notify the Administrative Agent for further notification to the Lenders:

- (a) of the occurrence of any Default that is continuing;
- (b) of any breach or non-performance of, or any default under, any Contractual Obligation of any Loan Party or any Material Subsidiary of any Loan Party under a Material Contract, or any violation of, or non-compliance with, any applicable Law, which, in each case, would reasonably be expected to result, either individually or in the aggregate, in a Material Adverse Effect on the financial condition of the Company and its Subsidiaries taken as a whole;
- (c) of the occurrence of any ERISA Event; and
- (d) of any material change in accounting policies or financial reporting practices by any Loan Party or any Subsidiary thereof.

Each notice pursuant to this Section 6.03 shall be accompanied by a statement of a Responsible Officer of the Company setting forth details of the occurrence referred to therein and to the extent applicable, stating what action the Borrowers have taken and proposes to take with respect thereto. Each notice pursuant to Section 6.03(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

### **6.04 Payment of Obligations**

Pay and discharge as the same shall become due and payable, all (a) all material tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by the Company or such Subsidiary; (b) all lawful claims which, if unpaid, would by law become a Lien (other than Liens permitted pursuant to Section 7.01) upon its property; and (c) all Indebtedness having an aggregate outstanding principal amount of more than the Threshold Amount, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness.

### **6.05 Preservation of Existence, Etc**

- (a) Preserve, renew and maintain in full force and effect its legal existence and good standing (if applicable) under the Laws of the jurisdiction of its organization except in a transaction permitted by Section 7.04 or 7.05; provided, however, that nothing contained in this Section 6.05(a) shall be deemed to prohibit any Loan Party or any Subsidiary from reorganizing in another state of the United States or changing its entity form subject to Section 6.02(e);

(b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and

(c) to the extent required under the Collateral Documents, preserve or renew all of its registered patents, trademarks, trade names and service marks that the Loan Parties in their reasonable business judgment deem necessary, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

#### **6.06 Maintenance of Properties**

(a) Maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted; and

(b) make all necessary repairs thereto and renewals and replacements thereof that the Loan Parties in their reasonable business judgment deem necessary except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

#### **6.07 Maintenance of Insurance**

(a) Maintenance of Insurance. Maintain with financially sound and reputable insurance companies not Affiliates of the Company, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons.

(b) Evidence of Insurance. Cause the Administrative Agent to be named as lenders' loss payable, loss payee or mortgagee, as its interest may appear, and/or additional insured with respect of any such insurance providing liability coverage or coverage in respect of any Collateral, and cause, unless otherwise agreed to by the Administrative Agent, each provider of any such insurance to agree, by endorsement upon the policy or policies issued by it or by independent instruments furnished to the Administrative Agent that it will give the Administrative Agent thirty (30) days prior written notice before any such policy or policies shall be cancelled (or ten (10) days prior notice in the case of cancellation due to the nonpayment of premiums). Annually, upon expiration of insurance coverages, the Loan Parties shall provide, or cause to be provided, to the Administrative Agent, such evidence of insurance as required by the Administrative Agent, including, but not limited to: (i) evidence of such insurance policies (including, without limitation and as applicable, ACORD Form 28 certificates (or similar form of insurance certificate), and ACORD Form 25 certificates (or similar form of insurance certificate)), and (ii) lender's loss payable endorsement if the Administrative Agent for the benefit of the Secured Parties is not on the declarations page for such policy. As requested by the Administrative Agent, the Loan Parties agree to deliver to the Administrative Agent an Authorization to Share Insurance Information.

(c) Redesignation. Promptly notify the Administrative Agent of any Mortgaged Property that is, or becomes, a Flood Hazard Property.

#### **6.08 Compliance with Laws**

Comply in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such

requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted; or (b) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

**6.09 Books and Records**

Maintain proper books of record and account, in which in all material respects full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of the Company or such Domestic Subsidiary, as the case may be .

**6.10 Inspection Rights**

(a) Permit representatives and independent contractors of the Administrative Agent and each Lender to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants, all at the reasonable expense of the Borrowers (provided that the Designated Subsidiary's liability shall in no event exceed the Designated Subsidiary Share of such expense) and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Borrowers; provided, however, that when an Event of Default exists the Administrative Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Borrowers at any time during normal business hours and without advance notice; provided further, that unless an Event of Default has occurred and is continuing, only one such visit per fiscal year shall be at the Company's expense. Any Lender may accompany the Administrative Agent in connection with any inspection (i) at such Lender's expense if no Event of Default has occurred and is continuing and (ii) at the Borrower's expense if an Event of Default has occurred and is continuing.

(b) If requested by the Administrative Agent in its sole discretion, permit the Administrative Agent and its representatives, upon reasonable advance notice to the Borrowers, to conduct, at the expense of the Borrowers, an annual real estate appraisal on real estate Collateral of the Company and its Subsidiaries.

**6.11 Use of Proceeds**

Use the proceeds of the Credit Extensions to (a) repay the existing Indebtedness the Borrowers and their Subsidiaries (other than Indebtedness permitted to exist pursuant to Section 7.02), and (b) to provide ongoing working capital and for general corporate purposes (including investments not prohibited hereunder) not in contravention of any Law or of any Loan Document.

**6.12 [Reserved]**

**6.13 Covenant to Guarantee Obligations**

The Company will cause each Material Subsidiary (other than any Excluded Subsidiary) whether newly formed, after acquired or otherwise existing to promptly (and in any event within ninety (90) days after such Material Subsidiary is formed or acquired (or such longer period of time as agreed to by the Administrative Agent in its reasonable discretion)) become a Guarantor hereunder by way of execution of a Joinder Agreement; provided, however, no Excluded Subsidiary shall be required to become a Guarantor of, or grant or pledge any security to support, any Secured Obligations . In connection therewith, the Loan Parties shall give notice to the Administrative Agent not less than thirty (30) days

after creating a Material Subsidiary (or such longer period of time as agreed to by the Administrative Agent in its reasonable discretion), or acquiring the Equity Interests of any other Person. In connection with the foregoing, the Loan Parties shall deliver to the Administrative Agent, with respect to each new Guarantor to the extent applicable, substantially the same documentation required pursuant to Sections 4.01(b) and (e) and 6.14 and such other documents or agreements as the Administrative Agent may reasonably request.

#### **6.14 Covenant to Give Security**

Except with respect to Excluded Property and any other property subject to the other exclusions and limitations set forth in the Collateral Documents:

(a) Equity Interests and Personal Property. Each U.S. Loan Party will cause the Pledged Equity and all of its tangible and intangible owned personal property (other than the Excluded Property and subject to the other exclusions and limitations set forth in the Collateral Documents) now owned or hereafter acquired by it to be subject at all times to a first priority, perfected Lien (subject to Permitted Liens to the extent permitted by the Loan Documents) in favor of the Administrative Agent for the benefit of the Secured Parties to secure the Secured Obligations pursuant to the terms and conditions of the Collateral Documents. Each Loan Party (other than an Excluded Subsidiary) shall provide any filings and deliveries (other than filings and deliveries relating to the attachment or perfection of Liens under laws outside of the United States) reasonably necessary in connection therewith to perfect the security interests therein to the extent required by the Collateral Documents, all in form and substance reasonably satisfactory to the Administrative Agent.

(b) Account Control Agreements. Each of the U.S. Loan Parties shall not open, maintain or otherwise have any deposit or other accounts (including securities accounts) at any bank or other financial institution, or any other account where money or securities are or may be deposited or maintained with any Person, other than (a) (i) the accounts set forth on Schedule 6.14 and Schedule 5.21(d)(i), (ii) Deposit and Securities Accounts of Excluded Subsidiaries, (iii) Deposit and Securities Accounts as to which the Company has given the Administrative Agent written notice; and (iv) other Deposit and Securities accounts where that the balance in any such account under this clause (iv), individually or in the aggregate for all such accounts does not exceed \$500,000, (b) accounts maintained with or through Administrative Agent, and (c) any payroll accounts and other zero balance accounts.

(c) Further Assurances. At any time upon request of the Administrative Agent, promptly execute and deliver any and all further instruments and documents and take all such other action as the Administrative Agent may deem necessary or desirable to maintain in favor of the Administrative Agent, for the benefit of the Secured Parties, Liens and insurance rights on the Collateral that are duly perfected in accordance with the requirements of, or the obligations of the Loan Parties under, the Loan Documents and all applicable Laws; provided, however, in no event shall any Loan Party or any of their respective Subsidiaries be required to execute or deliver, or take any actions with respect to, the grant of security or pledge of any assets (including Pledged Equity) under the laws of any jurisdiction outside of the United States.

#### **6.15 Further Assurances**

(a) Promptly upon reasonable request by the Administrative Agent, or any Lender through the Administrative Agent, (a) correct any material defect or error that may be discovered in any Loan Document or in the execution, acknowledgment, filing or recordation thereof, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent, or any Lender through the Administrative Agent, may reasonably require from time to time in order to carry out more effectively the purposes of the Loan Documents..

(b) Notwithstanding anything to the contrary set forth herein or in any other Loan Document, the Administrative Agent shall not obtain or perfect a security interest in any assets of the Company or any other Loan Party: (i) that are Excluded Property, (ii) that require actions or documents, instruments, agreements, certificates or opinions under Laws of jurisdictions outside of the United States, or (iii) as to which the Administrative Agent shall determine, in its reasonable discretion, that the cost of obtaining or perfecting such security interest is excessive in relation to the benefit to the Lenders of the security afforded thereby (such comparison to be determined in a manner consistent with any such determination made in connection with the Closing Date) or would otherwise violate applicable Law.

**6.16** [Reserved].

**6.17** [Reserved].

**6.18** Compliance with Environmental Laws.

(a) Comply, and cause all lessees and other Persons operating or occupying its properties to comply, in all material respects, with all applicable Environmental Laws and Environmental Permits where a failure to do so could reasonably be expected to have a Material Adverse Effect; (b) obtain and renew all Environmental Permits necessary for its operations and properties where a failure to do so could reasonably be expected to have a Material Adverse Effect; and (c) conduct any investigation, study, sampling and testing, and undertake any cleanup, removal, remedial or other action necessary to remove and clean up all Hazardous Materials from any of its properties, in accordance with the requirements of all Environmental Laws; provided, however, that neither the Company nor any of its Subsidiaries shall be required to undertake any such cleanup, removal, remedial or other action to the extent that its obligation to do so is being contested in good faith and by proper proceedings and appropriate reserves are being maintained with respect to such circumstances in accordance with GAAP.

