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

FORM 10-Q

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

For the quarterly period ended June 30, 2016

☐ **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 000-51222

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

Delaware	**33-0857544**
(State or Other Jurisdiction of Incorporation or Organization)	**(I.R.S. Employer Identification No.)**
6340 Sequence Drive San Diego, California	**92121**
(Address of Principal Executive Offices)	**(Zip Code)**

Registrant's Telephone Number, including area code: (858) 200-0200

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 website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

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 (Check one):

Large Accelerated Filer	☒	Accelerated Filer	o
Non-Accelerated Filer	o (Do not check if a smaller reporting company)	Smaller Reporting Company	o

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

As of July 28, 2016, 83,883,617 shares of the Registrant's common stock were outstanding.

DexCom, Inc.

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PART I - FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

DexCom, Inc.

Consolidated Balance Sheets
(In millions—except par value data)

	June 30, 2016 (Unaudited)	December 31, 2015
Assets		
Current assets:		
Cash and cash equivalents	$ 87.5	$ 86.1
Short-term marketable securities, available-for-sale	28.1	29.1
Accounts receivable, net	73.8	74.1
Inventory	42.9	35.2
Prepaid and other current assets	8.7	6.8
Total current assets	241.0	231.3
Property and equipment, net	77.0	54.7
Intangible assets, net	1.8	2.2
Goodwill	11.8	3.7
Other assets	1.2	0.1
Total assets	$ 332.8	$ 292.0
Liabilities and stockholders' equity		
Current liabilities:		
Accounts payable and accrued liabilities	$ 49.9	$ 38.9
Accrued payroll and related expenses	23.3	24.9
Current portion of long-term debt	—	2.3
Current portion of deferred revenue	0.7	0.8
Total current liabilities	73.9	66.9
Other liabilities	12.5	3.9
Total liabilities	86.4	70.8
Commitments and contingencies (Note 4)		
Stockholders' equity:		
Preferred stock, $0.001 par value, 5.0 shares authorized; no shares issued and outstanding at June 30, 2016 and December 31, 2015, respectively	—	—
Common stock, $0.001 par value, 100.0 authorized; 84.1 and 83.8 issued and outstanding, respectively, at June 30, 2016; and 82.0 and 81.7 shares issued and outstanding, respectively, at December 31, 2015	0.1	0.1
Additional paid-in capital	841.8	776.8
Accumulated other comprehensive loss	(0.7)	(0.3)
Accumulated deficit	(594.8)	(555.4)
Total stockholders' equity	246.4	221.2
Total liabilities and stockholders' equity	$ 332.8	$ 292.0

See accompanying notes

DexCom, Inc.

Consolidated Statements of Operations
(In millions—except per share data)
(Unaudited)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2016	2015	2016	2015
Product revenue	$ 137.3	$ 92.9	$ 253.5	$ 165.7
Development grant and other revenue	—	0.3	—	0.3
Total revenue	137.3	93.2	253.5	166.0
Cost of sales	51.8	27.2	92.9	53.5
Gross profit	85.5	66.0	160.6	112.5
Operating expenses				
Research and development	36.3	24.4	68.5	44.2
Selling, general and administrative	69.3	45.2	131.4	84.6
Total operating expenses	105.6	69.6	199.9	128.8
Operating loss	(20.1)	(3.6)	(39.3)	(16.3)
Interest income	0.1	—	0.2	—
Interest expense	(0.1)	(0.1)	(0.2)	(0.3)
Loss before income taxes	(20.1)	(3.7)	(39.3)	(16.6)
Income tax expense	0.1	—	0.1	—
Net loss	$ (20.2)	$ (3.7)	$ (39.4)	$ (16.6)
Basic and diluted net loss per share	$ (0.24)	$ (0.05)	$ (0.48)	$ (0.21)
Shares used to compute basic and diluted net loss per share	83.6	79.6	82.8	78.7

See accompanying notes

DexCom, Inc.

Consolidated Statements of Comprehensive Loss
(In millions)
(Unaudited)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2016	2015	2016	2015
Net loss	$ (20.2)	$ (3.7)	$ (39.4)	$ (16.6)
Unrealized gain (loss) on short-term available-for-sale marketable securities	—	—	—	—
Foreign currency translation loss	(0.4)	—	(0.4)	(0.2)
Comprehensive loss	$ (20.6)	$ (3.7)	$ (39.8)	$ (16.8)

See accompanying notes

DexCom, Inc.

Consolidated Statements of Cash Flows
(In millions)
(Unaudited)

	Six Months Ended June 30,	
	2016	**2015**
Operating activities		
Net loss	$ (39.4)	$ (16.6)
Adjustments to reconcile net loss to cash provided by operating activities:		
Depreciation and amortization	7.3	5.0
Share-based compensation	52.7	36.6
Accretion and amortization related to marketable securities, net	0.1	0.2
Amortization of debt issuance costs	—	0.1
Loss on disposal of equipment	—	0.2
Changes in operating assets and liabilities:		
Accounts receivable, net	0.8	(3.1)
Inventory	(7.2)	(6.4)
Prepaid and other assets	(2.7)	(1.0)
Restricted cash	—	0.3
Accounts payable and accrued liabilities	9.3	3.7
Accrued payroll and related expenses	(1.7)	(0.2)
Deferred revenue	(0.2)	0.1
Deferred rent and other liabilities	0.9	0.9
Net cash provided by operating activities	19.9	19.8
Investing activities		
Purchase of available-for-sale marketable securities	(20.9)	(27.5)
Proceeds from the maturity of available-for-sale marketable securities	21.7	9.2
Purchase of property and equipment	(22.0)	(14.3)
Acquisitions, net of cash acquired	0.4	(0.5)
Net cash used in investing activities	(20.8)	(33.1)
Financing activities		
Net proceeds from issuance of common stock	4.8	10.4
Repayment of long-term debt	(2.3)	(1.2)
Net cash provided by financing activities	2.5	9.2
Effect of exchange rate changes on cash and cash equivalents	(0.2)	—
Increase (decrease) in cash and cash equivalents	1.4	(4.1)
Cash and cash equivalents, beginning of period	86.1	71.8
Cash and cash equivalents, end of period	$ 87.5	$ 67.7
Supplemental disclosure of non-cash investing and financing transactions:		
Issuance of common stock in connection with acquisition	$ 7.2	$ —
Acquisition-related holdback liability	$ 1.8	$ —
Assets acquired and financing obligation under build-to-suit leasing arrangement	$ 6.0	$ —

See accompanying notes

DexCom, Inc.
Notes to Consolidated Financial Statements
(Unaudited)

1. Organization and Summary of Significant Accounting Policies

Organization and Business

DexCom, Inc. is a medical device company focused on the design, development and commercialization of continuous glucose monitoring ("CGM") systems for ambulatory use by people with diabetes and by healthcare providers for the treatment of people with diabetes. Unless the context requires otherwise, the terms "we," "us," "our," the "company," or "DexCom" refer to DexCom, Inc. and its subsidiaries.

Basis of Presentation

We have incurred operating losses since our inception and have an accumulated deficit of $594.8 million at June 30, 2016. As of June 30, 2016, we had available cash, cash equivalents and marketable securities totaling $115.6 million and working capital of $167.1 million. Our ability to transition to, and maintain, profitable operations is dependent upon achieving a level of revenues adequate to support our cost structure. If events or circumstances occur such that we do not meet our operating plan as expected, we may be required to reduce planned increases in compensation expenses and other operating expenses needed to support the growth of our business which could have an adverse impact on our ability to achieve our intended business objectives. We believe our working capital resources will be sufficient to fund our operations through at least June 30, 2017.

We have prepared the accompanying unaudited consolidated financial statements in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP") for interim financial information and with the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all of the information and disclosures required by U.S. GAAP for complete financial statements. In the opinion of management, all adjustments, which include only normal recurring adjustments considered necessary for a fair presentation, have been included. Operating results for the three and six months ended June 30, 2016 are not necessarily indicative of the results that may be expected for the year ending December 31, 2016. These unaudited consolidated financial statements should be read in conjunction with the audited financial statements and related notes thereto for the year ended December 31, 2015 included in the Annual Report on Form 10-K filed by us with the Securities and Exchange Commission on February 23, 2016.

Principles of Consolidation

The consolidated financial statements include the accounts of DexCom, Inc. and our wholly owned subsidiaries. All significant intercompany balances and transactions have been eliminated in consolidation.

Segment Reporting

An operating segment is identified as a component of a business that has discrete financial information available, and one for which the chief operating decision maker must decide the level of resource allocation. In addition, the guidance for segment reporting indicates certain quantitative thresholds. None of the operations of our subsidiaries meet the definition of an operating segment and are currently not material, but may become material in the future.

We currently consider our operations to be, and manage our business globally within, one reportable segment, which is consistent with how our President and Chief Executive Officer, who is our chief operating decision maker, reviews our business, makes investment and resource allocation decisions and assesses operating performance.

We sell our products through a direct sales force in the United States and portions of Europe, and through distribution arrangements in the United States, Canada, Australia, New Zealand, and in portions of Europe, Asia, Latin America, the Middle East and Africa. DexCom, Inc. is domiciled in the United States.

Use of Estimates

The preparation of consolidated financial statements in conformity with U.S. GAAP requires us to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and accompanying notes. Actual results could differ from these estimates. Significant estimates include excess or obsolete inventories, valuation of inventory, warranty accruals, employee bonus, clinical trial expenses, allowance for bad debt, refunds and rebates, including pharmacy rebates and share-based compensation expense.

Share-Based Compensation

Share-based compensation expense is measured at the grant date based on the estimated fair value of the award and is recognized, for awards that are ultimately expected to vest, primarily on a straight-line basis over the requisite service period of the individual grants, which typically equals the vesting period. The fair value of our Restricted Stock Units ("RSUs") is based on the market price of our common stock on the date of grant. We are also required to estimate at grant the likelihood that the award will ultimately vest (the "pre-vesting forfeiture rate"), and to revise the estimate, if necessary, in future periods if the actual forfeiture rate differs. We determine the pre-vesting forfeiture rate of an award based on our historical pre-vesting award forfeiture experience, giving consideration to company-specific events impacting historical pre-vesting award forfeiture experience that are unlikely to occur in the future as well as anticipated future events that may impact forfeiture rates. We use our historical data to estimate pre-vesting forfeitures and record stock-based compensation expense only for those awards that are expected to vest.

We recorded $27.6 million and $52.7 million in share-based compensation expense during the three and six months ended June 30, 2016, compared to $20.7 million and $36.6 million during the three and six months ended June 30, 2015. At June 30, 2016, unrecognized estimated compensation costs related to unvested stock options and restricted stock units totaled $202.8 million and is expected to be recognized through 2020.

Revenue Recognition

We sell our durable systems and disposable units through a direct sales force in the United States and portions of Europe, and through distribution arrangements in the United States, Canada, Australia, New Zealand, and in portions of Europe, Asia, Latin America the Middle East and Africa. Components are individually priced and can be purchased separately or together. We receive payment directly from customers who use our products, as well as from distributors, organizations and third-party payors. Our durable system includes a reusable transmitter, a receiver, a power cord and a USB cable. Disposable sensors for use with the durable system are sold separately in packages of four. We provide free of charge software and mobile applications for use with our durable systems and disposable sensors. The initial durable system price is generally not dependent upon the purchase of any amount of disposable sensors.

Revenue is recognized when persuasive evidence of an arrangement exists, delivery has occurred or services have been rendered, the price is fixed or determinable, and collectability is reasonably assured. Revenue on product sales is generally recognized upon shipment, which is when title and the risk of loss have been transferred to the customer and there are no other post shipment obligations. With respect to customers who directly pay for products, the products are generally paid for at the time of shipment using a customer's credit card and do not include customer acceptance provisions. We recognize revenue from contracted insurance payors based on the contracted rate. For non-contracted insurance payors, we obtain prior authorization from the payor and recognize revenue based on the estimated collectible amount and historical experience. We also receive a prescription or statement of medical necessity and, for insurance reimbursement customers, an assignment of benefits prior to shipment.

We provide a "30-day money back guarantee" program whereby customers who purchase a durable system and a package of four disposable sensors may return the durable system for any reason within thirty days of purchase and receive a full refund of the purchase price of the durable system. We accrue for estimated returns, refunds and rebates, including pharmacy rebates, by reducing revenues and establishing a liability account at the time of shipment based on historical experience. Returns have historically been immaterial. Allowances for rebates include contracted discounts with commercial payors and are amounts owed after the final dispensing of the product by a distributor or retail pharmacy to a pharmacy benefit plan participant and are based upon contractual agreements with private sector benefit providers. The allowance for rebates is based on contractual discount rates, expected utilization under each contract and our estimate of the amount of inventory in the distribution channel that will become subject to such rebates. Our estimates for expected utilization for rebates are based on historical rebate claims and to a lesser extent third party market research data. Rebates are generally invoiced and paid monthly or quarterly in arrears so that our accrual consists of an estimate of the amount expected to be incurred for the current month's or quarter's activity, plus an accrual for unpaid rebates from prior periods, and an accrual for inventory in the distribution channel.

We have entered into distribution agreements with Byram Healthcare and its subsidiaries ("Byram"), RGH Enterprises ("Edgepark") and other distributors that allow the distributors to sell our durable systems and disposable units. We have contracts with certain distributors, including and pharmacy wholesalers, who stock our products, and we refer to these distributors as Stocking Distributors, whereby the Stocking Distributors fulfill orders for our product from their inventory. We also have contracts with certain distributors that do not stock our products, but rather products are shipped directly to the customer by us on behalf of our distributor, and we refer to these distributors as Drop-Ship Distributors. Revenue is recognized based on contracted prices and invoices are either paid by check following the issuance of a purchase order or letter of credit, or they are paid by wire at the time of placing the order. Terms of distributor orders are generally Freight on Board shipping point (or Free Carrier shipping point for international orders). Distributors do not have rights of return per their distribution

agreement outside of our standard warranty. The distributors typically have a limited time frame to notify us of any missing, damaged, defective or non-conforming products. For any such products, we shall either, at our option, replace the portion of defective or non-conforming product at no additional cost to the distributor or cancel the order and refund any portion of the price paid to us at that time for the sale in question.

Warranty Accrual

Estimated warranty costs associated with a product are recorded at the time of shipment. We estimate future warranty costs by analyzing historical warranty experience for the timing and amount of returned product, and these estimates are evaluated on at least a quarterly basis to determine the continued appropriateness of such assumptions.

Foreign Currency

The financial statements of our foreign subsidiaries are translated into U.S. dollars for financial reporting purposes. Assets and liabilities are translated at period-end exchange rates, and revenue and expense transactions are translated at average exchange rates for the period. Translation related adjustments are recognized as part of comprehensive income and are included in accumulated other comprehensive loss in the consolidated balance sheet. Gains and losses resulting from certain intercompany transactions as well as transactions with customers and vendors that are denominated in currencies other than the functional currency of each subsidiary give rise to foreign exchange gains or losses reflected in operations. To date the results of operations of these subsidiaries and related translation adjustments and foreign exchange gains or losses have not been material in our consolidated results.

Comprehensive Loss

We report all components of comprehensive loss, including net loss, in the consolidated financial statements in the period in which they are recognized. Comprehensive loss is defined as the change in equity during a period from transactions and other events and circumstances from non-owner sources. Net loss and comprehensive loss, including unrealized gains and losses on marketable securities and foreign currency translation adjustments, are reported, net of their related tax effect, to arrive at comprehensive loss.

Inventory

Inventory is valued at the lower of cost or market value on a part-by-part basis that approximates first in, first out. We make adjustments to reduce the cost of inventory to its net realizable value, if required, for estimated excess, obsolete and potential scrapped inventories. Factors influencing these adjustments include inventories on hand and on order compared to estimated future usage and sales for existing and new products, as well as judgments regarding quality control testing data, and assumptions about the likelihood of scrap and obsolescence. Once written down the adjustments are considered permanent and are not reversed until the related inventory is sold or disposed. During the first quarter of 2015, we recorded charges of approximately $2.0 million in cost of goods sold related to excess and obsolete inventory due to the approval and launch of our DexCom G4 PLATINUM with Share System. During the second quarter of 2016, we recorded charges of $3.5 million in cost of goods sold related to excess and obsolete receiver inventory primarily related to the customer notification as discussed in the Risk Factor entitled "*If we or our suppliers or distributors fail to comply with ongoing regulatory requirements, or if we experience unanticipated problems with our products, the products could be subject to restrictions or withdrawal from the market."*

Our products require customized products and components that currently are available from a limited number of sources. We purchase certain components and materials from single sources due to quality considerations, costs or constraints resulting from regulatory requirements.

Marketable Securities

We have classified our marketable securities with remaining maturity at purchase of more than three months and remaining maturities of one year or less as short-term available-for-sale marketable securities. Marketable securities with remaining maturities of greater than one year are also classified as short-term available-for-sale marketable securities as such marketable securities represent the investment of cash that is available for current operations. We carry our marketable securities at fair value with unrealized gains and losses, if any, reported as a separate component of stockholders' equity and included in comprehensive loss. Realized gains and losses are calculated using the specific identification method and recorded as interest income. We invest in various types of securities, including debt securities in government-sponsored entities, corporate debt securities, U.S. Treasury securities and commercial paper. We do not generally intend to sell the investments and it is not more likely than not that we will be required to sell the investments before recovery of their amortized cost bases, which may be at maturity.

Fair Value Measurements

The fair value hierarchy described by the authoritative guidance for fair value measurements is based on three levels of inputs, of which the first two are considered observable and the last unobservable, that may be used to measure fair value and include the following:

Level 1—Quoted prices in active markets for identical assets or liabilities.

Level 2—Inputs other than Level 1 that are observable, either directly or indirectly, such as quoted prices for similar assets or liabilities; quoted prices in markets that are not active; or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.

Level 3—Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities.

We carry our marketable securities at fair value. The carrying amounts of financial instruments, such as cash and cash equivalents, accounts receivable, prepaid expenses and other current assets, accounts payable and accrued liabilities, are carried at cost, which approximate the related fair values due to the short-term maturities of these instruments. For additional detail see Note 6 “Fair Value Measurements.”

Property and Equipment

Property and equipment is stated at cost and depreciated over the estimated useful lives of the assets, generally three years for computer equipment, four years for machinery and equipment, and five years for furniture and fixtures, using the straight-line method. Leasehold improvements are stated at cost and amortized over the shorter of the estimated useful lives of the assets or the remaining lease term.

Goodwill and Intangible Assets

Our identifiable intangible assets are comprised of acquired core technologies, customer relationships, covenants not-to-compete, in-process research and development and trade names. The cost of identifiable intangible assets with finite lives is generally amortized on a straight-line basis over the assets’ respective estimated useful lives. The change in goodwill for the three and six months ended June 30, 2016 compared to December 31, 2015 was primarily due to the acquisition of Nintamed, our distributor in Germany, Switzerland and Austria, based on our preliminary purchase price allocation. The acquisition is part of our strategy to expand our international operations. In connection with the acquisition, we issued 110,993 shares of our common stock with an aggregate value of $7.2 million as of May 2, 2016 and recorded a $1.8 million holdback liability within “Other Liabilities” in the Consolidated Balance Sheets, which represents a portion of the purchase price withheld and payable in May 2018, in either cash or common stock at our election, to the extent that certain breaches of the representations and warranties have not occurred. We have determined that the acquisition of Nintamed was a non-material business combination.

We test goodwill and intangible assets with indefinite lives for impairment on an annual basis. Also, between annual tests we test for impairment if events and circumstances indicate it is more likely than not that the fair value is less than the carrying value. Events that would indicate impairment and trigger an interim impairment assessment include, but are not limited to, current economic and market conditions, including a decline in market capitalization, a significant adverse change in legal factors, business climate or operational performance of the business and an adverse action or assessment by a regulator.

Recent Accounting Guidance

In May 2014, the Financial Accounting Standards Board (“FASB”) issued authoritative guidance for Revenue from Contracts with Customers, to supersede nearly all existing revenue recognition guidance under U.S. GAAP. The core principle of the guidance is to recognize revenues when promised goods or services are transferred to customers in an amount that reflects the consideration that is expected to be received for those goods or services. The guidance defines a five step process to achieve this core principle and it is possible when the five step process is applied, more judgment and estimates may be required within the revenue recognition process than required under existing U.S. GAAP including identifying performance obligations in the contract, estimating the amount of variable consideration to include in the transaction price and allocating the transaction price to each separate performance obligation. The updated standard permits the use of either the retrospective or cumulative effect transition method and is effective for us in our first quarter of fiscal 2018. Early adoption is not permitted. We have not yet selected a transition method and we are currently evaluating the effect that the updated standard will have on our consolidated financial statements and related disclosures.

In July 2015, the FASB issued guidance to change the subsequent measurement of inventory from lower of cost or market to lower of cost and net realizable value. The guidance requires that inventory accounted for under the first-in, first-out (FIFO) or average cost methods be measured at the lower of cost and net realizable value, where net realizable value represents

the estimated selling price of inventory in the ordinary course of business, less reasonably predictable costs of completion, disposal, and transportation. The guidance is effective for us beginning in the first quarter of fiscal 2018. Early adoption is permitted as of the beginning of an interim or annual reporting period. We are currently evaluating the effect this guidance will have on our consolidated financial statements.

In February 2016, the FASB issued ASU 2016-02, Leases (Topic 842) ("ASU 2016-02"), which require a lessee to recognize a lease payment liability and a corresponding right of use asset on their balance sheet for all lease terms longer than 12 months, lessor accounting remains largely unchanged. ASU 2016-02 is effective for fiscal years, and interim periods within those years, beginning on or after December 15, 2018 and early adoption is permitted. We are currently evaluating the effect this guidance will have on our consolidated financial statements.

In February 2016, the FASB issued ASU 2016-09, Compensation - Stock Compensation (Topic 718) ("ASU 2016-09"), which is intended to simplify several areas of accounting for share-based payment arrangements. The amendments in this update cover such areas as the recognition of excess tax benefits and deficiencies, the classification of those excess benefits on the statement of cash flows, an accounting policy election for forfeitures, the amount an employer can withhold to cover income taxes and still qualify for equity classification and the classification of those taxes paid on the statement of cash flows. ASU 2016-09 is effective for fiscal years beginning after December 15, 2016, and interim periods within those annual periods, with early adoption permitted. We are currently evaluating the effect this guidance will have on our consolidated financial statements.

2. Net Loss Per Common Share

Basic net loss per share attributable to common stockholders is calculated by dividing the net loss attributable to common stockholders by the weighted-average number of common shares outstanding for the period, without consideration for common stock equivalents. Diluted net loss per share attributable to common stockholders is computed by dividing the net loss attributable to common stockholders by the weighted-average number of common share equivalents outstanding for the period determined using the treasury-stock method. For purposes of this calculation, outstanding options and unvested RSUs settleable in shares of common stock are considered to be common stock equivalents and are only included in the calculation of diluted net loss per share when their effect is dilutive.

Historical outstanding anti-dilutive securities not included in diluted net loss per share attributable to common stockholders calculation (in millions):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2016	2015	2016	2015
Options outstanding to purchase common stock	1.0	2.1	1.0	2.1
Unvested restricted stock units	3.9	4.4	3.9	4.4
Total	4.9	6.5	4.9	6.5

3. Financial Statement Details (in millions)

Short- Term Marketable Securities, Available-for-Sale

Short-term marketable securities, consisting solely of debt securities, were as follows:

	June 30, 2016			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Market Value
U.S. government agencies	$ 22.2	$ —	$ —	$ 22.2
Corporate debt	2.6	—	—	2.6
Commercial paper	3.3	—	—	3.3
Total	$ 28.1	$ —	$ —	$ 28.1

	December 31, 2015			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Market Value
U.S. government agencies	$ 22.1	$ —	$ —	$ 22.1
Corporate debt	4.9	—	—	4.9
Commercial paper	2.1	—	—	2.1
Total	$ 29.1	$ —	$ —	$ 29.1

As of June 30, 2016, the estimated market value of available-for-sale marketable securities with contractual maturities of up to one year and up to 18 months were $27.0 million and $1.1 million, respectively.

Inventory

	June 30, 2016	December 31, 2015
Raw materials	$ 18.4	$ 16.0
Work-in-process	3.4	2.6
Finished goods	21.1	16.6
Total	$ 42.9	$ 35.2

Accounts Payable and Accrued Liabilities

	June 30, 2016	December 31, 2015
Accounts payable trade	$ 22.4	$ 19.0
Accrued tax, audit, and legal fees	3.3	2.1
Clinical trials	0.5	0.7
Pharmacy rebates	5.2	4.0
Accrued other including warranty	18.5	13.1
Total	$ 49.9	$ 38.9

Accrued Warranty

Warranty costs are reflected in the consolidated statements of operations as product cost of sales. A reconciliation of our accrued warranty costs for the three and six months ended June 30, 2016 and 2015 were as follows:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2016	2015	2016	2015
Beginning balance	$ 5.7	$ 1.1	$ 3.3	$ 1.3
Charges to costs and expenses	7.3	1.8	13.5	3.0
Costs incurred	(5.1)	(1.7)	(8.9)	(3.1)
Ending balance	$ 7.9	$ 1.2	$ 7.9	$ 1.2

Other Liabilities

	June 30, 2016	December 31, 2015
Financing lease obligations	$ 6.0	$ —
Deferred rent	4.3	3.8
Other	2.2	0.1
Total	$ 12.5	$ 3.9

4. Commitments and Contingencies

Revolving Credit Agreement

In June 2016, we entered into a $200.0 million revolving credit agreement (the “Credit Agreement”) with JPMorgan Chase Bank, NA, as administrative agent, Bank of America, Silicon Valley Bank and Union Bank. In addition to allowing borrowings in US dollars, the Credit Agreement provides a $25.0 million sublimit for borrowings in Canadian Dollars, Euros, British Pounds, Swedish Krona, Japanese Yen and any other currency that is subsequently approved by JPMorgan Chase and each lender. The Credit Agreement also provides a subfacility of up to $10.0 million for letters of credit. The interest rate under the Credit Agreement ranges from 0.75% to 2.75% plus our choice of one of two base rates, LIBOR or a rate based on the publicly announced JPMorgan Chase prime rate, the federal funds rate or the overnight bank funding rate. We will also pay a commitment fee of between 0.25% and 0.45%, payable quarterly in arrears, on the average daily unused amount of the revolving facility based on our leverage ratio. The aggregate debt issuance costs and fees incurred with respect to entering into the Credit Agreement were $0.7 million, which have been capitalized on our Consolidated Balance Sheet within "Other Assets" and will be amortized through the maturity date of June 2021 on a straight line basis. As of June 30, 2016 we had no outstanding borrowings under the Credit Agreement.

Long-Term Debt

In November 2012, we entered into a loan and security agreement (the “Loan Agreement”) that provides for (i) a $15.0 million revolving line of credit and (ii) a total term loan of up to $20.0 million (“the Term Loan”), in both cases, to be used for general corporate purposes. The revolving line of credit expired as of November 2015 with no amounts drawn or outstanding. In accordance with the Loan Agreement, $7.0 million was advanced under the Term Loan at the funding date in November 2012 and the remaining $13.0 million in additional funds expired unused. In June 2016, we paid off the remaining principal balance under the Term Loan.

Leases

Under the office lease agreement, as amended (the “Office Lease”), with John Hancock Life Insurance Company (U.S.A.) (the “Landlord”) we lease approximately 219,000 square feet of space in the buildings at 6340 Sequence Drive, 6310 Sequence Drive and 6290 Sequence Drive. The amended lease term extends through March 2022 and we have an option to renew the lease upon the expiration of the initial term for two additional five-year terms by giving notice to the Landlord prior to the end of the initial term of the lease and any extension period, if applicable. Provided we are not in default under the Office Lease and the Office Lease is still in effect, we generally have the right to terminate the lease starting at the 55th month of the Office Lease. In September 2015, we received $1.8 million of tenant improvement allowance associated with the Office Lease, which was recorded as a deferred rent obligation and will be amortized over the term of the lease and reflected as a reduction to

rent expense. Leasehold improvements associated with the tenant improvement allowance are included in Property and equipment, net in our consolidated balance sheet. On February 1, 2016, we entered into a Sublease (the "Sublease") with Entropic Communications, LLC with respect to the building at 6350 Sequence Drive in San Diego, California (the "6350 Building"). Under the Sublease, we have leased approximately 132,600 square feet of space in the 6350 Building. The lease term extends through January 2022.

On April 28, 2016, we entered into a certain Industrial Net Lease (the "Mesa Lease") with PRA/LB, L.L.C. with respect to facilities in the building at 232 South Dobson Road in Mesa, Arizona (the "Mesa Building"). Under the Mesa Lease, we have leased approximately 148,797 square feet of space in the Mesa Building, of which approximately 78,000 square feet was available to us on May 1, 2016 and the remaining portion of the Mesa Building will become available to us on or around January 1, 2018. The term of the Mesa Lease extends through March 2028 with four extension options, each with five-year terms. The lease arrangement involves the construction of our new manufacturing facility where we are involved in the design and construction of the leased space, including non-standard tenant improvements paid for by us. This arrangement is referred to as build-to suit lease and for accounting purposes, we are considered the owner of the construction project during the construction period. As of June 30, 2016, we have capitalized the fair value of the Mesa Building of $6.0 million within "Property and Equipment, net," and recorded a corresponding financing lease obligation liability of $6.0 million within "Other Liabilities" in the Consolidated Balance Sheet. At the conclusion of the construction period we will evaluate the Mesa Lease to determine whether or not it meets the criteria for "sales-leaseback" treatment.

We have also entered into other operating lease agreements, primarily for office and warehouse space, that expire at various times through September 2023. These facility leases have annual rental increases ranging from approximately 2.5% to 4%. The difference between the straight-line expense over the term of the lease and actual amounts paid are recorded as deferred rent.

Rental obligations, excluding real estate taxes, operating costs, and tenant improvement allowances, under all lease agreements as of June 30, 2016 were as follows (in millions):

Fiscal Year Ending		
Remainder of 2016	$	3.2
2017		7.2
2018		9.4
2019		10.5
2020		10.8
Thereafter		37.5
Total	$	78.6

Total rent expense for the three and six months ended June 30, 2016 was $2.3 million and $4.2 million, compared to $1.4 million and $2.8 million for the same periods of 2015.

Litigation

On March 28, 2016, Agamatrix, Inc. ("Agamatrix") filed a patent infringement lawsuit against us in the United States District Court for the District of Oregon, asserting that certain of our products infringe certain patents held by Agamatrix. It is our position that Agamatrix's assertions of infringement have no merit. Neither the outcome of the litigation nor the amount and range of potential fees associated with the litigation can be assessed at this time. As of June 30, 2016, no amounts have been accrued in respect of this litigation.

From time to time, we are subject to various claims and suits arising out of the ordinary course of business, including commercial and employment related matters. In addition, from time to time, we may bring claims or initiate lawsuits against various third parties with respect to matters arising out of the ordinary course of our business, including commercial and employment related matters. We do not expect that the resolution of these matters would, or will, have a material adverse effect or material impact on our consolidated financial position.

Purchase Commitments

We are party to various purchase arrangements related to our manufacturing and development activities including materials used in our CGM systems. As of June 30, 2016, we had purchase commitments with vendors totaling $55.5 million due within one year. There are no material purchase commitments due beyond one year.

Other

On May 2, 2016, we entered into a Standard Form of Agreement (the "Skanska Contract") with Skanska USA Building Inc. (the "Contractor"), providing for construction and design services to build out our new manufacturing facility in the Mesa Building. The first phase of construction began in the second quarter of 2016 and is expected to be completed in mid-2017. The total expenditures under the Skanska Contract are currently anticipated to be approximately $30 million.

5. Development and Other Agreements

Collaboration with Verily Life Sciences

On August 10, 2015, we entered into a Collaboration and License Agreement (the "Verily Collaboration Agreement") with Google Life Sciences LLC, now renamed Verily Life Sciences ("Verily"). Pursuant to the Verily Collaboration Agreement, we and Verily have agreed to jointly develop a series of next-generation CGM products. The Verily Collaboration Agreement provides us with an exclusive license to use certain intellectual property of Verily related to the development, manufacture and commercialization of the products contemplated under the Verily Collaboration Agreement. The Verily Collaboration Agreement provides for the establishment of a joint steering committee, joint development committee and joint commercialization committee to oversee and coordinate the parties' activities under the collaboration. We and Verily have agreed to make committee decisions by consensus.

The terms of Verily Collaboration Agreement required that we pay an upfront fee of $35.0 million in either cash or shares of our common stock at our sole election, with the number of shares calculated based on the volume weighted average trading price during a period of twenty consecutive trading days ending prior to the date of the Verily Collaboration Agreement. In addition, we will pay Verily up to $65.0 million in additional milestones upon achievement of various development and regulatory objectives, which payments may be paid in cash or shares of our common stock at our sole election, calculated based on the volume weighted average trading price during a period of twenty consecutive trading days ending on the trading day prior to the date on which the applicable objective has been achieved.

On August 27, 2015, we filed a Registration Statement on Form S-3 with the SEC and issued 404,591 shares of our common stock to Verily in connection with the $35.0 million upfront payment. We recorded $36.5 million in research and development expense in our consolidated statement of operations during 2015 related to the issuance of the 404,591 shares of our common stock, based on our stock price of $90.29 per share as of the date of Verily Collaboration Agreement.

In addition, Verily is eligible to receive tiered royalty payments associated with the commercialization of the products contemplated under the Verily Collaboration Agreement, which are subject to regulatory approval. Unless we attain annual product sales subject to the Verily Collaboration Agreement in excess of $750.0 million, there will be no royalty paid by us to Verily. Above this range, and upon marketing approval of the initial product contemplated by the Verily Collaboration Agreement, or upon commercialization of any other DexCom product that incorporates Verily intellectual property, we will pay to Verily a royalty percentage starting in the high single digits and declining to the mid-single digits based on our annual aggregate product sales.

The Verily Collaboration Agreement shall be terminable by either party (a) upon uncured material breach of the Verily Collaboration Agreement by the other party, (b) if the second product contemplated by the Verily Collaboration Agreement has not been submitted to the FDA for approval by a specified date and (c) if the annual net sales for the products developed with Verily under the Verily Collaboration Agreement are less than a specified aggregate dollar amount. Additionally, we have the right to terminate the Verily Collaboration Agreement upon the expiration of the last to expire patent that covers a product developed under the Verily Collaboration Agreement.

Tandem Diabetes Care, Inc.

On February 1, 2012, we entered into a non-exclusive Development and Commercialization Agreement (the "Tandem Agreement") with Tandem Diabetes Care, Inc. ("Tandem") to integrate a future generation of our continuous glucose monitoring technology with Tandem's t:slim™ insulin delivery system in the United States. On January 4, 2013, the Tandem Agreement was amended to allow for the integration of our G4 PLATINUM systems with Tandem's t:slim insulin delivery system in the United States. We received an initial payment of $1.0 million as a result of the execution of the Tandem

Agreement. In July 2014 we received an additional $1.0 million milestone payment related to the regulatory submission by Tandem of their CGM enabled insulin pump.

In September 2015, we received a final $1.0 million milestone payment related to the regulatory approval of Tandem 's CGM enabled insulin pump, which was recognized in development grant and other revenue for the twelve months ended December 31, 2015. Under the terms of the Tandem Agreement, we are entitled to receive up to $1.0 million to offset certain development, clinical and regulatory expenses. Each of the milestones related to the Tandem Agreement is considered to be substantive.

In September 2015, the Tandem Agreement was amended to eliminate Tandem's obligation to pay DexCom a royalty of $100 for each Tandem t:slim G4 integrated pump system sold and instead to reallocate $100 for each Tandem t:slim G4 integrated pump system to incremental marketing activities for such pump systems, or marketing activities to support other jointly funded development projects.

6. Fair Value Measurements

We base the fair value of our Level 1 financial instruments that are in active markets using quoted market prices for identical instruments.

We obtain the fair value of our Level 2 financial instruments, which are not in active markets, from a primary professional pricing source using quoted market prices for identical or comparable instruments, rather than direct observations of quoted prices in active markets. Fair value obtained from this professional pricing source can also be based on pricing models whereby all significant observable inputs, including maturity dates, issue dates, settlement date, benchmark yields, reported trades, broker-dealer quotes, issue spreads, benchmark securities, bids, offers or other market related data, are observable or can be derived from, or corroborated by, observable market data for substantially the full term of the asset.

We validate the quoted market prices provided by our primary pricing service by comparing the fair values of our Level 2 marketable securities portfolio balance provided by our primary pricing service against the fair values of our Level 2 marketable securities portfolio balance provided by our investment managers.

The following table represents our fair value hierarchy for our financial assets (cash equivalents and marketable securities) measured at fair value on a recurring basis as of June 30, 2016 (in millions):

	Fair Value Measurements Using			
	Level 1	Level 2	Level 3	Total
Cash equivalents	$ —	$ 33.3	$ —	$ 33.3
Marketable securities, available for sale				
U.S. government agencies	—	22.2	—	22.2
Corporate debt	—	2.6	—	2.6
Commercial paper	—	3.3	—	3.3
Total marketable securities, available for sale	$ —	$ 28.1	$ —	$ 28.1

The following table represents our fair value hierarchy for our financial assets (cash equivalents and marketable securities) measured at fair value on a recurring basis as of December 31, 2015 (in millions):

	Fair Value Measurements Using			
	Level 1	Level 2	Level 3	Total
Cash equivalents	$ —	$ 32.1	$ —	$ 32.1
Marketable securities, available for sale				
U.S. government agencies	—	22.1	—	22.1
Corporate debt	—	4.9	—	4.9
Commercial paper	—	2.1	—	2.1
Total marketable securities, available for sale	$ —	$ 29.1	$ —	$ 29.1

There were no transfers between Level 1 and Level 2 securities during the three and six months ended June 30, 2016 and 2015. There were no transfers into or out of Level 3 securities during the three and six months ended June 30, 2016 and 2015.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This document, including the following Management's Discussion and Analysis of Financial Condition and Results of Operations, contains forward-looking statements that are not purely historical regarding DexCom's or its management's intentions, beliefs, expectations and strategies for the future. These forward-looking statements fall within the meaning of the federal securities laws that relate to future events or our future financial performance. In some cases, you can identify forward-looking statements by terminology such as "may," "will," "expect," "plan," "anticipate," "believe," "estimate," "intend," "potential" or "continue" or the negative of these terms or other comparable terminology. Forward-looking statements are made as of the date of this report, deal with future events, are subject to various risks and uncertainties, and actual results could differ materially from those anticipated in those forward looking statements. The risks and uncertainties that could cause actual results to differ materially are more fully described under "Risk Factors" and elsewhere in this report and in our other reports filed with the SEC. We assume no obligation to update any of the forward-looking statements after the date of this report or to conform these forward-looking statements to actual results.

Overview

We are a medical device company primarily focused on the design, development and commercialization of continuous glucose monitoring ("CGM") systems for ambulatory use by people with diabetes and by healthcare providers for the treatment of people with diabetes. Unless the context requires otherwise, the terms "we," "us," "our," the "company," or "DexCom" refer to DexCom, Inc. and its subsidiaries.

Background

From inception to 2006, we devoted substantially all of our resources to start-up activities, raising capital and research and development, including product design, testing, manufacturing and clinical trials. Since 2006, we have devoted considerable resources to the commercialization of our ambulatory continuous glucose monitoring systems, including the G4 PLATINUM and G5 Mobile, as well as the continued research and clinical development of our technology platform.

The International Diabetes Federation ("IDF") estimates that in 2015, 415 million people around the world had diabetes, and the Centers for Disease Control ("CDC") estimates that in 2012, diabetes affected 29.1 million people in the United States, of which 8.1 million were undiagnosed. IDF estimates that by 2040, the worldwide incidence of people suffering from diabetes will reach 642 million. According to the CDC's National Vital Statistics Reports for 2010, diabetes was the seventh leading cause of death by disease in the United States. According to the Congressional Diabetes Caucus, diabetes is the leading cause of kidney failure, adult-onset blindness, lower-limb amputations, and significant cause of heart disease and stroke, high blood pressure and nerve damage. According to the IDF, there were an estimated 5 million deaths attributable to diabetes globally in 2015 between the ages of 20 and 79 years. The American Diabetes Association ("ADA") Fast Facts, revised in July 2014, states that diabetes is the primary cause of death for more than 69,000 Americans each year, and contributes to the death of more than 234,000 Americans annually. According to an article published in *The New England Journal of Medicine* in November 2014, excess mortality for people with diabetes with ages of less than 30 years is largely explained by acute complications of diabetes.

According to the CDC 2011 National Diabetes Fact Sheet, in the United States, another individual is diagnosed with diabetes every 17 seconds. As reported by the Congressional Diabetes Caucus website, 1.9 million people will be diagnosed with diabetes this year, approximately 5,082 people per day. In 2012 alone there were about 1.7 million people 20 years or older diagnosed. In addition to those newly diagnosed, the Congressional Diabetes Caucus website reports that every 24 hours there are: 238 amputations in people with diabetes, 120 people who enter end-stage kidney disease programs, and 48 people who go blind.

According to the ADA, one in every five healthcare dollars was spent on treating diabetes in 2012, and the direct medical costs and indirect expenditures attributable to diabetes in the United States were an estimated $245 billion, an increase of $71 billion, or approximately 41%, since 2007. Of the $245 billion in overall expenses, the ADA estimated that approximately $176 billion were direct costs associated with diabetes care, chronic complications and excess general medical costs, and $69 billion were indirect medical costs. The ADA also found that average medical expenditures among people with diagnosed diabetes were 2.3 times higher than for people without diabetes in 2012. According to the IDF, expenditures attributable to diabetes were an estimated $673 to $1,197 billion globally in 2015. The IDF estimates that expenditures attributable to diabetes will grow to a range of $802 to $1,452 billion globally by 2040.

We believe continuous glucose monitoring has the potential to enable more people with diabetes to achieve and sustain tight glycemic control. The Diabetes Control and Complications Trial demonstrated that improving blood glucose control lowers the risk of developing diabetes-related complications by up to 50%. The study also demonstrated that people with Type

1 diabetes achieved sustained benefits with intensive management. Yet, according to an article published in the *Journal of the American Medical Association* in 2004, less than 50% of diabetes patients were meeting ADA standards for glucose control (A1c), and only 37% of people with diabetes were achieving their glycemic targets. According to an article published in *The New England Journal of Medicine* in November 2014, in two national registries, only 13% to 15% of people with diabetes met treatment guidelines for good glycemic control, and more than 20% had very poor glycemic control. The CDC estimated that as of 2006, 63.4% of all adults with diabetes were monitoring their blood glucose levels on a daily basis, and that 86.7% of insulin-requiring patients with diabetes monitored daily.

Various clinical studies also demonstrate the benefits of continuous glucose monitoring and that continuous glucose monitoring is equally effective in patients who administer insulin through multiple daily injections or through use of continuous subcutaneous insulin infusion pumps. Results of a Juvenile Diabetes Research Foundation study published in the *New England Journal of Medicine* in 2008, and the extension phase of the study, published in *Diabetes Care* in 2009, demonstrated that continuous glucose monitoring improved A1c levels and reduced incidence of hypoglycemia for patients over the age of 25 and for all patients of all ages who utilized continuous glucose monitoring regularly.

Our initial target market in the United States consists of the estimated 30% of people with Type 1 diabetes who utilize insulin pump therapy and the estimated 50% of people with Type 1 diabetes who utilize multiple daily insulin injections. Our broader target market in the United States consists of our initial target market plus an estimated 20% of people with Type 1 diabetes using conventional insulin therapy and the estimated 27% of people with Type 2 diabetes who require insulin. Although our initial focus was within the United States, we have expanded our operations to include Canada, Australia, New Zealand, and portions of Europe, Asia, Latin America, the Middle East and Africa.

Products

Ambulatory Product Line: SEVEN® PLUS, DexCom G4®, DexCom G4® PLATINUM, DexCom Share™ System and DexCom G5® Mobile

We received approval from the Food and Drug Administration (“FDA”) and commercialized our first product in 2006. In 2009 we received approval and began commercializing our third generation system, the DexCom SEVEN PLUS. We no longer market or provide support for the DexCom SEVEN PLUS system. On June 14, 2012, we received Conformité Européenne Marking (“CE Mark”) approval for our fourth generation continuous glucose monitoring system, the DexCom G4 system, enabling commercialization of the DexCom G4 system in the European Union, Australia, New Zealand and the countries in Asia and Latin America that recognize the CE Mark. On October 5, 2012, we received approval from the FDA for the DexCom G4 PLATINUM, which is designed for up to seven days of continuous use by adults with diabetes, and we began commercializing this product in the United States in the fourth quarter of 2012. On February 14, 2013, we received CE Mark approval for a pediatric indication for our DexCom G4 system, enabling us to market and sell this system to persons two years old and older who have diabetes (hereinafter referred to as the “Pediatric Indication”), and we initiated a limited commercial launch in the second quarter of 2013. In connection with our receipt of CE Mark approval for the Pediatric Indication, we changed the name of the DexCom G4 system to the DexCom G4 PLATINUM system. On February 3, 2014, we received approval from the FDA for a Pediatric Indication for the DexCom G4 PLATINUM system in the United States. On June 3, 2014, we received approval from the FDA for an expanded indication for the DexCom G4 PLATINUM for professional use. This expanded indication allows healthcare professionals to purchase the DexCom G4 PLATINUM system for use with multiple patients. Healthcare professionals can use the insights gained from a DexCom G4 PLATINUM professional session to adjust therapy and to educate and motivate patients to modify their behavior after viewing the effects that specific foods, exercise, stress, and medications have on their glucose levels. On January 23, 2015, we received approval from the FDA for the DexCom G4 PLATINUM with Share, which is designed for up to seven days of continuous use, and we began commercializing this product in the United States in the first quarter of 2015. The DexCom G4 PLATINUM with Share remote monitoring system uses a secure wireless connection between a patient's receiver and an app on the patient's iPhone®, iPod touch®, or iPad® mobile digital device to transmit glucose information to apps on the mobile devices of up to five designated recipients, or “followers,” who can remotely monitor a patient's glucose information and receive alert notifications anywhere they have an Internet or cellular connection. Unless the context requires otherwise, the term “G4 PLATINUM” shall refer to the DexCom G4 and DexCom G4 PLATINUM systems (and all associated indications of use for such systems including without limitation, associated DexCom Share System functionalities) that are commercialized by us in and outside of the United States.

As compared to the SEVEN PLUS, the G4 PLATINUM offers:

- an improved sensor wire design that allows more scalable manufacturing,
- a smaller, sleeker receiver that is capable of displaying data in color,
- a new transmitter design that offers improved communication range with the receiver which allows for improved data capture,
- additional user interface and algorithm enhancements that are intended to make the user experience more customizable and to make its glucose monitoring function more accurate especially in the hypoglycemic range,
- the ability to market and sell to an expanded customer population due to the approval by the FDA of, and our obtaining a CE Mark for, a Pediatric Indication, and
- DexCom Share remote monitoring capabilities.

DexCom SHARE™

On October 17, 2014, we received approval from the FDA for the DexCom SHARE remote monitoring system. DexCom SHARE enables users of our G4 PLATINUM System to have their sensor glucose information remotely monitored by their family or friends. To use DexCom SHARE, the G4 PLATINUM user docks their G4 PLATINUM Receiver in the DexCom SHARE Cradle and their sensor glucose information is wirelessly transmitted to, and viewed by, such patient's friends or family through the DexCom SHARE mobile application. DexCom SHARE provides secondary notifications to individuals designated by a G4 PLATINUM System user and does not replace real time continuous glucose monitoring or standard home blood glucose monitoring.

On January 23, 2015, the FDA approved a version of the G4 PLATINUM Receiver that includes the DexCom Share System. The G4 PLATINUM Receiver with Share remote monitoring system uses a secure wireless connection via Bluetooth Low Energy between a patient's receiver and a mobile application on the patient's iPhone, iPod touch, or iPad mobile digital device to transmit glucose information to mobile applications on the mobile devices of up to five designated recipients, or "followers," without the need to use the DexCom SHARE Cradle component. The mobile applications that comprise the DexCom Share System were classified by the FDA as Class II, exempt, due to the fact that these mobile applications were secondary displays of the associated G4 PLATINUM Receiver. With the mobile applications classified as Class II, exempt, DexCom must comply with certain general and special controls required by the FDA but does not need prior FDA approval to commercialize changes to the DexCom Share System. We began commercialization of the G4 PLATINUM with Share in the first quarter of 2015 and discontinued the DexCom SHARE Cradle. Effective April 24, 2015, our DexCom Share System also supports the Apple Watch™, allowing the Apple Watch to utilize DexCom Share System functionality. Effective June 2, 2015, the mobile application for the Share System followers became available for Android devices.

DexCom G5 Mobile

On August 19, 2015, we received approval from the FDA for the DexCom G5 Mobile Continuous Glucose Monitoring System (the "G5 Mobile"). The G5 Mobile is designed to allow our transmitter to run the algorithm that has historically operated on the receiver, and to communicate directly to a patient's iPhone, iPod touch, or iPad mobile digital device to utilize DexCom Share System functionality. The G5 Mobile transmitter has a labeled useful life of three months.

We previously received CE Mark approval for, and in September, 2015, we launched the G5 Mobile in certain countries in Europe. In the countries and regions outside of the United States that recognize the CE Mark, the G5 Mobile does not require confirmatory finger sticks when making treatment decisions, although a minimum of two finger sticks a day remain necessary for calibration of the G5 Mobile. On July 21, 2016, the Clinical Chemistry and Clinical Toxicology Devices Panel (the "Panel") of the FDA voted to recommend our proposed non-adjunctive indication for the G5 Mobile. This recommendation is non-binding and we remain in discussions with the FDA concerning the formal approval of our PMA for the expanded non-adjunctive indication for the G5 Mobile.

Data from the G5 Mobile can be integrated with DexCom CLARITY™, our next generation cloud-based reporting software, for personalized, easy-to-understand analysis of trends that may improve diabetes management.

Except with respect to the foregoing, the G5 Mobile is equivalent to the G4 PLATINUM System in technical and regulatory respects.

SweetSpot

Through our acquisition of SweetSpot in 2012, we have a software platform that enables our customers to aggregate and analyze data from certain diabetes devices and to share it with their healthcare providers. In November 2011, SweetSpot

received 510(k) clearance from the FDA to market to clinics its initial cloud-based data management service, which helps healthcare providers and patients see, understand and use blood glucose meter data to diagnose and manage diabetes. SweetSpot has also developed a data transfer service that is registered with the FDA as a Medical Device Data System. This data transfer service allows researchers to control the transfer of data from certain diabetes devices to research tools and databases according to their own research workflows. SweetSpot's software provides an advanced cloud-based platform for uploading, processing and delivering health data and transforms raw output from certain medical devices into useful information for healthcare providers, individuals and researchers.

Sensor Augmented Insulin Pumps

We are leveraging our technology platform to enhance the capabilities of our current products and to develop additional continuous glucose monitoring products. In 2008 and 2015, we entered into development agreements with Animas Corporation ("Animas"), a subsidiary of Johnson & Johnson, and in 2012 and 2015 we entered into development agreements with Tandem Diabetes Care, Inc. ("Tandem"). The purpose of each of these development relationships is to integrate our technology into the insulin pump product offerings of the respective partner, enabling the partner's insulin pump to receive glucose readings from our transmitter and display this information on the pump's screen. The Animas insulin pump product augmented with our sensor technology has been branded the Vibe®, and received CE Mark approval in May 2011, which allows Animas to market the Vibe in the countries that recognize CE Mark approvals. In December 2014, Animas received FDA approval for the VIBE system in the United States and began commercializing this product in 2015. In July 2014, Tandem filed their submission for FDA approval of their CGM-enabled insulin pump in the United States. In September 2015 Tandem announced it had received FDA approval of its t:slim G4™ Insulin Pump, a touch-screen pump that is integrated with our G4 PLATINUM system and is indicated for use by people 12 years of age or older who use insulin. Tandem began commercializing this product in September 2015.

Future Products

We plan to develop future generations of technologies focused on improved performance and convenience and that will enable intelligent insulin administration. Over the longer term, we plan to develop networked platforms with open architecture, connectivity and transmitters capable of communicating with other devices and software systems. Our product development timelines are highly dependent on our ability to achieve clinical endpoints and regulatory and legal requirements, and to overcome technology challenges. Our product development timelines may be delayed due to extended regulatory approval timelines, scheduling issues with patients and investigators, requests from institutional review boards, sensor performance and manufacturing supply constraints, among other factors. In addition, support of these clinical trials requires significant resources from employees involved in the production of our products, including research and development, manufacturing, quality assurance, and clinical and regulatory personnel. Even if our development and clinical trial efforts are successful, the FDA may not approve our products, and even if approved, we may not achieve acceptance in the marketplace by physicians and people with diabetes.

On August 10, 2015, we entered into a Collaboration and License Agreement (the "Verily Collaboration Agreement") with Google Life Sciences LLC, now named Verily Life Sciences ("Verily"). Pursuant to the Verily Collaboration Agreement, we and Verily have agreed to jointly develop a series of next-generation continuous glucose monitoring products. The Verily Collaboration Agreement provides us with an exclusive license to use certain intellectual property of Verily related to the development, manufacture and commercialization of the products contemplated under the Verily Collaboration Agreement. The Verily Collaboration Agreement provides for the establishment of a joint steering committee, joint development committee and joint commercialization committee to oversee and coordinate the parties' activities under the collaboration. We and Verily have agreed to make committee decisions by consensus.

Commercial Operations

We have built a direct sales organization in the United States, and are building a direct sales force in portions of Europe, to call on endocrinologists, pediatric endocrinologists, physicians, pediatricians and diabetes educators who can educate and influence patient adoption of continuous glucose monitoring. We believe that focusing efforts on these participants is important given the instrumental role they each play in the decision-making process for diabetes therapy. To complement our direct sales efforts, we have entered into U.S. and international distribution arrangements that allow distributors to sell our products. We believe our direct, highly specialized and focused sales organization and our domestic and international distribution agreements are sufficient for us to support our sales efforts for at least the next twelve months.

As a medical device company, reimbursement from Medicare and private third-party healthcare payors is an important element of our success. Although the Centers for Medicare and Medicaid ("CMS") released 2008 Alpha-Numeric Healthcare Common Procedure Coding System ("HCPCS") codes applicable to each of the three components of our continuous glucose monitoring systems, to date, our approved products are not reimbursed by virtue of a national coverage decision by Medicare. It

is not known when, if ever, Medicare will adopt a national coverage decision with respect to continuous glucose monitoring devices. Until any such coverage decision is adopted by Medicare, reimbursement of our products will generally be limited to those customers covered by third-party payors that have adopted coverage policies for continuous glucose monitoring devices that include our products. As of August 2, 2016, the seven largest private third-party payors, in terms of the number of covered lives, have issued coverage policies for the category of continuous glucose monitoring devices. In addition, we have negotiated contracted rates with all seven of those third-party payors for the purchase of our G4 PLATINUM and G5 Mobile systems by their members. Many of these coverage policies reimburse for our products under durable medical equipment benefits, are restrictive in nature and require the patient to comply with extensive documentation and other requirements to demonstrate medical necessity under the policy. In addition, customers who are insured by payors that do not offer coverage for our devices will have to bear the financial cost of the products. We currently employ in-house reimbursement expertise to assist customers in obtaining reimbursement from private third-party payors. We also maintain a field-based reimbursement team charged with calling on third-party private payors to obtain coverage decisions and contracts. We have had formal meetings and have increased our efforts to create and liberalize coverage policies with third-party payors, including obtaining reimbursement for our products under pharmacy benefits, and expect to continue to do so in fiscal 2016. However, unless government and other third-party payors provide adequate coverage and reimbursement for our products, people with diabetes may not use them on a widespread basis.

We currently manufacture our products at our headquarters facilities in San Diego, California. As of June 30, 2016, these facilities had more than 8,000 square feet of laboratory space and approximately 18,000 square feet of controlled environment rooms. In July 2012, the FDA completed an inspection of our facilities, and did not identify any observations or require any other types of corrective action. During a routine FDA post-approval facility inspection ending on November 7, 2013, the FDA issued a Form 483 with several observations regarding DexCom Medical Device Reporting (“MDR”) procedures and complaint reportability determinations. DexCom responded to the observations on November 26, 2013. On March 14, 2014, we received the 2014 Warning Letter from the FDA related to administrative deficiencies in filing MDRs. On April 2, 2014, we responded to the 2014 Warning Letter. On April 16, 2015, the FDA initiated an on-site inspection intended to both close out the 2014 Warning Letter and conduct our normal biennial quality system inspection. The FDA completed its inspection with no observations. On May 21, 2015, the FDA issued a letter closing the 2014 Warning Letter. During a routine FDA post-market inspection ending on March 29, 2016, the FDA issued a Form 483 with one observation regarding the DexCom MDR procedure specific to retrospective MDR filing when a change in complaint reportability is made. On April 19, 2016, we responded to this observation.

There are technical challenges to increasing manufacturing capacity, including FDA qualification of new manufacturing facilities, equipment design and automation, material procurement, problems with production yields, and quality control and assurance. We have focused significant effort on continual improvement programs in our manufacturing operations intended to improve quality, yields and throughput. We have made progress in manufacturing to enable us to supply adequate amounts of product to support our commercialization efforts, however we cannot guarantee that supply will not be constrained going forward. Additionally, the production of our continuous glucose monitoring systems must occur in a highly controlled and clean environment to minimize particles and other yield- and quality-limiting contaminants. Developing commercial-scale manufacturing facilities has and will continue to require the investment of substantial additional funds and the hiring and retaining of additional management, quality assurance, quality control and technical personnel who have the necessary manufacturing experience. Manufacturing is subject to numerous risks and uncertainties described in detail in “Risk Factors” below.

We manufacture our G4 PLATINUM and G5 Mobile systems with certain components supplied by outside vendors and other components that we manufacture internally. Key components that we manufacture internally include our wire-based sensors for the G4 PLATINUM and G5 Mobile systems. The remaining components and assemblies are purchased from outside vendors. We then assemble, test, package and ship the finished G4 PLATINUM and G5 Mobile systems, which include a reusable transmitter, a receiver, disposable sensors and our mobile applications including functionality related to the DexCom Share System.

Product revenues are generated from the sale of durable continuous glucose monitoring systems (receivers and transmitters) and disposable sensors through a direct sales force in the United States and portions of Europe, as well as through distribution arrangements in the United States, Canada, Australia, New Zealand, and in portions of Europe, Asia, Latin America, the Middle East and Africa. The sensor is inserted by the user and is intended to be used continuously for up to seven days, after which it may be replaced with a new disposable sensor. Our transmitter is reusable until it reaches the end of its battery life. Our receiver is reusable. As we establish an installed base of customers using our products, we expect to generate an increasing portion of our revenues through recurring sales of our disposable sensors.

As of June 30, 2016, we had an accumulated deficit of $594.8 million. We expect our losses to continue as we proceed with our commercialization and research and development activities. We have financed our operations primarily through offerings of equity securities and debt. In November 2012, we entered into our Loan Agreement that provided for (i) a $15.0

million revolving line of credit and (ii) initially provided a total term loan of up to $20.0 million (the “Term Loan”). The revolving line of credit expired as of November 2015 with no amounts drawn or outstanding. In accordance with the Loan Agreement, $7.0 million was advanced under the Term Loan at the funding date in November 2012, and the remaining $13.0 million in additional funds expired unused. In June 2016, we paid off the remaining principal balance under the Term Loan. In June 2016, we entered into a $200.0 million Credit Agreement with JPMorgan Chase Bank, NA, as administrative agent, Bank of America, Silicon Valley Bank and Union Bank. The Credit Agreement provides a subfacility of up to $10.0 million for letters of credit.

Financial Operations

Revenue

We sell our durable systems and disposable units through a direct sales force in the United States and portions of Europe, and through distribution arrangements in the United States, Canada, Australia, New Zealand, and in portions of Europe, Asia, Latin America, the Middle East and Africa. We have contracts with certain distributors who stock our products, and we refer to these distributors as Stocking Distributors, whereby the distributors fulfill orders for our product from their inventory. We also have contracts with certain distributors that do not stock our products, but rather products are shipped directly to the customer by us on behalf of our distributor, and we refer to these distributors as Drop-Ship Distributors. We expect that revenues we generate from the sales of our products will fluctuate from quarter to quarter. We typically experience seasonality with lower sales in the first quarter of each year, compared to the previous fourth quarter, related to annual insurance deductible resets and unfunded flexible spending accounts.

Cost of Sales

Cost of sales includes direct labor and materials costs related to each product sold or produced, including assembly, test labor and scrap, as well as factory overhead supporting our manufacturing operations. Factory overhead includes facilities, material procurement and control, manufacturing engineering, quality assurance, supervision and management. These costs are primarily salary, fringe benefits, share-based compensation, facility expense, supplies and purchased services. A portion of our costs are currently fixed due to our moderate level of production volumes compared to our potential capacity. All of our manufacturing costs are included in cost of sales.

Research and Development

Our research and development expenses primarily consist of engineering and research expenses related to our continuous glucose monitoring technology, clinical trials, regulatory expenses, quality assurance programs, materials and products for clinical trials. Research and development expenses are primarily related to employee compensation, including salary, fringe benefits, share-based compensation, and temporary employee expenses. We also incur significant expenses to operate our clinical trials including clinical site reimbursement, clinical trial product and associated travel expenses. Our research and development expenses also include fees for design services, contractors and development materials.

Selling, General and Administrative

Our selling, general and administrative expenses primarily consist of salary, fringe benefits and share-based compensation for our executive, financial, sales, marketing, information technology and administrative functions. Other significant expenses include commissions, marketing and advertising, IT software license costs, insurance, professional fees for our outside legal counsel and independent auditors, litigation expenses, patent application expenses and consulting expenses.

Results of Operations

Quarter Ended June 30, 2016 Compared to June 30, 2015

Revenue, Cost of Sales and Gross Profit

Product revenue increased $44.4 million to $137.3 million for the three months ended June 30, 2016 compared to $92.9 million for the three months ended June 30, 2015, primarily due to increased sales volume of our disposable sensors resulting from the continued growth of our installed base of customers using our G4 PLATINUM and G5 Mobile systems and durable systems to both new and existing customers. Revenue attributable to our disposable sensors and durable systems was approximately 70% and 30% of total revenue for the three months ended June 30, 2016, and was approximately 70% and 30% of total revenue for the three months ended June 30, 2015, respectively.

Cost of sales increased $24.6 million to $51.8 million for the three months ended June 30, 2016 compared to $27.2 million for the three months ended June 30, 2015, primarily due to increased sales volume, partially due to increased warranty costs related to receivers, and $3.5 million in receiver related excess and obsolete inventory charges primarily related to the customer notification discussed in the Risk Factor entitled "*If we or our suppliers or distributors fail to comply with ongoing regulatory requirements, or if we experience unanticipated problems with our products, the products could be subject to restrictions or withdrawal from the market.*" Gross profit increased $19.5 million to $85.5 million for the three months ended June 30, 2016 compared to $66.0 million for the same period in 2015, primarily due to increased revenue, partially offset by the product mix of sales of our lower margin G5 transmitters and costs related to the customer notification discussed above.

Revenue from products shipped to our Drop-Ship Distributors' customers was $8.8 million, or 6%, of our total revenues for the three months ended June 30, 2016 compared to $8.6 million, or 9%, of our total revenues for the three months ended June 30, 2015. Revenue from products shipped to Stocking Distributors was $86.5 million, or 63%, of our total revenues for the three months ended June 30, 2016 compared to $57.7 million, or 62%, of our total revenues for the three months ended June 30, 2015.

The development grant and other revenues of $0.3 million for the three months ended June 30, 2015 was primarily due to services associated with clinical supply and services agreements. We did not incur any development and other cost of sales during the three months ended June 30, 2016 and June 30, 2015.

Research and Development. Research and development expense increased $11.9 million to $36.3 million for the three months ended June 30, 2016 compared to $24.4 million for the three months ended June 30, 2015. Significant elements of the increase in research and development costs for the three months June 30, 2016 compared to the three months ended June 30, 2015 included $4.3 million in additional salaries, bonus and payroll related costs, $2.4 million in additional share-based compensation, $0.9 million in additional supplies, and $0.7 million in additional consulting expenses.

Selling, General and Administrative. Selling, general and administrative expense increased $24.1 million to $69.3 million for the three months ended June 30, 2016 compared to $45.2 million for the three months ended June 30, 2015. The increase was primarily due to higher headcount related selling, marketing and information technology infrastructure costs to support revenue growth and the continued commercialization of our products. Significant elements of the increase in selling, general, and administrative expenses included $6.5 million in additional salaries, bonus, and payroll related costs, $3.3 million in additional share-based compensation costs, $2.5 million of additional consulting fees, $2.2 million in additional marketing costs, $1.0 million of additional software license costs, $0.6 million of additional commissions, and $0.6 million of additional costs to support our international expansion.

Interest Income. Interest income was $0.1 million for the three months ended June 30, 2016 and is related to our marketable securities portfolio.

Interest Expense. Interest expense was $0.1 million for the three months ended June 30, 2016 and $0.1 million for the three months ended June 30, 2015 and is related to our Loan Agreement and Revolving Credit Agreement.

Income Tax Expense. Income tax expense was $0.1 million for the three months ended June 30, 2016, and is primarily related to state minimum taxes and foreign income taxes related to our international subsidiaries.

Six Months Ended June 30, 2016 Compared to June 30, 2015

Revenue, Cost of Sales and Gross Profit

Product revenues increased $87.8 million to $253.5 million for the six months ended June 30, 2016 compared to $165.7 million for the six months ended June 30, 2015 based primarily on increased sales volume of our disposable sensors due to the continued growth of our installed base of customers using our G4 PLATINUM and G5 Mobile systems and durable systems to both new and existing customers. Revenue attributable to our disposable sensors and durable systems was approximately 70% and 30%, respectively, of total revenue, for each of the six months ended June 30, 2016 and 2015.

Cost of sales increased $39.4 million to $92.9 million for the six months ended June 30, 2016 compared to $53.5 million for the six months ended June 30, 2015, primarily due to increased sales volume, partially due to increased warranty costs related to receivers, and $3.5 million in receiver related excess and obsolete inventory charges primarily related to the customer notification as discussed in the Risk Factor entitled "*If we or our suppliers or distributors fail to comply with ongoing regulatory requirements, or if we experience unanticipated problems with our products, the products could be subject to restrictions or withdrawal from the market."* The gross profit of $160.6 million for the six months ended June 30, 2016 increased $48.1 million compared to $112.5 million for the same period in 2015, primarily due to increased revenue, partially offset by the product mix of sales of our lower margin G5 transmitters and costs related to the customer notification discussed above.

The development grant and other revenues of $0.3 million for the six months ended June 30, 2015 was primarily due to services associated with clinical supply and services agreements. We did not incur any development and other cost of sales during the six months ended June 30, 2016 and June 30, 2015.

Revenue from products shipped to our Drop-Ship Distributors' customers was $18.3 million, or 7%, of our total revenues for the six months ended June 30, 2016 compared to $17.0 million, or 10%, of our total revenues for the six months ended June 30, 2015. Revenue from products shipped to Stocking Distributors was $165.9 million, or 65%, of our total revenues for the six months ended June 30, 2016 compared to $102.9 million, or 62%, of our total revenues for the six months ended June 30, 2015.

Research and Development. Research and development expense increased $24.3 million to $68.5 million for the six months ended June 30, 2016, compared to $44.2 million for the six months ended June 30, 2015. Significant elements of the increase in research and development costs for the six months ended June 30, 2016 compared to the six months ended June 30, 2015 included $8.2 million in additional salaries, bonus and payroll related costs, $5.5 million in additional share-based compensation, $2.7 million in additional supplies, and $1.1 million in additional consulting expenses.

Selling, General and Administrative. Selling, general and administrative expense increased $46.8 million to $131.4 million for the six months ended June 30, 2016, compared to $84.6 million for the six months ended June 30, 2015. The increase was primarily due to higher headcount related selling, marketing and information technology infrastructure costs to support revenue growth and the continued commercialization of our products. Significant elements of the increase in selling, general, and administrative expenses included $12.1 million in additional salaries, bonus, and payroll related costs, $8.3 million in additional share-based compensation costs, $5.1 million in additional marketing costs, $4.0 million of additional consulting fees, $2.0 million of additional commissions, $1.7 million of additional software license costs and $1.3 million of additional costs to support our international expansion.

Interest Income. Interest income was $0.2 million for the six months ended June 30, 2016 and is related to our marketable securities portfolio.

Interest Expense. Interest expense was $0.2 million for the six months ended June 30, 2016 compared to $0.3 million for the six months ended June 30, 2015 and is related to our Loan Agreement and Revolving Credit Agreement.

Income Tax Expense. Income tax expense was $0.1 million for the six months ended June 30, 2016, and is primarily related to state minimum taxes and foreign income taxes related to our international subsidiaries.

Liquidity and Capital Resources

We have incurred losses since our inception in May 1999. As of June 30, 2016, we had an accumulated deficit of $594.8 million and had working capital of $167.1 million. To date, we have funded our operations primarily through offerings of equity securities and debt, and the sales of our products. In June 2016, we entered into a $200.0 million Credit Agreement, including a subfacility of up to $10.0 million for letters of credit. The revolving loans under the Credit Agreement will be available for general corporate purposes, including working capital and capital expenditures.

Our cash, cash equivalents and marketable securities totaled $115.6 million as of June 30, 2016. We generally invest our cash and cash equivalents in investment grade, highly liquid fixed income securities. Our marketable securities portfolio is denominated in U.S. dollars and consists of investment grade, highly liquid securities of various holdings including obligations of U.S. government sponsored enterprises, commercial paper, corporate debt, and money market funds. The change in our cash, cash equivalents and marketable securities during the six months ended June 30, 2016 was due to the factors described in the "Cash Flow Summary" below.

Cash Flow Summary

The following table sets forth a summary of our cash flows for the periods indicated (in millions)

	Six Months Ended June 30,		Change
	2016	2015	
Net cash provided by operating activities	$ 19.9	$ 19.8	$ 0.1
Net cash used in investing activities	$ (20.8)	$ (33.1)	$ 12.3
Net cash provided by financing activities	$ 2.5	$ 9.2	$ (6.7)

As of June 30, 2016, we had $87.5 million of cash and cash equivalents compared to $86.1 million as of December 31, 2015, an increase of $1.4 million. The cash flows during the six months ended June 30, 2016 were related primarily to the following items:

Cash inflows:

- Net cash provided by operations of $19.9 million comprised of net loss of $39.4 million, changes in working capital balances of $0.8 million, offset by $60.1 million positive adjustments to accrual based net loss for non-cash items primarily related to share-based compensation, depreciation and amortization;
- Proceeds of $0.8 million as a result of marketable securities transactions;
- Proceeds from issuance of common stock of $4.8 million.

Cash outflows:

- Capital expenditures of $22.0 million primarily related to purchase of manufacturing equipment, facility related build-outs and office equipment;
- Repayments of debt of $2.3 million.

Net Cash Provided by Operating Activities. The change in cash provided by operations was primarily due to $22.8 million in higher net loss, offset by an additional $4.9 million cash inflow from changes in operating assets and liabilities and by $18.0 million in higher non-cash charges primarily comprised of share-based compensation. The main drivers in the change in operating assets and liabilities included increases in inventory, accounts payable, accrued payroll and other liabilities, all as a result of our growth.

Net Cash Used in Investing Activities. The change in cash used in investing activities was primarily due to $19.1 million net increase in cash as a result of marketable securities transactions, offset by the use of an additional $7.7 million to purchase equipment to support manufacturing improvements and information technology infrastructure.

Net Cash Provided by Financing Activities. The decrease in cash provided by financing activities was due to $5.6 million decrease in proceeds from the issuance of common stock pursuant to the exercise of then-outstanding stock options for the six months ended June 30, 2016 compared to the six months ended June 30, 2015, and $1.1 million increase in loan payments as a result of the payoff of the remaining principal balance under the Term Loan.

Operating Capital and Capital Expenditure Requirements

We anticipate that we will continue to incur net losses as we incur expenses and expand the commercialization of our approved products domestically and internationally, develop additional continuous glucose monitoring products, and expand our marketing, manufacturing and corporate infrastructure.

We believe that our cash, cash equivalents, marketable securities balances, projected cash contributions from our commercial operations and $200.0 million available under our Credit Agreement will be sufficient to meet our anticipated cash requirements with respect to the continued scale-up of our commercialization activities, research and development activities, including clinical trials, the expansion of our marketing, manufacturing and corporate infrastructure, and to meet our other anticipated cash needs through at least June 30, 2017. If our available cash, cash equivalents and marketable securities are insufficient to satisfy our liquidity requirements, or if we develop additional products or new markets for our existing products, we may seek to sell additional equity or debt securities or obtain an additional credit facility. The sale of additional equity and debt securities may result in additional dilution to our stockholders. If we raise additional funds through the issuance of debt securities or preferred stock, these securities could have rights senior to those of our common stock and could contain covenants that would restrict our operations. We may require additional capital beyond our currently forecasted amounts. Any such required additional capital may not be available on reasonable terms, if at all. Additionally, we cannot guarantee that we will be successful in obtaining additional cash contributions from future partnership arrangements. Our ability to transition to, and maintain profitable operations is dependent upon achieving a level of revenues adequate to support our cost structure. If events or circumstances occur such that we do not meet our operating plan as expected, or if we are unable to obtain additional financing, we may be required to reduce planned increases in compensation related expenses or other operating expenses related to research, development, and commercialization activities, which could have an adverse impact on our ability to achieve our intended business objectives.

Because of the numerous risks and uncertainties associated with the development of continuous glucose monitoring technologies, we are unable to estimate the exact amounts of capital outlays and operating expenditures associated with our current and anticipated clinical trials. Our future funding requirements will depend on many factors, including, but not limited to:

- the revenue generated by sales of our approved products and other future products;
- the expenses we incur in manufacturing, developing, selling and marketing our products;
- the quality levels of our products and services;
- the third-party reimbursement of our products for our customers;
- our ability to efficiently scale our manufacturing operations to meet demand for our current and any future products;
- the costs, timing and risks of delays of additional regulatory approvals;
- the costs of filing, prosecuting, defending and enforcing any patent claims and other intellectual property rights;
- the rate of progress and cost of our clinical trials and other development activities;
- the success of our research and development efforts;
- the emergence of competing or complementary technological developments;
- the terms and timing of any collaborative, licensing and other arrangements that we may establish; and
- the acquisition of businesses, products and technologies and our ability to integrate and manage any acquired businesses, products and technologies.

Contractual Obligations

We are party to various purchase arrangements related to components used in manufacturing and research and development activities. As of June 30, 2016, we had firm purchase commitments with certain vendors totaling approximately $55.5 million due within one year. There are no material purchase commitments due beyond one year.

We are party to various leasing arrangements as described in the Management’s Discussion and Analysis of Financial Condition and Results of Operations in Item 7 of our Annual Report on Form 10-K for the fiscal year ended December 31, 2015. We have entered into the following new leasing arrangements during the six months ended June 30, 2016:

- On February 1, 2016, we entered into a Sublease (the “Sublease”) with Entropic Communications, LLC with respect to the building at 6350 Sequence Drive in San Diego, California (the “6350 Building”). Under the Sublease, we have leased approximately 132,600 square feet of space in the 6350 Building. The lease term extends through January 2022. The total obligation for rent under the life of the lease is $14.5 million, excluding real estate taxes and operating costs.
- On April 28, 2016, we entered into a certain Industrial Net Lease (the “Mesa Lease”) with PRA/LB, L.L.C. with respect to facilities in the building at 232 South Dobson Road in Mesa, Arizona (the “Mesa Building"). Under the

Mesa Lease, we have leased approximately 148,797 square feet of space in the Mesa Building, of which approximately 78,000 square feet was available to us on May 1, 2016 and the remaining portion of the Mesa Building will become available to us on or around January 1, 2018. The term of the Mesa Lease extends through March 2028 with four extension options, each with five year terms. The total obligation for rent under the lease term ending March 2028 is approximately $15.3 million, excluding real estate taxes and operating costs.

The following table summarizes our outstanding contractual obligations as of June 30, 2016 and the effect those obligations are expected to have on our liquidity and cash flows in future periods (in millions):

Contractual Obligations:	Total	Less than 1 Year	1-3 Years	3-5 Years	More than 5 Years
Operating leases	$ 78.6	$ 3.2	$ 16.6	$ 21.3	$ 37.5
Purchase commitments	55.5	55.5	—	—	—
Total	$ 134.1	$ 58.7	$ 16.6	$ 21.3	$ 37.5

Other

On May 2, 2016, we entered into that certain Standard Form of Agreement (the “Skanska Contract”) with Skanska USA Building Inc. (the “Contractor”) , providing for construction and design services to build out our new manufacturing facility in the Mesa Building. The first phase of construction began in the second quarter of 2016 and is expected to be completed in mid-2017. The total expenditures under the Skanska Contract are currently anticipated to be approximately $30 million.

Off-Balance Sheet Arrangements

We have not engaged in any off-balance sheet activities.

Critical Accounting Policies and Estimates

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

Our significant accounting policies are more fully described in Note 1 to our consolidated financial statements included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2015. Our accounting policies and estimates which are most critical to a full understanding and evaluation of our reported financial results are described in the Management’s Discussion and Analysis of Financial Condition and Results of Operations in Item 7 of our Annual Report on Form 10-K for the fiscal year ended December 31, 2015. There were no material changes to our critical accounting policies during the six months ended June 30, 2016.