**6.19** Preparation of Environmental Reports.

At the request of the Required Lenders upon the occurrence of an Event of Default or to the extent that the Required Lender has a reasonable belief that there has been a release of Hazardous Materials , provide to the Lenders within sixty (60) days after such request, at the expense of the Company, an environmental site assessment report consisting of a Phase I level report for any of its properties described in such request, prepared by an environmental consulting firm acceptable to the Administrative Agent, indicating the presence or absence of Hazardous Materials and the estimated cost of any compliance, removal or remedial action in connection with any Hazardous Materials on such properties; without limiting the generality of the foregoing, if the Administrative Agent determines at any time that a material risk exists that any such report will not be provided within the time referred to above, the Administrative Agent may retain an environmental consulting firm to prepare such report at the expense of the Borrowers, and the Company hereby grants and agrees to cause any Domestic Subsidiary that owns any property described in such request to grant at the time of such request to the Administrative

Agent, the Lenders, such firm and any agents or representatives thereof an irrevocable non-exclusive license, subject to the rights of tenants, to enter onto their respective properties to undertake such an assessment.

**6.20 Approvals and Authorizations .**

Maintain all authorizations, consents, approvals and licenses from, exemptions of, and filings and registrations with, each Governmental Authority of the jurisdiction in which each Foreign Obligor is organized and existing, and all approvals and consents of each other Person in such jurisdiction, in each case that are required in connection with the Loan Documents.

**6.21 Anti-Corruption Laws .**

Conduct its business in compliance with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other similar anti-corruption legislation in other jurisdictions and maintain policies and procedures designed to promote and achieve compliance with such laws.

**6.22 Post-closing Covenants.**

The Borrower agrees to deliver, or cause to be delivered, to the Administrative Agent, the items described in Schedule 6. 22 on the dates and by the times specified with respect to such items, or such later time as may be agreed to by the Administrative Agent in writing in its reasonable discretion.

**ARTICLE VII**

**NEGATIVE COVENANTS**

Each of the Loan Parties hereby covenants and agrees that on the Closing Date and thereafter until the Facility Termination Date, no Loan Party shall, nor shall it permit any Material Subsidiary to, directly or indirectly:

**7.01 Liens .**

Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, except for the following (the “Permitted Liens”):

(a) Liens pursuant to any Loan Document;

(b) Liens existing on the Closing Date and listed on Schedule 7.01 and any renewals or extensions thereof, provided that (i) the property covered thereby is not changed, (ii) the amount secured or benefited thereby is not increased except as contemplated by Section 7.02(b), (iii) the direct or any contingent obligor with respect thereto is not changed, and (iv) any renewal or extension of the obligations secured or benefited thereby is permitted by Section 7.02(b);

(c) Liens for Taxes not yet delinquent or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(d) Liens such as carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s, supplier’s, storage, landlord’s or other like Liens arising in the ordinary course of business or in connection with ongoing construction which are securing amounts not overdue



for a period of more than ninety (90) days or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person;

(e) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security or similar laws or regulations, other than any Lien imposed by ERISA and other social security legislation;

(f) pledges or deposits to secure the performance of tenders, bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety, customs and appeal bonds, performance or payment bonds and other obligations of a like nature incurred in the ordinary course of business;

(g) easements, rights-of-way, restrictions, minor defects or irregularities in title and other similar charges or 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 Company and its Subsidiaries taken as a whole;

(h) Liens securing judgments for the payment of money (or appeal or other surety bonds relating to such judgments) not constituting an Event of Default under Section 8.01(h);

(i) bankers' Liens, rights of setoff and other similar Liens existing solely with respect to cash and Cash Equivalents on deposit in one or more accounts maintained by the Company or any of its Subsidiaries, in each case in the ordinary course of business in favor of the bank or banks with which such accounts are maintained, securing solely the customary amounts owing to such bank with respect to cash management and operating account arrangements; provided, that in no case shall any such Liens secure (either directly or indirectly) the repayment of any Indebtedness unless otherwise permitted hereunder;

(j) Liens arising out of judgments or awards not resulting in an Event of Default; provided the applicable Loan Party or Subsidiary shall in good faith be prosecuting an appeal or proceedings for review;

(k) Any interest or title of a lessor, licensor or sublessor under any lease, license or sublease entered into by any Loan Party or any Subsidiary thereof, including the license (as licensor or sublicensor) of Intellectual Property, in each case in the ordinary course of business and covering only the assets so leased, licensed or subleased;

(l) Liens of a collection bank arising under Section 4-210 of the UCC on items in the course of collection;

(m) Any zoning, building or similar laws or rights reserved to or vested in any Governmental Authority;

(n) (i) Liens on the assets of Foreign Subsidiaries, provided that the value of the assets subject to such Liens does not in the aggregate exceed 10% of the value of Company's Consolidated assets; and (ii) Liens on assets of Excluded Subsidiaries, provided that (A) such Liens do not extend to, or encumber, assets that constitute Collateral or the Equity Interest of the Company or any other Loan Party, and (B) such Liens extending to the assets of any Excluded

Subsidiary secure only Indebtedness of Excluded Subsidiaries otherwise permitted under Section 7.02;

(o) leases, subleases, licenses or sublicenses granted to others not interfering in any material respect with the business of any Loan Party or any of its Material Subsidiaries (including without limitation (i) nonexclusive licenses granted to customers and other relevant parties in the ordinary course of business; (ii) other licenses and similar arrangements that may be exclusive in one or more respects so long as such exclusive licensing is limited to geographic areas, particular fields of use, customized products for customers or limited time periods, and so long as after giving effect to such exclusive license, the Company or a Subsidiary, as applicable, retains sufficient rights to use the subject Intellectual Property as to enable the Company or its Subsidiary, as applicable to continue to conduct its business in the ordinary course; and (iii) the rights of customers and other relevant third parties with respect to arrangements with respect to co-operated, co-branded, “white-label” Inventory in the ordinary course of business;

(p) any interest or title of a lessor or sublessor under any lease permitted by this Agreement; and Liens on any property of a Person acquired or held by any Loan Party or any Subsidiary of any Loan Party securing indebtedness incurred or assumed for the purpose of financing (or refinancing) all or part of the cost of acquiring such property and permitted under Section 7.02(c);

(q) Liens arising from the filing of precautionary uniform commercial code financing statements with respect to any lease permitted by this Agreement;

(r) Liens arising out of consignment or similar arrangements for the sale of goods entered into by the Company or any Subsidiary of the Company in the ordinary course of business;

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

(t) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods entered into by the Company or any Subsidiary in the ordinary course of business and not prohibited by this Agreement;

(u) Liens on the assets of Excluded Subsidiaries securing the CTCB Indebtedness;

(v) other Liens on assets other than the Collateral or Intellectual Property securing Indebtedness outstanding permitted pursuant to Section 7.02 or other obligations not exceeding the Threshold Amount in aggregate principal amount;

(w) Liens on pledged cash collateral not exceeding the Threshold Amount in the aggregate securing any Swap Contract permitted pursuant to Section 7.02(f);

(x) (A) Liens that are contractual rights of setoff relating to purchase orders entered into with customers of such Person in the ordinary course of its business and (B) Liens on goods the purchase price of which is financed by a documentary letter of credit issued for the account of the Company or any of its Subsidiaries, provided that such Lien secures only the obligations of the Company or such Subsidiaries in respect of such letter of credit to the extent permitted under Section 7.02; and

(y) Any security interest or set-off arrangements entered into by any Foreign Subsidiary in the ordinary course of its banking arrangements which arise from the general banking conditions.

## **7.02 Indebtedness.**

Create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness under the Loan Documents;

(b) (i) Indebtedness outstanding on the date hereof and listed on Schedule 7.02 and any refinancing, refunding, renewals or extensions thereof; provided that the amount of such Indebtedness is not increased at the time of such refinancing, refunding, renewal or extension except by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such refinancing and by an amount equal to any existing commitments unutilized thereunder and the direct or any contingent obligor with respect thereto is not changed, as a result of or in connection with such refinancing, refunding, renewal or extension; and (ii) CTCB Indebtedness and any refinancing, refunding, renewals or extensions thereof;

(c) Indebtedness in respect of Capitalized Leases and purchase money obligations for fixed or capital assets within the limitations set forth in Section 7.01(p); provided, however, that the aggregate amount of all such Indebtedness at any one time outstanding (together with outstanding Indebtedness under clause (i) below, shall not exceed \$25,000,000;

(d) Intercompany Debt which shall (i) to the extent required by the Administrative Agent, be evidenced by promissory notes which, if owed to the Company or Loan Party that is not an Excluded Subsidiary, shall be pledged to the Administrative Agent as Collateral for the Secured Obligations in accordance with the terms of the Security Agreement unless such pledge (A) could result in shall result in adverse tax consequences to the Company or (B) is not permitted by any Law applicable, and (ii) be otherwise permitted under the provisions of Section 7.03;

(e) Unsecured Guarantees of the Borrowers or any Subsidiary in respect of Indebtedness otherwise permitted hereunder, including guarantees (i) by any Loan Party of Indebtedness of any Excluded Subsidiary to the extent such guarantees constitute Investments subject to the limitations of Section 7.03(c) and (g), (ii) by any Excluded Subsidiary of Indebtedness of any other Excluded Subsidiary, and (iii) by any Subsidiary of the Company of Indebtedness of the Company or any other Loan Party;

(f) obligations (contingent or otherwise) existing or arising under any Swap Contract, provided that (i) such obligations are (or were) entered into by such Person in the ordinary course of business for the purpose of directly mitigating risks associated with fluctuations in interest rates or foreign exchange rates and (ii) such Swap Contract does not contain any provision exonerating the non-defaulting party from its obligation to make payments on outstanding transactions to the defaulting party;

(g) Indebtedness outstanding on the Closing Date and set forth on Schedule 7.02;

(h) Guaranty by the Company of the obligations of Super Micro Computer Taiwan, Inc., to Bank of America under that certain revolving credit facility with the aggregate commitment amount of \$10,000,000;

(i) Indebtedness arising under a declaration of joint and several liability used for the purpose of Article 2:403 of the Dutch Civil Code (and any residual liability under such declaration arising pursuant to section 2:404(2) of the Dutch Civil Code);

(j) Indebtedness arising under a Dutch fiscal unity (*fiscale eenheid*);

(k) other unsecured Indebtedness not contemplated by the above provisions in an aggregate principal amount (together with outstanding Indebtedness under clause (c) above) not to exceed \$25,000,000 at any time outstanding;

(l) other Indebtedness, whether secured or unsecured, incurred by Foreign Subsidiaries in an aggregate principal amount not to exceed \$50,000,000 at any time outstanding;

(m) Endorsement of negotiable Instruments in the ordinary course of business;

(n) obligations arising under performance bonds, bid bonds, appeal bonds, customs bonds, surety bonds, banker's acceptances and trade-related letters of credit, in each case in the ordinary course of business and not in connection with Indebtedness for borrowed money.

To the extent that the creation, incurrence or assumption of any Indebtedness could be attributable to more than one subsection of this Section 7.02, the Company may allocate such Indebtedness to any one or more of such subsections and in no event shall the same portion of Indebtedness be deemed to utilize or be attributable to more than one item.