Recent Accounting Guidance

In May 2014, the FASB issued authoritative guidance for Revenue from Contracts with Customers, to supersede nearly all existing revenue recognition guidance under U.S. GAAP. The core principle of the guidance is to recognize revenues when promised goods or services are transferred to customers in an amount that reflects the consideration that is expected to be received for those goods or services. The guidance defines a five step process to achieve this core principle and it is possible when the five step process is applied, more judgment and estimates may be required within the revenue recognition process than required under existing U.S. GAAP including identifying performance obligations in the contract, estimating the amount of variable consideration to include in the transaction price and allocating the transaction price to each separate performance obligation. The updated standard permits the use of either the retrospective or cumulative effect transition method and is effective for us in our first quarter of fiscal 2018. Early adoption is not permitted. We have not yet selected a transition method and we are currently evaluating the effect that the updated standard will have on our consolidated financial statements and related disclosures.

In July 2015, the FASB issued guidance to change the subsequent measurement of inventory from lower of cost or market to lower of cost and net realizable value. The guidance requires that inventory accounted for under the first-in, first-out (FIFO)

or average cost methods be measured at the lower of cost and net realizable value, where net realizable value represents the estimated selling price of inventory in the ordinary course of business, less reasonably predictable costs of completion, disposal, and transportation. The guidance is effective for us beginning in the first quarter of fiscal 2018. Earlier application is permitted as of the beginning of an interim or annual reporting period. We are currently evaluating the effect this guidance will have on our consolidated financial statements.

In February 2016, the FASB issued ASU 2016-02, Leases (Topic 842) ("ASU 2016-02"), which require a lessee to recognize a lease payment liability and a corresponding right of use asset on their balance sheet for all lease terms longer than 12 months, lessor accounting remains largely unchanged. ASU 2016-02 is effective for fiscal years, and interim periods within those years, beginning on or after December 15, 2018 and early adoption is permitted. We are currently evaluating the effect this guidance will have on our consolidated financial statements.

In February 2016, the FASB issued ASU 2016-09, Compensation - Stock Compensation (Topic 718) ("ASU 2016-09"), which is intended to simplify several areas of accounting for share-based payment arrangements. The amendments in this update cover such areas as the recognition of excess tax benefits and deficiencies, the classification of those excess benefits on the statement of cash flows, an accounting policy election for forfeitures, the amount an employer can withhold to cover income taxes and still qualify for equity classification and the classification of those taxes paid on the statement of cash flows. ASU 2016-09 is effective for fiscal years beginning after December 15, 2016, and interim periods within those annual periods, with early adoption permitted. We are currently evaluating the effect this guidance will have on our consolidated financial statements.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Interest Rate Risk

The primary objective of our investment activities is to preserve our capital for the purpose of funding operations while at the same time maximizing the income we receive from our investments without significantly increasing risk. To achieve these objectives, our investment policy allows us to maintain a portfolio of cash equivalents and short-term investments in a variety of securities, including money market funds, U.S. Treasury debt and corporate debt securities. Due to the short-term nature of our investments, we believe that we have no material exposure to interest rate risk.

Foreign Currency Risk

We have only limited business transactions in foreign currencies. We do not currently engage in hedging or similar transactions to reduce our foreign currency risks. We believe we have no material exposure to risk from changes in foreign currency exchange rates at this time. We will continue to monitor and evaluate our internal processes relating to foreign currency exchange, including the potential use of hedging strategies.

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Regulations under the Securities Exchange Act of 1934 require public companies to maintain "disclosure controls and procedures," which are defined to mean a company's controls and other procedures that are designed to ensure that information required to be disclosed in the reports that it files or submits under the Securities Exchange Act of 1934 is accumulated and timely communicated to management, including our Chief Executive Officer and Chief Financial Officer, recorded, processed, summarized, and reported within the time periods specified in the Securities and Exchange Commission's rules and forms. Our management, including our Chief Executive Officer and our Chief Financial Officer, conducted an evaluation as of the end of the period covered by this report of the effectiveness of our disclosure controls and procedures. Based on their evaluation, our Chief Executive Officer and our Chief Financial Officer concluded that our disclosure controls and procedures were effective for this purpose.

Changes in Internal Control Over Financial Reporting

There were no changes in our internal control over financial reporting during our last fiscal quarter that have materially affected, or are reasonably likely to materially affect our internal control over financial reporting.

Limitation on Effectiveness of Controls

It should be noted that any system of controls, however well designed and operated, can provide only reasonable, and not absolute, assurance that the objectives of the system are met. The design of any control system is based, in part, upon the benefits of the control system relative to its costs. Control systems can be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of the control. In addition, over time, controls may become inadequate because of changes in conditions, or the degree of compliance with the policies or procedures may deteriorate. Because of these and other inherent limitations of control systems, there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions, regardless of how remote.

PART II OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

On March 28, 2016, Agamatrix, Inc. (“Agamatrix”) filed a patent infringement lawsuit against us in the United States District Court for the District of Oregon, asserting that certain of our products infringe certain patents held by Agamatrix. It is our position that Agamatrix’s assertions of infringement have no merit. Neither the outcome of the litigation nor the amount and range of potential fees associated with the litigation can be assessed at this time. As of June 30, 2016, no amounts have been accrued in respect of this litigation.

We are subject to various claims, complaints and legal actions that arise from time to time in the normal course of business. In addition, from time to time, we may bring claims or initiate lawsuits against various third parties with respect to matters arising out of the ordinary course of our business, including commercial and employment related matters. We do not believe we are party to any currently pending legal proceedings, the outcome of which could have a material adverse effect on our operations or financial position. There can be no assurance that existing or future legal proceedings arising in the ordinary course of business or otherwise will not have a material adverse effect on our business, consolidated financial position, results of operations or cash flows.

ITEM 1A. RISK FACTORS

Our short and long-term success is subject to numerous risks and uncertainties, many of which involve factors that are difficult to predict or beyond our control. Before making a decision to invest in, hold or sell our common stock, stockholders and potential stockholders should carefully consider the risks and uncertainties described below, in addition to the other information contained in or incorporated by reference into this Quarterly Report on Form 10-Q, as well as the other information we file with the Securities and Exchange Commission. If any of the following risks are realized, our business, financial condition, results of operations and prospects could be materially and adversely affected. In that case, the value of our common stock could decline and stockholders may lose all or part of their investment. Furthermore, additional risks and uncertainties of which we are currently unaware, or which we currently consider to be immaterial, could have a material adverse effect on our business. Refer to our disclaimer regarding forward-looking statements at the beginning of our Management’s Discussion and Analysis of Financial Condition and Results of Operations.

Factors that May Affect our Financial Condition and Results of Operations

Risks Related to Our Business

We have incurred losses since inception and anticipate that we will incur continued losses in the future.

We have incurred net losses in each year since our inception in May 1999, including a net loss of $39.4 million for the six months ended June 30, 2016. As of June 30, 2016, we had an accumulated deficit of $594.8 million. We have financed our operations primarily through private and public offerings of equity securities and debt, and the sales of our products. We have devoted substantial resources to:

- research and development relating to our continuous glucose monitoring systems;
- sales and marketing and manufacturing expenses associated with the commercialization of our G4 PLATINUM and G5 Mobile systems; and
- expansion of our workforce.

We expect our research and development expenses to increase in connection with our clinical trials and other development activities related to our products, including our next generation sensors, transmitters and sensor augmented insulin pump and other collaborations. We also expect that our general and administrative expenses will continue to increase due to the additional operational and regulatory burdens applicable to public healthcare and medical device companies. As a result, we expect we may continue to incur operating losses in the future. These losses, among other things, have had and will continue to have an adverse effect on our stockholders' equity.

If we are unable to continue the development of an adequate sales and marketing organization, or if our direct sales organization is not successful, we may have difficulty achieving market awareness and selling our products.

To achieve commercial success for the G4 PLATINUM and G5 Mobile systems and our future products, we must continue to develop and grow our sales and marketing organization and enter into partnerships or other arrangements to market

and sell our products. Developing and managing a direct sales organization is a difficult, expensive and time consuming process. To be successful we must:

- recruit and retain adequate numbers of effective and experienced sales personnel;
- effectively train our sales personnel in the benefits and risks of our products;
- establish and maintain successful sales, marketing and education programs that educate endocrinologists, physicians and diabetes educators so they can appropriately inform their patients about our products; and
- manage geographically disbursed sales and marketing operations.

We currently employ a direct sales force to market our products in the United States and are building a direct sales force in certain countries in Europe. Our direct sales force calls directly on healthcare providers and people with diabetes throughout the applicable country to initiate sales of our products. Our sales organization competes with the experienced, larger and well-funded marketing and sales operations of our competitors. We may not be able to successfully manage our dispersed sales force, or increase our product sales at acceptable rates.

We have also entered into distribution arrangements to leverage existing distributors already engaged in the diabetes marketplace. Our United States distribution partnerships are focused on accessing underrepresented regions and, in some instances, third-party payors that contract exclusively with distributors. Our European and other international distribution partners call directly on healthcare providers and patients to market and sell our products in Canada, Europe, Australia, New Zealand, Asia, Latin America, the Middle East and Africa. Because of the competition for their services, we may be unable to partner with or retain additional qualified distributors. Further, we may not be able to enter into agreements with distributors on commercially reasonable terms, if at all. Our distributors might not have the resources to continue to support our recent rapid growth.

We may require additional funding to continue the commercialization of our G4 PLATINUM and G5 Mobile systems, or the development and commercialization of our future generation and other continuous glucose monitoring systems, including our sensor augmented insulin pump systems developed in collaboration with Animas and Tandem and our collaboration with Verily (formerly Google Life Sciences).

Our operations have consumed substantial amounts of cash since inception. We expect to continue to spend substantial amounts on commercializing our products, including growth of our manufacturing capacity, and on research and development, including conducting clinical trials for our next generation ambulatory continuous glucose monitoring sensors and systems. For the six months ended June 30, 2016, we generated $19.9 million in net cash from operating activities, compared to $19.8 million generated for the same period in 2015, and as of June 30, 2016, we had working capital of $167.1 million which included $115.6 million in cash, cash equivalents and short-term marketable securities. Although we expect that our cash generated by operations will increase in each of the next several years, we may need additional funds to continue the commercialization of our current products and to develop and commercialize our next generation sensors and systems. Additional financing may not be available on a timely basis on terms acceptable to us, or at all. Any additional financing may be dilutive to stockholders or may require us to grant a lender a security interest in our assets. The amount of funding we may need will depend on many factors, including:

- the revenue generated by sales of our products and other future products;
- the costs, timing and risks of delay of additional regulatory approvals;
- the expenses we incur in manufacturing, developing, selling and marketing our products;
- our ability to scale our manufacturing operations to meet demand for our current and any future products;
- the costs to produce our continuous glucose monitoring systems;
- the costs of filing, prosecuting, defending and enforcing any patent claims and other intellectual property rights;
- the rate of progress and cost of our clinical trials and other development activities;
- the success of our research and development efforts;
- the emergence of competing or complementary technological developments;
- the terms and timing of any collaborative, licensing and other arrangements that we may establish;
- the cost of ongoing compliance with legal and regulatory requirements, and third party payors' policies;
- the cost of obtaining and maintaining regulatory or payor clearance or approval for our current or future products including those integrated with other companies products; and
- the acquisition of businesses, products and technologies, although we currently have no commitments or agreements relating to any of these types of transactions.

If adequate funds are not available, we may not be able to commercialize our products at the rate we desire and we may have to delay development or commercialization of our other products or license to third parties the rights to commercialize products or technologies that we would otherwise seek to commercialize. We also may have to reduce sales, marketing, customer support or other resources devoted to our products. Any of these factors could harm our financial condition.

If we are unable to establish adequate sales, marketing and distribution capabilities or enter into and maintain arrangements with third parties to sell, market and distribute our products, our business may be harmed.

We have entered into distribution arrangements to leverage established distributors already engaged in the diabetes marketplace. We have entered into distribution agreements with Byram and Edgepark, pursuant to which we generated approximately 17% and 11% respectively, of our total revenue during the six months ended June 30, 2016. We cannot guarantee that these relationships will continue or that we will be able to maintain this volume of sales from these relationships in the future. A substantial decrease or loss of these sales could have a material adverse effect on our operating performance. Additionally, to the extent that we enter into additional arrangements with third parties to perform sales, marketing, distribution and billing services in the United States, Europe or other countries, our product margins could be lower than if we directly marketed and sold our products. Furthermore, to the extent that we enter into co-promotion or other marketing and sales arrangements with other companies, any revenue received will depend on the skills and efforts of others, and we cannot predict whether these efforts will be successful. In addition, market acceptance of our products by physicians and people with diabetes in Europe or other countries will largely depend on our ability to demonstrate their relative safety, efficacy, reliability, cost-effectiveness and ease of use. If we are unable to do so, we may not be able to generate product revenue from our sales efforts in Europe or other countries. Finally, if we are unable to establish and maintain adequate sales, marketing and distribution capabilities, independently or with others, we may not be able to generate adequate product revenue and may not become profitable.

Although many third-party payors have adopted some form of coverage policy on continuous glucose monitoring devices, our products do not yet have simple broad-based contractual coverage with most third-party payors and we frequently experience administrative challenges in obtaining reimbursement for our customers. If we are unable to obtain adequately broad reimbursement at acceptable prices for our products or any future products from third-party payors, we will be unable to generate significant revenue.

As a medical device company, reimbursement from Medicare and private third-party healthcare payors is an important element of our success. Although CMS in 2008 released HCPCS codes applicable to each of the three components of our continuous glucose monitoring systems to date, our approved products are not reimbursed by virtue of a national coverage decision by Medicare. It is not known when, if ever, Medicare will adopt a national coverage decision with respect to continuous glucose monitoring devices. Until any such coverage decision is adopted by Medicare, reimbursement of our products will generally be limited to those people with diabetes covered by third-party payors that have adopted policies for continuous glucose monitoring devices allowing for coverage of these devices if certain conditions are met. As of August 2, 2016, the seven largest private third-party payors, in terms of the number of covered lives, have issued coverage policies for the category of continuous glucose monitoring devices. In addition, we have negotiated contracted rates with all seven of those third-party payors for the purchase of our products by their members. However, people with diabetes without insurance that covers our products will have to bear the financial cost of them. In the United States, people with diabetes using existing single-point finger stick devices are generally reimbursed all or part of the product cost by Medicare or other third-party payors. The commercial success of our products in both domestic and international markets will substantially depend on whether timely and comprehensive third-party reimbursement is widely available for individuals that use them. While many third-party payors have adopted some form of coverage policy on continuous glucose monitoring devices, typically, though not exclusively, under durable medical equipment benefits, those coverage policies frequently require significant medical documentation in order for policy holders to obtain reimbursement, and as a result, we have difficulty improving the efficiency of our customer service group. In addition, Medicare, Medicaid, health maintenance organizations and other third-party payors are increasingly attempting to contain healthcare costs by limiting both coverage and the level of reimbursement of new medical devices, and, as a result, they may not cover or provide adequate payment for our products. In order to obtain additional reimbursement arrangements, including under pharmacy benefits, we may have to agree to a net sales price lower than the net sales price we might charge in other sales channels. Our revenue may be limited by the continuing efforts of government and third-party payors to contain or reduce the costs of healthcare through various increasingly sophisticated means, such as requiring prospective reimbursement and second opinions, purchasing in groups, or redesigning benefits. We are unable to predict what effect the current or any future healthcare reform will have on our business, or the effect these matters will have on our customers. Our dependence on the commercial success of the G4 PLATINUM and G5 Mobile systems makes us particularly susceptible to any cost containment or reduction efforts. Accordingly, unless government and other third-party payors provide adequate coverage and reimbursement for the G4 PLATINUM and G5 Mobile systems, people without coverage who have diabetes may not use our products. Furthermore, payors are increasingly basing reimbursement rates on factors such as the efficacy of the product, and clinical outcomes associated with the product, and any factors that negatively impact the efficacy or

clinical outcomes (or cause a perception of any such negative impact), such as the results of a clinical trial, a product defect, or a product recall, could negatively impact the reimbursement rate,

In some foreign markets, pricing and profitability of medical devices are subject to government control. In the United States, we expect that there will continue to be federal and state proposals for similar controls. Also, the trends toward managed healthcare in the United States and proposed legislation intended to reduce the cost of government insurance programs could significantly influence the purchase of healthcare services and products and may result in lower prices for our products or the exclusion of our products from reimbursement programs.

We may never receive approval or clearance from the FDA and other governmental agencies to market our next generation ambulatory system, expanded indications for use of current and future generation ambulatory systems, future software platforms, or any other continuous glucose monitoring system or related component under development.

Our continuous glucose monitoring systems are classified by the FDA as premarket approval, or PMA, medical devices. The PMA process requires us to prove the safety and efficacy of our ambulatory system to the FDA's satisfaction. This process can be expensive, prolonged and uncertain, requires detailed and comprehensive scientific and human clinical data, and may never result in the FDA granting a PMA. Any future general ambulatory system or expanded indications for use of current and future generation ambulatory systems will require approval of the applicable regulatory authorities. In addition, we intend to seek either 510(k) clearances or PMA approvals for certain changes and modifications to our existing software platform, but cannot predict when, if ever, those changes and modifications will be approved.

The FDA can refuse to grant a 510(k) clearance or delay, limit or deny approval of a PMA application or supplement for many reasons, including:

- the system may not be deemed by the FDA to be substantially equivalent to appropriate predicate devices;
- the system may not satisfy the FDA's safety or efficacy requirements;
- the data from pre-clinical studies and clinical trials may be insufficient to support approval;
- the manufacturing process or facilities used may not meet applicable requirements; and
- changes in FDA approval policies or adoption of new regulations may require additional data.

Even if approved or cleared by the FDA or foreign regulatory agencies, future generations of our ambulatory system, expanded indications for use of current and future generation ambulatory systems, our software platform or any other continuous glucose monitoring system under development, may not be approved or cleared for the indications that are necessary or desirable for successful commercialization. We may not obtain the necessary regulatory approvals or clearances to market these continuous glucose monitoring systems in the United States or outside of the United States. Any delay in, or failure to receive or maintain, approval or clearance for our products could prevent us from generating revenue from these products or achieving profitability. The uncertain timing of regulatory approvals for future generations of our products could subject our current inventory to excess or obsolescence charges, which could have an adverse effect on our operating results.

If we are unable to successfully complete the pre-clinical studies or clinical trials necessary to support additional PMA or 510(k) applications or supplements, we may be unable to commercialize our continuous glucose monitoring systems under development, which could impair our financial position.

To support these and any future additional PMA or 510(k) applications or supplements, we together with our partners, must successfully complete pre-clinical studies, bench-testing, and clinical trials that will demonstrate that the product is safe and effective. Product development, including pre-clinical studies and clinical trials, is a long, expensive and uncertain process and is subject to delays and failure at any stage. Furthermore, the data obtained from the studies and trials may be inadequate to support approval of a PMA or 510(k) application and the FDA may request additional clinical data in support of those applications, which may result in significant additional clinical expenses and may delay product approvals. While we have in the past obtained, and may in the future obtain, an investigational device exemption (“IDE”) prior to commencing clinical trials for our products, FDA approval of an IDE application permitting us to conduct testing does not mean that the FDA will consider the data gathered in the trial to be sufficient to support approval of a PMA or 510(k) application or supplement, even if the trial's intended safety and efficacy endpoints are achieved. Additionally, since 2009, the FDA has significantly increased the scrutiny applied to its oversight of companies subject to its regulations, including 510(k) and PMA submissions, by hiring new investigators and increasing the frequency and scope of its inspections of manufacturing facilities. The FDA's Center for Devices and Radiological Health is contemplating significant changes to the 510(k) process, which could complicate the product approval process for certain of our and our partner’s products, although we cannot predict the effect of such procedural changes and cannot ascertain if such changes will have a substantive impact on the approval of our products or our partners’

products. If we fail to adequately respond to any changes to the 510(k) submission process and associated matters, our business may be adversely impacted.

Unexpected changes to the FDA or foreign regulatory approval processes could also delay or prevent the approval of our products submitted for review. The data contained in our submission, including data drawn from our clinical trials, may not be sufficient to support approval of our products or additional or expanded indications. Medical device company stock prices have declined significantly in certain circumstances where companies have failed to meet expectations in regards to the timing of regulatory approval. If the FDA's response causes product approval delays, or is not favorable for any of our products, our stock price could decline substantially.

The commencement or completion of any of our clinical trials may be delayed or halted, or be inadequate to support approval of a PMA or 510(k) application or supplement, for numerous reasons, including, but not limited to, the following:

- the FDA or other regulatory authorities do not approve a clinical trial protocol or a clinical trial, or place a clinical trial on hold;
- patients do not enroll in clinical trials at the rate we expect;
- patients do not comply with trial protocols;
- patient follow-up does not occur at the rate we expect;
- patients experience adverse side effects;
- patients die during a clinical trial, even though their death may not be related to our products;
- institutional review boards (“IRBs”) and third-party clinical investigators may delay or reject our trial protocol;
- third-party clinical investigators decline to participate in a trial or do not perform a trial on our anticipated schedule or consistent with the investigator agreements, clinical trial protocol, good clinical practices or other FDA or IRB requirements;
- DexCom or third-party organizations do not perform data collection, monitoring and analysis in a timely or accurate manner or consistent with the clinical trial protocol or investigational or statistical plans;
- third-party clinical investigators have significant financial interests related to DexCom or the study that the FDA deems to make the study results unreliable, or DexCom or investigators fail to disclose such interests;
- regulatory inspections of our clinical trials or manufacturing facilities may, among other things, require us to undertake corrective action or suspend or terminate our clinical trials;
- changes in governmental regulations, policies or administrative actions applicable to our trial protocols;
- the interim or final results of the clinical trial are inconclusive or unfavorable as to safety or efficacy; and
- the FDA concludes that our trial design is inadequate to demonstrate safety and efficacy.

The results of pre-clinical studies do not necessarily predict future clinical trial results, and prior clinical trial results might not be repeated in subsequent clinical trials. Additionally, the FDA may disagree with our interpretation of the data from our pre-clinical studies and clinical trials, or may find the clinical trial design, conduct or results inadequate to prove safety or efficacy, and may require us to pursue additional pre-clinical studies or clinical trials, which could further delay the approval of our products. If we are unable to demonstrate the safety and efficacy of our products in our clinical trials to the FDA's satisfaction, we will be unable to obtain regulatory approval to market our products in the United States. In addition, the data we collect from our current clinical trials, our pre-clinical studies and other clinical trials may not be sufficient to support FDA approval, even if our endpoints are met.

We may also conduct clinical studies to demonstrate the relative or comparative effectiveness of continuous glucose monitoring devices for the treatment of diabetes. These types of studies, which often require substantial investment and effort, may not show adequate, or any, clinical benefit for the use of continuous glucose monitoring devices.

We conduct business in a heavily regulated industry and if we fail to comply with applicable laws and government regulations, we could become subject to penalties or be required to make significant changes to our operations.

The healthcare industry generally, and our business specifically, is subject to extensive foreign, federal, state and local laws and regulations, including those relating to:

- the pricing of our products and services;
- the distribution of our products and services;
- billing for services;
- financial relationships with physicians and other referral sources;
- inducements and courtesies given to physicians and other health care providers and patients;
- labeling products;
- the characteristics and quality of our products and services;
- confidentiality, maintenance and security issues associated with medical records and individually identifiable health and other personal information;
- medical device reporting;
- prohibitions on kickbacks, also referred to as anti-kickback laws or regulations;
- any scheme to defraud any healthcare benefit program;
- physician payment disclosure requirements;
- personal health information;
- privacy;
- data protection;
- mobile communications;
- false claims; and
- professional licensure.

These laws and regulations are extremely complex and, in some cases, still evolving. If our operations are found to violate any of the foreign, federal, state or local laws and regulations which govern our activities, we may be subject to litigation, government enforcement actions, the applicable penalty associated with the violation, including civil and criminal penalties, damages, fines or curtailment of our operations. The risk of being found in violation of these laws and regulations is increased by the fact that many of them have not been fully interpreted by the regulatory authorities or the courts, and their provisions are open to a variety of interpretations. Any action against us for violation of these laws or regulations, even if we successfully defend against it, could cause us to incur significant legal expenses and divert our management's time and attention from the operation of our business.

The FDA, the Office of Inspector General for the Department of Health and Human Services, the Department of Justice, states' attorneys general and other governmental authorities actively enforce the laws and regulations discussed above. In the United States, medical device manufacturers have been the target of numerous government prosecutions and investigations alleging violations of law, including claims asserting impermissible off-label promotion of pharmaceutical products, payments intended to influence the referral of federal or state healthcare business, and submission of false claims for government reimbursement. As part of our compliance program, we have reviewed our sales contracts and marketing materials and practices to reduce the risk of non-compliance with these federal and state laws, and inform employees and marketing representatives of the Anti-Kickback Statute and their obligations thereunder. However, we cannot rule out the possibility that the government or other third parties could interpret these laws differently and challenge our practices under one or more of these laws.

In addition, the laws and regulations impacting or affecting our business may change significantly in the future. Any new laws or regulations may adversely affect our business. A review of our business by courts or regulatory authorities may result in a determination that could adversely affect our operations. Also, the regulatory environment applicable to our business may change in a way that restricts or adversely impacts our operations.

We are not aware of any governmental investigations involving our executives or us. However, any future investigations of our executives, our managers or us could result in significant liabilities or penalties to us, as well as adverse publicity.

Laws and regulations governing the export of our products could adversely impact our business.

The U.S. Department of the Treasury's Office of Foreign Assets Control, and the Bureau of Industry and Security at the U.S. Department of Commerce, administer certain laws and regulations that restrict U.S. persons and, in some instances, non-U.S. persons, in conducting activities, and transacting business with or making investments in certain countries, governments, entities and individuals subject to U.S. economic sanctions. Due to our international operations, we are subject to such laws and regulations, which are complex, restrict our business dealings with certain countries and individuals, and are constantly changing. Further restrictions may be enacted, amended, enforced or interpreted in a manner that materially impacts our operations.

Violations of these regulations are punishable by civil penalties, including fines, denial of export privileges, injunctions, asset seizures, debarment from government contracts and revocations or restrictions of licenses, as well as criminal fines and imprisonment. We have established procedures designed to assist with our compliance with such laws and regulations. However, we have only limited experience dealing with these laws and regulations and we cannot guaranty that our procedures will effectively prevent us from violating these regulations in every transaction in which we may engage. Any such violation could adversely affect our reputation, business, financial condition and results of operations.

If our manufacturing capabilities are insufficient to produce an adequate supply of product at appropriate quality levels, our growth could be limited and our business could be harmed.

We currently have limited resources, facilities and experience in commercially manufacturing sufficient quantities of product to meet expected demand. In the past, we have had difficulty scaling our manufacturing operations to provide a sufficient supply of product to support our commercialization efforts. From time to time, we have also experienced brief periods of backorder and, at times, have had to limit the efforts of our sales force to introduce our products to new customers. We have focused significant effort on continual improvement programs in our manufacturing operations intended to improve quality, yields and throughput. We have made progress in manufacturing to enable us to supply adequate amounts of product to support our commercialization efforts; however, we cannot guaranty that supply will not be constrained in the future. In order to produce our products in the quantities we anticipate will be necessary to meet market demand, we will need to increase our manufacturing capacity by a significant factor over the current level. In addition, we will have to modify our manufacturing design, reliability and process if and when our next generation sensor technologies are approved and commercialized. There are technical challenges to increasing manufacturing capacity, including equipment design and automation, materials procurement, manufacturing site expansion, problems with production yields and quality control and assurance. Developing commercial-scale manufacturing facilities will require the investment of substantial additional funds and the hiring and retention of additional management, quality assurance, quality control and technical personnel who have the necessary manufacturing experience. Also, the scaling of manufacturing capacity is subject to numerous risks and uncertainties, and may lead to variability in product quality or reliability, increased construction timelines, as well as resources required to design, install and maintain manufacturing equipment, among others, all of which can lead to unexpected delays in manufacturing output. In addition, any changes to our manufacturing processes may require FDA submission and approval and our facilities may have to undergo additional inspections by the FDA and corresponding state agencies. We may be unable to adequately maintain, develop and expand our manufacturing process and operations or obtain FDA and state agency approval of our facilities in a timely manner or at all. If we are unable to manufacture a sufficient supply of our current products or any future products for which we may receive approval, maintain control over expenses or otherwise adapt to anticipated growth, or if we underestimate growth, we may not have the capability to satisfy market demand and our business will suffer.

Additionally, the production of our products must occur in a highly controlled and clean environment to minimize particles and other yield- and quality-limiting contaminants. Weaknesses in process control or minute impurities in materials may cause a substantial percentage of defective products. If we are not able to maintain stringent quality controls, or if contamination problems arise, our clinical development and commercialization efforts could be delayed, which would harm our business and our results of operations.

We also require the suppliers and business partners of components or services for our products to comply with law and certain of our policies regarding sourcing practices, but we do not control them or their practices. If any supplier or business partner violates laws or implements unethical practices, there could be disruptions to our supply chain, cancellation of our orders, terminations of the relationship with the partner or damage to our reputation.

In the future, if our products have material defects or errors, this could result in loss or delay of revenues, delayed market acceptance, damaged reputation, diversion of development resources, legal claims, increased insurance costs or increased service and warranty costs, any of which could harm our business. Such defects or errors could also prompt us to amend certain warning labels or narrow the scope of the use of our products, either of which could hinder our success in the market.

Since our commercial launch in 2006, we have had periodic field failures related to our products, including reports of sensor errors, sensor failures, broken sensors, receiver malfunctions and transmitter failures. To comply with the FDA's medical device reporting requirements, we have filed reports of all such broken or lodged sensors. Although we believe we have taken and are taking appropriate actions aimed at reducing or eliminating field failures, we cannot guaranty that we will not have additional failures going forward.

Our manufacturing operations depend upon third-party suppliers, making us vulnerable to supply problems and price fluctuations, which could harm our business.

We rely on OnCore Manufacturing Services to manufacture and supply circuit boards for our receiver and transmitter; we rely on ON Semiconductor Corp. to manufacture and supply the application specific integrated circuit that is incorporated into the transmitter; we rely on DSM PTG, Inc. to manufacture certain polymers used to synthesize our polymeric biointerface membranes for our products; and we rely on The Tech Group to supply our injection molded components. Each of these suppliers is a single-source supplier. In some cases, our agreements with these and our other suppliers can be terminated by either party upon short notice. Our contract manufacturers also rely on single-source suppliers to manufacture some of the components used in our products. Our manufacturers and suppliers may encounter problems during manufacturing for a variety of reasons, including failure to follow specific protocols and procedures, failure to comply with applicable regulations, failed FDA audit or inspection, equipment malfunction and environmental factors, any of which could delay or impede their ability to meet our demand. If our single-source suppliers shift their manufacturing and assembly sites to other locations, these new sites may require additional FDA approval and inspection. Should any such FDA approval be delayed, or such inspection requires corrective action, our supply of critical components may be constrained or unavailable. Our reliance on these outside manufacturers and suppliers also subjects us to other risks that could harm our business, including:

- we may not be able to obtain adequate supply in a timely manner or on commercially reasonable terms;
- our products are technologically complex and it is difficult to develop alternative supply sources;
- we are not a major customer of many of our suppliers, and these suppliers may therefore give other customers' needs higher priority than ours;
- our suppliers may make errors in manufacturing components that could negatively affect the efficacy or safety of our products or cause delays in shipment of our products;
- we may have difficulty locating and qualifying alternative suppliers for our single-source supplies;
- switching components may require product redesign and submission to the FDA of a PMA supplement or possibly a separate PMA, either of which could significantly delay production;
- our suppliers manufacture products for a range of customers, and fluctuations in demand for the products these suppliers manufacture for others may affect their ability to deliver components to us in a timely manner;
- our suppliers may make obsolete components that are critical to our products; and
- our suppliers may encounter financial hardships unrelated to our demand for components, including those related to changes in global economic conditions, which could inhibit their ability to fulfill our orders and meet our requirements.

We may not be able to quickly establish additional or replacement suppliers, particularly for our single-source components, in part because of the FDA inspection and approval process and because of the custom nature of various parts we design. Any interruption or delay in the supply of components or materials, or our inability to obtain components or materials from alternate sources at acceptable prices in a timely manner, could impair our ability to meet the demand of our customers and cause them to cancel orders or switch to competitive products.

Potential long-term complications from our current or future products or other continuous glucose monitoring systems under development may not be revealed by our clinical experience to date.

Based on our experience, complications from use of our products may include sensor errors, sensor failures, broken sensors, lodged sensors or skin irritation under the adhesive dressing of the sensor. Inflammation or redness, swelling, minor infection, and minor bleeding at the sensor insertion site are also possible risks with an individual's use of our products. However, if unanticipated long-term side-effects result from the use of our products or other glucose monitoring systems under development, we could be subject to liability and the adoption of our systems may become more limited. With respect to our G4 PLATINUM and G5 Mobile systems, our clinical trials have been limited to seven days of continuous use. It is possible that the results from our clinical studies and trials may not be indicative of the clinical results obtained when we examine the patients at later dates. We cannot assure you that repeated, long-term use would not result in unanticipated adverse effects, potentially even after the sensor is removed.

If we or our suppliers or distributors fail to comply with ongoing regulatory requirements, or if we experience unanticipated problems with our products, the products could be subject to restrictions or withdrawal from the market.

Any product for which we obtain marketing approval will be subject to continual review and periodic inspections by the FDA and other regulatory bodies, which may include inspection of our manufacturing processes, post-approval clinical data and promotional activities for such product. The FDA's MDR regulations require that we report to the FDA any incident in which our product may have caused or contributed to a death or serious injury, or in which our product malfunctioned and, if the malfunction were to recur, it would likely cause or contribute to a death or serious injury. An example of the difficulty of complying with the regulatory requirements associated with the manufacture of our products, on February 23, 2016, we issued a customer notification via the DexCom website and certified mail regarding the audible alarms and alerts associated with our receivers (Dexcom G4 PLATINUM and Dexcom G5 Mobile) and was classified as a voluntary Class 1 recall by the FDA. The issue with the audible alarms and alerts was identified as a result of our continuous review of complaints received from our customers. A failure of the audible alarms and alerts may cause our customers to not detect a severe hypoglycemic (low glucose) or hyperglycemic (high glucose) event. We are working to implement a solution for the audible alarms and alerts issue identified in the customer notification. The FDA is aware of this notification and a copy of this notification is available on our website at http://www.dexcom.com/notification. In the customer notification we have recommended that customers test the alarms and alerts on their receiver(s) every few days to make sure that the alarms and alerts are functioning properly. On April 11, 2016, we issued a press release supplementing our previous customer notification and reminding patients to periodically test the audible alarms and alerts on their receiver.

We and our suppliers are also required to comply with the FDA's Quality System Regulation (“QSR”) and other regulations, which cover the methods and documentation of the design, testing, production, control, selection and oversight of suppliers or contractors, quality assurance, labeling, packaging, storage, complaint handling, shipping and servicing of our products. The FDA enforces the QSR through unannounced inspections. We currently manufacture our products at our headquarters facilities in San Diego, California. In these facilities we have more than 8,000 square feet of laboratory space and approximately 18,000 square feet of controlled environment rooms. During a routine FDA post-approval facility inspection ending on November 7, 2013, the FDA issued a Form 483 with several observations regarding DexCom MDR procedures and complaint reportability determinations. DexCom responded to the observations on November 26, 2013. On March 14, 2014, we received the 2014 Warning Letter from the FDA related to administrative deficiencies in filing MDRs. On April 2, 2014, we responded to the 2014 Warning Letter. On April 16, 2015, the FDA initiated an on-site inspection intended to both close out the 2014 Warning Letter and conduct our normal biennial quality system inspection. The FDA completed its inspection with no observations. On May 21, 2015, the FDA issued a letter closing the 2014 Warning Letter. During a routine FDA post-market inspection ending on March 29, 2016, the FDA issued a Form 483 with one observation regarding the DexCom MDR procedure specific to retrospective MDR filing when a change in complaint reportability is made. On April 19, 2016 DexCom responded to this observation.

Compliance with ongoing regulatory requirements can be complex, expensive and time-consuming. Failure by us or one of our suppliers or distributors to comply with statutes and regulations administered by the FDA, competent authorities and other regulatory bodies, or failure to take adequate response to any observations, could result in, among other things, any of the following actions:

- warning letters or untitled letters that require corrective action;
- delays in approving or refusal to approve our continuous glucose monitoring systems;
- fines and civil penalties;
- unanticipated expenditures;
- FDA refusal to issue certificates to foreign governments needed to export our products for sale in other countries;
- suspension or withdrawal of approval by the FDA or other regulatory bodies;
- product recall or seizure;
- interruption of production;
- interruption of the supply of components from our key component suppliers;
- operating restrictions;
- injunctions; and
- criminal prosecution.

The effect of these events can be difficult to quantify. If any of these actions were to occur, it would harm our reputation and cause our product sales and profitability to suffer. In addition, we believe events that could be classified as reportable events pursuant to MDR regulations are generally underreported by physicians and users, and any underlying problems could

be of a larger magnitude than suggested by the number or types of MDRs filed by us. Furthermore, our key component suppliers may not currently be or may not continue to be in compliance with applicable regulatory requirements.

Even if regulatory approval or clearance of a product is granted, the approval or clearance may be subject to limitations on the indicated uses for which the product may be marketed or contain requirements for costly post-marketing testing or surveillance to monitor the safety or efficacy of the product. Later discovery of previously unknown problems with our products, including software bugs, unanticipated adverse events or adverse events of unanticipated severity or frequency, manufacturing problems, or failure to comply with regulatory requirements such as the QSR, MDR reporting, or other post-market requirements may result in restrictions on such products or manufacturing processes, withdrawal of the products from the market, voluntary or mandatory recalls, fines, suspension of regulatory approvals, product seizures, injunctions or the imposition of civil or criminal penalties. In addition, our distributors have rights to create marketing materials for their sales of our products, and may not adhere to contractual, legal or regulatory limitations that are imposed on their marketing efforts.

We are subject to claims of infringement or misappropriation of the intellectual property rights of others, which could prohibit us from shipping affected products, require us to obtain licenses from third parties or to develop non-infringing alternatives, and subject us to substantial monetary damages and injunctive relief. We may also be subject to other claims or suits.

Third parties have asserted, and may assert infringement or misappropriation claims against us with respect to our current or future products. We are aware of numerous patents issued to third parties that may relate to aspects of our business, including the design and manufacture of continuous glucose monitoring sensors and membranes, as well as methods for continuous glucose monitoring. Whether a product infringes a patent involves complex legal and factual issues, the determination of which is often uncertain. Therefore, we cannot be certain that we have not infringed the intellectual property rights of such third parties or others. Our competitors may assert that our continuous glucose monitoring systems or the methods we employ in the use of our systems are covered by U.S. or foreign patents held by them. This risk is exacerbated by the fact that there are numerous issued patents and pending patent applications relating to self-monitored glucose testing systems in the medical technology field. Because patent applications may take years to issue, there may be applications now pending of which we are unaware that may later result in issued patents that our products infringe. There could also be existing patents of which we are unaware that one or more components of our system may inadvertently infringe. As the number of competitors in the market for continuous glucose monitoring systems grows, the possibility of inadvertent patent infringement by us or a patent infringement claim against us increases.

On March 28, 2016, Agamatrix, Inc. filed a patent infringement lawsuit against us in the United States District Court for the District of Oregon, asserting that certain of our products infringe certain patents held by Agamatrix. It is our position that Agamatrix’s assertions of infringement have no merit. Neither the outcome of the litigation nor the amount and range of potential fees associated with the litigation can be assessed at this time. As of June 30, 2016, no amounts have been accrued in respect of this litigation.

Any infringement or misappropriation claim could cause us to incur significant costs, place significant strain on our financial resources, divert management's attention from our business and harm our reputation. If the relevant patents were upheld as valid and enforceable and we were found to infringe, we could be prohibited from selling our product that is found to infringe unless we could obtain licenses to use the technology covered by the patent or are able to design around the patent. We may be unable to obtain a license on terms acceptable to us, if at all, and we may not be able to redesign our products to avoid infringement. Even if we are able to redesign our products to avoid an infringement claim, we may not receive FDA approval for such changes in a timely manner or at all. A court could also order us to pay compensatory damages for such infringement, plus prejudgment interest and could, in addition, treble the compensatory damages and award attorney fees. These damages could be substantial and could harm our reputation, business, financial condition and operating results. A court also could enter orders that temporarily, preliminarily or permanently enjoin us and our customers from making, using, selling or offering to sell one or more of our products, or could enter an order mandating that we undertake certain remedial activities. Depending on the nature of the relief ordered by the court, we could become liable for additional damages to third parties.

Any adverse determination in litigation or interference proceedings to which we are or may become a party relating to patents could subject us to significant liabilities to third parties or require us to seek licenses from other third parties. Furthermore, if we are found to willfully infringe third-party patents, we could, in addition to other penalties, be required to pay treble damages and/or attorneys' fees for the prevailing party. Although patent and intellectual property disputes in the medical device area have often been settled through licensing or similar arrangements, costs associated with such arrangements may be substantial and would likely include ongoing royalties. We may be unable to obtain necessary licenses on satisfactory terms. If we do not obtain necessary licenses, we may not be able to redesign our products to avoid infringement and any redesign may not receive FDA approval in a timely manner if at all. Adverse determinations in a judicial or administrative proceeding or

failure to obtain necessary licenses could prevent us from manufacturing and selling our products, which would have a significant adverse impact on our business.

In addition, from time to time, we are subject to various claims and suits arising out of the ordinary course of business, including commercial or employment related matters. Although individually we do not expect these claims or suits to have a material adverse effect on DexCom, in the aggregate they may divert significant time and resources from our staff.

Our inability to adequately protect our intellectual property could allow our competitors and others to produce products based on our technology, which could substantially impair our ability to compete.

Our success and our ability to compete depend, in part, upon our ability to maintain the proprietary nature of our technologies. We rely on a combination of patent, copyright and trademark law, and trade secrets and nondisclosure agreements to protect our intellectual property. However, such methods may not be adequate to protect us or permit us to gain or maintain a competitive advantage. Our patent applications may not issue as patents in a form that will be advantageous to us, or at all. Our issued patents, and those that may issue in the future, may be challenged, invalidated or circumvented, which could limit our ability to stop competitors from marketing related products. In addition, there are numerous recent changes to the patent laws and proposed changes to the rules of the U.S. Patent and Trademark Office, which may have a significant impact on our ability to protect our technology and enforce our intellectual property rights. For example, in September 2011, the United States enacted sweeping changes to the United States patent system under the Leahy-Smith America Invents Act, including changes that would transition the United States from a “first-to-invent” system to a “first-to-file” system and alter the processes for challenging issued patents. These changes could increase the uncertainties and costs surrounding the prosecution of our patent applications and the enforcement or defense of our issued patents.

To protect our proprietary rights, we may in the future need to assert claims of infringement against third parties. The outcome of litigation to enforce our intellectual property rights in patents, copyrights, trade secrets or trademarks is highly unpredictable, could result in substantial costs and diversion of resources, and could have a material adverse effect on our financial condition and results of operations regardless of the final outcome of such litigation. In the event of an adverse judgment, a court could hold that some or all of our asserted intellectual property rights are not infringed, invalid or unenforceable, and could award attorney fees.

Despite our efforts to safeguard our unpatented and unregistered intellectual property rights, we may not succeed in doing so or the steps taken by us in this regard may not be adequate to detect or deter misappropriation of our technology or to prevent an unauthorized third party from copying or otherwise obtaining and using our products, technology or other information that we regard as proprietary. In addition, third parties may be able to design around our patents. Furthermore, the laws of foreign countries may not protect our proprietary rights to the same extent as the laws of the United States.

We operate in a highly competitive market and face competition from large, well-established medical device manufacturers with significant resources, and, as a result, we may not be able to compete effectively.

The market for glucose monitoring devices is intensely competitive, subject to rapid change and significantly affected by new product introductions and other market activities of industry participants. In selling the G4 PLATINUM and G5 Mobile systems, we compete directly with Roche Diabetes Care, a division of Roche Diagnostics; LifeScan, Inc., a division of Johnson & Johnson; the Diabetes Care division of Abbott Laboratories, and Panasonic Healthcare Holdings' Ascensia Diabetes Care (formerly Bayer Diabetes Care), each of which manufactures and markets products for the single-point finger stick device market. Collectively, these companies currently account for substantially all of the worldwide sales of self-monitored glucose testing systems. Several companies are developing or marketing short-term continuous glucose monitoring products that will compete directly with our products. To date, in addition to us, two other companies, Medtronic, Inc. ("Medtronic") and Abbott Diabetes Care, Inc. ("Abbott"), have received approval from the FDA to market, and actively market, continuous glucose monitors. Abbott has discontinued selling its Freestyle Navigator glucose monitoring system in the United States; however, Abbott filed a clinical study for home use of the Navigator II system in the United States and in October 2012 Abbott initiated a limited launch of the Navigator II system in Europe. We believe that Abbott is also conducting clinical studies on a new glucose monitoring platform and has commercialized this new system in Europe. We also believe Abbott has submitted a professional use version of this new system to the FDA for review. In addition, we believe that Roche and others, are developing invasive and non-invasive continuous glucose monitoring systems. Also, Medtronic, and other third parties, have developed, or are developing, insulin pumps augmented with continuous glucose monitoring systems that provide, among other things, the ability to suspend insulin administration while the user's glucose levels are low. Most of the companies developing or marketing competing devices are publicly traded or divisions of publicly traded companies, and these companies possess several competitive advantages, including:

- significantly greater name recognition;
- established relations with healthcare professionals, customers and third-party payors;
- established distribution networks;
- additional lines of products, and the ability to offer rebates or bundle products to offer higher discounts or incentives to gain a competitive advantage;
- greater experience in conducting research and development, manufacturing, clinical trials, obtaining regulatory approval for products and marketing approved products;
- the ability to integrate multiple products to provide additional features beyond continuous glucose monitoring; and
- greater financial and human resources for product development, sales and marketing, and patent litigation.

As a result, we may not be able to compete effectively against these companies or their products, which may adversely impact our business.

We enter into collaborations with third parties that may not result in the development of commercially viable products or the generation of significant future revenues.

In the ordinary course of our business, we enter into collaborative arrangements to develop new products and to pursue new markets, such as our agreements with Animas and Tandem, to integrate our continuous glucose monitoring technology into their respective insulin delivery systems, and our agreement with Verily to develop a series of next-generation continuous glucose monitoring products. We also have entered into an OUS Commercialization Agreement with Animas pursuant to which Animas retains the right to develop and market outside the United States an ambulatory insulin pump that is combined with our continuous glucose monitoring technology which has been branded the Vibe. In May 2011, we, together with Animas, received CE Mark certification for the Vibe, allowing it to be marketed in the countries that recognize CE Mark approval. Animas received FDA approval for the Vibe system in December 2014. On September 9, 2015 Tandem received FDA approval for its sensor augmented insulin delivery system, the t:slim G4™ Insulin Pump. We also previously entered into collaborative agreements with Insulet and Roche neither of which resulted in the successful development of a commercially viable product nor is anticipated to result in significant additional revenues for the foreseeable future.

As a result of these development relationships, our operating results depend, to some extent, on the ability of our development partners to successfully commercialize their insulin delivery systems. Any factors that may limit our partners' ability to achieve widespread adoption of their systems, including competitive pressures, technological breakthroughs for the treatment or prevention of diabetes, adverse regulatory or legal actions relating to insulin pump products, or changes in reimbursement rates or policies of third-party payors relating to insulin pumps or similar products, could have an adverse impact on our operating results. For example, UnitedHealthcare announced, effective July 1, 2016, that UnitedHealthcare Community Plan and Commercial members will no longer have an in-network choice among providers of insulin pumps, and designated Medtronic as its preferred, in-network provider. We do not have a development relationship with Medtronic, which

has developed an insulin pump augmented with its proprietary continuous glucose monitoring system. The decision by UnitedHealthcare to establish Medtronic as its preferred provider of insulin pumps could result in a material reduction in the number of insulin pumps sold by other insulin pump manufacturers, including Animas and Tandem. In addition, it is possible that other large third-party payors will establish preferred providers of insulin pumps, which may or may not include the pumps produced by our development partners.

Many of the companies that we collaborate with are also competitors or potential competitors who may decide to terminate our collaborative arrangement. In the event of such a termination, we may be required to devote additional resources to product development and commercialization, we may need to cancel some development programs and we may face increased competition. Additionally, similar to the agreements with Roche, collaborations may not result in the development of products that achieve commercial success and could be terminated prior to developing any products. Former collaborators may use the experience and insights they develop in the course of their collaborations with us to initiate or accelerate their development of products that compete with our products, which may create competitive disadvantages for us. Accordingly, we cannot assure you that any of our collaborations will result in the successful development of a commercially viable product or result in significant additional future revenues.

In addition, our development timelines are highly dependent on our ability to achieve clinical endpoints and regulatory requirements and to overcome technology challenges, and may be delayed due to scheduling issues with patients and investigators, requests from institutional review boards, product performance and manufacturing supply constraints, among other factors. In addition, support of these clinical trials requires significant resources from employees involved in the production of our products, including research and development, manufacturing, quality assurance, and clinical and regulatory personnel. Even if our development and clinical trial efforts succeed, the FDA may not approve the combined products or may require additional product testing and clinical trials before approving the combined products, which would result in product launch delays and additional expense. If approved by the FDA, the combined products may not achieve acceptance in the marketplace by physicians and people with diabetes.

To date, no continuous glucose monitoring system has received FDA clearance as a replacement for single-point finger stick devices, and our current and future generation products may never be approved for that indication.

Our products do not eliminate the need for single-point finger stick devices and our future products may not be approved for that indication. Notwithstanding the favorable ruling made at the FDA's Clinical Chemistry and Clinical Toxicology Devices Panel of the Medical Devices Advisory Committee on July 21, 2016, as of the date of filing of this quarterly report, no precedent for FDA approval of continuous glucose monitoring systems as a replacement for single-point finger stick devices has been established. Accordingly, there is no established study design or agreement regarding performance requirements or measurements in clinical trials for continuous glucose monitoring systems. If any of our competitors were to obtain replacement claim labeling for a continuous glucose monitoring system, our products may fail to compete effectively against that system and our business would suffer.

Technological breakthroughs by us or our competitors could materially impact sales of current or future generations of our products.

The glucose monitoring market is subject to rapid technological change and product innovation. Our products are based on our proprietary technology, but a number of companies and medical researchers are pursuing new technologies for the monitoring of glucose levels. FDA approval of a commercially viable continuous glucose monitor or sensor produced by one of our competitors could significantly reduce market acceptance of our systems. Several of our competitors are in various stages of developing continuous glucose monitors or sensors, including non-invasive and invasive devices, and the FDA has approved several of these competing products. In addition, the National Institutes of Health and other supporters of diabetes research are continually seeking ways to prevent, cure or improve treatment of diabetes. Therefore, our products may be rendered obsolete by technological breakthroughs in diabetes monitoring, treatment, prevention or cure.

In addition, in the periods leading up to the launch of new or upgraded versions of our continuous glucose monitoring products, our customers' anticipation of the release of those products may cause them to cancel, change or delay current period purchases of our current products, which could have a material adverse effect on our business operations, financial condition and results of operations in current periods.

We face the risk of product liability claims and may not be able to maintain or obtain insurance.

Our business exposes us to the risk of product liability claims that is inherent in the testing, manufacturing and marketing of medical devices, including those which may arise from the misuse (including system hacking or other unauthorized access by third parties to our systems) or malfunction of, or design flaws in, our products. We may be subject to product liability claims if our products cause, or merely appear to have caused, an injury. Claims may be made by customers, healthcare providers or others selling our products. The risk of product liability claims may increase if our products obtain approved

labeling in the United States that allows for our patients to make diabetes treatment decisions. The risk of claims may also increase if our products are subject to a product recall or seizure. An example of the difficulty of complying with the regulatory requirements associated with the manufacture of our products we issued notifications to our customers regarding the audible alarms and alerts associated with our receivers, as discussed earlier in the risk factor entitled "*If we or our suppliers or distributors fail to comply with ongoing regulatory requirements, or if we experience unanticipated problems with our products, the products could be subject to restrictions or withdrawal from the market.*"

Although we have product liability and clinical trial liability insurance that we believe is appropriate, this insurance is subject to deductibles and coverage limitations. Our current product liability insurance may not continue to be available to us on acceptable terms, if at all, and, if available, the coverage may not be adequate to protect us against any future product liability claims. Further, if additional products are approved for marketing, we may seek additional insurance coverage. If we are unable to obtain insurance at an acceptable cost or on acceptable terms with adequate coverage or otherwise protect against potential product liability claims, we will be exposed to significant liabilities, which may harm our business. A product liability claim, recall or other claim with respect to uninsured liabilities or for amounts in excess of insured liabilities could result in significant costs and significant harm to our business.

We may be subject to claims against us even if the apparent injury is due to the actions of others or misuse of the device. Our customers, either on their own or following the advice of their physicians, may use our products in a manner not described in the products' labeling and that differs from the manner in which it was used in clinical studies and approved by the FDA. For example, our current systems are designed to be used by an individual continuously for up to seven days, but the individual might be able to circumvent the safeguards designed into the systems and use the products for longer than seven days. Off-label use of products by customers is common, and any such off-label use of our products could subject us to additional liability. The CE Mark for our G5 Mobile system includes an indication that allows patients to make diabetes treatment decisions based on the information generated by such systems, although it still requires finger stick calibrations twice per day. In addition, the FDA or other regulatory agencies may in the future approve similar diabetes treatment indications. We expect that such diabetes treatment indications could expose us to additional liability. These liabilities could prevent or interfere with our product commercialization efforts. Defending a suit, regardless of merit, could be costly, could divert management attention and might result in adverse publicity, which could result in the withdrawal of, or inability to recruit, clinical trial volunteers or result in reduced acceptance of our products in the market.

We may be subject to fines, penalties and injunctions if we are determined to be promoting the use of our products for unapproved off-label uses.

Although we believe our promotional materials and training methods are conducted in compliance with FDA and other regulations, if the FDA determines that our promotional materials or training constitutes promotion of an unapproved use, the FDA could request that we modify our training or promotional materials or subject us to regulatory enforcement actions, including the issuance of a warning letter, injunction, seizure, civil fine and criminal penalties. It is also possible that other federal, state or foreign enforcement authorities might take action if they consider promotional or training materials to constitute promotion of an unapproved use, which could result in significant fines or penalties under other statutory authorities, such as laws prohibiting false claims for reimbursement.

If we are found to have violated laws protecting the use and confidentiality of patient health or other personal information, we could be subject to civil or criminal penalties, which could increase our liabilities and harm our reputation or our business.

There are a number of foreign, federal and state laws and regulations protecting the use and confidentiality of certain patient health and personal information, including patient records, and restricting the use and disclosure of that protected information. These laws include foreign, federal and state medical privacy laws, breach notification laws and foreign, federal and state consumer protection laws. The Department of Health and Human Services has promulgated regulations implementing the privacy and electronic security requirements set forth in the Administrative Simplification provisions of HIPAA. These privacy rules protect medical records and other personal health information by limiting their use and disclosure, giving individuals the right to access, amend and seek accounting of their own health information and limiting most use and disclosures of health information to the minimum amount reasonably necessary to accomplish the intended purpose. We are also subject to laws and regulations in foreign countries covering data privacy and other protection of health and employee information that may be more onerous than corresponding U.S. laws, including in particular the laws of Europe. If we are found to be in violation of the privacy rules under HIPAA or other laws, we could be subject to civil or criminal penalties, which could increase our liabilities, harm our reputation and have a material adverse effect on our business, financial condition and results of operations.

We are subject to complex and evolving U.S. and foreign laws and regulations regarding privacy, data protection, and other

matters. Many of these laws and regulations are subject to change and uncertain interpretation, and could result in claims, changes to our business practices, monetary penalties, increased cost of operations, or declines in user growth or engagement, or otherwise harm our business.

We are subject to a variety of laws and regulations in the United States and abroad that involve matters central to our business, including laws and regulations relating to privacy and data protection, rights of publicity, content, intellectual property, advertising, marketing, distribution, data security, data retention and deletion, personal information, electronic contracts and other communications, competition, protection of minors, consumer protection, telecommunications, product liability, taxation, economic or other trade prohibitions or sanctions, corrupt practices, fraud waste and abuse restrictions, and securities law compliance. The introduction of new products or expansion of our activities in certain jurisdictions may subject us to additional laws and regulations. For example, data protection laws passed by the federal government, many states and foreign countries require notification to users when there is a security breach for personal data.

In addition, foreign data protection, privacy, and other laws and regulations can be more restrictive than those in the United States. For example, data localization laws in some countries generally mandate that certain types of data collected in a particular country be stored and/or processed within that country. We could be subject to audits in Europe and around the world, particularly in the areas of consumer and data protection, as we continue to grow and expand our operations. Legislators and regulators may make legal and regulatory changes, or interpret and apply existing laws, in ways that make our products less useful to our customers, require us to incur substantial costs, expose us to unanticipated civil or criminal liability, or cause us to change our business practices. These changes or increased costs could negatively impact our business and results of operations in material ways.

The failure to comply with U.S. Foreign Corrupt Practices Act and similar worldwide anti-bribery laws in non-U.S. jurisdictions could materially adversely affect our business and result in civil and/or criminal sanctions.

The U.S. Foreign Corrupt Practices Act, or FCPA, and similar worldwide anti-bribery laws in non-U.S. jurisdictions generally prohibit companies and their intermediaries from making improper payments to non-U.S. government officials for the purpose of obtaining or retaining business. Because of the predominance of government-sponsored healthcare systems around the world, most of our customer relationships outside of the United States are with governmental entities and are therefore potentially subject to such anti-bribery laws. Global enforcement of anti-corruption laws has increased substantially in recent years, with more frequent voluntary self-disclosures by companies, aggressive investigations and enforcement proceedings by U.S. and foreign governmental agencies, and assessment of significant fines and penalties against companies and individuals. Our international operations create the risk of unauthorized payments or offers of payments by one of our employees, consultants, sales agents, or distributors, because these parties are not always subject to our control. It is our policy to implement safeguards to educate our employees and agents on these legal requirements and discourage improper practices. However, our existing safeguards and any future improvements may prove to be less than effective, and our employees, consultants, sales agents, or distributors may engage in conduct for which we might be held responsible. In addition, the government may seek to hold us liable for successor liability FCPA violations committed by any companies in which we invest or that we acquire. Any alleged or actual violations of these regulations may subject us to government scrutiny, severe criminal or civil sanctions and other liabilities, including exclusion from government contracting, and could disrupt our business, and result in a material adverse effect on our reputation, results of operations, financial condition, and cash flows.

The majority of our operations are conducted at five facilities in San Diego, California. Any disruption at these facilities could increase our expenses.

We take precautions to safeguard our facilities, which include manufacturing protocols, insurance, health and safety protocols, and off-site storage of computer data. However, a natural disaster, such as a fire, flood, earthquake, an act of terrorism, cyber attack or other disruptive event could cause substantial delays in our operations, damage or destroy our manufacturing equipment, inventory, or records and cause us to incur additional expenses. Earthquakes are of particular significance since our primary manufacturing facilities in California are located in an earthquake-prone area. In the event our existing manufacturing facilities or equipment are affected by man-made or natural disasters, we may be unable to manufacture products for sale or meet customer demands or sales projections. If our manufacturing operations were curtailed or ceased, it would seriously harm our business. The insurance we maintain against fires, floods, earthquakes and other natural disasters and similar events may not be adequate to cover our losses in any particular case. We are currently pursuing plans to establish a second facility outside of California to mitigate these risks.

Failure to protect our information technology infrastructure against cyber-based attacks, network security breaches, service interruptions, or data corruption could significantly disrupt our operations and adversely affect our business and operating results.

We rely on information technology and telephone networks and systems, including the Internet, to process and transmit sensitive electronic information and to manage or support a variety of business processes and activities, including sales, billing, customer service, procurement and supply chain, manufacturing, and distribution. We use enterprise information technology systems to record, process, and summarize financial information and results of operations for internal reporting purposes and to comply with regulatory financial reporting, legal, and tax requirements. Our information technology systems, some of which are managed by third-parties, may be susceptible to damage, disruptions or shutdowns due to computer viruses, ransomware or other malware, attacks by computer hackers, failures during the process of upgrading or replacing software, databases or components thereof, power outages, hardware failures, telecommunication failures, user errors or catastrophic events. Although we have developed systems and processes that are designed to protect customer information and prevent data loss and other security breaches, including systems and processes designed to reduce the impact of a security breach at a third party vendor, such measures cannot provide absolute security. If our systems are breached or suffer severe damage, disruption or shutdown and we are unable to effectively resolve the issues in a timely manner, our business and operating results may significantly suffer and we may be subject to litigation, government enforcement actions and other actions for which we could face financial liability and other adverse consequences which may include:

- loss of existing customers;
- difficulty in attracting new customers;
- problems in determining product cost estimates and establishing appropriate pricing;
- difficulty in preventing, detecting, and controlling fraud;
- disputes with customers, physicians, and other health care professionals;
- increases in operating expenses, incurrence of expenses, including remediation costs;
- loss of revenues;
- product development delays;
- disruption of key business operations; and
- diversion of attention of management and key information technology resources.

If our efforts to protect the security of information about our patients are unsuccessful, we could become subject to costly government enforcement actions and private litigation and our sales and reputation could suffer.

The nature of our business involves the receipt and storage of information about our patients. We have implemented programs to detect and alert us to data security incidents. However, because the techniques used to obtain unauthorized access, disable or degrade service, or sabotage systems change frequently and may be difficult to detect for long periods of time, we may be unable to anticipate these techniques or implement adequate preventive measures. We believe that companies have been increasingly subject to a wide variety of security incidents, cyber-attacks and other attempts to gain unauthorized access. These threats can come from a variety of sources, ranging in sophistication from an individual hacker to malfeasance by employees, consultants or other service providers to state-sponsored attacks. Cyber threats may be generic, or they may be custom-crafted against our information systems. Over the past year, cyber-attacks have become more prevalent and much harder to detect and defend against. Our network and storage applications may be vulnerable to cyber-attack, malicious intrusion, malfeasance, loss of data privacy or other significant disruption and may be subject to unauthorized access by hackers, employees, consultants or other service providers. In addition, hardware, software or applications we develop or procure from third parties may contain defects in design or manufacture or other problems that could unexpectedly compromise information security. Unauthorized parties may also attempt to gain access to our systems or facilities through fraud, trickery or other forms of deceiving our employees, contractors and temporary staff. If there are significant breaches of our data security or we fail to detect and appropriately respond to significant data security breaches, we could be exposed to government enforcement actions and private litigation. In addition, our patients could further lose confidence in our ability to protect their information, which could cause them to discontinue using our products or purchasing from us altogether.

Our products may not continue to achieve market acceptance.

We expect that sales of our G4 PLATINUM system, which consists of a handheld receiver, reusable transmitter and disposable sensor, and our G5 Mobile system which consists of a handheld receiver, reusable transmitter, disposable sensors and a smartphone application that securely identifies, receives, deciphers and displays information transmitted by the transmitter, will account for substantially all of our product revenue for the foreseeable future. If and when we receive FDA approval for and begin commercialization of our next generation continuous glucose monitoring systems and sensors, we expect most patients will migrate onto those systems. Notwithstanding our prior experience in selling our products, we might be unable to successfully expand the commercialization of our products on a wide scale for a number of reasons, including:

- the FDA approval of our G5 Mobile system in the United States in August 2015 and the approval to sell our G5 Mobile system in the countries that recognize our CE Mark means that we have relatively limited experience selling our G5 Mobile system;
- the approval for a Pediatric Indication of our G5 Mobile system in the United States and the countries that recognize our CE Mark means that we have limited experience selling and marketing the G5 Mobile system to persons aged two to 17 years or their legal guardians;
- widespread market acceptance of our products by physicians and people with diabetes will largely depend on our ability to demonstrate their relative safety, efficacy, reliability, cost-effectiveness and ease of use;
- the limited size of our sales force;
- we may not have sufficient financial or other resources to adequately expand the commercialization efforts for our products;
- our FDA and other regulatory submissions may be delayed, or approved with limited product labeling;
- we may not be able to manufacture our products in commercial quantities or at an acceptable cost;
- people with diabetes do not generally receive broad reimbursement from third-party payors for their purchase of our products since many payors require that a policy holder meet specific medical criteria to qualify for reimbursement, which may reduce widespread use of our products;
- the uncertainties associated with establishing and qualifying new manufacturing facilities;
- except for the G5 Mobile under the CE Mark, our systems are not labeled as a replacement for the information that is obtained from single-point finger stick devices;
- people with diabetes will need to incur the costs of our systems in addition to single-point finger stick devices;
- the relative immaturity of the continuous glucose monitoring market internationally, and the general absence of international reimbursement of continuous glucose monitoring devices by third-party payors and government healthcare providers outside the United States;
- the introduction and market acceptance of competing products and technologies;
- our inability to obtain sufficient quantities of supplies at appropriate quality levels from our single-source and other key suppliers;
- our inability to manufacture products that perform in accordance with expectations of consumers; and
- rapid technological change may make our technology and our products obsolete.

Our G4 PLATINUM and G5 Mobile systems are more invasive than current self-monitored glucose testing systems, including single-point finger stick devices, and people with diabetes may be unwilling to insert a sensor in their body, especially if their current diabetes management involves no more than two finger sticks per day. Moreover, people with diabetes may not perceive the benefits of continuous glucose monitoring and may be unwilling to change their current treatment regimens. In addition, physicians tend to be slow to change their medical treatment practices because of perceived liability risks arising from the use of new products. Physicians may not recommend or prescribe our products until (i) there is more long-term clinical evidence to convince them to alter their existing treatment methods, (ii) there are additional recommendations from prominent physicians that our products are effective in monitoring glucose levels and (iii) reimbursement or insurance coverage is more widely available. We cannot predict when, if ever, physicians and people with diabetes may adopt more widespread use of continuous glucose monitoring systems, including our systems. If our systems do not achieve an adequate level of acceptance by people with diabetes, physicians and healthcare payors, we may not generate significant product revenue and we may not become profitable.

Current uncertainty in global economic and political conditions makes it particularly difficult to predict product demand and other related matters and makes it more likely that our actual results could differ materially from expectations.

Our operations and performance depend on worldwide economic and political conditions. These conditions have been adversely impacted by continued global economic uncertainty, political instability and military hostilities in multiple geographies, concerns over the downgrade of U.S. sovereign debt and continued sovereign debt, monetary and financial uncertainties in Europe and other foreign countries. These include potential reductions in the overall stability and suitability of the Euro as a single currency, given the economic and political challenges facing individual Eurozone countries. These conditions have made and may continue to make it difficult for our customers and potential customers to afford our products, and could cause our customers to stop using our products or to use them less frequently. If that were to occur, our revenue may decrease and our performance may be negatively impacted. In addition, the pressure on consumers to absorb more of their own health care costs has resulted in some cases in higher deductibles and limits on durable medical equipment, which may cause seasonality in purchasing patterns. Furthermore, during economic uncertainty, our customers have had job losses and may continue to have issues gaining timely access to sufficient health insurance or credit, which could result in their unwillingness to purchase products or impair their ability to make timely payments to us. We cannot predict the reoccurrence of any economic slowdown or the strength or sustainability of the economic recovery, worldwide, in the United States, or in our industry. These and other economic factors could have a material adverse effect on our financial condition and operating results.

We depend on clinical investigators and clinical sites to enroll patients in our clinical trials and other third parties to manage the trials and to perform related data collection and analysis, and, as a result, we may face costs and delays that are outside of our control.

We rely on clinical investigators and clinical sites to enroll patients in our clinical trials and other third parties to manage the trial and to perform related data collection and analysis. However, we may not be able to control the amount and timing of resources that clinical sites may devote to our clinical trials. If these clinical investigators and clinical sites fail to enroll a sufficient number of patients in our clinical trials or fail to ensure compliance by patients with clinical protocols or fail to comply with regulatory requirements, we will be unable to complete these trials, which could prevent us from obtaining regulatory approvals for our products. Our agreements with clinical investigators and clinical sites for clinical testing place substantial responsibilities on these parties and, if these parties fail to perform as expected, our trials could be delayed or terminated. If these clinical investigators, clinical sites or other third parties do not carry out their contractual duties or obligations or fail to meet expected deadlines, or if the quality or accuracy of the clinical data they obtain is compromised due to their failure to adhere to our clinical protocols, regulatory requirements or for other reasons, our clinical trials may be extended, delayed or terminated, or the clinical data may be rejected by the FDA, and we may be unable to obtain regulatory approval for, or successfully commercialize, our products.

Healthcare reforms, changes in healthcare policies and changes to third-party reimbursements for our products may affect demand for our products.

Comprehensive healthcare legislation, signed into law in the United States in March 2010, imposes stringent compliance, recordkeeping, and reporting requirements on companies in various sectors of the life sciences industry, with which we may need to comply, and enhanced penalties for non-compliance with the new healthcare regulations. The impact of this legislation remains unclear, and costs of compliance with this legislation, or any future amendments thereto, could result in certain risks and expenses that we may have to assume.

Other legal, regulatory and commercial policy influences are subjecting our industry to significant changes, and we cannot predict whether new regulations or policies will emerge from U.S. federal or state governments, foreign governments, or third party payors. Government and payors may in the future consider healthcare policies and proposals intended to curb rising healthcare costs, including those that could significantly affect reimbursement for healthcare products such as our systems. These policies have included, and may in the future include: basing reimbursement policies and rates on clinical outcomes, the comparative effectiveness and costs of different treatment technologies and modalities; imposing price controls and taxes on medical device providers; and other measures. Future significant changes in the healthcare systems in the United States or elsewhere could also have a negative impact on the demand for our current and future products. These include changes that may reduce reimbursement rates for our products and changes that may be proposed or implemented by the current or future laws or regulations.

In addition, 2010's comprehensive U.S. healthcare reform legislation included an annual excise tax on the sale of medical devices equal to 2.3% of the price of the device starting on January 1, 2013, which does not include, under Internal Revenue Service (“IRS”) guidance, our existing systems as they are medical devices deemed to be generally purchased by the general public at retail under such legislation. *The Protecting Americans from Tax Hikes Act of 2015* was enacted on December 18, 2015, which provides a two-year moratorium on the medical device excise tax.

As a result, as of June 30, 2016, we believed that our current ambulatory products were exempt from the excise tax, except for our G4 PLATINUM system for professional use which is subject to the excise tax. The current tax liability related to our G4 PLATINUM system for professional use is immaterial, but may become material in the future. Notwithstanding our belief, if the IRS were to determine that this tax applies to any of our current or future products, our future operating results could be harmed, which in turn could cause the price of our stock to decline. In addition, because of the uncertainty surrounding these issues, the impact of this tax has not been reflected in our forward guidance.

We may be liable for contamination or other harm caused by materials that we handle, and changes in environmental regulations could cause us to incur additional expense.

Our research and development and clinical processes involve the handling of potentially harmful biological materials as well as hazardous materials. We are subject to federal, state and local laws and regulations governing the use, handling, storage and disposal of hazardous and biological materials and we incur expenses relating to compliance with these laws and regulations. If violations of environmental, health and safety laws occur, we could be held liable for damages, penalties and costs of remedial actions. These expenses or this liability could have a significant negative impact on our financial condition. We may violate environmental, health and safety laws in the future as a result of human error, equipment failure or other causes. Environmental laws could become more stringent over time, imposing greater compliance costs and increasing risks and penalties associated with violations. We are subject to potentially conflicting and changing regulatory agendas of political, business and environmental groups. Changes to or restrictions on permitting requirements or processes, hazardous or biological material storage or handling might require an unplanned capital investment or relocation. Failure to comply with new or existing laws or regulations could harm our business, financial condition and results of operations.

We are subject to a variety of market and financial risks due to our international operations that could adversely affect those operations or our profitability and operating results.

Our operations in countries outside the United States, which accounted for 13% of our revenues for the quarter ended June 30, 2016, are accompanied by certain financial and other risks. In addition to opening offices in the United Kingdom and Germany this year, in connection with distributor acquisitions and otherwise, we intend to continue to pursue growth opportunities in sales outside the United States, especially in Europe, which could expose us to greater risks associated with international sales and operations. Our profitability and international operations are, and will continue to be, subject to a number of risks and potential costs, including:

- local product preferences and product requirements;
- longer-term receivables than are typical in the United States;
- fluctuations in foreign currency exchange rates;
- less intellectual property protection in some countries outside the United States than exists in the United States;
- trade protection measures and import and export licensing requirements;
- workforce instability;
- political and economic instability; and
- the potential payment of U.S. income taxes on certain earnings of our subsidiaries outside the United States upon repatriation.

For example, the Obama Administration has announced potential legislative proposals to tax profits of U.S. companies earned abroad. While it is impossible for us to predict whether these and other proposals will be implemented, or how they will ultimately impact us, they may materially impact our results of operations if, for example, our profits earned abroad are subject to U.S. income tax, or we are otherwise disallowed deductions as a result of these profits.

As another example, changes in foreign currency exchange rates may reduce the reported value of our foreign currency revenues, net of expenses, and cash flows. We cannot predict changes in currency exchange rates, the impact of exchange rate changes, nor the degree to which we will be able to manage the impact of currency exchange rate changes.

As a final example, on June 23, 2016, the United Kingdom, or U.K., held a referendum in which voters approved an exit from the European Union, commonly referred to as “Brexit”. As a result of the referendum, it is expected that the U.K. government will begin negotiating the terms of the U.K.’s future relationship with the European Union. Although it is unknown what those terms will be, it is possible that there will be greater restrictions on imports and exports and on the movement of people between the U.K. and European Union countries, and increased regulatory complexities.

Failure to obtain regulatory approval in foreign jurisdictions will prevent us from marketing our products abroad.

We conduct limited commercial and marketing efforts in Canada, Europe, Australia, New Zealand, Asia, Latin America, the Middle East and Africa with respect to our continuous glucose monitoring systems and may seek to market our products in other regions in the future. Outside the United States, we can market a product only if we receive a marketing authorization and, in some cases, pricing approval, from the appropriate regulatory authorities. The approval procedure varies among countries and can involve additional testing, and the time required to obtain approval may differ from that required to obtain FDA approval. The foreign regulatory approval process may include all of the risks associated with obtaining FDA approval in addition to other risks. We may not obtain foreign regulatory approvals on a timely basis, if at all. Approval by the FDA does not ensure approval by regulatory authorities in other countries, and approval by one foreign regulatory authority does not ensure approval by regulatory authorities in other foreign countries or by the FDA. In addition, in order to obtain the approval of our products in certain foreign jurisdictions, we may need to obtain a Certificate to Foreign Government from the FDA. The FDA may refuse to issue a Certificate to Foreign Government in certain instances, including without limitation, during the pendency of any outstanding warning letter. As a result, we may not be able to file for regulatory approvals and may not receive necessary approvals to commercialize our products in any market outside the United States on a timely basis, or at all.

Our success will depend on our ability to attract and retain our personnel.

We are highly dependent on our senior management, especially Terry Gregg, our Executive Chairman, Kevin Sayer, our President and Chief Executive Officer, Steven R. Pacelli, our Executive Vice President of Strategy and Corporate Development, Jorge Valdes, our Executive Vice President and Chief Technical Officer, Andrew K. Balo, our Executive Vice President of Clinical, Regulatory, and Global Access, and Richard Doubleday, our Executive Vice President and Chief Commercial Officer. Our success will depend on our ability to retain our current management and to attract and retain qualified personnel in the future, including sales persons, scientists, clinicians, engineers and other highly skilled personnel. Competition for senior management personnel, as well as sales persons, scientists, clinicians and engineers, is intense and we may not be able to retain our personnel. The loss of the services of members of our senior management, scientists, clinicians or engineers could prevent the implementation and completion of our objectives, including the commercialization of our current products and the development and introduction of additional products. The loss of a member of our senior management or our professional staff would require the remaining executive officers to divert immediate and substantial attention to seeking a replacement. Each of our officers may terminate their employment at any time without notice and without cause or good reason. Additionally, volatility or a lack of positive performance in our stock price may adversely affect our ability to retain key employees.

We expect to continue to expand our operations and grow our research and development, manufacturing, sales and marketing, product development and administrative operations. We expect this expansion to place a significant strain on our management and it will require hiring a significant number of qualified personnel. Accordingly, recruiting and retaining such personnel will be critical to our success. There is intense competition from other companies and research and academic institutions for qualified personnel in the areas of our activities. If we fail to identify, attract, retain and motivate these skilled personnel, we may be unable to continue our development and commercialization activities.

We may face risks associated with acquisitions of companies, products and technologies and our business could be harmed if we are unable to address these risks.

If we are presented with appropriate opportunities, we could acquire or make other investments in complementary companies, products or technologies. In May 2016, we acquired Nintamed, our distributor in Germany, Switzerland and Austria. We may not realize the anticipated benefit of our acquisitions, or the realization of the anticipated benefits may require greater expenditures than anticipated by us. We will likely face risks, uncertainties and disruptions associated with the integration process, including difficulties in the integration of the operations and services of any acquired company, integration of acquired technology with our products, diversion of our management's attention from other business concerns, the potential loss of key employees or customers of the acquired businesses and impairment charges if future acquisitions are not as successful as we originally anticipate. If we fail to successfully integrate other companies, products or technologies that we acquire, our business could be harmed. Furthermore, we may have to incur debt or issue equity securities to pay for any additional future acquisitions or investments, the issuance of which could be dilutive to our existing shareholders. In addition, our operating results may suffer because of acquisition-related costs or amortization expenses or charges relating to acquired intangible assets.

Compliance with regulations relating to public company corporate governance matters and reporting is time consuming and expensive.

Many laws and regulations, notably those adopted in connection with the Sarbanes-Oxley Act of 2002, the Dodd-Frank Wall Street Reform and Consumer Protection Act, new SEC regulations and The NASDAQ Stock Market listing rules, impose obligations on public companies, such as ours, which have increased the scope, complexity and cost of corporate governance,

reporting and disclosure practices. Compliance with these laws and regulations, including enhanced new disclosures, has required and will continue to require substantial management time and oversight and the incurrence of significant accounting and legal costs. The effects of new laws and regulations remain unclear and will likely require substantial management time and oversight and require us to incur significant additional accounting and legal costs. Additionally, changes to existing accounting rules or standards, such as the potential requirement that U.S. registrants prepare financial statements in accordance with International Financial Reporting Standards, may adversely impact our reported financial results and business, and may require us to incur greater accounting fees.

If we are unable to successfully maintain effective internal control over financial reporting, investors may lose confidence in our reported financial information and our stock price and our business may be adversely impacted.

As a public company, we are required to maintain internal control over financial reporting and our management is required to evaluate the effectiveness of our internal control over financial reporting as of the end of each fiscal year. If we are not successful in maintaining effective internal control over financial reporting, there could be inaccuracies or omissions in the consolidated financial information we are required to file with the SEC. Additionally, even if there are no inaccuracies or omissions, we will be required to publicly disclose the conclusion of our management that our internal control over financial reporting or disclosure controls and procedures are not effective. These events could cause investors to lose confidence in our reported financial information, adversely impact our stock price, result in increased costs to remediate any deficiencies, attract regulatory scrutiny or lawsuits that could be costly to resolve and distract management's attention, limit our ability to access the capital markets or cause our stock to be delisted from The NASDAQ Global Select Market or any other securities exchange on which it is then listed.

Valuation of share-based payments, which we are required to perform for purposes of recording compensation expense under authoritative guidance for share-based payment, involves assumptions that are subject to change and difficult to predict.

We record compensation expense in the consolidated statement of operations for share-based payments, such as employee stock options, restricted stock units and employee stock purchase plan shares, using the fair value method. The requirements of the authoritative guidance for share-based payment have and will continue to have a material effect on our future financial results reported under U.S. GAAP and make it difficult for us to accurately predict the impact on our future financial results.

For instance, estimating the fair value of share-based payments is highly dependent on assumptions regarding the future exercise behavior of our employees and changes in our stock price. The actual values realized upon the exercise, expiration, early termination or forfeiture of share-based payments might be significantly different than our estimates of the fair values of those awards as determined at the date of grant. If there are errors in our input assumptions for our valuations models, we may inaccurately calculate actual or estimated compensation expense for share-based payments.

The authoritative guidance for share-based payment could also adversely impact our ability to provide accurate guidance on our future financial results as assumptions that are used to estimate the fair value of share-based payments are based on estimates and judgments that may differ from period to period. We may also be unable to accurately predict the amount and timing of the recognition of tax benefits associated with share-based payments as they are highly dependent on the exercise behavior of our employees and the price of our stock relative to the exercise price of each outstanding stock option.

For those reasons, among others, the authoritative guidance for share-based payment may create variability and uncertainty in the share-based compensation expense we will record in future periods, which could adversely impact our stock price and increase our expected stock price volatility as compared to prior periods.

Changes in financial accounting standards or practices or existing taxation rules or practices may cause adverse unexpected revenue and/or expense fluctuations and affect our reported results of operations.

A change in accounting standards or practices or a change in existing taxation rules or practices can have a significant effect on our reported results and may even affect our reporting of transactions completed before the change is effective. New accounting pronouncements and taxation rules and varying interpretations of accounting pronouncements and taxation practice have occurred and may occur in the future. The method in which we market and sell our products may have an impact on the manner in which we recognize revenue. In addition, changes to existing rules or the questioning of current practices may adversely affect our reported financial results or the way we conduct our business. Additionally, changes to existing accounting rules or standards, such as the potential requirement that U.S. registrants prepare financial statements in accordance with International Financial Reporting Standards, may adversely impact our reported financial results and business, and may further require us to incur greater accounting fees.

The SEC "conflict minerals" rule has caused us to incur additional expenses, could limit the supply and increase the cost of certain metals used in manufacturing our products, and could make us less competitive in our target markets.

We are required to disclose the origin, source and chain of custody of specified minerals, known as conflict minerals, that are necessary to the functionality or production of products manufactured or contracted to be manufactured. The requirement mandates companies to obtain sourcing data from suppliers, engage in supply chain due diligence, and file annually with the SEC a specialized disclosure report on Form SD covering the prior calendar year. The rule could limit our ability to source at competitive prices and to secure sufficient quantities of certain minerals used in the manufacture of our products, specifically tantalum, tin, gold and tungsten, as the number of suppliers that provide conflict-free minerals may be limited. In addition, we have incurred, and may continue to incur, material costs associated with complying with the rule, such as costs related to the determination of the origin, source and chain of custody of the minerals used in our products, the adoption of conflict minerals-related governance policies, processes and controls, and possible changes to products or sources of supply as a result of such activities. Within our supply chain, we may not be able to sufficiently verify the origins of the relevant minerals used in our products through the data collection and due diligence procedures that we implement, which may harm our reputation. Furthermore, we may encounter challenges in satisfying those customers that require that all of the components of our products be certified as conflict free, and if we cannot satisfy these customers, they may choose a competitor's products. We continue to investigate the presence of conflict materials within our supply chain.

Risks Related to Our Common Stock

Our stock price is highly volatile and investing in our stock involves a high degree of risk, which could result in substantial losses for investors.

Historically, the market price of our common stock, like the securities of many other medical products companies, fluctuates and could continue to be volatile in the future. From January 1, 2016 through August 2, 2016, the closing price of our common stock on the NASDAQ Global Select Market was as high as $92.78 per share and as low as $53.38 per share.

The market price of our common stock is influenced by many factors that are beyond our control, including the following:

- securities analyst coverage or lack of coverage of our common stock or changes in their estimates of our financial performance;
- variations in quarterly operating results;
- future sales of our common stock by our stockholders;
- investor perception of us and our industry;
- announcements by us or our competitors of significant agreements, acquisitions or capital commitments;
- changes in market valuation or earnings of our competitors;
- general economic conditions;
- regulatory actions;
- legislation and political conditions; and
- terrorist acts.

Please also refer to the factors described above in this "Risk Factors" section. In addition, the stock market in general has experienced extreme price and volume fluctuations that have often been unrelated and disproportionate to the operating performance of companies in our industry. These broad market and industry factors may materially reduce the market price of our common stock, regardless of our operating performance.

Further, securities class action litigation has often been brought against public companies that experience periods of volatility in the market prices of their securities. Securities class action litigation could result in substantial costs and a diversion of our management's attention and resources.

If our financial performance fails to meet the expectations of investors and public market analysts, the market price of our common stock could decline.

Our revenues and operating results may fluctuate significantly from quarter to quarter. We believe that period-to-period comparisons of our operating results may not be meaningful and should not be relied on as an indication of our future performance. If quarterly revenues or operating results fall below the expectations of investors or public market analysts, the trading price of our common stock could decline substantially. Factors that might cause quarterly fluctuations in our operating results include:

- our inability to manufacture an adequate supply of product at appropriate quality levels and acceptable costs;

- possible delays in our research and development programs or in the completion of any clinical trials;
- a lack of acceptance of our products in the marketplace by physicians and people with diabetes;
- the inability of customers to receive reimbursements from third-party payors;
- failures to comply with regulatory requirements, which could lead to withdrawal of products from the market;
- our failure to continue the commercialization of any of our continuous glucose monitoring systems;
- competition;
- inadequate financial and other resources; and
- global and political economic conditions, political instability and military hostilities.

Failure to comply with covenants in our revolving credit agreement with JPMorgan Chase Bank and other syndicate lenders could result in our inability to borrow additional funds and adversely impact our business.

We have entered into a revolving credit agreement, a pledge and security agreement with JPMorgan Chase Bank and four other lenders to fund our business operations. These agreements imposes numerous financial and other restrictive covenants on our operations, including covenants relating to our general profitability and our liquidity. As of June 30, 2016, we were in compliance with the covenants imposed by the loan and security agreement. If we violate these or any other covenants, any outstanding amounts under these agreements could become due and payable prior to their stated maturity dates, each lender could proceed against any collateral in our operating accounts and our ability to borrow funds in the future may be restricted or eliminated. These restrictions may also limit our ability to borrow additional funds and pursue other business opportunities or strategies that we would otherwise consider to be in our best interests.

Increasing our financial leverage could affect our operations and profitability.

The current maximum available credit under our multi-currency revolving credit facility is $200 million. Our leverage ratio may affect the availability to us of additional capital resources as well as our operations in several ways, including:

- the terms on which credit may be available to us could be less attractive, both in the economic terms of the credit and the legal covenants;
- the possible lack of availability of additional credit;
- the potential for higher levels of interest expense to service or maintain our outstanding debt;
- the possibility of additional borrowings in the future to repay our indebtedness when it comes due; and
- the possible diversion of capital resources from other uses.

While we believe we will have the ability to service our debt and obtain additional resources in the future if and when needed, that will depend upon our results of operations and financial position at the time, the then-current state of the credit and financial markets, and other factors that may be beyond our control. Therefore, we cannot give assurances that sufficient credit will be available on terms that we consider attractive, or at all, if and when necessary or beneficial to us.

The issuance of shares by us in the future or sales of shares by our stockholders may cause the market price of our common stock to drop significantly, even if our business is performing well.

This issuance of shares by us in the future or sales of shares by our stockholders may cause the market price of our common stock to decline, perhaps significantly, even if our business is performing well. The market price of our common stock could also decline if there is a perception that sales of our shares are likely to occur in the future. This might also make it more difficult for us to sell equity securities in the future at a time and at a price that we deem appropriate. Also, we may issue securities in connection with future financings and acquisitions, and those shares could dilute the holdings of other stockholders.

We do not intend to pay dividends for the foreseeable future.

We have never declared or paid cash dividends on our capital stock. We currently intend to retain any future earnings to finance the operation and expansion of our business, and we do not expect to declare or pay any dividends in the foreseeable future and the terms of our credit agreement restrict our ability to declare or pay any dividends. As a result, stockholders may only receive a return on their investment in our common stock if the market price of our common stock increases.

Anti-takeover effects of our charter documents and Delaware law could make a merger, tender offer or proxy contest difficult, thereby depressing the trading price of our common stock.

In addition, there are provisions in our certificate of incorporation and bylaws, as well as provisions in the Delaware General Corporation Law, that may discourage, delay or prevent a change of control that might otherwise be beneficial to stockholders. For example:

- our Board of Directors may, without stockholder approval, issue shares of preferred stock with special voting or economic rights;
- our stockholders do not have cumulative voting rights and, therefore, each of our directors can only be elected by holders of a majority of our outstanding common stock;
- a special meeting of stockholders may only be called by a majority of our Board of Directors, the Chairman of our Board of Directors, or our Chief Executive Officer;
- our stockholders may not take action by written consent;
- our Board of Directors is divided into three classes, only one of which is elected each year; and
- we require advance notice for nominations for election to the Board of Directors or for proposing matters that can be acted upon by stockholders at stockholder meetings.

ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

Not applicable.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

Not applicable.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

ITEM 5. OTHER INFORMATION

None.

ITEM 6. EXHIBITS

The following exhibits are filed as a part of this report.

Exhibit Number	Exhibit Description	Incorporated by Reference				Provided Herewith
		Form	File No.	Date of First Filing	Exhibit Number	
10.38	Credit Agreement dated June 17, 2016 by and among DexCom, Inc., the Lenders, and JPMorgan Chase Bank, as Administrative Agent.**					X
10.39	Industrial Net Lease, Broadway dated April 28, 2016, by and between PRA/LB, L.L.C. and DexCom, Inc.					X
10.40	Standard Form of Agreement dated May 2, 2016, by and between DexCom, Inc. and Skanska USA Building Inc.					X
10.41	Amendment to Non-Exclusive Distribution Agreement dated April 30, 2016 by and between RGH Enterprises, Inc. d/b/a Cardinal Health at Home and DexCom, Inc. **					X
31.01	Certification of Chief Executive Officer Pursuant to Securities Exchange Act Rule 13a-14(a).	—	—	—	—	X
31.02	Certification of Chief Financial Officer Pursuant to Securities Exchange Act Rule 13a-14(a).	—	—	—	—	X
32.01	Certification of Chief Executive Officer Pursuant to 18 U.S.C. Section 1350 and Securities Exchange Act Rule 13a-14(b).*	—	—	—	—	X
32.02	Certification of Chief Financial Officer Pursuant to 18 U.S.C. Section 1350 and Securities Exchange Act Rule 13a-14(b).*	—	—	—	—	X
101.INS	XBRL Instance Document					X
101.SCH	XBRL Taxonomy Extension Schema Document					X
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document					X
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document					X
101.LAB	XBRL Taxonomy Extension Label Linkbase Document					X
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document					X

* This certification is not deemed “filed” for purposes of Section 18 of the Securities Exchange Act, or otherwise subject to the liability of that section. Such certification will not be deemed to be incorporated by reference into any filing under the Securities Act of 1933 or the Securities Exchange Act of 1934, except to the extent that DexCom specifically incorporates it by reference.

** Confidential treatment has been requested for certain portions of this document pursuant to an application for confidential treatment sent to the Securities and Exchange Commission. Such portions are omitted from this filing and were filed separately with the Securities and Exchange Commission.

SIGNATURES

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

DEXCOM, INC.
(Registrant)

Dated: August 2, 2016

By: /s/ KEVIN R. SAYER

Kevin R. Sayer,
President & Chief Executive Officer (Principal Executive Officer)

Dated: August 2, 2016

By: /s/ JESS ROPER

Jess Roper,
Senior Vice President & Chief Financial Officer (Principal Financial and Accounting Officer)

[***] = CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY BRACKETS AND ASTERISKS, HAS BEEN OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO RULE 24b-2 OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED INFORMATION.

Exhibit 10.38

CREDIT AGREEMENT

dated as of

June 17, 2016

by and among

DEXCOM, INC.,
as Borrower,

the Lenders party hereto,

and

JPMORGAN CHASE BANK,
NATIONAL ASSOCIATION,
as Administrative Agent

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,
as Sole Bookrunner and Sole Lead Arranger

BANK OF AMERICA, N.A. and SILICON VALLEY BANK,
as Co-Syndication Agents

[***] = CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY BRACKETS AND ASTERISKS, HAS BEEN OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO RULE 24b-2 OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED INFORMATION.

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CREDIT AGREEMENT dated as of June 17, 2016, by and among DEXCOM, INC., a Delaware corporation ("***Borrower***"), the Lenders party hereto, and JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, as Administrative Agent.

The parties hereto agree as follows:

ARTICLE I

Definitions

SECTION 1.01. Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

"***ABR***", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, bear interest at a rate determined by reference to the Alternate Base Rate.

"***Adjusted LIBO Rate***" means, with respect to any Eurodollar Borrowing for any Interest Period, an interest rate *per annum* (rounded upwards, if necessary, to the next 1/16 of 1%) equal to (a) the Eurocurrency Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate.

"***Administrative Agent***" means JPMorgan Chase Bank, N.A. (including its branches and affiliates) in its capacity as administrative agent for the Lenders hereunder.

"***Administrative Questionnaire***" means an Administrative Questionnaire in a form supplied 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.

"***Agent Party***" has the meaning assigned to it in Section 9.01(d).

"***Alternate Base Rate***" means, for any day, a rate *per annum* equal to the greatest of (a) the Prime Rate in effect on such day, (b) the NYFRB Rate in effect on such day plus ½ of 1% and (c) the Adjusted LIBO Rate for a one month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1%, provided that, the Adjusted LIBO Rate for any day shall be based on the Eurocurrency Rate at approximately 11:00 a.m. London time on such day. Any change in the Alternate Base Rate due to a change in the Prime Rate, the NYFRB Rate or the Adjusted LIBO Rate shall be effective from and including the effective date of such change in the Prime Rate, the NYFRB Rate or the Adjusted LIBO Rate, respectively.

"***Anti-Corruption Laws***" means all laws, rules, and regulations of any jurisdiction applicable to the Borrower or any of its Subsidiaries from time to time concerning or relating to bribery or corruption.

"***Applicable Currency***" means dollars, Canadian Dollars, Euros, British Pounds, Swedish Krona, Japanese Yen and any other currency that is agreed to by the Administrative Agent and each of the Revolving

Lenders; provided that at all times each of the foregoing currencies (other than dollars) is a lawful currency that is readily available and freely transferable and convertible into dollars.

"***Applicable Payment Office***" means, in the case of a Eurodollar Borrowing, the applicable Eurodollar Payment Office.

"***Applicable Percentage***" means, with respect to any Lender, the percentage of the total Commitments represented by such Lender's Commitment; provided that in the case of Section 2.20 when a Defaulting Lender shall exist, "Applicable Percentage" shall mean the percentage of the total Commitments (disregarding any Defaulting Lender's Commitment) represented by such Lender's Commitment. If the Commitments have terminated or expired, the Applicable Percentages shall be determined based upon the Commitments most recently in effect, giving effect to any assignments and to any Lender's status as a Defaulting Lender at the time of determination.

"***Applicable Rate***" means, for any day, with respect to any ABR Loan or Eurodollar Revolving Loan, or with respect to the commitment fees payable hereunder, as the case may be, the applicable rate *per annum* set forth below under the caption "ABR Spread", "Eurodollar Spread" or "Unused Commitment Fee Rate", as the case may be, based upon Total Leverage Ratio as of the most recent determination date, provided that until the delivery to the Administrative Agent, pursuant to Section 5.01, of the Borrower's consolidated financial information for the fiscal quarter ending June 30, 2016, the "Applicable Rate" shall be the applicable rates per annum set forth below in Level I:

Level:	Total Leverage Ratio	ABR Spread	Eurodollar Spread	Unused Commitment Fee Rate
Level I	Less than 0.75 to 1.00	0.75%	1.75%	0.25%
Level II	Greater than or equal to 0.75 to 1.00 but less than 1.25 to 1.00	1.00%	2.00%	0.30%
Level III	Greater than or equal to 1.25 to 1.00 but less than 1.75 to 1.00	1.25%	2.25%	0.35%
Level IV	Greater than or equal to 1.75 to 1.00 but less than 2.50 to 1.00	1.50%	2.50%	0.40%
Level V	Greater than or equal to 2.50 to 1.00	1.75%	2.75%	0.45%

For purposes of the foregoing, (a) the Applicable Rate shall be determined as of the end of each fiscal quarter of the Borrower, based upon the Borrower's annual or quarterly consolidated financial statements delivered pursuant to Section 5.01 and (b) each change in the Applicable Rate resulting from a change in the Total Leverage Ratio shall be effective during the period commencing on and including the date of delivery to the Administrative Agent of such consolidated financial statements indicating such change and ending on the date immediately preceding the effective date of the next such change, provided that (A) at any time that an Event of Default has occurred and is continuing or (B) at the option of the Administrative Agent or at the request of the Required Lenders, if the Borrower fails to deliver the annual or quarterly consolidated financial statements required to be delivered by it pursuant to Section 5.01, the Total Leverage Ratio shall be deemed to be in Level V during the period from the expiration of the time for delivery thereof until such consolidated financial statements are delivered.

If at any time the Administrative Agent determines that the financial statements upon which the Applicable Rate was determined were incorrect (whether based on a restatement, fraud or otherwise), the Borrower shall be required to retroactively pay any additional amount that the Borrower would have been required to pay if such financial statements had been accurate at the time they were delivered.

"***Approved Fund***" has the meaning assigned to it in Section 9.04(b).

"***Assignment and Assumption***" means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9.04), and accepted by the Administrative Agent, in the form of Exhibit A or any other form approved by the Administrative Agent.

"***Availability Period***" means the period from and including the Effective Date to but excluding the earlier of the Maturity Date and the date of termination of the Commitments.

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

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

"***Banking Services***" means each and any of the following bank services provided to any Loan Party or any of their Subsidiaries by any Lender or any of its Affiliates: (a) credit cards for commercial customers (including, without limitation, "commercial credit cards" and purchasing cards), (b) stored value cards, (c) merchant processing services, and (d) treasury management services (including, without limitation, controlled disbursement, automated clearinghouse transactions, return items, any direct debit scheme or arrangement, overdrafts and interstate depository network services).

"***Banking Services Obligations***" means (a) any and all obligations of the Loan Parties or their Subsidiaries, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor) in connection with Banking Services and (b) obligations of the Borrower to Silicon Valley Bank under the Existing Letters of Credit, but excluding any renewals, extensions or modifications thereof or substitutions therefor.

"***Bankruptcy Code***" means the provisions of Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. or other applicable bankruptcy, insolvency or similar laws.

"***Bankruptcy Event***" means, with respect to any Person, such Person becomes the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, custodian, assignee for the benefit of creditors or similar Person charged with the reorganization or liquidation of its business appointed for it, or, in the good faith determination of the Administrative Agent, has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment, provided that a Bankruptcy Event shall not result solely by virtue of any ownership interest, or the acquisition of any ownership interest, in such Person by a Governmental Authority or instrumentality thereof, unless such ownership interest results in or provides such Person 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 Person (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Person.

"***Board***" means the Board of Governors of the Federal Reserve System of the United States of America.

"***Borrower***" has the meaning assigned to it in the preamble hereto.

"***Borrowing***" means Revolving Loans of the same Type, made, converted or continued on the same date and, in the case of Eurodollar Loans, as to which a single Interest Period is in effect.

"***Borrowing Availability***" means, as of any date of determination, the total Commitments minus the sum of the Total Revolving Credit Exposures (including, without duplication, the outstanding balance of Letter of Credit Obligations then outstanding).

"***Borrowing Request***" means a request by the Borrower for a Revolving Borrowing in accordance with Section 2.03.

"***Business Day***" means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed; provided that, when used in connection with a Eurodollar Loan, the term "Business Day" shall also exclude (a) any day on which banks are not open for dealings in dollar deposits in the London interbank market and (b) any day on which banks are not open in the principal financial center of the Applicable Currency.

"***Capital Lease Obligations***" of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

"***CDOR Rate***" has the meaning assigned to it in the definition of "Eurocurrency Rate."

"***CFC***" has the meaning assigned to it in the definition of "Excluded Subsidiary."

"***CFC Holdco***" has the meaning assigned to it in the definition of "Excluded Subsidiary."

"***Change in Control***" means (a) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group (within the meaning of the Securities Exchange Act of 1934 and the rules of the SEC thereunder as in effect on the date hereof), of Equity Interests representing more than 40% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of the Borrower; (b) occupation of a majority of the seats (other than vacant seats) on the board of directors of the Borrower by Persons who were not (i) directors of the Borrower on the date of this Agreement or (ii) nominated or appointed by the board of directors of the Borrower, or (c) the acquisition of direct or indirect Control of the Borrower by any Person or group.

"***Change in Law***" means the occurrence after the date of this Agreement or, with respect to any Lender, such later date on which such Lender becomes a party to this Agreement, of (a) the adoption of or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the interpretation or application thereof by any Governmental Authority or (c) compliance by any Lender or the Issuing Bank (or, for purposes of Section 2.15(b), by any lending office of such Lender or by such Lender's or the Issuing Bank's holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement; provided that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and

Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall be deemed to be a "Change in Law," regardless of the date enacted, adopted or issued.

"***Class***" when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Revolving Loans or other Loans.

"***Code***" means the Internal Revenue Code of 1986, as amended.

"***Collateral***" means any and all property owned, leased or operated by a Person covered by the Collateral Documents and any and all other property of any Loan Party, now existing or hereafter acquired, that may at any time be, become or intended to be, subject to a security interest or Lien in favor of the Administrative Agent, on behalf of itself and the Lenders and other Secured Parties, to secure the Secured Obligations, which, for the avoidance of doubt, shall not include any copyrights, patents, trademarks or other Intellectual Property or any other Excluded Assets (as defined in the Security Agreement).

"***Collateral Documents***" means, collectively, the Security Agreement and any other agreements, instruments and documents executed in connection with this Agreement that are intended to create, perfect or evidence Liens to secure the Secured Obligations, including, without limitation, all other security agreements, pledge agreements, mortgages, deeds of trust, loan agreements, pledges, powers of attorney, financing statements and all other written matter whether theretofore, now or hereafter executed by any Loan Party and delivered to the Administrative Agent.

"***Commitment***" means, with respect to each Lender, the commitment of such Lender to make Revolving Loans and to acquire participations in Letters of Credit hereunder, expressed as an amount representing the maximum aggregate amount of such Lender's Revolving Credit Exposure hereunder, as such commitment may be (a) reduced from time to time pursuant to Section 2.09, (b) increased pursuant to Section 2.21 and (c) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 9.04. The initial amount of each Lender's Commitment is set forth on Schedule 2.01, or in the Assignment and Assumption pursuant to which such Lender shall have assumed its Commitment, as applicable. The initial aggregate principal amount of the Lenders' Commitments is $200,000,000.

"***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.

"***Communications***" has the meaning assigned to it in Section 9.01(d).

"***Computation Date***" has the meaning assigned to it in Section 2.04.

"***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.

"***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.

"***Copyrights***" means, with respect to any Person, all of such Person's right, title, and interest in and to the following: (a) all copyrights, rights and interests in copyrights, works protectable by copyright,

copyright registrations, and copyright applications; (b) all renewals of any of the foregoing; (c) all income, royalties, damages, and payments now or hereafter due and/or payable under any of the foregoing, including, without limitation, damages or payments for past or future infringements for any of the foregoing; (d) the right to sue for past, present, and future infringements of any of the foregoing; and (e) all rights corresponding to any of the foregoing throughout the world.

"***Credit Event***" means a Borrowing, the issuance, amendment, renewal or extension of a Letter of Credit, an LC Disbursement or any of the foregoing.

"***Credit Party***" means the Administrative Agent, each Issuing Bank or any other Lender.

"***Default***" means any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

"***Defaulting Lender***" means any Lender that (a) has failed, within two (2) Business Days of the date required to be funded or paid, to (i) fund any portion of its Loans, (ii) fund any portion of its participations in Letters of Credit or (iii) pay over to any Credit Party any other amount required to be paid by it hereunder, unless, in the case of clause (i) above, such Lender notifies the Administrative Agent in writing that such failure is the result of such Lender's good faith determination that a condition precedent to funding (specifically identified and including the particular default, if any) has not been satisfied, (b) has notified the Borrower or any Credit Party in writing, or has made a public statement to the effect, that it does not intend or expect to comply with any of its funding obligations under this Agreement (unless such writing or public statement indicates that such position is based on such Lender's good faith determination that a condition precedent (specifically identified and including the particular default, if any) to funding a loan under this Agreement cannot be satisfied) or generally under other agreements in which it commits to extend credit, (c) has failed, within three (3) Business Days after request by the Borrower or a Credit Party, acting in good faith, to provide a certification in writing from an authorized officer of such Lender that it will comply with its obligations (and is financially able to meet such obligations) to fund prospective Loans and participations in then outstanding Letters of Credit under this Agreement, provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon such Credit Party's receipt of such certification in form and substance satisfactory to it and the Administrative Agent, or (d) has become the subject of (A) a Bankruptcy Event or (B) a Bail-In Action.

"***Disclosed Matters***" means the actions, suits and proceedings and the environmental matters disclosed in Schedule 3.06.

"***Dollar Amount***" of any currency at any date shall mean (i) the amount of such currency if such currency is Dollars or (ii) the equivalent amount thereof in Dollars if such currency is a Foreign Currency, calculated on the basis of the Exchange Rate for such currency, on or as of the most recent Computation Date provided for in Section 2.04.

"***dollars***" or "***$***" refers to lawful money of the United States of America.

"***EBITDA***" means, for any period, Net Income for such period *plus* (a) without duplication and to the extent deducted in determining Net Income for such period, the sum of (i) Interest Expense for such period, (ii) income tax expense for such period, (iii) all amounts attributable to depreciation and amortization expense for such period, (iv) expenses relating to share-based compensation and (v) any other non-cash charges, non-cash losses or non-cash expenses for such period (but excluding any non-cash charge, loss or expense in respect of an item that was included in Net Income in a prior period), *minus* (b) without duplication and to the extent included in Net Income, (i) any cash payments made during such period in respect of non-

cash charges described in clause (a)(v) taken in a prior period and (ii) any non-cash items of income for such period, all calculated for the Borrower and its Subsidiaries on a consolidated basis in accordance with GAAP.

"***ECP***" means an "eligible contract participant" as defined in Section 1(a)(18) of the Commodity Exchange Act or any regulations promulgated thereunder and the applicable rules issued by the Commodity Futures Trading Commission and/or the SEC.

"***EEA Financial Institution***" means (a) any institution established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent;

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

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

"***Effective Date***" means the date on which the conditions specified in Section 4.01 are satisfied (or waived in accordance with Section 9.02).

"***Electronic Signature***" means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a person with the intent to sign, authenticate or accept such contract or record.

"***Electronic System***" means any electronic system, including e-mail, e-fax, Intralinks®, ClearPar®, Debt Domain, Syndtrak and any other Internet or extranet-based site, whether such electronic system is owned, operated or hosted by the Administrative Agent or any Issuing Bank and any of its respective Related Persons or any other Person, providing for access to data protected by passcodes or other security system.

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

"***Environmental Liability***" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower or any Subsidiary 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.

"***Equity Interests***" means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any such equity interest.

"***Equivalent Amount***" of any currency with respect to any amount of dollars at any date shall mean the equivalent in such currency of such amount of dollars, calculated on the basis of the Exchange Rate for such other currency at 11:00 a.m., London time, on the date on or as of which such amount is to be determined.

"***ERISA***" means the Employee Retirement Income Security Act of 1974, as amended from time to time.

"***ERISA Affiliate***" means any trade or business (whether or not incorporated) that, together with the Borrower, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

"***ERISA Event***" means (a) any "reportable event", as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30 day notice period is waived); (b) the existence with respect to any Plan of an "accumulated funding deficiency" (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(d) of the Code or Section 303(d) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by the Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by the Borrower or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the incurrence by the Borrower or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; or (g) the receipt by the Borrower or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Borrower or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA.

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

"***Eurocurrency Rate***" means,

(a) with respect to any Eurodollar Borrowing for any Applicable Currency (other than Canadian Dollars or Swedish Krona), and for any Interest Period, the London interbank offered rate as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate for the Applicable Currency for a period equal in length to such Interest Period) as displayed on pages LIBOR01 or LIBOR02 of the Reuters screen that displays such rate, and in the case of any Foreign Currency, the appropriate page of such service which displays the London interbank offered rate as administered by ICE Benchmark Administration for deposits in such Foreign Currency (or any other Person that takes over the administration of such rate for such Foreign Currency) for a period equal in length to such Interest Period (or, in the event such rate does not appear on a Reuters page or screen, on any successor or substitute page on such screen that displays such rate, or on the appropriate page of such other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion; in each case the "***LIBO Screen Rate***") at approximately 11:00 a.m., London time, two (2) Business Days prior to the commencement of such Interest Period; provided that if the LIBO Screen Rate shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement;

(b) with respect to any Eurodollar Borrowing denominated in Canadian Dollars and for any Interest Period, the Canadian deposit offered rate which, in turn means on any day the annual

rate of interest determined with reference to the arithmetic average of the discount rate quotations of all institutions listed in respect of the relevant Interest Period for CAD Dollar-denominated bankers' acceptances displayed and identified as such on the "Reuters Screen CDOR Page" as defined in the International Swap Dealer Association, Inc. definitions, as modified and amended from time to time, as of 10:00 a.m., Toronto time, on such day and, if such day is not a Business Day, then on the immediately preceding Business Day (as adjusted by the Administrative Agent after 10:00 a.m., Toronto time, to reflect any error in the posted rate of interest or in the posted average annual rate of interest) (such rate, the "***CDOR Rate***"); provided that if such rates are not available on the Reuters Screen CDOR Page on any particular day, then the Canadian deposit offered rate component of such rate on that day shall be calculated as the cost of funds quoted by the Administrative Agent to raise CAD Dollars for the applicable interest period as of 10:00 a.m., Toronto time, on such day for commercial loans or other extensions of credit to businesses of comparable credit risk; or if such day is not a Business Day, then as quoted by the Administrative Agent on the immediately preceding Business Day; provided that if the CDOR Rate shall be less than zero, the CDOR Rate shall be deemed to be zero for purposes of this Agreement; and

(c) with respect to any Eurodollar Borrowing denominated in Swedish Krona and for any Interest Period, the rate per annum equal to the Stockholm Interbank Offered Rate (STIBOR) or the successor thereto as approved by the Administrative Agent which appears on the Bloomberg Page BTMM SW (or on such other substitute Bloomberg page that displays such rate) (or on any successor or substitute service providing rate quotations comparable to those currently provided by such service, as determined by the Administrative Agent from time to time) as the rate for deposits in Swedish Krona for a period equal in length to such Interest Period, at approximately 11:00 a.m., Stockholm, Sweden time, two (2) Business Days prior to the commencement of such Interest Period (such rate, the "***STIBOR Rate***"); provided that if the STIBOR Screen Rate shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement;

provided that if the LIBO Screen Rate, the CDOR Rate or the STIBOR Rate shall not be available at such time for such Interest Period (an "***Impacted Interest Period***") with respect to the Applicable Currency then the LIBO Screen Rate, the CDOR Rate or the STIBOR Rate, as applicable, shall be the Interpolated Rate; provided that if any Interpolated Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

"***Eurodollar***" when used in reference to a currency means an Applicable Currency and when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted LIBO Rate.

"***Eurodollar Payment Office***" of the Administrative Agent shall mean, for each Foreign Currency, the office, branch, affiliate or correspondent bank of the Administrative Agent for such currency as specified from time to time by the Administrative Agent to the Borrower and each Lender.

"***Event of Default***" has the meaning assigned to such term in Article VII.

"***Exchange Rate***" means, on any day, with respect to any Foreign Currency, the rate at which such Foreign Currency may be exchanged into dollars, as set forth at approximately 11:00 a.m., Local Time, on such date on the Reuters World Currency Page for such Foreign Currency. In the event that such rate does not appear on any Reuters World Currency Page, the Exchange Rate with respect to such Foreign Currency shall be determined by reference to such other publicly available service for displaying exchange rates as may be reasonably selected by the Administrative Agent or, in the event no such service is selected, such

Exchange Rate shall instead be calculated on the basis of the arithmetical mean of the buy and sell spot rates of exchange of the Administrative Agent for such Foreign Currency on the London market at 11:00 a.m., Local Time, on such date for the purchase of Dollars with such Foreign Currency, for delivery two (2) Business Days later; provided, that if at the time of any such determination, for any reason, no such spot rate is being quoted, the Administrative Agent, after consultation with the Borrower, may use any reasonable method it deems appropriate to determine such rate, and such determination shall be conclusive absent manifest error.

"***Excluded Subsidiary***" means (i) any Subsidiary that is a "controlled foreign corporation" within the meaning of the Code (a "***CFC***"), (ii) any Subsidiary substantially all the assets of which consist of Equity Interests of one or more CFCs (a "***CFC Holdco***"), and (iii) any Subsidiary of a CFC.

"***Excluded Swap Obligation***" means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor's failure for any reason to constitute an ECP at the time the Guarantee of such Guarantor or the grant of such security interest becomes or would become effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes illegal.

"***Excluded Taxes***" means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. Federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan, Letter of Credit or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan, Letter of Credit or Commitment (other than pursuant to an assignment request by the Borrower under Section 2.19(b)) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.17, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender acquired the applicable interest in a Loan, Letter of Credit or Commitment or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient's failure to comply with Section 2.17(f) and (d) any U.S. Federal withholding Taxes imposed under FATCA.

"***Existing Letters of Credit***" means, collectively, (i) that certain Irrevocable Standby Letter of Credit No. SVBSF009895, dated June 29, 2015, in the amount of $664,000.00 issued by Silicon Valley Bank to Kilroy Realty, L.P., as beneficiary, on behalf of the Borrower, as applicant, and (ii) that certain Irrevocable Standby Letter of Credit No. SVBSF010781, dated May 2, 2016, in the amount of $3,600,000.00 issued by Silicon Valley Bank to PRA/LB, L.L.C., as beneficiary, on behalf of the Borrower, as applicant, in each case, as in effect on the Effective Date and excluding any renewals, extensions or modifications thereof or substitutions therefor.

"***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 agreement entered into pursuant to Section 1471(b)(1) of the Code.

"***Federal Funds Effective Rate***" means, for any day, the rate calculated by the NYFRB based on such day's federal funds transactions by depositary institutions (as determined in such manner as the NYFRB shall set forth on its public website from time to time) and published on the next succeeding Business Day by the NYFRB as the federal funds effective rate.

"***Financial Officer***" means the chief financial officer, vice president of finance, principal accounting officer, treasurer or controller of the Borrower.

"***Financial Statements***" means the financial statements to be furnished pursuant to Sections 5.01(a) and (b).

"***Fixed Charges***" means, for any period, without duplication, cash Interest Expense *plus* the scheduled principal payments on all Long-Term Debt in the four consecutive fiscal quarters immediately following the end of such period, all calculated for the Borrower and its Subsidiaries on a consolidated basis in accordance with GAAP.

"***Fixed Charge Coverage Ratio***" means, for any period, the ratio of (a) EBITDA *minus* taxes paid in cash to (b) Fixed Charges, all calculated for the Borrower and its Subsidiaries on a consolidated basis in accordance with GAAP.

"***Foreign Currency***" means each Applicable Currency, other than dollars.

"***Foreign Currency LC Exposure***" means, at any time, the sum of (a) the Dollar Amount of the aggregate undrawn and unexpired amount of all outstanding Foreign Currency Letters of Credit at such time plus (b) the aggregate principal Dollar Amount of all LC Disbursements in respect of Foreign Currency Letters of Credit that have not yet been reimbursed at such time.

"***Foreign Currency Letter of Credit***" means a Letter of Credit denominated in a Foreign Currency.

"***Foreign Currency Sublimit***" means $25,000,000.

"***Foreign Lender***" means (a) if the 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.

"***GAAP***" means generally accepted accounting principles in the United States of America.

"***Governmental Authority***" means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"***Governmental Authorizations***" means any and all permits, licenses, authorizations, certificates, registrations, accreditations and governmental or other approvals applied for, pending by, issued or given to any Loan Party or any of their Subsidiaries with or by any governmental or quasi-governmental authorities (federal, state, local or foreign) and all agreements with any governmental or quasi-governmental authorities

(federal, state, local or foreign) entered into by any Loan Party or any of their Subsidiaries, that are in effect or applied for.

"***Guarantee***" of or by any Person (the "***guarantor***") means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness of any other Person (the "***primary obligor***") in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness; provided, that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business.

"***Guarantors***" means all Loan Guarantors and all non-Loan Parties who have delivered an Obligation Guaranty, and the term "Guarantor" means each or any one of them individually.

"***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, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

"***Impacted Interest Period***" has the meaning assigned to it in the definition of "Eurocurrency Rate."

"***Indebtedness***" of any Person means, without duplication, (a) all obligations of such Person for borrowed money or with respect to deposits or advances of any kind, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person upon which interest charges are customarily paid, (d) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (e) all obligations of such Person in respect of the deferred purchase price of property or services (excluding current accounts payable incurred in the ordinary course of business), (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (g) all Guarantees by such Person of Indebtedness of others, (h) all Capital Lease Obligations of such Person, (i) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty and (j) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

"***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 (a) hereof, Other Taxes.

"***Ineligible Institution***" has the meaning assigned to it in Section 9.04(b).

"***Intellectual Property***" means, with respect to any Person, any and all of such Person's (a) Patents, Trademarks and Copyrights, including any amendments, renewals and extensions thereof, (b) trade secrets

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

"***Interest Election Request***" means a request by the Borrower to convert or continue a Revolving Borrowing in accordance with Section 2.08.

"***Interest Expense***" means, with reference to any period, total interest expense (including that attributable to Capital Lease Obligations) of the Borrower and its Subsidiaries for such period with respect to all outstanding Indebtedness of the Borrower and its Subsidiaries (including all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptances and net costs under Swap Agreements in respect of interest rates, to the extent such net costs are allocable to such period in accordance with GAAP), calculated for the Borrower and its Subsidiaries on a consolidated basis for such period in accordance with GAAP.

"***Interest Payment Date***" means (a) with respect to any ABR Loan, the last day of each March, June, September and December and (b) with respect to any Eurodollar Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Eurodollar Borrowing with an Interest Period of more than three months' duration, each day prior to the last day of such Interest Period that occurs at intervals of three months' duration after the first day of such Interest Period.

"***Interest Period***" means with respect to any Eurodollar Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, two, three or six months thereafter, as the Borrower may elect; provided, that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless, in the case of a Eurodollar Borrowing only, such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day and (ii) any Interest Period pertaining to a Eurodollar Borrowing that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and, in the case of a Revolving Borrowing, thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

"***Interpolated Rate***" means with respect to the LIBO Screen Rate, the CDOR Rate or the STIBOR Rate, as applicable, at any time, for any Interest Period, the rate *per annum* (rounded to the same number of decimal places as the LIBO Screen Rate, the CDOR Rate or the STIBOR Rate, as applicable) determined by the Administrative Agent (which determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the LIBO Screen Rate, the CDOR Rate or the STIBOR Rate, as applicable, for the longest period (for which such rate is available for the Applicable Currency) that is shorter than the Impacted Interest Period; and (b) the LIBO Screen Rate, the CDOR Rate or the STIBOR Rate, as applicable, for the shortest period (for which such rate is available for the Applicable Currency) that exceeds the Impacted Interest Period, in each case, at such time.

"***IRS***" means the United States Internal Revenue Service.

"***Issuing Bank***" means JPMorgan in its capacity as the issuer of Letters of Credit hereunder, and its successors in such capacity as provided in Section 2.06(i). Any Issuing Bank may, in its discretion, arrange

for one or more Letters of Credit to be issued by Affiliates of such Issuing Bank, in which case the term "Issuing Bank" shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate. Each reference herein to the "Issuing Bank" shall be deemed to be a reference to the relevant Issuing Bank.

"***JPMorgan***" means JPMorgan Chase Bank, National Association.

"***LC Disbursement***" means a payment made by the Issuing Bank pursuant to a Letter of Credit.

"***LC Exposure***" means, at any time, the sum of (a) the aggregate undrawn Dollar Amount of all outstanding Letters of Credit at such time plus (b) the aggregate Dollar Amount of all LC Disbursements that have not yet been reimbursed by or on behalf of the Borrower at such time. The LC Exposure of any Lender at any time shall be its Applicable Percentage of the total LC Exposure at such time.

"***Lender Parent***" means, with respect to any Lender, any Person as to which such Lender is, directly or indirectly, a subsidiary.

"***Lenders***" means the Persons listed on Schedule 2.01 and any other Person that shall have become a party hereto pursuant to an Assignment and Assumption, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption. Unless the context otherwise requires, the term "Lenders" includes the Issuing Bank.

"***Letter of Credit***" means any letter of credit issued pursuant to this Agreement.

"***Letter of Credit Commitment***" means, with respect to each Issuing Bank, the commitment of such Issuing Bank to issue Letters of Credit hereunder. The initial amount of each Issuing Bank's Letter of Credit Commitment is set forth on Schedule 2.01, or if an Issuing Bank has entered into an Assignment and Assumption, the amount set forth for such Issuing Bank as its Letter of Credit Commitment in the Register maintained by the Administrative Agent.

"***LIBO Screen Rate***" has the meaning assigned to it in the definition of "Eurocurrency Rate."

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

"***Loan Documents***" means this Agreement, including schedules and exhibits hereto, each Collateral Document, the Loan Guaranty and any promissory notes and any other agreement, instrument, document or certificate entered into in connection herewith by the Borrower or any Loan Party with or in favor of the Administrative Agent and/or the Lenders, including any amendments, modifications or supplements thereto or waivers thereof, legal opinions issued in connection with the other Loan Documents, UCC filings, flood determinations, letter of credit applications and any agreements between the Borrower and the Issuing Bank regarding the Issuing Bank's Letter of Credit Commitment or the respective rights and obligations between the Borrower and the Issuing Bank in connection with the issuance of Letters of Credit and any other documents prepared in connection with the other Loan Documents, if any.

"***Loan Guarantor***" means each Loan Party, other than Excluded Subsidiaries.

"***Loan Guaranty***" means that certain Guaranty (including any and all supplements thereto), dated as of the date hereof, among the Loan Guarantors and the Administrative Agent, for the benefit of the Administrative Agent and the other Secured Parties, and any other guarantee entered into, after the date of this Agreement by any other Loan Party (as required by this Agreement or any other Loan Document) or any other Person for the benefit of the Administrative Agent and the other Secured Parties, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"***Loan Parties***" means the Borrower and each Guarantor.

"***Loans***" means the loans made by the Lenders to the Borrower pursuant to this Agreement.

"***Local Time***" means (i) New York City time in the case of a Loan, Borrowing or LC Disbursement denominated in dollars and (ii) local time in the case of a Loan, Borrowing or LC Disbursement denominated in a Foreign Currency (it being understood that such local time shall mean London, England time unless otherwise notified by the Administrative Agent).

"***Long-Term Debt***" means any Indebtedness that, in accordance with GAAP, constitutes (or, when incurred, constituted) a long-term liability.

"***Material Adverse Effect***" means a material adverse effect on (a) the business, assets, operations, property or financial condition of the Borrower and its Subsidiaries taken as a whole or (b) the validity or enforceability of any of the Loan Documents or the rights and remedies of the Administrative Agent or Lenders thereunder.

"***Material Indebtedness***" means Indebtedness (other than the Loans and Letters of Credit), or obligations in respect of one or more Swap Agreements, of any one or more of the Borrower and its Subsidiaries in an aggregate principal amount exceeding $15,000,000. For purposes of determining Material Indebtedness, the "principal amount" of the obligations of the Borrower or any Subsidiary in respect of any Swap Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that the Borrower or such Subsidiary would be required to pay if such Swap Agreement were terminated at such time.

"***Maturity Date***" means June 17, 2021.

"***Moody's***" means Moody's Investors Service, Inc.

"***Multiemployer Plan***" means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

"***Net Income***" means, for any period, the consolidated net income (or loss) determined for the Borrower and its Subsidiaries, on a consolidated basis, in accordance with GAAP; provided that there shall be excluded (a) subject to Section 1.05 hereof, the income (or deficit) of any Person accrued prior to the date it becomes a Subsidiary or is merged into or consolidated with the Borrower or any Subsidiary, (b) the income (or deficit) of any Person (other than a Subsidiary) in which the Borrower or any Subsidiary has an ownership interest, except to the extent that any such income is actually received by the Borrower or such Subsidiary in the form of dividends or similar distributions and (c) the undistributed earnings of any Subsidiary, to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary is not at the time permitted by the terms of any contractual obligation (other than under any Loan Document) or requirement of law applicable to such Subsidiary.

"***NYFRB***" means the Federal Reserve Bank of New York.

"***NYFRB Rate***" means, for any day, the greater of (a) the Federal Funds Effective Rate in effect on such day and (b) the Overnight Bank Funding Rate in effect on such day (or for any day that is not a Business Day, for the immediately preceding Business Day); provided that if none of such rates are published for any day that is a Business Day, the term "NYFRB Rate" means the rate for a federal funds transaction quoted at 11:00 a.m. on such day received to the Administrative Agent from a Federal funds broker of recognized standing selected by it; provided, further, that if any of the aforesaid rates shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

"***Obligation Guaranty***" means any Guarantee of all or any portion of the Secured Obligations executed and delivered to the Administrative Agent for the benefit of the Secured Parties by a guarantor who is not a Loan Party.

"***Obligations***" means all unpaid principal of and accrued and unpaid interest on the Loans, all LC Exposure, all accrued and unpaid fees and all expenses, reimbursements, indemnities and other obligations and indebtedness (including interest and fees accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), obligations and liabilities of any of the Loan Parties to any of the Lenders, the Administrative Agent, the Issuing Bank or any indemnified party, individually or collectively, existing on the Effective Date or arising thereafter, direct or indirect, joint or several, absolute or contingent, matured or unmatured, liquidated or unliquidated, secured or unsecured, in each case arising by contract, operation of law or otherwise, arising or incurred under this Agreement or any of the other Loan Documents or in respect of any of the Loans made or reimbursement or other obligations incurred or any of the Letters of Credit or other instruments at any time evidencing any thereof.

"***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, Letter of Credit 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 2.19).

"***Overnight Bank Funding Rate***" means, for any day, the rate comprised of both overnight federal funds and overnight Eurodollar borrowings by U.S.-managed banking offices of depository institutions (as such composite rate shall be determined by the NYFRB as set forth on its public website from time to time) and published on the next succeeding Business Day by the NYFRB as an overnight bank funding rate (from and after such date as the NYFRB shall commence to publish such composite rate).

"***Overnight Foreign Currency Rate***" means, for any amount payable in a Foreign Currency, the rate of interest per annum as determined by the Administrative Agent at which overnight or weekend deposits in the relevant currency (or if such amount due remains unpaid for more than three (3) Business Days, then for such other period of time as the Administrative Agent may elect) for delivery in immediately available and freely transferable funds would be offered by the Administrative Agent to major banks in the interbank market upon request of such major banks for the relevant currency as determined above and in an amount

comparable to the unpaid principal amount of the related Credit Event, plus any taxes, levies, imposts, duties, deductions, charges or withholdings imposed upon, or charged to, the Administrative Agent by any relevant correspondent bank in respect of such amount in such relevant currency.

"***Participant***" has the meaning assigned to such term in Section 9.04(c).

"***Participant Register***" has the meaning assigned to such term in Section 9.04(c).

"***Patents***" means, with respect to any Person, all of such Person's right, title, and interest in and to: (a) any and all patents and patent applications; (b) all inventions and improvements described and claimed therein; (c) all reissues, divisions, continuations, renewals, extensions, and continuations-in-part thereof; (d) all income, royalties, damages, claims, and payments now or hereafter due or payable under and with respect thereto, including, without limitation, damages and payments for past and future infringements thereof; (e) all rights to sue for past, present, and future infringements thereof; and (f) all rights corresponding to any of the foregoing throughout the world.

"***PBGC***" means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

"***Permitted Encumbrances***" means:

(a) Liens imposed by law for Taxes that are not yet due or are being contested in compliance with Section 5.04;

(b) carriers', warehousemen's, mechanics', materialmen's, repairmen's and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than thirty (30) days or are being contested in compliance with Section 5.04;

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

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

(e) judgment liens in respect of judgments that do not constitute an Event of Default under clause (k) of Article VII;

(f) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of the Borrower or any Subsidiary;

(g) Liens in favor of a banking or other financial institution arising as a matter of law or in the ordinary course of business under customary general terms and conditions encumbering deposits or other funds maintained with a financial institution (including the right of set-off) and that are within the general parameters customary in the banking industry or arising pursuant to such banking institution's general terms and conditions;

(h) Liens on specific items of inventory or other goods and proceeds thereof of any Person securing such Person's obligations in respect of bankers' acceptances or letters of credit issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods in the ordinary course of business; and

(i) Liens encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business and not for speculative purposes.

"***Permitted Investments***" means:

(a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within eighteen months from the date of acquisition thereof;

(b) investments in commercial paper maturing within 365 days from the date of acquisition thereof and investments in corporate obligations maturing within eighteen months, having, at such date of acquisition, a minimum S&P rating of A1 or Moody's rating of P1;

(c) investments in certificates of deposit, in individual increments of $250,000 or less from any individual commercial bank, banker's acceptances and time deposits maturing within 180 days from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the United States of America or any State thereof;

(d) fully collateralized repurchase agreements with a term of not more than thirty (30) days for securities described in clause (a) above and entered into with a financial institution satisfying the criteria described in clause (c) above;

(e) money market funds that (i) comply with the criteria set forth in SEC Rule 2a-7 under the Investment Company Act of 1940, (ii) are rated AAA by S&P and Aaa by Moody's and (iii) have portfolio assets of at least $100,000,000;

(f) investments in investment grade corporate bonds existing on the Effective Date;

(g) local currencies held by any foreign Subsidiary; and

(h) investments of the type described in clauses (a) through (d) above of foreign Subsidiaries.

"***Person***" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"***Plan***" means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which the Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"***Platform***" means Debt Domain, Intralinks, Syndtrak or a substantially similar electronic transmission system.

"***Prime Rate***" means the rate of interest *per annum* publicly announced from time to time by JPMorgan Chase Bank, N.A. as its prime rate in effect at its office located at 270 Park Avenue, New York, New York; each change in the Prime Rate shall be effective from and including the date such change is publicly announced as being effective.

"***Projections***" has the meaning assigned to such term in Section 5.01(d).

"***Recipient***" means (a) the Administrative Agent, (b) any Lender and (c) any Issuing Bank, as applicable.

"***Register***" has the meaning assigned to such term in Section 9.04(b).

"***Related Parties***" means, with respect to any specified Person, such Person's Affiliates and the respective directors, officers, employees, agents and advisors of such Person and such Person's Affiliates.

"***Required Lenders***" means, at any time, Lenders having Revolving Credit Exposures and unused Commitments representing greater than 50% of the sum of the total Revolving Credit Exposures and unused Commitments at such time.

"***Restricted Payment***" means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests in the Borrower or any Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Equity Interests in the Borrower or any option, warrant or other right to acquire any such Equity Interests in the Borrower.

"***Revolving Credit Exposure***" means, with respect to any Lender at any time, the sum of the outstanding principal amount of such Lender's Revolving Loans, its LC Exposure at such time.

"***Revolving Loan***" means a Loan made pursuant to Section 2.03.

"***S&P***" means Standard & Poor's.

"***Sale and Leaseback Transaction***" has the meaning assigned to it in Section 6.09.

"***Sanctioned Country***" means, at any time, a country, region or territory which is itself the subject or target of any Sanctions (at the time of this Agreement, Cuba, Iran, North Korea, Sudan, Syria and Crimea).

"***Sanctioned Person***" means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, or by the United Nations Security Council, the European Union, any European Union member state, Her Majesty's Treasury of the United Kingdom, or other relevant sanctions authority, (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a) or (b).

"***Sanctions***" means all economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, or (b) the

United Nations Security Council, the European Union, any European Union member state, Her Majesty's Treasury of the United Kingdom, or other relevant sanctions authority.

"***SEC***" means the Securities and Exchange Commission of the United State of America.

"***Secured Obligations***" means all Obligations, together with all (i) Banking Services Obligations and (ii) Swap Agreement Obligations owing to one or more Lenders or their respective Affiliates; provided, however, that the definition of "Secured Obligations" shall not create any guarantee by any Guarantor of (or grant of security interest by any Guarantor to support, as applicable) any Excluded Swap Obligations of such Guarantor for purposes of determining any obligations of any Guarantor.

"***Secured Parties***" means (a) the Lenders, (b) the Administrative Agent, (c) each Issuing Bank, (d) each provider of Banking Services, to the extent the Banking Services Obligations in respect thereof constitute Secured Obligations, (e) each counterparty to any Swap Agreement, to the extent the obligations thereunder constitute Secured Obligations, (f) the beneficiaries of each indemnification obligation undertaken by any Loan Party under any Loan Document and (g) the successors and assigns of each of the foregoing.

"***Security Agreement***" means that certain Pledge and Security Agreement (including any and all supplements thereto), dated as of the date hereof, among the Loan Parties and the Administrative Agent, for the benefit of the Administrative Agent and the other Secured Parties, and any other pledge or security agreement entered into, after the date of this Agreement by any other Loan Party (as required by this Agreement or any other Loan Document) or any other Person for the benefit of the Administrative Agent and the other Secured Parties, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"***Statutory Reserve Rate***" means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentage (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board to which the Administrative Agent is subject with respect to the Adjusted LIBO Rate, for eurocurrency funding (currently referred to as "Eurocurrency Liabilities" in Regulation D of the Board). Such reserve percentage shall include those imposed pursuant to such Regulation D. Eurodollar Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

"***STIBOR Rate***" has the meaning assigned to it in the definition of "Eurocurrency Rate."

"***Subordinated Indebtedness***" of a Person means any Indebtedness of such Person, the payment of which is subordinated to payment of the Secured Obligations to the written satisfaction of the Administrative Agent.

"***subsidiary***" means, with respect to any Person (the "***parent***") at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held (excluding in all cases any "qualifying shares").

"***Subsidiary***" means any direct or indirect subsidiary of the Borrower or of any other Loan Party, as applicable.

"***Swap Agreement***" means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Borrower or the Subsidiaries shall be a Swap Agreement.

"***Swap Agreement Obligations***" means any and all obligations of the Loan Parties and their Subsidiaries, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor), under (a) any Swap Agreement permitted hereunder with a Lender or an Affiliate of a Lender, and (b) any cancellations, buy backs, reversals, terminations or assignments of any Swap Agreement transaction permitted hereunder with a Lender or an Affiliate of a Lender.

"***Taxes***" means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), value added taxes, or any other goods and services, use or sales taxes, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"***Total Indebtedness***" means, at any date, the aggregate principal amount of all Indebtedness of the type specified in clauses (a) through (i) in the definition thereof determined for the Borrower and its Subsidiaries on a consolidated basis at such date, in accordance with GAAP.

"***Total Leverage Ratio***" means, on any date, the ratio of (a) Total Indebtedness on such date to (b) EBITDA for the period of four consecutive fiscal quarters ended on or most recently prior to such date.

"***Total Revolving Credit Exposure***" means, the sum of the outstanding principal amount of all Lenders' Revolving Loans and their LC Exposure at such time.

"***Trademarks***" means, with respect to any Person, all of such Person's right, title, and interest in and to the following: (a) all trademarks (including service marks), trade names, trade dress, and trade styles and the registrations and applications for registration thereof and the goodwill of the business symbolized by the foregoing; (b) all licenses of the foregoing, whether as licensee or licensor; (c) all renewals of the foregoing; (d) all income, royalties, damages, and payments now or hereafter due or payable with respect thereto, including, without limitation, damages, claims, and payments for past and future infringements thereof; (e) all rights to sue for past, present, and future infringements of the foregoing, including the right to settle suits involving claims and demands for royalties owing; and (f) all rights corresponding to any of the foregoing throughout the world.

"***Transactions***" means the execution, delivery and performance by the Borrower of this Agreement, the borrowing of Loans, the use of the proceeds thereof and the issuance of Letters of Credit hereunder.

"***Type***", when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted LIBO Rate or the Alternate Base Rate.

"***U.S. Person***" means a "United States person" within the meaning of Section 7701(a)(30) of the Code.

"***U.S. Tax Compliance Certificate***" has the meaning assigned to such term in Section 2.17(f)(ii)(B)(3).

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

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

SECTION 1.02.
Classification of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Class (e.g., a "***Revolving Loan***") or by Type (e.g., a "***Eurodollar Loan***") or by Class and Type (e.g., a "***Eurodollar Revolving Loan***"). Borrowings also may be classified and referred to by Class (e.g., a "***Revolving Borrowing***") or by Type (e.g., a "***Eurodollar Borrowing***") or by Class and Type (e.g., a "***Eurodollar Revolving Borrowing***").

SECTION 1.03.
Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person's successors and assigns, (c) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (e) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights , and (f) any reference to any law, rule or regulations shall mean such law, rule or regulation as amended or restated from time to time.

SECTION 1.04.
Accounting Terms; GAAP. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided that, if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately

before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith. Notwithstanding any other provision contained herein, the effectiveness of any change in GAAP after the Effective Date will not cause any lease that was not or would not have been a capital lease prior to such change to be deemed a capital lease. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under Financial Accounting Standards Board Accounting Standards Codification 825 (or any other Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of the Borrower or any Subsidiary at "fair value", as defined therein.

SECTION 1.05.

Pro Forma Adjustments for Acquisitions and Dispositions. To the extent the Borrower or any of its Subsidiaries makes any acquisition permitted pursuant to Section 6.04 or disposition of assets outside the ordinary course of business during the period of four fiscal quarters of the Borrower most recently ended for which financial statements have been delivered, the Total Leverage Ratio shall be calculated after giving pro forma effect thereto (including pro forma adjustments arising out of events which are directly attributable to the acquisition or the disposition of assets, are factually supportable and are expected to have a continuing impact, in each case as determined on a basis consistent with Article 11 of Regulation S-X of the Securities Act of 1933, as amended, as interpreted by the SEC, and as certified by a Financial Officer), as if such acquisition or such disposition (and any related incurrence, repayment or assumption of Indebtedness) had occurred in the first day of such four-quarter period.

SECTION 1.06.

Status of Obligations. In the event that the Borrower or any other Loan Party shall at any time issue or have outstanding any Subordinated Indebtedness, the Borrower shall take or cause such other Loan Party to take all such actions as shall be necessary to cause the Secured Obligations to constitute senior indebtedness (however denominated) in respect of such Subordinated Indebtedness and to enable the Administrative Agent and the Lenders to have and exercise any payment blockage or other remedies available or potentially available to holders of senior indebtedness under the terms of such Subordinated Indebtedness. Without limiting the foregoing, the Secured Obligations are hereby designated as "senior indebtedness" and as "designated senior indebtedness" and words of similar import under and in respect of any indenture or other agreement or instrument under which such Subordinated Indebtedness is outstanding and are further given all such other designations as shall be required under the terms of any such Subordinated Indebtedness in order that the Lenders may have and exercise any payment blockage or other remedies available or potentially available to holders of senior indebtedness under the terms of such Subordinated Indebtedness.

ARTICLE II

The Credits

SECTION 2.01.

Commitments. Subject to the terms and conditions set forth herein, each Lender agrees to make Revolving Loans to the Borrower in the Applicable Currency from time to time during the Availability Period in an aggregate principal amount that will not result (after giving effect to any application of proceeds of such Borrowing pursuant to Section 2.10) in (a) the Dollar Amount of any Lender's Revolving Credit Exposure exceeding such Lender's Commitment, (b) the sum of the Dollar Amount of the Total Revolving Credit Exposures exceeding the total Commitments or (c) the Dollar Amount of the total outstanding Revolving Loans denominated in Foreign Currencies to exceed the Foreign Currency Sublimit. Within the

foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Revolving Loans.

SECTION 2.02.
Loans and Borrowings. (II) Each Revolving Loan shall be made as part of a Borrowing consisting of Revolving Loans made by the Lenders ratably in accordance with their respective Commitments. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder; provided that the Commitments of the Lenders are several and no Lender shall be responsible for any other Lender's failure to make Loans as required.

(b) Subject to Section 2.14, each Revolving Borrowing shall be comprised entirely of ABR Loans or Eurodollar Loans as the Borrower may request in accordance herewith. Each Lender at its option may make any Eurodollar Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement.

(c) At the commencement of each Interest Period for any Eurodollar Revolving Borrowing, such Borrowing shall be in an aggregate Dollar Amount that is an integral multiple of $1,000,000 and not less than $5,000,000. At the time that each ABR Revolving Borrowing is made, such Borrowing shall be in an aggregate Dollar Amount that is an integral multiple of $100,000 and not less than $500,000; provided that an ABR Revolving Borrowing may be in an aggregate Dollar Amount that is equal to the entire unused balance of the total Commitments or that is required to finance the reimbursement of an LC Disbursement as contemplated by Section 2.06(e). Borrowings of more than one Type and Class may be outstanding at the same time; provided that there shall not at any time be more than a total of 10 Eurodollar Revolving Borrowings outstanding.

(d) Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date.

SECTION 2.03.
Requests for Revolving Borrowings. To request a Revolving Borrowing, the Borrower shall notify the Administrative Agent of such request by telephone (a) in the case of a Eurodollar Borrowing denominated in dollars, not later than 1:00 p.m., New York City time, three (3) Business Days before the date of the proposed Borrowing, (b) in the case of a Eurodollar Borrowing denominated in a Foreign Currency, not later than 11:00 a.m., Local Time, three (3) Business Days before the date of the proposed Borrowing or (c) in the case of an ABR Borrowing, not later than 11:00 a.m., New York City time, on the date of the proposed Borrowing; provided that any such notice of an ABR Revolving Borrowing to finance the reimbursement of an LC Disbursement as contemplated by Section 2.06(e) may be given not later than 1:00 p.m., New York City time, on the date of the proposed Borrowing. Each such telephonic Borrowing Request shall be irrevocable and shall be confirmed promptly by hand delivery or telecopy (or transmit by electronic communication in accordance with Section 9.01 hereof) to the Administrative Agent of a written Borrowing Request in a form approved by the Administrative Agent and signed by the Borrower. Each such telephonic and written Borrowing Request shall specify the following information in compliance with Section 2.02:

(i) the aggregate amount of the requested Borrowing;

(ii) the date of such Borrowing, which shall be a Business Day;

(iii) whether such Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing;

(iv) in the case of a Eurodollar Borrowing, the Applicable Currency and initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period"; and

(v) the location and number of the Borrower's account to which funds are to be disbursed, which shall comply with the requirements of Section 2.07.

If no election as to the Type of Revolving Borrowing is specified, then the requested Revolving Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested Eurodollar Revolving Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one month's duration. Promptly following receipt of a Borrowing Request in accordance with this Section, the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

SECTION 2.04.
Determination of Dollar Amounts. The Administrative Agent will determine the Dollar Amount of:

(a) each Eurodollar Borrowing as of the date two (2) Business Days prior to the date of such Borrowing or, if applicable, the date of conversion/continuation of any Borrowing as a Eurodollar Borrowing;

(b) the LC Exposure as of the date of each request for the issuance, amendment, renewal or extension of any Letter of Credit; and

(c) the aggregate amount of all Loans and LC Exposure on and as of the last Business Day of each calendar quarter and, during the continuation of an Event of Default, on any other Business Day elected by the Administrative Agent in its discretion or upon instruction by the Required Lenders.

Each day upon or as of which the Administrative Agent determines Dollar Amounts as described in the preceding clauses (a), (b) and (c) is herein described as a "***Computation Date***" with respect to each Credit Event for which a Dollar Amount is determined on or as of such day.

SECTION 2.05.
[Intentionally Omitted].

SECTION 2.06.
Letters of Credit. (II) General. Subject to the terms and conditions set forth herein, the Borrower may request the issuance of Letters of Credit denominated in Applicable Currencies as the applicant thereof for the support of its or its Subsidiaries' obligations, in a form reasonably acceptable to the Issuing Bank, at any time and from time to time during the Availability Period and the Issuing Bank shall, subject to the conditions precedent set forth in Section 4.02, issue such requested Letters of Credit pursuant to this Agreement. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by the Borrower to, or entered into by the Borrower with, the Issuing Bank relating to any Letter of Credit, the terms and conditions of this Agreement shall control. Notwithstanding anything herein to the contrary, the Issuing Bank shall have no obligation hereunder to issue, and shall not issue, any Letter of Credit the proceeds of which would be made available to any Person (i) to fund any activity or business of or with any Sanctioned Person, or in any country or territory that, at the time of such funding, is the subject of any Sanctions or (ii) in any manner that would result in a violation of any Sanctions by any party to this Agreement.

(b) Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions. To request the issuance of a Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), the Borrower shall hand deliver or telecopy (or transmit by electronic communication in accordance with Section 9.01 hereof) to the Issuing Bank and the Administrative Agent (reasonably in advance of the requested date of issuance, amendment, renewal or extension, but in any event no less than three (3) Business Days, or with respect to Letters of Credit to be issued in Swedish Krona, such longer period as required by the Issuing Bank from time to time) a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, renewed or extended, and specifying the date of issuance, amendment, renewal or extension (which shall be a Business Day), the date on which such Letter of Credit is to expire (which shall comply with paragraph (c) of this Section), the amount of such Letter of Credit, the Applicable Currency, the name and address of the beneficiary thereof and such other information as shall be necessary to prepare, amend, renew or extend such Letter of Credit. If requested by the Issuing Bank, the Borrower also shall submit a letter of credit application on the Issuing Bank's standard form in connection with any request for a Letter of Credit. A Letter of Credit shall be issued, amended, renewed or extended only if (and upon issuance, amendment, renewal or extension of each Letter of Credit the Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, renewal or extension (i) (x) the aggregate undrawn Dollar Amount of all outstanding Letters of Credit issued by the Issuing Bank at such time plus (y) the aggregate Dollar Amount of all LC Disbursements made the Issuing Bank that have not yet been reimbursed by or on behalf of the Borrower at such time shall not exceed its Letter of Credit Commitment, (ii) the Dollar Amount of any Lender's Revolving Credit Exposure shall not exceed its Commitment and (iii) the sum of the Dollar Amount of the Total Revolving Credit Exposure shall not exceed the total Commitments. The Borrower may, at any time and from time to time, reduce the Letter of Credit Commitment of any Issuing Bank; provided that the Borrower shall not reduce the Letter of Credit Commitment of any Issuing Bank if, after giving effect of such reduction, the conditions set forth in clauses (i) through (iii) above shall not be satisfied.

(c) Expiration Date. Each Letter of Credit shall expire (or be subject to termination by notice from the Issuing Bank to the beneficiary thereof) at or prior to the close of business on the earlier of (i) the date one year after the date of the issuance of such Letter of Credit (or, in the case of any renewal or extension thereof, one year after such renewal or extension) and (ii) the date that is five (5) Business Days prior to the Maturity Date. Notwithstanding the foregoing, any Letter of Credit may, at the discretion of the Issuing Bank, expire no later than one year after the Maturity Date so long as the Borrower cash collateralizes an amount equal to 105% of the face amount of such Letter of Credit at least ten (10) Business Days prior to the Maturity Date in the manner described in Section 2.06(j) and otherwise on terms and conditions reasonably acceptable to the Issuing Bank and the Administrative Agent.

(d) Participations. By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of the Issuing Bank or the Lenders, the Issuing Bank hereby grants to each Lender, and each Lender hereby acquires from the Issuing Bank, a participation in such Letter of Credit equal to such Lender's Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the foregoing, each Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the Issuing Bank, such Lender's Applicable Percentage of each LC Disbursement made by the Issuing Bank and not reimbursed by the Borrower on the date due as provided in paragraph (e) of this Section, or of any reimbursement payment required to be refunded to the Borrower for any reason. Each Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default

or reduction or termination of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

(e) Reimbursement. If the Issuing Bank shall make any LC Disbursement in respect of a Letter of Credit, the Borrower shall reimburse such LC Disbursement by paying to the Administrative Agent in dollars the Dollar Amount equal to such LC Disbursement, calculated as of the date the Issuing Bank made such LC Disbursement (or if the Issuing Bank shall so elect in its sole discretion by notice to the Borrower (given at the time such LC Disbursement is made), in such other Applicable Currency which was paid by the Issuing Bank pursuant to such LC Disbursement in an amount equal to such LC Disbursement) not later than 12:00 noon, New York City time, on the date that such LC Disbursement is made, if the Borrower shall have received notice of such LC Disbursement prior to 10:00 a.m., New York City time, on such date, or, if such notice has not been received by the Borrower prior to such time on such date, then not later than 12:00 noon, New York City time, on the Business Day immediately following the day that the Borrower receives such notice; provided that the Borrower may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.03 that such payment be financed with (i) to the extent such LC Disbursement was made in dollars, an ABR Revolving Borrowing in an amount equal to such LC Disbursement or (ii) to the extent that such LC Disbursement was made in a Foreign Currency, a Eurodollar Revolving Borrowing in such Foreign Currency in an amount equal to such LC Disbursement and, in each case, to the extent so financed, the Borrower's obligation to make such payment shall be discharged and replaced by the resulting ABR Revolving Borrowing or Eurodollar Revolving Borrowing, as applicable. If the Borrower fails to make such payment when due, the Administrative Agent shall notify each Lender of the applicable LC Disbursement, the payment then due from the Borrower in respect thereof and such Lender's Applicable Percentage thereof. Promptly following receipt of such notice, each Lender shall pay to the Administrative Agent its Applicable Percentage of the payment then due from the Borrower, in the same manner as provided in Section 2.07 with respect to Loans made by such Lender (and Section 2.07 shall apply, *mutatis mutandis*, to the payment obligations of the Lenders), and the Administrative Agent shall promptly pay to the Issuing Bank the amounts so received by it from the Lenders. Promptly following receipt by the Administrative Agent of any payment from the Borrower pursuant to this paragraph, the Administrative Agent shall distribute such payment to the Issuing Bank or, to the extent that Lenders have made payments pursuant to this paragraph to reimburse the Issuing Bank, then to such Lenders and the Issuing Bank as their interests may appear. Any payment made by a Lender pursuant to this paragraph to reimburse the Issuing Bank for any LC Disbursement (other than the funding of ABR Revolving Loans as contemplated above) shall not constitute a Loan and shall not relieve the Borrower of its obligation to reimburse such LC Disbursement. If the Borrower's reimbursement of, or obligation to reimburse, any amounts in any Foreign Currency would subject the Administrative Agent, the Issuing Bank or any Lender to any stamp duty, ad valorem charge or similar tax that would not be payable if such reimbursement were made or required to be made in dollars, the Borrower shall, at its option, either (x) pay the amount of any such tax requested by the Administrative Agent, the Issuing Bank or the relevant Lender or (y) reimburse each LC Disbursement made in such Foreign Currency in dollars, in an amount equal to the Equivalent Amount, calculated using the applicable Exchange Rates, on the date such LC Disbursement is made, of such LC Disbursement.

(f) Obligations Absolute. The Borrower's obligation to reimburse LC Disbursements as provided in paragraph (e) of this Section shall be absolute, unconditional and irrevocable, and shall, subject to the limitations set forth in the immediately following sentence, be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by the Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms

of such Letter of Credit, or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrower's obligations hereunder. Neither the Administrative Agent, the Lenders nor the Issuing Bank, nor any of their Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the Issuing Bank; provided that the foregoing shall not be construed to excuse the Issuing Bank from liability to the Borrower to the extent of any direct damages (as opposed to special, indirect, consequential or punitive damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by applicable law) suffered by the Borrower that are caused by the Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or wilful misconduct on the part of the Issuing Bank (as finally determined by a court of competent jurisdiction), the Issuing Bank shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, the Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

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

(h) Interim Interest. If the Issuing Bank shall make any LC Disbursement, then, unless the Borrower shall reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the reimbursement is due and payable at the rate *per annum* then applicable to ABR Revolving Loans (or in the case such LC Disbursement is denominated in a Foreign Currency, at the Overnight Foreign Currency Rate for such Applicable Currency plus the then effective Applicable Rate with respect to Eurodollar Revolving Loans) and such interest shall be due and payable on the date when such reimbursement is payable; provided that, if the Borrower fails to reimburse such LC Disbursement when due pursuant to paragraph (e) of this Section, then Section 2.13(d) shall apply. Interest accrued pursuant to this paragraph shall be for the account of the Issuing Bank, except that interest accrued on and after the date of payment by any Lender pursuant to paragraph (e) of this Section to reimburse the Issuing Bank shall be for the account of such Lender to the extent of such payment.

(i) Replacement of the Issuing Bank. (II) The Issuing Bank may be replaced at any time by written agreement among the Borrower, the Administrative Agent, the replaced Issuing Bank and the successor Issuing Bank. The Administrative Agent shall notify the Lenders of any such replacement of the Issuing Bank. At the time any such replacement shall become effective, the Borrower shall pay all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 2.12(b). From and after the effective

date of any such replacement, (x) the successor Issuing Bank shall have all the rights and obligations of the Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (y) references herein to the term "Issuing Bank" shall be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous Issuing Banks, as the context shall require. After the replacement of an Issuing Bank hereunder, the replaced Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit.

(ii) Subject to the appointment and acceptance of a successor Issuing Bank, any Issuing Bank may resign as an Issuing Bank at any time upon thirty (30) days' prior written notice to the Administrative Agent, the Borrower and the Lenders, in which case, such Issuing Bank shall be replaced in accordance with Section 2.06(i) above.

(j) Cash Collateralization. If any Event of Default shall occur and be continuing, on the Business Day that the Borrower receives notice from the Administrative Agent or the Required Lenders (or, if the maturity of the Loans has been accelerated, Lenders with LC Exposure representing not less than 51% of the total LC Exposure) demanding the deposit of cash collateral pursuant to this paragraph, the Borrower shall deposit in an account with the Administrative Agent, in the name of the Administrative Agent and for the benefit of the Lenders, an amount in cash equal to 105% of the Dollar Amount of the LC Exposure as of such date plus any accrued and unpaid interest thereon; provided that (i) the portions of such amount attributable to undrawn Foreign Currency Letters of Credit or LC Disbursements in a Foreign Currency that the Borrower is not late in reimbursing shall be deposited in the applicable Foreign Currencies in the actual amounts of such undrawn Letters of Credit and LC Disbursements and (ii) the obligation to deposit such cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to the Borrower described in clause (h) or (i) of Article VII. For the purposes of this paragraph, the Foreign Currency LC Exposure shall be calculated using the applicable Exchange Rate on the date notice demanding cash collateralization is delivered to the Borrower. The Borrower also shall deposit cash collateral pursuant to this paragraph as and to the extent required by Section 2.11(c). Such deposit shall be held by the Administrative Agent as collateral for the payment of the LC Exposure under this Agreement. The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Administrative Agent and at the Borrower's risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Administrative Agent to reimburse the Issuing Bank for LC Disbursements for which it has not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrower for the LC Exposure at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of Lenders with LC Exposure representing not less than 51% of the total LC Exposure), be applied to satisfy other obligations of the Borrower under this Agreement. If the Borrower is required to provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to the Borrower within three (3) Business Days after all Events of Default have been cured or waived.