### **7.03 Investments.**

Make or hold any Investments, except:

(a) Investments held by the Company and its Subsidiaries in the form of cash or Cash Equivalents;

(b) advances to officers, directors and employees of the Company and Subsidiaries in an aggregate amount not to exceed \$500,000 at any time outstanding, for travel, entertainment, relocation and analogous ordinary business purposes;

(c) (i) Investments by the Company and its Subsidiaries in their respective Subsidiaries outstanding on the date hereof, (ii) additional Investments by Subsidiaries of the Company that are not U.S. Loan Parties in the Company or in other Subsidiaries of the Company and (iii) so long as no Default has occurred and is continuing or would result from such Investment, additional Investments by the Company and/ or any U.S. Loan Party in any Subsidiary (regardless of whether or not Loan Parties) in an aggregate amount invested in any fiscal year not to exceed \$100,000,000;

(d) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;

- (e) Guarantees permitted by Section 7.02;
- (f) Investments existing on the date hereof (other than those referred to in Section 7.03(c)(i)) and set forth on Schedule 7.03;
- (g) Additional Investments by the Company or any U.S. Loan Party in Subsidiaries, so long as the aggregate outstanding amount of such Investments at no time exceeds 20% of the value of Company's Consolidated assets;
- (h) Investments in joint ventures, so long as immediately before and after giving effect to any such Investment, (x) no Default or Event of Default exists, and (y) Consolidated Leverage Ratio is less than 1.50:1.00; and
- (i) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of suppliers and customers and in settlement of delinquent obligations of, and other disputes with, customers and suppliers arising in the ordinary course of business;
- (j) Investments arising from deposits made in the ordinary course of business securing obligations or performance under real estate or personal property leases;
- (k) Investments consisting of deposit, securities or commodities accounts that are subject to a Qualifying Control Agreement, in each case, if and to the extent a Qualifying Control Agreement is required hereunder;
- (l) other Investments not contemplated by the above provisions not exceeding \$15,000,000 in the aggregate in any fiscal year of the Company;
- (m) Investments by the Company in Swap Contracts permitted under Section 7.02(l);
- (n) Investments consisting of the acquisition or issuance of Equity Interests in newly created, direct or indirect, Wholly-Owned Subsidiaries, created for the purpose of effecting an acquisition permitted under clause (o) below or a corporate restructuring permitted by Sections 7.04 or 7.05 hereof; and
- (o) Investments consisting of strategic Investments in operating companies approved by the Company's board of directors in an aggregate amount not to exceed \$25,000,000 in any fiscal year, and other joint ventures and strategic alliances in the ordinary course of business; provided, that immediately before and after giving effect thereto, no Default exists and is continuing.

#### **7.04 Fundamental Changes**

Merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except that:

- (a) any Subsidiary may merge with (i) the Company ; provided that the Company shall be the continuing or surviving Person, or (ii) any one or more other Subsidiaries, provided that when any Loan Party is merging with another Subsidiary, such Loan Party shall be the continuing or surviving Person;

(b) any Loan Party may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Company or to a U.S. Loan Party;

(c) any Subsidiary that is not a Loan Party may dispose of all or substantially all its assets (including any Disposition that is in the nature of a liquidation) to (i) another Subsidiary that is not a Loan Party or (ii) to a Loan Party;

(d) in so long as no Default has occurred and is continuing or would result therefrom, each of the Borrower and any of its Subsidiaries may merge into or consolidate with any other Subsidiary of Company or permit any other Subsidiary of Company to merge into or consolidate with it; provided, however, that in each case, immediately after giving effect thereto (i) in the case of any such merger to which the Company is a party, the Company is the surviving Person and (ii) in the case of any such merger to which any Loan Party (other than the Company ) is a party, such Loan Party is the surviving Person; and

(e) Dispositions to a third party permitted under Section 7.05.

#### **7.05 Dispositions.**

Make any Disposition, except:

(a) Permitted Transfers;

(b) Dispositions of obsolete or worn out property, whether now owned or hereafter acquired, in the ordinary course of business , including the abandonment or other Disposition of Intellectual Property, in each case, which, in the reasonable judgment of the Company , is no longer economically practicable to maintain or useful in the conduct of the business of the Company and its Subsidiaries, taken as a whole ;

(c) Dispositions of equipment or real property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are reasonably promptly applied to the purchase price of such replacement property;

(d) Dispositions permitted by Section 7.04;

(e) Dispositions (i) of Accounts (as defined in the UCC) of Foreign Subsidiaries pursuant to factoring or other similar arrangements and (ii) so long as no Default or Event of Default has occurred and is continuing, Accounts (as defined in the UCC) of any Subsidiary that are past due for the purposes of collection of such past due Accounts;

(f) transfers or other Dispositions of any property to any Subsidiary that is not a Loan Party; provided that the aggregate value of the property transferred by the Company to Subsidiaries that are not Loan Parties, net of any fair market value consideration received in respect of such transfer, shall constitute an Investment subject to the limitations of Section 7.03(c) and (g); and

(g) the entry into any agreement providing for any of the foregoing Dispositions so long as no Default exists at the time of entry into such agreement.

#### **7.06 Restricted Payments.**

Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except that:

(a) so long as no Default shall have occurred and be continuing at the time of the making of any such Restricted Payment or would result therefrom, each Subsidiary of a Loan Party may make Restricted Payments to any Person that owns Equity Interests in such Subsidiary, ratably according to their respective holdings of the type of Equity Interest in respect of which such Restricted Payment is being made;

(b) the Company and each Subsidiary may declare and make Restricted Payments payable solely in Equity Interests (other than Disqualified Stock of the Company) of such Person;

(c) the Company and each Subsidiary may make other Restricted Payments, provided all of the following conditions are satisfied:

(i) no Default or Event of Default has occurred and is continuing or would arise as a result of such Restricted Payment, and

(ii) at the time of such Restricted Payment, the Consolidated Leverage Ratio (after giving Pro Forma Effect to such Restricted Payment) (as of the most recent Measurement Period for which financial statements have been delivered to the Administrative Agent) shall be 0.25 to 1.0 less than the then applicable level set forth in Section 7.11;

(d) the Company may repurchase Equity Interests issued by it, which redemption is deemed to occur upon (i) the exercise of stock options if the Equity Interests represent a portion of the exercise price thereof or (ii) the withholding of a portion of Equity Interests issued to employees and other participants under an equity compensation program of the Borrower or its Subsidiaries, in each case to cover withholding tax obligations of such persons in respect of such issuance; and

(e) the Company may make payments of cash in lieu of fractional shares upon conversion of convertible securities or upon any stock dividend, stock split or combination or business combination otherwise permitted hereunder.

#### **7.07 Change in Nature of Business**

Engage in any material line of business substantially different from those lines of business conducted by the Company and its Subsidiaries on the date hereof or any business substantially related or incidental thereto.

#### **7.08 Transactions with Affiliates**

Enter into or permit to exist any transaction or series of transactions with any officer, director or Affiliate of such Person other than transactions which are

(a) entered into in the ordinary course of such Person's business on fair and reasonable terms and conditions substantially as favorable to such Person as would be obtainable by it in a comparable arm's length transaction with a Person other than an officer, director or Affiliate;

- (b) Restricted Payments permitted by Section 7.06;
- (c) any payment of compensation or fees and provision of benefits to employees, officers, directors or shareholders made in the ordinary course of business or otherwise expressly permitted hereunder;
- (d) transfers of cash and assets to any U.S. Loan Party,
- (e) transactions solely among Excluded Subsidiaries;
- (f) transactions between or among U.S. Loan Parties;
- (g) Investments in Subsidiaries subject to the limitations of Section 7.03(c); and
- (h) Other intercompany transactions expressly permitted by this Agreement .

#### **7.09 Burdensome Agreements**

Enter into, or permit to exist, any Contractual Obligation (except for this Agreement and the other Loan Documents) that (a) encumbers or restricts the ability of any such Person to (i) to act as a Loan Party; (ii) make Restricted Payments to any Loan Party, (iii) pay any Indebtedness or other obligation owed to any Loan Party, (iv) make loans or advances to any Loan Party, or (v) create any Lien upon any of their properties or assets, whether now owned or hereafter acquired, except, in the case of clause (a)(v) only, for any document or instrument governing Indebtedness incurred pursuant to Section 7.02(b), (c), (e) or (m); provided that any such restriction contained therein relates only to the asset or assets constructed or acquired in connection therewith or (b) requires the grant of any Lien (other than a Permitted Lien) on property for any Indebtedness if a Lien on such property is given to the Administrative Agent as security for the Secured Obligations; provided however, the foregoing shall not apply to (A) restrictions and conditions imposed by Law, (B) restrictions and conditions existing on the Closing Date identified on Schedule 7.09, (C) customary restrictions and conditions contained in agreements relating to the sale permitted hereunder of a Subsidiary pending such sale, provided such restrictions and conditions apply only to the Subsidiary that is to be sold and such sale is expressly permitted hereunder, (D) customary restrictions and conditions on assignment and transfer contained in agreements and licenses relating to Intellectual Property, (E) Indebtedness of any Excluded Subsidiary or restrictions and conditions contained in agreements or instruments evidencing any Indebtedness of Excluded Subsidiaries permitted to be incurred under Section 7.02. Notwithstanding anything in Section 7.09 to the contrary, nothing herein shall restrict the licensing or sublicensing by the Company or its Subsidiaries of Intellectual Property in the ordinary course of business.

#### **7.10 Use of Proceeds**

Use the proceeds of any Credit Extension, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

#### **7.11 Financial Covenants**

- (a) Consolidated Profitability. Permit the Consolidated Profitability as of the end of any fiscal quarter, measured on a fiscal quarterly basis, to be less than \$0 for any two consecutive fiscal quarters.



(b) Consolidated Leverage Ratio. Permit the Consolidated Leverage Ratio as of the end of any fiscal quarter, measured for the applicable Measurement Period, to be greater than 2.00:1.00.

(c) Domestic Unencumbered Liquidity. Permit the Domestic Unencumbered Liquidity of the Company to be less than \$30,000,000, measured quarterly as of the last day of each fiscal quarter.

**7.12 [Reserved].**

**7.13 Amendments of Organization Documents; Fiscal Year; Legal Name, State of Formation; Form of Entity and Accounting Changes.**

(a) Amend any of its Organization Documents;

(b) change its fiscal year;

(c) without providing ten (10) days prior written notice to the Administrative Agent (or such extended period of time as agreed to by the Administrative Agent), change its name, state of formation, form of organization or principal place of business; or

(d) make any change in accounting policies or reporting practices, except as required by GAAP.

**7.14 Sale and Leaseback Transactions.**

Enter into any Sale and Leaseback Transaction.

**7.15 Prepayments, Etc. of Indebtedness.**

(a) Make (or give any notice with respect thereto) any voluntary or optional payment or prepayment or redemption or acquisition for value of (including without limitation, by way of depositing money or securities with the trustee with respect thereto before due for the purpose of paying when due), refund, refinance or exchange of any subordinated Indebtedness of any Loan Party or any Material Subsidiary.

(b) Amend, modify or change (or permit the amendment, modification or change of) any of the terms or provisions of any document governing any subordinated Indebtedness of any Loan Party or any Material Subsidiary without the consent of the Required Lenders and the Administrative Agent.