SECTION 2.07.

Funding of Borrowings. (II) Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof solely by wire transfer of immediately available funds (i) in the case of Loans denominated in dollars, by 12:00 noon, New York City time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders and (ii) in the case of each

Loan denominated in a Foreign Currency, by 12:00 noon, Local Time, in the city of the Administrative Agent's Applicable Payment Office for such currency and at such Applicable Payment Office for such currency. Except in respect of the provisions of this Agreement covering the reimbursement of Letters of Credit, the Administrative Agent will make such Loans available to the Borrower by promptly crediting the funds so received, in like funds, to (x) an account of the Borrower designated by the Borrower in the applicable Borrowing Request, in the case of Loans denominated in dollars made to the Borrower and (y) an account of the Borrower in the relevant jurisdiction and designated by the Borrower in the applicable Borrowing Request, in the case of Loans denominated in a Foreign Currency; provided that ABR Revolving Loans made to finance the reimbursement of an LC Disbursement as provided in Section 2.06(e) shall be remitted by the Administrative Agent to the Issuing Bank.

(b) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any 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 paragraph (a) of this Section and may, in reliance upon such assumption, make available to the Borrower 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 Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation (including without limitation the Overnight Foreign Currency Rate in the case of Loans denominated in a Foreign Currency) or (ii) in the case of the Borrower, the interest rate applicable to ABR Loans. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such Borrowing.

SECTION 2.08.

Interest Elections. (II) Each Revolving Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Eurodollar Revolving Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Eurodollar Revolving Borrowing, may elect Interest Periods therefor, all as provided in this Section. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing. Notwithstanding anything in this Agreement to the contrary, the Borrower may not request that any Eurodollar Revolving Borrowing denominated in a Foreign Currency be converted into a different Type of Borrowing or Loan.

(b) To make an election pursuant to this Section, the Borrower shall notify the Administrative Agent of such election by telephone by the time that a Borrowing Request would be required under Section 2.03 if the Borrower were requesting a Revolving Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such telephonic Interest Election Request shall be irrevocable and shall be confirmed promptly by hand delivery or telecopy (or transmit by electronic communication in accordance with Section 9.01 hereof) to the Administrative Agent of a written Interest Election Request in a form approved by the Administrative Agent and signed by the Borrower.

(c) Each telephonic and written Interest Election Request shall specify the following information in compliance with Section 2.02:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing; and

(iv) if the resulting Borrowing is a Eurodollar Borrowing, the Interest Period and Applicable Currency to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period".

If any such Interest Election Request requests a Eurodollar Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one month's duration.

(d) Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) If the Borrower fails to deliver a timely Interest Election Request with respect to a Eurodollar Revolving Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period (i) in the case of a Eurodollar Borrowing denominated in dollars, such Borrowing shall be converted to an ABR Borrowing and (ii) in the case of a Eurodollar Borrowing denominated in a Foreign Currency, in respect of which the applicable Borrower shall have failed to deliver an Interest Election Request prior to the third (3rd) Business Day preceding the end of such Interest Period, such Borrowing shall automatically continue as a Eurodollar Revolving Borrowing in the same Applicable Currency with an Interest Period of one month unless such Eurodollar Revolving Borrowing is or was repaid in accordance with Section 2.11. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders, so notifies the Borrower, then, so long as such Event of Default is continuing (x) no outstanding Revolving Borrowing may be converted to or continued as a Eurodollar Borrowing, (y) unless repaid, each Eurodollar Revolving Borrowing denominated in dollars shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto and (z) unless repaid, each Eurodollar Revolving Borrowing denominated in a Foreign Currency shall automatically be continued as a Eurodollar Revolving Borrowing in the same Applicable Currency with an Interest Period of one month.

SECTION 2.09.
Termination and Reduction of Commitments. (II) Unless previously terminated, the Commitments shall terminate on the Maturity Date.

(b) The Borrower may at any time terminate the Commitments upon (i) the payment in full of all outstanding Revolving Loans and LC Disbursements, together with accrued and unpaid interest thereon, (ii) the cancellation and return of all outstanding Letters of Credit (or alternatively, with respect to each such Letter of Credit, the furnishing to the Administrative Agent of a cash deposit (or at the discretion of the Administrative Agent a backup standby letter of credit satisfactory to the Administrative Agent and the Issuing Bank) in a Dollar Amount equal to 105% of the LC Exposure as of such date), (iii) the payment in full of the accrued and unpaid fees, including applicable prepayment fee (if any), and (iv) the payment in full of all reimbursable expenses and other Obligations together with accrued and unpaid interest thereon.

(c) The Borrower may from time to time reduce the Commitments; provided that (i) each reduction of the Commitments shall be in an amount that is an integral multiple of $1,000,000 and not less than $5,000,000 and (ii) the Borrower shall not terminate or reduce the Commitments if, after giving effect to any concurrent prepayment of the Loans in accordance with Section 2.11, the Dollar Amount of the sum of the Total Revolving Credit Exposures would exceed the total Commitments.

(d) The Borrower shall notify the Administrative Agent of any election to terminate or reduce the Commitments under paragraph (b) of this Section at least three (3) Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each notice delivered by the Borrower pursuant to this Section shall be irrevocable; provided that a notice of termination of the Commitments delivered by the Borrower may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Any termination or reduction of the Commitments shall be permanent. Each reduction of the Commitments shall be made ratably among the Lenders in accordance with their respective Commitments.

SECTION 2.10.

Repayment of Loans; Evidence of Debt. (II) The Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Revolving Loan on the Maturity Date.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(c) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, the Class, Applicable Currency and Type thereof and the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender’s share thereof.

(d) The entries made in the accounts maintained pursuant to paragraph (b) or (c) of this Section shall be *prima facie* evidence of the existence and amounts of the obligations recorded therein; provided that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement.

(e) Any Lender may request that Loans made by it be evidenced by a promissory note. In such event, the Borrower shall prepare, execute and deliver to such Lender a promissory note payable to such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and in a form approved by the Administrative Agent. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 9.04) be represented by one or more promissory notes in such form.

SECTION 2.11.

Prepayment of Loans. (II) The Borrower shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, subject to prior notice in accordance with paragraph (b) of this Section.

(b) The Borrower shall notify the Administrative Agent by telephone (confirmed by telecopy) of any prepayment hereunder (i) in the case of prepayment of a Eurodollar Revolving Borrowing denominated in dollars, not later than 1:00 p.m., New York City time, three (3) Business Days before the date of prepayment, (ii) in the case of prepayment of a Eurodollar Revolving Borrowing denominated in a Foreign Currency, not later than 11:00 a.m., Local Time, three (3) Business Days before the date of prepayment or (iii) in the case of prepayment of an ABR Revolving Borrowing, not later than 11:00 a.m., New York City time on the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid; provided that, if a notice of prepayment is given in connection with a conditional notice of termination of the Commitments as contemplated by Section 2.09, then such notice of prepayment may be revoked if such notice of termination is revoked in accordance with Section 2.09. Promptly following receipt of any such notice relating to a Revolving Borrowing, the Administrative Agent shall advise the Lenders of the contents thereof. Each partial prepayment of any Revolving Borrowing shall be in an amount that would be permitted in the case of an advance of a Revolving Borrowing of the same Type as provided in Section 2.02. Each prepayment of a Revolving Borrowing shall be applied ratably to the Loans included in the prepaid Borrowing. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.13.

(c) If at any time the sum of the aggregate principal Dollar Amount of all of the Revolving Credit Exposures (calculated, with respect to those Credit Events denominated in Foreign Currencies, as of the most recent Computation Date with respect to each such Credit Event) exceeds (A) the aggregate Commitments or (B) the sum of the aggregate principal Dollar Amount of all of the outstanding Revolving Credit Exposures denominated in a Foreign Currency, as of the most recent Computation Date with respect to each such Credit Event, exceeds the Foreign Currency Sublimit, the Borrower shall immediately repay Borrowings or cash collateralize LC Exposure in an account with the Administrative Agent pursuant to Section 2.06(j), as applicable, in an aggregate principal amount sufficient to cause (x) the aggregate Dollar Amount of all Revolving Credit Exposures (so calculated) to be less than or equal to the aggregate Commitments and (y) the Revolving Credit Exposures denominated in a Foreign Currency to be less than or equal to the Foreign Currency Sublimit, as applicable.

SECTION 2.12.

Fees. (II) The Borrower agrees to pay to the Administrative Agent for the account of each Lender a commitment fee, which shall accrue at the Applicable Rate on the daily unused amount of the Commitment of such Lender during the period from and including the Effective Date to but excluding the date on which such Commitment terminates. Accrued commitment fees shall be payable in arrears on the last day of March, June, September and December of each year and on the date on which the Commitments terminate, commencing on the first such date to occur after the date hereof. All commitment fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(b) The Borrower agrees to pay (i) to the Administrative Agent for the account of each Lender a participation fee with respect to its participations in Letters of Credit, which shall accrue at the same Applicable Rate used to determine the interest rate applicable to Eurodollar Revolving Loans on the average daily Dollar Amount of such Lender's LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Effective Date to but excluding the later of the date on which such Lender's Commitment terminates and the date on which such Lender ceases to have any LC Exposure, and (ii) to the Issuing Bank a fronting fee, which shall accrue at the rate or rates *per annum* separately agreed upon between the Borrower and the Issuing Bank on the average daily Dollar Amount of the LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Effective Date to but excluding the later of the

date of termination of the Commitments and the date on which there ceases to be any LC Exposure, as well as the Issuing Bank's standard fees with respect to the issuance, amendment, renewal or extension of any Letter of Credit or processing of drawings thereunder. Participation fees and fronting fees accrued through and including the last day of March, June, September and December of each year shall be payable on the third (3rd) Business Day following such last day, commencing on the first such date to occur after the Effective Date; provided that all such fees shall be payable on the date on which the Commitments terminate and any such fees accruing after the date on which the Commitments terminate shall be payable on demand. Any other fees payable to the Issuing Bank pursuant to this paragraph shall be payable within ten (10) days after demand. All participation fees and fronting fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(c) The Borrower agrees to pay to the Administrative Agent, for its own account, fees payable in the amounts and at the times separately agreed upon between the Borrower and the Administrative Agent.

(d) All fees payable hereunder shall be paid on the dates due, in immediately available funds, to the Administrative Agent (or to the Issuing Bank, in the case of fees payable to it) for distribution, in the case of commitment fees and participation fees, to the Lenders. Fees paid shall not be refundable under any circumstances.

SECTION 2.13.
Interest. (II) The Loans comprising each ABR Borrowing shall bear interest at the Alternate Base Rate plus the Applicable Rate.

(b) The Loans comprising each Eurodollar Borrowing shall bear interest at the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing plus the Applicable Rate.

(c) Notwithstanding the foregoing, if any principal of or interest on any Loan or any fee or other amount payable by the Borrower hereunder is not paid when due, whether at stated maturity, upon acceleration or otherwise, such overdue amount shall bear interest, after as well as before judgment, at a rate *per annum* equal to (i) in the case of overdue principal of any Loan, 2% plus the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section or (ii) in the case of any other amount, 2% plus the rate applicable to ABR Loans as provided in paragraph (a) of this Section.

(d) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and, in the case of Revolving Loans, upon termination of the Commitments; provided that (i) interest accrued pursuant to paragraph (c) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of an ABR Revolving Loan prior to the end of the Availability Period), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any Eurodollar Revolving Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(e) All interest hereunder shall be computed on the basis of a year of 360 days, except that (i) interest computed by reference to the Alternate Base Rate at times when the Alternate Base Rate is based on the Prime Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year) and (ii) interest on Eurodollar Borrowings denominated in a Foreign Currency shall be computed on the basis of a year of a length consistent with market conventions for loans in such Foreign Currency, and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate, Adjusted LIBO Rate or Eurocurrency Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

SECTION 2.14.
Alternate Rate of Interest. If prior to the commencement of any Interest Period for a Eurodollar Borrowing:

(a) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate or the Eurocurrency Rate, as applicable, for such Interest Period; or

(b) the Administrative Agent is advised in writing by the Required Lenders that the Adjusted LIBO Rate or the Eurocurrency Rate, as applicable, for such Interest Period will not adequately and fairly reflect the cost to such Lenders (or Lender) of making or maintaining their Loans (or its Loan) included in such Borrowing for such Interest Period;

then the Administrative Agent shall give notice thereof to the Borrower and the Lenders by telephone or telecopy as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (i) any Interest Election Request that requests the conversion of any Revolving Borrowing to, or continuation of any Revolving Borrowing as, a Eurodollar Borrowing shall be ineffective and, unless repaid, (A) in the case of a Eurodollar Borrowing denominated in dollars, such Borrowing shall be made as an ABR Borrowing and (B) in the case of a Eurodollar Borrowing denominated in a Foreign Currency, such Eurodollar Borrowing shall be repaid on the last day of the then current Interest Period applicable thereto, and (ii) if any Borrowing Request requests (x) a Eurodollar Revolving Borrowing in dollars, such Borrowing shall be made as an ABR Borrowing and (y) a Eurodollar Revolving Borrowing in a Foreign Currency, such Borrowing Request shall be ineffective; provided that if the circumstances giving rise to such notice affect only one Type of Borrowings, then the other Type of Borrowings shall be permitted.

SECTION 2.15.
Increased Costs. (II) If any Change in Law shall:

(ii) impose, modify or deem applicable any reserve, special deposit, liquidity or similar requirement (including any compulsory loan requirement, insurance charge or other assessment) against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Adjusted LIBO Rate) or the Issuing Bank;

(iii) impose on any Lender or the Issuing Bank or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender or any Letter of Credit or participation therein; or

(iv) 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;

and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making, continuing, converting or maintaining any Loan, or of maintaining its obligation to make any such Loan (including, without limitation, pursuant to any conversion of any Borrowing denominated in an Applicable Currency into a Borrowing denominated in any other Applicable Currency), or to increase the cost to such Lender, the Issuing Bank or such other Recipient of participating in, issuing or maintaining any Letter of Credit (including, without limitation, pursuant to any conversion of any Borrowing denominated in an Applicable Currency into a Borrowing denominated in any other Applicable Currency) or to reduce

the amount of any sum received or receivable by such Lender, the Issuing Bank or such other Recipient hereunder, whether of principal, interest or otherwise (including, without limitation, pursuant to any conversion of any Borrowing denominated in an Applicable Currency into a Borrowing denominated in any other Applicable Currency), then the Borrower will pay to such Lender, the Issuing Bank or such other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender, the Issuing Bank or such other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(b) If any Lender or the Issuing Bank determines that any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or the Issuing Bank's capital or on the capital of such Lender's or the Issuing Bank's holding company, if any, as a consequence of this Agreement or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by the Issuing Bank, to a level below that which such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the Issuing Bank's policies and the policies of such Lender's or the Issuing Bank's holding company with respect to capital adequacy and liquidity and so long as it is generally the policy of such Lender to seek reimbursement for such amounts from similarly situated borrower), then from time to time the Borrower will pay to such Lender or the Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company for any such reduction suffered.

(c) A certificate of a Lender or the Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or the Issuing Bank or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender or the Issuing Bank, as the case may be, the amount shown as due on any such certificate within ten (10) days after receipt thereof.

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

SECTION 2.16.

Break Funding Payments. In the event of (a) the payment of any principal of any Eurodollar Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Eurodollar Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.11(b) and is revoked in accordance therewith), or (d) the assignment of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.19, then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event. In the case of a Eurodollar Loan, such loss, cost or expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Loan had such event

not occurred, at the Adjusted LIBO Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the eurodollar market. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

SECTION 2.17.

Payments Free of Taxes. **(II)** Any and all payments by or on account of any obligation of the Borrower under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by current and future applicable law. If any applicable law (as determined in the good faith discretion of an applicable withholding agent) requires the deduction or withholding of any Tax from any such payment by a withholding agent, then the applicable withholding agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 2.17) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) Payment of Other Taxes by the Borrower. The Borrower 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, Other Taxes.

(c) Evidence of Payments. As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority pursuant to this Section 2.17, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(d) Indemnification by the Borrower. The Borrower shall indemnify each Recipient, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(e) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 9.04(c) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable

or paid by the Administrative Agent 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 hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (e).

(f) Status of Lenders. (II) 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 Borrower 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 Borrower 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 Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower 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 2.17(f)(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 Borrower 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 Borrower or the Administrative Agent), an executed 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 Borrower 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, an executed IRS Form W-8BEN-E or IRS Form W-8BEN 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 IRS Form W-8BEN 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) in the case of a Foreign Lender claiming that its extension of credit will generate U.S. effectively connected income, an executed 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 C-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 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 IRS Form W-8BEN-E or IRS Form W-8BEN; or

(4) to the extent a Foreign Lender is not the beneficial owner, an executed IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN-E, IRS Form W-8BEN, a U.S. Tax Compliance Certificate substantially in the form of Exhibit C-2 or Exhibit C-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 C-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 Borrower 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), executed originals of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. Federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower 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 Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower 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 Borrower or the Administrative Agent as may be necessary for the Borrower 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.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(g) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.17 (including by the payment of additional amounts pursuant to this Section 2.17), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made

under this Section 2.17 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (g) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(h) Survival. Each party's obligations under this Section 2.17 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

(i) Defined Terms. For purposes of this Section 2.17, the term "***Lender***" includes any Issuing Bank and the term "***applicable law***" includes FATCA.

SECTION 2.18.

Payments Generally; Pro Rata Treatment; Sharing of Set-offs. (II) The Borrower shall make each payment required to be made by it hereunder (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Section 2.15, 2.16 or 2.17, or otherwise) prior to (i) in the case of payments denominated in dollars, 12:00 noon, New York City time and (ii) in the case of payments denominated in a Foreign Currency, 12:00 noon, Local Time, in the city of the Administrative Agent's Applicable Payment Office for such currency, in each case on the date when due, in immediately available funds, without set-off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made (i) subject to Section 2.06(e), in the same currency in which the applicable Credit Event was made (or where such currency has been converted to another Applicable Currency, in such Applicable Currency) and (ii) to the Administrative Agent at its offices at 270 Park Avenue, New York, New York, or, in the case of a Credit Event denominated in a Foreign Currency, the Administrative Agent's Applicable Payment Office for such currency, except payments to be made directly to the Issuing Bank as expressly provided herein and except that payments pursuant to Sections 2.15, 2.16, 2.17 and 9.03 shall be made directly to the Persons entitled thereto. The Administrative Agent shall distribute any such payments denominated in the same currency received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. Notwithstanding the foregoing provisions of this Section, if, after the making of any Credit Event in any Foreign Currency, currency control or exchange regulations are imposed in the country which issues such currency with the result that the type of currency in which the Credit Event was made (the "***Original Currency***") no longer exists or the Borrower is not able to make payment to the Administrative Agent for the account of the Lenders in such Original Currency, then all payments to be made by the Borrower hereunder in such currency shall instead be made when due in dollars in an amount equal

to the Dollar Amount (as of the date of repayment) of such payment due, it being the intention of the parties hereto that the Borrower take all risks of the imposition of any such currency control or exchange regulations.

(b) Any funds or proceeds of Collateral received by the Administrative Agent (i) not constituting either (A) a specific payment of principal, interest, fees or other sum payable under the Loan Documents (which shall be applied as specified by the Borrower), or (B) a mandatory prepayment (which shall be applied in accordance with Section 2.11) or (ii) after an Event of Default has occurred and is continuing and the Administrative Agent so elects or the Required Lenders so direct, shall be applied ratably first, to pay any fees, indemnities, or expense reimbursements including amounts then due to the Administrative Agent and the Issuing Bank from the Borrower (other than in connection with Banking Services Obligations or Swap Agreement Obligations), second, to pay any fees or expense reimbursements then due to the Lenders from the Borrower (other than in connection with Banking Services Obligations or Swap Agreement Obligations), third, to pay interest then due and payable on the Loans ratably, fourth, to prepay principal on the Loans and unreimbursed LC Disbursements and to pay any amounts owing with respect to Swap Agreement Obligations up to and including the amount most recently provided to the Administrative Agent pursuant to Section 2.22, ratably, fifth, to pay an amount to the Administrative Agent equal to one hundred five percent (105%) of the aggregate LC Exposure, to be held as cash collateral for such Obligations, and sixth, to the payment of any amounts owing in respect of Banking Services Obligations up to and including the amount most recently provided to the Administrative Agent pursuant to Section 2.22, or, with respect to the Existing Letters of Credit, payment of cash collateral to Silicon Valley Bank in an amount equal to one hundred five percent (105%) of the aggregate exposure thereunder, and seventh, to the payment of any other Secured Obligation due to the Administrative Agent or any Lender from the Borrower or any other Loan Party.

Notwithstanding the foregoing, Secured Obligations arising under Banking Services Obligations or Swap Agreement Obligations shall be excluded from the application described above and paid in clause seventh if the Administrative Agent has not received written notice thereof, together with such supporting documentation as the Administrative Agent may have reasonably requested from the applicable provider of such Banking Services or Swap Agreements.

(c) If any Lender shall, by exercising any right of set off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Revolving Loans or participations in LC Disbursements resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Revolving Loans and participations in LC Disbursements and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Revolving Loans and participations in LC Disbursements of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Revolving Loans and participations in LC Disbursements; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in LC Disbursements to any assignee or participant, other than to the Borrower or any Subsidiary or Affiliate thereof (as to which the provisions of this paragraph shall apply). The Borrower 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 the Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(d) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the Issuing Bank hereunder that 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 Lenders or the Issuing Bank, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or the Issuing Bank, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or Issuing Bank with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation (including without limitation the Overnight Foreign Currency Rate in the case of Loans denominated in a Foreign Currency).

(e) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.06(d) or 2.06(e), 2.07(b), 2.18(d) or 9.03(c), then the Administrative Agent may, in its discretion and notwithstanding any contrary provision hereof, (i) apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid, and/or (ii) hold such amounts in a segregated account over which the Administrative Agent shall have exclusive control as cash collateral for, and application to, any future funding obligations of such Lender under any such Section, in the case of each of clauses (i) and (ii) above, in any order as determined by the Administrative Agent in its discretion.

SECTION 2.19.

Mitigation Obligations; Replacement of Lenders. (II) If any Lender requests compensation under Section 2.15, or if the Borrower is 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 2.17, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Sections 2.15 or 2.17, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If any Lender (i) requests compensation under Section 2.15, (ii) if the Borrower is 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 2.17, (iii) if any Lender becomes Defaulting Lender or (iv) if any Lender has failed to consent to any amendment, consent or waiver that has been approved by the Required Lenders but requires the approval of all the Lenders, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights (other than its existing rights to payments pursuant to Sections 2.15 or 2.17) and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (i) the Borrower shall have received the prior written consent of the Administrative Agent (and if a Commitment is being assigned, the Issuing Bank), which consent shall not unreasonably be withheld, (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in LC Disbursements, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts) and (iii) in the

case of any such assignment resulting from a claim for compensation under Section 2.15 or payments required to be made pursuant to Section 2.17, such assignment will result in a reduction in such compensation or payments. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

SECTION 2.20.

Defaulting Lenders. Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender:

(a) fees shall cease to accrue on the Commitment of such Defaulting Lender pursuant to Section 2.12(a);

(b) the Commitment and Revolving Credit Exposure of such Defaulting Lender shall not be included in determining whether the Required Lenders have taken or may take any action hereunder (including any consent to any amendment, waiver or other modification pursuant to Section 9.02); provided that this clause (b) shall not apply to the vote of a Defaulting Lender in the case of an amendment, waiver or other modification requiring the consent of such Lender or each Lender affected thereby; and

(c) if any LC Exposure exists at the time such Lender becomes a Defaulting Lender then:

(iii) all or any part of the LC Exposure of such Defaulting Lender shall be reallocated among the non-Defaulting Lenders in accordance with their respective Applicable Percentages but only (x) to the extent that such reallocation does not, as to any non-Defaulting Lender, cause such non-Defaulting Lender's Revolving Credit Exposure to exceed its Commitment and (y) if the conditions set forth in Section 4.02 are satisfied at such time;

(iv) if the reallocation described in clause (i) above cannot, or can only partially, be effected, the Borrower shall within one (1) Business Day following notice by the Administrative Agent cash collateralize for the benefit of the Issuing Bank only the Borrower's obligations corresponding to such Defaulting Lender's LC Exposure (after giving effect to any partial reallocation pursuant to clause (i) above) in accordance with the procedures set forth in Section 2.06(j) for so long as such LC Exposure is outstanding;

(v) if the Borrower cash collateralizes any portion of such Defaulting Lender's LC Exposure pursuant to clause (ii) above, the Borrower shall not be required to pay any fees to such Defaulting Lender pursuant to Section 2.12(b) with respect to such Defaulting Lender's LC Exposure during the period such Defaulting Lender's LC Exposure is cash collateralized;

(vi) if the LC Exposure of the non-Defaulting Lenders is reallocated pursuant to clause (i) above, then the fees payable to the Lenders pursuant to Section 2.12(a) and Section 2.12(b) shall be adjusted in accordance with such non-Defaulting Lenders' Applicable Percentages; and

(vii) if all or any portion of such Defaulting Lender's LC Exposure is neither reallocated nor cash collateralized pursuant to clause (i) or (ii) above, then, without prejudice to any rights or remedies of the Issuing Bank or any other Lender hereunder, all commitment fees that otherwise would have been payable to such Defaulting Lender (solely with respect to the portion of such Defaulting Lender's Commitment that was utilized by such LC Exposure) and letter of credit fees payable under Section 2.12(b) with respect to such Defaulting Lender's LC Exposure shall be payable

to the Issuing Bank until and to the extent that such LC Exposure is reallocated and/or cash collateralized.

If (i) a Bankruptcy Event or a Bail-In Action with respect to a Lender Parent shall occur following the date hereof and for so long as such event shall continue or (ii) the Issuing Bank has a good faith belief that any Lender has defaulted in fulfilling its obligations under one or more other agreements in which such Lender commits to extend credit, the Issuing Bank shall not be required to issue, amend or increase any Letter of Credit, unless the Issuing Bank shall have entered into arrangements with the Borrower or such Lender, satisfactory to the Issuing Bank to defease any risk to it in respect of such Lender hereunder.

In the event that the Administrative Agent, the Borrower, and the Issuing Bank each agrees that a Defaulting Lender has adequately remedied all matters that caused such Lender to be a Defaulting Lender, then the LC Exposure of the Lenders shall be readjusted to reflect the inclusion of such Lender's Commitment and on such date such Lender shall purchase at par such of the Loans of the other Lenders as the Administrative Agent shall determine may be necessary in order for such Lender to hold such Loans in accordance with its Applicable Percentage.

SECTION 2.21.
Increase in Commitments.

(a) Request for Increase. Provided there exists no Default, upon notice to the Administrative Agent (which shall promptly notify the Lenders), the Borrower may from time to time request an increase in the Commitments by an amount (for all such increases) not exceeding $100,000,000; provided that (i) any such increase shall be in a minimum amount of $25,000,000 and (ii) the Borrower may make a maximum of three such increases.

(b) Increasing and Additional Lenders. The Borrower may, in consultation with the Administrative Agent, designate any Lender party to this Agreement (with the consent of such Lender, which may be given or withheld in its sole discretion) or another Person (which may be, but need not be, an existing Lender) which is not an Ineligible Institution and which such Person shall be subject to the consent of the Administrative Agent and the Issuing Bank (such consents not to be unreasonably withheld) if such Person is not a Lender, an Affiliate of a Lender or an Approved Fund and which at the time agrees in its sole discretion to (i) in the case of any such designated Lender that is an existing Lender, increase its Commitment, and (ii) in the case of any other such Person (an "Additional Lender"), become a party to this Agreement pursuant to a customary joinder agreement in form and substance reasonably satisfactory to the Administrative Agent and its counsel.

(c) Effective Date and Allocations. If the Commitments are increased in accordance with this Section, the Borrower shall determine the effective date (the "Increase Effective Date") and the final allocation of such increase in consultation with the Administrative Agent. The Administrative Agent shall promptly notify the Lenders of the final allocation of such increase and the Increase Effective Date.

(d) Conditions to Effectiveness of Increase. As a condition precedent to such increase, the Borrower shall deliver to the Administrative Agent a certificate of each Loan Party dated as of the Increase Effective Date (in sufficient copies for each Lender) signed by a Responsible Officer of such Loan Party (x) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such increase, and (y) in the case of the Borrower, certifying that, before and after giving effect to such increase, (A) the representations and warranties contained in Article V and the other Loan Documents are true and correct in all material respects on and as of the Increase Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct in all material

respects as of such earlier date. The Borrower shall prepay any Revolving Loans outstanding on the Increase Effective Date (and pay any additional amounts required pursuant to Section 2.16) to the extent necessary to keep the outstanding Revolving Loans ratable with any revised Applicable Percentages arising from any nonratable increase in the Commitments under this Section.

(e) Conflicting Provisions. This Section shall supersede any provisions in Section 2.18 or 9.02 to the contrary.

SECTION 2.22.

Banking Services and Swap Agreements. Each Lender or Affiliate thereof providing Banking Services for, or having Swap Agreements with, any Loan Party or any Subsidiary thereof shall deliver to the Administrative Agent, promptly after entering into such Banking Services or Swap Agreements, written notice setting forth the aggregate amount of all Banking Services Obligations and Swap Agreement Obligations of such Loan Party or Subsidiary thereof to such Lender or Affiliate (whether matured or unmatured, absolute or contingent). In furtherance of that requirement, each such Lender or Affiliate thereof shall furnish the Administrative Agent, from time to time after a significant change therein or upon a request therefor, a summary of the amounts due or to become due in respect of such Banking Services Obligations and Swap Agreement Obligations. The most recent information provided to the Administrative Agent shall be used in determining which tier of the waterfall, contained in Section 2.18(b), such Banking Services Obligations and/or Swap Agreement Obligations will be placed.

ARTICLE III

Representations and Warranties

The Borrower represents and warrants to the Administrative Agent and the Lenders that:

SECTION 3.01.

Organization; Powers. Each of the Loan Parties and their Subsidiaries is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, has all requisite power and authority to carry on its business as now conducted and, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required.

SECTION 3.02.

Authorization; Enforceability. The Transactions are within the Borrower's and each other Loan Party's corporate powers and have been duly authorized by all necessary corporate and, if required, stockholder action. This Agreement has been duly executed and delivered by the Borrower and constitutes a legal, valid and binding obligation of the Borrower, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

SECTION 3.03.

Governmental Approvals; No Conflicts. The Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except such as have been obtained or made and are in full force and effect, (b) will not violate any applicable law or regulation or the charter, by-laws or other organizational documents of any Loan Party or any of their

Subsidiaries or any order of any Governmental Authority, (c) will not violate or result in a default under any indenture, material agreement or other material instrument binding upon any Loan Party or any of their Subsidiaries or their assets, or give rise to a right thereunder to require any payment to be made by any Loan Party or any of their Subsidiaries, and (d) will not result in the creation or imposition of any Lien on any asset of any Loan Party or any of their Subsidiaries.

SECTION 3.04.

Financial Condition; No Material Adverse Change. (III) The Borrower has heretofore furnished to the Lenders its consolidated balance sheet and statements of income, stockholders equity and cash flows (i) as of and for the fiscal year ended December 31, 2015, reported on by Ernst & Young LLP, independent public accountants, and (ii) as of and for the fiscal quarter and the portion of the fiscal year ended March 31, 2016, certified by its chief financial officer. Such financial statements present fairly, in all material respects, the financial position and results of operations and cash flows of the Borrower and its consolidated Subsidiaries as of such dates and for such periods in accordance with GAAP, subject to year end audit adjustments and the absence of footnotes in the case of the statements referred to in clause (ii) above.

(b) Since December 31, 2015, there has been no event, development or circumstance that has had or would reasonably be expected to have a Material Adverse Effect.

SECTION 3.05.

Properties. (III) Each of the Loan Parties and its Subsidiaries has good title to, or valid leasehold interests in, all its real and personal property material to its business, except for minor defects in title that do not interfere with its ability to conduct its business as currently conducted or to utilize such properties for their intended purposes or except where the failure to do so would not reasonably be expected to have a Material Adverse Effect.

(k) As of the Effective Date, the Loan Parties not have any interest in, or title to, any Intellectual Property except as set forth in Schedule 3.05. Each of the Loan Parties and its Subsidiaries owns, or is licensed to use, all Trademarks, Copyrights, Patents and other Intellectual Property free and clear of all Liens (other than Liens permitted under Section 6.02), and the use thereof by the Loan Parties and their Subsidiaries does not infringe upon the rights of any other Person, except for any such infringements that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.06.

Litigation and Environmental Matters. (III) There are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of the Borrower, threatened against or affecting any Loan Party or any of their Subsidiaries (i) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect (other than the Disclosed Matters) or (ii) that involve this Agreement or the Transactions.

(c) Except for the Disclosed Matters and except with respect to any other matters that, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, no Loan Party nor any of their Subsidiaries (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, (iii) has received notice of any claim with respect to any Environmental Liability or (iv) knows of any basis for any Environmental Liability.

(d) Since the date of this Agreement, there has been no change in the status of the Disclosed Matters that, individually or in the aggregate, has resulted in, or would reasonably be expected to result in Material Adverse Effect.

SECTION 3.07.

Compliance with Laws and Agreements. Each Loan Party and its Subsidiaries is in compliance with all laws, regulations and orders of any Governmental Authority applicable to it or its property and all indentures, agreements and other instruments binding upon it or its property, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect. No Default has occurred and is continuing.

SECTION 3.08.

Investment Company Status. No Loan Party nor any of their Subsidiaries is an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940.

SECTION 3.09.

Taxes. Each Loan Party and its Subsidiaries has timely filed or caused to be filed all Tax returns and reports required to have been filed and has paid or caused to be paid all Taxes required to have been paid by it, except (a) Taxes that are being contested in good faith by appropriate proceedings and for which such Loan Party or such Subsidiary, as applicable, has set aside on its books adequate reserves or (b) to the extent that the failure to do so would not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.10.

ERISA. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, would reasonably be expected to result in a Material Adverse Effect. The present value of all accumulated benefit obligations under each Plan (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of such Plan by an amount that would reasonably be expected to result in a Material Adverse Effect, and the present value of all accumulated benefit obligations of all underfunded Plans (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of all such underfunded Plans by an amount that would reasonably be expected to result in a Material Adverse Effect.

SECTION 3.11.

Disclosure. None of the reports, financial statements, certificates or other written information furnished by or on behalf of the Borrower to the Administrative Agent or any Lender in connection with the negotiation of this Agreement or delivered hereunder (as modified or supplemented by other information so furnished) 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 in any material respect; provided that, with respect to projected financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed by it to be reasonable at the time (it being recognized that such projections are not to be viewed as facts and are subject to significant uncertainties and contingencies, which are beyond the Borrower's control, that no assurance can be given that any particular financial projections will be realized, that actual results may differ from projected results and that such differences may be material).

SECTION 3.12.

Anti-Corruption Laws and Sanctions. The Loan Parties have implemented and maintain in effect policies and procedures designed to ensure compliance by the Loan Parties, their Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions, and the Loan Parties, their Subsidiaries and their respective officers and directors and to the knowledge of any Loan Party its employees and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. None of (a) any Loan Party, any Subsidiary or any of their respective directors, officers or employees, or (b) to the knowledge of any Loan Party, any agent of any Loan Party or any of their Subsidiaries that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person. No Transaction will violate any Anti-Corruption Law or applicable Sanctions.

SECTION 3.13.

EEA Financial Institutions. No Loan Party is an EEA Financial Institution.

SECTION 3.14.

Capitalization and Subsidiaries. Schedule 3.14 sets forth as of the Effective Date (a) a correct and complete list of the name and relationship to the Borrower of each Subsidiary, (b) a true and complete listing of each class of each Loan Parties' (other than the Borrower) authorized Equity Interests, of which all of such issued Equity Interests are validly issued, outstanding, fully paid and non-assessable, and owned beneficially and of record by the Persons identified on Schedule 3.14, and (c) the type of entity of each Loan Party and each of their Subsidiaries. All of the issued and outstanding Equity Interests owned by any Loan Party have been (to the extent such concepts are relevant with respect to such ownership interests) duly authorized and issued and are fully paid and non-assessable.

SECTION 3.15.

Employment Matters. As of the Effective Date, there are no strikes, lockouts or slowdowns against any Loan Party or any Subsidiary pending or, to the knowledge of any Loan Party, threatened. The hours worked by and payments made to employees of the Loan Parties and their Subsidiaries have not been in violation in any material respect of the Fair Labor Standards Act or any other applicable federal, state, local or foreign law dealing with such matters.

SECTION 3.16.

Federal Reserve Regulations. No part of the proceeds of any Loan or Letter of Credit has been used or will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board, including Regulations T, U and X.

SECTION 3.17.

Use of Proceeds. The proceeds of the Loans and the Letters of Credit will be used as set forth in Section 5.08.

ARTICLE IV

Conditions

SECTION 4.01.

Effective Date. The obligations of the Lenders to make Loans and of the Issuing Bank to issue Letters of Credit hereunder shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 9.02):

(b) The Administrative Agent (or its counsel) shall have received (i) from each party hereto either (A) a counterpart of this Agreement signed on behalf of such party or (B) written evidence satisfactory to the Administrative Agent (which may include fax or other electronic transmission of a signed signature page of this Agreement) that such party has signed a counterpart of this Agreement and (ii) duly executed copies of the Loan Documents to be executed on the Effective Date, including any promissory notes requested by a Lender pursuant to Section 2.10 payable to the order of each such requesting Lender.

(c) The Lenders shall have received (i) audited consolidated financial statements of the Loan Parties for the 2014 and 2015 fiscal years and (ii) unaudited interim consolidated financial statements of the Loan Parties for each fiscal quarter ended after the date of the latest applicable financial statements delivered pursuant to clause (i) of this paragraph as to which such financial statements are available.

(d) The Administrative Agent shall have received the results of a recent Lien search in the jurisdiction of organization of each Loan Party and each jurisdiction where assets of the Loan Parties are located, and such search shall reveal no Liens on any of the assets of the Loan Parties except for Liens permitted by Section 6.02 or discharged on or prior to the Effective Date pursuant to a pay-off letter or other documentation satisfactory to the Administrative Agent.

(e) Each document (including any Uniform Commercial Code financing statement) required by the Collateral Documents or under law or reasonably requested by the Administrative Agent to be filed, registered or recorded in order to create in favor of the Administrative Agent, for the benefit of the Secured Parties, a perfected Lien on the Collateral described therein, prior and superior in right to any other Person (other than with respect to Liens expressly permitted by Section 6.02), shall be in proper form for filing, registration or recordation.

(f) The Administrative Agent shall have received (i) the certificates representing the Equity Interests required to be pledged pursuant to the Security Agreement on the Effective Date, together with an undated stock power for each such certificate executed in blank by a duly authorized officer of the pledgor thereof and (ii) each promissory note (if any) pledged to the Administrative Agent pursuant to the Security Agreement endorsed (without recourse) in blank (or accompanied by an executed transfer form in blank) by the pledgor thereof.

(g) The Administrative Agent shall have received (i) a certificate of each Loan Party, dated the Effective Date and executed by its secretary or assistant secretary, which shall (A) certify the resolutions of its Board of Directors, members or other body authorizing the execution, delivery and performance of the Loan Documents to which it is a party, (B) identify by name and title and bear specimen signatures of the officers of such Loan Party authorized to sign the Loan Documents to which it is a party and, in the case of the Borrower, its Financial Officers, and (C) contain appropriate attachments, including the charter, articles or certificate of organization or incorporation of each Loan Party certified by the relevant authority of the jurisdiction of organization of such Loan Party and a true and correct copy of its bylaws or operating, management or partnership agreement, or other organizational or governing documents, and (ii) a good standing certificate for each Loan Party from its jurisdiction of organization.

(h) The Administrative Agent shall have received a certificate confirming compliance with the conditions set forth in paragraphs (a) and (b) of Section 4.02 dated the Effective Date and signed by the president, a vice president or a Financial Officer of the Borrower.

(i) The Administrative Agent shall have received a favorable written opinion (addressed to the Administrative Agent and the Lenders and dated the Effective Date) of Jones Day, counsel for the Loan Parties, substantially in the form of Exhibit B, and covering such other matters relating to the Loan Parties,

this Agreement or the Transactions as the Required Lenders shall reasonably request. Each Loan Party hereby requests such counsel to deliver such opinion.

(j) The Administrative Agent shall have received insurance certificates and endorsements for all insurance of the Borrower and the other Loan Parties as the Administrative Agent shall request naming the Administrative Agent, on behalf of the Lenders, as additional insured or lenders loss payee (or similar designation), as applicable, in form, scope and substance satisfactory to the Administrative Agent, and otherwise in compliance with the terms of Section 5.05 of this Agreement and Section 4.12 of the Security Agreement.

(k) The Administrative Agent shall have received all fees and other amounts due and payable on or prior to the Effective Date, including, to the extent invoiced on or prior to the Effective Date, reimbursement or payment of all out-of-pocket expenses required to be reimbursed or paid by the Borrower hereunder.

The Administrative Agent shall notify the Borrower and the Lenders of the Effective Date, and such notice shall be conclusive and binding. Notwithstanding the foregoing, the obligations of the Lenders to make Loans and of the Issuing Bank to issue Letters of Credit hereunder shall not become effective unless each of the foregoing conditions is satisfied (or waived pursuant to Section 9.02) at or prior to 3:00 p.m., New York City time, on June 30, 2016 (and, in the event such conditions are not so satisfied or waived, the Commitments shall terminate at such time).

SECTION 4.02.

Each Credit Event. The obligation of each Lender to make a Loan on the occasion of any Borrowing, and of the Issuing Bank to issue, amend, renew or extend any Letter of Credit, is subject to the satisfaction of the following conditions:

(d) The representations and warranties of the Borrower set forth in this Agreement shall be true and correct in all material respects (without duplication of any materiality qualifiers set forth therein) on and as of the date of such Borrowing or the date of issuance, amendment, renewal or extension of such Letter of Credit, as applicable (unless such representation and warranty relates to an earlier date, then such representation and warranty shall be true and correct in all material respects (without duplication of any materiality qualifiers set forth therein) as of such earlier date).

(e) At the time of and immediately after giving effect to such Borrowing or the issuance, amendment, renewal or extension of such Letter of Credit, as applicable, no Default shall have occurred and be continuing.

Each Borrowing and each issuance, amendment, renewal or extension of a Letter of Credit shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in paragraphs (a) and (b) of this Section.

ARTICLE V

Affirmative Covenants

Until the Commitments have expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full and all Letters of Credit shall have expired or terminated , in each case, without any pending draw, and all LC Disbursements shall have been reimbursed, the Borrower covenants and agrees with the Lenders that:

SECTION 5.01.
Financial Statements; Ratings Change and Other Information. The Borrower will furnish to the Administrative Agent and each Lender:

(f) within ninety (90) days after the end of each fiscal year of the Borrower, its audited consolidated balance sheet and related statements of operations, stockholders' equity and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by Ernst & Young LLP or other independent public accountants of recognized national standing (without a "going concern" or like qualification commentary or exception and without any qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, accompanied by any management letter prepared by said accountants;

(g) within forty-five (45) days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower, its consolidated balance sheet and related statements of operations and cash flows as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by one of its Financial Officers as presenting fairly in all material respects the financial condition and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes;

(h) concurrently with any delivery of financial statements under clause (a) or (b) above, a certificate of a Financial Officer of the Borrower (i) certifying as to whether a Default has occurred and, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (ii) setting forth reasonably detailed calculations demonstrating compliance with Section 6.13 and (iii) stating whether any change in GAAP or in the application thereof has occurred since the date of the audited financial statements referred to in Section 3.04 and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such certificate;

(i) as soon as available, but in any event no later than 100 days following the end of, each fiscal year of the Borrower, a copy of the Borrower's plan and forecast, in a form consistent with the Borrower's past practice (the "***Projections***");

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

(k) promptly following any request therefor, such other information regarding the operations, business affairs and financial condition of the Borrower or any of its Subsidiaries, or compliance with the terms of this Agreement, as the Administrative Agent or any Lender may reasonably request.

Information required to be delivered pursuant to Section 5.01(a), 5.01(b) or 5.01(e) shall be deemed to have been delivered if such information, or one or more annual, quarterly or current reports containing such information, shall have been posted by the Administrative Agent on the Platform, on the website of the SEC at http://www.sec.gov or on the website of Borrower. Information required to be delivered pursuant to this Section 5.01 may also be delivered by electronic communications pursuant to procedures approved by the

Administrative Agent. Each Lender shall be solely responsible for timely accessing posted documents and maintaining its copies of such documents.

SECTION 5.02.
Notices of Material Events. The Borrower will furnish to the Administrative Agent and each Lender prompt written notice of a Financial Officer of the Borrower becoming aware of the following:

(c) the occurrence of any Default;

(d) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or affecting any Loan Party or any Affiliate thereof that, if adversely determined, could reasonably be expected to result in a Material Adverse Effect;

(e) the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, could reasonably be expected to result in liability of the Loan Parties and their Subsidiaries in an aggregate amount that could reasonably be expected to result in a Material Adverse Effect; and

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

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

SECTION 5.03.
Existence; Conduct of Business. The Borrower will, and will cause each of its Subsidiaries to, do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence and the rights, Governmental Authorizations, privileges and franchises material to the conduct of its business except where the failure to do so would not reasonably be expected to have a Material Adverse Effect; provided that the foregoing shall not prohibit any merger, consolidation, liquidation or dissolution permitted under Section 6.03.

SECTION 5.04.
Payment of Obligations. The Borrower will, and will cause each of its Subsidiaries to, pay its obligations, including Tax liabilities, that, if not paid, could result in a Material Adverse Effect before the same shall become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) the Borrower or such Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (c) the failure to make payment pending such contest would not reasonably be expected to result in a Material Adverse Effect.

SECTION 5.05.
Maintenance of Properties; Insurance. The Borrower will, and will cause each of its Subsidiaries to, (a) except as otherwise permitted pursuant to this Agreement keep and maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear excepted, and (b) maintain, with financially sound and reputable insurance companies, insurance in such amounts and against such risks as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations. The Borrower will furnish to the Lenders, upon request of the Administrative Agent, but no less frequently than annually, information in reasonable detail as to the insurance so maintained.

SECTION 5.06.

Books and Records; Inspection Rights. The Borrower will, and will cause each of its Subsidiaries to, keep proper books of record and account in which full, true and correct entries in all material respects are made of all dealings and transactions in relation to its business and activities. The Borrower will, and will cause each of its Subsidiaries to, permit any representatives designated by the Administrative Agent, upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants (at which the Borrower shall have the right to be present), all at such reasonable times and as often as reasonably requested (and, if requested, any Lender may accompany the Agent on such inspection, which shall be at at such Lender's sole expense unless an Event of Default has occurred and is continuing); provided, however, that unless an Event of Default has occurred and is continuing, any such inspection shall be limited to once in any calendar year.

SECTION 5.07.

Compliance with Laws. The Borrower will, and will cause each of its Subsidiaries to, comply with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect. The Borrower will maintain in effect and enforce policies and procedures designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.

SECTION 5.08.

Use of Proceeds and Letters of Credit. The proceeds of the Loans and the Letters of Credit will be used only for general corporate purposes of the Borrower and its Subsidiaries including working capital, capital expenditures, acquisitions, dividends and share repurchases permitted hereunder. No part of the proceeds of any Loan will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board, including Regulations T, U and X. The Borrower will not request any Borrowing or Letter of Credit, and the Borrower shall not use, and shall procure that its Subsidiaries and its or their respective directors, officers, employees and agents shall not use, the proceeds of any Borrowing or Letter of Credit (A) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (B) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, to the extent such activities, business or transaction would be prohibited by Sanctions if conducted by a corporation incorporated in the United States or in a European Union member state, or (C) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

SECTION 5.09.

Accuracy of Information. The Borrower will ensure that any written information, including financial statements or other documents, furnished to the Administrative Agent or the Lenders in connection with this Agreement or any amendment or modification hereof or waiver hereunder contains no 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 materially misleading, and the furnishing of such information shall be deemed to be a representation and warranty by the Borrower on the date thereof as to the matters specified in this Section 5.09; provided that, with respect to projected financial information, the Borrower will cause such projections to be prepared in good faith based upon assumptions believed to be reasonable at the time (it being recognized that such projections are not to be viewed as facts and are subject to significant uncertainties and contingencies, which are beyond the Borrower's control, that no

assurance can be given that any particular financial projections will be realized, that actual results may differ from projected results and that such differences may be material).

SECTION 5.10.

Additional Collateral; Further Assurances. (V) Subject to applicable law and the Collateral Documents, the Borrower shall cause each wholly-owned domestic Subsidiary (other than any Excluded Subsidiary) formed or acquired after the date of this Agreement in accordance with the terms of this Agreement to become a Loan Party by executing one or more joinder agreements (or similar documents) as requested by Administrative Agent. Upon execution and delivery thereof, each such Person (i) shall become a Loan Guarantor and thereupon shall have all of the rights, benefits, duties, and obligations in such capacity under the Loan Documents and (ii) will grant Liens to the Administrative Agent, for the benefit of the Administrative Agent and the Secured Parties, in any property of such Loan Party which constitutes Collateral.

(f) Without limiting the foregoing, the Borrower will, and will cause each Loan Party to, execute and deliver, or cause to be executed and delivered, to the Administrative Agent such documents, agreements and instruments, and will take or cause to be taken such further actions (including the filing and recording of financing statements and other documents and such other actions or deliveries of the type required by Section 4.01, as applicable, including, without limitation, issuance of legal opinions), which may be required by law or which the Administrative Agent may, from time to time, reasonably request to carry out the terms and conditions of this Agreement and the other Loan Documents and to ensure perfection and priority of the Liens created or intended to be created by the Collateral Documents, all at the expense of the Borrower. The Borrower will cause (i) 100% of the issued and outstanding Equity Interests of each of its domestic Subsidiaries (other than Excluded Subsidiaries) and (ii) 65% of all issued and outstanding voting Equity Interests and 100% of the issued and outstanding nonvoting Equity Interests (which, for the avoidance of doubt, is not convertible into voting Equity Interests) of each of its directly-owned foreign Subsidiaries and CFC Holdcos, in each case of clauses (i) and (ii) above, to be subject at all times to a first priority, perfected Lien in favor of the Administrative Agent pursuant to terms in the Loan Documents or as Administrative Agent may reasonably request (provided that this shall not be construed to constitute consent by the Administrative Agent or any of the Lenders to the establishment of any foreign Subsidiaries or the consummation of any other transaction not expressly permitted by the terms of this Agreement).

(g) If any assets which constitute or are required to constitute Collateral are acquired by any Loan Party after the Effective Date (other than assets constituting Collateral under the Security Agreement that become subject to the Lien in favor of the Administrative Agent upon acquisition thereof), the Borrower, on behalf of the Loan Parties, will notify the Administrative Agent thereof and cause such assets to be subjected to a Lien securing the Secured Obligations in connection with and at the time of acquisition thereof and will take, and cause each Loan Party to take, such actions as shall be necessary or reasonably requested by the Administrative Agent to grant and perfect such Liens, including actions described in Section 5.10(b), all at the expense of the Loan Parties. Administrative Agent may determine in its sole discretion whether or not to take any steps with respect to obtaining a security interest in or pledge or perfection of any Collateral if it determines that the cost thereof exceeds the practical benefit to the Secured Parties of the security afforded thereby.

(h) Each Loan Party agrees that each action required by Section 5.10(a) shall be completed not less than thirty (30) days after the formation or acquisition of a Subsidiary (or such longer period of time as designated by the Administrative Agent in its reasonable discretion).

(i) The parties hereto agree that if a Borrower who caused any Equity Interests in its domestic or foreign Subsidiaries to be subject to a first priority, perfected Lien in favor of the Administrative Agent per clauses (b) or (c) above and that Subsidiary subsequently is transferred in a manner permitted hereunder such that it is no longer a direct subsidiary of the Borrower, the Parties agree that the Lien on the Equity Interests of such Subsidiary shall be released upon consummation of the transfer.

SECTION 5.11.

Intellectual Property. (V) The Borrower will, and will cause each of its Subsidiaries to, take all actions necessary to maintain and pursue each application, to obtain the relevant registration and to maintain the registration of each of its Patents, Trademarks and Copyrights (now or hereafter existing), including the filing of applications for renewal, affidavits of use, affidavits of noncontestability and opposition and interference and cancellation proceedings, unless the Borrower shall determine that such Patent, Trademark or Copyright is not material to the conduct of its business or operations or such failures to take such actions could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(c) The Borrower will, and will cause each of its Subsidiaries to promptly sue for infringement, misappropriation or dilution and to recover any and all damages for such infringement, misappropriation or dilution to protect such Patent, Trademark or Copyright, unless the Borrower shall reasonably determine that such Patent, Trademark or Copyright is in no way material to the conduct of its business or operations or such infringement, misappropriation or dilution could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. In the event that the Borrower or such Subsidiary institutes suit because any of its Patents, Trademarks or Copyrights is infringed upon, or misappropriated or diluted by a third party, such Person shall comply with Section 4.7 of the Security Agreement.

SECTION 5.12.

Post-Closing Matters. On or prior to 30 days following the Effective Date (or such longer period agreed to by the Administrative Agent in its sole discretion), the Borrower will deliver to the Administrative Agent original stock certificates representing the Applicable Pledge Percentage (as defined in the Security Agreement) of each of DexCom (UK) Limited, DexCom (Canada) Inc. and DexCom AB, together with executed transfer powers in form and substance acceptable to the Administrative Agent

ARTICLE VI

Negative Covenants

Until the Commitments have expired or terminated and the principal of and interest on each Loan and all fees payable hereunder have been paid in full and all Letters of Credit have expired or terminated, in each case, without any pending draw, and all LC Disbursements shall have been reimbursed, the Borrower covenants and agrees with the Lenders that:

SECTION 6.01.

Indebtedness. The Borrower will not, and will not permit any of its Subsidiaries to, create, incur, assume or permit to exist any Indebtedness, except:

(g) (i) Indebtedness created hereunder or (ii) any other Secured Obligations;

(h) Indebtedness existing on the date hereof and set forth in Schedule 6.01 and extensions, amendments, refinancings, renewals and replacements of any such Indebtedness that do not increase the outstanding principal amount thereof or shorten the final maturity or weighted average life to maturity thereof;

(i) Indebtedness of the Borrower to any Subsidiary and of any Subsidiary to the Borrower or any other Subsidiary, provided that (i) Indebtedness of any Subsidiary that is not a Loan Party to the Borrower or any other Loan Party shall be subject to Section 6.04 and (ii) Indebtedness of any Loan Party to any Subsidiary that is not a Loan Party shall be subordinated to the Secured Obligations on terms reasonably satisfactory to the Administrative Agent;

(j) Guarantees by the Borrower of Indebtedness of any Subsidiary and by any Subsidiary of Indebtedness of the Borrower or any other Subsidiary, provided that (i) the Indebtedness so Guaranteed is permitted by this Section 6.01, (ii) Guarantees by the Borrower or any other Loan Party of Indebtedness of any Subsidiary that is not a Loan Party shall be subject to Section 6.04 and (iii) Guarantees permitted under this clause (d) shall be subordinated to the Secured Obligations on the same terms as the Indebtedness so Guaranteed is subordinated to the Secured Obligations;

(k) Indebtedness of the Borrower or any Subsidiary incurred to finance the acquisition, construction or improvement of any fixed or capital assets, including Capital Lease Obligations and any Indebtedness assumed in connection with the acquisition of any such assets or secured by a Lien on any such assets prior to the acquisition thereof, and extensions, renewals and replacements of any such Indebtedness that do not increase the outstanding principal amount thereof; provided that (i) such Indebtedness is incurred prior to or within one hundred eighty (180) days after such acquisition or the completion of such construction or improvement and (ii) the aggregate principal amount of Indebtedness permitted by this clause (e) shall not exceed the greater of $50,000,000 and 10% of the total assets of the Borrower at any time outstanding;

(l) Indebtedness of the Borrower or any Subsidiary as an account party in respect of trade letters of credit; and

(m) other unsecured Indebtedness of the Borrower or any of its Subsidiaries (including, without limitation, any Indebtedness assumed in connection with an acquisition permitted hereunder), so long as, after giving effect thereto the Borrower is in pro forma compliance with each of the covenants contained in Section 6.13 and no Default or Event of Default shall have occurred and be continuing.

SECTION 6.02.
Liens. The Borrower will not, and will not permit any of its Subsidiaries to, create, incur, assume or permit to exist any Lien on any property or asset (including trademarks, trade names, copyrights, patents and other Intellectual Property) now owned or hereafter acquired by it, or assign or sell any income or revenues (including accounts receivable) or rights in respect of any thereof, except:

(l) Permitted Encumbrances;

(m) any Lien on any property or asset of the Borrower or any Subsidiary existing on the date hereof and set forth in Schedule 6.02; provided that (i) such Lien shall not apply to any other property or asset of the Borrower or any Subsidiary and (ii) such Lien shall secure only those obligations which it secures on the date hereof and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof;

(n) any Lien existing on any property or asset prior to the acquisition thereof by the Borrower or any Subsidiary or existing on any property or asset of any Person that becomes a Subsidiary after the date

hereof prior to the time such Person becomes a Subsidiary; provided that (i) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Subsidiary, as the case may be, (ii) such Lien shall not apply to any other property or assets of the Borrower or any Subsidiary and (iii) such Lien shall secure only those obligations which it secures on the date of such acquisition or the date such Person becomes a Subsidiary, as the case may be and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof; and

(o) Liens on fixed or capital assets acquired, constructed or improved by the Borrower or any Subsidiary; provided that (i) such security interests secure Indebtedness permitted by clause (e) of Section 6.01, (ii) such security interests and the Indebtedness secured thereby are incurred prior to or within one hundred eighty (180) days after such acquisition or the completion of such construction or improvement, (iii) the Indebtedness secured thereby does not exceed 80% of the cost of acquiring, constructing or improving such fixed or capital assets and (iv) such security interests shall not apply to any other property or assets of the Borrower or any Subsidiary.

(p) Liens of a collecting bank arising in the ordinary course of business under Section 4-208 of the UCC in effect in the relevant jurisdiction covering only the items being collected upon;

(q) Liens granted by a Subsidiary that is not a Loan Party in favor of the Borrower or another Loan Party in respect of Indebtedness owed by such Subsidiary;

(r) Liens, if any, in favor of the Issuing Bank to cash collateralize LC Exposure or otherwise secure the obligations of a Defaulting Lender to fund risk participations hereunder; and

(s) financing statements filed under the UCC of any jurisdiction for notice purposes in connection with any operating lease in respect of the amounts covered by such lease.

SECTION 6.03.

Fundamental Changes. (VI) The Borrower will not, and will not permit any of its Subsidiaries to, merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or sell, transfer, lease or otherwise dispose of (in one transaction or in a series of transactions) all or any substantial part of its assets, or all or substantially all of the stock of any of its Subsidiaries (in each case, whether now owned or hereafter acquired), or liquidate or dissolve, except that, if at the time thereof and immediately after giving effect thereto no Default shall have occurred and be continuing (i) any Subsidiary may merge into the Borrower in a transaction in which the Borrower is the surviving corporation, (ii) any Subsidiary may merge into any Loan Party in a transaction in which the surviving entity is a Loan Party or any Subsidiary that is not a Loan Party may merge into any other Subsidiary that is not a Loan Party, (iii) any Subsidiary may sell, transfer, lease or otherwise dispose of its assets to the Borrower or to another Loan Party and any Subsidiary that is not a Loan Party may sell, transfer, lease or otherwise dispose of its assets to any other Subsidiary that is not a Loan Party and (iv) any Subsidiary may liquidate or dissolve if the Borrower determines in good faith that such liquidation or dissolution is in the best interests of the Borrower and is not materially disadvantageous to the Lenders; provided that any such merger involving a Person that is not a wholly-owned Subsidiary immediately prior to such merger shall not be permitted unless also permitted by Section 6.04.

(e) The Borrower will not, and will not permit any of its Subsidiaries to, engage to any material extent in any business other than businesses of the type conducted by the Borrower and its Subsidiaries on the Effective Date and any other businesses reasonably related or otherwise complimentary or similar thereto.

SECTION 6.04.

Investments, Loans, Advances, Guarantees and Acquisitions. The Borrower will not, and will not permit any of its Subsidiaries to, purchase, hold or acquire (including pursuant to any merger with any Person that was not a wholly owned Subsidiary prior to such merger) any capital stock, evidences of indebtedness or other securities (including any option, warrant or other right to acquire any of the foregoing) of, make or permit to exist any loans or advances to, Guarantee any obligations of, or make or permit to exist any investment or any other interest in, any other Person, or purchase or otherwise acquire (in one transaction or a series of transactions) any assets of any other Person constituting a business unit, except:

(f) cash or Permitted Investments;

(g) investments by the Borrower existing on the date hereof in the capital stock of its Subsidiaries;

(h) loans or advances (i) made by the Borrower to any Loan Party and made by any Loan Party to the Borrower or any other Loan Party, (ii) made by any Subsidiary that is not a Loan Party to the Borrower or any Loan Party or to any non-Loan Party or (iii) made by the Borrower or any Loan Party to any foreign Subsidiary that is not a Loan Party, provided that the aggregate amount of such loans of advances under this clause (iii) shall not exceed $15,000,000 in any fiscal year;

(i) Guarantees constituting Indebtedness permitted by Section 6.01;

(j) other acquisitions, investments, loans or advancements made by the Loan Parties, so long as, after giving effect thereto (i) the Borrower is in pro forma compliance with each of the covenants contained in Section 6.13, (ii) the Borrower shall have not less than $25,000,000 in the aggregate of (x) Borrowing Availability and (y) unrestricted domestic cash; and (iii) no Default or Event of Default shall have occurred and be continuing;

(k) acquisitions or investments made by foreign Subsidiaries that are not Loan Parties in an aggregate amount not to exceed $25,000,000 in any fiscal year;

(l) notes payable, or stock or other securities issued by an account debtor to the Borrower or any Subsidiary pursuant to negotiated agreements with respect to settlement of such account debtor's accounts in the ordinary course of business, consistent with past practices;

(m) investments in the form of Swap Agreements permitted by Section 6.05;

(n) investments of any Person existing at the time such Person becomes a Subsidiary of the Borrower or consolidates or merges with the Borrower or any of the Subsidiaries so long as such investments were not made in contemplation of such Person becoming a Subsidiary or of such merger;

(o) investments constituting deposits described in clauses (c) and (d) of the definition of the term "Permitted Encumbrances";

(p) advances to officers, directors and employees of the Borrower or any Subsidiaries made in the ordinary course of business and consistent with past practices for travel, entertainment, relocation and similar purposes up to a maximum of $5,000,000 in the aggregate at any one time outstanding; and

(q) investments consisting of extensions of credit in the nature of accounts 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.

SECTION 6.05.

Swap Agreements. The Borrower will not, and will not permit any of its Subsidiaries to, enter into any Swap Agreement, except (a) Swap Agreements entered into to hedge or mitigate risks to which the Borrower or any Subsidiary has actual exposure (other than those in respect of Equity Interests of the Borrower or any of its Subsidiaries), and (b) Swap Agreements entered into in order to effectively cap, collar or exchange interest rates (from fixed to floating rates, from one floating rate to another floating rate or otherwise) with respect to any interest-bearing liability or investment of the Borrower or any Subsidiary.

SECTION 6.06.

Restricted Payments. The Borrower will not, and will not permit any of its Subsidiaries to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment, except (a) the Borrower may declare and pay dividends with respect to its Equity Interests payable solely in additional shares of its common stock, (b) Subsidiaries of the Borrower may declare and pay dividends ratably with respect to their Equity Interests, (c) the Borrower may make Restricted Payments pursuant to and in accordance with stock option plans or other benefit plans for management or employees of the Borrower and its Subsidiaries, (d) other Restricted Payments not to exceed $50,000,000 in the aggregate during any four consecutive fiscal quarters so long as after giving effect thereto (i) the Borrower shall have not less than $25,000,000 of unrestricted domestic cash and (ii) no Default or Event of Default shall have occurred and be continuing and (e) any other Restricted Payments so long as after giving effect thereto (i) pro forma Total Leverage Ratio is less than or equal to 1.75 to 1.00, (ii) the Borrower is in pro forma compliance with each of the covenants contained in Section 6.13, and (iii) the Borrower shall have not less than $25,000,000 of unrestricted domestic cash and (iv) no Default or Event of Default shall have occurred and be continuing.

SECTION 6.07.

Transactions with Affiliates. The Borrower will not, and will not permit any of its Subsidiaries to, sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except (a) in the ordinary course of business at prices and on terms and conditions not less favorable to the Borrower or such Subsidiary than could be obtained on an arm's-length basis from unrelated third parties, (b) transactions between or among the Borrower and its wholly-owned Subsidiaries not involving any other Affiliate and (c) any Restricted Payment permitted by Section 6.06.

SECTION 6.08.

Restrictive Agreements. The Borrower will not, and will not permit any of its Subsidiaries to, directly or indirectly, enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon (a) the ability of any Loan Party or any of their Subsidiaries to create, incur or permit to exist any Lien of the Administrative Agent or any Secured Party upon any of its property or assets, or (b) the ability of any Subsidiary of a Loan Party to pay dividends or other distributions with respect to any shares of its capital stock or to make or repay loans or advances to the Borrower or any other Loan Party or to Guarantee Indebtedness of the Borrower or any other Loan Party; provided that (i) the foregoing shall not apply to restrictions and conditions imposed by law or by this Agreement, (ii) the foregoing shall not apply to restrictions and conditions existing on the date hereof identified on Schedule 6.08 (but shall apply to any extension or renewal of, or any amendment or modification expanding the scope of, any such restriction or condition), (iii) the foregoing shall not apply to customary restrictions and conditions contained in agreements relating to the sale of a Subsidiary pending such sale,

provided that such restrictions and conditions apply only to the Subsidiary that is to be sold and such sale is permitted hereunder, (iv) clause (a) of the foregoing shall not apply to restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness and (v) clause (a) of the foregoing shall not apply to customary provisions in leases restricting the assignment thereof.

SECTION 6.09.
Sale and Leaseback Transactions. The Borrower will not, and will not permit any of its Subsidiaries to, enter into any arrangement, directly or indirectly, whereby it shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or 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 sold or transferred (a "***Sale and Leaseback Transaction***"). For the avoidance of doubt, customary "build to suit" transactions do not constitute a Sale and Leaseback Transaction hereunder.

SECTION 6.10.
Amendment of Material Documents. The Borrower will not, and will not permit any of its Subsidiaries to, amend, modify or waive any of its rights under (a) any agreement relating to any Subordinated Indebtedness, or (b) its charter, articles or certificate of organization or incorporation and bylaws or operating, management or partnership agreement, or other organizational or governing documents, to the extent any such amendment, modification or waiver would be adverse to the Administrative Agent or the Lenders.

SECTION 6.11.
Fiscal Year. The Borrower will not, and will not permit any of its Subsidiaries to, change its fiscal year to end on any date other than December 31 of each year.

SECTION 6.12.
Anti-Corruption Laws and Sanctions. The Borrower will not, and will not permit any of its Subsidiaries to, fail to maintain in effect and enforce policies and procedures designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.

SECTION 6.13.
Financial Covenants.

(j) Minimum Fixed Charge Coverage Ratio. The Borrower will not permit the Fixed Charge Coverage Ratio, for any period of four consecutive fiscal quarters ending on the last day of any fiscal quarter (commencing with the fiscal quarter ending June 30, 2016) to be less than 2.50 to 1.00.

(k) Maximum Total Leverage Ratio. The Borrower will not permit the Total Leverage Ratio, on the last day of any fiscal quarter (commencing with the fiscal quarter ending June 30, 2016) to be greater than 3.00 to 1.00.

ARTICLE VII

Events of Default

If any of the following events ("***Events of Default***") shall occur:

(t) the Borrower shall fail to pay any principal of any Loan or any reimbursement obligation in respect of any LC Disbursement when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;

(u) the Borrower shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in clause (a) of this Article) payable under this Agreement or any other Loan Document, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of three (3) Business Days;

(v) any representation or warranty made or deemed made by or on behalf of the Borrower or any Subsidiary in or in connection with this Agreement, any other Loan Document, or any amendment or modification thereof or waiver thereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement, any other Loan Document, or any amendment or modification thereof or waiver thereunder, shall prove to have been incorrect in any material respect when made or deemed made;

(w) the Borrower shall fail to observe or perform any covenant, condition or agreement contained in Section 5.02, 5.03 (with respect to the Borrower's existence), 5.08, 5.12 or in Article VI;

(x) the Borrower or any other Loan Party shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those specified in clause (a), (b) or (d) of this Article) or any other Loan Document, and such failure shall continue unremedied for a period of thirty (30) days after notice thereof from the Administrative Agent to the Borrower (which notice will be given at the request of any Lender);

(y) any Loan Party or any of their Subsidiaries shall fail to make a principal payment in respect of any Material Indebtedness, when and as the same shall become due and payable, after giving effect to any applicable grace or cure period;

(z) any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; provided that this clause (g) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness;

(aa) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of any Loan Party or any of their Subsidiaries or their debts, or of a substantial part of its assets, under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Loan Party or any of their Subsidiaries or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered;

(bb) any Loan Party or any of their Subsidiaries shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (h) of this Article, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator,

conservator or similar official for any Loan Party or any of their Subsidiaries or for a substantial part of their assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing;

(cc) any Loan Party or any of their Subsidiaries shall become unable, admit in writing its inability or fail generally to pay its debts as they become due;

(dd) one or more judgments for the payment of money in an aggregate amount in excess of $25,000,000 (except to the extent covered by insurance) shall be rendered against any Loan Party, any of their Subsidiaries or any combination thereof and the same shall remain undischarged for a period of thirty (30) consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of any Loan Party or any of their Subsidiaries to enforce any such judgment;

(ee) an ERISA Event shall have occurred that, in the opinion of the Required Lenders, when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in liability of any Loan Party or any of their Subsidiaries in an aggregate amount that could reasonably be expected to result in a Material Adverse Effect; or

(ff) a Change in Control shall occur;

then, and in every such event (other than an event with respect to the Borrower described in clause (h) or (i) of this Article), and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, by notice to the Borrower, take either or both of the following actions, at the same or different times: (i) terminate the Commitments (including the Letter of Credit Commitments), and thereupon the Commitments shall terminate immediately, (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower, and (iii) require cash collateral for the LC Exposure in accordance with Section 2.06(j); and in case of any event with respect to the Borrower described in clause (h) or (i) of this Article, the Commitments shall automatically terminate and the principal of the Loans then outstanding and cash collateral for the LC Exposure, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower.

In addition to any other rights and remedies granted to the Administrative Agent and the Lenders in the Loan Documents, the Administrative Agent on behalf of the Lenders may exercise all rights and remedies of a secured party under the New York Uniform Commercial Code or any other applicable law.

ARTICLE VIII

The Administrative Agent; Credit Bidding

SECTION 8.01. The Administrative Agent. Each of the Lenders and the Issuing Bank hereby

irrevocably appoints the Administrative Agent as its agent 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, together with such actions and powers as are reasonably incidental thereto.

The bank 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 such bank and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with any Loan Party, any of their Subsidiaries or other Affiliate thereof as if it were not the Administrative Agent hereunder.

The Administrative Agent shall not have any duties or obligations except those expressly set forth herein. Without limiting the generality of the foregoing, (a) the Administrative Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, (b) the Administrative Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby that the Administrative Agent is required to exercise in writing as directed by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 9.02), and (c) except as expressly set forth herein, the Administrative Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any Loan Party or any of their Subsidiaries that is communicated to or obtained by the bank serving as Administrative Agent or any of its Affiliates in any capacity. The Administrative Agent shall not be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 9.02) or in the absence of its own gross negligence or willful misconduct. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until written notice thereof is given to the Administrative Agent by the Borrower or a Lender, and the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or in connection herewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document, or any other agreement, instrument or document, or (v) 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.

The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing believed by it to be genuine and to have been signed or sent 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 be made by the proper Person, and shall not incur any liability for relying thereon. 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.

The Administrative Agent may perform any and all its duties and exercise its rights and powers by or through any one or more sub-agents appointed by the Administrative Agent, including, without limitation with such titles as “Bookrunner,” “Arranger” and “Syndication Agent”. The Administrative Agent and any such sub-agent may perform any and all its duties and exercise its rights and powers through their respective Related Parties. The exculpatory provisions of the preceding paragraphs 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 credit facilities provided for herein as well as activities as Administrative Agent. Notwithstanding anything herein to the contrary, none of the "Bookrunners," "Arrangers" or "Syndication Agent" 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 Issuing Bank hereunder."

Subject to the appointment and acceptance of a successor Administrative Agent as provided in this paragraph, the Administrative Agent may resign at any time by notifying the Lenders, the Issuing Bank and the Borrower. Upon any such resignation, the Required Lenders shall have the right, with the consent of the Borrower (not to be unreasonably withheld) so long as no Event of Default exists, to appoint a successor. If no 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, then the retiring Administrative Agent may, on behalf of the Lenders and the Issuing Bank, appoint a successor Administrative Agent which shall be a bank with an office in New York, New York, or an Affiliate of any such bank. Upon the acceptance of its appointment as Administrative Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations hereunder. The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the Administrative Agent's resignation hereunder, the provisions of this Article and Section 9.03 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 while it was acting as Administrative Agent.

Each Lender acknowledges and agrees that the extensions of credit made hereunder are commercial loans and letters of credit and not investments in a business enterprise or securities. Each Lender further represents that it is engaged in making, acquiring or holding commercial loans in the ordinary course of its business and has, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement as a Lender, and to make, acquire or hold Loans hereunder. Each Lender shall, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information (which may contain material, non-public information within the meaning of the United States securities laws concerning the Borrower and its Affiliates) 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 related agreement or any document furnished hereunder or thereunder and in deciding whether or to the extent to which it will continue as a Lender or assign or otherwise transfer its rights, interests and obligations hereunder.

SECTION 8.02.

Credit Bidding. 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 Obligations (including by accepting some or all of the Collateral in satisfaction of some or all of the 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, including under Sections 363, 1123 or 1129 of the Bankruptcy Code, or any similar laws in any other jurisdictions to which a Credit Party is subject, or (b) at any other sale, 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 Obligations owed to the Secured Parties shall be

entitled to be, and shall be, credit bid by the Administrative Agent at the direction of the Required Lenders on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that shall 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) for the asset or assets so purchased (or for the equity interests or debt instruments of the acquisition vehicle or vehicles that are issued in connection with such purchase). In connection with any such bid (i) the Administrative Agent shall be authorized to form one or more acquisition vehicles and to assign any successful credit bid to such acquisition vehicle or vehicles (ii) each of the Secured Parties' ratable interests in the Obligations which were credit bid shall be deemed without any further action under this Agreement to be assigned to such vehicle or vehicles for the purpose of closing such sale, (iii) the Administrative Agent shall be authorized 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, and the governing documents shall provide for, control by the vote of the Required Lenders or their permitted assignees under the terms of this Agreement or the governing documents of the applicable acquisition vehicle or vehicles, as the case may be, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in Section 9.02 of this Agreement), (iv) the Administrative Agent on behalf of such acquisition vehicle or vehicles shall be authorized to issue to each of the Secured Parties, ratably on account of the relevant Obligations which were credit bid, interests, whether as equity, partnership, limited partnership interests or membership interests, in any such acquisition vehicle and/or debt instruments issued by such acquisition vehicle, all without the need for any Secured Party or acquisition vehicle to take any further action, and (v) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason, such Obligations shall automatically be reassigned to the Secured Parties pro rata and the equity interests and/or debt instruments issued by any acquisition vehicle on account of such Obligations shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action. Notwithstanding that the ratable portion of the Obligations of each Secured Party are deemed assigned to the acquisition vehicle or vehicles as set forth in clause (ii) above, each Secured Party shall execute such documents and provide such information regarding the Secured Party (and/or any designee of the Secured Party which will receive interests in or debt instruments issued by such acquisition vehicle) as the Administrative Agent may reasonably request in connection with the formation of any acquisition vehicle, the formulation or submission of any credit bid or the consummation of the transactions contemplated by such credit bid.

ARTICLE IX

Miscellaneous

SECTION 9.01.

Notices. (IX) Except in the case of notices and other communications expressly permitted to be given by telephone (and subject to paragraph (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 telecopy, as follows:

(i) if to the Borrower or any other Loan Party, to:

DexCom, Inc.
6340 Sequence Drive
San Diego, CA 92121

Attention: Jess Roper
Telephone No.: (858) 200-0223
Fax No.: (858) 754-0058
Email: jroper@dexcom.com

(ii) if to the Administrative Agent or Issuing Bank, in the case of Borrowings denominated in dollars to:

JPMorgan Chase Bank, N.A.
10 S. Dearborn St Floor 07
Chicago, IL 60603
Attention: Sharon Porch
Telephone No: (312) 385-7036
Fax No.: (888) 303-9732

in the case of Borrowings denominated in a Foreign Currency to:

JPMorgan Chase Bank, London Branch
25 Bank Street, Canary Wharf, 6th Floor
London E145JP, United Kingdom
Attention: Loans Agency,
Fax No.: +44 20 7777 2360
Email: Loan_and_agency_London@jpmorgan.com

In each case, with a copy to:

JPMorgan Chase Bank, N.A.
3 Park Plaza, Suite 900
Irvine CA 92614,
Attention: Ling Li
Fax No.: (714) 917-4866
Email: ling.f.li@jpmorgan.com

and:

Mayer Brown LLP
1221 Avenue of the Americas
New York, New York 10020
Attention: Brian Newhouse
Telephone No.: (212) 506-2148
Fax No.: (212) 849-5948
Email: bnewhouse@mayerbrown.com

(iii) if to any other Lender, to it at its address (or telecopy number) set forth in its Administrative Questionnaire.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given

at the opening of business on the next business day for the recipient). Notices delivered through Electronic Systems, to the extent provided in paragraph (b) below, shall be effective as provided in said paragraph (b).

(r) Notices and other communications to the Lenders and the Issuing Bank hereunder may be delivered or furnished by using Electronic Systems pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices pursuant to Article II unless otherwise agreed by the Administrative Agent and the applicable Lender. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient, at its e-mail address as described in the foregoing clause (i), of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii) above, if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(s) Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the other parties hereto.

(t) Electronic Systems.

(i) The Borrower agrees that the Administrative Agent may, but shall not be obligated to, make Communications (as defined below) available to the Issuing Banks and the other Lenders by posting the Communications on Debt Domain, Intralinks, Syndtrak, ClearPar or a substantially similar Electronic System.

(ii) Any Electronic System used by the Administrative Agent is provided "as is" and "as available." The Agent Parties (as defined below) do not warrant the adequacy of such Electronic Systems and expressly disclaim liability for errors or omissions in the Communications. 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 Communications or any Electronic System. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "***Agent Parties***") have any liability to the Borrower or the other Loan Parties, any Lender, the Issuing Bank or any other Person or entity for damages of any kind, including direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of the Borrower's, any Loan Party's or the Administrative Agent's transmission of communications through an Electronic System. "***Communications***" means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of any Loan Party pursuant to any Loan Document or the transactions contemplated therein which is distributed by the Administrative Agent, any Lender or any Issuing Bank by means of electronic communications pursuant to this Section, including through an Electronic System.

SECTION 9.02. Waivers; Amendments. (IX) No failure or delay by the Administrative Agent, the

Issuing Bank or any Lender in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Issuing Bank and the Lenders hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by the Borrower therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent, any Lender or the Issuing Bank may have had notice or knowledge of such Default at the time.

(e) Subject to Section 9.02(c) below, neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders or by the Borrower and the Administrative Agent with the consent of the Required Lenders; provided that no such agreement shall (i) increase the Commitment of any Lender without the written consent of such Lender, (ii) reduce the principal amount of any Loan or LC Disbursement or reduce the rate of interest thereon (other than to reduce the default rate accruing under and in accordance with Section 2.13(c)), or reduce any fees or other amount payable hereunder, without the written consent of each Lender affected thereby, (iii) postpone the scheduled date of payment of the principal amount of any Loan or LC Disbursement, or any interest thereon, or any fees or other amount payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment, without the written consent of each Lender affected thereby, (iv) change Section 2.18(b) or (c) in any manner or Section 8.02 in a manner that would alter the pro rata sharing by the Lenders required thereby, in each case, without the written consent of each Lender, (v) change any of the provisions of this Section or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender, (vi) waive or amend clause (d) of the definition of "Ineligible Institution", without the written consent of each Lender, (vii) except as provided in any Collateral Document, release all or substantially all of the Collateral without the written consent of each Lender, (viii) release any Guarantor from its obligation under its Loan Guaranty or Obligation Guaranty (except as otherwise permitted herein or in the other Loan Documents), without the written consent of each Lender or (ix) subordinate any of the Obligations to any other Indebtedness of the Loan Parties (except as otherwise permitted herein or in the other Loan Documents), without the written consent of each Lender; provided further that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent or the Issuing Bank hereunder without the prior written consent of the Administrative Agent or the Issuing Bank, as the case may be; provided further that no such agreement shall amend or modify the provisions of Section 2.07 or any letter of credit application and any bilateral agreement between the Borrower and the Issuing Bank regarding the Issuing Bank's Letter of Credit Commitment or the respective rights and obligations between the Borrower and the Issuing Bank in connection with the issuance of Letters of Credit without the prior written consent of the Administrative Agent and the Issuing Bank, respectively.

(f) if the Administrative Agent and the Borrower acting together identify any ambiguity, omission, mistake, typographical error or other defect in any provision of this Agreement or any other Loan Document, then the Administrative Agent and the Borrower shall be permitted to amend, modify or supplement such provision to cure such ambiguity, omission, mistake, typographical error or other defect, and such amendment shall become effective without any further action or consent of any other party to this Agreement.

SECTION 9.03.

Expenses; Indemnity; Damage Waiver. (IX) The Borrower shall pay (i) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent and its Affiliates (which shall be limited, in the case of legal fees and expenses, to the reasonable and documented fees, disbursements and other charges of one primary counsel and one local counsel in each applicable jurisdiction) in connection with the syndication of the credit facilities provided for herein, the preparation 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 and documented out-of-pocket expenses incurred by the Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent, the Issuing Bank or any Lender (which shall be limited, in the case of legal fees and expenses, to the reasonable and documented fees, disbursements and other charges of one primary counsel and one local counsel in each applicable jurisdiction for the Administrative Agent and not more than one outside counsel and one local counsel in each applicable jurisdiction for all of the other Lenders and, solely in the case of an actual or reasonably perceived conflict of interest, one additional counsel for each affected Lender) in connection with the enforcement or protection of its rights in connection with this Agreement and the other Loan Documents, including its rights under this Section, or in connection with the Loans made or Letters of Credit issued hereunder, including all such reasonable and documented out-of pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(f) The Borrower shall indemnify the Administrative Agent, the Issuing Bank and each Lender, 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 (which shall be limited, in the case of legal fees and expenses, to the reasonable and documented fees, disbursements and other charges of one primary counsel and one local counsel in each applicable jurisdiction for the Administrative Agent, and not more than one outside counsel, and one local counsel in each applicable jurisdiction for all of the other Indemnitees and, solely in the case of an actual or reasonably perceived conflict of interest, one additional counsel for each affected Indemnitee) incurred by or asserted against any Indemnitee 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 or any other transactions contemplated hereby, (ii) any Loan or Letter of Credit or the use of the proceeds therefrom (including any refusal by the Issuing Bank 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 the Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not such claim, litigation, investigation or proceeding is brought by the Borrower or any other Loan Party or any of their Subsidiaries or its or their respective equity holders, Affiliates, creditors or any other third Person and whether based on contract, tort or any other theory 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. This Section 9.03(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims or damages arising from any non-Tax claim.

(g) To the extent that the Borrower fails to pay any amount required to be paid by it to the Administrative Agent or the Issuing Bank under paragraph (a) or (b) of this Section, each Lender severally agrees to pay to the Administrative Agent or the Issuing Bank, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided 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 the Issuing Bank in their capacity as such.

(h) To the extent permitted by applicable law, no party hereto shall assert, and each such party hereby waives, any claim against any other party hereto, 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 or thereby, the Transactions, any Loan or Letter of Credit or the use of the proceeds thereof; provided that, nothing in this clause (d) shall relieve the Borrower of any obligation it may have to indemnify an Indemnitee against special, indirect, consequential or punitive damages asserted against such Indemnitee by a third party.

(i) All amounts due under this Section shall be payable promptly after written demand therefor.

SECTION 9.04.

Successors and Assigns. (IX) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (including any Affiliate of the Issuing Bank that issues any Letter of Credit), except that (i) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section. 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 (including any Affiliate of the Issuing Bank that issues any Letter of Credit), Participants (to the extent provided in paragraph (c) of this Section) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the Issuing Bank and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(d) (IX) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more Persons (other than an Ineligible Institution) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment, participations in Letters of Credit and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld) of:

(A) the Borrower, provided that, the Borrower shall be deemed to have consented to an assignment unless it shall have objected thereto by written notice to the Administrative Agent within five (5) Business Days after having received notice thereof; provided that no consent of the Borrower shall be required for an assignment to a Lender, an Affiliate of a Lender, an Approved Fund or, if an Event of Default has occurred and is continuing, any other assignee;

(B) the Administrative Agent, provided that no consent of the Administrative Agent shall be required for an assignment of any Commitment to an assignee that is a Lender (other than a Defaulting Lender) with a Commitment immediately prior to giving effect to such assignment; and

(C) the Issuing Bank.

(v) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender or an Affiliate of a Lender or an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans of any Class, the amount of the Commitment or 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) shall not be less than $5,000,000 unless each of the Borrower and the Administrative Agent otherwise consent, provided that no such consent of the Borrower shall be required if an Event of Default has occurred and is continuing;

(B) 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, provided that this clause shall not be construed to prohibit the assignment of a proportionate part of all the assigning Lender's rights and obligations in respect of one Class of Commitments or Loans;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent (x) an Assignment and Assumption or (y) to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to a Platform as to which the Administrative Agent and the parties to the Assignment and Assumption are participants, together with a processing and recordation fee of $3,500; and

(D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire in which the assignee designates one or more Credit Contacts to whom all syndicate-level information (which may contain material non-public information about the Borrower, the Loan Parties and their related parties or their respective securities) will be made available and who may receive such information in accordance with the assignee's compliance procedures and applicable laws, including Federal and state securities laws.

For the purposes of this Section 9.04(b), the term "***Approved Fund***" and "***Ineligible Institution***" have the following meanings:

"***Approved Fund***" means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"***Ineligible Institution***" means (a) a natural person, (b) a Defaulting Lender or its Lender Parent, (c) a company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person or relative(s) thereof; provided that, such company, investment vehicle or trust shall not constitute an Ineligible Institution if it (x) has not been established for the primary purpose of acquiring any Loans or Commitments, (y) is managed by a professional advisor, who is not such natural person or a relative thereof, having significant experience in the business of making or purchasing commercial loans, and (z) has assets greater than $25,000,000 and a significant part of its activities consist of making or purchasing commercial loans and similar extensions of credit in the ordinary course of its business, or (d) the Borrower or any of its Affiliates.

(i) Subject to acceptance and recording thereof pursuant to paragraph (b)(iv) of this Section, from and after the effective date specified in each Assignment and Assumption the assignee thereunder shall be a party hereto 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 2.15, 2.16, 2.17 and 9.03). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.04 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (c) of this Section.

(ii) The Administrative Agent, acting for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount (and stated interest) of the Loans and LC Disbursements owing to, each Lender pursuant to the terms hereof from time to time (the "***Register***"). The entries in the Register shall be conclusive, and the Borrower, the Administrative Agent, the Issuing Bank 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, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower, the Issuing Bank and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(iii) Upon its receipt of (x) a duly completed Assignment and Assumption executed by an assigning Lender and an assignee or (y) to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to a Platform as to which the Administrative Agent and the parties to the Assignment and Assumption are participants, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section and any written consent to such assignment required by paragraph (b) of this Section, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register; provided that if either the assigning Lender or the assignee shall have failed to make any payment required to be made by it pursuant to Section 2.06(d) or (e), 2.07(b), 2.18(d) or 9.03(c), the Administrative Agent shall have no obligation to accept such Assignment and Assumption and record the information therein in the Register unless and until such payment shall have been made in full, together with all accrued interest thereon. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(e) Any Lender may, without the consent of the Borrower, the Administrative Agent or the Issuing Bank, sell participations to one or more banks or other entities (a "***Participant***"), other than an Ineligible Institution, in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans owing to it); provided that (A) such Lender's obligations under this Agreement shall remain unchanged; (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations; and (C) the Borrower, the Administrative Agent, the Issuing Bank and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce 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, modification or waiver described in the first proviso to Section 9.02(b) that affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.15, 2.16 and 2.17 (subject to the requirements and limitations therein, including

the requirements under Sections 2.17(f) and (g) (it being understood that the documentation required under Section 2.17(f) shall be delivered to the participating Lender and the information and documentation required under 2.17(g) will be delivered to the Borrower and the Administrative Agent)) 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 Section 2.19 as if it were an assignee under paragraph (b) of this Section; and (B) shall not be entitled to receive any greater payment under Section 2.15 or 2.17, with respect to any participation, than its participating Lender 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 Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 2.19(b) with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.08 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.18(c) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, 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.

(f) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

SECTION 9.05.

Survival. All covenants, agreements, representations and warranties made by the Borrower herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement and the other Loan Documents shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent, the Issuing Bank or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or terminated. The provisions of Sections 2.15, 2.16, 2.17 and 9.03 and Article VIII shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any provision hereof.

SECTION 9.06.

Counterparts; Integration; Effectiveness; Electronic Execution. (IX) This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to (i) fees payable to the Administrative Agent and (ii) the reductions of the Letter of Credit Commitment of any Issuing Bank 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 which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(j) Delivery of an executed counterpart of a signature page of this Agreement by telecopy, emailed pdf. or any other electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement. The words “execution,” “signed,” “signature,” “delivery,” and words of like import in or relating to any document to be signed in connection with this Agreement and the transactions contemplated hereby shall be deemed to include Electronic Signatures, deliveries 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; provided that nothing herein shall require the Administrative Agent or Silicon Valley Bank to accept electronic signatures in any form or format without its prior written consent.

SECTION 9.07.

Severability. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

SECTION 9.08.

Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations at any time owing by such Lender or Affiliate to or for the credit or the account of the Borrower against any of and all the obligations of the Borrower now or hereafter existing under this Agreement held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement and although such obligations may be unmatured. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff) which such Lender may have.

SECTION 9.09.

Governing Law; Jurisdiction; Consent to Service of Process. (IX) This Agreement shall be construed in accordance with and governed by the law of the State of New York.

(b) Each party hereto irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the Supreme Court of the State of New York sitting in the Borough of Manhattan, and of the United States District Court for the Southern District of New York sitting in the Borough of Manhattan, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that the Administrative Agent, the Issuing Bank or any Lender may otherwise have to bring any action or proceeding relating to this Agreement against the Borrower or its properties in the courts of any jurisdiction.

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

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

SECTION 9.10.
WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

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

SECTION 9.12.
Confidentiality. Each of the Administrative Agent, the Issuing Bank and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any Governmental Authority (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by

applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations, (g) with the consent of the Borrower or (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the Administrative Agent, the Issuing Bank or any Lender on a non-confidential basis from a source other than the Borrower. For the purposes of this Section, "***Information***" means all information received from the Borrower relating to the Borrower or its business, other than any such information that is available to the Administrative Agent, the Issuing Bank or any Lender on a non-confidential basis prior to disclosure by the Borrower and other than information pertaining to this Agreement routinely provided by arrangers to data service providers, including league table providers, that serve the lending industry; provided that, in the case of information received from the Borrower 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.

SECTION 9.13.
Material Non-Public Information.

(d) EACH LENDER ACKNOWLEDGES THAT INFORMATION AS DEFINED IN SECTION 9.12(a) FURNISHED TO IT PURSUANT TO THIS AGREEMENT MAY INCLUDE MATERIAL NON-PUBLIC INFORMATION CONCERNING THE BORROWER AND ITS RELATED PARTIES OR THEIR RESPECTIVE SECURITIES, AND CONFIRMS THAT IT HAS DEVELOPED COMPLIANCE PROCEDURES REGARDING THE USE OF MATERIAL NON-PUBLIC INFORMATION AND THAT IT WILL HANDLE SUCH MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH THOSE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.

(e) ALL INFORMATION, INCLUDING REQUESTS FOR WAIVERS AND AMENDMENTS, FURNISHED BY THE BORROWER OR THE ADMINISTRATIVE AGENT PURSUANT TO, OR IN THE COURSE OF ADMINISTERING, THIS AGREEMENT WILL BE SYNDICATE-LEVEL INFORMATION, WHICH MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION ABOUT THE BORROWER, THE LOAN PARTIES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES. ACCORDINGLY, EACH LENDER REPRESENTS TO THE BORROWER AND THE ADMINISTRATIVE AGENT THAT IT HAS IDENTIFIED IN ITS ADMINISTRATIVE QUESTIONNAIRE A CREDIT CONTACT WHO MAY RECEIVE INFORMATION THAT MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH ITS COMPLIANCE PROCEDURES AND APPLICABLE LAW.

SECTION 9.14.
Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which are treated as interest on such Loan under applicable law (collectively the "***Charges***"), shall exceed the maximum lawful rate (the "***Maximum Rate***") which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such

Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender.

SECTION 9.15.
USA PATRIOT Act. Each Lender that is subject to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "***Act***") hereby notifies the Borrower that pursuant to the requirements of the Act, it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender to identify the Borrower in accordance with the Act.

SECTION 9.16.
Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

[Signatures Immediately Follow]

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

DEXCOM, INC.

By: /s/ Jess Roper

Name: Jess Roper
Title: SVP and Chief Financial Officer

JPMORGAN CHASE BANK, N.A., individually
and as Administrative Agent and Issuing Bank

By: /s/ Ling Li

Name: Ling Li
Title: Executive Director

BANK OF AMERICA N.A.

By: /s/ Heath Lipson

Name: Heath Lipson
Title: SVP

SILICON VALLEY BANK

By: /s/ Brett Maver

Name: Brett Maver
Title: Director

BANK OF THE WEST

By: /s/ Jason Antrim

Name: Jason Antrim
Title: Vice President

UNION BANK

By: /s/ Edmund Osorio

Name: Edmund Osorio
Title: Vice President

SCHEDULE 2.01

Commitment Schedule

Lender	Commitment	Letter of Credit Commitment
JPMorgan Chase Bank, National Association	$85,000,000.00	$10,000,000
Bank of America N.A.	$40,000,000.00	--
Silicon Valley Bank	$40,000,000.00	--
Bank of the West	$20,000,000.00	--
Union Bank	$15,000,000.00	--
Total	**$200,000,000.00**	**$10,000,000**

Schedule 3.05

INTELLECTUAL PROPERTY

All Intellectual Property listed on this Schedule 3.05 is owned by DexCom, Inc.

PATENTS

Ctry	Patent No.	Expiration
US	6702857	27-Jul-21
US	7632228	27-Jul-21
US	8840552	11-Mar-25
US	7471972	22-Nov-23
US	8509871	15-Feb-25
US	9328371	30-Aug-21
US	8527025	04-Mar-17
US	7711402	26-May-19
US	8676288	04-Mar-17
US	9339223	25-Jan-18
US	6741877	04-Mar-17
US	7110803	04-Mar-17
US	7835777	04-Mar-17
US	7974672	04-Mar-17
US	7970448	04-Mar-17
US	7792562	04-Mar-17
US	7860545	04-Mar-17
US	6558321	28-Nov-17
US	6862465	04-Mar-17
US	7136689	04-Mar-17
US	8527026	04-Mar-17
US	8923947	27-Jul-21
US	8155723	04-Mar-17
US	4757022	10-Sep-05
US	4994167	19-Feb-08
US	7226978	22-May-22
US	8865249	22-May-22
US	9179869	22-May-22
US	8050731	12-Nov-24
US	8053018	22-May-22
US	7134999	22-Aug-23
US	7881763	22-Aug-23
US	7192450	27-Jul-21
US	8118877	27-Jul-21

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US	7875293	27-Jul-21
US	7778680	08-Oct-27
US	8428679	23-Oct-24
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US	8290562	05-Sep-24
US	7979104	01-Aug-23
US	8588882	01-Aug-23
US	7933639	01-Aug-23
US	8285354	06-May-24
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US	7986986	01-Aug-23
US	7959569	01-Aug-23
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US	8332008	08-Oct-24
US	7797028	01-Aug-23
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US	7379765	27-Jul-24
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US	8808182	26-Dec-23

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US	8801612	18-Jan-24
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US	8548553	01-Aug-23
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US	8821400	14-Jan-25
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US	8216139	27-Dec-25
US	9192328	26-Nov-25
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US	7831287	12-Apr-27
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US	8690775	11-Dec-29

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US	8064977	14-Apr-26
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US	8911367	14-Aug-30
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US	8862197	25-Mar-28

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US	8828201	27-Dec-30
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DE	602004046018.4	14-Aug-26
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GB	1986543	22-Feb-26
GB	2407094	22-Feb-26
GB	2091409	21-Sep-27
GB	2129285	25-Mar-28
IE	1414504	26-Jul-22
IE	1011425	03-Mar-18
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JP	4295615	26-Jul-22
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JP	4317519	20-May-23
JP	5037128	27-Jul-24
JP	4708342	21-Jul-24
JP	4786653	13-Jul-25
JP	4870075	13-Jul-25
JP	5161341	13-Jul-25
JP	5138819	13-Jul-25
JP	5306521	13-Jul-25
JP	5646659	13-Jul-25
LI	1011425	03-Mar-18
LU	1414504	26-Jul-22
LU	1011425	03-Mar-18
NL	1414504	26-Jul-22
NL	1011425	03-Mar-18
NL	2239567	03-Dec-24
NL	2335584	13-Jul-25
NL	2335583	13-Jul-25
NL	2327984	13-Jul-25
NL	E2532302	20-Jun-26
NL	2517623	20-Jun-26
SE	1414504	26-Jul-22
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SE	2335584	13-Jul-25
SE	2335583	13-Jul-25
SE	2327984	13-Jul-25
SE	2532302	20-Jun-26

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SE	2517623	20-Jun-26

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United States	Appealed	14/290842	29-May-14	2014-0275900	18-Sep-14
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United States	Pending	14/014216	29-Aug-13	2014-0001042	02-Jan-14
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United States	Published	13/181341	12-Jul-11	2011-0270062	03-Nov-11
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United States	Published	14/148512	06-Jan-14	2014-0121989	01-May-14
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United States	Pending	12/253064	16-Oct-08	2009-0043182	12-Feb-09
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United States	Pending	13/092538	22-Apr-11	2011-0201910	18-Aug-11
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United States	Published	14/300137	09-Jun-14	2014-0288494	25-Sep-14
United States	Published	13/885604	15-May-13	2014-0039383	06-Feb-14
United States	Published	14/063753	25-Oct-13	2014-0052091	20-Feb-14
United States	Published	14/063790	25-Oct-13	2014-0052092	20-Feb-14
United States	Published	14/063811	25-Oct-13	2014-0052093	20-Feb-14
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United States	Published	14/063941	25-Oct-13	2014-0052095	20-Feb-14
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United States	Published	14/144373	30-Dec-13	2014-0114278	24-Apr-14
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United States	Allowed	13/863204	15-Apr-13	2013-0231542	05-Sep-13
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United States	Published	14/144536	30-Dec-13	2014-0128702	08-May-14

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United States	Published	14/266408	30-Apr-14	2014-0235982	21-Aug-14
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United States	Published	14/163346	24-Jan-14	2014-0142405	22-May-14
United States	Published	14/924030	27-Oct-15	2016-0051173	25-Feb-16
United States	Published	13/893237	13-May-13	2013-0255570	03-Oct-13
United States	Pending	12/728060	19-Mar-10	2010-0191082	29-Jul-10
United States	Published	14/743777	18-Jun-15	2015-0282741	08-Oct-15
United States	Published	14/296735	05-Jun-14	2014-0288403	25-Sep-14
United States	Published	13/547952	12-Jul-12	2012-0277562	01-Nov-12
United States	Allowed	11/078072	10-Mar-05	2006-0020191	26-Jan-06
United States	Published	12/749981	30-Mar-10	2010-0185069	22-Jul-10
United States	Published	14/590483	06-Jan-15	2015-0148638	28-May-15
United States	Published	14/860602	21-Sep-15	2016-0008029	14-Jan-16
United States	Published	14/923350	26-Oct-15	2016-0045145	18-Feb-16
United States	Published	11/439630	23-May-06	2006-0270923	30-Nov-06
United States	Published	11/503367	10-Aug-06	2007-0027370	01-Feb-07
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United States	Published	14/181434	14-Feb-14	2014-0161969	12-Jun-14
United States	Published	13/903609	28-May-13	2013-0267808	10-Oct-13
United States	Published	14/144523	30-Dec-13	2014-0114158	24-Apr-14
United States	Published	14/283153	20-May-14	2014-0257065	11-Sep-14
United States	Published	14/842276	01-Sep-15	2015-0374270	31-Dec-15
United States	Published	13/951358	25-Jul-13	2013-0310670	21-Nov-13
United States	Published	14/293298	02-Jun-14	2014-0288402	25-Sep-14
United States	Published	14/552398	24-Nov-14	2015-0087942	26-Mar-15
United States	Published	14/256716	18-Apr-14	2014-0213869	31-Jul-14
United States	Published	13/720227	19-Dec-12	2013-0123596	16-May-13
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United States	Published	14/072659	05-Nov-13	2014-0058235	27-Feb-14
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United States	Published	14/145416	31-Dec-13	2014-0128704	08-May-14
United States	Published	14/145404	31-Dec-13	2014-0128703	08-May-14
United States	Published	13/963698	09-Aug-13	2013-0321426	05-Dec-13
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United States	Published	14/508990	07-Oct-14	2015-0025346	22-Jan-15
United States	Published	14/887232	19-Oct-15	2016-0038065	11-Feb-16
United States	Allowed	12/869996	27-Aug-10	2010-0324403	23-Dec-10
United States	Published	14/576103	18-Dec-14	2015-0119666	30-Apr-15
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United States	Published	13/473206	16-May-12	2012-0259191	11-Oct-12
United States	Published	13/899905	22-May-13	2013-0253418	26-Sep-13
United States	Published	14/144424	30-Dec-13	2014-0114154	24-Apr-14
United States	Appealed	12/880015	10-Sep-10	2010-0331656	30-Dec-10
United States	Pending	12/628095	30-Nov-09	2010-0096259	22-Apr-10
United States	Published	14/517663	17-Oct-14	2015-0038815	05-Feb-15
United States	Published	14/517718	17-Oct-14	2015-0112174	23-Apr-15
United States	Published	14/742137	17-Jun-15	2015-0282750	08-Oct-15
United States	Published	14/861963	22-Sep-15	2016-0007897	14-Jan-16
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United States	Published	14/960011	04-Dec-15	2016-0081600	24-Mar-16
United States	Published	12/748069	26-Mar-10	2010-0261987	14-Oct-10
United States	Published	14/144489	30-Dec-13	2014-0114161	24-Apr-14
United States	Published	14/960127	04-Dec-15	2016-0081632	24-Mar-16
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United States	Published	14/057720	18-Oct-13	2014-0046148	13-Feb-14
United States	Published	12/829337	01-Jul-10	2011-0024043	03-Feb-11
United States	Published	14/155814	15-Jan-14	2014-0123893	08-May-14
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United States	Allowed	12/893850	29-Sep-10	2011-0077490	31-Mar-11
United States	Published	14/968643	14-Dec-15	2016-0095542	07-Apr-16
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United States	Published	14/860392	21-Sep-15	2016-0018246	21-Jan-16
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United States	Published	14/959946	04-Dec-15	2016-0081599	24-Mar-16
United States	Published	13/247856	28-Sep-11	2012-0078071	29-Mar-12
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United States	Published	14/341140	25-Jul-14	2014-0337944	13-Nov-14
United States	Published	14/959927	04-Dec-15	2016-0088428	24-Mar-16
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United States	Published	13/594602	24-Aug-12	2013-0053665	28-Feb-13
United States	Published	13/594734	24-Aug-12	2013-0053666	28-Feb-13
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United States	Allowed	13/796185	12-Mar-13	2013-0245401	19-Sep-13
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United States	Published	14/567293	11-Dec-14	2015-0090589	02-Apr-15
United States	Appealed	13/836260	15-Mar-13	2014-0005509	02-Jan-14
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United States	Appealed	13/788375	07-Mar-13	2013-0325352	05-Dec-13
United States	Published	13/789339	07-Mar-13	2013-0325504	05-Dec-13
United States	Pending	13/789341	07-Mar-13	2013-0321425	05-Dec-13
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United States	Published	14/142677	27-Dec-13	2014-0266776	18-Sep-14
United States	Published	14/956105	01-Dec-15	2016-0081551	24-Mar-16
United States	Published	14/956117	01-Dec-15	2016-0081586	24-Mar-16
United States	Published	13/733810	03-Jan-13	2014-0188402	03-Jul-14
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United States	Published	14/945327	18-Nov-15	2016-0066867	10-Mar-16
United States	Published	14/945363	18-Nov-15	2016-0066868	10-Mar-16
United States	Published	14/945176	18-Nov-15	2016-0073880	17-Mar-16
United States	Published	14/945285	18-Nov-15	2016-0066866	10-Mar-16
United States	Published	14/142365	27-Dec-13	2014-0187889	03-Jul-14
United States	Published	14/142608	27-Dec-13	2014-0188398	03-Jul-14
United States	Published	13/836530	15-Mar-13	2014-0275896	18-Sep-14
United States	Published	14/841368	31-Aug-15	2015-0366494	24-Dec-15
United States	Published	13/779607	27-Feb-13	2014-0094671	03-Apr-14
United States	Published	14/543644	17-Nov-14	2015-0080691	19-Mar-15
United States	Published	14/841446	31-Aug-15	2015-0366491	24-Dec-15
United States	Published	13/789371	07-Mar-13	2014-0088389	27-Mar-14
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United States	Published	13/504858	27-Apr-12	2012-0215087	23-Aug-12
United States	Allowed	13/661393	26-Oct-12	2013-0109944	02-May-13
United States	Published	13/785384	05-Mar-13	2013-0231543	05-Sep-13
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United States	Published	13/780808	28-Feb-13	2014-0107450	17-Apr-14
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United States	Published	14/962972	08-Dec-15	2016-0089068	31-Mar-16
United States	Published	14/250341	10-Apr-14	2014-0213866	31-Jul-14
United States	Published	14/964433	09-Dec-15	2016-0113556	28-Apr-16
United States	Allowed	13/734576	04-Jan-13	2014-0095577	03-Apr-14
United States	Published	13/734639	04-Jan-13	2014-0096264	03-Apr-14
United States	Published	14/659263	16-Mar-15	2015-0289821	15-Oct-15
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United States	Allowed	14/505451	02-Oct-14	2015-0108185	23-Apr-15

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United States	Published	14/534061	05-Nov-14	2015-0123813	07-May-15
United States	Published	14/534057	05-Nov-14	2015-0123812	07-May-15
United States	Published	14/962330	08-Dec-15	2016-0095148	31-Mar-16
United States	Published	14/962370	08-Dec-15	2016-0088372	24-Mar-16
United States	Published	14/962907	08-Dec-15	2016-0089066	31-Mar-16
United States	Published	14/569512	12-Dec-14	2015-0164391	18-Jun-15
United States	Published	14/974865	18-Dec-15	2016-0120448	05-May-16
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United States	Published	14/717643	20-May-15	2015-0351670	10-Dec-15
United States	Published	14/717904	20-May-15	2015-0351671	10-Dec-15
United States	Published	14/717965	20-May-15	2015-0351672	10-Dec-15
United States	Published	14/717967	20-May-15	2015-0351673	10-Dec-15
United States	Published	14/525622	28-Oct-14	2015-0119655	30-Apr-15
United States	Published	14/526254	28-Oct-14	2015-0119668	30-Apr-15
United States	Published	14/526225	28-Oct-14	2015-0118668	30-Apr-15
United States	Published	14/526236	28-Oct-14	2015-0120317	30-Apr-15
United States	Published	14/526287	28-Oct-14	2015-0118658	30-Apr-15
United States	Published	14/539890	12-Nov-14	2015-0130633	14-May-15
United States	Published	14/539952	12-Nov-14	2015-0130634	14-May-15
United States	Published	14/539956	12-Nov-14	2015-0135118	14-May-15
United States	Published	14/524919	27-Oct-14	2015-0119667	30-Apr-15
United States	Published	14/307219	17-Jun-14	2015-0025495	22-Jan-15
United States	Published	14/538701	11-Nov-14	2015-0164390	18-Jun-15
United States	Published	14/941435	13-Nov-15	2016-0066826	10-Mar-16
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United States	Published	14/919528	21-Oct-15	2016-0113594	28-Apr-16
United States	Published	14/919611	21-Oct-15	2016-0113596	28-Apr-16
United States	Published	14/919625	21-Oct-15	2016-0119210	28-Apr-16
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United States	Published	14/835603	25-Aug-15	2016-0058380	03-Mar-16
United States	Published	14/874188	02-Oct-15	2016-0098539	07-Apr-16
United States	Published	14/874296	02-Oct-15	2016-0098848	07-Apr-16
United States	Published	14/874334	02-Oct-15	2016-0098540	07-Apr-16

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Country	**Status**	**App. No.**	**Filing Date**	**Pubn No.**	**Pubn Date**
United States	Published	14/770803	26-Aug-15	2016-0073964	17-Mar-16
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United States	Published	14/250320	10-Apr-14	2015-0289788	15-Oct-15
United States	Published	14/862079	22-Sep-15	2016-0081597	24-Mar-16
United States	Published	14/975310	18-Dec-15	2016-0113557	28-Apr-16
United States	Published	14/975437	18-Dec-15	2016-0113558	28-Apr-16
United States	Published	14/975444	18-Dec-15	2016-0106350	21-Apr-16
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Country	Status	App. No.	Filing Date	Pubn No.	Pubn Date
[***]	[***]	[***]	[***]		
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WO	Published	PCT/US2015/020778	16-Mar-15	WO 2015156965	15-Oct-15
WO	Published	PCT/US2014/064169	05-Nov-14	WO 2015-069797	14-May-15
WO	Published	PCT/US2014/070104	12-Dec-14	WO 2015094981	25-Jun-15
WO	Published	PCT/US2015/031710	20-May-15	WO 2015187366	10-Dec-15
WO	Published	PCT/US2014/062687	28-Oct-14	WO 2015066051	07-May-15
WO	Published	PCT/US2014/065306	12-Nov-14	WO 2015-073588	21-May-15
WO	Published	PCT/US2014/062465	27-Oct-14	WO 2015065922	07-May-15
WO	Published	PCT/US2014/042741	17-Jun-14	WO 2015-009385	22-Jan-15
WO	Published	PCT/US2014/065082	11-Nov-14	WO 2015-073459	21-May-15
[***]	[***]	[***]	[***]		
WO	Published	PCT/US2015/056775	21-Oct-15	WO 2016-065081	28-Apr-16
WO	Published	PCT/US2014/072113	23-Dec-14	WO 2015122964	20-Aug-15
WO	Published	PCT/US2015/053854	02-Oct-15	WO 2016057343	14-Apr-16
[***]	[***]	[***]	[***]		
WO	Published	PCT/US2015/020796	16-Mar-15	WO 2015156966	15-Oct-15
WO	Published	PCT/US2015/051548	22-Sep-15	WO 2016-049080	31-Mar-16
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Canada	Published	2866153	29-Aug-14	2866153	10-Oct-13
Canada	Published	2867335	12-Sep-14	2867335	16-Jan-14
Canada	Published	2892266	22-May-15	2892266	02-Oct-14
Canada	Published	2882228	13-Feb-15	2882228	08-May-14
Canada	Published	2867334	12-Sep-14	2867334	12-Dec-13
Canada	Published	2885062	13-Mar-15	2885062	15-May-14
Canada	Published	2886791	31-Mar-15	2886791	03-Jul-14
Canada	Published	2881391	06-Feb-15	2881391	03-Apr-14
Canada	Published	2920308	02-Feb-16	2920308	14-May-15
Canada	Published	2924219	22-Mar-16	2924219	25-Jun-15
Canada	Published	2920297	02-Feb-16	2920297	07-May-15
Canada	Published	2910596	27-Oct-15	2910596	22-Jan-15
China	Published	201380016634	25-Sep-14	104394757	04-Mar-15
China	Published	201380022831.2	30-Oct-14	104781820	15-Jul-15
China	Published	201280046113.4	21-Mar-14	103930029	16-Jul-14
China	Published	201480014870.2	14-Sep-15	105408902	16-Mar-16
China	Published	201380057087.X	30-Apr-15	104755019	01-Jul-15
China	Published	201380029760.9	05-Dec-14	104520857	15-Apr-15
China	Published	201380029760.9	30-Jun-15	104885089	02-Sep-15
China	Published	201380050760.7	27-Mar-15	104684477	03-Jun-15
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European Community	Appealed	4779357.5	15-Dec-05	1648293	26-Apr-06
European Community	Allowed	12170100.7	30-May-12	2497420	12-Sep-12

Country	Status	App. No.	Filing Date	Pubn No.	Pubn Date
European Community	Allowed	12170103.1	30-May-12	2494921	05-Sep-12
European Community	Published	12170112.2	30-May-12	2494922	05-Sep-12
European Community	Published	12170105.6	30-May-12	2497415	12-Sep-12
European Community	Published	12170606.3	01-Jun-12	2508129	10-Oct-12
European Community	Published	4778806.2	15-Dec-05	1648298	26-Apr-06
European Community	Published	6824880.6	21-Jul-08	1991110	02-Oct-12
European Community	Published	10193216.8	30-Nov-10	2329763	08-Jun-11
European Community	Allowed	10193217.6	30-Nov-10	2301428	30-Mar-11
European Community	Published	10164999.4	04-Jun-10	2228642	15-Sep-10
European Community	Published	7844038.5	07-May-10	2227132	15-Sep-10
European Community	Published	6816228.8	25-Feb-09	2068699	17-Jun-09
European Community	Published	11189427.5	16-Nov-11	2433563	28-Mar-12
European Community	Allowed	10195508.6	16-Dec-10	2335585	22-Jun-11
European Community	Published	15195173.8	18-Nov-15	3001952	06-Apr-16
European Community	Allowed	12193934.2	22-Nov-12	2561807	27-Feb-13
European Community	Published	13156245.6	21-Feb-13	2596747	29-May-13
European Community	Published	6718980.3	11-Jun-08	1973464	01-Oct-08
European Community	Published	14184330	10-Sep-14	2829224	28-Jan-15
European Community	Published	9815214.3	25-Mar-11	2326944	01-Jun-11
European Community	Published	8843163	19-Apr-10	2203741	07-Jul-10
European Community	Published	9723677.2	20-Sep-10	2257794	08-Dec-10
European Community	Published	10794798.8	14-Dec-11	2448486	09-May-12
European Community	Published	10770372	31-Aug-11	2424435	07-Mar-12
European Community	Published	10794795.4	12-Dec-11	2448485	09-May-12

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Country	Status	App. No.	Filing Date	Pubn No.	Pubn Date
European Community	Published	12771436.8	11-Nov-13	2697650	19-Feb-14
European Community	Published	11833076	26-Apr-13	2621339	07-Aug-13
European Community	Published	11837040.2	22-May-13	2632334	04-Sep-13
European Community	Published	12767836.5	05-Nov-13	2693945	12-Feb-14
European Community	Published	12828853.7	14-Feb-14	2747650	02-Jul-14
European Community	Published	13717649.1	10-Sep-14	2833782	11-Feb-15
European Community	Published	13711808.9	09-Sep-14	2825096	21-Jan-15
European Community	Published	13745489.8	18-Dec-14	2870555	13-May-15
European Community	Allowed	12833164.2	20-Feb-14	2757951	30-Jul-14
European Community	Published	13735148.2	18-Dec-14	2866659	06-May-15
European Community	Published	13735149	18-Dec-14	2866653	06-May-15
European Community	Published	13742300	18-Dec-14	2866641	06-May-15
European Community	Published	14706156.8	19-May-15	2973081	20-Jan-16
European Community	Published	13784079.9	29-Apr-15	2914159	09-Sep-15
European Community	Published	13730712	18-Dec-14	2856367	08-Apr-15
European Community	Published	14708172.3	16-Jun-15	2973082	20-Jan-16
European Community	Published	13818868.5	29-Apr-15	2941191	11-Nov-15
European Community	Published	13789925.8	06-May-15	2917856	16-Sep-15
European Community	Published	13821308.7	13-Apr-15	2939158	04-Nov-15
European Community	Published	13770598.4	25-Feb-15	2900140	05-Aug-15
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Country	**Status**	**App. No.**	**Filing Date**	**Pubn No.**	**Pubn Date**
[***]	[***]	[***]	[***]		
European Community	Published	14737121.5	20-Oct-15	3022668	25-May-16
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European Community	Published	14714784.7	03-Jul-15	2986214	24-Feb-16
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Description	**CR App. No.**	**Filing Date**	**CR Reg. No.**	**Reg. Date**
PEDIATRIC 2014: Freedom for Them, Peace of Mind for You [bifold Consumer Brochure]	1-2206199047	10-Mar-15	TX 8-035-134	16-Mar-15
PEDIATRIC 2014: Stay One Step Ahead [Bifold] - Consumer Brochure	1-2206198601	10-Mar-15	TX 8-035-135	16-Mar-15
PEDIATRIC 2014: Quick Start Guide	1-2209145748	11-Mar-15	TX 8-035-141	16-Mar-15
PEDIATRIC 2014: Dexcom G4 Platinum Pediatric [CGM] User's Guide	1-2206072011	10-Mar-15	TX 8-035-146	16-Mar-15
COPYRIGHT: SHARE DIRECT IFU - Adult "Dexcom G4 Platinum CGM Receiver with Share - User's Guide [Adult]"	1-2231882631	19-Mar-15	TX 8-045-706	24-Mar-15
COPYRIGHT: SHARE DIRECT IFU - Pediatric "Dexcom G4 Platinum Pediatric CGM Receiver with Share - User's Guide]	1-2231883028	19-Mar-15	TX 8-118-979	24-Mar-15
G4 [PLATINUM]: SOFTWARE CODE for G4 [Platinum] Receiver	1-2370542401	08-May-15	TX 8-188-791	08-May-15
DEXCOM SHARE - IFU 2014	1-1993231841	19-Dec-14	TX 8-004-914	09-Jan-15
PEDIATRIC 2014: 7 Simple Steps to Start [Training Checklist]	1-2209145671	11-Mar-15	TX 8-120-318	16-Mar-15
PEDIATRIC 2014: Always There, as They Grow, Wherever They Go [HCP catalog]	1-2206199154	10-Mar-15	TX 8-120-321	16-Mar-15
PEDIATRIC 2014: Stay One Step Ahead [Professional Catalog]	1-2206198769	10-Mar-15	TX 8-120-358	16-Mar-15
COPYRIGHT: 2014 SPRITZ Product [Software 505 Code]	1-2403335101	20-May-15	TX 8180224	20-May-15
DEXCOM G5 - SOFTWARE Code	1-2403335176	20-May-15	TZu1988066	20-May-15

COPYRIGHT APPLICATIONS

SHARE 2014: SHARE design with Stylized A pyramid [color] Work of Visual Art	1-2434988551	01-Jun-15
SHARE 2014: SHARE Icon [color]	1-2434922832	01-Jun-15
SHARE 2014: SHARE Icon [B&W]	1-2434987616	01-Jun-15
SHARE 2014: FOLLOW Icon [color]	1-2434988281	01-Jun-15
SHARE 2014: FOLLOW Icon [B&W]	1-2434988387	01-Jun-15
DEX DEXCOM G5 - Home Screen Completed 2014; 1st Pubn 10/27/2014	1-1993232471	19-Dec-14

TRADEMARKS AND TRADEMARK APPLICATIONS

Country	CaseType	Status	App. No.	Filing date	Patent No.	Reg. Date	Pubn No.	Pubn Date
United Arab Emirates	National TM App	Registered	201614	26-Nov-13	201614	24-Nov-15	2014 237	01-May-14
Argentina	National TM App	Registered	3296047	06-Dec-13	2708564	28-Jan-15	3296047	15-Oct-14
Australia	Madrid Protocol	Registered	A0039070	04-Nov-13	AU 1598703	04-Nov-13	50/2013	27-Mar-14
Bolivia	National TM App	Registered	SM-6793-2013	02-Dec-13	153835-C	20-Aug-14	169229	05-Jun-14
Canada	National TM App	Registered	1626225	10-May-13	916515	06-Oct-15	1626225	22-Oct-14
Switzerland	Madrid Protocol	Registered	A0039070	04-Nov-13	1186618	18-Dec-14	50/2013	02-Jan-14
Chile	National TM App	Registered	1084257	26-Nov-13	1150049	12-Jan-15	1084257	04-Jul-14
China	National TM App	Registered	13890753	10-Jan-14	13890753	28-May-15	13890753	27-Feb-15
Colombia	Madrid Protocol	Registered	A0039070	04-Nov-13	CO 520019	12-Jan-15	WO 1186618	26-Dec-13
Costa Rica	National TM App	Registered	2013-10288	26-Nov-13	236968	28-Jul-14	2014 58	20-May-14
European Community	National TM App	Registered	3955531	28-Jul-04	3955531	30-Sep-05		
Hong Kong	National TM App	Registered	302830185	09-Dec-13	302830185	09-Dec-13	302830185	03-Jan-14
India	National TM App	Registered	2661284	17-Jan-14	2661284	17-Dec-15	2661284	30-Mar-13
Japan	National TM App	Registered	2004-069113	27-Jul-04	4821001	26-Nov-04		
Lebanon	National TM App	Registered	26659	01-Dec-14	161490	05-Dec-14		
Mexico	Madrid Protocol	Registered	A0039070	04-Nov-13	MX 12469566	31-Jul-14	WO 1186618	26-Dec-13
Malaysia	National TM App	Registered	2013062673	22-Nov-13	2013062673	08-Jul-15	2013062673	23-Apr-15
Norway	Madrid Protocol	Registered	A0039070	04-Nov-13	1186618	04-Nov-13	50/2013	02-Jan-14
Philippines	Madrid Protocol	Registered	A0039070	04-Nov-13	2014/15419 6	20-Nov-14		
Qatar	National TM App	Registered	88020	20-Mar-14	88020	17-Dec-16		
Russian Federation	Madrid Protocol	Registered	A0039070	04-Nov-13	1188618	18-Nov-14		
Saudi Arabia	National TM App	Registered	1435006722	13-Feb-14	1435006722	25-Jul-14	1435006722	12-Mar-14
Singapore	Madrid Protocol	Registered	A0039070	04-Nov-13	T132069J	10-Sep-14	045/2014	27-Jun-14
Thailand	National TM App	Registered	918822	26-Nov-13	Kor405572	26-Nov-13	918822	07-Aug-15
Taiwan	National TM App	Registered	102069799	12-Dec-13	1656619	01-Aug-14		
US	National TM App	Registered	78/361731	03-Feb-04	US3895549	21-Dec-10		

Country	CaseType	Status	App. No.	Filing date	Patent No.	Reg. Date	Pubn No.	Pubn Date
Vietnam	Madrid Protocol	Registered	A0039070	04-Nov-13	1186618	14-Jan-15		
South Africa	National TM App	Registered	2013/33053	26-Nov-13	2013/33053	28-Sep-15		
Peru	National TM App	Allowed	555810	25-Nov-13	209187	02-Apr-14	555810	20-Jan-14
Bangladesh	National TM App	Pending	171002	23-Dec-13				
Sri Lanka	National TM App	Pending	185060	22-Nov-13				
Bahrain	Madrid Protocol	Published	A0039070	04-Nov-13			WO 1186618	26-Dec-13
Brazil	National TM App	Published	840.773.145	24-Jan-14			2014 77	13-May-14
Indonesia	National TM App	Published	D00.2013.060813	18-Dec-13			D00.2013.060813	21-Oct-15
Kuwait	National TM App	Published	145692	28-Nov-13			145692	05-Apr-15
Oman	Madrid Protocol	Published	A0039070	04-Nov-13			1186618	26-Dec-13

Schedule 3.06

DISCLOSED MATTERS

(a) None.

(b) None.

(c) None.

Schedule 3.14

CAPITALIZATION AND SUBSIDIARIES

Owner	Issuer	Certificate Number(s)	Number of Shares Issued	Class of Stock	Percentage of Outstanding Shares	Type of Entity
DexCom, Inc.	SweetSpot Diabetes Care, Inc.	[***]	[***]	[***]	[***]	Delaware corporation
DexCom, Inc.	DexCom (Canada) Inc.	[***]	[***]	[***]	[***]	Limited company by shares
DexCom, Inc.	DexCom (UK) Limited	[***]	[***]	[***]	[***]	Limited company by shares

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Owner	Issuer	Certificate Number(s)	Number of Shares Issued	Class of Stock	Percentage of Outstanding Shares	Type of Entity
DexCom, Inc.	DexCom AB	[***]	[***]	[***]	[***]	Swedish Private Limited Liability Company
DexCom (UK) Limited	DexCom (UK) Intermediate Holdings Ltd	[***]	[***]	[***]	[***]	Limited company by shares
DexCom (UK) Intermediate Holdings Ltd	DexCom Operating Ltd	[***]	[***]	[***]	[***]	Limited company by shares
DexCom (UK) Intermediate Holdings Ltd	DexCom (UK) Distribution Limited	[***]	[***]	[***]	[***]	Limited company by shares
Platin 1204. GmbH	Nintamed Verwaltungs GmbH	[***]	[***]	[***]	[***]	German Limited Liability Company
Platin 1204. GmbH	Nintamed GmbH & Co. KG	[***]	[***]	[***]	[***]	German Limited Partnership with a Limited Liability Company as a General Partner
DexCom (UK) Intermediate Holdings Ltd.	Platin 1204. GmbH	[***]	[***]	[***]	[***]	German Limited Liability Company
DexCom (UK) Intermediate Holdings Ltd.	Nintamed Handels GmbH	[***]	[***]	[***]	[***]	Austrian Limited Liability Company

Owner	Issuer	Certificate Number(s)	Number of Shares Issued	Class of Stock	Percentage of Outstanding Shares	Type of Entity
DexCom (UK) Intermediate Holdings Ltd.	Nintamed Suisse GmbH	[***]	[***]	[***]	[***]	Swiss Limited Liability Company

Schedule 6.01

EXISTING INDEBTEDNESS

None.

Schedule 6.02

EXISTING LIENS

None.

Schedule 6.08

EXISTING RESTRICTIONS

None.

EXHIBIT A
ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (the "***Assignment and Assumption***") is dated as of the Effective Date set forth below and is entered into by and between [*Insert name of Assignor*] (the "***Assignor***") and [*Insert name of Assignee*] (the "***Assignee***"). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, supplemented or otherwise modified from time to time, the "***Credit Agreement***"), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of the Assignor's rights and obligations in its capacity as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below (including any letters of credit and guarantees included in such facilities) and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned pursuant to clauses (i) and (ii) above being referred to herein collectively as the "***Assigned Interest***"). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor: _____

2. Assignee: _____

[and is an Affiliate/Approved Fund of [*identify Lender*]]

3. Borrower: DexCom, Inc.

4. Administrative Agent: JPMorgan Chase Bank, National Association, as the administrative agent under the Credit Agreement

5. Credit Agreement: The $200,000,000 Credit Agreement dated as of June 17, 2016 among DexCom, Inc., the Lenders parties thereto, JPMorgan Chase Bank, National Association, as Administrative Agent

6. Assigned Interest:

Facility Assigned	Aggregate Amount of Commitment/Loans for all Lenders	Amount of Commitment/Loans Assigned	Percentage Assigned of Commitment/Loans
	$	$	%
	$	$	%
	$	$	%

Effective Date: _____ ___, 20___ [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

The Assignee agrees to deliver to the Administrative Agent a completed Administrative Questionnaire in which the Assignee designates one or more Credit Contacts to whom all syndicate-level information (which may contain material non-public information about the Borrower[, the Loan Parties] and [its] [their] Related Parties or their respective securities) will be made available and who may receive such information in accordance with the Assignee's compliance procedures and applicable laws, including Federal and state securities laws.

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR

[NAME OF ASSIGNOR]

By: _____
Title:

ASSIGNEE
[NAME OF ASSIGNEE]

By: _____
Title:

[Consented to and] Accepted:

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, as
Administrative Agent

By_____
Title:

[Consented to:]

[NAME OF RELEVANT PARTY]

By_____
Title:

ANNEX 1 TO EXHIBIT A

DEXCOM, INC.
STANDARD TERMS AND CONDITIONS FOR
ASSIGNMENT AND ASSUMPTION

1. Representations and Warranties.

1.1 Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Credit Agreement or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of the Credit Agreement or (iv) the performance or observance by the Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under the Credit Agreement.

1.2. Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it satisfies the requirements, if any, specified in the Credit Agreement that are required to be satisfied by it in order to acquire the Assigned Interest and become a Lender, (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it has received a copy of the Credit Agreement, together with copies of the most recent financial statements delivered pursuant to Section 5.01 thereof, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Administrative Agent or any other Lender, and (v) attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Credit Agreement, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Credit Agreement are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Acceptance and adoption of the terms of this Assignment and Assumption by the Assignee and the Assignor by Electronic Signature or delivery of an executed counterpart of a signature page of this Assignment and Assumption by any Electronic System shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of New York.

EXHIBIT B
OPINION OF COUNSEL FOR THE LOAN PARTIES

See attached.

EXHIBIT C-1
FORM OF
U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement dated as of June 17, 2016 (as amended, supplemented or otherwise modified from time to time, the "***Credit Agreement***"), among DexCom, Inc., each lender from time to time party thereto and JPMorgan Chase Bank, National Association, as Administrative Agent.

Pursuant to the provisions of Section 2.17 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Loan(s) (as well as any promissory note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (iv) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with a certificate of its non-U.S. Person status on IRS Form W-8BEN-E or IRS Form W-8BEN. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF LENDER]

By:__
Name:
Title:
Date: _____ __, 20[ ]

EXHIBIT C-2
FORM OF
U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement dated as of June 17, 2016 (as amended, supplemented or otherwise modified from time to time, the "***Credit Agreement***"), among DexCom, Inc., each lender from time to time party thereto and JPMorgan Chase Bank, National Association, as Administrative Agent.

Pursuant to the provisions of Section 2.17 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, and (iv) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN-E or IRS Form W-8BEN. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF PARTICIPANT]

By:__

Name:

Title:

Date: _____ __, 20[ ]

EXHIBIT C-3
FORM OF
U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement dated as of June 17, 2016 (as amended, supplemented or otherwise modified from time to time, the "***Credit Agreement***"), among DexCom, Inc., each lender from time to time party thereto and JPMorgan Chase Bank, National Association, as Administrative Agent.

Pursuant to the provisions of Section 2.17 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) with respect such participation, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN-E or IRS Form W-8BEN or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN-E or IRS Form W-8BEN from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF PARTICIPANT]

By:
Name:
Title:

Date: _____ __, 20[ ]

EXHIBIT C-4
FORM OF
U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement dated as of June 17, 2016 (as amended, supplemented or otherwise modified from time to time, the "***Credit Agreement***"), among DexCom, Inc., each lender from time to time party thereto and JPMorgan Chase Bank, National Association, as Administrative Agent.

Pursuant to the provisions of Section 2.17 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the Loan(s) (as well as any promissory note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such Loan(s) (as well as any promissory note(s) evidencing such Loan(s)), (iii) with respect to the extension of credit pursuant to this Credit Agreement or any other Loan Document, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN-E or IRS Form W-8BEN or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN-E or IRS Form W-8BEN from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF LENDER]

By:
Name:
Title:
Date: _____ __, 20[ ]

Exhibit 10.39

INDUSTRIAL NET LEASE
BROADWAY 101 COMMERCE PARK – PHASE III

Landlord:

PRA/LB, L.L.C.,
an Arizona limited liability company

and

Tenant:

DEXCOM, INC.,
a Delaware corporation

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LEASE SUMMARY (AND SOME DEFINED TERMS)

LEASE DATE:	May 1, 2016
LANDLORD:	PRA/LB, L.L.C., an Arizona limited liability company
LANDLORD'S ADDRESS:	PRA/LB, L.L.C. c/o Cox Armored Mini-Storage Management Inc. 1650 East Lamar Road Phoenix, Arizona 85016 Attention: Diane Gibson With a copy to: Brier, Irish, Hubbard & Erhart, P.L.C. 2400 East Arizona Biltmore Circle, Suite 1300 Phoenix, Arizona 85016-2115 Attention: Robert N. Brier, Esq.
ADDRESS FOR RENT PAYMENT:	PRA/LB, L.L.C. c/o Cox Armored Mini-Storage Management Inc. 1650 East Lamar Road Phoenix, Arizona 85016 Attention: Diane Gibson
TENANT:	Dexcom, Inc., a Delaware corporation
TENANT'S ADDRESS:	Dexcom, Inc. 6340 Sequence Drive San Diego, California 92121 Attention: Chief Executive Officer with a copy to: Dexcom, Inc. 6340 Sequence Drive San Diego, California 92121 Attention: Legal Department and with a copy to: Stuart Kane LLP 620 Newport Center Drive, Suite 200 Newport Beach, California 92660 Attention: Josh C. Grushkin
BUILDING:	Building 1 situated on the Property, having an address of 232 South Dobson Road, Mesa, Arizona 85202, containing approximately 148,797 square feet of rentable area, in the aggregate, which rentable area includes an initial take down of approximately 78,000 square feet ("**Phase I**") and a final take down of approximately 70,797 square feet ("**Phase II**").

PREMISES:	The entire Building (Building 1) and all appurtenances and improvements situated on the land on which the Building is located, as shown on the Building and Parking Site Plan attached hereto as Exhibit A-1, including, without limitation, exterior patio area(s), parking areas, landscaped areas, loading and unloading areas, trash areas, sidewalks, walkways, parkways and driveways, and all fixtures, systems and facilities contained, maintained or used in connection with those areas.
PROPERTY:	The Building and another building ("**Building 2**") located at 318 South Dobson Road, Mesa, Arizona 85202, containing approximately 64,187 square feet of rentable area, together with all appurtenances and improvements situated on the land on which such buildings are located, as shown on the Property Site Plan attached hereto as Exhibit A-2, as such area may be expanded or reduced from time to time, including the parking areas, sidewalks, landscaping and other common areas now or subsequently located upon the land. The Building and Building 2 are collectively referred to as the "**Buildings**". The Property is commonly known as "Broadway 101 Commerce Park – Phase III" and contains approximately 212,984 square feet of rentable area, subject to the terms of Section 1.1.
USE:	General office and warehouse uses in connection with the research and development, manufacture and distribution of medical and other technological devices, including, but not limited to, continuous glucose monitoring systems for diabetes management, and customer service and training; and any other use requested by Tenant and approved by Landlord, which approval Landlord shall not unreasonably withhold so long as such use is permitted by law and does not conflict with the express terms of this Lease or with any other uses and/or restrictive covenants then in effect at the Property.
EARLY ACCESS:	Landlord shall provide Tenant with access to the Premises for purposes of inspection and other pre-construction activities promptly after (a) Landlord has received and approved copies of Tenant's insurance certificates as required under this Lease, and (b) Landlord has also received from Tenant a copy of this Lease fully executed by Tenant and the Letter of Credit required under this Lease. Tenant shall prepare the Premises for occupancy by Tenant in accordance with the Work Letter attached to this Lease as Exhibit B.
TARGET PHASE I OCCUPANCY DATE:	Tenant is expected to cause the tenant improvements in Phase I to be completed on or about October 1, 2016.
TARGET PHASE II OCCUPANCY DATE:	Tenant is expected to cause the tenant improvements in Phase II to be completed on or about January 1, 2018.
COMMENCEMENT DATE:	May 1, 2016
TERM:	Eleven (11) years, eleven (11) months, beginning on the Commencement Date.
EXPIRATION DATE:	March 31, 2028

BASE RENT (Article 3):

Dates	Mos.	RSF	Monthly Rate PSF*	Monthly Rent*	Rental Consideration for Entire Period*
5/1/2016 – 9/30/2016	5	78,000	$0.000	$0.00	$0.00
10/1/2016 – 12/31/2017	15	78,000	$0.670	$52,260.00	$783,900.00
1/1/2018 – 12/31/2018	12	148,797	$0.690	$102,669.93	$1,232,039.16
1/1/2019 – 12/31/2019	12	148,797	$0.711	$105,794.67	$1,269,536.04
1/1/2020 – 12/31/2020	12	148,797	$0.732	$108,919.40	$1,307,032.80
1/1/2021 – 12/31/2021	12	148,797	$0.754	$112,192.94	$1,346,315.28
1/1/2022 – 12/31/2022	12	148,797	$0.777	$115,615.27	$1,387,383.24
1/1/2023 – 12/31/2023	12	148,797	$0.800	$119,037.60	$1,428,451.20
1/1/2024 – 12/31/2024	12	148,797	$0.824	$122,608.73	$1,471,304.76
1/1/2025 – 12/31/2025	12	148,797	$0.849	$126,328.65	$1,515,943.80
1/1/2026 – 12/31/2026	12	148,797	$0.874	$130,048.58	$1,560,582.96
1/1/2027 – 3/31/2028	15	148,797	$0.900	$133,917.30	$2,008,759.50
First Option Term (if applicable):					
4/1/2028 – 3/31/2029	12	148,797	$0.927	$137,934.82	$1,655,217.84
4/1/2029 – 3/31/2030	12	148,797	$0.955	$142,101.14	$1,705,213.68
4/1/2030 – 3/31/2031	12	148,797	$0.984	$146,416.25	$1,756,995.00
4/1/2031 – 3/31/2032	12	148,797	$1.013	$150,731.36	$1,808,776.32
4/1/2032 – 3/31/2033	12	148,797	$1.044	$155,344.07	$1,864,128.84

*plus applicable rental taxes thereon

NOTE: If Tenant occupies all or any portion of Phase II for the purpose of conducting Business Operations (as defined below) therein prior to January 1, 2018 (each such early occupancy of all or portions of Phase II, herein a "**Phase II Early Take Down**"), then from the date Tenant commences to use such portion of Phase II for Business Operations until January 1, 2018, notwithstanding anything otherwise provided above, Tenant shall be required to pay Base Rent for such portion of Phase II at the monthly rate of $0.670 per rentable square foot (prorated for any partial month during such period), provided that each such Phase II Early Take Down (until the final take down) shall include at least 20,000 square feet of rentable area irrespective of the actual rentable area of Phase II then being occupied by Tenant for the purpose of conducting Business Operations. Prior to each such Phase II Early Take Down, (a) Tenant shall give Landlord advance written notice thereof, (i) specifying the date that Tenant desires to commence Business Operations in such portion of Phase II subject to a Phase II Early Take Down, and (ii) specifying the rentable area included in such portion of Phase II subject to a Phase II Early Take Down, and (b) the parties shall promptly enter into a written agreement setting forth the date upon which Tenant will commence to occupy and pay Base Rent for such portion of Phase II subject to a Phase II Early Take Down and specifying the amount of such Base Rent. For purpose hereof, "**Business Operations**" shall mean (i) the stationing of employees in any portion of Phase II subject to a Phase II Early Take Down, or (ii) the storage or operation of any equipment, inventory or personal property in any portion of Phase II subject to a Phase II Early Take Down; provided, however, in no event shall Business Operations be deemed to have commenced in Phase II if Tenant, its employees or agents are solely using any portion of Phase II for the staging of Tenant Improvements.

RENT ABATEMENT: As reflected in the rent schedule above, as an inducement to Tenant entering into this Lease, Landlord has agreed to abate the monthly installments of Base Rent (calculated at the monthly rate of $0.670 per square foot) that would otherwise be payable for Phase I and Phase II (148,797 SF) during Months 1 through 5 of the Term and for Phase II (70,797 SF) during Months 6 through 15* of the Term (collectively, the "**Rent Abatement**"). Base Rent only is being abated, or partially abated, as the case may be, during said months of the Term and Tenant shall nevertheless be required to commence to pay Tenant's Building Share and/or Tenant's Property Share (as such terms are defined below), as applicable, of Insurance Costs, Taxes and Property Management Expenses, with respect to the entire Building (148,797 SF), commencing on the Commencement Date.

*or until such earlier date(s) that Tenant is required to commence paying Base Rent for all or portions of Phase II.

TENANT'S SHARE:	(i) 100% to the extent the Building or Premises (as opposed to the entire Property) are separately assessed or charged for the applicable item of additional rent ("**Tenant's Building Share**"); or (ii) with respect to items of additional rent which are applicable to the entire Property, the percentage obtained by converting a fraction, the numerator of which is the rentable area of the Building and the denominator of which is the rentable area of both Buildings on the Property ("**Tenant's Property Share**"). Subject to the terms of Section 1.1, Tenant's Property Share as of the Lease Date is approximately 70% (based on 148,797 square feet of rentable area in the Building and 212,984 square feet of rentable area in both Buildings on the Property).
INITIAL LETTER OF CREDIT AMOUNT:	$3,600,000.00
PARKING:	Approximately three hundred eighty-six (386) parking spaces ("**Tenant Parking Spaces**") located on the Premises adjacent to the Building (north of Birchwood), as shown on the Building and Parking Site Plan attached to this Lease as Exhibit A-1. During the Term, including any Option Terms, Tenant and the Tenant Entities (as defined below) will be entitled to use all such Tenant Parking Spaces, free of charge, subject to such reasonable rules and regulations as Landlord may from time to time promulgate regarding such use.
REAL ESTATE BROKER DUE COMMISSION:	Cushman & Wakefield, representing Landlord and Tenant, whose fees shall be paid by Landlord pursuant to separate written agreement(s).

The above information and defined terms (together, the "**Summary**") are incorporated into and made a part of the Standard Lease Provisions set forth below. In the event of any conflict between the Summary and the Standard Lease Provisions, the Summary shall control. This "**Lease**" includes the Summary, the Standard Lease Provisions and Exhibits A through F, all of which are made a part of this Lease.

STANDARD LEASE PROVISIONS

1. **USE AND RESTRICTIONS ON USE**.

1.1

By this Lease Landlord leases to Tenant and Tenant leases from Landlord the Building and the Premises as set forth and described on the Summary. The term "**rentable area**" shall mean the rentable area of the Building on the Premises or the Buildings on the Property, as the case may be, as calculated by Landlord, including a proportionate share of any common areas. Tenant hereby accepts and agrees to be bound by the figures for the rentable area of the Building and the Buildings as shown on the Summary; however, Landlord may adjust the rentable area of the Buildings on the Property (and Tenant's Building Share and/or Tenant's Property Share, as applicable) if there is any addition to or subtraction from the Buildings on the Property, or any other circumstance reasonably justifying adjustment. If Tenant constructs any mezzanine space in the Building, at Tenant's sole cost and expense, subject to the terms of Exhibit B, the square footage of such area shall not be added to the rentable area of the Building for purposes of determining the Monthly Base Rent or Tenant's Building Share and/or Tenant's Property Share, as applicable, under this Lease.

1.2

The Building is to be used solely for the purposes set forth on the Summary. Tenant shall have access to the Building and the Premises 24 hours per day, seven days per week, subject to the terms of this Lease and such reasonable rules and regulations as Landlord may from time to time promulgate regarding such access. Tenant shall not do or permit anything to be done in or about the Building or Premises which will in any way obstruct or interfere with the rights of other tenants or occupants of the Property or injure, annoy, or disturb them, or allow the Building or Premises to be used for any improper, immoral, unlawful, or objectionable purpose, or commit any waste. Landlord and Tenant acknowledge that Section 5.2 of that certain Easements, Covenants, Conditions and Restrictions Agreement dated and recorded on August 11, 2014, in the Official Records of Maricopa County as instrument number 20140526495 (the "**ECC&Rs**"), states that the owner of the Premises shall not use or permit any other person or business enterprise to use any portion of the Premises, and that the Premises is restricted from use, as (i) a retail convenience grocery store, (ii) a smoke shop, or other retail outlet selling tobacco products as one of its primary uses, (iii) a sexually oriented business, (iv) for the sale of pornographic or sexually explicit materials or drug paraphernalia, package or carry out beer, wine, liquor or spirits, (v) for the retail sale of motor fuels, or (vi) for the sale of items commonly sold in a convenience store, including, but not limited to, candy, chips, snacks, juice, smoothies, coffee and coffee products, donuts, pastries, soda and other carbonated beverages, unless such items are sold on an incidental basis (such incidental basis herein referred to as the "**Incidental Sales**"). Tenant agrees that in no event shall the Premises or any portion of the Premises or the Building be used at any time for any of the restricted uses set forth in the ECC&Rs, with the exception of Incidental Sales. Landlord agrees that, so long as such uses are in compliance with all applicable laws, ordinances and regulations and do not violate the restrictions set forth in the ECC&Rs, Tenant shall be permitted to operate a store, café, and/or cafeteria in a portion of the Building, exclusively for use by Tenant's employees working at the Building and not open to the general public. Subject to Landlord's express obligations set forth in Section 7.1(b) and elsewhere in this Lease, Tenant shall comply with all governmental laws, ordinances and regulations applicable to the use of the Building, the Premises and its occupancy and shall promptly comply with all governmental orders and directions for the correction, prevention and abatement of any violations caused or permitted by, or resulting from the specific use by, Tenant, or in or upon, or in connection with, the Building or the Premises, all at Tenant's sole expense. Tenant shall not do or knowingly permit anything to be done on or about the Building or the Premises or bring into or keep anything in the Building or the Premises which will in any way increase the rate of, invalidate or prevent the procuring of any insurance protecting against loss or damage to the Building or any of its contents by fire or other casualty or against liability for damage to property or injury to persons in or about the Building or any part thereof.

1.3

Tenant shall not, and shall not direct, suffer or permit any of its agents, contractors, employees, licensees or invitees (collectively, the "**Tenant Entities**") to at any time handle, use, manufacture, store or dispose of (collectively, "**Use**") in or about the Building, the Premises, or the Property any (collectively, "**Hazardous**

Materials") flammables, explosives, radioactive materials, hazardous wastes or materials, toxic wastes or materials, or other similar substances, petroleum products or derivatives or any substance subject to regulation by or under any federal, state and local laws and ordinances relating to the protection of the environment or the keeping, use or disposition of environmentally hazardous materials, substances, or wastes, presently in effect or hereafter adopted, all amendments to any of them, and all rules and regulations issued pursuant to any of such laws or ordinances (collectively, "**Environmental Laws**"), except as provided below in Sections 1.3(A) and 1.3(B) hereof, nor shall Tenant suffer or permit any Hazardous Materials to be used in any manner not fully in compliance with all Environmental Laws, in the Building, the Premises, or the Property or allow the environment to become contaminated with any Hazardous Materials. Notwithstanding the foregoing, (A) Tenant may Use Hazardous Materials in the Building, subject to the additional terms and conditions set forth on Exhibit D (Hazardous Materials) attached hereto and incorporated herein by this reference, and (B) Tenant may handle, store, use or dispose of products containing small quantities of Hazardous Materials (such as aerosol cans containing insecticides, toner for copiers, paints, paint remover and the like) to the extent customary and necessary for the use of the Building for general office purposes; provided that Tenant shall always handle, store, use, and dispose of any such Hazardous Materials in a safe and lawful manner and never allow such Hazardous Materials to contaminate the Building, the Premises, the Property or the environment. Tenant shall protect, defend, indemnify and hold harmless Landlord and its trustees, boards of directors, officers, general partners, managers, members, beneficiaries, stockholders, employees and agents (collectively, the "**Landlord Entities**") for, from and against any and all loss, claim, liability or cost whatsoever (including court costs and attorneys' fees) incurred by reason of any failure of Tenant to fully comply with all applicable Environmental Laws, or the presence, handling, use or disposition in or from the Building, the Premises, and/or the Property of any Hazardous Materials by Tenant or any Tenant Entity (even though permissible under all applicable Environmental Laws or the provisions of this Lease), or by reason of any failure of Tenant to keep, observe, or perform any provision of this Section 1.3.

1.4

During the Term of this Lease, Tenant and the Tenant Entities will be entitled to exclusive use of the Premises (subject to the non-exclusive rights of others granted under any easements or other agreements affecting the Premises and Landlord's rules and regulations regarding such use), including all of the Tenant Parking Spaces set forth in the Summary and shown on Exhibit A-2. Tenant shall have the right to monitor and control the use of the Tenant Parking Spaces, including closure of such parking areas, as well as the right to mark the parking stalls in accordance with applicable laws, ordinances and regulations. In no event will Tenant or the Tenant Entities park in any of the other parking areas which serve the Property.

2.

TERM.

The Term of this Lease shall be for the period designated in the Summary, beginning on the Commencement Date and ending on the Expiration Date, as the same may be extended or sooner terminated as provided in this Lease. Landlord shall deliver possession of the Building and the Premises to Tenant as provided in the Summary. Tenant acknowledges that, except as otherwise expressly set forth in this Lease, neither Landlord nor any agent of Landlord has made any representation or warranty with respect to the Building, the Premises, the Property or their condition, or with respect to the suitability thereof for the conduct of Tenant's business, and Tenant shall accept the Building and the Premises in their then as-is condition on delivery by Landlord (subject to the further terms of this Lease), without any obligation on Landlord's part to make any alterations, upgrades or improvements thereto. Tenant shall be responsible for constructing, furnishing and/or installing such improvements, additions, alterations, equipment and furnishings for the Building and the Premises, including, without limitation, the installation of all heating, ventilating and air conditioning systems, evaporative cooling systems, fire sprinkler systems and the like, which are necessary to permit the Building to be utilized for the purposes set forth on the Summary and otherwise in accordance with all of the terms of this Lease; such work shall be performed by Tenant in accordance with the terms and conditions set forth in Exhibit B. The entry, use or occupancy of the Building by Tenant, or any agent, employee or contractor of Tenant, prior to the Commencement Date, for the purpose of preparing the Building for occupancy by Tenant, as more particularly set forth in Exhibit B, shall be subject to all the provisions of this Lease other than the payment of rent, including, without limitation, Tenant's compliance with the insurance requirements of Article 11. Said early

possession shall not advance the Commencement Date or the Expiration Date. Even though the Term of this Lease does not commence until the Commencement Date, this Lease shall be in full force and effect as a binding obligation of the parties from and after the date this Lease is fully executed.

3.
RENT.

3.1
Tenant agrees to pay to Landlord the Monthly Base Rent then in effect on or before the first day of each full calendar month during the Term, commencing upon the expiration of the Rent Abatement. Rent for any period during the Term which is less than a full month shall be a prorated portion of the Monthly Base Rent based upon the number of days in such month. Said rent shall be paid to Landlord, without deduction or offset except as expressly permitted under this Lease, and without notice or demand, at the Rent Payment Address set forth on the Summary, or to such other person or at such other place as Landlord may from time to time designate in writing. If an Event of Default occurs, Landlord may require by notice to Tenant that all subsequent rent payments be made by an automatic payment from Tenant's bank account to Landlord's account, without cost to Landlord. Tenant must implement such automatic payment system prior to the next scheduled rent payment or within ten (10) business days after Landlord's notice, whichever is later. Unless specified in this Lease to the contrary, all amounts and sums payable by Tenant to Landlord pursuant to this Lease, other than Base Rent, shall be additional rent. Tenant shall pay to Landlord, in addition to, and simultaneously with, all payments of rent and any other amounts payable to Landlord under this Lease, a sum equal to the aggregate of any municipal, county, state or federal excise, sales, use, rental or transaction privilege taxes now or hereafter levied or imposed against, or on account of, any or all consideration from and amounts payable under this Lease by Tenant, or the receipt thereof by Landlord.

3.2
Tenant recognizes that late payment of any rent or other sum due under this Lease will result in administrative expense to Landlord, the extent of which additional expense is extremely difficult and economically impractical to ascertain. Tenant therefore agrees that if rent or any other sum is not paid when due and payable pursuant to this Lease, a late charge shall be imposed in an amount equal to five percent (5%) of the unpaid rent or other payment. The provisions of this Section 3.2 in no way relieve Tenant of the obligation to pay rent or other payments on or before the date on which they are due, nor do the terms of this Section 3.2 in any way affect Landlord's remedies pursuant to Article 19 of this Lease in the event said rent or other payment is unpaid after date due.

4.
ADDITIONAL RENT.

4.1
Except as may otherwise be expressly provided in this Lease, all rent shall be absolutely net to Landlord so that this Lease shall yield net to Landlord the rent to be paid each month during the Term of this Lease. Accordingly, and except as may otherwise be provided in this Lease, all costs, expenses and obligations of every kind or nature whatsoever relating to the Building and the Premises which may arise or become due during the Term (including, without limitation, all costs and expenses of maintenance and repairs (including necessary replacements), insurance and taxes, etc., except as may otherwise be expressly provided in this Lease) shall be paid by Tenant. In the event Tenant fails to pay, perform or discharge any imposition, insurance premium, utility charge, maintenance, repair or replacement expense which it is obligated to pay or discharge, Landlord may, but shall not be obligated to, pay, perform and/or discharge the same, and in that event Tenant shall reimburse Landlord for such amount as additional rent, together with a reasonable fee for overhead not to exceed eight percent (8%), within thirty (30) days after invoice, and Tenant hereby agrees to indemnify, defend and hold Landlord harmless for, from and against such costs, fees, charges, expenses, reimbursements and obligations referred to above. Nothing herein contained, however, shall be deemed to require Tenant to pay or discharge any liens or mortgages of any character whatsoever which may exist or hereafter be placed upon the Premises by an affirmative act or omission of Landlord. For the purpose of this Article 4, the following terms are defined as follows:

4.1.1

Insurance Costs: All insurance charges of or relating to all insurance policies and endorsements deemed by Landlord to be reasonably necessary or desirable and relating in any manner to the protection, preservation, or operation of the Building, the Premises and the Property or any part thereof, including, without limitation, the insurance required to be maintained by Landlord pursuant to Section 21.1 of this Lease.