**7.16 [Reserved].**

**7.17 Sanctions.**

Directly or indirectly, to the knowledge of the Borrower, use any Credit Extension or the proceeds of any Credit Extension, or lend, contribute or otherwise make available such Credit Extension or the proceeds of any Credit Extension to any Person, to fund any activities of or business with any Person, or in any Designated Jurisdiction, that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any Person (including any Person participating in the transaction, whether as Lender, Arranger, Administrative Agent, L/C Issuer, Swingline Lender, or otherwise) of Sanctions.

## **7.18 Anti-Corruption Laws**

Directly or indirectly, use any Credit Extension or the proceeds of any Credit Extension for any purpose which would breach the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other similar, applicable anti-corruption legislation in other jurisdictions.

## **ARTICLE VIII**

### **EVENTS OF DEFAULT AND REMEDIES**

#### **8.01 Events of Default**

Any of the following shall constitute an Event of Default:

(a) Non-Payment. The Company or any other Loan Party fails to pay (i) when and as required to be paid herein, any amount of principal of any Loan or any L/C Obligation or deposit any funds as Cash Collateral in respect of L/C Obligations, or (ii) within three (3) Business Days after the same becomes due, any interest on any Loan or on any L/C Obligation, or any fee due hereunder, or (iii) within five (5) days after the same becomes due, any other amount payable hereunder or under any other Loan Document; or

(b) Specific Covenants. Any Loan Party fails to perform or observe any term, covenant or agreement contained in any of Section 6.01, 6.02, 6.03, 6.05(a) (solely as it relates to the Company), 6.08, 6.10, 6.11, Article VII or Article X; or

(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in Section 8.01(a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for thirty (30) days after the earliest to occur of (i) the date upon which a Responsible Officer of any Loan Party has knowledge thereof after reasonable inquiry and diligence, and (ii) the date upon which written notice thereof is given to the Borrower by the Administrative Agent or the Required Lenders; or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Company or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect or misleading in any material respect (without duplication of any materiality qualifiers contained therein) when made or deemed made; or

(e) Cross-Default. (i) Any Loan Party or any Material Subsidiary thereof (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness or Guarantee (other than Indebtedness hereunder and Indebtedness under Swap Contracts) having an aggregate outstanding principal amount of more than the \$25,000,000, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or Guarantee or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, or such Guarantee to become payable or cash collateral in respect thereof to be demanded; provided that this clause

(B) shall not apply to Indebtedness that becomes due as a result of a voluntary sale or transfer of assets not prohibited by the applicable agreement or instrument; or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which a Loan Party or any Subsidiary thereof is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which a Loan Party or any Subsidiary thereof is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by such Loan Party or such Subsidiary as a result thereof is greater than the \$25,000,000; provided, however, that an Event of Default under this clause (e) shall continue only so long as the applicable event or condition constituting such Event of Default is not waived or rescinded by the holders of such Indebtedness; or

(f) Insolvency Proceedings, Etc. Any Loan Party or any Material Subsidiary thereof institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for sixty (60) calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undischarged or unstayed for sixty (60) calendar days, or an order for relief is entered in any such proceeding; or

(g) Inability to Pay Debts; Attachment. (i) Any Loan Party or any Material Subsidiary thereof becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, subject to applicable grace periods, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within sixty (60) days after its issue or levy; or

(h) Judgments. There is entered against any Loan Party or any Material Subsidiary thereof (i) one or more final judgments or orders for the payment of money in an aggregate amount (as to all such judgments and orders) exceeding the Threshold Amount (to the extent not covered by independent third-party insurance as to which the insurer is rated at least "A" by A.M. Best Company, has been notified of the potential claim and does not dispute coverage), or (ii) any one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of thirty (30) consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

(i) ERISA. (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of any Loan Party under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of the Threshold Amount, or (ii) the Company or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of the Threshold Amount; or

(j) Invalidity of Loan Documents. Any material provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all Obligations arising under the Loan Documents, ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of any provision of any Loan Document; or any Loan Party denies in writing that it has any or further liability or obligation under any provision of any Loan Document, or purports to revoke, terminate or rescind any provision of any Loan Document; or

(k) Collateral Documents. Any Collateral Document after delivery thereof pursuant to the terms of the Loan Documents shall for any reason cease to create a valid and perfected first priority Lien (subject to Permitted Liens) on the Collateral purported to be covered thereby, or any Loan Party shall assert the invalidity of such Liens; or

(l) Change of Control. There occurs any Change of Control.

(m) Without limiting the provisions of Article IX, if an Event of Default shall have occurred under the Loan Documents, then such Event of Default will continue to exist until it either is cured (to the extent specifically permitted) in accordance with the Loan Documents or is otherwise expressly waived by Administrative Agent (with the approval of requisite Appropriate Lenders (in their sole discretion) as determined in accordance with Section 11.01; and once an Event of Default occurs under the Loan Documents, then such Event of Default will continue to exist until it is expressly waived by the requisite Appropriate Lenders or by the Administrative Agent with the approval of the requisite Appropriate Lenders, as required hereunder in Section 11.01.

## **8.02 Remedies upon Event of Default**

If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

(a) declare the Commitment of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions to be terminated, whereupon such commitments and obligation shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrowers;

(c) require that the Borrowers Cash Collateralize the L/C Obligations (in an amount equal to the Minimum Collateral Amount with respect thereto); provided that in no event shall the Designated Borrower be required to Cash Collateralize more than the Designated Borrower Share of the L/C Obligations; and

(d) exercise on behalf of itself, the Lenders and the L/C Issuer all rights and remedies available to it, the Lenders and the L/C Issuer under the Loan Documents or applicable Law or equity;

provided, however, that upon the occurrence of an actual or deemed entry of an order for relief with respect to the Borrowers under the Bankruptcy Code of the United States, the obligation of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, and the obligation of the Borrowers to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, in each case without further act of the Administrative Agent or any Lender.

### **8.03 Application of Funds**

After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 8.02) or if at any time insufficient funds are received by and available to the Administrative Agent to pay fully all Secured Obligations then due hereunder, any amounts received on account of the Secured Obligations shall, subject to the provisions of Sections 2.14 and 2.15, be applied by the Administrative Agent in the following order :

First, to payment of that portion of the Secured Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Secured Obligations constituting fees, indemnities and other amounts (other than principal, interest and Letter of Credit Fees) payable to the Lenders and the L/C Issuer (including fees, charges and disbursements of counsel to the respective Lenders and the L/C Issuer arising under the Loan Documents and amounts payable under Article III, ratably among them in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Secured Obligations constituting accrued and unpaid Letter of Credit Fees and interest on the Loans, L/C Borrowings and other Secured Obligations arising under the Loan Documents, ratably among the Lenders and the L/C Issuer in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Secured Obligations constituting unpaid principal of the Loans, L/C Borrowings and Secured Obligations then owing under Secured Hedge Agreements and Secured Cash Management Agreements and to the to the Administrative Agent for the account of the L/C Issuer, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit to the extent not otherwise Cash Collateralized by the Borrowers pursuant to Sections 2.03 and 2.14, in each case ratably among the Administrative Agent, the Lenders, the L/C Issuer, the Hedge Banks and the Cash Management Banks in proportion to the respective amounts described in this clause Fourth held by them; and

Last, the balance, if any, after all of the Secured Obligations have been indefeasibly paid in full, to the Borrowers or as otherwise required by Law.

Subject to Sections 2.03(c) and 2.14, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Fourth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Secured Obligations, if any, in the order set forth above. Excluded Swap Obligations with respect to

any Loan Party shall not be paid with amounts received from such Guarantor or its assets, but appropriate adjustments shall be made with respect to payments from other Loan Parties to preserve the allocation to Secured Obligations otherwise set forth above in this Section.

Notwithstanding the foregoing, Secured Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements shall be excluded from the application described above if the Administrative Agent has not received a Secured Party Designation Notice, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be. Each Cash Management Bank or Hedge Bank not a party to this Agreement that has given the notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of the Administrative Agent pursuant to the terms of Article IX for itself and its Affiliates as if a “Lender” party hereto.

## ARTICLE IX

### ADMINISTRATIVE AGENT

#### 9.01 Appointment and Authority.

(a) Appointment. Each of the Lenders and the L/C Issuer hereby irrevocably appoints, designates and authorizes Bank of America to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the L/C Issuer, and neither the Company nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term “agent” herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

(b) Collateral Agent. The Administrative Agent shall also act as the “collateral agent” under the Loan Documents, and each of the Lenders (including in its capacities as a potential Hedge Bank, and a potential Cash Management Bank) and the L/C Issuer hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender and the L/C Issuer for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Secured Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as “collateral agent” and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent), shall be entitled to the benefits of all provisions of this Article IX and Article XI (including Section 11.04(c), as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” under the Loan Documents) as if set forth in full herein with respect thereto.

#### 9.02 Rights as a Lender.

The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the

Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of banking, trust, financial, advisory, underwriting or other business with any Loan Party or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders or to provide notice to or consent of the Lenders with respect thereto.

### **9.03 Exculpatory Provisions.**

(a) The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent and its Related Parties:

(i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable Law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may affect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(iii) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty or responsibility to disclose, and shall not be liable for the failure to disclose, any information relating to any Loan Party or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

(b) Neither the Administrative Agent nor any of its Related Parties shall be liable for any action taken or not taken by the Administrative Agent under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby or thereby (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary), or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 11.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and non-appealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given in writing to the Administrative Agent by the Borrowers, a Lender or the L/C Issuer.

(c) Neither the Administrative Agent nor any of its Related Parties have any duty or obligation to any Lender or participant or any other Person to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder

or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Collateral Documents, (v) the value or the sufficiency of any Collateral, or (vi) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

#### **9.04 Reliance by Administrative Agent**

The Administrative Agent shall be entitled to rely upon, and shall be fully protected in relying and shall not incur any liability for relying upon, any notice, request, certificate, communication, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall be fully protected in relying and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the L/C Issuer, the Administrative Agent may presume that such condition is satisfactory to such Lender or the L/C Issuer unless the Administrative Agent shall have received notice to the contrary from such Lender or the L/C Issuer prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Loan Parties), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts. For purposes of determining compliance with the conditions specified in Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objections.

#### **9.05 Delegation of Duties**

The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the Facilities as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

#### **9.06 Resignation of Administrative Agent**

(a) Notice. The Administrative Agent may at any time give notice of its resignation to the Lenders, the L/C Issuer and the Borrowers. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrowers, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such



bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the “Resignation Effective Date”), then the retiring Administrative Agent may (but shall not be obligated to) on behalf of the Lenders and the L/C Issuer, appoint a successor Administrative Agent meeting the qualifications set forth above; provided that in no event shall any successor Administrative Agent be a Defaulting Lender. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) **[Reserved]**.