4.1.2

Taxes: Real estate taxes and any other taxes, charges and assessments which are levied with respect to the Property, or with respect to any improvements, fixtures and equipment or other property of Landlord, real or personal, located on the Property and used in connection with the operation of the Property; and all fees, expenses and costs incurred by Landlord in investigating, protesting, contesting or in any way seeking to reduce or avoid increase in any assessments, levies or the tax rate pertaining to any Taxes to be paid by Landlord in any calendar year. Taxes shall not include any corporate franchise, or estate, inheritance or net income tax, or tax imposed upon any transfer by Landlord of its interest in this Lease or the Building or any taxes to be paid by Tenant pursuant to Article 27.

4.1.3

Property Management Expenses: An amount equal to two and one-half percent (2.5%) of the annual gross receipts of the Premises (which amount shall be allocated and paid by Tenant based on Tenant's Building Share), and, if applicable, any assessments, costs or fees paid or incurred by Landlord pursuant to any owners' association, cross-access (vehicular and pedestrian) easement or similar agreement entered into by Landlord and the owner(s) of adjacent properties, as equitably prorated and apportioned between the Premises (or the Property if allocated to Tenant pursuant to Tenant's Property Share) and such other properties, provided that, (a) any such agreement to be entered into by Landlord and the owner(s) of adjacent properties after the execution of this Lease and during the Term of this Lease shall be subject to Tenant's right to reasonably comment upon and approve the same in advance of Landlord entering into same, which approval shall not be unreasonably withheld, delayed or conditioned by Tenant, and (b) such agreement shall not provide for cross parking unless expressly approved in advance by Tenant.

4.2

Tenant shall pay as additional rent for each calendar year Tenant's Building Share or Tenant's Property Share, as applicable, of Insurance Costs, Taxes and Property Management Expenses incurred for such calendar year, commencing on the Commencement Date. Subject to the terms of Sections 4.4 and 4.5 below, payment of such amounts shall be due within thirty (30) days after invoice. When providing any such invoice to Tenant for payment, Landlord shall provide an explanation to Tenant with the calculation of how such amount was determined, including whether such amount is calculated as Tenant's Building Share or Tenant's Property Share.

4.3

Concurrently with Landlord's delivery of any invoice to Tenant, or otherwise promptly after written request from Tenant from time to time, but not more often than one time per calendar year, Landlord shall furnish to Tenant copies of the insurance premium statements and tax bills for the current and immediately preceding calendar year, as well as any additional back-up documentation for any other charges being attributed to Tenant's Building Share and/or Tenant's Property Share.

4.4

Prior to the actual determination thereof for a calendar year, Landlord may from time to time estimate Tenant's Building Share and/or Tenant's Property Share, as applicable, for Insurance Costs, Taxes and/or Property Management Expenses under Section 4.2 for the calendar year or portion thereof. Landlord will give Tenant written notification of the amount of such estimate not more often than two times in any calendar year, and Tenant agrees that it will pay, by increase of the monthly estimate of Tenant's Building Share or Tenant's Property Share, as applicable, of Insurance Costs, Taxes and/or Property Management Expenses (as applicable) due for such calendar year, additional rent in the amount of such estimate, as of the first of the month that occurs not less than thirty (30) days following Tenant's receipt of such written notification of the amount of such estimate. Any such increased rate of the monthly estimate of Tenant's Building Share and/or Tenant's Property Share, as applicable, of Insurance Costs, Taxes and/or

Property Management Expenses pursuant to this Section 4.4 shall remain in effect until further written notification to Tenant pursuant hereto.

4.5

When the above mentioned actual determination of Tenant's Building Share and/or Tenant's Property Share, as applicable, for Insurance Costs, Taxes and/or Property Management Expenses is made for any calendar year, Landlord shall provide written notice to Tenant reconciling the previously paid estimated amounts with such actual amounts, and when Tenant is so notified in writing by Landlord, then:

4.5.1

If the total additional rent Tenant actually paid pursuant to Section 4.3 on account of Insurance Costs, Taxes and/or Property Management Expenses for the calendar year is less than Tenant's liability for Tenant's Building Share and/or Tenant's Property Share, as applicable, of Insurance Costs, Taxes and/or Property Management Expenses, then Tenant shall pay such deficiency to Landlord as additional rent in one lump sum within thirty (30) days after Tenant's receipt of Landlord's bill therefor; and

4.5.2

If the total additional rent Tenant actually paid pursuant to Section 4.3 on account of Insurance Costs, Taxes and/or Property Management Expenses for the calendar year is more than Tenant's Building Share and/or Tenant's Property Share, as applicable, for Insurance Costs, Taxes and/or Property Management Expenses, then Landlord shall credit the difference against the then next due payments to be made by Tenant under this Article 4, or, if the Lease has terminated, refund the difference to Tenant in one lump sum within thirty (30) days after Landlord's determination thereof.

4.6

If the Commencement Date is other than January 1 or if the Expiration Date is other than December 31, Tenant's liability for Tenant's Building Share and/or Tenant's Property Share, as applicable, of Insurance Costs, Taxes and/or Property Management Expenses for the calendar year in which said date occurs shall be prorated based upon a three hundred sixty-five (365) day year.

4.7 Promptly following Tenant's execution of this Lease, Tenant shall pay to Landlord the sum of $21,000.00, as the agreed upon payment for a portion of the Insurance Costs, Taxes and Property Management Expenses attributable to the early access period occurring prior to the Commencement Date.

5.

LETTER OF CREDIT.

5.1

Concurrently with Tenant's execution of this Lease, Tenant shall deliver to Landlord, as protection for the full performance by Tenant of all of its obligations under this Lease and for all claims, damages, judgments, suits, causes of action, losses, liabilities, penalties, fines, expenses and costs Landlord may suffer (or which Landlord reasonably estimates that it may suffer) as a result of any default by Tenant under this Lease, an original, unconditional, irrevocable, standby letter of credit ("**Letter of Credit**") in the form of Exhibit E attached hereto and containing the terms required herein, in the Initial Letter of Credit Amount set forth in the Summary, naming Landlord as beneficiary, issued (or confirmed) by a solvent, nationally recognized financial institution with a long term credit rating of Baa2 or higher under the Moody's rating system, BBB or higher under the Standard & Poor's rating system, or comparable credit rating under an equivalent reputable rating system, acceptable to Landlord in Landlord's sole discretion, payable in Maricopa County, Arizona, or elsewhere so long as demands for payment are permitted via facsimile ("**Bank**"), permitting multiple and partial draws thereon, and otherwise in a form acceptable to Landlord in its sole discretion. The Letter of Credit shall be subject to the International Standby Practices-ISP 98, International Chamber of Commerce Publication #590. Tenant shall pay all expenses, points and/or fees incurred in obtaining the Letter of Credit. Tenant shall cause the Letter of Credit to be continuously maintained in effect (whether through replacement, renewal or extension) in the then required Letter of Credit Amount as provided below in Section 5.8, through the

Final LC Expiration Date (as defined in Section 5.8). If the Letter of Credit held by Landlord expires earlier than the Final LC Expiration Date (whether by reason of a stated expiration date or a notice of termination or non-renewal given by the Bank), Tenant shall deliver a new Letter of Credit or certificate of renewal or extension to Landlord not later than fifty (50) days prior to the expiration date of the Letter of Credit then held by Landlord, without any action whatsoever on the part of Landlord. Additionally, if Tenant desires to replace the Letter of Credit held by Landlord earlier than the expiration date of such Letter of Credit, Tenant shall deliver a new Letter of Credit to Landlord which satisfies the requirements of this Article 5, and Landlord shall surrender the Letter of Credit then held by Landlord to Tenant or Bank, as directed by Tenant, not later than thirty (30) days after Landlord's receipt of the new Letter of Credit. Any renewal or replacement Letter of Credit shall comply with all of the provisions of this Article, shall be irrevocable, transferable and shall remain in effect (or be automatically renewable) through the Final LC Expiration Date upon the same terms as the expiring Letter of Credit or such other terms as may be acceptable to Landlord in its sole discretion. In addition to the rights and remedies of Landlord set forth in this Article, any failure of Tenant to deliver such new Letter of Credit or certificate of renewal or extension when and as required above shall be an immediate material event of default under this Lease without notice or opportunity to cure.

5.2

Landlord shall have the immediate right to draw upon the Letter of Credit, in whole or in part, at any time and from time to time upon the occurrence of any of the following events (each, a "**Triggering Event**"): (a) a default by Tenant under this Lease which continues beyond the expiration of any applicable notice and cure period ("**Triggering Default**"); (b) a monetary Triggering Default occurs, irrespective of whether the amounts owing under such Triggering Default are subsequently received by Landlord from the proceeds of a draw on the Letter of Credit, and Tenant thereafter fails to make any payment of rent within five (5) days after the date due, without the need for Landlord to provide any notice or opportunity to cure, or fails to pay any Landlord Losses (as defined below) within five (5) days after invoice; (c) Tenant files a voluntary petition under the U.S. Bankruptcy Code or any state bankruptcy code (collectively, "**Bankruptcy Code**"); (d) an involuntary petition is filed against Tenant under the Bankruptcy Code; (e) Tenant files a voluntary petition under the Bankruptcy Code or an involuntary petition is filed against Tenant under the Bankruptcy Code and Tenant thereafter fails to make any payment of rent within five (5) days after the date due, without the need for Landlord to provide any notice or opportunity to cure; or (f) if the Letter of Credit held by Landlord is scheduled to expire earlier than the Final LC Expiration Date (whether by reason of a stated expiration date or a notice of termination or non-renewal given by the Bank), and Tenant fails to deliver to Landlord, at least fifty (50) days prior to the scheduled expiration date of the Letter of Credit then held by Landlord, a renewal or substitute Letter of Credit that is in effect and that complies with the provisions of this Article. In order to draw upon the Letter of Credit, Landlord shall submit a demand to the Bank, purportedly signed by Landlord or its managing agent, authorized representative or legal counsel, (i) identifying the Letter of Credit, (ii) specifying the date of the draw demand, (iii) specifying the amount of the draw, and (iv) specifying to whom (and to what bank account) the draw proceeds should be wired. The Letter of Credit shall require the Bank to honor any draw demand within two (2) business days after such demand is submitted. No condition or term of this Lease shall be deemed to render the Letter of Credit conditional to justify the issuer of the Letter of Credit in failing to honor a drawing upon such Letter of Credit in a timely manner. Tenant hereby acknowledges and agrees that Landlord is entering into this Lease in material reliance upon the ability of Landlord to draw upon the Letter of Credit upon the occurrence of any of the Triggering Events described above in this paragraph.

5.3

Upon any draw in accordance with the provisions of this Article: (A) Landlord may immediately apply or offset the proceeds of the Letter of Credit against any of the following (collectively, "**Landlord Losses**"): (i) any rent or other charges payable by Tenant under this Lease that are not paid by Tenant within five (5) days after the date first due; (ii) all actual losses and damages that Landlord has suffered as a result of any breach of this Lease by Tenant; (iii) any costs reasonably incurred by Landlord in connection with this Lease (including attorneys' fees); and (iv) any other amounts that Landlord may spend or become obligated to spend by reason of the occurrence of the Triggering Event; and/or (B) Landlord may hold such proceeds, or place such proceeds into escrow, and apply or offset the same from time to time against any unpaid rent or other quantifiable Landlord Losses. Any unused proceeds held by Landlord, or placed into escrow, shall constitute the property of Landlord to be applied as necessary to cover any actual Landlord Losses, and need not be segregated from Landlord's other assets. The use, application or retention

of the Letter of Credit, or any portion thereof, by Landlord (a) shall not prevent Landlord from exercising any other right or remedy provided by this Lease or by any applicable law, it being intended that Landlord shall not first be required to proceed against the Letter of Credit, (b) shall not operate as a limitation on any recovery to which Landlord may otherwise be entitled, and (c) shall not constitute the cure of any breach of this Lease by Tenant or the waiver of such breach by Landlord. Tenant agrees not to interfere in any way with payment to Landlord of the proceeds of the Letter of Credit, either prior to or following a draw by Landlord of any portion of the Letter of Credit, provided that such draw is consistent with the terms of this Lease and the Letter of Credit. Tenant covenants and warrants that it will neither assign nor encumber the Letter of Credit or any part thereof and that neither Landlord nor its successors or assigns will be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.

5.4

Tenant agrees and acknowledges that (a) the Letter of Credit constitutes a separate and independent contract between Landlord and the Bank, (b) Tenant is not a third party beneficiary of such contract, (c) Tenant has no property interest whatsoever in the Letter of Credit or the proceeds thereof, and (d) in the event Tenant becomes a debtor under any chapter of the Bankruptcy Code, neither Tenant, any trustee, nor Tenant's bankruptcy estate shall have any right to restrict or limit Landlord's claim and/or rights to the Letter of Credit and/or the proceeds thereof by application of Section 502(b)(6) of the Bankruptcy Code or otherwise.

5.5

The Letter of Credit shall also provide that Landlord may, at any time and without notice to Tenant and without first obtaining Tenant's consent thereto, transfer (one or more times) all or any portion of its interest in and to the Letter of Credit to another party, person or entity, including any mortgagee and/or to have the Letter of Credit reissued in the name of the mortgagee. If Landlord transfers its interest in the Property and/or the Building and transfers the Letter of Credit (or transfers or credits any proceeds thereof then held by Landlord) in whole or in part to the transferee, Landlord shall, without any further agreement between the parties hereto, thereupon be released by Tenant from all liability therefor. The provisions hereof shall apply to every transfer or assignment of all or any part of the Letter of Credit to a new landlord. In connection with any such transfer of the Letter of Credit by Landlord, Tenant shall, at Tenant's sole cost and expense, execute and submit to the issuer of the Letter of Credit such applications, documents and instruments as may be necessary to effectuate such transfer. Tenant shall be responsible for paying the issuer's transfer and processing fees in connection with any transfer of the Letter of Credit and, if Landlord advances any such fees (without having any obligation to do so), Tenant shall reimburse Landlord for such transfer or processing fees within ten (10) days after Landlord's written request therefor.

5.6

Landlord and Tenant (a) acknowledge and agree that in no event or circumstance shall the Letter of Credit or any renewal thereof or substitute therefor or any proceeds thereof be deemed to be or treated as a "security deposit" under any laws and governmental regulations applicable to security deposits in the commercial context ("**Security Deposit Laws**"), (b) acknowledge and agree that the Letter of Credit (including any renewal thereof or substitute therefor or any proceeds thereof) is not intended to serve as a security deposit, and the Security Deposit Laws shall have no applicability or relevancy thereto, and (c) waive any and all rights, duties and obligations either party may now or, in the future, will have relating to or arising from the Security Deposit Laws. Tenant hereby waives all provisions of the Security Deposit Laws, now or hereafter in effect, which (i) establish the time frame by which Landlord must refund a security deposit under a lease, and/or (ii) provide that Landlord may claim from the security deposit only those sums reasonably necessary to remedy defaults in the payment of rent, to repair damage caused by Tenant or to clean the Premises, it being agreed that Landlord may, in addition, claim the Landlord Losses specified in this Article above and/or other sums reasonably necessary to compensate Landlord for any claims, damages, judgments, suits, causes of action, losses, liabilities, penalties, fines, expenses and costs caused by Tenant's breach of this Lease or the acts or omissions of Tenant or any of Tenant's agents, employees, contractors, customers or invitees, including any damages Landlord suffers following termination of this Lease or termination of Tenant's right to possession of the Premises, without termination of this Lease.

5.7

If (a) the long term credit rating of the Bank issuing the Letter of Credit is downgraded below that required pursuant to Section 5.1 above, (b) the Bank issuing the Letter of Credit ceases to do business, is seized by the Federal Deposit Insurance Corporation ("**FDIC**") or any other applicable governing authority, enters into any form of regulatory or governmental receivership or other similar regulatory or governmental proceeding, is otherwise declared insolvent or determined to be insolvent, or is placed on the FDIC "watch list" or downgraded by the FDIC, or (c) the FDIC repudiates the Letter of Credit (each, a "**Bank Failure**"), then, at Landlord's sole option and written notice (a "**Landlord Election Notice**"), Tenant promptly shall either: (y) deliver to Landlord a cash security deposit in the then current required amount of the Letter of Credit, or (z) apply to a different Bank or Banks which satisfy all of the requirements for the issuing Bank, as set forth above, for a replacement Letter of Credit, submit all documentation and fees required in connection with the application, diligently pursue any and all further steps necessary to obtain a replacement Letter of Credit, and otherwise use its best efforts to obtain and deliver to Landlord a replacement Letter of Credit as soon as reasonably possible under the circumstances, issued by a different Bank which satisfies all of the requirements for the issuing Bank, as set forth above. Tenant shall promptly deliver notice to Landlord of a Bank Failure following Tenant's actual notice of such Bank Failure. Landlord shall not be required to pay any fees or undertake any actions whatsoever in connection with a replacement Letter of Credit, except those actions, if any, which may be reasonably requested or required from Landlord, at no cost to Landlord, in order to permit the issuance of a replacement Letter of Credit. Any such replacement Letter of Credit shall comply with all of the provisions of this Article. If applicable, Tenant shall keep Landlord apprised of the status of its efforts to obtain the replacement Letter of Credit and shall promptly respond to any requests for status or other information from Landlord in connection therewith, including authorizing Landlord to communicate directly with the Bank or Banks to which Tenant has applied in order to ascertain the status and extent of Tenant's efforts to obtain the replacement Letter of Credit. If Tenant does not obtain a replacement Letter of Credit within thirty (30) days after Tenant receives the Landlord Election Notice, Tenant shall immediately deliver a cash security deposit to Landlord in the Letter of Credit Amount and, if Tenant fails to do so, such failure shall be an immediate material event of default by Tenant under this Lease that is not subject to further notice and/or opportunity to cure.

5.8

Provided that no Reduction Threshold Triggering Event (as defined below) has previously occurred or is then occurring as of each such reduction date (as provided below), the amount that Landlord shall be permitted to draw upon the Letter of Credit shall be reduced (and the amount of the Letter of Credit [herein, the "**Letter of Credit Amount**"] shall be deemed reduced, irrespective of whether a replacement Letter of Credit or amendment to the existing Letter of Credit is issued) as follows: (a) to $2,880,000.00 on October 1, 2017; (b) to $2,304,000.00 on October 1, 2018; (c) to $1,843,200.00 on October 1, 2019; (d) to $1,474,560.00 on October 1, 2020; and (e) to zero (-0-) on October 1, 2021. If any Reduction Threshold Triggering Event occurs prior to or on the date of any such reduction, however, then the Letter of Credit Amount shall remain at the rate in effect immediately prior to the occurrence of such Reduction Threshold Triggering Event, until the date ("**Final LC Expiration Date**") that is one hundred twenty (120) days after the expiration of this Lease. At Tenant's option, provided Tenant gives Landlord at least twenty (20) days' prior written notice thereof and receives from Landlord written confirmation that no Reduction Threshold Triggering Event has previously occurred or is then occurring, Tenant shall be permitted to tender replacement Letter of Credit(s) or certificate(s) of amendment to the existing Letter of Credit from time to time, conforming in all respects to the requirements of this Article, in the then applicable Letter of Credit Amount. For the purpose of this Section 5.8, a "**Reduction Threshold Triggering Event**" shall mean any Triggering Default as defined in Section 5.2 above, except that in the case of a monetary Triggering Default in which the amount owing to Landlord under such monetary Triggering Default is less than $5,000, the same shall not become a Reduction Threshold Triggering Event unless and until Tenant continues to fail to make such delinquent payment to Landlord within three (3) business days after receipt of a second written notice from Landlord following the expiration of the initial notice and cure period.

6.

ALTERATIONS.

6.1

After construction of the initial Tenant Improvements (as defined in Exhibit B), Tenant shall be permitted, at Tenant's sole cost and expense, upon at least ten (10) days' advance written notice thereof to Landlord, to do the following without Landlord's consent: (i) install unattached, movable trade fixtures which may be installed without drilling, cutting or otherwise defacing the Building, and (ii) make minor, decorative additions, alterations and improvements located exclusively within the interior of the Building and provided that same (A) do not require plans and specifications, (B) are not structural in nature, (C) are not visible from outside the Building, (D) do not affect or require modification of the Building's electrical, mechanical, plumbing, heating, air conditioning or other systems, and (E) do not cost more than $75,000.00 to complete for any such project (hard and soft costs) (the foregoing collectively referred to herein as "**Cosmetic Alterations**"). Other than Cosmetic Alterations, Tenant shall not make or suffer to be made any alterations, additions, or improvements (collectively, "**Alterations**"), including, but not limited to, the attachment of any fixtures or equipment in, on, or to the Building, the Premises or any part thereof or the making of any improvements as required by Article 7, without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed so long as the requested improvements are in compliance with the terms hereof. It shall not be deemed unreasonable for Landlord to withhold its consent if the proposed Alterations would (i) adversely affect the outside appearance, character or use of any portions of the Building or other portions of the Property; (ii) adversely affect the Building's roof, roof membrane, or any other any structural component of the Building; (iii) adversely affect any base Building equipment, services or systems, or the proper functioning thereof, or Landlord's access thereto; (iv) in the commercially reasonable opinion of Landlord, lessen the value of the Building, the Premises or the Property; (v) violate or require a change in any occupancy certificate applicable to the Building, unless Tenant pays for such change; or (vi) trigger a legal requirement which would require any Alterations to be made to the Building, the Premises, or other aspect of the Property, unless Tenant pays for such Alterations. When applying for such consent, Tenant shall, if requested by Landlord, furnish reasonably detailed plans and specifications for such Alterations.

6.2

All such Alterations by Tenant other than Cosmetic Alterations shall be made by using a contractor reasonably approved by Landlord, at Tenant's sole cost and expense. Landlord shall have the right from time to time as determined by Landlord to inspect, supervise and/or oversee the construction of such Alterations. Landlord's right to inspect such Alterations and approve Tenant's contractor shall not impose upon Landlord any responsibility for defective, incomplete or nonconforming work that Landlord discovers or fails to discover by any such review and/or inspection. If Tenant employs any contractor or any subcontractor which employs any non-union labor or supplier, Tenant shall be responsible for and hold Landlord harmless from any and all delays, damages and extra costs suffered by Landlord as a result of any dispute with any labor unions concerning the wage, hours, terms or conditions of the employment of any such labor. In any event, Landlord may charge Tenant a construction management fee for any such Alterations requiring Landlord's consent, (a) in an amount equal to the lesser of (i) Landlord's actual, out-of-pocket costs in connection with such proposed Alterations, including costs to review plans and drawings for the proposed Alterations and costs to inspect, supervise and/or oversee construction of the Alterations, or aspects thereof, or (ii) two percent (2%) of the hard construction costs for the specific project, but (b) in any event not to exceed $50,000.00 per project, with all such amounts being due within thirty (30) days following Tenant's receipt of Landlord's demand and copies of invoices or other reasonable evidence of the actual costs incurred by Landlord.

6.3

All Alterations by Tenant, including Cosmetic Alterations, shall be constructed in accordance with all government laws, ordinances, rules and regulations, using building standard materials where applicable, and Tenant shall, prior to construction, provide the additional insurance required under Article 11 in such case, and also all such assurances to Landlord as Landlord shall reasonably request in writing delivered to Tenant to assure payment of the costs thereof if the costs of any such non-Cosmetic Alterations exceed $150,000.00 for the project, including but not limited to, notices of non-responsibility, waivers of lien, surety company performance bonds up to 150% of the budget for such project, or funded construction escrows, and to protect Landlord and the Building and appurtenant

land against any loss from any mechanic's, materialmen's or other liens. Tenant shall pay in addition to any sums due pursuant to Article 4, any increase in real estate taxes attributable to any such Alterations for so long, during the Term, as such increase is ascertainable and evidenced by the invoices or other information from applicable taxing authority; at Landlord's election said sums shall be paid in the same way as sums due under Article 4. Landlord may, as a condition to its consent to any particular Alterations other than the Tenant Improvements, require Tenant to deposit with Landlord the amount reasonably estimated by Landlord as sufficient to cover the cost of removing any Required Removables (as defined in Section 25.2) and restoring the Building and the Premises, to the extent required under Section 25.2.

7.
REPAIR.

7.1

(a) Landlord shall have no obligation to alter, remodel, improve, repair, maintain, replace, decorate or paint the Building or any portion of the Premises, except as may be expressly provided in this Lease. By taking possession of the Building and the Premises, Tenant accepts the same as being in good order, condition and repair, subject the Delivery Warranty (as defined below).

(b) Landlord hereby represents and warrants to Tenant, that to Landlord's knowledge as of the Lease Date, the Building and Premises are in substantial compliance with all governmental laws, ordinances and regulations, including the Americans with Disabilities Act. In the event the Building or Premises are not in substantial compliance with all governmental laws, ordinances and regulations, including the Americans with Disabilities Act, as of the Lease Date, Landlord shall have the right to contest any alleged violation in good faith, including, without limitation, the right to apply for and obtain a waiver or deferment of compliance, the right to assert any and all defenses allowed by law and the right to appeal any decisions, judgments or rulings to the fullest extent permitted by law. Landlord, after the exhaustion of any and all rights to appeal or contest, will make all repairs, additions, alterations or improvements necessary to comply with the terms of any final order or judgment. Notwithstanding the foregoing, Tenant, not Landlord, shall be responsible, at Tenant's sole cost and expense, for the correction of any violations which arise out of (a) the design or configuration of the Building requested by Tenant, (b) the specific nature of Tenant's business in the Building, (c) the acts or omissions of Tenant, its agents, employees or contractors, (d) the Tenant Improvements installed pursuant to Exhibit B, and any subsequent repairs or Alterations of or to the Building or the Premises by or on behalf of Tenant, or (e) Tenant's arrangement of any furniture, equipment or other property in the Building or on the Premises. It is hereby understood and agreed that no representations respecting the condition of the Premises or the Building have been made by Landlord to Tenant, except as specifically set forth in this Lease.

7.2

(a) Subject to the Delivery Warranty and the CapEx Amortization (as defined below), Tenant shall at its own cost and expense keep and maintain all parts of the Building and the Premises in good condition, promptly making all necessary repairs and replacements (including capital), whether ordinary or extraordinary, foreseen or unforeseen, with materials and workmanship of the same character, kind and quality as the original, including, but not limited to, repair and replacement of the roof, roof membrane, drains, gutters, downspouts, foundation, floor slab, exterior side of exterior walls, load bearing walls and other structural portions of the Building, all fixtures installed by Tenant, water heaters serving the Building, windows, glass and plate glass, doors, exterior stairs, skylights, any special office entries, interior walls and finish work, floors and floor coverings, heating, ventilating and air conditioning systems serving the Building, any evaporative cooling systems serving the Building, exposed and unexposed electrical systems and fixtures serving the Building, sprinkler systems, dock boards, truck doors, dock bumpers, exposed and unexposed plumbing work and fixtures, sewage systems serving the Building and the Premises, parking and driveway areas (including resurfacing and restriping), soil and landscaped areas, walkways (including periodic sweeping), signage, site lighting, reasonable and customary pest control services, and performance of regular removal of trash and debris. As used herein "**repairs**" shall include all necessary repairs, replacements, alterations, additions and betterments. All work required on the roof of the Building in connection with performing Tenant's maintenance obligations hereunder, including any necessary repair, patching and/or

replacement of the roof in connection therewith, shall be performed, at Tenant's sole cost (subject to the Delivery Warranty and the CapEx Amortization) and risk, only by vendors or contractors which have been pre-approved by Landlord and otherwise in a manner which will not damage the roof or void or adversely affect any roof warranties or guaranties. If any work by Tenant requires penetrations of the roof, or if otherwise required by Landlord, Tenant, at its sole cost and expense, shall retain the roofing contractor having a then existing warranty in effect on the roof to perform such work (to the extent that it involves the roof). Tenant shall keep the roof of the Building free of all trash and waste materials produced by Tenant or its agents or contractors and shall promptly notify Landlord in the event of any accident related to the roof. Tenant as part of its obligations hereunder shall keep the Building and the Premises in a clean and sanitary condition. Tenant will, as far as possible keep all such parts of the Building and the Premises from deterioration due to ordinary wear and from falling temporarily out of repair, and upon termination of this Lease in any way Tenant will yield up the Building and the Premises to Landlord in good condition and repair, loss by fire or other casualty excepted (but not excepting any damage to glass). Tenant shall, at its own cost and expense, repair any damage to the Premises or the Building resulting from and/or caused in whole or in part by the negligence or misconduct of Tenant, its agents, employees, contractors, invitees, or any other person entering upon the Building or the Premises as a result of Tenant’s business activities or caused by Tenant’s default hereunder.

(b) Notwithstanding anything otherwise provided above or elsewhere in this Lease, Landlord shall deliver the Building with all base building systems and components (including roof, exterior doors, electrical and plumbing) originally installed by Landlord and existing as of the Lease Date ("**Existing Systems**") in good working order and repair, and shall assign or otherwise pass through to Tenant the benefit of all warranties obtained by Landlord with respect to the Existing Systems (the "**Third Party Warranties**") so that Tenant can perform its obligations with respect to any necessary repairs, maintenance and replacements of the Existing Systems with the benefit of such Third Party Warranties. Further notwithstanding anything herein, and provided that Landlord is notified by Tenant of any such latent defects within the first one (1) year of the Term, any necessary repairs, maintenance and replacements of the Existing Systems that are not covered by the Third Party Warranties, and are necessary for correcting any latent defects in the Existing Systems, (i) shall be made by Tenant, and (ii) to the extent the rates charged by Tenant’s vendor are reasonable and comparable to any competitive bids Landlord may obtain for the same work, shall be at Landlord's sole cost and not subject to payment nor reimbursement by Tenant, nor as part of the Allowance or as part of Tenant’s Building Share (the "**Delivery Warranty**"). Tenant shall provide to Landlord a reasonably detailed invoice and other documentation substantiating the extent of any such necessary repairs, maintenance and/or replacements of the Existing Systems that are not covered by the Third Party Warranties and that are necessary for correcting any latent defects in the Existing Systems. Tenant and Landlord shall use good faith efforts to arrange for Landlord's direct payment to the applicable vendors for such repairs, maintenance and replacements of the Existing Systems pursuant to the Delivery Warranty; provided, however, in the event Landlord fails to pay any such amounts pursuant to the Delivery Warranty within thirty (30) days after invoice from the applicable party providing the repairs, maintenance and replacements of the Existing Systems, subject to Landlord's right to dispute the reasonableness of such amounts, Tenant shall then have the right, but not the obligation, to make such payments on behalf of Landlord, and thereafter offset or deduct such amounts paid by Tenant from up to twenty percent (20%) of the Monthly Base Rent, Tenant’s Building Share and/or Tenant’s Property Share next becoming due to Landlord.

(c) Further notwithstanding anything otherwise provided above or elsewhere in this Lease, if, during the Term of this Lease, Tenant is obligated under this Lease to make a Capital Replacement (as defined below) and the reasonably anticipated useful life of such Capital Replacement exceeds the then-scheduled Expiration Date (i.e., when the Term is scheduled to expire at the time of the Capital Replacement, in the event no remaining Option to Extend Term [as defined below] is exercised by Tenant), then: (i) Tenant shall make such Capital Replacement in connection with Tenant’s obligations under this Section 7.2, (ii) the cost of such Capital Replacement shall be paid by Landlord, as provided below, to the extent the rates charged by Tenant’s vendor are reasonable and comparable to any competitive bids Landlord may obtain for the same work, (iii) the amount paid by Landlord for such Capital Replacement shall be amortized over the useful life of such Capital Replacement in accordance with such reasonable useful life and amortization schedules as shall be mutually agreed upon by Landlord and Tenant in accordance with generally accepted accounting principles, with interest on the unamortized amount at one percent (1%) per annum in excess of the Wall Street Journal prime lending rate announced from time to time, and (iv) Tenant shall pay to Landlord monthly, as part of Tenant's Building Share, the portion of such amortization applicable to the unexpired

Term and any Option Terms (as defined below) that are exercised by Tenant. For the purpose of this Lease, "**Capital Replacement**" shall mean each of the following: (x) any capital improvement which is reasonably calculated to reduce the repair, maintenance and/or operating expenses for the Building; (y) any capital repair and/or replacement of Existing Systems or other equipment or improvements needed to operate and/or maintain the Building at the same quality levels as prior to the repair and/or replacement; and (z) any other capital repair, improvement or replacement which is required under any governmental laws, regulations or ordinances which were not applicable at the time of construction. Tenant shall provide to Landlord a reasonably detailed invoice and other documentation substantiating the need for such necessary Capital Replacement. Tenant and Landlord shall use good faith efforts to arrange for Landlord's direct payment to the applicable vendor providing any such Capital Replacement; provided, however, in the event Landlord fails to pay any such amount within thirty (30) days after invoice from such vendor, subject to Landlord's right to dispute the reasonableness of such amount, Tenant shall then have the right, but not the obligation, to make such payment on behalf of Landlord, and thereafter offset or deduct the amount paid by Tenant from up to twenty percent (20%) of the Monthly Base Rent, Tenant's Building Share and/or Tenant's Property Share next becoming due to Landlord, provided the amortized portion thereof applicable to the unexpired Term (including any Option Terms exercised by Tenant) shall be paid by Tenant to Landlord monthly as provided herein. Notwithstanding the foregoing, Landlord shall not be responsible for the cost of any such Capital Replacement if (aa) the Capital Replacement is required prior to the expiration of the reasonably anticipated useful life of the item to be replaced, (bb) Tenant has failed to perform its maintainance and repair obligations under this Lease with respect to the item being replaced (or if Tenant has failed to provide Landlord with copies of its reports and records relative thereto), or (cc) the Capital Replacement is otherwise required as a result of the acts or omissions of Tenant or any Tenant Entities. Any required amortization of the cost of any such Capital Replacement as set forth herein is referred to as the "**CapEx Amortization**."

7.3

Except as provided in Article 13 and Article 21, there shall be no abatement of rent and no liability of Landlord by reason of any injury to or interference with Tenant's business arising from the making of any repairs, alterations or improvements in or to any portion of the Property, the Building or the Premises, or to fixtures appurtenances and equipment therein. Except to the extent, if any, prohibited by law, and except as provided in connection with the Delivery Warranty and the CapEx Amortization above, Tenant waives the right to make repairs at Landlord's expense under any law, statute or ordinance now or hereafter in effect.

7.4

Tenant shall, at its own cost and expense, enter into a regularly scheduled preventative maintenance/service contract, providing for not less than quarterly filter changes and other preventative maintenance and servicing, with a maintenance contractor approved by Landlord for servicing all evaporative cooling, heating and air conditioning systems and equipment serving the Building (and a copy thereof shall be furnished to Landlord). The service contract must include all services suggested by the equipment manufacturer in the operation/maintenance manual and must become effective within thirty (30) days of the date Tenant takes possession of the Building. Should Tenant fail to do so, Landlord may, upon notice to Tenant, enter into such a maintenance/service contract on behalf of Tenant or perform the work and in either case, charge Tenant the cost thereof along with a reasonable amount for Landlord's overhead not to exceed eight percent (8%).

7.5

Tenant shall promptly deliver to Landlord copies of (i) all contracts, and renewals thereof, entered into in connection with the performance of its obligations under this Article 7, and (ii) all maintenance and service reports related thereto. In addition, Tenant shall prepare and deliver to Landlord quarterly reports setting forth in reasonable detail all maintenance, repair, replacement and other work completed with respect to the Building and the Premises during the immediately preceding calendar quarter.

7.6

If Tenant fails, refuses or neglects to make repairs and/or maintain the Building or the Premises in accordance with the terms of this Article 7, Landlord shall have the right, but not the duty, in addition to Landlord's other rights and remedies, upon giving Tenant reasonable written notice of Landlord's election to do so, to make such repairs or perform such maintenance on behalf of and for the account of Tenant. The cost of such work shall be paid

by Tenant to Landlord, together with a reasonable fee for overhead not to exceed eight percent (8%), as additional rent, within thirty (30) days after invoice. In addition, if Landlord reasonably determines that Tenant is not performing its obligations under this Article 7 in a good and workmanlike manner, consistent with the commercially reasonable standards of the remainder of the Property and other similar class properties in the same geographic market area as the Premises, then Landlord may, upon notice thereof to Tenant, elect to undertake the performance of any or all such obligations, whereupon the costs and expenses thereof shall be included in the Property Management Expenses charged to Tenant pursuant to Article 4.

8.
LIENS.

Tenant shall keep the Premises, the Building and the Property and Tenant's leasehold interest in the Building free from any liens arising out of any services, work or materials performed, furnished, or contracted for by Tenant, or obligations incurred by Tenant. In the event that Tenant fails, within ten (10) business days following Tenant's receipt of actual notice of the imposition of any such lien, to either cause the same to be released of record or provide Landlord with insurance against the same issued by a major title insurance company or such other protection against the same as Landlord shall accept (such failure to constitute an Event of Default), Landlord shall have the right to cause the same to be released by such means as it shall deem proper, including payment of the claim giving rise to such lien. All such sums paid by Landlord and all expenses incurred by it in connection therewith shall be payable to it by Tenant within ten (10) business days after Landlord's demand.

9.
ASSIGNMENT AND SUBLETTING.

9.1
In no event may Tenant encumber, mortgage or otherwise pledge this Lease or Tenant's interest in the Building or the Premises as security for any debt of Tenant. In addition, except as to a Permitted Transfer (as defined below), Tenant shall not assign this Lease or sublet the whole or any part of the Building or the Premises, whether voluntarily or by operation of law, or permit the use or occupancy of the Building or the Premises by anyone other than Tenant, and shall not make, suffer or permit such assignment, subleasing or occupancy without the prior written consent of Landlord, such consent not to be unreasonably withheld, conditioned or delayed, and said restrictions shall be binding upon any and all assignees of the Lease and subtenants of the Building or the Premises. In the event Tenant desires to sublet, or permit such occupancy of, the Building or the Premises, or any portion thereof, or assign this Lease, whether as a Permitted Transfer or otherwise, Tenant shall give written notice thereof to Landlord at least thirty (30) days but no more than one hundred twenty (120) days prior to the proposed commencement date of such subletting or assignment, or at least ten (10) days prior thereof in the case of a Permitted Transfer, which notice shall set forth the name of the proposed subtenant or assignee, the relevant terms of any sublease or assignment and copies of financial reports and other relevant financial information of the proposed subtenant or assignee.

9.2
Notwithstanding any assignment or subletting, permitted or otherwise, Tenant shall at all times remain directly, primarily and fully responsible and liable for the payment of the rent specified in this Lease and for compliance with all of its other obligations under the terms, provisions and covenants of this Lease. Upon the occurrence of an Event of Default, if the Building, the Premises or any part of them are then assigned or sublet, Landlord, in addition to any other remedies provided in this Lease or provided by law, may, at its option, collect directly from such assignee or subtenant all rents due and becoming due to Tenant under such assignment or sublease and apply such rent against any sums due to Landlord from Tenant under this Lease, and no such collection shall be construed to constitute a novation or release of Tenant from the further performance of Tenant's obligations under this Lease.

9.3
In addition to Landlord's right to approve of any subtenant or assignee (other than pursuant to a Permitted Transfer), Landlord shall have the option, in its sole discretion, in the event of any proposed subletting or

assignment that is not a Permitted Transfer, to terminate this Lease, or in the case of a proposed subletting of less than the entire Building that is not a Permitted Transfer, to recapture the portion of the Building to be sublet, as of the date the subletting or assignment is to be effective. The option shall be exercised, if at all, by written notice given by Landlord to Tenant within thirty (30) days following Landlord's receipt of Tenant's written notice as required above. However, if Tenant notifies Landlord, within five (5) business days after receipt of Landlord's termination notice, that Tenant is rescinding its proposed assignment or sublease, the termination notice shall be void and the Lease shall continue in full force and effect. If this Lease shall be terminated with respect to the entire Premises pursuant to this Section, because of a subletting of the entire Building, then the Term of this Lease shall end on the date stated in Tenant's notice as the effective date of the sublease or assignment as if that date had been originally fixed in this Lease for the expiration of the Term. If Landlord recaptures under this Section only a portion of the Building, the rent to be paid from time to time during the unexpired Term shall abate proportionately based on the proportion by which the approximate square footage of the remaining portion of the Building shall be less than that of the Building as of the date immediately prior to such recapture. Tenant shall, at Tenant's own cost and expense, discharge in full any outstanding commission obligation which may be due and owing as a result of any proposed assignment or subletting, whether or not the Building and/or Premises are recaptured pursuant to this Section 9.3 and rented by Landlord to the proposed tenant or any other tenant.

9.4

In the event that Tenant sells, sublets, assigns or transfers this Lease in a transaction that is not a Permitted Transfer, Tenant shall pay to Landlord, as additional rent an amount equal to fifty percent (50%) of any Increased Rent (as defined below), less the Costs Component (as defined below), when and as such Increased Rent is received by Tenant. As used in this Section, "**Increased Rent**" shall mean the excess of (i) all rent and other consideration which Tenant is entitled to receive by reason of any sale, sublease, assignment or other transfer of this Lease, over (ii) the rent otherwise payable by Tenant under this Lease at such time. For purposes of the foregoing, any consideration received by Tenant in form other than cash shall be valued at its fair market value as determined by Landlord in good faith. The "**Costs Component**" is that amount which, if paid monthly, would fully amortize on a straight-line basis, over the entire period for which Tenant is to receive Increased Rent, the reasonable costs incurred by Tenant for leasing commissions and tenant improvements in connection with such sublease, assignment or other transfer.

9.5

Notwithstanding any other provision hereof, it shall be considered reasonable for Landlord to withhold its consent to any assignment of this Lease or sublease of any portion of the Building or the Premises for which Tenant is obligated to obtain Landlord's consent if at the time of either Tenant's notice of the proposed assignment or sublease or the proposed commencement date thereof, there shall exist any uncured default of Tenant or matter which will become a default of Tenant with passage of time unless cured, or if the proposed assignee or sublessee is an entity: (a) with which Landlord is already in negotiation (evidenced by the exchange of written offers and counteroffers); (b) is already an occupant of the Property unless Landlord is unable to provide the amount of space required by such occupant; (c) is a governmental agency; (d) is incompatible with the stated use of the Building set forth in the Summary; or (e) would subject the Building or the Premises to a use which would: (i) involve increased personnel or wear upon the Property; (ii) violate any exclusive right granted to another tenant of the Property (Landlord hereby confirming that no such exclusive rights have been granted as of the Lease Date); (iii) require any addition to or modification of the Building, the Premises or the Property in order to comply with building code or other governmental requirements unless such addition or modification only affects the Building or the Premises and Tenant agrees to pay all such costs; or (iv) involve a violation of Section 1.3. Tenant expressly agrees that for the purposes of any statutory or other requirement of reasonableness on the part of Landlord, Landlord's refusal to consent to any assignment or sublease for any of the reasons described in this Section 9.5, shall be conclusively deemed to be reasonable.

9.6

Upon any request to assign or sublet other than a Permitted Transfer, Tenant will pay to Landlord (a) an assignment/subletting fee in the amount of $1,000.00 (plus applicable rental taxes thereon), plus, (b) on demand, a sum equal to all of Landlord's reasonable attorney's fees actually incurred (but in no event in excess of $2,000.00

for any proposed assignment or sublease) in investigating and considering any proposed assignment of this Lease or sublease of any of the Building or the Premises, regardless of whether Landlord shall consent to, refuse consent, or determine that Landlord's consent is not required for, such assignment or sublease. Any purported assignment or other transfer of this Lease or subletting of any of the Building or the Premises which does not comply with the provisions of this Article 9 shall, at the option of Landlord, be void.

9.7

If Tenant is a corporation, limited liability company, partnership or trust, any transfer or transfers of or change or changes within any twelve (12) month period in the number of the outstanding voting shares of the corporation or limited liability company, the general partnership interests in the partnership or the identity of the persons or entities controlling the activities of such partnership or trust resulting in the persons or entities owning or controlling a majority of such shares, partnership interests or activities of such partnership or trust at the beginning of such period no longer having such ownership or control, and where such events are not done in connection with a Permitted Transfer, shall be regarded as equivalent to an assignment of this Lease to the persons or entities acquiring such ownership or control and shall be subject to all the provisions of this Article 9 to the same extent and for all intents and purposes as though such an assignment.

9.8

Notwithstanding anything herein to the contrary, without the need to obtain the consent of Landlord, Tenant may (each of the following a "**Permitted Transfer**") assign this Lease or sublet the Building or the Premises or any portion thereof, to any entity which controls, is controlled by or is under common control with Tenant, or to any entity resulting from a merger, acquisition or consolidation with Tenant, or to any person or entity which acquires all or substantially all of the assets of Tenant's business conducted at the Building, or to any person or entity which acquires all or substantially all of the equity ownership interests of Tenant, provided that: (i) Tenant is not then in default under this Lease beyond the expiration of any applicable notice and cure period; (ii) at least ten (10) days prior to such Permitted Transfer, Tenant delivers to Landlord notice of such contemplated Permitted Transfer as set forth in Section 9.1; (iii) the stated use of the Building set forth in the Summary remains substantially similar following the Permitted Transfer; (iv) the proposed assignee or sublessee has a financial strength sufficient in Landlord's reasonable opinion to perform the obligations of Tenant under this Lease for the remainder of the Term, or to perform the obligations of the sublessee under the sublease for the stated term of the sublease, as the case may be (taking into consideration such proposed assignee's or sublessee's ability to also successfully operate its other businesses and assets, if any); (v) a fully executed copy of the assignment or sublease, the assumption of this Lease by the assignee and/or the acceptance of the sublease by the sublessee, as the case may be, is delivered to Landlord; and (vi) the Permitted Transfer is not entered into as a subterfuge to avoid the restrictions and provisions of this Article 9. For purposes of this provision, "**control**" shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract or otherwise. For the purpose of this Lease, any party that engages with Tenant in a Permitted Transfer is referred to herein as a "**Permitted Transferee**". Tenant acknowledges, and at Landlord's request at the time of such assignment or subletting shall confirm, that in each instance Tenant shall remain liable for the performance of the terms and conditions of this Lease despite such assignment or subletting.

10.

INDEMNIFICATION.

10.1

None of the Landlord Entities shall be liable and Tenant hereby waives all claims against them for any damage to any property or any injury to any person in or about the Premises, the Building or the Property by or from any cause whatsoever (including without limiting the foregoing, rain or water leakage of any character from the roof, windows, walls, basement, pipes, plumbing works or appliances, the Building not being in good condition or repair, gas, fire, oil, electricity or theft), except to the extent caused by or arising from the gross negligence or willful misconduct of Landlord or its agents, employees or contractors. Tenant shall protect, indemnify and hold the Landlord Entities harmless for, from and against any and all loss, claims, liability or costs (including court costs and attorney's fees) incurred by reason of (a) any damage to any property (including but not limited to property of any

Landlord Entity) or any injury (including but not limited to death) to any person occurring in, on or about the Premises, the Building or the Property to the extent that such injury or damage shall be caused by or arise from any actual or alleged act, neglect, fault, or omission by or of Tenant or any Tenant Entity to meet any standards imposed by any duty with respect to the injury or damage; (b) the conduct or management of any work or thing whatsoever done by Tenant in or about the Premises, the Building or the Property or from transactions of Tenant concerning the Premises, the Building or the Property; (c) Tenant's failure to comply with any and all governmental laws, ordinances and regulations applicable to the condition or use of the Building, the Premises or their occupancy; or (d) any breach or default on the part of Tenant in the performance of any covenant or agreement on the part of the Tenant to be performed pursuant to this Lease. The provisions of this Article shall survive the termination of this Lease with respect to any claims or liability accruing prior to such termination.

10.2

Landlord shall protect, indemnify and hold the Tenant Entities harmless for, from and against any and all loss, claims, liability or costs (including court costs and attorney's fees) incurred by reason of (a) any damage to property (including but not limited to property of any Tenant Entity) or any injury (including but not limited to death) to any person occurring in, on or about the Premises, the Building or the Property to the extent that such injury or damage is caused by or arises from the gross negligence or willful misconduct of any Landlord Entity, (b) Landlord's failure to comply with any and all governmental laws, ordinances and regulations which are the obligation of Landlord under this Lease, or (c) any breach or default on the part of Landlord in the performance of any covenant or agreement on the part of Landlord to be performed pursuant to this Lease. The provisions of this Article shall survive the termination of this Lease with respect to any claims or liability accruing prior to such termination.

11.

INSURANCE.

11.1

Tenant shall keep in force throughout the Term: (a) a Commercial General Liability insurance policy or policies to protect the Landlord Entities against any liability to the public or to any invitee of Tenant or a Landlord Entity incidental to the use of or resulting from any accident occurring in or upon the Building or the Premises with a limit of not less than $1,000,000 per occurrence and not less than $2,000,000 in the annual aggregate, or such larger amount as Landlord may prudently require from time to time, covering bodily injury and property damage liability, and $1,000,000 products/completed operations aggregate; (b) Umbrella Liability Insurance with a limit of not less than $10,000,000 per occurrence, in excess of and following the form of the underlying insurance described above, which is at least as broad as each and every area of such underlying insurance; (c) Business Auto Liability covering owned, non-owned and hired vehicles with a limit of not less than $1,000,000 per accident; (d) Worker's Compensation Insurance with limits as required by statute and Employers Liability with limits of $1,000,000 each accident, $1,000,000 disease policy limit, $1,000,000 disease--each employee; (e) Causes of Loss - Special Form coverage protecting Landlord and Tenant against loss of or damage to the initial Tenant Improvements installed under Exhibit B and any subsequent Alterations installed by or on behalf of Tenant, and protecting Tenant against loss of or damage to Tenant's trade fixtures, inventory and other business personal property situated in or about the Building and the Premises, all of the foregoing to the full replacement value of the improvements and property so insured; and, (f) Business Interruption Insurance with limit of liability representing loss of at least approximately twelve (12) months of income.

11.2

The aforesaid policies shall (a) be provided at Tenant's expense; (b) name the Landlord Entities as additional insureds (General Liability and Umbrella Liability) and loss payee (Causes of Loss - Special Form); (c) be issued by an insurance company with a minimum Best's rating of "A-:VII" during the Term; and (d) provide that said insurance shall not be canceled or materially reduced unless thirty (30) days' prior written notice (ten days for non-payment of premium) shall have been given to Landlord; a certificate of Liability insurance on ACORD Form 25 and a certificate of Property insurance on ACORD Form 27, together with additional insured endorsements and endorsements requiring the insurer to provide Landlord with thirty (30) days' prior written notice of any cancellation or material reduction in such insurance coverages, shall be delivered to Landlord by Tenant upon the Commencement

Date and at least thirty (30) days prior to each renewal of said insurance; provided, however, to the extent endorsements expressly requiring the insurer to provide Landlord with thirty (30) days' prior written notice of any cancellation or material reduction in such insurance coverages is not available from Tenant's insurance company, Tenant shall be obligated to provide such written notice to Landlord in lieu of the insurer providing such notice to Landlord.

11.3

Whenever Tenant shall undertake any Alterations in, to or about the Building or the Premises ("**Work**"), the aforesaid insurance protection must extend to and include injuries to persons and damage to property arising in connection with such Work, and such other insurance as Landlord shall require; and the policies of or certificates evidencing such insurance must be delivered to Landlord prior to the commencement of any such Work.

12.

WAIVER OF SUBROGATION.

So long as their respective insurers so permit, Tenant and Landlord hereby mutually waive their respective rights of recovery against each other for any loss insured by causes of loss – special form or other insurance now or hereafter existing for the benefit of the respective party but only to the extent of the net insurance proceeds payable under such policies. Each party shall obtain any special endorsements required by their insurer to evidence compliance with the aforementioned waiver.

13.

SERVICES AND UTILITIES.

Commencing as of the earlier of commencement of construction of the Tenant Improvements in Phase I or the Commencement Date, Tenant shall connect and activate its accounts with the applicable providers and pay directly to such providers all charges for water, gas, heat, light, power, telephone, sewer, sprinkler system and other utilities and services used on or from the Building and the Premises, together with any deposits, taxes, penalties, and surcharges or the like pertaining thereto and any maintenance charges for utilities. Any such deposits for utilities or services which are charged to and paid by Landlord in order to commence service to the Building or the Premises shall be reimbursed by Tenant to Landlord, as additional rent, within thirty (30) days after invoice. Tenant shall furnish all electric light bulbs, tubes and ballasts, battery packs for emergency lighting and fire extinguishers. Tenant will not, without the written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed, contract with a utility provider to service the Building or the Premises with any utility, including, but not limited to, telecommunications, electricity, water, sewer or gas, which is not previously providing such service to the Building or the Premises. Landlord shall in no event be liable for any interruption or failure of utility services on or to the Building or the Premises, except in the event of an Impairment Event as set forth below. As used herein, "**Impairment Event**" shall mean that: (a) Tenant's use of or access to all or any material portion of the Building for the conduct of Tenant's business is materially impaired as the result of the gross negligence or willful misconduct of Landlord, whether due to an interruption of essential utility services (i.e., electrical, water or sewer), the existence of Hazardous Materials, or otherwise; (b) such impairment does not arise in whole or in part as a result of an act or omission of Tenant or any Tenant Entities; (c) such impairment is not caused by a fire or other casualty (in which case the provisions in Article 21 will apply); and (d) such impairment continues for a consecutive period of three (3) or more business days after Landlord receives written notice of such impairment, including Saturdays and Sundays if Tenant is then operating its business in the Building seven (7) days per week. If an Impairment Event occurs, then as its sole and exclusive remedy therefor, Tenant shall be entitled to an equitable abatement of monthly Base Rent and additional rent under this Lease based upon the portion of the Building affected thereby (provided that if the operation of Tenant's business from the remainder of the Building not affected thereby is not reasonably practicable under the circumstances and Tenant in fact does not operate its business from the remainder of the Building, all monthly Base Rent and additional rent under this Lease shall be subject to such abatement), commencing upon the expiration of said three (3) consecutive business day period after Landlord receives written notice of such impairment from Tenant and continuing until such material impairment is cured; provided further, however, that if Landlord is diligently pursuing the repair of such impairment and, if applicable to the nature of such impairment, Landlord provides

substitute services reasonably suitable for Tenant's purposes and Tenant is thereafter able to fully conduct its business in the Building as usual, then there shall not be any abatement of Base Rent or additional rent.

14.
HOLDING OVER.

So long as Tenant gives Landlord at least ninety (90) days' prior written notice of its intention to remain in possession of the Building after the expiration of the Term, or any Option Term, specifying the approximate length of time Tenant intends to remain in possession, then Tenant shall have the right to remain in possession of the Building for up to six (6) successive one-month periods after such expiration, pursuant to the terms, covenants and conditions of this Lease, except with respect to the length of the Term and except that Monthly Base Rent shall be increased to an amount equal to One Hundred Twenty-Five Percent (125%) of the Monthly Base Rent in effect during the last month immediately preceding such expiration. If Tenant remains in possession of the Building after the expiration of the Term, or any Option Term, without providing such prior written notice to Landlord, or if Tenant remains in possession of the Building after the aforesaid six (6) month maximum holdover period, with or without Landlord's written consent, Tenant shall pay Landlord for each such day thereafter that Tenant retains possession of the Building or part of it at the rate ("**Holdover Rate**") which shall be Two Hundred Percent (200%) of the amount of the Base Rent for the last period prior to the date of such expiration. Such Monthly Base Rent and all additional rent under Article 4 shall be prorated on a daily basis. Additionally, if Tenant remains in possession of the Building after the expiration of the Term, or any Option Term, without providing such prior written notice to Landlord, or if Tenant remains in possession of the Building after the aforesaid six (6) month maximum hold over period, and such hold over is without Landlord's written consent, Tenant shall also pay all damages actually sustained by Landlord by reason of such retention. If Landlord gives notice to Tenant of Landlord's election to such effect, Landlord and Tenant may elect to mutually agree in a written amendment to this Lease that any such holding over described above shall constitute renewal of this Lease for a period from month to month or one (1) year, whichever is specified in such notice, in either case at a Monthly Base Rent amount mutually agreed upon by the parties, but if the Landlord does not so elect, no such renewal shall result notwithstanding acceptance by Landlord of any sums due hereunder after such termination; and instead, a tenancy at sufferance at the Holdover Rate shall be deemed to have been created. In any event, no provision of this Article 14 shall be deemed to waive Landlord's right of reentry or any other right under this Lease or at law.

15.
SUBORDINATION.

15.1
Without the necessity of any additional document being executed by Tenant for the purpose of effecting a subordination, this Lease shall be subject and subordinate at all times to any ground or underlying leases and to the lien of any mortgages or deeds of trust now or hereafter placed on, against or affecting the Property, Landlord's interest or estate in the Property, or any ground or underlying lease; provided, however, that if the lessor, mortgagee, trustee, or holder of any such ground or underlying lease, mortgage or deed of trust (each, a "**Lender**") elects to have Tenant's interest in this Lease be superior to any such instrument, then, by notice to Tenant, this Lease shall be deemed superior, whether this Lease was executed before or after said instrument. Notwithstanding the foregoing, Tenant covenants and agrees to execute and deliver within ten (10) business days after Landlord's request such further instruments evidencing such subordination or superiority of this Lease as may be required by Landlord, so long as such instruments include reference to the fact that Tenant's rights under this Lease shall not be disturbed on account of such subordination so long as Tenant has not committed a default under this Lease. Tenant's failure to sign and return any such documents following an additional five (5) business day cure period after notice shall constitute an immediate Event of Default (as defined in Article 18). Notwithstanding the foregoing, Tenant's right to quiet possession of the Premises shall not be disturbed on account of such subordination so long as Tenant is not in default, pays all rent and otherwise observes and performs all of its obligations under this Lease, unless this Lease is otherwise terminated pursuant to its terms.

15.2

Landlord agrees to use commercially reasonable efforts to cause its existing Lender to deliver to Tenant as soon as reasonably practicable, but in no event later than fifteen (15) days after complete execution of this Lease, at no cost to Landlord, such Lender's standard subordination, non-disturbance and attornment agreement which provides, among other things, that Tenant's right to possession of the Premises shall not be disturbed on account of such subordination so long as Tenant has not committed a default under this Lease ("**SNDA Agreement**"). Tenant shall cooperate in all respects with Landlord's efforts, provide all information reasonably required by such Lender, pay all fees and costs charged by such Lender in connection with procuring or attempting to procure such SNDA Agreement and promptly execute such SNDA Agreement as provided in Section 15.1 above. Landlord shall not be required to institute any legal action or proceeding in order to obtain such SNDA Agreement and it shall not be a default by Landlord or a defense to the enforceability of this Lease in favor of Tenant if Landlord is unable to obtain delivery of such an SNDA Agreement to Tenant.

15.3

As a condition precedent to the subordination of this Lease to the lien of any future Lender, Landlord shall cause any such future Lender to deliver to Tenant such future Lender's standard SNDA Agreement. Tenant shall cooperate in all respects with Landlord's efforts, provide all information reasonably required by any such Lender and promptly execute such SNDA Agreement as provided in Section 15.1 above. Landlord shall not be required to institute any legal action or proceeding in order to obtain such SNDA Agreement. It shall not be a default by Landlord or a defense to the enforceability of this Lease in favor of Tenant if Landlord is unable to obtain delivery of such SNDA Agreement to Tenant (but instead this Lease will not be subordinated).

16.

RULES AND REGULATIONS.

Tenant shall faithfully observe and comply with all the rules and regulations as set forth in Exhibit C to this Lease and all reasonable and non-discriminatory modifications of and additions to them from time to time put into effect by Landlord. Landlord shall not be responsible to Tenant for the non-performance by any other tenant or occupant of the Buildings of any such rules and regulations. Landlord shall enforce such rules and regulations in a uniform and non-discriminatory manner.

17.

REENTRY BY LANDLORD.

17.1

Subject to the terms of this Lease, Landlord reserves and shall at all reasonable times have the right to re-enter the Premises and the Building (a) to inspect the Premises and the Building, (b) to show the Premises and the Building to prospective purchasers or mortgagees, (c) during the last twelve (12) months of the Term, to show the Premises and the Building to prospective tenants, and (d) to exercise its rights under Section 7.6. of this Lease. In connection with any maintenance and repair of the Building or exterior areas of the Premises by Landlord under this Lease, or any alterations or improvements of the Building or the Premises which have been coordinated with and approved by Tenant (such approval not to be unreasonably withheld), Landlord may erect, use and maintain scaffolding, pipes, conduits and other necessary structures and open any wall, ceiling or floor in and through the Building and Premises where reasonably required by the character of the work to be performed, provided that Tenant has reasonable means of access to the Premises and the Building and the business activities of Tenant at the Building are not interfered with unreasonably. Notwithstanding the foregoing, except (i) to the extent requested by Tenant, and/or (ii) in the event of an emergency, Landlord shall provide to Tenant at least twenty-four (24) hours' advance notice (either written or oral) before Landlord enters the Building to perform any repairs therein. Further, a representative of Tenant may be present in the Building during any such entry into the Building (provided that, in the event of an emergency, Landlord shall not be obligated to delay its work merely because Tenant's representative is not present). Landlord shall have the right at any time to change the arrangement and/or locations of common areas of the Property provided that Tenant's use of the Building and parking areas is not adversely and materially impacted, and the Building and parking areas at all times remain accessible by reasonable means. In the event that

Landlord damages any portion of any wall or wall covering, ceiling, or floor or floor covering within the Building, Landlord shall repair or replace the damaged portion to match the original as nearly as commercially reasonable but shall not be required to repair or replace more than the portion actually damaged. Tenant hereby waives any claim for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Building or the Premises, and any other loss occasioned by any action of Landlord authorized by this Article 17, with the exception of foreseeable, direct and actual damages incurred by Tenant as a result of Landlord's gross negligence or willful misconduct.

17.2

For each of the aforesaid purposes, Landlord shall at all times have and retain a key with which to unlock all of the doors in the Premises, excluding Tenant's vaults and safes or special security areas (designated in advance), and Landlord shall have the right to use any and all means which Landlord may deem proper to open said doors in an emergency to obtain entry to any portion of the Premises. As to any portion to which access cannot be had by means of a key or keys in Landlord's possession, Landlord is authorized to gain access by such means as Landlord shall elect and the cost of repairing any damage occurring in doing so shall be borne by Tenant and paid to Landlord within thirty (30) days of Landlord's demand.

18.

DEFAULT.

The following events shall be deemed to be Events of Default under this Lease:

18.1

Tenant shall fail to pay when due any sum of money becoming due to be paid to Landlord under this Lease, whether such sum be any installment of the rent reserved by this Lease, any other amount treated as additional rent under this Lease, or any other payment or reimbursement to Landlord required by this Lease, whether or not treated as additional rent under this Lease, and such failure shall continue for a period of five (5) days after written notice that such payment was not made when due, but if any such notice shall be given and the default shall not be cured within the applicable cure period and is continuing, then for the twelve (12) month period commencing with the date of such notice, the failure to pay within five (5) days after due any additional sum of money becoming due to be paid to Landlord under this Lease during such period shall be an Event of Default.

18.2

Tenant shall fail to comply with any term, provision or covenant of this Lease which is not provided for in another Section of this Article and shall not cure such failure within thirty (30) days (forthwith, if the failure involves a hazardous condition) after written notice of such failure to Tenant provided, however, that such failure shall not be an event of default if such failure could not reasonably be cured during such thirty (30) day period, Tenant has commenced the cure within such thirty (30) day period and thereafter is diligently pursuing such cure to completion, but the total aggregate cure period shall not exceed ninety (90) days.

18.3

Tenant shall fail to vacate the Building and the Premises immediately upon termination of this Lease, by lapse of time or otherwise, or upon termination of Tenant's right to possession only, but subject to the terms and conditions of Article 14.

18.4

Tenant shall become insolvent, admit in writing its inability to pay its debts generally as they become due, file a petition in bankruptcy or a petition to take advantage of any insolvency statute, make an assignment for the benefit of creditors, make a transfer in fraud of creditors, apply for or consent to the appointment of a receiver of itself or of the whole or any substantial part of its property, or file a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws, as now in effect or hereafter amended, or any other applicable law or statute of the United States or any state thereof.

18.5

A court of competent jurisdiction shall enter an order, judgment or decree adjudicating Tenant bankrupt, or appointing a receiver of Tenant, or of the whole or any substantial part of its property, without the consent of Tenant, or approving a petition filed against Tenant seeking reorganization or arrangement of Tenant under the bankruptcy laws of the United States, as now in effect or hereafter amended, or any state thereof, and such order, judgment or decree shall not be vacated or set aside or stayed within ninety (90) days from the date of entry thereof.

19.

REMEDIES.

19.1

Upon the occurrence of any of the Events of Default described or referred to in Article 18, Landlord shall have the option to pursue any one or more of the following remedies without any notice or demand whatsoever, concurrently or consecutively and not alternatively:

19.1.1

Landlord may, at its election, terminate this Lease or terminate Tenant's right to possession only, without terminating the Lease.

19.1.2

Upon any termination of this Lease, whether by lapse of time or otherwise, or upon any termination of Tenant's right to possession without termination of the Lease, Tenant shall surrender possession and vacate the Building immediately, and deliver possession thereof to Landlord, and Tenant hereby grants to Landlord full and free license to enter into and upon the Building and the Premises in such event and to repossess Landlord of the Building and the Premises as of Landlord's former estate and to expel or remove Tenant and any others who may be occupying or be within the Building or the Premises and to remove Tenant's signs and other evidence of tenancy and all other property of Tenant therefrom without being deemed in any manner guilty of trespass, eviction or forcible entry or detainer, and without incurring any liability for any damage resulting therefrom, Tenant waiving any right to claim damages for such re-entry and expulsion, and without relinquishing Landlord's right to rent or any other right given to Landlord under this Lease or by operation of law.

19.1.3

Upon any termination of this Lease, whether by lapse of time or otherwise, Landlord shall be entitled to recover as damages, all rent, including any amounts treated as additional rent under this Lease, and other sums due and payable by Tenant on the date of termination, plus as liquidated damages and not as a penalty, an amount equal to the sum of: (a) an amount by which the then present value of the rent reserved in this Lease for the residue of the stated Term of this Lease including any amounts treated as additional rent under this Lease and all other sums provided in this Lease to be paid by Tenant, exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; (b) the value of the time and expense necessary to obtain a replacement tenant or tenants, and the estimated expenses relating to recovery of the Building and the Premises, preparation for reletting and for reletting itself; (c) the cost of performing any other covenants which would have otherwise been performed by Tenant; (d) the Rent Abatement; and (e) the unamortized portion of all tenant improvement costs, allowances, attorneys' fees, brokers' commissions and any other concessions provided by Landlord in connection with this Lease.

19.1.4

Upon any termination of Tenant's right to possession only without termination of the Lease:

19.1.4.1

Neither such termination of Tenant's right to possession nor Landlord's taking and holding possession thereof as provided in Section 19.1.2 shall terminate the Lease or release Tenant, in whole or in part, from any obligation, including Tenant's obligation to pay the rent, including any amounts treated as additional rent, under this Lease for the full Term, and if Landlord so elects Tenant shall continue to pay to Landlord the entire amount of the rent as and when it becomes due, including any amounts treated as additional rent under this Lease, for the remainder of the Term plus any other sums provided in this Lease to be paid by Tenant for the remainder of the Term.

19.1.4.2

Landlord shall use commercially reasonable efforts to relet the Building or portions thereof to the extent required by applicable law. Landlord and Tenant agree that nevertheless Landlord shall at most be required to use only the same efforts Landlord then uses to lease premises in the Property generally and that in any case that Landlord shall not be required to give any preference or priority to the showing or leasing of the Building or portions thereof over any other space that Landlord may be leasing or have available and may place a suitable prospective tenant in any such other space regardless of when such other space becomes available and that Landlord shall have the right to relet the Building for a greater or lesser term than that remaining under this Lease, the right to relet only a portion of the Building, or a portion of the Building or the entire Building as a part of a larger area, and the right to change the character or use of the Building. In connection with or in preparation for any reletting, Landlord may, but shall not be required to, make repairs, alterations and additions in or to the Building or the Premises and redecorate the same to the extent Landlord deems necessary or desirable, and Tenant shall pay the cost thereof, together with Landlord's expenses of reletting, including, without limitation, any commission incurred by Landlord, within five (5) days after Landlord's demand. Landlord shall not be required to observe any instruction given by Tenant about any reletting or accept any tenant offered by Tenant unless such offered tenant has a credit-worthiness acceptable to Landlord and leases the entire Building upon terms and conditions including a rate of rent (after giving effect to all expenditures by Landlord for tenant improvements, broker's commissions and other leasing costs) all no less favorable to Landlord than as called for in this Lease, nor shall Landlord be required to make or permit any assignment or sublease for more than the current term or which Landlord would not be required to permit under the provisions of Article 9.

19.1.4.3

Until such time as Landlord shall elect to terminate the Lease and shall thereupon be entitled to recover the amounts specified in such case in Section 19.1.3, Tenant shall pay to Landlord upon demand the full amount of all rent, including any amounts treated as additional rent under this Lease and other sums reserved in this Lease for the remaining Term, together with (a) the costs of repairs, alterations, additions, redecorating and Landlord's expenses of reletting and the collection of the rent accruing therefrom (including reasonable attorneys' fees and broker's commissions), as the same shall then be due or become due from time to time, less only such consideration as Landlord may have received from any reletting of the Building, (b) the Rent Abatement, and (c) the unamortized portion of all tenant improvement costs, allowances, attorneys' fees, brokers' commissions and any other concessions provided by Landlord in connection with this Lease; and Tenant agrees that Landlord may file suits from time to time to recover any sums falling due under this Article 19 as they become due. Any proceeds of reletting by Landlord in excess of the amount then owed by Tenant to Landlord from time to time shall be credited against Tenant's future obligations under this Lease but shall not otherwise be refunded to Tenant or inure to Tenant's benefit.

19.2

Upon the occurrence of an Event of Default, Landlord may (but shall not be obligated to) cure such default at Tenant's sole expense. Without limiting the generality of the foregoing, Landlord may, at Landlord's option, enter into and upon the Premises if Landlord determines in its sole discretion that Tenant is not acting within a commercially reasonable time to maintain, repair or replace anything for which Tenant is responsible under this Lease or to otherwise effect compliance with its obligations under this Lease and correct the same, without being deemed in any manner guilty of trespass, eviction or forcible entry and detainer and without incurring any liability for any damage or interruption of Tenant's business resulting therefrom and Tenant agrees to reimburse Landlord within five (5) days after Landlord's demand as additional rent, for any expenses which Landlord may incur in thus effecting compliance with Tenant's obligations under this Lease, plus interest from the date of expenditure by Landlord at the Default Rate (as defined below).

19.3

If, on account of any breach or default by Tenant in Tenant's obligations under the terms and conditions of this Lease, it shall become necessary or appropriate for Landlord to employ or consult with an attorney or collection agency concerning or to enforce or defend any of Landlord's rights or remedies arising under this Lease or to collect any sums due from Tenant, Tenant agrees to pay all costs and fees so incurred by Landlord, including, without limitation, reasonable attorneys' fees and costs. Tenant expressly waives any right to trial by jury.

19.4

Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies provided in this Lease or any other remedies provided by law (all such remedies being cumulative), nor shall pursuit of any remedy provided in this Lease constitute a forfeiture or waiver of any rent due to Landlord under this Lease or of any damages accruing to Landlord by reason of the violation of any of the terms, provisions and covenants contained in this Lease.

19.5

No act or thing done by Landlord or its agents during the Term shall be deemed a termination of this Lease or an acceptance of the surrender of the Premises, and no agreement to terminate this Lease or accept a surrender of said Premises shall be valid, unless in writing signed by Landlord. No waiver by Landlord of any violation or breach of any of the terms, provisions and covenants contained in this Lease shall be deemed or construed to constitute a waiver of any other violation or breach of any of the terms, provisions and covenants contained in this Lease. Landlord's acceptance of the payment of rental or other payments after the occurrence of an Event of Default shall not be construed as a waiver of such default, unless Landlord so notifies Tenant in writing. Forbearance by Landlord in enforcing one or more of the remedies provided in this Lease upon an Event of Default shall not be deemed or construed to constitute a waiver of such default or of Landlord's right to enforce any such remedies with respect to such default or any subsequent default.

19.6

To secure the payment of all rentals and other sums of money becoming due from Tenant under this Lease, Landlord shall have and Tenant grants to Landlord a continuing security interest upon all goods, wares, equipment, fixtures, furniture, inventory, accounts, contract rights, chattel paper and other personal property of Tenant situated on the Premises, and such property shall not be removed therefrom without the consent of Landlord until all arrearages in rent as well as any and all other sums of money then due to Landlord under this Lease shall first have been paid and discharged. Upon the occurrence of an Event of Default, Landlord shall have, in addition to any other remedies provided in this Lease or by law, all rights and remedies under the Uniform Commercial Code, including without limitation the right to sell the property described in this Section 19.6 at public or private sale upon five (5) days' notice to Tenant. Tenant hereby authorizes Landlord to file, and if requested, shall execute all such financing statements and other instruments as shall be deemed necessary or desirable in Landlord's discretion to perfect and continue to perfection of the security interest hereby created and shall sign any such other related documents promptly upon request.

19.7

Any and all property which may be removed from the Premises by Landlord pursuant to the authority of this Lease or of law, to which Tenant is or may be entitled, may be handled, removed and/or stored, as the case may be, by or at the direction of Landlord but at the risk, cost and expense of Tenant, and Landlord shall in no event be responsible for the value, preservation or safekeeping thereof. Tenant shall pay to Landlord, upon demand, any and all expenses incurred in such removal and all storage charges against such property so long as the same shall be in Landlord's possession or under Landlord's control. Any such property of Tenant not retaken by Tenant from storage within thirty (30) days after removal from the Premises shall, at Landlord's option, be deemed conveyed by Tenant to Landlord under this Lease as by a bill of sale without further payment or credit by Landlord to Tenant.

19.8

If an Event of Default by Tenant occurs under this Lease, Landlord shall be entitled to recover interest on all unpaid rent, additional rent, late charges and other sums payable under this Lease, costs to recover possession of the Building and the Premises, costs to return the Building and the Premises to the condition required on surrender thereof by Tenant, costs to remove, store and/or dispose of Tenant's property, costs in connection with reletting the Building (including, without limitation, costs of repairs, alterations, additions and redecoration of the Building, reasonable attorneys' fees and brokers' commissions), the amount of the Rent Abatement provided by Landlord under this Lease, attorneys' fees and costs in connection with enforcing this Lease and collecting sums due hereunder, and any and all other damages recoverable by Landlord under this Lease or applicable law, from the date first due until paid in full, at the rate of fifteen percent (15%) per annum ("**Default Rate**").

20.
QUIET ENJOYMENT.

Landlord represents and warrants that it has full right and authority to enter into this Lease and that Tenant, while paying the rental and performing its other covenants and agreements contained in this Lease, shall peaceably and quietly have, hold and enjoy the Premises for the Term without hindrance or molestation from Landlord subject to the terms and provisions of this Lease. Except as set forth in Article 13, Landlord shall not be liable for any interference or disturbance by other tenants or third persons, nor shall Tenant be released from any of the obligations of this Lease because of such interference or disturbance.

21.
CASUALTY.

21.1

Landlord shall maintain causes of loss-special form property insurance covering the Building as it exists on the Lease Date (i.e., as shown on those certain As-Built Drawings prepared by D.L. Withers Construction and dated 01-26-2016, hereinafter the "**D.L. Withers Drawings**"), in an amount not less than ninety percent (90%) of the replacement cost thereof and, if Landlord so elects or is otherwise mandated by applicable law or required by Landlord's Lender, flood and wind coverage, the cost of all of which shall be included in the Insurance Costs charged to Tenant pursuant to Article 4. Such insurance shall be for the sole benefit of Landlord and under its sole control. Tenant shall not take out separate insurance on the Building concurrent in form or contributing in the event of loss with that required to be maintained by Landlord hereunder unless Landlord is included as an additional loss payee thereon; provided, however, Landlord need not be included as an additional loss payee on any insurance coverages maintained by Tenant on the Tenant Improvements, any Alterations, or Tenant's trade fixtures, inventory and other business personal property installed in the Building or on the Premises by, or belonging to, Tenant. Tenant shall immediately notify Landlord whenever any such separate insurance on the Building is taken out and shall promptly deliver to Landlord the policy or policies of such insurance. In the event the Premises or the Building are damaged by fire or other cause, and to the extent Landlord makes sufficient insurance proceeds available to Tenant for the cost and expense of same, Tenant shall forthwith repair, reconstruct and restore the same as nearly as possible to the condition that the same were in immediately prior to such damage, but with such changes or alterations as may be reasonably requested by Tenant and reasonably acceptable to Landlord or otherwise required by law, and this Lease and Tenant's obligation to pay rent and additional rent hereunder shall remain in full force and effect. Such repairs, reconstruction, restoration, changes and alterations, including the cost of any temporary repairs for the protection of the Building and the Premises, or any portion thereof, pending completion thereof, and to the extent Landlord makes sufficient insurance proceeds available to Tenant for same, are referred to as the "**Restoration Work**". Notwithstanding anything otherwise provided above, at the option of Tenant, Landlord shall perform that portion of the Restoration Work necessary to repair and restore the Building and the Premises to their condition existing on the Lease Date (as shown on the D.L. Withers Drawings) (herein, the "**Base Restoration Work**"), using the proceeds of Landlord's property insurance. Landlord shall not, in any event, be required to repair or replace any damage or loss by or from fire or other cause to the Tenant Improvements, any Alterations, or Tenant's trade fixtures, inventory and other business personal property installed in the Building or on the Premises by, or belonging to, Tenant.