(c) Effect of Resignation or Removal. With effect from the Resignation Effective Date (i) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders or the L/C Issuer under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (ii) except for any indemnity payments or other amounts then owed to the retiring Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and the L/C Issuer directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor’s appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Administrative Agent (other than as provided in Section 3.01(g) and other than any rights to indemnity payments or other amounts owed to the retiring Administrative Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrowers to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrowers and such successor. After the retiring Administrative Agent’s resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 11.04 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them (i) while the retiring Administrative Agent was acting as Administrative Agent and (ii) after such resignation or removal for as long as any of them continues to act in any capacity hereunder or under the other Loan Documents, including, without limitation, (A) acting as collateral agent or otherwise holding any collateral security on behalf of any of the Secured Parties and (B) in respect of any actions taken in connection with transferring the agency to any successor Administrative Agent.

#### **9.07 Non-Reliance on Administrative Agent and Other Lenders**

Each Lender and the L/C Issuer acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and the L/C Issuer also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

**9.08 No Other Duties, Etc.**

Anything herein to the contrary notwithstanding, none of the titles listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or the L/C Issuer hereunder.

**9.09 Administrative Agent May File Proofs of Claim; Credit Bidding.**

In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrowers) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Secured Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the L/C Issuer and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the L/C Issuer and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the L/C Issuer and the Administrative Agent under Sections 2.03(h) and (i), 2.09 and 11.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and the L/C Issuer to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders and the L/C Issuer, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.09 and 11.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or the L/C Issuer any plan of reorganization, arrangement, adjustment or composition affecting the Secured Obligations or the rights of any Lender or the L/C Issuer to authorize the Administrative Agent to vote in respect of the claim of any Lender or the L/C Issuer or in any such proceeding.

The Secured Parties hereby irrevocably authorize the Administrative Agent, at the direction of the Required Lenders, to credit bid all or any portion of the Secured Obligations (including accepting some or all of the Collateral in satisfaction of some or all of the Secured Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (a) at any sale thereof conducted under the provisions of the Bankruptcy Code of the United States, including under Sections 363, 1123 or 1129 of the Bankruptcy Code of the United States, or any similar Laws in any other jurisdictions to which a Loan Party is subject, (b) at any other sale or foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with any applicable Law. In connection with any such credit bid and purchase, the Secured Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid on

a ratable basis (with Secured Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that would vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) in the asset or assets so purchased (or in the Equity Interests or debt instruments of the acquisition vehicle or vehicles that are used to consummate such purchase). In connection with any such bid (i) the Administrative Agent shall be authorized to form one or more acquisition vehicles to make a bid, (ii) to adopt documents providing for the governance of the acquisition vehicle or vehicles (provided that any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or Equity Interests thereof shall be governed, directly or indirectly, by the vote of the Required Lenders, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in clauses (a) through (j) of Section 11.1 of this Agreement, and (iii) to the extent that Secured Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Secured Obligations assigned to the acquisition vehicle exceeds the amount of debt credit bid by the acquisition vehicle or otherwise), such Secured Obligations shall automatically be reassigned to the Lenders pro rata and the Equity Interests and/or debt instruments issued by any acquisition vehicle on account of the Secured Obligations that had been assigned to the acquisition vehicle shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action.

**9.10 Collateral and Guaranty Matters.**

Each of the Lenders (including in its capacities as a potential Cash Management Bank and a potential Hedge Bank) and the L/C Issuer irrevocably authorize the Administrative Agent, at its option and in its discretion,

- (a) to release any Lien on any property granted to or held by the Administrative Agent under any Loan Document (i) upon the Facility Termination Date, (ii) that is sold or otherwise disposed of or to be sold or otherwise disposed of as part of or in connection with any sale or other disposition permitted hereunder or under any other Loan Document, or (iii) if approved, authorized or ratified in writing by the Required Lenders in accordance with Section 11.01;
- (b) to subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 7.01(i); and
- (c) to release any Guarantor from its obligations under the Guaranty if such Person ceases to be a Subsidiary as a result of a transaction permitted under the Loan Documents.

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty pursuant to this Section 9.10. In each case as specified in this Section 9.10, the Administrative Agent will, at the Borrowers' expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Collateral Documents or to subordinate its interest in such item, or to release such Guarantor from its obligations under the Guaranty, in each case in accordance with the terms of the Loan Documents and this Section 9.10.

The Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Administrative Agent's Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

**9.11 Secured Cash Management Agreements and Secured Hedge Agreements**

Except as otherwise expressly set forth herein, no Cash Management Bank or Hedge Bank that obtains the benefit of the provisions of Section 8.03, the Guaranty or any Collateral by virtue of the provisions hereof or any Collateral Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) (or to notice of or to consent to any amendment, waiver or modification of the provisions hereof or of the Guaranty or any Collateral Document) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article IX to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Secured Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements except to the extent expressly provided herein and unless the Administrative Agent has received a Secured Party Designation Notice of such Secured Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be. The Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Secured Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements in the case of a Facility Termination Date.

**ARTICLE X**

**CONTINUING GUARANTY**

**10.01 Guaranty**

Each Guarantor hereby absolutely and unconditionally, jointly and severally guarantees, as primary obligor and as a guaranty of payment and performance and not merely as a guaranty of collection, prompt payment when due, whether at stated maturity, by required prepayment, upon acceleration, demand or otherwise, and at all times thereafter, of any and all Secured Obligations (for each Guarantor, subject to the proviso in this sentence, its "Guaranteed Obligations"); provided that (a) the Guaranteed Obligations of a Guarantor shall exclude any Excluded Swap Obligations with respect to such Guarantor and (b) the liability of each Guarantor individually with respect to this Guaranty shall be limited to an aggregate amount equal to the largest amount that would not render its obligations hereunder subject to avoidance under Section 548 of the Bankruptcy Code of the United States or any comparable provisions of any applicable state law. The Administrative Agent's books and records showing the amount of the Obligations shall be admissible in evidence in any action or proceeding, and shall be binding upon each Guarantor, and conclusive for the purpose of establishing the amount of the Secured Obligations. This Guaranty shall not be affected by the genuineness, validity, regularity or enforceability of the Secured Obligations or any instrument or agreement evidencing any Secured Obligations, or by the existence, validity, enforceability, perfection, non-perfection or extent of any collateral therefor, or by any fact or circumstance relating to the Secured Obligations which might otherwise constitute a defense to the obligations of the Guarantors, or any of them, under this Guaranty, and each Guarantor hereby irrevocably waives any defenses it may now have or hereafter acquire in any way relating to any or all of the foregoing.

## **10.02 Rights of Lenders**

Each Guarantor consents and agrees that the Secured Parties may, at any time and from time to time, without notice or demand, and without affecting the enforceability or continuing effectiveness hereof: (a) amend, extend, renew, compromise, discharge, accelerate or otherwise change the time for payment or the terms of the Secured Obligations or any part thereof; (b) take, hold, exchange, enforce, waive, release, fail to perfect, sell, or otherwise dispose of any security for the payment of this Guaranty or any Secured Obligations; (c) apply such security and direct the order or manner of sale thereof as the Administrative Agent, the L/C Issuer and the Lenders in their sole discretion may determine; and (d) release or substitute one or more of any endorsers or other guarantors of any of the Secured Obligations. Without limiting the generality of the foregoing, each Guarantor consents to the taking of, or failure to take, any action which might in any manner or to any extent vary the risks of such Guarantor under this Guaranty or which, but for this provision, might operate as a discharge of such Guarantor.

## **10.03 Certain Waivers**

Each Guarantor waives (a) any defense arising by reason of any disability or other defense of the Borrowers or any other guarantor, or the cessation from any cause whatsoever (including any act or omission of any Secured Party) of the liability of the Company or any other Loan Party; (b) any defense based on any claim that such Guarantor's obligations exceed or are more burdensome than those of the Company or any other Loan Party; (c) the benefit of any statute of limitations affecting any Guarantor's liability hereunder; (d) any right to proceed against the Company or any other Loan Party, proceed against or exhaust any security for the Secured Obligations, or pursue any other remedy in the power of any Secured Party whatsoever; (e) any benefit of and any right to participate in any security now or hereafter held by any Secured Party; and (f) to the fullest extent permitted by law, any and all other defenses or benefits that may be derived from or afforded by applicable Law limiting the liability of or exonerating guarantors or sureties. Each Guarantor expressly waives all setoffs and counterclaims and all presentments, demands for payment or performance, notices of nonpayment or nonperformance, protests, notices of protest, notices of dishonor and all other notices or demands of any kind or nature whatsoever with respect to the Secured Obligations, and all notices of acceptance of this Guaranty or of the existence, creation or incurrence of new or additional Secured Obligations. Each Guarantor waives any rights and defenses that are or may become available to it by reason of §§ 2787 to 2855, inclusive, and §§ 2899 and 3433 of the California Civil Code. The foregoing waivers and the provisions hereinafter set forth in this Guaranty which pertain to California law are included solely out of an abundance of caution, and shall not be construed to mean that any of the above-referenced provisions of California law are in any way applicable to this Guaranty or the Secured Obligations. Each Guarantor waives any rights and defenses that are or may become available to it by reason of §§ 2787 to 2855, inclusive, and §§ 2899 and 3433 of the California Civil Code.

## **10.04 Obligations Independent**

The obligations of each Guarantor hereunder are those of primary obligor, and not merely as surety, and are independent of the Secured Obligations and the obligations of any other guarantor, and a separate action may be brought against each Guarantor to enforce this Guaranty whether or not the Borrowers or any other person or entity is joined as a party.

#### **10.05 Subrogation**

No Guarantor shall exercise any right of subrogation, contribution, indemnity, reimbursement or similar rights with respect to any payments it makes under this Guaranty until all of the Secured Obligations and any amounts payable under this Guaranty have been indefeasibly paid and performed in full and the Commitments and the Facilities are terminated. If any amounts are paid to a Guarantor in violation of the foregoing limitation, then such amounts shall be held in trust for the benefit of the Secured Parties and shall forthwith be paid to the Secured Parties to reduce the amount of the Secured Obligations, whether matured or unmatured.

#### **10.06 Termination; Reinstatement**

This Guaranty is a continuing and irrevocable guaranty of all Secured Obligations now or hereafter existing and shall remain in full force and effect until the Facility Termination Date. Notwithstanding the foregoing, this Guaranty shall continue in full force and effect or be revived, as the case may be, if any payment by or on behalf of the Borrowers or a Guarantor is made, or any of the Secured Parties exercises its right of setoff, in respect of the Secured Obligations and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by any of the Secured Parties in their discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Laws or otherwise, all as if such payment had not been made or such setoff had not occurred and whether or not the Secured Parties are in possession of or have released this Guaranty and regardless of any prior revocation, rescission, termination or reduction. The obligations of each Guarantor under this paragraph shall survive termination of this Guaranty.

#### **10.07 Stay of Acceleration**

If acceleration of the time for payment of any of the Secured Obligations is stayed, in connection with any case commenced by or against a Guarantor or the Borrowers under any Debtor Relief Laws, or otherwise, all such amounts shall nonetheless be payable by each Guarantor, jointly and severally, immediately upon demand by the Secured Parties.

#### **10.08 Condition of Borrower**

Each Guarantor acknowledges and agrees that it has the sole responsibility for, and has adequate means of, obtaining from the Borrowers and any other guarantor such information concerning the financial condition, business and operations of the Borrowers and any such other guarantor as such Guarantor requires, and that none of the Secured Parties has any duty, and such Guarantor is not relying on the Secured Parties at any time, to disclose to it any information relating to the business, operations or financial condition of the Borrowers or any other guarantor (each Guarantor waiving any duty on the part of the Secured Parties to disclose such information and any defense relating to the failure to provide the same).

#### **10.09 Appointment of Borrower**

Each of the Loan Parties hereby appoints the Borrowers to act as its agent for all purposes of this Agreement, the other Loan Documents and all other documents and electronic platforms entered into in connection herewith and agrees that (a) the Borrowers may execute such documents and provide such authorizations on behalf of such Loan Parties as the Borrowers deems appropriate in its sole discretion and each Loan Party shall be obligated by all of the terms of any such document and/or authorization executed on its behalf, (b) any notice or communication delivered by the Administrative Agent, L/C Issuer or a Lender to the Borrowers shall be deemed delivered to each Loan Party and (c) the

Administrative Agent, L/C Issuer or the Lenders may accept, and be permitted to rely on, any document, authorization, instrument or agreement executed by the Borrowers on behalf of each of the Loan Parties.

**10.10 Right of Contribution**

The Guarantors agree among themselves that, in connection with payments made hereunder, each Guarantor shall have contribution rights against the other Guarantors as permitted under applicable Law.

**10.11 Keepwell**

Each Loan Party that is a Qualified ECP Guarantor at the time the Guaranty or the grant of a Lien under the Loan Documents, in each case, by any Specified Loan Party becomes effective with respect to any Swap Obligation, hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds or other support to each Specified Loan Party with respect to such Swap Obligation as may be needed by such Specified Loan Party from time to time to honor all of its obligations under the Loan Documents in respect of such Swap Obligation (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP Guarantor's obligations and undertakings under this Article X voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations and undertakings of each Qualified ECP Guarantor under this Section shall remain in full force and effect until the Secured Obligations have been indefeasibly paid and performed in full. Each Loan Party intends this Section to constitute, and this Section shall be deemed to constitute, a guarantee of the obligations of, and a "keepwell, support, or other agreement" for the benefit of, each Specified Loan Party for all purposes of the Commodity Exchange Act.

**10.12 Additional Guarantor Waivers and Agreements**

(a) Each Guarantor understands and acknowledges that if the Secured Parties foreclose judicially or nonjudicially against any real property security for the Secured Obligations, that foreclosure could impair or destroy any ability that such Guarantor may have to seek reimbursement, contribution, or indemnification from the Borrowers or others based on any right such Guarantor may have of subrogation, reimbursement, contribution, or indemnification for any amounts paid by such Guarantor under this Guaranty. Each Guarantor further understands and acknowledges that in the absence of this paragraph, such potential impairment or destruction of such Guarantor's rights, if any, may entitle such Guarantor to assert a defense to this Guaranty based on Section 580d of the California Code of Civil Procedure as interpreted in *Union Bank v. Gradsky*, 265 Cal. App. 2d 40 (1968). By executing this Guaranty, each Guarantor freely, irrevocably, and unconditionally: (i) waives and relinquishes that defense and agrees that it will be fully liable under this Guaranty even though the Secured Parties may foreclose, either by judicial foreclosure or by exercise of power of sale, any deed of trust securing the Secured Obligations; (ii) agrees that it will not assert that defense in any action or proceeding which the Secured Parties may commence to enforce this Guaranty; (iii) acknowledges and agrees that the rights and defenses waived by such Guarantor in this Guaranty include any right or defense that it may have or be entitled to assert based upon or arising out of any one or more of §§ 580a, 580b, 580d, or 726 of the California Code of Civil Procedure or § 2848 of the California Civil Code; and (iv) acknowledges and agrees that the Secured Parties are relying on this waiver in creating the Secured Obligations, and that this waiver is a material part of the consideration which the Secured Parties are receiving for creating the Secured Obligations.

(b) Each Guarantor waives all rights and defenses that it may have because any of the Secured Obligations is secured by real property. This means, among other things: (i) the

Secured Parties may collect from any Guarantor without first foreclosing on any real or personal property collateral pledged by the other Loan Parties; and (ii) if the Secured Parties foreclose on any real property collateral pledged by the other Loan Parties: (A) the amount of the Secured Obligations may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price, and (B) the Secured Parties may collect from any Guarantor even if the Secured Parties, by foreclosing on the real property collateral, have destroyed any right such Guarantor may have to collect from the Borrowers. This is an unconditional and irrevocable waiver of any rights and defenses each Guarantor may have because any of the Secured Obligations is secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon § 580a, 580b, 580d, or 726 of the California Code of Civil Procedure.

(c) Each Guarantor waives any right or defense it may have at law or equity, including California Code of Civil Procedure § 580a, to a fair market value hearing or action to determine a deficiency judgment after a foreclosure.

## ARTICLE XI

### MISCELLANEOUS

#### 11.01 Amendments, Etc.

No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Company or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders (or by the Administrative Agent with the consent of the Required Lenders) and the Company or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such amendment, waiver or consent shall:

(a) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.02) without the written consent of such Lender (it being understood and agreed that a waiver of any condition precedent in Section 4.02 or of any Default or a mandatory reduction in Commitments is not considered an extension or increase in Commitments of any Lender);

(b) postpone any date fixed by this Agreement or any other Loan Document for any payment (excluding mandatory prepayments) of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under such other Loan Document without the written consent of each Lender entitled to such payment;

(c) reduce the principal of, or the rate of interest specified herein on, any Loan or L/C Borrowing, or (subject to clause (v) of the second proviso to this Section 11.01) any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender entitled to such amount; provided, however, that only the consent of the Required Lenders shall be necessary to amend the definition of "Default Rate" or to waive any obligation of the Borrowers to pay interest or Letter of Credit Fees at the Default Rate;



- (d) change Section 8.03 in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender;
- (e) change any provision of this Section 11.01 or the definition of “Required Lenders” or any other provision of any Loan Document specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or thereunder or make any determination or grant any consent hereunder, without the written consent of each Lender;
- (f) release all or substantially all of the Collateral in any transaction or series of related transactions, without the written consent of each Lender;
- (g) release all or substantially all of the value of the Guaranty, without the written consent of each Lender, except to the extent the release of any Subsidiary from the Guaranty is permitted pursuant to Section 9.10 (in which case such release may be made by the Administrative Agent acting alone); or
- (h) release a Borrower or permit a Borrower to assign or transfer any of its rights or obligations under this Agreement or the other Loan Documents without the consent of each Lender.

and provided, further, that (i) no amendment, waiver or consent shall, unless in writing and signed by the L/C Issuer in addition to the Lenders required above, affect the rights or duties of the L/C Issuer under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it; (ii) no amendment, waiver or consent shall, unless in writing and signed by the Swingline Lender in addition to the Lenders required above, affect the rights or duties of the Swingline Lender under this Agreement; (iii) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document; and (iv) the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto. Notwithstanding anything to the contrary herein, (A) no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender, or all Lenders or each affected Lender under a Facility, may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (1) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (2) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender, or all Lenders or each affected Lender under a Facility, that by its terms affects any Defaulting Lender disproportionately adversely relative to other affected Lenders shall require the consent of such Defaulting Lender; (B) each Lender is entitled to vote as such Lender sees fit on any bankruptcy reorganization plan that affects the Loans, and each Lender acknowledges that the provisions of Section 1126(c) of the Bankruptcy Code of the United States supersedes the unanimous consent provisions set forth herein and (C) the Required Lenders shall determine whether or not to allow a Loan Party to use cash collateral in the context of a bankruptcy or insolvency proceeding and such determination shall be binding on all of the Lenders.

Notwithstanding anything to the contrary herein the Administrative Agent may, with the prior written consent of the Borrowers only, amend, modify or supplement this Agreement or any of the other Loan Documents to cure any ambiguity, omission, mistake, defect or inconsistency.

## 11.02 Notices; Effectiveness; Electronic Communications

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by fax transmission or e-mail transmission as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Borrowers or any other Loan Party, the Administrative Agent, the L/C Issuer or the Swingline Lender, to the address, fax number, e-mail address or telephone number specified for such Person on Schedule 1.01(a); and

(ii) if to any other Lender, to the address, fax number, e-mail address or telephone number specified in its Administrative Questionnaire (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to the Borrowers).

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by fax transmission shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Administrative Agent, the Lenders, the Swingline Lender and the L/C Issuer hereunder may be delivered or furnished by electronic communication (including e-mail, FPML messaging and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices to any Lender, the Swingline Lender or the L/C Issuer pursuant to Article II if such Lender, Swingline Lender or the L/C Issuer, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent, the Swingline Lender, the L/C Issuer or the Borrowers may each, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement) and (ii) notices and other communications posted to an Internet or intranet website shall be deemed received by the intended recipient upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail address or other written acknowledgement) indicating that such notice or communication is available and identifying the website address therefor; provided that for both clauses (i) and (ii), if such notice or other communication is not sent during the normal business hours of the recipient, such notice,

email or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient.

(c) The Platform. THE PLATFORM IS PROVIDED “AS IS” AND “AS AVAILABLE.” THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the “Agent Parties”) have any liability to the Borrowers, any Lender, the L/C Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrowers’, any Loan Party’s or the Administrative Agent’s transmission of Borrower Materials or notices through the Platform, any other electronic platform or electronic messaging service, or through the Internet.

(d) Change of Address, Etc. Each of the Borrowers, the Administrative Agent, the L/C Issuer and the Swingline Lender may change its address, fax number or telephone number or e-mail address for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, fax number or telephone number or e-mail address for notices and other communications hereunder by notice to the Borrowers, the Administrative Agent, the L/C Issuer and the Swingline Lender. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, fax number and e-mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one (1) individual at or on behalf of such Public Lender to at all times have selected the “Private Side Information” or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender’s compliance procedures and applicable Law, including United States federal and state securities Laws, to make reference to Borrower Materials that are not made available through the “Public Side Information” portion of the Platform and that may contain material non-public information with respect to the Borrowers or their securities for purposes of United States federal or state securities laws.