21.2

The Restoration Work to be performed by Tenant shall be performed (a) in compliance with the terms and conditions set forth in Exhibit B for performance of the initial Tenant Improvements, except with respect to any fixed date deadlines therein that clearly pertain only to the initial Tenant Improvements, (b) using a licensed architect and general contractor reasonably acceptable to Landlord (if the Architect and general contractor specified in Exhibit B are no longer available or desirable), and (c) pursuant to detailed plans and specifications which have first been approved by Landlord in writing, pursuant to the provisions set forth in Section 4 of Exhibit B. As applicable, all insurance proceeds recovered and available from Landlord's and Tenant's Causes of Loss - Special Form insurance for the Building (but excluding insurance proceeds recovered for the Tenant Improvements, any Alterations, or Tenant's trade fixtures, inventory and other business personal property installed in the Building or on the Premises by, or belonging to, Tenant) shall be held by Landlord (less the reasonable costs, if any, to Landlord of such recovery),

and shall be applied to the payment of the costs of the Base Restoration Work and shall be paid out from time to time as the Base Restoration Work progresses, in the same manner and subject to the same terms, covenants and conditions set forth in Section 5 of Exhibit B for payment of the Allowance. If the net amount of such insurance proceeds is reasonably deemed insufficient by Landlord to complete the Base Restoration Work (exclusive of the Tenant Improvements, any Alterations and Tenant's trade fixtures, inventory and other business personal property), subject to Section 21.3(b) below, Landlord shall fund, at its sole cost and expense, the amount necessary to complete the Base Restoration Work which is in excess of the available insurance proceeds (the "**Excess Restoration Costs**").

21.3

Notwithstanding anything to the contrary contained in this Article: (a) Landlord and Tenant shall not have any obligation to complete any Restoration Work when the damage resulting from any casualty covered by the provisions of this Article 21 occurs during the last twelve (12) months of the Term or any Option Term, provided that if Landlord and Tenant elect not to repair any such damage occurring during the last twelve (12) months of the Term or any Option Term, and if such damage renders any material portion of the Building untenantable, then Tenant shall have the right to abate the Base Rent and additional rent next becoming due under this Lease for the portion of the Building rendered untenantable by delivering written notice thereof to Landlord; and (b) in the event Landlord's Lender requires that any insurance proceeds be applied to any indebtedness secured by a mortgage or deed of trust covering the Premises or the Building, Landlord shall have the right to either (i) self-fund the Restoration Work to the extent of the amount payable to its Lender out of such insurance proceeds, or (ii) terminate this Lease by delivering written notice of termination to Tenant. If this Lease is terminated under this Article 21 after a fire or other casualty, Tenant shall deliver to Landlord all proceeds of insurance applicable to any Tenant Improvements and Alterations that are damaged, excepting only the Required Removables, Tenant's trade fixtures, inventory and other business personal property. If this Lease is so terminated but Tenant fails to receive insurance proceeds covering the full replacement cost of such Tenant Improvements and Alterations other than the Required Removables, Tenant shall be deemed to have self-insured the replacement cost of the same and shall pay to Landlord the full replacement cost of such items, less any insurance proceeds actually received by Landlord from Tenant's insurance with respect to such items.

21.4

Notwithstanding anything to the contrary contained in this Article 21, if Tenant or Landlord is obligated to complete any Restoration Work, or portions thereof, but is delayed from completing such Restoration Work for a period of twelve (12) months after the scheduled date for completion thereof (as set forth in the applicable construction schedule), by reason of any causes beyond the reasonable control of such party (including strikes, lockouts, casualties, Acts of God or terrorism, war, material or labor shortages, government regulation or control or other causes beyond the reasonable control of such party), then either party may elect to terminate this Lease upon written notice given to the other party prior to completion of such Restoration Work.

21.5

In the event of any damage or destruction to the Building or the Premises by any peril covered by the provisions of this Article 21, it shall be Tenant’s responsibility to properly secure the Building and upon notice from Landlord to remove forthwith, at its sole cost and expense, all of the property belonging to Tenant or its licensees from such portion or all of the Building or the Premises as Landlord shall request.

21.6

This Lease sets forth the terms and conditions upon which this Lease may terminate in the event of any damage or destruction. Accordingly, except as expressly provided herein, Landlord and Tenant each hereby waives any and all provisions of applicable law that provide alternative rights for the parties in the event of damage or destruction (including, without limitation, the provisions of Section 33-343 of the Arizona Revised Statutes, and any successor statute or laws of a similar nature).

22.
EMINENT DOMAIN.

If all or any substantial part of the Building or the Premises shall be taken or appropriated by any public or quasi-public authority under the power of eminent domain, or conveyance in lieu of such appropriation, either party to this Lease shall have the right, at its option, of giving the other, at any time within thirty (30) days after such taking, notice terminating this Lease, except that Tenant may only terminate this Lease by reason of taking or appropriation, if such taking or appropriation shall be so substantial as to materially interfere with Tenant's use and occupancy of the Building. If neither party to this Lease shall so elect to terminate this Lease, the rental thereafter to be paid shall be adjusted on a fair and equitable basis under the circumstances. Landlord shall be entitled to any and all income, rent, award, or any interest whatsoever in or upon any such sum, which may be paid or made in connection with any such public or quasi-public use or purpose, and Tenant hereby assigns to Landlord any interest it may have in or claim to all or any part of such sums, other than any separate award which may be made with respect to Tenant's trade fixtures and moving expenses; Tenant shall make no claim for the value of any unexpired Term.

23.
SALE BY LANDLORD.

In event of a sale or conveyance by Landlord of the Building, the Premises or the Property, the same shall operate to release Landlord from any future liability upon any of the covenants or conditions, expressed or implied, contained in this Lease in favor of Tenant, and in such event Tenant agrees to look solely to the responsibility of the successor in interest of Landlord in and to this Lease. Except as set forth in this Article 23, this Lease shall not be affected by any such sale and Tenant agrees to attorn to the purchaser or assignee. If any security has been given by Tenant to secure the faithful performance of any of the covenants of this Lease, Landlord may transfer or deliver said security, as such, to Landlord's successor in interest and thereupon Landlord shall be discharged from any further liability with regard to said security.

24.
ESTOPPEL CERTIFICATES.

24.1
Within ten (10) business days following any written request which Landlord may make from time to time, Tenant shall execute and deliver to Landlord or mortgagee or prospective mortgagee a sworn statement certifying: (a) the date of commencement of this Lease; (b) the fact that this Lease is unmodified and in full force and effect (or, if there have been modifications to this Lease, that this Lease is in full force and effect, as modified, and stating the date and nature of such modifications); (c) the date to which the rent and other sums payable under this Lease have been paid; (d) the fact that there are no current defaults under this Lease by either Landlord or Tenant except as specified in Tenant's statement; and (e) such other factual matters as may be requested by Landlord. Landlord and Tenant intend that any statement delivered pursuant to this Section 24.1 may be relied upon by any mortgagee, beneficiary or purchaser, and Tenant shall be liable for all loss, cost or expense resulting from the failure of any sale or funding of any loan caused by any material misstatement contained in such estoppel certificate. Tenant irrevocably agrees that if Tenant fails to execute and deliver such certificate within such ten (10) business day period, Landlord or Landlord's beneficiary or agent may execute and deliver such certificate on Tenant's behalf, and that such certificate shall be fully binding on Tenant.

24.2
Within ten (10) business days following any written request which Tenant may make from time to time, Landlord shall execute and deliver to Tenant a sworn statement certifying: (a) the date of commencement of this Lease; (b) the fact that this Lease is unmodified and in full force and effect (or, if there have been modifications to this Lease, that this Lease is in full force and effect, as modified, and stating the date and nature of such modifications); (c) the date to which the rent and other sums payable under this Lease have been paid; (d) the fact that there are no current defaults under this Lease by either Landlord or Tenant except as specified in Landlord's statement; and (e) such other factual matters as may be requested by Tenant. Landlord and Tenant intend that any statement delivered pursuant to this Section 24.2 may be relied upon by Tenant and any prospective lender, investor

or purchaser. Landlord irrevocably agrees that if Landlord fails to execute and deliver such certificate within such ten (10) business day period, Tenant may execute and deliver such certificate on Landlord's behalf, and that such certificate shall be fully binding on Landlord.

25.
SURRENDER OF PREMISES.

25.1
Tenant shall arrange to meet Landlord for two (2) joint inspections of the Building and the Premises, the first to occur at least thirty (30) days (but no more than sixty (60) days) before the last day of the Term, and the second to occur not later than forty-eight (48) hours after Tenant has vacated the Building and the Premises. In the event of Tenant's failure to arrange such joint inspections and/or participate in either such inspection, Landlord's inspection at or after Tenant's vacating the Building and the Premises shall be conclusively deemed correct for purposes of determining Tenant's responsibility for repairs and restoration.

25.2
All Tenant Improvements and Alterations (as defined in Article 6) shall be and remain the property of Tenant during the Term. At the end of the Term or any renewal of the Term or other sooner termination of this Lease, Tenant will peaceably deliver up to Landlord possession of the Building and the Premises, together with all such Tenant Improvements and Alterations by whomsoever made, in the same conditions received or first installed, broom clean and free of all debris, excepting only ordinary wear and tear and damage by fire or other casualty. Notwithstanding the foregoing, at the end of the Term or any renewal of the Term or other sooner termination of this Lease, (a) Tenant shall, at Tenant's sole cost, remove any Tenant Improvements installed pursuant to Exhibit B or Alterations installed thereafter which Landlord has, by written notice delivered to Tenant at the time Landlord approves such Tenant Improvements or other Alterations, identified as Tenant Improvements or Alterations which Landlord will require that Tenant remove at the end of the Term ("**Required Removables**"), (b) repair any damage caused by such removal, and (c) restore the Building and the Premises to their condition existing immediately prior to the installation of the Required Removables. Such obligations of removal and restoration shall survive the expiration or earlier termination of this Lease. All other Tenant Improvements and Alterations shall become a part of the realty and shall belong to Landlord without compensation, and title shall pass to Landlord under this Lease as by a bill of sale. Tenant must, at Tenant's sole cost, remove upon termination of this Lease, any and all of Tenant's furniture, furnishings, equipment, movable partitions of less than full height from floor to ceiling and other trade fixtures and personal property, as well as all data/telecommunications cabling and wiring installed by or on behalf of Tenant, whether inside walls, under any raised floor or above any ceiling (collectively, "**Personalty**"). If Tenant fails to remove the Required Removables and/or the Personalty, and repair and restore the Building and the Premises as required above, Landlord shall have the right to do so and Tenant shall pay to Landlord all costs incurred by Landlord in connection therewith, plus a reasonable sum for overhead not to exceed eight percent (8%), which amounts shall be payable within ten (10) days after invoice, together with interest thereon from the date of expenditure until paid in full at the rate of eight percent (8%) per annum, provided that if such sums are not paid by Tenant by the date such sums are due, then such sums shall thereafter accrue interest at the Default Rate until paid in full. Personalty not so removed shall be deemed abandoned by Tenant and title to the same shall thereupon pass to Landlord under this Lease as by a bill of sale, but Tenant shall remain responsible for the cost of removal and disposal of such Personalty, as well as the repair of any damage caused by such removal. In lieu of requiring Tenant to remove the Required Removables and the Personalty, and repair and restore the Building and the Premises as aforesaid, Landlord may, by written notice to Tenant delivered at least thirty (30) days before the end of the Term or any Option Term or any sooner termination of this Lease, require Tenant to pay to Landlord, as additional rent hereunder, the cost of such removal, and repair and restoration in an amount reasonably estimated by Landlord.

25.3
All obligations of Tenant under this Lease not fully performed as of the expiration or earlier termination of the Term shall survive the expiration or earlier termination of the Term. Upon the expiration or earlier termination of the Term, Tenant shall pay to Landlord the amount, as estimated by Landlord, necessary to discharge Tenant's obligation for unpaid amounts due or to become due to Landlord. All such amounts shall be used and held

by Landlord for payment of such obligations of Tenant, with Tenant being liable for any additional costs upon demand by Landlord, or with any excess to be returned to Tenant after all such obligations have been determined and satisfied.

26.
NOTICES.

Any notice or document required or permitted to be delivered under this Lease shall be addressed to the intended recipient, by fully prepaid registered or certified United States Mail return receipt requested, or by reputable independent contract delivery service furnishing a written record of attempted or actual delivery, and shall be deemed to be delivered when tendered for delivery to the addressee at its address set forth on the Summary, or at such other address as it has then last specified by written notice delivered in accordance with this Article 26, or if to Tenant at either its aforesaid address or its last known registered office. Any such notice or document may also be personally delivered if a receipt is signed by and received from, the individual, if any, named in Tenant's Notice Address.

27.
TAXES PAYABLE BY TENANT.

Tenant agrees to pay, before delinquency, any and all taxes levied or assessed against Tenant and which become payable during the term hereof upon Tenant's equipment, furniture, fixtures and other personal property of Tenant located in the Building or on the Premises. In addition, and notwithstanding anything to the contrary in this Lease, Tenant shall also be liable for, and shall pay to Landlord within thirty (30) days after invoice accompanied by reasonable evidence of such charges, or, at Landlord's option, as part of Taxes payable hereunder, any and all increases in the property taxes and assessments which are levied against the Premises, Building or Property, to the extent such increases are the result of the installation by or on behalf of Tenant (whether under Exhibit B or thereafter) of alterations, additions or improvements which Landlord reasonably determines are not standard for a typical business park/light industrial property.

28.
SIGNS; USE OF ROOF SPACE.

28.1
Tenant shall have the right to install and maintain on the exterior walls of the Building such signs bearing Tenant's name as are allowed by the City of Mesa. The design details (including lettering, style, font, colors, etc.), construction, manner of installation, lighting and all other aspects of the signs shall be subject to the prior approval of Landlord, which approval shall not be unreasonably withheld, conditioned or delayed, shall reasonably conform to Landlord's overall signage plan for the Property, and shall be further subject to the approval of the City of Mesa, with any necessary permits and licenses to be obtained by Tenant at Tenant's sole cost and expense. The signs may not be attached to the face of the Building or connected to any electrical, lighting or other utility systems serving the Building in any manner which may adversely affect the structure of the Building or any of the mechanical, electrical, lighting, life safety, or other systems of the Building. After Tenant has obtained all such necessary approvals, permits and licenses, Tenant shall engage a sign contractor reasonably acceptable to Landlord to construct and install the signs, all at Tenant's sole cost and expense. Tenant shall cause its vendor to comply with all rules and regulations of the Property during such construction and installation. Landlord shall have the right, at no cost to Tenant, to supervise the attachment of the signs to the face of the Building and all connections to electrical, lighting and other utility lines serving the Building. Tenant shall maintain the signs in good condition and repair, at Tenant's sole cost and expense, and shall indemnify, defend and hold harmless Landlord and the Landlord Entities for, from and against any injury, loss or damage arising from the installation, maintenance or removal of the signs. At the end of the Term or any renewal of the Term or other sooner termination of this Lease, Tenant shall promptly remove all such signs and related improvements, repair any and all damage caused by such removal, and restore the Building to its condition existing prior to installation of the signs. Such obligations of removal and restoration shall survive the expiration or earlier termination of this Lease. If Tenant at any time fails to promptly perform its maintenance obligations or remove all such signs and repair any and all such damage, Landlord shall have the right to do so at Tenant's sole cost and expense and Tenant shall promptly reimburse Landlord for any such reasonable costs and expenses, as additional rent.

28.2

Notwithstanding any provision of this Lease to the contrary, Tenant shall have the right to use the roof of the Building ("**Roof Space**") for the sole purpose of installing, maintaining and operating satellite dishes, microwave antennas or other communication devices (together with all related equipment, cabling and wiring, the "**Devices**"), and photovoltaic solar panels ("**Solar Panels**"), subject to the following terms and conditions:

28.2.1

There shall be no rent or other payments due from Tenant for the Roof Space, but all other obligations of Tenant in this Lease, including, without limitation, the insurance and indemnity obligations owed to Landlord and the Landlord Entities, shall apply equally with respect to all matters pertaining to the Solar Panels, the Devices and the use of the Roof Space. Tenant shall give Landlord prompt notice of any casualty, injury or accident occurring on, or related to, the roof of the Building. The Devices shall be used only for Tenant's own purposes and in no event shall Tenant allow any provider of telecommunication, video, data or related services ("**Communication Services**") to locate any equipment on the roof of the Building, nor shall Tenant use the roof of the Building or the Devices to provide Communication Services to an unaffiliated tenant, occupant or licensee of another building, or to facilitate the provision of Communication Services on behalf of another Communication Services provider to an unaffiliated tenant, occupant or licensee of another building.

28.2.2

The Solar Panels and the Devices (together with a visual screen wall as may be reasonably specified by Landlord) shall be installed, operated and maintained at Tenant's sole risk, cost and expense and Tenant shall comply with all rules and regulations of the Property, all other applicable provisions of this Lease, all applicable laws and regulations, and Landlord's policies and practices for the Building relating to the installation, use and maintenance of the Solar Panels and the Devices. Tenant's right to install the Solar Panels and the Devices shall be subject to the approval rights of Landlord, which approval shall not be unreasonably withheld, conditioned or delayed, and Landlord's architect and/or engineer with respect to the plans and specifications of the Solar Panels and the Devices, the manner in which the Solar Panels and the Devices are attached to the roof of the Building and the manner in which any cables are run to and from the Solar Panels and/or the Devices. The precise specifications and a general description of the Solar Panels and the Devices along with all documents Landlord reasonably requires to review the installation of such Solar Panels and the Devices shall be submitted to Landlord for Landlord's written approval and Tenant must obtain Landlord's written approval prior to the installation of the Solar Panels and the Devices, which approval shall not be unreasonably withheld, conditioned or delayed. Furthermore, prior to such installation, Tenant shall coordinate with Landlord's warranty roofer to ensure that the installation, use and maintenance of the Solar Panels and the Devices do not and will not void or otherwise diminish the protection afforded by Landlord's roof warranty. If such installation requires penetrations of the roof, or if otherwise required by Landlord, Tenant, at its sole cost and expense, shall retain the roofing contractor having a then existing warranty in effect on the roof to perform such work All sales taxes, use and occupancy taxes and taxes and charges in the nature thereof with respect to the Solar Panels and/or the Devices are the responsibility of and shall be paid by Tenant.

28.2.3

Tenant agrees to maintain the Solar Panels and the Devices in proper operating condition and satisfactory condition as to appearance and safety. Tenant shall keep the roof free of all trash and waste materials produced by Tenant or any Tenant Entities. If Landlord reasonably determines that the Solar Panels and/or the Devices do not comply with the approved plans and specifications, that the Building or Building's electrical, mechanical or life-safety systems have been damaged during installation of the Solar Panels or the Devices, that the installation was defective or that Tenant is not maintaining the Solar Panels or the Devices in good condition and repair as required herein, Landlord shall notify Tenant of any noncompliance or detected problems and Tenant shall immediately cure the defects.

28.2.4

Unless otherwise directed by Landlord at the end of the Term or any renewal of the Term or other sooner termination of this Lease, the Solar Panels and the Devices, the appurtenances and the visual screen wall, if any, shall automatically be considered Required Removables that will remain the personal property of Tenant, and shall

be removed by Tenant at its own expense upon the expiration of the Term or other sooner termination of this Lease. Alternatively, if Tenant vacates the Building without removing the Solar Panels and/or the Devices and Landlord elects in its sole discretion not to require such removal, or if Landlord otherwise requests that Tenant leave the Solar Panels and/or the Devices intact on the Building, and in connection therewith, Landlord and Tenant agreed upon a commercially reasonable amount of consideration to be paid to Tenant for leaving such items intact on the Building, then Tenant shall not remove the same and ownership to the same shall pass to Landlord as if voluntarily conveyed by deed or bill of sale and Tenant shall have no further claim thereto following receipt of the agreed-upon consideration from Landlord. Tenant shall repair any damage caused by installation and/or removal of the Solar Panels and/or the Devices and shall restore the roof to the condition it was in prior to Tenant installing and using the Solar Panels and/or the Devices, reasonable wear and tear excepted. Such obligations of removal and restoration shall survive the expiration or earlier termination of this Lease. If Tenant at any time fails to promptly perform its maintenance obligations under this Section 28.2, or if Tenant fails to remove all such Solar Panels and/or the Devices and repair any and all such damage, Landlord shall have the right to do so at Tenant's sole cost and expense and Tenant shall promptly reimburse Landlord for all such costs and expenses, together with a reasonable fee for overhead not to exceed eight percent (8%), as additional rent.

29.

DEFINED TERMS AND HEADINGS.

The Article headings shown in this Lease are for convenience of reference and shall in no way define, increase, limit or describe the scope or intent of any provision of this Lease. In any case where this Lease is signed by more than one person, the obligations under this Lease shall be joint and several. The terms "Tenant" and "Landlord" or any pronoun used in place thereof shall indicate and include the masculine or feminine, the singular or plural number, individuals, firms or corporations, and their and each of their respective successors, executors, administrators and permitted assigns, according to the context hereof.

30.

TENANT'S AUTHORITY; OFAC.

30.1

If Tenant signs as a corporation, partnership, trust or other legal entity, each of the persons executing this Lease on behalf of Tenant represents and warrants that Tenant has been and is qualified to do business in the state in which the Building is located, that the entity has full right and authority to enter into this Lease, and that all persons signing on behalf of the entity were authorized to do so by appropriate actions. Tenant agrees to deliver to Landlord, simultaneously with the delivery of this Lease, a corporate resolution, proof of due authorization by partners, opinion of counsel or other appropriate documentation reasonably acceptable to Landlord evidencing the due authorization of Tenant to enter into this Lease.

30.2

Tenant hereby represents and warrants that neither Tenant, nor any persons or entities holding any legal or beneficial interest whatsoever in Tenant, are (i) the target of any sanctions program that is established by Executive Order of the President or published by the Office of Foreign Assets Control, U.S. Department of the Treasury ("**OFAC**"); (ii) designated by the President or OFAC pursuant to the Trading with the Enemy Act, 50 U.S.C. App. § 5, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-06, the Patriot Act, Public Law 107-56, Executive Order 13224 (September 23, 2001) or any Executive Order of the President issued pursuant to such statutes; or (iii) named on the following list that is published by OFAC: "List of Specially Designated Nationals and Blocked Persons."

30.3

Landlord hereby represents and warrants that neither Landlord, nor any persons or entities holding any legal or beneficial interest whatsoever in Landlord, are (i) the target of any sanctions program that is established by Executive Order of the President or published by the OFAC; (ii) designated by the President or OFAC pursuant to the Trading with the Enemy Act, 50 U.S.C. App. § 5, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-06, the Patriot Act, Public Law 107-56, Executive Order 13224 (September 23, 2001) or any Executive

Order of the President issued pursuant to such statutes; or (iii) named on the following list that is published by OFAC: "List of Specially Designated Nationals and Blocked Persons."

31.
FINANCIAL STATEMENTS AND CREDIT REPORTS.

At Landlord's request, to be given in writing not more than one (1) time during any twelve (12)-month period during the Term (unless the same has been requested by any Lender of Landlord or by any prospective Lender or any prospective purchaser of the Building, Premises or Property), Tenant shall deliver to Landlord a copy, certified by an officer of Tenant as being a true and correct copy, of Tenant's most recent audited financial statement, or, if unaudited, certified by Tenant's chief financial officer as being true, complete and correct in all material respects. Tenant hereby authorizes Landlord to obtain one or more credit reports on Tenant at any time, and shall execute such further authorizations as Landlord may reasonably require in order to obtain a credit report. The foregoing provisions of this Article 31 shall not apply so long as the "Tenant" is publicly-traded on a recognized national stock exchange and its financial statements and information are available to the public over the internet (as is the case with Dexcom, Inc., as of the Lease Date).

32.
COMMISSIONS.

Each of the parties represents and warrants to the other that it has not dealt with any broker or finder in connection with this Lease, except as described on the Summary.

33.
TIME AND APPLICABLE LAW.

Time is of the essence of this Lease and all of its provisions. This Lease shall in all respects be governed by the laws of the state in which the Property is located. Venue for any litigation between the parties hereto concerning this Lease or the occupancy of the Premises shall be initiated in the county in which the Premises are located.

34.
SUCCESSORS AND ASSIGNS.

Subject to the provisions of Article 9, the terms, covenants and conditions contained in this Lease shall be binding upon and inure to the benefit of the heirs, successors, executors, administrators and assigns of the parties to this Lease.

35.
ENTIRE AGREEMENT.

This Lease, together with its exhibits, contains all agreements of the parties to this Lease and supersedes any previous negotiations. There have been no representations made by the Landlord or any of its representatives or understandings made between the parties other than those set forth in this Lease and its exhibits. This Lease may not be modified except by a written instrument duly executed by the parties to this Lease.

36.
EXAMINATION NOT OPTION.

Submission of this Lease shall not be deemed to be a reservation of the Premises. Landlord shall not be bound by this Lease until it has received a copy of this Lease duly executed by Tenant and has delivered to Tenant a copy of this Lease duly executed by Landlord, and until such delivery Landlord reserves the right to exhibit and lease the Premises to other prospective tenants.

37.
RECORDATION.

Tenant shall not record or register this Lease or a short form memorandum hereof without the prior written consent of Landlord. Notwithstanding the foregoing, Landlord and Tenant hereby agree to execute and record a short form memorandum of this Lease in the form attached hereto as Exhibit F (the "**Memorandum of Lease**") within ten (10) business days after the later of (i) the date of mutual execution hereof or (ii) the date that Tenant, at Tenant's sole cost and expense, prepares a legal description for the Premises (separate from the remainder of the Property) which is acceptable to the parties. Recordation of the Memorandum of Lease shall be at Tenant's expense.

38.
LIMITATION OF LANDLORD'S LIABILITY.

Redress for any claim against Landlord under this Lease shall be limited to and enforceable only against and to the extent of Landlord's interest in the Property. The obligations of Landlord under this Lease are not intended to be and shall not be personally binding on, nor shall any resort be had to the private properties of, any of its or its investment manager's trustees, directors, officers, partners, beneficiaries, managers, members, stockholders, employees, or agents, and in no case shall Landlord be liable to Tenant hereunder for any lost profits, damage to business, or any form of special, indirect or consequential damages.

39.
EXPENDITURES BY LANDLORD.

Whenever under any provision of this Lease Tenant is obligated to make any payment or expenditure, or to do any act or thing, or to incur any liability whatsoever, and Tenant fails, refuses or neglects to perform as herein required, Landlord shall be entitled, but shall not be obligated, to make any such payment or to do any such act or thing, or to incur any such liability, all on behalf of and at the cost and for the account of Tenant. All costs and expenditures in connection therewith, together with a reasonable fee for overhead not to exceed eight percent (8%), shall be paid by Tenant to Landlord, as additional rent, promptly upon receipt of a bill therefor.

40.
CONFIDENTIALITY.

Except to the extent Tenant is required by law to disclose the same in Tenant's Form 8-K or other required filings with the United States Securities and Exchange Commission ("**SEC**") (as is the case with Dexcom, Inc., as of the Lease Date), each of Landlord and Tenant shall cause the rental rates and other terms of this Lease (the "**Confidential Information**") to be kept strictly confidential and neither party shall, either directly or indirectly, with or without cause, in whole or in part, disclose, or permit to be disclosed, any Confidential Information to any other person or party, or use or permit the use of such Confidential Information in any manner other than in connection with enforcing the terms and conditions of this Lease. A breach of this covenant shall be an immediate material breach and Event of Default under this Lease, subjecting the breaching party to any and all of the other party's rights and remedies available under this Lease, and/or at law or in equity. The foregoing covenant shall not, however, prohibit Landlord and Tenant from disclosing the Confidential Information (a) to its respective brokers, financial and other professional advisors, (b) to its lenders, investors or beneficiaries, or any prospective lenders, investors, purchasers or beneficiaries, (c) in connection with any litigation or arbitration proceedings, (d) in response to any governmental request, (e) as may be required by court order or subpoena, or (f) as may otherwise be required by law (including requirements imposed by the SEC on publicly-traded companies). This covenant of confidentiality shall survive the expiration or earlier termination of this Lease or Tenant's right to possession of the Premises.

41.
LANDLORD DEFAULT.

Subject to the terms of Section 7.1(c), in the event of a breach, default or noncompliance hereunder by Landlord, Tenant agrees, before exercising any right or remedy available Tenant, to give Landlord written notice of the claimed

breach, default or noncompliance. If prior to its giving such notice Tenant has been notified in writing (by way of notice of assignment of rents and leases, or otherwise) of the address of any Lender (as defined in Article 15), concurrently with giving the notice to Landlord, Tenant agrees to also give notice by overnight delivery or registered mail to such Lender. For the thirty (30) days following such notice (or such longer period of time as may be reasonably required to cure a matter which, due to its nature, cannot reasonably be remedied within thirty (30) days), Landlord shall have the right to cure the breach, default or noncompliance involved. If Landlord has failed to cure a default within said period, any such Lender shall have an additional thirty (30) days within which to cure the same or, if such default cannot be cured within that period, such additional time as may be necessary if within such thirty (30) day period said Lender has commenced and is diligently pursuing the actions or remedies necessary to cure the breach, default or noncompliance involved (including, but not limited to, commencement and prosecution of proceedings to foreclose or otherwise exercise its rights under its mortgage or other security instrument or ground lease, if necessary to effect such cure), in which event Tenant shall not be entitled to exercise any right or remedy available to it under this Lease so long as such actions or remedies are being diligently pursued by said Lender. In no event shall Tenant have the right to terminate this Lease as a result of Landlord's default and Tenant's remedies shall be limited to an injunction and/or actual damages (but not special, punitive or consequential damages). If Tenant fails to give notice to Landlord and any Lender of a default within twelve (12) months after Tenant has actual knowledge of the occurrence of the events pursuant to which the default arises or would occur with notice as provided above, thereafter Tenant shall have no right to deem the same a default hereunder.

42.

OPTIONS TO EXTEND.

42.1

Landlord hereby grants Tenant four (4) options (each, an "**Option to Extend**") to extend the Term for the entire Building and Premises only, for additional consecutive periods of five (5) years each (each, an "**Option Term**"). Each Option to Extend shall be exercised, if at all, only by written notice ("**Option Notice**") delivered by Tenant to Landlord at least twelve (12) months, but not more than fifteen (15) months, prior to commencement of the applicable Option Term. If Tenant exercises an Option to Extend, the Term shall be extended for the applicable Option Term upon all of the same terms, covenants and conditions contained in this Lease, except that (a) Monthly Base Rent shall be payable at the rates set forth in the Summary for the first such Option Term, (b) Monthly Base Rent shall be payable at the then Current Market Rate (as determined below) for each subsequent Option Term, and (c) the number of remaining Options to Extend (if any) shall be reduced by one. If Tenant does not deliver an Option Notice within the time period set forth herein, such Option to Extend and any remaining unexercised Options to Extend shall lapse and Tenant shall have no right to extend the Term.

42.2

The "**Current Market Rate**" shall mean the bona fide rates, terms and conditions then being offered, as of the commencement of the applicable Option Term, in "arm's length" transactions to comparable tenants under renewal leases or amendments for comparable space within comparable/similar class buildings in the same geographic submarket as the Building, taking into account all tenant inducements then being given to renewing tenants including, but not limited to, rent abatements, tenant improvement allowances and/or remodeling allowances and parking concessions. Within thirty (30) days after Landlord's receipt of an Option Notice with respect to either the second, third or fourth Option Terms, Landlord shall provide Tenant written notice of Landlord's determination of the Current Market Rate for the applicable Option Term, including any step increases over the Option Term. Within ten (10) business days after Landlord delivers its determination of the Current Market Rate to Tenant, Tenant shall, by written notice to Landlord, either accept or reject the Current Market Rate as determined by Landlord. If Tenant does not deliver such written acceptance or rejection within said ten (10) business day period, Tenant shall be deemed to have accepted Landlord's determination of the Current Market Rate.

42.3

If Tenant rejects Landlord's determination of the Current Market Rate within said ten (10) business day period, the parties shall negotiate in good faith in an effort to agree upon the Current Market Rate within fifteen (15) days thereafter. If the parties fail to reach an agreement within said fifteen (15) day negotiation period, each

party shall select an impartial appraiser licensed in the State of Arizona, who is a member of the American Institute of Real Estate Appraisers or, if it is not then in existence, a member of the most nearly comparable organization, who has a minimum of ten (10) years' experience in the Phoenix, Arizona, commercial leasing market, and who is not affiliated with either party or involved in an active transaction in which either party is also involved, and shall notify the other party, in writing, of its selection within ten (10) days after the expiration of the negotiation period. The appraisers shall attempt to reach an agreement concerning the Current Market Rate within the next ten (10) days after their appointment. If the two appraisers agree upon the Current Market Rate, such determination shall be final and binding on the parties and shall constitute the Monthly Base Rent payable by Tenant during the applicable Option Term. If the two appraisers do not mutually agree upon the Current Market Rate, the two appraisers shall promptly select within ten (10) days, and provide their respective proposals of the Current Market Rate to, a third appraiser, and the third appraiser will then notify Landlord and Tenant of such appraiser's name, address and selection within five (5) days after his or her appointment. The third appraiser shall satisfy the same professional qualifications set forth above for the other appraisers, with the added qualification that he or she shall not have represented either party or any of its affiliates in any capacity during the five (5) years prior to his or her selection as the third appraiser. Within ten (10) days after the selection of the third appraiser, such third appraiser shall select the proposed Current Market Rate provided by either Landlord's or Tenant's appraiser in its entirety, without averaging or otherwise adjusting such value in any manner, and shall notify Landlord, Tenant and the other two appraisers of his or her decision. The third appraiser's decision concerning the Current Market Rate shall be binding upon the parties, shall not be subject to any right of appeal and shall constitute the Monthly Base Rent payable by Tenant during the applicable Option Term. Each party shall be responsible for the fees and costs of its appraiser. The non-prevailing party shall be responsible for the fees and costs of the third appraiser.

42.4

If Tenant accepts or is deemed to have accepted Landlord's determination of the Current Market Rate, as set forth above in Section 42.2, or if the Current Market Rate is otherwise determined in accordance with the provisions of Section 42.3 above, Landlord shall prepare and the parties shall both execute an appropriate amendment to this Lease setting forth the extension of the Term for the applicable Option Term and the Monthly Base Rent payable during such Option Term ("**Option Term Amendment**"). If the Current Market Rate has not been determined as of the commencement of the Option Term and until the Current Market Rate is determined in the manner provided above, Tenant shall pay Monthly Base Rent in an amount equal to 105% of the Monthly Base Rent payable for the calendar month immediately preceding the commencement of the applicable Option Term ("**Temporary Rent**"). Within ten (10) days after the final determination of the Current Market Rate, Landlord shall refund to Tenant, or Tenant shall pay to Landlord, as the case may be, an amount equal to the difference between the Temporary Rent paid by Tenant and the finally determined Current Market Rate for the same period.

42.5

Each Option to Extend shall be exercisable by Tenant on the express conditions that at the time of the exercise of the Option to Extend, and upon the date of the commencement of such Option Term, Tenant shall not be in default under any of the provisions of this Lease beyond any applicable cure period, unless such restriction is expressly waived in writing by Landlord (which election shall be in Landlord's sole discretion). Each Option to Extend is personal to the originally-named Tenant executing this Lease and any Permitted Transferee which assumes this Lease in writing, and may only be exercised by said Tenant or Permitted Transferee. If Tenant mortgages, pledges, hypothecates or encumbers this Lease in violation of Section 9.1, or if Tenant assigns this Lease to other than a Permitted Transferee, or if Tenant sublets all or any portion of the Building or Premises to other than a Permitted Transferee, prior to the exercise of an Option to Extend, such Option to Extend and any remaining unexercised Options to Extend shall lapse. If Tenant mortgages, pledges, hypothecates or encumbers this Lease in violation of Section 9.1, or if Tenant assigns this Lease to other than a Permitted Transferee, or if Tenant sublets all or any portion of the Building or Premises to other than a Permitted Transferee, after the exercise of the Option to Extend, but prior to the commencement of the applicable Option Term, such Option to Extend and any remaining unexercised Options to Extend Term shall lapse and this Lease shall expire as if the Option to Extend had not been exercised, unless such restriction is expressly waived in writing by Landlord (which election shall be in Landlord's sole discretion).

43.

TENANT'S RIGHT TO PURCHASE BUILDING.

43.1

Tenant shall have the right to purchase the Building Parcel (defined below) for the total purchase price of $23,063,535 (based on $155 per square foot of rentable area in the Building) ("**Purchase Right**"), only by delivering to Landlord a Purchase Exercise Notice (as defined below), together with the Earnest Money (as defined below), not later than April 7, 2017. Tenant may only exercise the Purchase Right one time on or before April 7, 2017. If Tenant does not exercise the Purchase Right by delivering a Purchase Exercise Notice on or before April 7, 2017, or if Tenant exercises the Purchase Right but the sale is not consummated for any reason other than a default by Tenant under this Article 43, then Tenant shall have an ongoing right of first offer to purchase the Building Parcel at the price Landlord is then willing to offer the Building Parcel for sale ("**Offer Right**"), should Landlord at any time thereafter elect to offer the Building Parcel for sale to an unaffiliated third party. At any time Landlord elects to offer the Building Parcel for sale to an unaffiliated third party separately from the remainder of the Property, Landlord shall deliver written notice to Tenant setting forth the terms of the Offer Right to Tenant, and Tenant shall have ten (10) business days after receipt of such written terms of the Offer Right within which to exercise the Offer Right by delivering to Landlord a Purchase Exercise Notice, together with the Earnest Money. For purposes of this Article 43, "**Building Parcel**" shall mean the separate legal parcel (as described in Section 43.3 below) that will contain the Premises generally located on the Property north of Birchwood Avenue. "**Earnest Money**" as used in this Article 43 shall mean an amount equal to $500,000. Notwithstanding any provision of this Article 43 to the contrary, Tenant shall have no Offer Right in the event of the offer or sale by Landlord or its members or managers of any interest in the Building Parcel or of any ownership interest in the entity that owns the Building Parcel or in the entities that are the members or managers thereof to a Landlord Affiliate (as defined below), provided that following such sale Kenn Francis and/or Tod Thorpe (individually or as a trustee of a revocable trust) shall retain (individually or through an entity) an ownership and/or management interest in the Building Parcel, in the entity that owns the Building Parcel or in the entities that are the members or managers thereof. "**Landlord Affiliate**" means Landlord, Kenn Francis and/or Tod Thorpe, or any person or entity that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with Landlord, Kenn Francis and/or Tod Thorpe, which, in the case of a limited liability company, shall include each manager or member thereof.

43.2

Tenant shall deliver the Earnest Money to Escrow Agent (defined in Section 43.5 below) in cash or other immediately available U.S. funds, at the same time that Tenant delivers its written notice of the exercise of its Purchase Right or its notice of the exercise of its Offer Right (a "**Purchase Exercise Notice**"), as the case may be, which amount shall be applied to the purchase price, as further set forth in the Purchase Contract (as defined below). The Earnest Money shall be non-refundable unless (a) the City of Mesa denies Landlord's application for a Lot Split (as defined below), (b) Tenant disapproves the Declaration (as defined below) proposed by Landlord, (c) there is any lien, claim or encumbrance on title for the Building Parcel that is not one of the Permitted Exceptions (as defined below), or (d) Landlord defaults under its obligations under this Article 43 or the Purchase Contract.

43.3

Tenant acknowledges that Landlord's ability to sell the Building Parcel to Tenant pursuant to Tenant's rights set forth in this Article 43 is strictly contingent upon obtaining the City of Mesa's approval to split (the "**Lot Split**") the parcel of real property on which the Property is currently situated (as of the Lease Date) into two separate legal parcels, one of which will contain the Building and become the Building Parcel. In the event Landlord has not caused the Lot Split to occur prior to the delivery of a Purchase Exercise Notice by Tenant, Landlord shall use commercially reasonable efforts to obtain the Lot Split following the delivery of a Purchase Exercise Notice, provided that Landlord shall not be obligated to spend more than $50,000 to obtain the Lot Split (the "**Lot Split Cap**") unless Tenant continues to fund the effort to obtain the Lot Split at its sole cost and expense. If, despite the exercise of commercially reasonable and good faith efforts, Landlord has not obtained the Lot Split after the expenditure of funds up to the Lot Split Cap (as evidenced by invoices provided to Tenant upon written request), Tenant shall have the right to continue to fund the effort to obtain the Lot Split at its sole cost and expense. Notwithstanding any provision of this Article 43 to the contrary, including the immediately preceding sentence regarding the funding of

the Lot Split, if the Closing (defined in Section 43.13 below) shall not have occurred by the date that is twelve (12) months after the delivery of the applicable Purchase Exercise Notice ("**Outside Closing Date**"), then Landlord shall have the right, at its election, upon delivery of written notice to Tenant and Escrow Agent (as defined in Section 43.5 below) within ten (10) days following the Outside Closing Date, to terminate the Purchase Contract (as defined in Section 43.5 below), in which event the Earnest Money shall be returned to Tenant.

43.4

In connection with the Lot Split, Landlord may record any reasonably necessary or desirable declaration or agreement concerning cross-access (vehicular and pedestrian) and other easements between the parcel on which the Building is located and the adjacent parcel that will benefit and burden the parcels (the "**Declaration**"); provided, however, that Tenant shall have the right to reasonably comment upon and approve any such proposed Declaration prior to the Earnest Money becoming non-refundable, and that such Declaration shall not provide for cross parking, as the parcels shall be self-parked.

43.5

If Tenant timely and properly exercises the Purchase Right or the Offer Right, as the case may be, Landlord shall: (a) open escrow with, and deliver the Earnest Money to, First American Title Insurance Company (the name of the escrow officer to be determined by Landlord), which company shall act as the escrow agent and title insurer for this transaction ("**Escrow Agent**"); (b) if the Lot Split has not then already been approved, apply to the City of Mesa for the Lot Split; and (c) prepare a draft purchase contract ("**Purchase Contract**") for Tenant to review and comment upon, setting forth the proposed terms by which Tenant shall purchase the Building Parcel, including, but not limited to, the terms of the Purchase Right or Offer Right, as applicable. If the City of Mesa, after exhaustion of any and all rights of appeal by Landlord, subject to the Lot Split Cap (unless Tenant agrees to continue to fund the same as provided above) and the Outside Closing Date, refuses to approve the Lot Split, then this Article 43 shall be null and void in its entirety.

43.6

The Purchase Contract shall, among other matters, provide for: (a) a closing date ("**Closing Date**") that is not more than thirty (30) days after the later of (i) the date that Tenant properly exercises the Purchase Right or Offer Right under this Article 43 (if the Lot Split already has been approved), or (ii) the date that the City of Mesa approves the Lot Split; and (b) conveyance of fee simple title to the Building Parcel by special warranty deed, subject to (i) non-delinquent taxes, (ii) any lien, claim, encumbrance or other matter of record existing as of the Lease Date, excluding all monetary liens created by the acts or omissions of Landlord, including, but not limited to, all judgment and tax liens, mechanics and materialman's liens and professional liens, mortgages or deeds of trust recorded against the Building Parcel, (iii) any additional matters that may be specifically approved, in writing, by Tenant or otherwise deemed approved or accepted by Tenant, (iv) matters arising out of any act of Tenant or any Tenant Entities, (v) the Declaration, if applicable, in a form approved by Tenant, and (vi) any lien, claim or encumbrance or other matter, except liens, claims or adverse encumbrances caused by any act of Landlord (except to the extent Landlord causes any such liens or claims to be bonded or insured over) (collectively, "**Permitted Exceptions**"). Notwithstanding the foregoing, if any so-called speculative builder tax may be assessed against the sale of the Building Parcel, the Closing Date shall be delayed until such tax shall not be applicable, unless Tenant shall agree to be solely responsible for such tax. In light of Tenant's occupancy and possession of the Building and Premises as the "Tenant" under this Lease, Tenant shall have no right or entitlement to any due diligence or investigation period of or about the Building Parcel pursuant to which Tenant would have any unilateral right to revoke its exercise of its Purchase Right or Offer Right, as applicable, and avoid consummating its acquisition of the Building Parcel. Notwithstanding the immediately preceding sentence, after Landlord's receipt of a Purchase Exercise Notice, to the extent not previously made available or delivered to Tenant, Landlord will either make available to or deliver to Tenant copies of the following documents (which documents are called collectively the "**Due Diligence Documents**"): (i) service contracts and all other written contracts or agreements in Landlord's possession which affect the Building Parcel; (ii) a survey of the Building Parcel, if in Landlord's possession; and (iii) any environmental, engineering, structural or soils reports, and any building/architectural plans and specifications, to the extent in Landlord's possession.

43.7

Landlord has not undertaken and shall not undertake any independent investigation as to the truth or accuracy of any of the Due Diligence Documents or other documents or materials provided to Tenant, and is providing access to same to Tenant solely as an accommodation. Landlord makes no representation or warranty whatsoever, express or implied, as to the completeness, content or accuracy of the Due Diligence Documents. Tenant shall have no claim against any Landlord Entity by reason of the information contained in, or that should have been contained in, the Due Diligence Documents. The provisions of this Section 43.7 shall be included in and shall survive the Closing or the termination of the Purchase Contract (if the parties enter into a Purchase Contract).

43.8

If Tenant exercises the Purchase Right or Offer Right or the purchase of the Building Parcel hereunder is closed prior to disbursement to Tenant of the entire Allowance (as defined in Exhibit B), Landlord shall have no further obligation to disburse to Tenant the remaining portion of the Allowance.

43.9

Except as otherwise provided herein or in the terms of the Purchase Contract, Landlord and Tenant shall share all costs in connection with the purchase of the Building Parcel and the transactions contemplated by this Article 43 in a manner customary for the county in which the Building Parcel is located, including, without limitation, any recording fees, broker fees, closing or escrow fees, title insurance premiums, survey costs and transfer fees and taxes. Except as otherwise provided herein, Landlord has no obligation to provide ALTA extended title insurance coverage or a survey of the Building Parcel to Tenant, and if Tenant elects to procure either or both an ALTA extended coverage title insurance policy and/or a survey, such procurement shall not be a condition precedent to Tenant's obligation to close once Tenant delivers its Purchase Exercise Notice; provided, however, it shall be a condition precedent to Tenant’s obligation to close that Landlord cause to be procured for Tenant’s benefit an ALTA standard coverage policy of title insurance, and Landlord shall pay for the standard coverage portion of such owner’s policy of title insurance obtained by Tenant from Escrow Agent and one-half (1/2) of the escrow fees and other closing costs, in accordance with county custom. Each of Landlord and Tenant shall be responsible for their respective attorneys' fees.

43.10

The sale of the Building Parcel as provided for herein shall be made on a "AS IS," "WHERE-IS" basis as of the Closing Date, without any representations or warranties of any nature whatsoever from Landlord except for those which may be mutually agreed upon in the Purchase Contract. Landlord hereby specifically disclaims any warranty (oral or written) concerning: (a) the nature and condition of the Building Parcel and the suitability thereof for any and all activities and uses that Tenant may elect to conduct thereon, (b) the manner, construction, condition and state of repair or lack of repair of any improvements located thereon, (c) the nature and extent of any right-of-way, lien, encumbrance, license, reservation, condition or otherwise, (d) the compliance of the Building Parcel or its operation with any laws, rules, ordinances, or regulations of any government or other body, and (e) any other matter whatsoever. Tenant expressly acknowledges that, in consideration of the agreements of Landlord herein, LANDLORD MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF QUANTITY, QUALITY, CONDITION, HABITABILITY, MERCHANTABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE BUILDING PARCEL, ANY IMPROVEMENTS LOCATED THEREON, OR ANY SOIL CONDITIONS RELATED THERETO. TENANT SPECIFICALLY ACKNOWLEDGES THAT TENANT IS NOT RELYING ON (AND LANDLORD HEREBY DISCLAIMS AND RENOUNCES) ANY REPRESENTATIONS OR WARRANTIES MADE BY OR ON BEHALF OF LANDLORD OF ANY KIND OR NATURE WHATSOEVER.

43.11

There shall be no proration of any cost or expense items included within Insurance Costs, Taxes or Property Management Expenses; provided, however, that if and to the extent that, as of the Closing Date, Landlord has paid any bills for any Insurance Costs, Taxes or Property Management Expenses incurred (prior to the Closing Date) in connection with the ownership and operation of the Property that, under the terms of this Lease, Tenant would be required to reimburse Landlord for some or all of such Insurance Costs, Taxes or Property Management

Expenses, then at the Closing, Tenant shall be required to pay to Landlord, in addition to the Purchase Price, any such accrued Insurance Costs, Taxes or Property Management Expenses for which Tenant is responsible under this Lease.

43.12

After the draft Purchase Contract is submitted to Tenant, the parties shall have fifteen (15) business days ("**Outside Date**") to attempt to negotiate in good faith an acceptable form of the Purchase Contract. Landlord and Tenant agree that there shall be no conditions precedent to Tenant's obligation to consummate its acquisition of the Building Parcel (e.g. financing contingency), other than (a) the City of Mesa approving the Lot Split, (b) Tenant approving the Declaration proposed by Landlord, (c) there being no lien, claim or encumbrance on title for the Building Parcel other than the Permitted Exceptions, and Escrow Agent being committed to issue a standard coverage owner's policy of title insurance to Tenant, and (d) Landlord not being in default under this Article 43 or the Purchase Contract. If the parties do not execute and deliver to the Escrow Agent the mutually agreeable form of Purchase Contract prior to the Outside Date, the transaction contemplated by the exercised Purchase Right and Offer Right, as applicable to such proposed form of Purchase Contact, shall be void and of no further force or effect.

43.13

The purchase of the Building Parcel contemplated herein shall be consummated at a closing ("**Closing**") to take place at the offices of Escrow Agent. The Closing shall occur on the Closing Date. The Closing shall be effective as of 11:59 p.m. on the Closing Date. Tenant shall not have the right to escrow or hold back any portion of the purchase price hereunder. The purchase price shall be paid to Landlord at Closing through Escrow Agent, by federal wire transfer of immediately available U.S. funds.

43.14

If Tenant fails to timely perform or satisfy any of its obligations under this Article 43, including its obligation timely to close on the purchase of the Building Parcel in accordance with terms and conditions of the mutually executed Purchase Contract, then the Purchase Right or Option Right, as the case may be, shall be null and void and, provided that Tenant has deposited the Earnest Money with Landlord or Escrow Agent and Landlord or Escrow Agent has full possession of the Earnest Money free and clear of any claim to such Earnest Money from Tenant or any other party, Landlord's sole remedy shall be to obtain and/or retain the Earnest Money as liquidated damages and not as a penalty and such failure to close shall not itself constitute an Event of Default by Tenant under this Lease. If, for any reason, Landlord or Escrow Agent does not have full possession of the Earnest Money free and clear of any claim to such Earnest Money from Tenant or any other party and Tenant fails to timely perform or satisfy any of its obligations imposed under this Article 43, including its obligation to timely close on the purchase of the Building Parcel in accordance with terms and conditions of the mutually executed Purchase Contract, then the Purchase Right and Option Right shall be null and void and such failure may, at Landlord's sole election, constitute an Event of Default by Tenant under this Lease, and Landlord shall have the right to pursue any or all of the following remedies: (a) seek to obtain and/or retain the Earnest Money as liquidated damages and not as a penalty; and (b) all rights and remedies available to it under this Lease against Tenant. If Landlord fails to timely perform or satisfy its obligation to apply for the Lot Split, and subject to the City of Mesa approving the Lot Split, and thereafter consummate a sale of the Building Parcel pursuant to this Article 43 (for any reason other than a default by Tenant under this Lease or any other reason outside of Landlord's reasonable control), then such failure shall constitute a default by Landlord, and Tenant shall have all rights and remedies available to it under this Lease against Landlord, as well as (i) the right to have the Earnest Money immediately refunded to Tenant and have Landlord reimburse Tenant in an amount equal to the lesser of $15,000.00 or Tenant's actual out-of-pocket costs incurred in connection with the contemplated purchase of the Building Parcel, and (ii) the right to file an action to specifically enforce the terms of this Article 43 and the Purchase Contract. As used in the immediately preceding sentence, the term "**out-of-pocket costs**" means all out-of-pocket costs that were actually incurred by Tenant in negotiating the Purchase Contract or performing any acts under the Purchase Contract (including actual attorneys' fees, due diligence expenses, consultant fees, loan fees, and the like). When making a claim for reimbursement of out-of-pocket costs, Tenant must supply copies of relevant invoices, contracts, and the like documenting the costs.

43.15

At all times from the date on which Tenant exercises the Purchase Right or Offer Right, as the case may be, until the Closing Date, this Lease shall remain in full force and effect. Upon the consummation of the Closing pursuant to this Article 43, this Lease shall automatically terminate and as of such termination, no further obligations or liabilities of Landlord or Tenant shall accrue under this Lease, but the parties shall remain liable for all then-accrued obligations or liabilities, all obligations not performed as of the Closing and all obligations which by their nature or the express terms of this Lease survive the expiration or earlier termination of this Lease, including, without limitation, obligations of indemnification for any acts or omissions occurring on or before such termination, which obligations shall survive the termination of this Lease. Notwithstanding the foregoing, at Tenant's election, Landlord shall, at no cost to Landlord, cooperate with Tenant in keeping this Lease intact and assigning Landlord's right, title and interest in this Lease to the entity selected by Tenant to acquire fee title to the Building Parcel at the Closing. This Article 43 shall survive the Closing and shall not merge into any conveyance documents delivered at Closing.

43.16

Each party hereto represents and warrants to the other that it has dealt with no brokers or finders in connection with the Purchase Right, including Cushman & Wakefield. Landlord and Tenant each shall indemnify, protect and defend and hold the other harmless for, from and against all losses, claims, costs, expenses, damages (including, but not limited to, reasonable fees of counsel selected by the indemnified party) resulting from the claims of any broker, finder, or other such party claiming by, through or under the acts or agreements of the indemnifying party. The obligations of the parties pursuant to this Section 43.16 shall survive any termination of this Lease.

43.17

Landlord may assign all or any of its right, title, interest and obligations under this Article 43 to any third party intermediary (an "**Intermediary**") in connection with a tax-deferred exchange pursuant to Section 1031 of the Internal Revenue Code (an "**Exchange**"). If Landlord elects to so assign its right, title, interest and obligations under this Article 43, Tenant hereby covenants and agrees that Tenant shall reasonably cooperate with Landlord (without incurring any additional liability or any additional third party expenses, however) in connection with such election and the consummation of the Exchange, including without limitation, by executing an acknowledgement of Landlord's assignment, to the Intermediary, of its right, title, interest and obligations under this Article 43.

43.18

If Tenant is then in default under this Lease beyond any applicable cure period, (a) Tenant shall not have the right to exercise the Purchase Right or the Offer Right, (b) Landlord shall not be obligated to provide Tenant with an offer to purchase the Building Parcel prior to selling the Building Parcel to a third party, in which case the Tenant's Offer Right under this Article 43 shall be void and of no further force or effect, and (c) Landlord (in its sole discretion) shall not be obligated to consummate the sale of the Building Parcel to Tenant, in which case Tenant's rights under this Article 43 shall be void and of no further force or effect. The foregoing rights of Landlord shall be in addition to any other rights and remedies available to Landlord at law or in equity.

43.19

The rights granted to Tenant under this Article 43 are personal to the originally-named Tenant executing this Lease and any Permitted Transferee that assumes this Lease in writing (that is, Dexcom, Inc., a Delaware corporation, and any Permitted Transferee). If said Tenant assigns this Lease or otherwise transfers its interest in this Lease or the Premises to any party other than a Permitted Transferee, prior to (i) Tenant's exercise of the Purchase Right or Offer Right, as the case may be, Tenant's rights under this Article 43 shall be void and of no further force or effect, (ii) the date Landlord is obligated to provide Tenant with any offer to purchase the Building Parcel, Tenant's rights under this Article 43 shall be void and of no further force or effect and Landlord shall not be obligated to provide any such offer to Tenant, or (iii) the date Tenant is required to close its purchase of the Building Parcel pursuant to the Purchase Contract, then Landlord (in its sole discretion) shall not be obligated to sell the Building Parcel to Tenant in which case Tenant's rights under this Article 43 shall be void and of no further force or effect.

44.

BACKUP GENERATORS; ADDITIONAL EQUIPMENT.

44.1

Landlord shall permit Tenant to install, operate and maintain, at Tenant's sole risk, cost and expense, at locations adjacent to the Building which are mutually agreed upon by Landlord and Tenant, one or more backup generators and such other non-hazardous equipment (e.g., air compressor equipment, etc.) as may be approved by Landlord (collectively, together with any screening, wall enclosures and other ancillary equipment, and all related conduit and wiring, "**Tenant's Off-Premises Equipment**"), which approval shall not be unreasonably withheld, provided that (a) the plans and specifications therefor are first submitted to and approved by Landlord, (b) the mounting methods are approved by Landlord, (c) Tenant satisfies such conditions as Landlord may in its sole but reasonable discretion impose with respect to the same, based on the advice of Landlord's structural and mechanical engineers, so that the Property's systems and equipment are not adversely affected, (d) Tenant obtains any and all necessary permits and governmental approvals for the same (or other applicable governmental or quasi-governmental agency), (e) Tenant satisfies such conditions as any applicable governmental or quasi-governmental agency may impose, (f) the same are maintained by Tenant in good order and condition and any damage to the same, the Building or the common areas of the Building is promptly repaired, and (g) Tenant installs and maintains such screening and wall enclosures as may be required by Landlord. No underground fuel storage tank system, nor any underground piping connected to an above-ground fuel storage tank system, is permitted. All of Tenant's Off-Premises Equipment, including, without limitation, the backup generators, fuel storage tank systems and all other components thereof, must be located entirely above ground. The backup generators shall be used by Tenant only during (i) testing and regular maintenance, and (ii) any period of electrical power outage at the Building. Landlord makes no representation or warranty with respect to any of Tenant's Off-Premises Equipment.

44.2

Tenant acknowledges, agrees and confirms that if as a consequence of the installation of any Tenant's Off-Premises Equipment pursuant to this Article 44, the Taxes imposed on the land upon which the Property is located increase, then Tenant shall be responsible for such increase in Taxes. Written evidence establishing such increased tax assessment shall be provided by Landlord to Tenant and Tenant shall pay to Landlord as additional rent such incremental tax amount upon demand. If any of Tenant's Off-Premises Equipment is located on or within the Tenant Parking Spaces, then the number of parking spaces allocated to Tenant under this Lease shall be reduced by the number of parking spaces which would have been available for use at the Building but for the installation of such Tenant's Off-Premises Equipment.

44.3

Tenant shall, at Tenant's sole cost and expense, upon the expiration or earlier termination of this Lease or Tenant's vacation or abandonment of the Premises, (a) remove Tenant's Off-Premises Equipment, (b) repair any and all damage caused to the Building or the common areas of the Building by such removal, and (c) pay to Landlord, on demand, the cost and expense to restore the Building and the Building systems to their condition existing prior to the installation of Tenant's Off-Premises Equipment. If Tenant fails to remove Tenant's Off-Premises Equipment and repair such damage, Landlord shall have the right to do so at Tenant's sole cost and expense and Tenant shall reimburse Landlord for any such costs as additional rent, together with interest thereon from the date of expenditure to the date of reimbursement at the Default Rate. Alternatively, if Tenant vacates the Premises without removing Tenant's Off-Premises Equipment and Landlord elects in its sole discretion not to require such removal, or if Landlord otherwise requests that Tenant leave Tenant's Off-Premises Equipment intact at the Building, then Tenant shall not remove Tenant's Off-Premises Equipment and ownership to the same shall pass to Landlord as if voluntarily conveyed by deed or bill of sale and Tenant shall have no further claim thereto.

45.

INCENTIVES.

Tenant, at Tenant's sole cost and option, may attempt to secure certain economic and tax incentives from the City of Mesa and other applicable governmental agencies, in connection with the operation of its business in the Building.

Upon Tenant's request, Landlord, at no cost whatsoever to Landlord, shall use commercially reasonable efforts to cooperate with Tenant while Tenant is attempting to secure any such incentives, provided such incentives do not impose any additional requirements, obligations or undue burden or time constraints on Landlord or its management or administrative personnel, or the Property. Tenant shall reimburse Landlord, as additional rent, for any and all actual costs incurred by Landlord (including attorneys' fees) in connection with Landlord's above described cooperation. Notwithstanding the foregoing, Landlord shall provide notice to Tenant prior to Landlord incurring any costs in connection any such Tenant's incentives. In no event shall Landlord's duty of cooperation require Landlord to be the applicant, or to sign any joinder or consent, or to incur or assume any risk of liability, in connection with Tenant's efforts to obtain any such incentives. Tenant shall promptly furnish to Landlord copies of all applications and materials (and any revisions or supplementations thereto) submitted to and filed with the applicable governmental agency(ies) from which Tenant is pursuing any such incentives and all staff reports and recommendations and other written materials issued by such applicable governmental agency(ies). If and to the extent any incentive sought by Tenant is actually provided to and received by Landlord in connection with Landlord's ownership of the Property, then the amount of such incentive or rebate shall be applied as a credit against the monthly installments of Base Rent, Insurance Costs, Taxes and/or Property Management Expenses as applicable until fully used and applied. Tenant acknowledges and agrees that it shall not be a defense to the enforceability of this Lease in favor of Tenant if Tenant is unable to obtain any such incentives.

46.
LEASEHOLD TITLE INSURANCE.

Landlord shall reasonably cooperate with Tenant in Tenant obtaining, at Tenant's sole cost and expense, (a) a leasehold policy of title insurance from a title company selected by Tenant, with the amount of such insurance to be determined by Tenant (the "**Title Policy**"), and, (b) if requested by Tenant, an ALTA survey of the Premises necessary for the issuance of the Title Policy.

47.
NAME AND IMAGE.

Tenant shall have the right to use the name and image of the Building in Tenant's advertising, website and other Tenant's business related publications.

48.
LANDLORD'S COVENANTS.

Landlord covenants and agrees not to record any declaration of covenants, conditions and restrictions ("**CC&Rs**") encumbering the Premises, the Building or the Property after the date of this Lease unless such CC&Rs do not materially and adversely affect Tenant's rights or obligations under this Lease.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, this Lease has been executed as of the dates set forth below.

LANDLORD:

PRA/LB, L.L.C., an Arizona limited liability company
By: Pacific Realty Advisors, Inc.,
an Arizona corporation
Its: Manager

By: /s/ Kenn M. Francis
Kenn M. Francis
Its: President

Dated: April 27, 2016

TENANT:

DEXCOM, INC., a Delaware corporation

By: /s/ Jess Roper
Name: Jess Roper
Its: Senior Vice President,
Chief Financial Officer

Dated: April 28, 2016

EXHIBIT A-1 – BUILDING AND PARKING SITE PLAN

Exhibit A-1 is intended only to show the general location of the Building, Tenant Parking Spaces and Premises as of the Lease Date. It does not in any way supersede any of Landlord's rights set forth in the Lease with respect to arrangements and/or locations of public parts of the Property and changes in such arrangements and/or locations. It is not to be scaled; any measurements or distances shown should be taken as approximate.

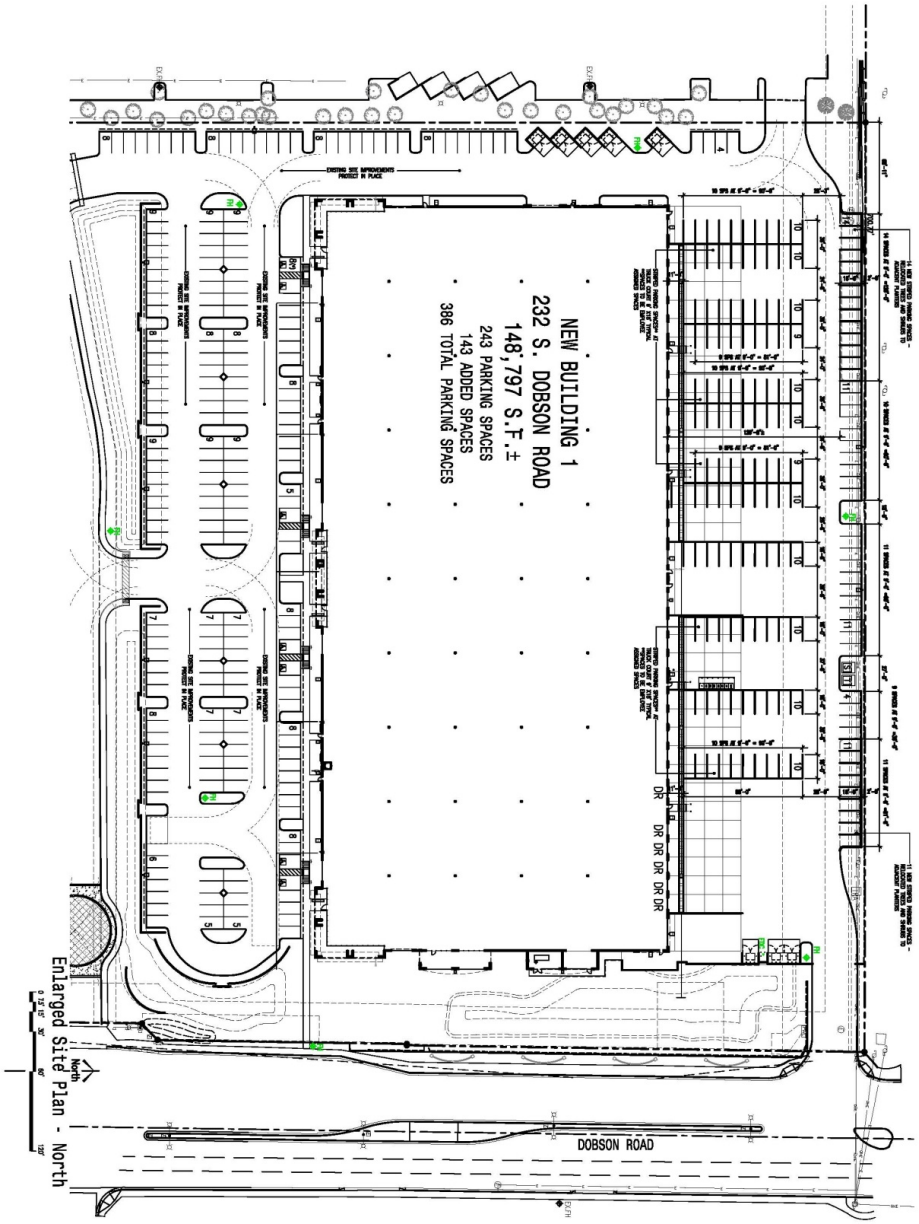

EXHIBIT A-2 – PROPERTY SITE PLAN

Exhibit A-2 is intended only to show the general layout of the Property as of the Lease Date. It does not in any way supersede any of Landlord's rights set forth in the Lease with respect to arrangements and/or locations of public parts of the Property and changes in such arrangements and/or locations. It is not to be scaled; any measurements or distances shown should be taken as approximate.

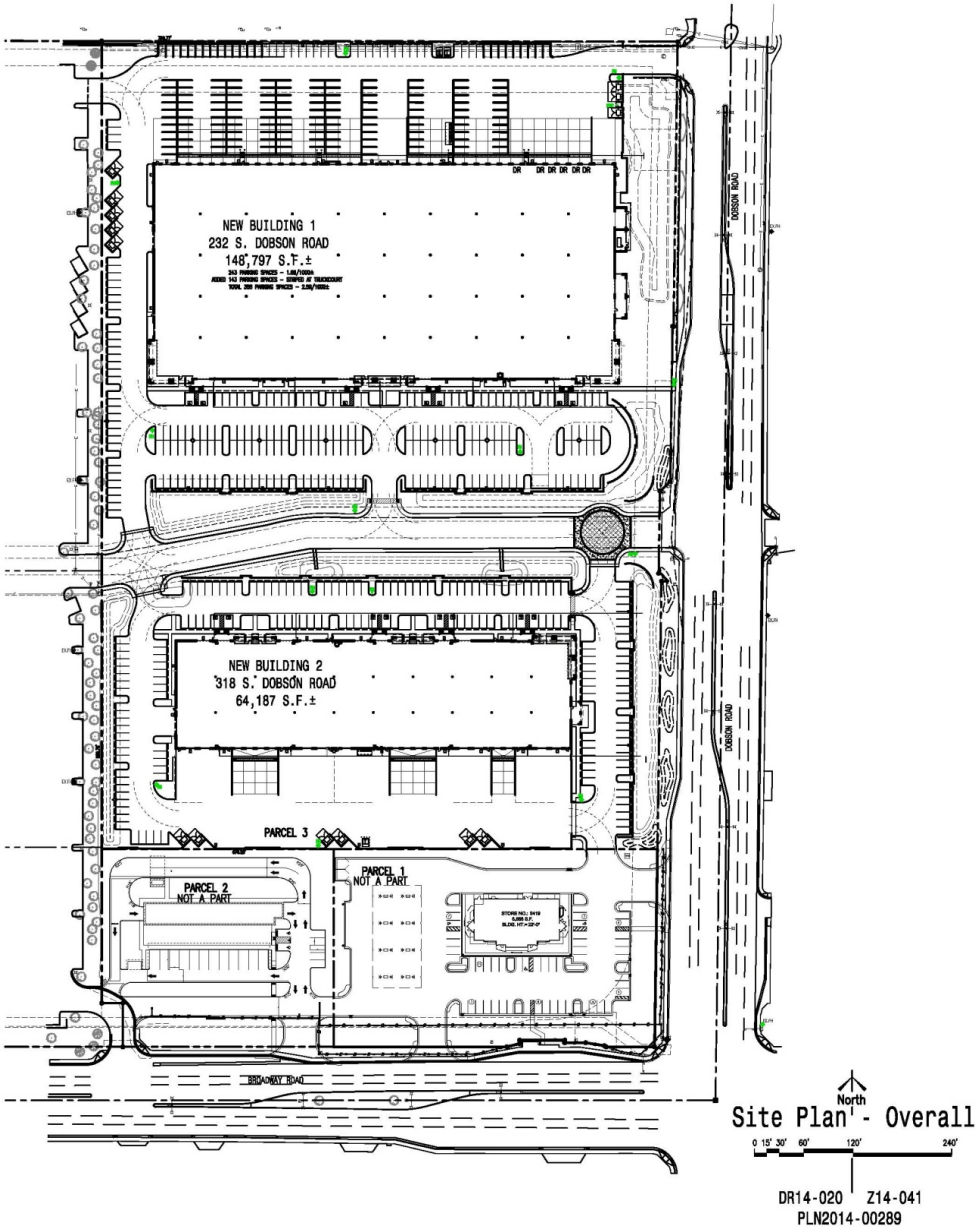

EXHIBIT B – WORK LETTER

1. **TENANT IMPROVEMENTS**. As used in this Work Letter, the term "**Tenant Improvements**" or "**Tenant Improvement Work**" means those items of general tenant improvement construction shown on the Final Plans (described in Section 4 below). Because the Tenant Improvement Work for the Building will be completed in two separate projects with respect to Phase I and Phase II, the Work Schedule, Allowance and other terms of this Work Letter will be applicable on a per project basis for each such phase of the Tenant Improvement Work. Capitalized terms used herein without definitions shall have the meanings given such terms in the Lease, unless the context clearly requires otherwise.

2. **WORK SCHEDULE**. Within ten (10) days after the execution of the Lease, Tenant will deliver to Landlord, for Landlord's review and approval, a schedule ("**Work Schedule**") which will set forth the timetable for the planning and completion of the installation of the Tenant Improvements. The Work Schedule will set forth each of the various items of work to be done or approval to be given by Landlord and Tenant in connection with the completion of the Tenant Improvements. The Work Schedule will be submitted to Landlord for its approval, which approval Landlord agrees not to unreasonably withhold, condition or delay, and, once approved by both Landlord and Tenant, the Work Schedule will become the basis for completing the Tenant Improvements. All plans and drawings required by this Work Letter and all work performed pursuant thereto are to be prepared and performed in accordance with the Work Schedule. Tenant may, from time to time during construction of the Tenant Improvements, modify the Work Schedule as Tenant reasonably deems appropriate, subject to Landlord's reasonable approval. If Landlord fails to approve the Work Schedule, as originally submitted and/or as it may be modified after discussions between Landlord and Tenant within five (5) business days after the date the Work Schedule is first received by Landlord, the Work Schedule shall be deemed to be approved by Landlord as submitted.

3. **CONSTRUCTION REPRESENTATIVES**. Landlord hereby appoints the following person as Landlord's representative ("**Landlord's Representative**") to act for Landlord in all matters covered by this Work Letter: Tom Steimel of T. L. Steimel & Associates, Inc., E-mail: tsteimel@tlsa.org, office: 602-224-5771, and cell: 602-370-8102.

Tenant hereby appoints the following person(s) as Tenant's representative ("**Tenant's Representative**") to act for Tenant in all matters covered by this Work Letter: Jim Gillard, E-mail: jgillard@dexcom.com, office: 858-200-0210.

All communications with respect to the matters covered by this Work Letter are to be made to Landlord's Representative or Tenant's Representative, as the case may be, in writing in compliance with the notice provisions of the Lease. Either party may change its representative under this Work Letter at any time by written notice to the other party in compliance with the notice provisions of the Lease.

4. **TENANT IMPROVEMENT PLANS**.

(a) **Preparation of Space Plans.** Tenant has contracted with GC Mansour Architecture (the "**Architect**") for the preparation of the plans for the Tenant Improvements. In accordance with the Work Schedule, Tenant shall cause the Architect to promptly prepare detailed space plans and computer-aided design ("**CAD**") drawings for the layout of the Tenant Improvements in the Building ("**Space Plans**"). The Space Plans are to be sufficient to convey the architectural design and layout of the Tenant Improvements in the Building and are to be submitted to Landlord in accordance with the Work Schedule for Landlord's approval. If Landlord reasonably disapproves any aspect of the Space Plans, Landlord will advise Tenant in writing of such disapproval and the reasons therefor in accordance with the Work Schedule. Tenant will then submit to Landlord for Landlord's approval, in accordance with the Work Schedule, a redesign of the Space Plans incorporating the revisions reasonably required by Landlord. This process will be repeated until the Space Plans are mutually approved by Landlord and Tenant.

(b) **Preparation of Final Plans.** Based on the approved Space Plans, and in accordance with the Work Schedule, Tenant shall cause the Architect to prepare and submit to Landlord for its approval complete architectural plans, drawings and specifications and complete engineered mechanical, structural, electrical and plumbing working drawings for all of the Tenant Improvements for the Building (collectively, the "**Final Plans**"). The Final Plans will show: (a) the subdivision (including partitions and walls), layout, lighting, finish and decoration work (including

carpeting and other floor coverings) for the Building; (b) all internal and external communications and utility facilities which will require conduit or other improvements from the base Building shell work and/or within common areas; and (c) all other specifications for the Tenant Improvements. If Tenant does not elect to use Landlord's engineer in connection with the preparation of the mechanical, structural, electrical and plumbing working drawings, Tenant shall select an engineer reasonably satisfactory to Landlord and shall cause its engineer to coordinate with Landlord's engineer in order to assure that the Final Plans do not conflict with any Building structural, mechanical, electrical, plumbing or other systems. If Landlord disapproves any aspect of the Final Plans, Landlord shall advise Tenant in writing of such disapproval and the reasons therefor within the time frame set forth in the Work Schedule. In accordance with the Work Schedule, Tenant shall then cause the Architect to redesign the Final Plans, incorporating the revisions requested by Landlord, and resubmit the same to Landlord for approval. The above process will be repeated until the Final Plans are approved by Landlord and Tenant.

(c) **Requirements of Tenant's Final Plans.** Landlord will not unreasonably withhold, condition or delay its consent to the Final Plans, or any changes in the Final Plans, provided the Final Plans will: (i) be compatible with the shell and with the design, construction and equipment of the Building; and (ii) comply with all applicable laws, ordinances, rules and regulations of all governmental authorities having jurisdiction, and all applicable insurance regulations.

(d) **Submittal of Final Plans.** Once approved by Landlord and Tenant, Tenant shall cause the Architect to immediately submit the Final Plans to the appropriate governmental agencies for plan checking and the issuance of a building permit. Tenant will cause the Architect to make any changes to the Final Plans which are requested by the applicable governmental authorities to obtain the building permit, provided that no changes, modifications or alterations to the Final Plans as approved by Landlord may be made without the prior written consent of Landlord, and then only after agreement by Tenant to pay any costs resulting from the design and/or construction of such changes in excess of the Allowance. Landlord's approval of the Final Plans shall create no liability or responsibility on the part of Landlord for the completeness of such plans or their design sufficiency or compliance with laws and regulations.

(e) **Changes to Shell of Building.** If the Final Plans or any amendment thereof or supplement thereto shall require changes in the Building shell, the increased cost of the Building shell work caused by such changes will be paid for by Tenant or charged against the "**Allowance**" described in Section 5 below.

(f) **Tenant's Contractors.** Tenant shall retain Skanska USA Building Inc. to construct the Tenant Improvements in accordance with the Final Plans. All contractors engaged by Tenant shall be bondable, experienced, reputable, licensed contractors, possessing good labor relations, capable of performing quality workmanship and working in harmony with any other contractors working at the Building, all as reasonably determined by Landlord. Tenant shall deliver to Landlord, at least five (5) days prior to the commencement of construction, (i) the names, addresses, telephone numbers, and primary contacts for the general, mechanical and electrical contractors Tenant intends to engage, and (ii) the date on which construction will commence, together with the estimated dates of completion of construction. Tenant shall provide Landlord with a copy of its contract with the general contractor prior to commencement of construction.