(e) Reliance by Administrative Agent, L/C Issuer and Lenders. The Administrative Agent, the L/C Issuer and the Lenders shall be entitled to rely and act upon any notices (including, without limitation, telephonic or electronic notices, Loan Notices, Letter of Credit Applications, Notice of Loan Prepayment and Swingline Loan Notices) purportedly given by or on behalf of any Loan Party even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Loan Parties shall indemnify the Administrative Agent, the L/C Issuer, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of a Loan Party. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

### **11.03 No Waiver; Cumulative Remedies; Enforcement .**

No failure by any Lender, the L/C Issuer or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or under any other Loan Document preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 8.02 for the benefit of all the Lenders and the L/C Issuer; provided, however, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) the L/C Issuer or the Swingline Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as L/C Issuer or Swingline Lender, as the case may be) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with Section 11.08 (subject to the terms of Section 2.13), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.13, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

### **11.04 Expenses; Indemnity; Damage Waiver .**

(a) Costs and Expenses . The Loan Parties shall pay (i) all reasonable out-of-pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable fees, charges and disbursements of counsel for the Administrative Agent), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable out-of-pocket expenses incurred by the L/C Issuer in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all out-of-pocket expenses incurred by the Administrative Agent, any Lender or the L/C Issuer (including the fees, charges and disbursements of any counsel for the Administrative Agent, any Lender or the L/C Issuer), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) Indemnification by the Loan Parties. The Loan Parties shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender and the L/C Issuer, and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnitee”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the fees, charges and disbursements of any counsel for any Indemnitee), incurred by any Indemnitee or asserted against any Indemnitee by any Person (including the Company or any other Loan Party) 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, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents (including in respect of any matters addressed in Section 3.01), (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by a Loan Party or any of its Subsidiaries, or any Environmental Liability related in any way to a Loan Party or any of its Subsidiaries (except to the extent such Environmental Liabilities (i) are incurred following foreclosure by the Administrative Agent or following the Administrative Agent or any Lender having become the successor-in-interest to any Loan Party or any of their Subsidiaries and (ii) are attributable to acts of such Indemnitee), 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 the Company or any other Loan Party, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee. Without limiting the provisions of Section 3.01(c), this Section 11.04(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Reimbursement by Lenders. To the extent that the Loan Parties for any reason fail to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof), the L/C Issuer, the Swingline Lender or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), the L/C Issuer, the Swingline Lender or such Related Party, as the case may be, such Lender’s pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender’s share of the Total Credit Exposure at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender), such payment to be made severally among them based on such Lender’s Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought), provided, further that, the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent), the L/C Issuer or the Swingline Lender in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent), the L/C Issuer or the Swingline Lender in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.12(d).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable Law, no Loan Party shall assert, and each Loan Party hereby waives, and acknowledges that no other Person shall have, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee 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.

(e) Payments. All amounts due under this Section shall be payable not later than ten (10) Business Days after demand therefor.

(f) Survival. The agreements in this Section and the indemnity provisions of Section 11.02(e) shall survive the resignation of the Administrative Agent, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

#### **11.05 Payments Set Aside.**

To the extent that any payment by or on behalf of the Borrowers is made to the Administrative Agent, the L/C Issuer or any Lender, or the Administrative Agent, the L/C Issuer or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent, the L/C Issuer or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and the L/C Issuer severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders and the L/C Issuer under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

#### **11.06 Successors and Assigns.**

(a) Successors and Assigns Generally. The provisions of this Agreement and the other Loan Documents shall be binding upon and inure to the benefit of the parties hereto and thereto and their respective successors and assigns permitted hereby, except neither the Company nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (e) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted

hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the L/C Issuer and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement and the other Loan Documents (including all or a portion of its Commitment(s) and the Loans (including for purposes of this subsection (b), participations in L/C Obligations and in Swingline Loans) at the time owing to it); provided that (in each case with respect to any Facility) the assignee is a Non-Public Lender if it is subject to the CRR and any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment under any Facility and/or the Loans at the time owing to it (in each case with respect to any Facility) or contemporaneous assignments to related Approved Funds (determined after giving effect to such Assignments) that equal at least the amount specified in paragraph (b)(i)(B) of this Section in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$5,000,000, in the case of any assignment in respect of the Revolving Facility, or \$1,000,000, in the case of any assignment in respect of the Term Facility, unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrowers otherwise consent (each such consent not to be unreasonably withheld or delayed).

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement and the other Loan Documents with respect to the Loans and/or the Commitment assigned, except that this clause (ii) shall not apply to the Swingline Lender's rights and obligations in respect of Swingline Loans .

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition:

(A) the consent of the Borrowers (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided that the Borrowers shall be deemed to have consented to any such

assignment unless it shall object thereto by written notice to the Administrative Agent within five (5) Business Days after having received notice thereof;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of (1) any Revolving Commitment if such assignment is to a Person that is not a Lender with a Commitment in respect of the applicable Facility, an Affiliate of such Lender or an Approved Fund with respect to such Lender or (2) any Term Loan to a Person that is not a Lender, an Affiliate of a Lender or an Approved Fund; and

(C) the consent of the L/C Issuer and the Swingline Lender shall be required for any assignment in respect of the Revolving Facility.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of \$3,500; provided, however, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment to Certain Persons. No such assignment shall be made (A) to the Company or any of the Company's Affiliates or Subsidiaries, (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B), or (C) to a natural Person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural person).

(vi) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrowers and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (A) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent, the L/C Issuer or any Lender hereunder (and interest accrued thereon) and (B) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit and Swingline Loans in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning



Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05 and 11.04 with respect to facts and circumstances occurring prior to the effective date of such assignment); provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Upon request, the Borrowers (at their expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section.

(c) Register. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrowers (and such agency being solely for tax purposes), shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it (or the equivalent thereof in electronic form) and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans and L/C Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, absent manifest error, and the Borrowers, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrowers and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrowers or the Administrative Agent, sell participations to any Person (other than a natural Person, or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural Person, a Defaulting Lender or the Company or any of the Company's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans (including such Lender's participations in L/C Obligations and/or Swingline Loans) owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrowers, the Administrative Agent, the Lenders and the L/C Issuer shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 11.04(c) without regard to the existence of any participations.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 11.01 that affects such Participant. The Borrowers agree that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 (subject to the requirements and limitations therein, including the requirements under Section 3.01(e) (it being understood that the documentation required under Section 3.01(e) shall be delivered to the Lender who sells the participation)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Sections 3.06 and 11.13 as if it were an assignee under paragraph (b) of this

Section and (B) shall not be entitled to receive any greater payment under Sections 3.01 or 3.04, with respect to any participation, than the Lender from whom it acquired the applicable participation would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrowers' request and expense, to use reasonable efforts to cooperate with the Borrowers to effectuate the provisions of Section 3.06 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 11.08 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.13 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a fiduciary agent of the Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note or Notes, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(f) Resignation as L/C Issuer or Swingline Lender after Assignment. Notwithstanding anything to the contrary contained herein, if at any time Bank of America assigns all of its Revolving Commitment and Revolving Loans pursuant to subsection (b) above, Bank of America may, (i) upon thirty (30) days' notice to the Borrowers and the Lenders, resign as L/C Issuer and/or (ii) upon thirty (30) days' notice to the Borrowers, resign as Swingline Lender. In the event of any such resignation as L/C Issuer or Swingline Lender, the Borrowers shall be entitled to appoint from among the Lenders a successor L/C Issuer or Swingline Lender hereunder; provided, however, that no failure by the Borrowers to appoint any such successor shall affect the resignation of Bank of America as L/C Issuer or Swingline Lender, as the case may be. If Bank of America resigns as L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c)). If Bank of America resigns as Swingline Lender, it shall retain all the rights of the Swingline Lender provided for hereunder with respect to Swingline Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans or fund risk participations in outstanding Swingline Loans pursuant to Section 2.04(c). Upon the appointment of a successor L/C Issuer and/or Swingline Lender, (A) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer or Swingline Lender, as the case may be, and (B) the successor L/C Issuer shall issue letters of credit in

substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to Bank of America to effectively assume the obligations of Bank of America with respect to such Letters of Credit.

**11.07 Treatment of Certain Information; Confidentiality**

(a) Treatment of Certain Information. Each of the Administrative Agent, the Lenders and the L/C Issuer agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (i) to its Affiliates and to its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (ii) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (iii) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process, (iv) to any other party hereto, (v) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (vi) subject to an agreement containing provisions substantially the same as those of this Section, to (A) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement or (B) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to the Borrowers and their obligations, this Agreement or payments hereunder, (vii) on a confidential basis to (A) any rating agency in connection with rating the Company or its Subsidiaries or the credit facilities provided hereunder or (B) the provider of any Platform or other electronic delivery service used by the Administrative Agent, the L/C Issuer and/or the Swingline Lender to deliver Borrower Materials or notices to the Lenders or (C) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers or other market identifiers with respect to the credit facilities provided hereunder, or (viii) with the consent of the Borrowers or to the extent such Information (1) becomes publicly available other than as a result of a breach of this Section or (2) becomes available to the Administrative Agent, any Lender, the L/C Issuer or any of their respective Affiliates on a non-confidential basis from a source other than the Borrowers. For purposes of this Section, “Information” means all information received from the Borrowers or any Subsidiary relating to the Company or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or the L/C Issuer on a non-confidential basis prior to disclosure by the Company or any Subsidiary, provided that, in the case of information received from the Company or any Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information. In addition, the Administrative Agent and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to the Agents and the Lenders in connection with the administration of this Agreement, the other Loan Documents and the Commitments.

(b) Non-Public Information. Each of the Administrative Agent, the Lenders and the L/C Issuer acknowledges that (i) the Information may include material non-public information concerning a Loan Party or a Subsidiary, as the case may be, (ii) it has developed compliance procedures regarding the use of material non-public information and (iii) it will handle such material non-public information in accordance with applicable Law, including United States federal and state securities Laws.

(c) Press Releases. The Loan Parties and their Affiliates agree that they will not in the future issue any press releases or other public disclosure (other than any document filed with any Governmental Authority relating to a public offering of any securities of any Loan Party) using the name of the Administrative Agent or any Lender or their respective Affiliates or referring to this Agreement or any of the Loan Documents without the prior written consent of the Administrative Agent, unless (and only to the extent that) the Loan Parties or such Affiliate is required to do so under law and then, in any event the Loan Parties or such Affiliate will consult with such Person before issuing such press release or other public disclosure.

(d) Customary Advertising Material. The Loan Parties consent to the publication by the Administrative Agent or any Lender of customary advertising material relating to the transactions contemplated hereby using the name, product photographs, logo or trademark of the Loan Parties.

#### **11.08 Right of Setoff**

If an Event of Default shall have occurred and be continuing, each Lender, the L/C Issuer and each of their respective Affiliates is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Administrative Agent, to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, the L/C Issuer or any such Affiliate to or for the credit or the account of the Company or any other Loan Party against any and all of the obligations of the Company or such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender or the L/C Issuer or their respective Affiliates, irrespective of whether or not such Lender, the L/C Issuer or Affiliate shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Company or such Loan Party may be contingent or unmatured, secured or unsecured, or are owed to a branch, office or Affiliate of such Lender or the L/C Issuer different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness; provided that in the event that any Defaulting Lender shall exercise any such right of setoff, (a) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.15 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the L/C Issuer and the Lenders, and (b) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Secured Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, the L/C Issuer and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, the L/C Issuer or their respective Affiliates may have. Each Lender and the L/C Issuer agrees to notify the Borrowers and the Administrative Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application. Notwithstanding the foregoing, in no event shall any Lender set-off or apply any deposits of any Excluded Subsidiary held by any lender or any other obligations owing by such Lender to any Excluded Subsidiary against any of the Obligations of the Company or any U.S. Loan Party.

### **11.09 Interest Rate Limitation**

Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the “Maximum Rate”). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrowers. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

### **11.10 Counterparts; Integration; Effectiveness**

This Agreement and each of the other Loan Documents may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents, and any separate letter agreements with respect to fees payable to the Administrative Agent or the L/C Issuer, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement or any other Loan Document, or any certificate delivered thereunder, by fax transmission or e-mail transmission (e.g. “pdf” or “tif”) shall be effective as delivery of a manually executed counterpart of this Agreement or such other Loan Document or certificate. Without limiting the foregoing, to the extent a manually executed counterpart is not specifically required to be delivered under the terms of any Loan Document, upon the request of any party, such fax transmission or e-mail transmission shall be promptly followed by such manually executed counterpart.

### **11.11 Survival of Representations and Warranties**

All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

### **11.12 Severability**

If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of

this Section, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent, the L/C Issuer or the Swingline Lender, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

### **11.13 Replacement of Lenders**

If the Borrowers are entitled to replace a Lender pursuant to the provisions of Section 3.06, or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then the Borrowers may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 11.06), all of its interests, rights (other than its existing rights to payments pursuant to Sections 3.01 and 3.04) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

- (a) the Company shall have paid to the Administrative Agent the assignment fee (if any) specified in Section 11.06(b);
- (b) such Lender shall have received payment of an amount equal to 100% of the outstanding principal of its Loans and L/C Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrowers or the Designated Borrower (up to the Designated Borrower Share) (in the case of all other amounts);
- (c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;
- (d) such assignment does not conflict with applicable Laws; and
- (e) in the case of an assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrowers to require such assignment and delegation cease to apply.

### **11.14 Governing Law; Jurisdiction; Etc**

(a) GOVERNING LAW. THIS AGREEMENT (INCLUDING THIS SECTION 11.14) AND THE OTHER LOAN DOCUMENTS (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) SUBMISSION TO JURISDICTION. THE COMPANY AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST THE ADMINISTRATIVE AGENT, ANY LENDER, THE L/C ISSUER, OR ANY RELATED PARTY OF THE FOREGOING IN ANY WAY RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO, IN ANY FORUM OTHER THAN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT, ANY LENDER OR THE L/C ISSUER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE COMPANY OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. THE COMPANY AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. THE COMPANY AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 11.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

**11.15 Waiver of Jury Trial.**

EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (a) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR

OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (b) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

**11.16 Subordination**

Each Loan Party (a “Subordinating Loan Party”) hereby subordinates the payment of all obligations and indebtedness of any other Loan Party owing to it, whether now existing or hereafter arising, including but not limited to any obligation of any such other Loan Party to the Subordinating Loan Party as subrogee of the Secured Parties or resulting from such Subordinating Loan Party’s performance under this Guaranty, to the indefeasible payment in full in cash of all Obligations (other than contingent indemnification obligations). If the Secured Parties so request, any such obligation or indebtedness of any such other Loan Party to the Subordinating Loan Party (other than obligations and indebtedness owing to a Loan Party that is an Excluded Subsidiary) shall be enforced and performance received by the Subordinating Loan Party as trustee for the Secured Parties and the proceeds thereof shall be paid over to the Secured Parties on account of the Secured Obligations, but without reducing or affecting in any manner the liability of the Subordinating Loan Party under this Agreement. Without limitation of the foregoing, so long as no Default has occurred and is continuing, the Loan Parties may make and receive payments with respect to Intercompany Debt; provided, that in the event that any Loan Party receives any payment of any Intercompany Debt at a time when such payment is prohibited by this Section, such payment shall be held by such Loan Party (other than a Loan Party that is an Excluded Subsidiary), in trust for the benefit of, and shall be paid forthwith over and delivered, upon written request, to the Administrative Agent.

**11.17 No Advisory or Fiduciary Responsibility**

In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Company and each other Loan Party acknowledges and agrees, and acknowledges its Affiliates’ understanding, that: (a) (i) the arranging and other services regarding this Agreement provided by the Administrative Agent and any Affiliate thereof, the Arranger and the Lenders are arm’s-length commercial transactions between the Company, each other Loan Party and their respective Affiliates, on the one hand, and the Administrative Agent and, as applicable, its Affiliates and the Lenders and their Affiliates (collectively, solely for purposes of this Section, the “Lenders”), on the other hand, (ii) each of the Company and the other Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) the Company and each other Loan Party is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (b) (i) the Administrative Agent and its Affiliates and each Lender each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary, for Company, any other Loan Party or any of their respective Affiliates, or any other Person and (ii) neither the Administrative Agent, any of its Affiliates nor any Lender has any obligation to the Company, any other Loan Party or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (c) the Administrative Agent and its Affiliates and the Lenders may be engaged in a broad range of transactions that involve interests that differ from those of the Company, the other Loan Parties and their respective Affiliates, and neither the Administrative Agent, any of its Affiliates nor any Lender has any obligation to disclose any of such interests to the Company, any other Loan Party or any of their respective Affiliates. To the fullest extent permitted by law, each of the Company and each other Loan Party hereby waives and releases any claims that it may have against the Administrative Agent, any of its Affiliates or any Lender with respect to any



breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transactions contemplated hereby.

**11.18 Electronic Execution**

The words “delivery,” “execute,” “execution,” “signed,” “signature,” and words of like import in any Loan Document or any other document executed in connection herewith shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

**11.19 USA PATRIOT Act Notice**

Each Lender that is subject to the Act (as hereinafter defined) and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Company and the other Loan Parties that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Act”), it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Loan Party in accordance with the Act. The Company and the Loan Parties agree to, promptly following a request by the Administrative Agent or any Lender, provide all such other documentation and information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable “know your customer” and anti-money laundering rules and regulations, including the Act.

**11.20 Time of the Essence**

Time is of the essence of the Loan Documents.

**11.21 Entire Agreement**

THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT AMONG THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES.

**11.22 Judgment Currency**

If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of each Loan Party in respect of any such sum due from it to the Administrative Agent or any Lender hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the “Judgment Currency”) other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the “Agreement Currency”), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent or such Lender, as the case may be, of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent or such Lender, as the case may be, may in accordance with normal banking

procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent or any Lender from any Loan Party in the Agreement Currency, such Loan Party agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or such Lender, as the case may be, against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent or any Lender in such currency, the Administrative Agent or such Lender, as the case may be, agrees to return the amount of any excess to such Loan Party (or to any other Person who may be entitled thereto under applicable law).

**11.23 Prior Agreement Superseded.**

THIS AGREEMENT IS AN AMENDMENT AND RESTATEMENT, IN ITS ENTIRETY, OF THE PRIOR AGREEMENT, AND ANY INDEBTEDNESS OUTSTANDING THEREUNDER SHALL BE DEEMED TO BE OUTSTANDING UNDER THIS AGREEMENT. NOTHING IN THIS AGREEMENT SHALL BE DEEMED TO BE A REPAYMENT OR NOVATION OF THE INDEBTEDNESS, OR TO RELEASE OR OTHERWISE ADVERSELY AFFECT ANY LIEN, MORTGAGE OR SECURITY INTEREST SECURING SUCH INDEBTEDNESS OR ANY RIGHTS OF THE AGENT OR ANY LENDER AGAINST ANY SURETY OR OTHER PARTY PRIMARILY OR SECONDARILY LIABLE FOR SUCH INDEBTEDNESS.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

BORROWER:

SUPER MICRO COMPUTER, INC.,  
a Delaware corporation

By: /S/ HOWARD HIDESHIMA

Name: HOWARD HIDESHIMA

Title: CFO

DESIGNATED  
BORROWER:

SUPER MICRO COMPUTER B.V.

By: /S/ WALLY LIAW

Name: WALLY LIAW

Title: SOLYELY AUTHORIZED STATUTORY DIRECTOR

CREDIT AGREEMENT

SIGNATURE PAGE

---

BANK OF AMERICA, N.A.,  
as Administrative Agent

By: /S/ THOMAS R. SULLIVAN

Name: Thomas R. Sullivan

Title: Senior Vice President

CREDIT AGREEMENT

SIGNATURE PAGE

---

BANK OF AMERICA, N.A.,  
as a Lender, L/C Issuer and Swingline Lender

By: /S/ THOMAS R. SULLIVAN

Name: Thomas R. Sullivan

Title: Senior Vice President

CREDIT AGREEMENT  
SIGNATURE PAGE

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the incorporation by reference in Registration Statement Nos. 333-142404 and 333-210881 on Form S-8 of our reports dated August 26, 2016 relating to the consolidated financial statements of Super Micro Computer, Inc. and subsidiaries (collectively, the “Company”) (which report expresses an unqualified opinion and includes an explanatory paragraph relating to significant related party transactions), and the effectiveness of the Company's internal control over financial reporting, appearing in this Annual Report on Form 10-K of the Company for the year ended June 30, 2016 .

/s/ Deloitte & Touche LLP

San Jose, California

August 26, 2016

**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER  
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Charles Liang, certify that:

1. I have reviewed this annual report on Form 10-K of Super Micro Computer, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(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: August 26, 2016

/s/ C HARLES L IANG

---

**Charles Liang**  
**President, Chief Executive Officer and**  
**Chairman of the Board**  
**(Principal Executive Officer)**

**CERTIFICATION OF PRINCIPAL FINANCIAL AND ACCOUNTING OFFICER  
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Howard Hideshima, certify that:

1. I have reviewed this annual report on Form 10-K of Super Micro Computer, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(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: August 26, 2016

/s/ H OWARD H IDESHIMA

---

**Howard Hideshima**  
Senior Vice President, Chief Financial Officer  
(Principal Financial and Accounting Officer)



**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER  
PURSUANT TO 18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

I, Charles Liang, certify pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Annual Report of Super Micro Computer, Inc. on Form 10-K for the year ended June 30, 2016, as filed with the Securities and Exchange Commission on the date thereof, fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and the information contained in such Annual Report on Form 10-K fairly presents, in all material respects, the financial condition and results of operations of Super Micro Computer, Inc.

Date: August 26, 2016

/s/ CHARLES L IANG

---

Charles Liang  
President and Chief Executive Officer  
(Principal Executive Officer)

**CERTIFICATION OF PRINCIPAL FINANCIAL AND ACCOUNTING OFFICER  
PURSUANT TO 18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

I, Howard Hideshima, certify pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Annual Report of Super Micro Computer, Inc. on Form 10-K for the year ended June 30, 2016, as filed with the Securities and Exchange Commission on the date thereof, fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and the information contained in such Annual Report on Form 10-K fairly presents, in all material respects, the financial condition and results of operations of Super Micro Computer, Inc.

Date: August 26, 2016

/s/ HOWARD H IDESHIMA

---

**Howard Hideshima**  
Senior Vice President, Chief Financial Officer  
(Principal Financial and Accounting Officer)