(g) **Construction**. After Tenant obtains Landlord's approval of the Final Plans and any and all necessary building permits, Tenant shall cause Tenant's contractor to promptly commence and complete construction in accordance with the Final Plans and this Work Letter. Tenant shall not deviate from the approved Final Plans without obtaining Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Tenant shall cause the Tenant Improvements to be constructed in a good, first-class, workmanlike manner, in compliance with all laws and regulations, and in a manner which does not unreasonably disturb any other occupant of the Property. Landlord shall have the right from time to time as determined by Landlord to inspect, supervise and/or oversee the construction of the Tenant Improvements. Landlord's right to inspect the Tenant Improvements and approve Tenant's contractor shall not impose upon Landlord any responsibility for defective, incomplete or nonconforming work that Landlord discovers or fails to discover by any such review and/or inspection. During construction of the Tenant Improvements, Tenant shall maintain, or shall cause its general contractor to maintain, builder's risk and other

insurance as reasonably specified by Landlord, naming Landlord, Landlord's managing agent and Landlord's Lender as additional insureds and Landlord's Lender as loss payee, and appropriate liability, worker's compensation and other insurance as otherwise required under the Lease. The builder's risk insurance shall cover, without limitation, the full replacement cost of all materials, supplies and equipment used and/or stored during construction, or to be incorporated in the Tenant Improvements, including any temporary off-site storage of such items and transit coverage. Tenant's contractors shall not be permitted to commence construction of the Tenant Improvements until all required insurance has been obtained and certificates of insurance have been received and approved by Landlord. Tenant hereby agrees to indemnify, defend and hold harmless Landlord for, from and against any and all liability and claims for damage or death of persons or damage or destruction of property arising out of or relating to the construction of the Tenant Improvements.

(h) **Completion**. As will be more particularly set forth in the Work Schedule(s), (A) Tenant agrees to use all commercially reasonable efforts to cause the contractor to commence construction of the Tenant Improvements for Phase I promptly after mutual execution and delivery of the Lease and to substantially complete construction by October 1, 2016, and (B) Tenant agrees to use all commercially reasonable efforts to cause the contractor to commence construction of the Tenant Improvements for Phase II on or about October 1, 2017, and to substantially complete construction by January 1, 2018, subject to delays caused by Landlord and force majeure conditions as may be provided in the Lease.

5. **PAYMENT FOR THE TENANT IMPROVEMENTS**.

(a) **Allowance**. Landlord hereby grants to Tenant an Allowance in an amount equal to $743,985.00 with respect to Phase I and $743,985.00 with respect to Phase II. The Allowance is to be used only for:

(i) The payment of the cost of Landlord's review of the Space Plans and the Final Plans, including mechanical, electrical, plumbing and structural drawings and of all other aspects necessary to complete the Final Plans, which costs shall be deducted from the Allowance prior to disbursement to Tenant;

(ii) Fees paid by Tenant to the Architect and any other consultants and designers in connection with the preparation of the Space Plans and Final Plans;

(iii) The payment of plan check, permit and license fees relating to construction of the Tenant Improvements;

(iv) Costs of construction of the Tenant Improvements, including, without limitation, costs of labor and materials, and fees for the general contractor including, but not limited to, fees and costs attributable to general conditions associated with the construction of the Tenant Improvements; and

(v) Landlord's construction management fee in an amount not to exceed the lesser of one percent (1%) of the total hard construction costs of the Tenant Improvements in each Phase of the Building or $50,000.00 for each Phase of the Building, which shall be deducted from the Allowance prior to disbursement to Tenant.

(b) **Payment**. Tenant shall be responsible for all costs in connection with the construction of the Tenant Improvements which exceed the Allowance, if any. In no event may the Allowance be used to pay for Tenant's furniture, artifacts, equipment, telephone systems or any other item of personal property which is not affixed to the Building. Tenant shall pay all billed costs and expenses incurred in connection with the construction of the Tenant Improvements as construction progresses ("**Total Costs**"), including those costs and expenses associated with the preparation of architectural and engineering plans, subject to reimbursement out of the Allowance. The term "**Landlord's Share**" (as used below), in the event the Total Costs exceed the amount of the Allowance, shall mean a fraction, the numerator of which is the amount of the Allowance and the denominator of which is the Total Costs.

(c) **Required Submissions**. Throughout and upon completion of construction of the Tenant Improvements, and in connection with each request for disbursements of the Allowance as more particularly set forth below, Tenant shall promptly provide to Landlord (i) all preliminary 20-day notices, (ii) all applications for payment including, without

limitation, all standard AIA G702 Application for Payment forms, (iii) paid invoices or other proof of payment reasonably required by Landlord, (iv) full and final unconditional lien waivers, in form and content provided by Arizona Revised Statutes ("**ARS**") Section 33-1008.D (or any successor statute) and otherwise acceptable to Landlord and Landlord's Lender, from Tenant's general contractor and all other contractors, subcontractors and material suppliers furnishing services or materials to the Building, (v) releases of any and all liens which may have been filed with respect to the Tenant Improvements, (vi) a copy of any necessary temporary or final certificate of occupancy or its equivalent or other governmental approvals necessary for Tenant to occupy the Building, (vii) certificates of insurance required to be maintained by Tenant pursuant to the Lease, (viii) an AIA G713 certificate of the Architect that the Tenant Improvements have been substantially completed (which certificate shall include a punch list as of the date of the certificate), (ix) a certified statement from Tenant and its general contractor of the actual Total Costs, (x) a certificate signed by Tenant and its general contractor certifying that all of the Tenant Improvements (including all punch list items) under the construction contract have been completed and all Total Costs associated therewith have been fully paid, (xi) air balance reports, (xii) excess energy use calculations, (xiii) any and all reports of inspections by the City of Mesa or other governmental agencies having jurisdiction, (xiv) the "as-builts", (xv) any warranties, operating manuals and similar items applicable to the Tenant Improvements, (xvi) one year warranty letters from Tenant's contractors, (xvii) a final punchlist completed and signed off by the Architect, and (xviii) an acceptance of the applicable Phase of the Building signed by Tenant (all of the foregoing items, together, are herein referred to as the "**Required Submissions**").

(d) **Disbursement**. Provided Tenant is not then in default under the Lease, Landlord shall disburse the Allowance (not more than one disbursement per month) to Tenant or, at Landlord's election, directly to Tenant's general contractor, within a reasonable time (not to exceed thirty [30] days) after receipt of Tenant's written request for reimbursement and satisfaction of the following "**Evidence of Completion and Payment**", provided that (i) Landlord shall not be required to disburse any portion of the Allowance for Phase I prior to May 1, 2016, (ii) Landlord shall not be required to disburse any portion of the Allowance for Phase II prior to October 1, 2017, and (iii) in no event shall Landlord be required to disburse amounts greater than the total construction costs then incurred and paid by Tenant in connection with such portions of the Tenant Improvements as evidenced in the Required Submissions for such disbursement, or Landlord's Share of such total construction costs, as the case may be:

(1) Landlord shall have received a written draw request ("**Draw Request**") from Tenant in a form satisfactory to Landlord and Landlord's Lender with respect to the Tenant Improvements specifying that the requisite portion of the Tenant Improvements has been completed. The Draw Request shall constitute a representation by Tenant that the Tenant Improvements identified therein have been completed in a good and workmanlike manner and in accordance with the Final Plans, the Work Schedule and applicable laws and regulations;

(2) Landlord shall have received written certification from the Architect that the Tenant Improvements have been completed to the level indicated in the Draw Request in accordance with the Final Plans;

(3) Landlord's construction representative shall have inspected the Tenant Improvements and determined that the portion of the Tenant Improvements covered by the Draw Request has been completed in a good and workmanlike manner;

(4) Landlord shall have received from Tenant the following Required Submissions: (i) all applicable preliminary 20-day notices if the same have not already been provided to Landlord; (ii) all applications for payment including, without limitation, a standard AIA G702 Application for Payment form, in reasonable detail as required by Landlord or Landlord's Lender; (iii) a reasonably detailed invoice, bill of sale or other transfer of title for any materials, supplies and equipment covered in the Draw Request, including project name, description of the materials being stored or incorporated in the Tenant Improvements, including general quantities thereof, and which is for the same amount being requested for such items on each applicable pay application line, (iv) a certificate of insurance in the form required herein, identifying the project, the materials, supplies or equipment covered, and the invoice amount being requested; (v) proof that the Tenant Improvements for which payment is sought have been completed and/or that the materials covered by the Draw Request have been incorporated into the Tenant Improvements, or stored in the Building (including description of the areas where such materials, supplies or equipment are being

stored and such verification thereof [including photographs] as may be required by Landlord's Lender), which proof may be satisfied by a signed statement from Tenant's general contractor; (vi) paid invoices or other proof of payment reasonably required by Landlord; (vii) an unconditional waiver and release on progress payment, in form and content as provided by ARS Section 33-1008.D (or any successor statute) and otherwise acceptable to Landlord and Landlord's Lender, from Tenant's general contractor and every other contractor, subcontractor and party actually providing or fabricating the labor, services or materials and architects retained by Tenant for the Tenant Improvements for which payment is requested; and (viii) releases of all liens which may have been filed with respect to the applicable Tenant Improvements; provided, however, the final ten percent (10%) of the Allowance shall not be disbursed until Landlord shall have received from Tenant all of the Required Submissions with respect to the applicable Phase of the Building;

(5) Landlord shall have determined that no Tenant Improvements exist which adversely affect the mechanical, electrical, plumbing, heating, ventilating and air conditioning, life-safety or other systems of the Building, the curtain wall of the Building, or the structure or exterior appearance of the Building; and,

(6) Any other requirements or conditions which may be required or imposed by Landlord's Lender with respect to the construction of the Tenant Improvements shall have been satisfied.

Notwithstanding anything to the contrary contained hereinabove, all disbursements of the Allowance shall be subject to the prior deduction of the portion of Landlord's construction management fee allocable to the Tenant Improvements described in the applicable Draw Request. The Allowance being furnished herein is a one-time allowance only and Tenant shall be solely responsible for all costs of any future improvements or alterations which may be permitted or required under the Lease or which Landlord may otherwise authorize in writing.

(e) **Deadline to Use Allowance**. If Tenant does not complete construction of the Tenant Improvements for Phase I, provide to Landlord all of the items required to be furnished to Landlord pursuant to Section 5(c) above, and request the Allowance applicable to Phase I in writing by December 31, 2017, then any remaining unused portion of the Allowance for Phase I shall be deemed waived and Tenant shall have no further claim thereto. If Tenant does not complete construction of the Tenant Improvements for Phase II, provide to Landlord all of the items required to be furnished to Landlord pursuant to Section 5(c) above, and request the Allowance applicable to Phase II in writing by December 31, 2018, then any remaining unused portion of the Allowance for Phase II shall be deemed waived and Tenant shall have no further claim thereto.

(f) **Books and Records**. At its option, Landlord, at any time within three (3) years after final disbursement of the Allowance to Tenant, and upon at least ten (10) business days' prior written notice to Tenant, may cause an audit to be made of Tenant's books and records relating to Tenant's expenditures in connection with the construction of the Tenant Improvements. Tenant shall maintain complete and accurate books and records in accordance with generally accepted accounting principles of these expenditures for at least three (3) years. Tenant shall make available to Landlord's auditor at the Building within ten (10) business days after Landlord's notice requiring the audit, all books and records maintained by Tenant pertaining to the construction and completion of the Tenant Improvements. In addition to all other remedies which Landlord may have pursuant to the Lease, Landlord may recover from Tenant the reasonable cost of its audit if the audit discloses that Tenant falsely reported to Landlord expenditures which were not in fact made or falsely reported a material amount of any expenditure or the aggregate expenditures.

6. **WARRANTIES**. Tenant warranties and guarantees the Tenant Improvements against defective workmanship and materials for a period of one year from the date of substantial completion of the applicable portion of the Tenant Improvements, and Tenant agrees, at its sole cost and expense, to repair or replace any defective item occasioned by poor workmanship or materials during said one-year period. The construction contracts entered into by Tenant in connection with the Tenant Improvements shall provide that each contractor and each subcontractor shall be responsible for the replacement or repair, without additional charge, of all work done or furnished in accordance with its contract that shall become defective within one year after completion of the work performed by such contractor or subcontractors and shall be written such that all guarantees and warranties and all other rights and remedies at law, in equity or by contract with respect to the work performed and the contractor's or subcontractor's obligations shall inure to the benefit of both Landlord and Tenant, as their respective interests may appear, and shall

be directly enforceable by either. Tenant covenants to give to Landlord any non-exclusive assignment or other assurances which may be necessary to effect such rights of direct enforcement.

7. **MISCELLANEOUS CONSTRUCTION COVENANTS.**

(a) **Additional Services**. If the construction of the Tenant Improvements requires that additional services or facilities (including, but not limited to, hoisting, cleanup or other cleaning services, trash removal, field supervision, or ordering of materials) be provided, Landlord shall not be obligated to provide or pay for same, but if Landlord elects to provide any such services, Tenant shall not be required to pay any additional fee for the same.

(b) **Coordination of Labor**. All of Tenant's contractors, subcontractors, employees, servants and agents must work in harmony with and shall not interfere with any labor employed by Landlord, or Landlord's contractors or by any other tenant or its contractors with respect to the any portion of the Property.

(c) **Work in Adjacent Areas**. Any work to be performed in areas adjacent to the Building shall be performed only after obtaining Landlord's express written permission, which shall not be unreasonably withheld, conditioned or delayed, and shall be done only if an agent or employee of Landlord is present.

(d) **HVAC Systems**. Tenant agrees to be entirely responsible for the maintenance or the balancing of any heating, ventilating or air conditioning system installed by Tenant and/or maintenance of the electrical or plumbing work installed by Tenant and/or for maintenance of lighting fixtures, partitions, doors, hardware or any other installations made by Tenant.

(e) **Coordination with Lease**. Nothing herein contained shall be construed as (i) constituting Tenant as Landlord's agent for any purpose whatsoever, or (ii) a waiver by Landlord or Tenant of any of the terms or provisions of the Lease. Any default by Tenant following the giving of notice and the passage of any applicable cure period with respect to any portion of this Work Letter shall be deemed a breach of the Lease for which Landlord shall have all the rights and remedies as in the case of a breach of said Lease.

(f) **Landlord's Performance of Work**. Within ten (10) business days after receipt of Landlord's notice of Tenant's failure to perform its obligations under this Work Letter, if Tenant shall fail to commence to cure such failure, Landlord shall have the right, but not the obligation, to perform, on behalf of and for the account of Tenant, subject to reimbursement of the cost thereof by Tenant, any and all of the Tenant Improvements which Landlord determines, in its reasonable discretion, should be performed immediately and on an emergency basis for the best interest of the Building including, without limitation, work which pertains to structural components, mechanical, sprinkler and general utility systems, roofing and removal of unduly accumulated construction material and debris; provided, however, Landlord shall use reasonable efforts to give Tenant at least ten (10) days' notice prior to the performance of any Tenant Improvements.

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EXHIBIT C – RULES AND REGULATIONS

1.Except as provided in the Lease, no other sign, placard, picture, advertisement, name or notice shall be installed or displayed on any part of the outside of the Building or elsewhere in the common areas of the Premises without the prior written consent of the Landlord which consent shall be in Landlord's sole discretion.

2.
No awning shall be permitted on any part of the Building, except upon written consent of Landlord, which shall not be unreasonably withheld, conditioned or delayed. Tenant shall not place anything or allow anything to be placed against or near any glass partitions or doors or windows which may appear unsightly, in the opinion of Landlord, from outside the Building.

3.
Tenant, upon the termination of its tenancy, shall deliver to Landlord the keys or other means of access to all doors.

4.
Tenant shall not place a load upon any floor of the Building, including mezzanine area, if any, which exceeds the load per square foot that such floor was designed to carry and that is allowed by law.

5.
No cooking shall be done or permitted in the Building, except that Underwriters' Laboratory approved microwave ovens or equipment for brewing coffee, tea, hot chocolate and similar beverages shall be permitted, provided that such equipment and use is in accordance with all applicable federal, state and city laws, codes, ordinances, rules and regulations, except as provided in Section 1.2 of the Lease.

6.
Tenant may use hand trucks, forklifts and other material-handling equipment deemed necessary by Tenant for Tenant's use of the Building, subject to compliance with all applicable laws, ordinances, rules and regulations.

7.
Consistent with Article 47 of the Lease, Tenant shall have the right to use the name and image of the Building in Tenant's advertising, website and other business related publications.

8.
All trash and refuse shall be contained in suitable receptacles at locations approved by Landlord. Tenant shall not place in the trash receptacles any personal trash or material that cannot be disposed of in the ordinary and customary manner of removing such trash without violation of any law or ordinance governing such disposal.

9.
Tenant shall comply with all safety, fire protection and evacuation procedures and regulations established by Landlord or any governing authority.

10.
Tenant assumes all responsibility for securing and protecting the Building and its contents including keeping doors locked and other means of entry to the Building closed.

11.
Tenant shall not permit any animals, other than service animals, to be brought or kept in or about the Building or any common area of the Premises.

12.
Tenant shall not permit any motor vehicles to be washed or mechanical work or maintenance of motor vehicles to be performed on any portion of the Premises or parking lot.

13.

These Rules and Regulations are in addition to, and shall not be construed to in any way modify or amend, in whole or in part, the terms, covenants, agreements and conditions of any lease of any premises in the Property. Landlord may waive any one or more of these Rules and Regulations for the benefit of any tenant or tenants, and any such waiver by Landlord shall not be construed as a waiver of such Rules and Regulations for any or all tenants.

14.

Landlord reserves the right to make such other and reasonable rules and regulations as in its judgment may from time to time be needed for safety and security, for care and cleanliness of the Property and for the preservation of good order in and about the Property. Tenant agrees to abide by all such rules and regulations herein stated and any additional rules and regulations which are adopted. Tenant shall be responsible for the observance of all of the foregoing rules by Tenant's employees, agents, clients, customers, invitees and guests.

15.

Any toilet rooms, toilets, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed and no foreign substance of any kind whatsoever shall be thrown into them.

16.

Tenant shall not permit smoking or carrying of lighted cigarettes or cigars in areas reasonably designated by Landlord or any applicable governmental agencies as non-smoking areas.

17.

Canvassing, soliciting, distribution of handbills or any other written material at the Property is prohibited and each tenant shall cooperate to prevent the same. No tenant shall solicit business from other tenants or permit the sale of any goods or merchandise without the written consent of Landlord.

18.

Driveways shall not be obstructed by tenants or used by tenants for any purpose other than for ingress to and egress from its premises. Landlord shall in all cases retain the right to control and prevent access to the Property by all persons whose presence, in the judgment of Landlord, shall be prejudicial to the safety, character, reputation and interests of the Property or its tenants.

19.

Tenant shall have the right to park vehicles overnight on the Premises, at the sole risk of Tenant.

20.

No trucks, tractors or similar vehicles can be parked anywhere other than in Tenant's own truck dock area. Tractor-trailers which must be unhooked or parked with dolly wheels beyond the concrete loading areas must use steel plates or wood blocks under the dolly wheels to prevent damage to the asphalt paving surfaces. No parking or storing of such trailers will be permitted in the parking areas or on streets adjacent thereto.

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EXHIBIT D – HAZARDOUS MATERIALS

1. Except as otherwise set forth herein, Tenant agrees that Tenant and the Tenant Entities shall not handle, use, manufacture, store or dispose of any Hazardous Materials on, under, or about the Building or the Premises without Landlord's prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed as long as Tenant demonstrates and documents to Landlord's reasonable satisfaction (i) that such Hazardous Materials (A) are necessary or useful to Tenant's business; and (B) will be used, kept, and stored in compliance with all laws relating to any Hazardous Materials so brought or used or kept in or about the Building; and (ii) that Tenant will give all required notices concerning the presence in or on the Building or the release of such Hazardous Materials from the Building).

2. Tenant further agrees that Tenant will not permit any substance suspected of causing cancer or reproductive toxicity to come into contact with groundwater under the Building or the Premises. Any such substance coming into contact with groundwater shall be considered a Hazardous Material for purposes of this Exhibit D.

3. (i) Notwithstanding the provisions of paragraph (1) of this Exhibit D, Tenant may handle, store, and use Hazardous Materials, limited to the types, amounts, and use identified in a list of hazardous materials (permitted chemicals) provided by Tenant to Landlord prior to or contemporaneously with the execution of the Lease ("**List of Hazardous Materials**"). The List of Hazardous Materials shall be subject to change from time to time, and Tenant shall provide Landlord with an updated List of Hazardous Materials on an annual basis, and at any other time within thirty (30) days following written request from Landlord. If no List of Hazardous Materials is provided to Landlord prior to or contemporaneously with the execution of the Lease, then the portions of this Paragraph (3) which specifically pertain to the List of Hazardous Materials shall be of no force and effect. Tenant hereby certifies to Landlord that the information provided by Tenant pursuant to this Paragraph is true, correct, and complete. Tenant covenants to comply with all use restrictions shown on the List of Hazardous Materials and any updated List of Hazardous Materials provided to Landlord from time to time. Tenant's business and operations, and more especially its handling, storage, use and disposal of Hazardous Materials shall at all times (a) comply with all applicable laws pertaining to Hazardous Materials, and (b) satisfy all required and the highest recommended standards of all governmental authorities and agencies having jurisdiction thereof, including, without limitation, the Occupational Safety & Health Administration (OSHA), OSHA's Hazard Communication Standard, Chemical Hygiene Plan and the Uniform Fire Code. Tenant shall at all times maintain in good standing all necessary licenses, certificates and approvals as may be required by any governmental authorities and/or agencies having jurisdiction thereof, which compliance documents shall be available for inspection by Landlord at all times. Tenant shall give or post all notices required by all applicable laws pertaining to Hazardous Materials. If Tenant shall at any time fail to comply with this Paragraph, Tenant shall immediately notify Landlord in writing of such noncompliance. Landlord's rights and remedies hereunder shall not impose upon Landlord an affirmative duty or obligation whatsoever to monitor or inspect Tenant's use, storage, handling, transportation or disposal of any Hazardous Materials and it shall at all times be Tenant's sole obligation and responsibility to fully comply with all of the terms and conditions herein set forth.

(ii) At the request of Landlord from time to time, Tenant shall provide Landlord with copies of or on-line access to electronic copies of any Material Safety Data Sheets (as required by the Occupational Safety and Health Act) relating to any Hazardous Materials to be used, kept, or stored at, in or about the Building.

(iii) Tenant shall not store hazardous wastes in the Building or on the Premises for more than ninety (90) days except when done in accordance with applicable Environmental Laws; "hazardous waste" has the meaning given it by the Resource Conservation and Recovery Act of 1976, as amended. Tenant shall not install any underground or above ground storage tanks on the Premises. Tenant shall not dispose of any Hazardous Material or solid waste in the Building or on the Premises. In performing any alterations of the Building permitted by the Lease, Tenant shall not install any Hazardous Material in the Building without the specific consent of Landlord attached as an exhibit to this Exhibit D.

(iv) Any increase in the premiums for necessary insurance on the Property which arises from Tenant's use and/or storage of Hazardous Materials shall be solely at Tenant's expense. Tenant shall procure and maintain at its sole expense such additional insurance as may be necessary to comply with any requirement of any federal, state or local governmental agency with jurisdiction.

4. If Landlord, in its sole discretion, believes that the Building, the Premises or the environment has become contaminated with Hazardous Materials that must be removed under the laws of the state where the Premises

are located, in breach of the provisions of the Lease, Landlord, in addition to its other rights under the Lease, may enter upon the Building and the Premises and obtain samples, including without limitation the soil and groundwater under the Building and the Premises, for the purposes of analyzing the same to determine whether and to what extent the Building, the Premises or the environment has become so contaminated. Landlord shall give Tenant at least 24 hours' advance written notice prior to each such inspection (except in an emergency). If such inspection reveals any Hazardous Materials in the Building or on the Premises that are materially inconsistent with the information disclosed by Tenant to Landlord in this Exhibit D or otherwise, as updated from time to time, Tenant shall reimburse Landlord for the actual costs incurred by Landlord in connection with such inspection. Landlord shall provide to Tenant samples obtained by Landlord and copies of the results of any inspection, sampling and analysis performed at Landlord's direction. Tenant may also, at Tenant's sole cost and expense, perform any such sampling, testing or drilling to locate any Hazardous Materials in the Building or on the Premises, provided that (i) such work is performed by a licensed environmental contractor reasonably acceptable to Landlord, (ii) Tenant first obtains Landlord's approval of the extent, location(s), specifications, method of boring, scheduling, and other specifics of such soil sampling activities, which approval shall not be unreasonably withheld, (iii) Tenant's contractor delivers to Landlord a certificate of insurance evidencing insurance coverages reasonably satisfactory to Landlord prior to entering on the Property, (iv) such activities are done in compliance with all applicable laws and in such a manner as not to interfere with the operations of other occupants at the Property, (v) Tenant promptly delivers to Landlord a detailed and full written report of the results of such inspection and testing, and (vi) upon completion of the inspection and testing, Tenant or its contractor restores all affected areas of the Property to their condition existing prior to the commencement of such work to the reasonable satisfaction of Landlord.

5. Without limiting the above, Tenant shall reimburse, defend, indemnify and hold Landlord and the Landlord Entities harmless for, from and against any and all claims, losses, liabilities, damages, costs and expenses, including without limitation, loss of rental income, loss due to business interruption, and attorneys' fees and costs, arising out of or in any way connected with the use, manufacture, storage, or disposal of Hazardous Materials by Tenant or any Tenant Entities on, under or about the Building or the Premises including, without limitation, the costs of any required or necessary investigation, repair, cleanup or detoxification and the preparation of any closure or other required plans in connection herewith, whether voluntary or compelled by governmental authority. The indemnity obligations of Tenant under this clause shall survive any termination of the Lease. At Landlord's option, Tenant shall perform any required or necessary investigation, repair, cleanup, or detoxification of the Building and/or Premises. In such case, Landlord shall have the right, in its sole discretion, to approve all plans, consultants, and cleanup standards. Tenant shall provide Landlord on a timely basis with (i) copies of all documents, reports, and communications with governmental authorities; and (ii) notice and an opportunity to attend all meetings with regulatory authorities. Tenant shall comply with all notice requirements and Landlord and Tenant agree to cooperate with governmental authorities seeking access to the Building or the Premises for purposes of sampling or inspection. No disturbance of Tenant's use of the Building or the Premises resulting from activities conducted pursuant to this paragraph shall constitute an actual or constructive eviction of Tenant. In the event that such cleanup extends beyond the termination of the Lease, Tenant's obligation to pay rent (including additional rent) shall continue until such cleanup is completed and any certificate of clearance or similar document has been delivered to Landlord. Rent during such holdover period shall be at market rent; if the parties are unable to agree upon the amount of such market rent, then Landlord shall have the option of (a) increasing the rent for the period of such holdover based upon the increase in the cost-of-living from the third month preceding the commencement date to the third month preceding the start of the holdover period, using such indices and assumptions and calculations as Landlord in its sole reasonable judgment shall determine are necessary; or (b) having Landlord and Tenant each appoint a qualified MAI appraiser doing business in the area; in turn, these two independent MAI appraisers shall appoint a third MAI appraiser and the majority shall decide upon the fair market rental for the Premises as of the expiration of the then current term. Landlord and Tenant shall equally share in the expense of this appraisal except that in the event the rent is found to be within five percent (5%) of the original rate quoted by Landlord, then Tenant shall bear the full cost of all the appraisal process. In no event shall the rent be subject to determination or modification by any person, entity, court, or authority other than as set forth expressly herein, and in no event shall the rent for any holdover period be less than the rent due in the preceding period.

6. Notwithstanding anything set forth in the Lease, Tenant shall only be responsible for contamination of Hazardous Materials or any cleanup resulting directly therefrom, and resulting directly from matters occurring or Hazardous Materials deposited (other than by Landlord or contractors, agents or representatives controlled by Landlord) during the Term of this Lease, and any other period of time during which Tenant is in actual or constructive occupancy of the Building or the Premises. Tenant shall take reasonable precautions to prevent the contamination of the Building and/or the Premises with Hazardous Materials by third parties. If Hazardous Materials (other than de minimis amounts) are discovered in or on the Building or the Premises

prior to the Commencement Date, except to the extent the same (i) have been caused by Tenant or any Tenant Entities or (ii) represents a breach of any covenant of Tenant respecting the Use of Hazardous Materials therein or thereon, then Landlord shall undertake such measures as it deems reasonably appropriate under the circumstances, or as may be required by law, to either abate or remove and dispose of the Hazardous Materials in compliance with all applicable laws and regulations. In addition, in the event Landlord either caused or was directly responsible for the presence of Hazardous Materials (other than de minimis amounts) in the Building and/or the Premises, then, to the extent Landlord caused or was directly responsible for the same, Landlord shall indemnify Tenant and the Tenant Entities from all third party claims and actions asserted against Tenant or the Tenant Entities arising from the presence of Hazardous Materials in the Building or the Premises; provided, however, in the event any Lender becomes the "landlord" hereunder, then Tenant expressly acknowledges and agrees that, so long as such Lender is the "landlord" hereunder, the aforesaid indemnification of Tenant by Landlord shall not apply or be enforceable in any way against said Lender as the "landlord" hereunder.

7. Except as to a Permitted Transfer, it shall not be unreasonable for Landlord to withhold its consent to any proposed assignment or sublease if (i) the proposed assignee's or sublessee's anticipated use of the Building involves the generation, storage, use, treatment or disposal of Hazardous Materials; (ii) the proposed assignee or sublessee has been required by any prior landlord, lender, or governmental authority to take remedial action in connection with Hazardous Materials contaminating a property if the contamination resulted from such assignee's or sublessee's actions or use of the property in question; or (iii) the proposed assignee or sublessee is subject to an enforcement order issued by any governmental authority in connection with the use, disposal, or storage of a Hazardous Material.

8. Any of Tenant's insurance insuring against claims of the type dealt with in this Exhibit D shall be considered primary coverage for claims against the Building, the Premises or the Property arising out of or under this Paragraph.

9. In the event of (i) any transfer of Tenant's interest under the Lease; or (ii) the termination of the Lease, by lapse of time or otherwise, Tenant shall be solely responsible for compliance with any and all then effective federal, state or local laws concerning (a) the physical condition of the Premises, Building, or Property; or (b) the presence of toxic or Hazardous Materials in or on the Premises, Building, or Property, including but not limited to any reporting or filing requirements imposed by such laws. Tenant's duty to pay rent and additional rent shall continue until the obligations imposed by such laws are satisfied in full and any certificate of clearance or similar document has been delivered to Landlord.

10. All consents given by Landlord pursuant to this Exhibit D shall be in writing and shall be attached hereto. If such materials are not specified in the list attached hereto, then such consents will be deemed withheld.

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EXHIBIT E – FORM OF LETTER OF CREDIT

IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER _____

ISSUE DATE: _____

ISSUING BANK:
SILICON VALLEY BANK
3003 TASMAN DRIVE
2ND FLOOR, MAIL SORT HF210
SANTA CLARA, CALIFORNIA 95054

BENEFICIARY:
PRA/LB, L.L.C.
C/O COX ARMORED MINI-STORAGE MANAGEMENT INC.
1650 EAST LAMAR ROAD
PHOENIX, ARIZONA 85016
ATTENTION: DIANE GIBSON

APPLICANT:
DEXCOM, INC.
6340 SEQUENCE DRIVE
SAN DIEGO, CA 92121

AMOUNT: US$3,600,000.00 (THREE MILLION SIX HUNDRED THOUSAND AND 00/100 U.S. DOLLARS)

EXPIRATION DATE: ONE YEAR FROM ISSUANCE

LOCATION: SANTA CLARA, CALIFORNIA

DEAR SIR/MADAM:

WE, SILICON VALLEY BANK ("ISSUING BANK") HEREBY ISSUE OUR IRREVOCABLE STANDBY LETTER OF CREDIT IN FAVOR OF PRA/LB, L.L.C., ("BENEFICIARY") FOR THE ACCOUNT OF DEXCOM, INC., ("APPLICANT") UP TO THE AGGREGATE AMOUNT OF THREE MILLION SIX HUNDRED THOUSAND AND NO/100 U.S. DOLLARS ($3,600,000.00). FUNDS, UP TO THE MAXIMUM AGGREGATE AMOUNT AVAILABLE UNDER THIS LETTER OF CREDIT ARE PAYABLE BY THE ISSUING BANK WITHIN TWO (2) BUSINESS DAYS AFTER RECEIPT BY THE ISSUING BANK, ON OR BEFORE OUR CLOSE OF BUSINESS ON THE EXPIRATION DATE OF ONE OR MORE DRAW STATEMENT(S) SIGNED BY AN AUTHORIZED SIGNATORY OF BENEFICIARY INCLUDING THEIR LEGAL COUNSEL (OR IF THIS LETTER OF CREDIT IS TRANSFERRED, BY AN AUTHORIZED SIGNATORY INCLUDING THEIR LEGAL COUNSEL OF ANY SUCH TRANSFEREE) FOLLOWED BY HIS/HER PRINTED NAME AND DESIGNATED TITLE.

DRAW STATEMENT(S) DRAWN UPON THIS LETTER OF CREDIT SHOULD BE ADDRESSED TO US, MARKED: “DRAWN UNDER SILICON VALLEY BANK STANDBY LETTER OF CREDIT NO. SVBSF_____, ISSUED ON _____, 20__”. SPECIFY THE AMOUNT OF THE DRAW REQUEST, SET FORTH WIRE TRANSFER INSTRUCTIONS AND STATE IN SUBSTANCE THAT BENEFICIARY IS ENTITLED TO DRAW ON THIS LETTER OF CREDIT UNDER THE TERMS OF THE LEASE, DATED AS OF _____, 2016, BETWEEN BENEFICIARY, AS LANDLORD, AND APPLICANT, AS TENANT ("LEASE").

THIS ORIGINAL LETTER OF CREDIT AND AMENDMENT(S), IF ANY, MUST ACCOMPANY ANY DRAWING HEREUNDER FOR ENDORSEMENT OF THE DRAWING AMOUNT AND WILL BE RETURNED TO THE BENEFICIARY UNLESS IT IS FULLY UTILIZED.

PARTIAL DRAWS AND MULTIPLE PRESENTATIONS ARE PERMITTED HEREUNDER.

ALL THE DETAILS SET FORTH HEREIN IN THIS LETTER OF CREDIT DRAFT IS APPROVED BY APPLICANT. IF THERE IS ANY DISCREPANCY BETWEEN THE DETAILS OF THIS LETTER OF CREDIT DRAFT AND THE LETTER OF CREDIT APPLICATION, BETWEEN APPLICANT AND SILICON VALLEY BANK, THE DETAILS HEREOF SHALL PREVAIL.

_____ _____
Applicant’s Authorized Signature DATE

THE ISSUING BANK SHALL BE ENTITLED (AND REQUIRED) TO RELY UPON THE STATEMENTS CONTAINED IN THE ABOVE-DESCRIBED STATEMENT(S), AND WILL HAVE NO OBLIGATION TO VERIFY THE TRUTH OF ANY STATEMENT(S) SET FORTH THEREIN.

THIS LETTER OF CREDIT SHALL EXPIRE ON OUR CLOSE OF BUSINESS ON _____, BUT THIS LETTER OF CREDIT AND SUCH EXPIRATION DATE SHALL AUTOMATICALLY BE EXTENDED WITHOUT AMENDMENT FOR SUCCESSIVE PERIODS OF ONE (1) YEAR EACH FROM ITS CURRENT AND EACH SUCCESSIVE EXPIRATION DATE, BUT IN NO EVENT BEYOND JULY 31, 2028 WHICH SHALL BE THE FINAL EXPIRATION DATE OF THIS LETTER OF CREDIT, UNLESS, AT LEAST SIXTY (60) DAYS PRIOR TO THE THEN CURRENT EXPIRATION DATE, THE ISSUING BANK NOTIFIES BENEFICIARY IN WRITING BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OR OVERNIGHT COURIER SERVICE, AT THE ABOVE ADDRESS (OR ANY OTHER ADDRESS INDICATED BY BENEFICIARY, IN A WRITTEN NOTICE TO US THE RECEIPT OF WHICH WE HAVE ACKNOWLEDGED, AS THE ADDRESS TO WHICH WE SHOULD SEND SUCH NOTICE), THAT THIS LETTER OF CREDIT WILL NOT BE EXTENDED BEYOND THE CURRENT EXPIRATION DATE, PROVIDED THAT THE OBLIGATION OF US TO MAKE ANY PAYMENT HEREUNDER IN RESPECT OF A DRAWING REQUEST MADE PRIOR TO THE EXPIRATION DATE HEREOF SHALL CONTINUE UNTIL PAYMENT IS MADE. A COPY OF OUR NON EXTENSION NOTICE SHALL ALSO BE SENT IN THE SAME MANNER TO BRIER, IRISH, HUBBARD & ERHART, P.L.C., 2400 EAST ARIZONA BILTMORE CIRCLE, SUITE 1300, PHOENIX, ARIZONA 85016, ATTN: ROBERT N. BRIER, ESQ; AND PRA/LB L.L.C., 4315 NORTH 66TH STREET, SCOTTSDALE, ARIZONA 85251, ATTN: KENN FRANCIS AND PRA/LB L.L.C., 17 NORTH VISTA DE CATALINA, LAGUNA BEACH, CALIFORNIA 92651, ATTN: TOD THORPE. HOWEVER, THE LACK OF RECEIPT OF SUCH COPY SHALL NOT INVALIDATE OUR NON EXTENSION NOTICE TO THE BENEFICIARY.

ALL DEMANDS FOR PAYMENT SHALL BE MADE EITHER IN PERSON OR BY OVERNIGHT COURIER SERVICE BY PRESENTATION OF THE ORIGINAL APPROPRIATE DOCUMENTS ON A BUSINESS DAY AT OUR OFFICE (THE “BANK’S OFFICE”) AT: SILICON VALLEY BANK, 3003 TASMAN DRIVE, SANTA CLARA, CA 95054, ATTENTION: STANDBY LETTER OF CREDIT NEGOTIATION SECTION. FACSIMILE PRESENTATIONS ARE PERMITTED. SHOULD BENEFICIARY WISH TO MAKE PRESENTATIONS UNDER THIS LETTER OF CREDIT ENTIRELY BY FACSIMILE TRANSMISSION IT NEED NOT TRANSMIT THIS LETTER OF CREDIT AND AMENDMENT(S), IF ANY. EACH FACSIMILE TRANSMISSION SHALL BE MADE AT: (408) 496-2418 OR (408) 969-6510; AND SIMULTANEOUSLY UNDER ATTEMPTED TELEPHONE ADVICE TO: (408)654-6274 OR (408) 654-7716, ATTENTION: STANDBY LETTER OF CREDIT NEGOTIATION SECTION WITH ORIGINALS TO FOLLOW BY OVERNIGHT COURIER SERVICE; PROVIDED, HOWEVER, THE BANK WILL DETERMINE HONOR OR DISHONOR ON THE BASIS OF PRESENTATION BY FACSIMILE ALONE, AND WILL NOT EXAMINE THE ORIGINALS. IN ADDITION, ABSENCE OF THE AFORESAID TELEPHONE ADVICE SHALL NOT AFFECT OUR OBLIGATION TO HONOR ANY DRAW REQUEST.

THIS LETTER OF CREDIT IS TRANSFERABLE IN FULL, ONE OR MORE TIMES, BY BENEFICIARY’S REQUEST, BUT IN EACH INSTANCE ONLY TO A SINGLE BENEFICIARY AS TRANSFEREE AND ONLY UP TO THE THEN AVAILABLE AMOUNT, ASSUMING SUCH TRANSFER TO SUCH TRANSFEREE WOULD BE IN COMPLIANCE WITH THEN APPLICABLE LAW AND REGULATIONS, INCLUDING BUT NOT LIMITED TO THE REGULATIONS OF THE U. S. DEPARTMENT OF TREASURY AND U. S. DEPARTMENT OF COMMERCE. AT THE TIME OF TRANSFER, THE ORIGINAL LETTER OF CREDIT AND ORIGINAL AMENDMENT(S), IF ANY, MUST BE SURRENDERED TO US AT OUR ADDRESS INDICATED IN THIS LETTER OF CREDIT TOGETHER WITH OUR TRANSFER FORM ATTACHED HERETO AS EXHIBIT “A” DULY EXECUTED. THE CORRECTNESS OF THE SIGNATURE AND TITLE OF THE PERSON SIGNING THE TRANSFER FORM MUST BE VERIFIED BY BENEFICIARY’S BANK. APPLICANT SHALL PAY OUR TRANSFER FEE OF ¼ OF 1% OF THE TRANSFER AMOUNT (MINIMUM US$250.00) UNDER THIS LETTER OF CREDIT. EACH TRANSFER SHALL BE EVIDENCED BY OUR ENDORSEMENT ON THE REVERSE OF THE LETTER OF CREDIT AND WE SHALL FORWARD THE ORIGINAL OF THE LETTER OF CREDIT SO ENDORSED TO THE TRANSFEREE.

WE AGREE THAT WE SHALL HAVE NO DUTY OR RIGHT TO INQUIRE AS TO THE BASIS UPON WHICH BENEFICIARY HAS DETERMINED THAT THE AMOUNT IS DUE AND OWING OR HAS DETERMINED TO PRESENT TO US ANY STATEMENT(S) UNDER THIS LETTER OF CREDIT, AND THE PRESENTATION OF SUCH STATEMENT(S) IN COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT, SHALL AUTOMATICALLY RESULT IN PAYMENT TO THE BENEFICIARY.

ALL THE DETAILS SET FORTH HEREIN IN THIS LETTER OF CREDIT DRAFT IS APPROVED BY APPLICANT. IF THERE IS ANY DISCREPANCY BETWEEN THE DETAILS OF THIS LETTER OF CREDIT DRAFT AND THE LETTER OF CREDIT APPLICATION, BETWEEN APPLICANT AND SILICON VALLEY BANK, THE DETAILS HEREOF SHALL PREVAIL.

_____ _____

Applicant’s Authorized Signature DATE

EXCEPT AS EXPRESSLY STATED HEREIN, THIS UNDERTAKING IS NOT SUBJECT TO ANY AGREEMENT, CONDITION OR QUALIFICATION. THE OBLIGATION OF SILICON VALLEY BANK UNDER THIS LETTER OF CREDIT IS THE INDIVIDUAL OBLIGATION OF SILICON VALLEY BANK AND IS IN NO WAY CONTINGENT UPON REIMBURSEMENT WITH RESPECT THERETO, OR UPON OUR ABILITY TO PERFECT ANY LIEN, SECURITY INTEREST OR ANY OTHER REIMBURSEMENT.

IF ANY INSTRUCTIONS ACCOMPANYING A DRAWING UNDER THIS LETTER OF CREDIT REQUEST THAT PAYMENT IS TO BE MADE BY TRANSFER TO YOUR ACCOUNT WITH ANOTHER BANK, WE WILL ONLY EFFECT SUCH PAYMENT BY FED WIRE TO A U.S. REGULATED BANK, AND WE AND/OR SUCH OTHER BANK MAY RELY ON AN ACCOUNT NUMBER SPECIFIED IN SUCH INSTRUCTIONS EVEN IF THE NUMBER IDENTIFIES A PERSON OR ENTITY DIFFERENT FROM THE INTENDED PAYEE.

THIS LETTER OF CREDIT IS SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES–ISP98, INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION 590.

IF THE ORIGINAL OF THIS LETTER OF CREDIT IS LOST, STOLEN, MUTILATED OR DESTROYED, WE WILL ISSUE YOU A “CERTIFIED TRUE COPY” OF THIS LETTER OF CREDIT UPON OUR RECEIPT OF YOUR INDEMNITY LETTER TO SILICON VALLEY BANK IN THE FORM OF EXHIBIT “B” ATTACHED HERETO.

IF BENEFICIARY REQUESTS ANY ASSISTANCE OR HAS ANY QUESTIONS REGARDING THIS TRANSACTION, BENEFICIARY MAY CALL SILICON VALLEY BANK AT (408)654-6274 OR (408) 654-7716.

SILICON VALLEY BANK,

_____ _____

AUTHORIZED SIGNATURE AUTHORIZED SIGNATURE

ALL THE DETAILS SET FORTH HEREIN IN THIS LETTER OF CREDIT DRAFT IS APPROVED BY APPLICANT. IF THERE IS ANY DISCREPANCY BETWEEN THE DETAILS OF THIS LETTER OF CREDIT DRAFT AND THE LETTER OF CREDIT APPLICATION, BETWEEN APPLICANT AND SILICON VALLEY BANK, THE DETAILS HEREOF SHALL PREVAIL.

_____ _____

Applicant’s Authorized Signature DATE

IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER _____

EXHIBIT A
TRANSFER FORM

DATE: _____

TO: SILICON VALLEY BANK
3003 TASMAN DRIVE RE: IRREVOCABLE STANDBY LETTER OF CREDIT
SANTA CLARA, CA 95054 NO. _____ ISSUED BY
ATTN:INTERNATIONAL DIVISION. SILICON VALLEY BANK, SANTA CLARA
STANDBY LETTERS OF CREDIT L/C AMOUNT: _____

GENTLEMEN:

FOR VALUE RECEIVED, THE UNDERSIGNED BENEFICIARY HEREBY IRREVOCABLY TRANSFERS TO:

_____
(NAME OF TRANSFEREE)

_____
(ADDRESS)

ALL RIGHTS OF THE UNDERSIGNED BENEFICIARY TO DRAW UNDER THE ABOVE LETTER OF CREDIT UP TO ITS AVAILABLE AMOUNT AS SHOWN ABOVE AS OF THE DATE OF THIS TRANSFER.

BY THIS TRANSFER, ALL RIGHTS OF THE UNDERSIGNED BENEFICIARY IN SUCH LETTER OF CREDIT ARE TRANSFERRED TO THE TRANSFEREE. TRANSFEREE SHALL HAVE THE SOLE RIGHTS AS BENEFICIARY THEREOF, INCLUDING SOLE RIGHTS RELATING TO ANY AMENDMENTS, WHETHER INCREASES OR EXTENSIONS OR OTHER AMENDMENTS, AND WHETHER NOW EXISTING OR HEREAFTER MADE. ALL AMENDMENTS ARE TO BE ADVISED DIRECTLY TO THE TRANSFEREE WITHOUT NECESSITY OF ANY CONSENT OF OR NOTICE TO THE UNDERSIGNED BENEFICIARY.

THE ORIGINAL OF SUCH LETTER OF CREDIT IS RETURNED HEREWITH, AND WE ASK YOU TO ENDORSE THE TRANSFER ON THE REVERSE THEREOF, AND FORWARD IT DIRECTLY TO THE TRANSFEREE WITH YOUR CUSTOMARY NOTICE OF TRANSFER.

SIGNATURE AUTHENTICATED

The name(s), title(s), and signature(s) conform to that/those on file with us for the company and the signature(s) is/are authorized to execute this instrument.

_____
(Name of Bank)
_____
(Address of Bank)
_____
(City, State, ZIP Code)
_____
(Authorized Name and Title)

_____
(Authorized Signature)
_____
(Telephone number)
SINCERELY,

_____
(BENEFICIARY'S NAME)
_____
(SIGNATURE OF BENEFICIARY)

_____

ALL THE DETAILS SET FORTH HEREIN IN THIS LETTER OF CREDIT DRAFT IS APPROVED BY APPLICANT. IF THERE IS ANY DISCREPANCY BETWEEN THE DETAILS OF THIS LETTER OF CREDIT DRAFT AND THE LETTER OF CREDIT APPLICATION, BETWEEN APPLICANT AND SILICON VALLEY BANK, THE DETAILS HEREOF SHALL PREVAIL.

_____ _____
Applicant's Authorized Signature DATE

(NAME AND TITLE)

Exhibit “B”

ALL THE DETAILS SET FORTH HEREIN IN THIS LETTER OF CREDIT DRAFT IS APPROVED BY APPLICANT. IF THERE IS ANY DISCREPANCY BETWEEN THE DETAILS OF THIS LETTER OF CREDIT DRAFT AND THE LETTER OF CREDIT APPLICATION, BETWEEN APPLICANT AND SILICON VALLEY BANK, THE DETAILS HEREOF SHALL PREVAIL.

_____ _____

Applicant’s Authorized Signature DATE

EXHIBIT B

_____, 20___

Silicon Valley Bank
3003 Tasman Drive
Santa Clara, CA 95054
Attn: Standby Letters of Credit Department

Re: Irrevocable Standby Letter of Credit No. SVBSF_____

Ladies and Gentlemen:

The undersigned ("Beneficiary") is the beneficiary under Irrevocable Standby Letter of Credit **No. SVBSF_____** issued by Silicon Valley Bank ("Bank") upon the request of _____ (together with all amendments issued to such letter of credit, the "Standby L/C"). Beneficiary cannot locate the executed original of the Standby L/C (the "Original Standby L/C") and has requested that Bank issue a certified true copy of the Standby L/C ("Certified True Copy") to replace the Original Standby L/C. Beneficiary understands that Bank is willing to grant Beneficiary's request to issue the Certified True Copy so long as Beneficiary agrees to execute this letter agreement for Bank's benefit.

In consideration of Bank's willingness to issue the Certified True Copy, Beneficiary agrees as follows:

1. If Beneficiary locates the Original Standby L/C, it will not draw any draft(s) or make any demand(s) upon Bank thereunder, but will promptly deliver to Bank the Original Standby L/C, marked "CANCELED", and signed and dated by its duly authorized representative, for disposition by Bank.

2. Beneficiary represents and warrants that it has not encumbered, assigned, or otherwise transferred its interest in the Standby L/C or delivered the Original Standby L/C to any other person or entity.

3. Beneficiary will indemnify and save Bank harmless from and against any and all claims, judgments, demands, losses, damages, actions, liabilities, costs and expenses, including, without limitation, attorneys' fees, which Bank at any time may suffer, sustain or incur in connection with the missing Original Standby L/C (collectively, "Claims"), including, without limitation, any presentation for payment of any draft(s) or demand(s) drawn under the Original Standby L/C by a holder in due course or a bonafide purchaser for value of the Original Standby L/C, or any other draw requests, presentments or any other claims made on the Original Standby L/C regardless of the party making such draw requests, presentments or any other claims made (including Beneficiary and/or any of its agents, successors and assigns). This indemnity shall include, without limitation, the face amount of the Original Standby L/C if Bank is required by law to pay same to a holder in due course or a bonafide purchaser for value of the Original Standby L/C and/or any presentation thereunder or proceeds thereof. Beneficiary will pay, within thirty (30) days of receipt of written request from Bank, all sums requested by Bank as indemnity for Bank's Claims.

4. Upon the effectiveness of this letter agreement, Beneficiary irrevocably releases Bank from any obligation to it under the Original Standby L/C.

Beneficiary has executed this letter agreement by its duly authorized representative on the date hereof and this letter agreement shall be deemed to be effective as of such date.

Yours truly,

_____
(Beneficiary)

Authorized Signature: _____
Name & Title: _____

ALL THE DETAILS SET FORTH HEREIN IN THIS LETTER OF CREDIT DRAFT IS APPROVED BY APPLICANT. IF THERE IS ANY DISCREPANCY BETWEEN THE DETAILS OF THIS LETTER OF CREDIT DRAFT AND THE LETTER OF CREDIT APPLICATION, BETWEEN APPLICANT AND SILICON VALLEY BANK, THE DETAILS HEREOF SHALL PREVAIL.

_____ _____
Applicant's Authorized Signature DATE

SIGNATURE AUTHENTICATED

The signature of Beneficiary conforms to that on file with us in the Signature Specimen Card of the Beneficiary for Loans and Guarantee.

_____
(Name of bank)

By:_____
(Authorized Signature) **

_____
(Title)

_____
(Telephone Number)

_____
(Address of bank)

** VERIFICATION OF BENEFICIARY'S SIGNATURE(S) BY A NOTARY PUBLIC IS UNACCEPTABLE.

ALL THE DETAILS SET FORTH HEREIN IN THIS LETTER OF CREDIT DRAFT IS APPROVED BY APPLICANT. IF THERE IS ANY DISCREPANCY BETWEEN THE DETAILS OF THIS LETTER OF CREDIT DRAFT AND THE LETTER OF CREDIT APPLICATION, BETWEEN APPLICANT AND SILICON VALLEY BANK, THE DETAILS HEREOF SHALL PREVAIL.

_____ _____
Applicant's Authorized Signature DATE

EXHIBIT F – MEMORANDUM OF LEASE

RECORDING REQUESTED
BY AND WHEN RECORDED
MAIL THIS MEMORANDUM
OF LEASE TO:

Stuart Kane LLP
620 Newport Center Drive, Suite 200
Newport Beach, CA 92660
Attention: Josh C. Grushkin

(Above Space for Recorder's Use Only)

MEMORANDUM OF LEASE

This Memorandum of Lease (this "Memorandum") is made as of _____, 2016, by and between PRA/LB, L.L.C., an Arizona limited liability company ("Landlord"), and DEXCOM INC., a Delaware corporation ("Tenant"), to evidence that certain Industrial Net Lease for Broadway 101 Commerce Park – Phase III (the "Lease") of even date herewith between Landlord and Tenant, pursuant to which Lease Landlord has leased a portion of that certain improved real property owned by Landlord and more particularly described in Exhibit "A" attached hereto and by this reference incorporated herein, and further described in the Lease as the "Premises".

Landlord and Tenant have made this Memorandum to provide notice to any interested party of such demise and of the terms and provisions of the Lease. Capitalized terms used in this Memorandum but not defined herein shall have the definitions set forth in the Lease.

NOW, THEREFORE, Landlord and Tenant declare as follows:

1. Landlord has leased to Tenant and Tenant has leased from Landlord the Premises described in the Lease on the terms and conditions therein set forth, all as more fully described in the Lease.

2. This Memorandum is subject to all of the terms, conditions and limitations set forth in the Lease and the terms of the Lease are hereby incorporated herein for all purposes with the same effect as though the terms and conditions of the Lease were set forth herein in their entirety.

3. Landlord and Tenant acknowledge that, as further set forth in the Lease, (a) the initial expiration date of the Lease is contemplated to be March 31, 2028; (b) Tenant has the option to extend the Term beyond such initial expiration date pursuant to the Option to Extend; and (c) Tenant has the right to purchase the Premises pursuant to the Purchase Right and the Offer Right.

4. Upon the expiration or earlier termination of the Lease or any termination of Tenant’s right of possession of the Premises, Tenant shall, within twenty (20) days after written request from Landlord, execute and deliver to Landlord for recording a Termination of Memorandum of Lease in a form reasonably acceptable to the parties. If Tenant fails to execute and deliver to Landlord for recording such a Termination of Memorandum of Lease within twenty (20) days after the expiration or earlier termination of the Lease or any earlier termination of Tenant’s right of possession of the Premises, Tenant grants to Landlord a power of attorney to execute and record a Termination of Memorandum of Lease within twenty (20) days after the expiration or earlier termination

of the Lease or any termination of Tenant's right of possession of the Premises, which power of attorney is coupled with an interest and is non-revocable.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Memorandum as of the date first written above.

LANDLORD:

PRA/LB, L.L.C.,

an Arizona limited liability company
By: Pacific Realty Advisors, Inc., an Arizona corporation
Its: Manager

By:_____

Kenn M. Francis
Its: President

TENANT:

DEXCOM, INC.,

a Delaware corporation

By:__

Name:__

Its: __

STATE OF ARIZONA)
)
County of Maricopa)

On this ___ day of _____, 2016, before me personally appeared Kenn Francis, whose identity was proven to me on the basis of satisfactory evidence to be the person he/she claims to be, and acknowledged before me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity or entities upon behalf of which the person acted, executed the instrument.

(seal)

Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of San Diego)

On _____, 2016, before me, _____, a notary public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT "A"

LEGAL DESCRIPTION

[TO BE UPDATED, AT TENANT'S SOLE COST AND EXPENSE, TO DESCRIBE ONLY THE PREMISES; BELOW LEGAL DESCRIPTION IS FOR THE ENTIRE PROPERTY]

PARCEL 3, OF LOT SPLIT OF DOBSON & BROADWAY, A SPLIT OF LOT 7, BROADWAY 101 COMMERCE PARK PHASE II, ACCORDING TO BOOK 928 OF MAPS. PAGE 44, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED IN BOOK 1194 OF MAPS, PAGE 7.

Exhibit 10.40

AIA® Document A102™ - 2007

Standard Form of Agreement Between Owner and Contractor *where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price*

AGREEMENT made as of the 2nd day of May in the year 2016
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

DexCom, Inc.
6340 Sequence Drive
San Diego, CA 92121
Attn: James Gillard

and the Contractor:
(Name, legal status, address and other information)

Skanska USA Building Inc.
4742 N. 24th Street, Suite 165
Phoenix, AZ 85016
Attn: Ross Vroman

for the following Project:
(Name, location and detailed description)

Tenant Improvements at
232 South Dobson Road,
Mesa, AZ 85202 »

The Architect:
(Name, legal status, address and other information)

Mansour Architecture Corporation
6498 Weathers Place, Suite 100
San Diego, CA 92121
Attn: Anthony Mansour

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is not intended for use in competitive bidding.

AIA Document A201™-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Electronic copying of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

TABLE OF ARTICLES

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, as modified herein by the parties, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, the Exhibits to this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, then conflicts or discrepancies shall be resolved in the following descending order of priority: (i) approved revisions and addenda, including the GMP Amendment, of later date take precedence over those of earlier date or original documents; (ii) this Agreement (including the exhibits; (iii) modifications to the General Conditions; (iv) the General Conditions; and (v) Drawings and Specifications, where Drawings govern Specifications for quantity and location and Specifications govern Drawings for quality and performance. In the event of ambiguity in quantity or quality, the greater quantity and the better quality shall govern. Work not particularly detailed or specified shall be performed in the same manner as similar portions of the Work that are detailed or specified. Owner and Contractor entered into that certain Master Services Agreement dated as of January 12, 2016, which agreement concerns a

different subject matter than this Agreement, remains in full force and effect and is not superseded by the Contract Documents.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

§ 2.1 Contractor shall provide all general contractor services, and shall perform all the work required by the Contract Documents for the complete construction of the Project in accordance with the Contract Documents, which shall include, but not be limited to, relocation of existing utilities. Contractor shall provide and furnish all materials, supplies, equipment and tools, implements, and all other facilities, and all other labor, supervision, transportation, utilities, storage, services, sales taxes, appliances and all other services as and when required for or in connection with the complete construction of the Project, including any off site construction shown on the Contract Documents (hereinafter collectively referred to as the "Work"). The phrase "the complete construction of the Project" means to perform the totality of the obligations imposed upon Contractor by the Contract Documents or reasonably inferable therefrom as necessary to complete the Work and the Project and to provide a fully complete and operational construction solution, in Contractor's exercise of its best professional judgment, to the standards generally conveyed in the Contract Documents and customarily found in the construction industry for projects similar in size and scope to the Project.

ARTICLE 3 RELATIONSHIP OF THE PARTIES

The Contractor accepts the relationship of reliance and confidence established by this Agreement and covenants with the Owner to cooperate with Owner, Owner's project manager, Gary Ghio with G2 Facilities Management Consulting ("Project Manager") (provided, however, Owner may designate a different Project Manager by written notice to Contractor), and the Architect, and to exercise the Contractor's best skill, efforts and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents. Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering. Contractor shall not be responsible for the adequacy of the design criteria required by the Contract Documents.

ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 4.1 The date for the commencement of the Work (the "Commencement Date") shall be set forth in a Notice to Proceed (NTP) issued by Owner concurrent with execution of this Agreement. However, the NTP shall not be effective, and Contractor shall have no obligation to commence its Work, until Owner has fulfilled the following conditions precedent and has delivered to Contractor copies of the building permit required to be obtained by the Owner for the commencement of the Work at the site, if any, and certificates of insurance for all insurance required to be provided by Owner, including the builder's risk insurance;

(2) evidence sufficient to reasonably satisfy Contractor of Owner's financing for the Project; and

(3) reasonable access to the site.

If Owner does not issue an effective NTP, Contractor shall have no obligation to commence the Work, or any part of the Work, until Owner satisfies the above conditions precedent to the effectiveness of the NTP.

.

(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)
(paragraph deleted)

§ 4.2 The Contract Time shall be measured from the Commencement Date, subject to adjustments in Contract Time as expressly provided in the Contract Documents.

§ 4.3 The Contractor shall diligently prosecute the Work and achieve Substantial Completion of the entire Work for the Project not later than the Substantial Completion date established in a written amendment to be signed by Owner and Contractor and delivered to each other setting forth the schedule for completion of each milestone of the Work, the deadline for Substantial Completion and the Guaranteed Maximum Price (the “GMP Amendment”), subject to adjustments of this Contract Time as provided in the Contract Documents (the "Substantial Completion Deadline"). Time is of the essence of this Agreement for meeting the milestones of Substantial and Final Completion.
(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

Portion of Work	Substantial Completion date

, subject to adjustments of this Contract Time as provided in the Contract Documents.

(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time, or for bonus payments for early completion of the Work.)

Liquidated damages established as set forth in Section 4.5 below.

§ 4.4 The Contractor agrees to complete all of the Work in accordance with the Contractor’s Schedule included in the GMP Amendment.

§ 4.5 Liquidated Damages. The Owner and the Contractor acknowledge and agree that if the Contractor does not timely achieve Substantial Completion by the Substantial Completion Deadline set forth in the GMP Amendment, (a) the Owner will suffer substantial loss of income and revenue and other damages and losses, including, without limitation, loss of business and loss or damage to reputation, business relationships, goodwill, and loss of use of the property, and (b) the actual amount of damages which the Owner would suffer would be extremely difficult and impracticable to ascertain. Accordingly, the Owner and the Contractor agree that:

(a) If the Contractor does not timely achieve Substantial Completion by the deadline set forth in the GMP Amendment, then the following sums shall constitute a reasonable estimate of the amount of damages for such delay, and the Contractor shall pay such sums to the Owner as liquidated damages for each day or portion of a day that Substantial Completion is delayed beyond the deadline within thirty (30) calendar days upon Owner’s invoice to the Contractor:

One Thousand Dollars ($1,000.00) for each day of unexcused delay.

(b) In no event shall the liquidated damages, in the aggregate, exceed 10 percent (10%) of Contractors Fee. The liquidated damages set forth above are the sole and exclusive remedy for Contractor’s failure to achieve Substantial Completion by the deadline set forth in the GMP Amendment.

Final completion shall occur no later than thirty (30) days after Substantial Completion. Failure to achieve Final Completion before the expiration of such thirty (30)-day period will result in liquidated damages of Five Hundred Dollars ($500.00) per day for each day in excess of thirty (30) days after Substantial Completion until Final Completion is achieved, subject to the cap set forth above.

ARTICLE 5 CONTRACT SUM
§ 5.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor’s performance of the Contract, in accordance with, and subject to the terms of the conditions of the Contract Documents. The Contract

Sum shall be the lesser of (a) Cost of the Work as defined in Article 7 plus the Contractor's Fee and (b) the Guaranteed Maximum Price. A Schedule of Billable Rates is attached hereto as Exhibit C and incorporated herein.

§ 5.1.1 The Contractor's Fee:
(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee.)

two and 65/100 percent (2.65%) of the Cost of Work.

§ 5.1.2 The method of adjustment of the Contractor's Fee for changes in the Work:

In connection with any changes in the Work which increase the Contract Sum, the Contractor's Fee shall be increased by an amount equal to two and 65/100 percent (2.65%) of that portion of the Cost of the Work incurred as a result of such changes in the Work, and in connection with any changes in the Work which decrease the Contract Sum, the Contractor's Fee shall be reduced by an amount equal to two and 65/100 percent (2.65%) of that portion of the Cost of the Work reduced as a result of such changes in the Work.

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

Limitations, if any, will be agreed upon by Contractor and Owner on a trade-by-trade basis **(**and may be set forth in the amendment to this Agreement which documents, if applicable, the agreed-upon Guaranteed Maximum Price).

§ 5.1.4 Rental rates for Contractor-owned equipment shall not exceed the amounts set forth in Section 7.5.2 hereof.

§ 5.1.5 Unit prices, if any:
(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price Per Unit ($0.00)

§ 5.2 GUARANTEED MAXIMUM PRICE
§ 5.2.1 The Contract Sum is guaranteed by the Contractor not to exceed a maximum amount (the "Guaranteed Maximum Price") established in the GMP Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner. Contractor acknowledges and agrees that the Guaranteed Maximum Price includes all inflationary costs and adjustments, and labor and material escalations, in connection with the performance of the Work so long as Owner satisfies its express obligations under the Schedule and timely issues the NTP . The Guaranteed Maximum Price shall not be adjusted due to any such inflationary costs and/or escalation events so long as Owner satisfies its express obligations under the Schedule and timely issues the NTP. There shall be no shared savings clause in this Agreement. All savings will accrue to the Owner.
(Insert specific provisions if the Contractor is to participate in any savings.)

§ 5.2.1.1 At a time to be mutually agreed upon by the Owner and the Contractor, the Contractor shall prepare a Guaranteed Maximum Price proposal for the Owner's review and written acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Contractor's reasonable estimate of the Cost of the Work, including contingencies described in Section 5.2.1.4, and the Contractor's Fee.

§ 5.2.1.2 To the extent that the Drawings and Specifications are anticipated to require further development, the Contractor shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as

changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 5.2.1.3 The Contractor shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

.1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;

.2 A list of the clarifications and assumptions made by the Contractor in the preparation of the Guaranteed Maximum Price proposal, including assumptions to supplement the information provided by the Owner and contained in the Drawings and Specifications;

.3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Contractor's Fee;

.4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based (i.e., the proposed "Substantial Completion Deadline"); and

.5 A date by which the Owner must accept or reject the Guaranteed Maximum Price, which shall not be less than 30 days from the date of the Guaranteed Maximum Price proposal (it being agreed if Owner does not accept or reject the Guaranteed Maximum Price proposal in writing, it shall be deemed rejected).

§ 5.2.1.4 In preparing the Contractor's Guaranteed Maximum Price proposal, the Contractor shall include its contingency for the Contractor's exclusive use (hereinafter the "Construction Contingency") as necessary to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order, and to the extent not paid for by insurance, or Subcontractor defaults. Subject to the prior written consent of Owner, which consent shall not be unreasonably withheld, the Construction Contingency shall be available for the Contractor's exclusive use at any time to cover costs intended to be covered by the Contract Documents, including at the time of Final Payment, for reimbursement of costs and expenses (1) reasonably incurred by Contractor in performing the Work, (2) of a type that are reimbursable under this Agreement as a Cost of the Work, and (3) that are not otherwise the basis for a Change Order (it being understood that the Construction Contingency shall not be used to fund any Work which would otherwise be subject to a Change Order); including, by way of example, but not limited to, (a) Work items inadvertently omitted during the estimating and bidding process, (b) schedule recovery costs associated with normal weather, (c) cost increases due to unanticipated local labor and material market conditions, (d) interfacing omissions between and from the various categories of work; and (e) additional costs incurred due to the withdrawal or disqualification of a subcontractor bid forming the basis for the GMP prior to signing of a written subcontract, provided, however, Contractor shall not be entitled to reimbursement for any costs attributable to its negligence or willful misconduct or the failure of Contractor to perform its obligations under this Agreement. Contractor shall furnish the Owner with a monthly Contingency Log showing all reimbursements from the Construction Contingency. Costs and expenses reimbursable from the Construction Contingency shall not exceed the amount of the Construction Contingency identified as an element of the Guaranteed Maximum Price set forth in the GMP Amendment. When the Construction Contingency is exhausted, all costs and expenses that would qualify for reimbursement from the Construction Contingency shall be borne by Contractor unless such costs and expenses are otherwise compensable under the terms of this Agreement and do not cause the Guaranteed Maximum Price to be exceeded. Any amount remaining in the Construction Contingency at Final Payment shall be counted as savings that shall accrue solely to Owner.

§ 5.2.1.5 The Contractor shall meet with the Owner to review the Guaranteed Maximum Price proposal. In the event that the Owner discovers any inconsistencies or inaccuracies in the information presented, it shall notify the Contractor, who shall promptly make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both, as the case may be.

§ 5.2.1.6 If the Owner notifies the Contractor in writing that the Owner has accepted the Guaranteed Maximum Price proposal before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Contractor. Following acceptance of a Guaranteed Maximum Price, the Owner and Contractor shall execute the Guaranteed Maximum Price Amendment

amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 5.2.1.7 The Contractor shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner, in its sole and absolute discretion, provides prior written authorization for such costs "Initial Release Work.") Written authorization for Initial Release Work shall be provided by an Approval Letter in the form at **Exhibit A**. All Initial Release Work performed pursuant to the Approval Letters shall be performed in accordance with the Contract Documents unless otherwise specified in the Approval Letter. All Initial Release Work, if any, shall be deemed to be included in the scope of the Work pursuant to the Contract Documents. The Approval Letters constitute the basis upon which Initial Release Work shall be performed and upon which the Contractor shall be paid for the Initial Release Work and, unless and until the GMP is agreed to by the Owner, the Contractor shall not proceed with any other Work. The GMP shall include the cost of any Initial Release Work authorized pursuant to the Approval Letter issued prior to the establishment of the GMP.

§ 5.2.1.8 The Owner shall provide the revisions to the Drawings and Specifications to incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Contractor as they are revised and approved by Owner. The Contractor shall promptly notify the Owner of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

§ 5.2.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:
(State the numbers or other identification of accepted alternates. If bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)

To be set forth in GMP Amendment.

§ 5.2.3 Allowances included in the Guaranteed Maximum Price, if any:
(Identify allowance and state exclusions, if any, from the allowance price.)

Item	**Price**

To be set forth in GMP Amendment.

§ 5.2.4 Not used.

§ 5.2.5 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Contractor has provided in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 6.2 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201–2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in AIA

Document A201–2007 and shall not be modified by Articles 5, 7 and 8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201–2007 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Contractor's Fee as defined in Section 5.1.1 of this Agreement.

§ 6.4 No change in the Work, whether by way of alteration or addition to the Work, shall be the basis of an addition to the Guaranteed Maximum Price or a change in the Contract Time unless and until such alteration or addition has been authorized by a written Change Order or Construction Change Directive executed and issued in accordance with and in strict compliance with the requirements of the Contract Documents. This requirement is of the essence of the Contract Documents. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by any alteration or addition to the Work, whether there is in fact any such unjust enrichment, shall be the basis for any claim to an increase in the Guaranteed Maximum Price or change in the Contract Time.

ARTICLE 7 COSTS TO BE REIMBURSED

§ 7.1 COST OF THE WORK

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior written consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 7.

§ 7.1.2 The "Lump Sum General Conditions" shall include the following categories of Work as further described in **Exhibit C**:

- Wages or salaries of on-site personnel directly employed by the Contractor to supervise the Work at the site. Wages or salaries of supervisory and administrative personnel directly employed by the Contractor engaged in the performance of the Work and located at the Site or working off-Site but only for that portion of their time required for the Work
- Travel, accommodations and meals for Contractor's personnel necessarily and directly incurred in connection with the performance of the Work.
- Travel to Owners office and other ADC's sites as specifically described in **Exhibit C**.
- Expenses incurred in accordance with the Contractor's standard written personnel policy for relocation and temporary living allowance of the Contractor's personnel required for the Work.
- Reasonable costs of expenses incurred in operating, maintaining and demobilizing the Site office, including the cost of office furniture, telephones, internet, postage, express delivery charges, computing equipment, software, printing equipment, office supplies, photocopying and other miscellaneous expenses as detailed in **Exhibit C**.
- Accounting and data processing costs related to the Work, including the cost of information technologies support services, check processing charges and document archiving.
- On-site meeting expenses
- Preparation and management of the Contractor's loss prevention program including safety orientations for all site personnel and visitors, site safety signage, the cost for the Contractor's sponsored safety incentive program for all project participants, and any required drug testing.
- Personal protective equipment including, hardhats, safety glasses, safety vests, gloves for Contractor's employees and visitors to the Site.
- Preparation and management of the Contractor's quality control program.
- Preparation and periodic update of the construction master project schedule.
- Drug testing for Skanska employees
- Temporary jobsite signage
- Blue print reproduction

The Lump Sum General Conditions shall be adjusted as part of any adjustment of the Contract Sum due to changes, excused delays or other circumstances extending the Contract Time. In such event, the lump sum amount for General Conditions shall be increased or decreased, as the case may be, by the additional or decreased General Conditions Costs incurred or saved by Contractor during the extended period, with the Schedule of Billable Rates attached hereto as **Exhibit C** being used to determine the supervisory and administrative personnel costs associated with the adjustment.

Notwithstanding anything to the contrary in this Agreement, the Owner shall not be charged under any other provision of this Agreement for items covered under the Lump Sum General Conditions. Where any open cost is subject to the Owner's prior written approval, the Contractor shall obtain this approval prior to incurring the cost.

§ 7.2 LABOR COSTS
§ 7.2.1 Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's prior written approval, at off-site workshops are included in the Lump Sum General Conditions.

§ 7.2.2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site are included in the Lump Sum General Conditions. *(If it is intended that the wages or salaries of certain personnel stationed at the Contractor's principal or other offices shall be included in the Cost of the Work, identify in Article 15, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)*

§ 7.2.3 Wages and salaries of the Contractor's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work are included in the Lump Sum General Conditions.

§ 7.2.4 Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3 are included in the Lump Sum General Conditions.

§ 7.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Contractor or paid to any Subcontractor or vendor, with the Owner's prior written approval.

§ 7.3 SUBCONTRACT COSTS
Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts.

§ 7.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION
§ 7.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS
§ 7.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Contractor shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Contractor-owned item may not exceed the purchase price of any comparable item. Rates of Contractor-owned equipment and quantities of equipment shall be subject to the Owner's prior written approval.

§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 7.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office are included in the Lump Sum General Conditions.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior written approval.

§ 7.6 MISCELLANEOUS COSTS

§ 7.6.1 Contractor's Controlled Insurance Program shall be charged at 1.89–% of the Cost of Work(excluding the insurance and SubGuard costs set forth in this Section). Contractor's Builder's Risk Insurance shall be charged at 0.8% of the Cost of Work (excluding the insurance and SubGuard costs set forth in this Section). SubGuard shall be charged at 0.9% of the Cost of Work (excluding the (i) Cost of Work for each contract of $250,000.00 or less with any Subcontractor or supplier, and (ii) insurance and SubGuard costs set forth in this Section).

§ 7.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Contractor is liable.

§ 7.6.3 Fees and assessments for permits (other than the building permit which Owner will obtain), licenses and inspections for which the Contractor is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201–2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Contractor's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201–2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 7.6.6 Intentionally Deleted.

§ 7.6.7 Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 7.6.8 Legal mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor after the execution of this Agreement in the performance of the Work with the Owner's prior approval, which shall not be unreasonably withheld.

§ 7.6.9 Subject to the Owner's prior written approval, reasonable, out-of-pocket expenses incurred in accordance with the Contractor's standard written personnel policy for relocation and temporary living allowances of the Contractor's personnel required for the Work.

§ 7.6.10 That portion of the reasonable, out-of-pocket expenses of the Contractor's supervisory or administrative personnel incurred while traveling in discharge of duties connected with, and necessary for, the Work. Such expenses shall be subject to Owner's prior written approval.

§ 7.7 OTHER COSTS AND EMERGENCIES

§ 7.7.1 Other reasonable, out-of-pocket costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2007 (not caused by the negligence or willful misconduct of Contractor and/or its Subcontractors of any tier).

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Contractor or its Subcontractor and only to the extent that the cost of repair or correction is not recovered by the Contractor from insurance, sureties, Subcontractors, suppliers, or others.

§ 7.8 RELATED PARTY TRANSACTIONS

§ 7.8.1 For purposes of Section 7.8, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Contractor; any entity in which any stockholder in, or management employee of, the Contractor owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Contractor. The term "related party" includes any member of the immediate family of any person identified above.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Contractor and a related party, the Contractor shall notify the Owner in writing of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such written notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Contractor shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Article 10. If the Owner fails to authorize the transaction, in writing, the Contractor shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Article 10.

ARTICLE 8 COSTS NOT TO BE REIMBURSED

§ 8.1 The Cost of the Work shall not include the items listed below:

.1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Section 7.2. or as may be expressly provided in Article 15;

.2 Expenses of the Contractor's principal office and offices other than the site office;

.3 Overhead and general expenses, except as may be expressly included in Article 7;

.4 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work;

.5 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence or failure of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;

.6 Any cost not specifically and expressly described in Article 7;

.7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;

.8 Any cost that is counted more than once (e.g., an item that is part of the General Condition Items may not also be counted as part of the other Cost of Work);

.9 Amounts required to be paid by Contractor for federal, state or local income or franchise taxes;

.10 Unless otherwise agreed by Owner in writing, any acceleration costs, including any and all overtime wages, arising as a result of delay in carrying out the Work caused by Contractor or its Subcontractors of any tier;

.11 Any costs or expenses in connection with any indemnity provided by Contractor pursuant to the Contract Documents;

.12 Costs associated with Contractor's failure to obtain any and all applicable permits for which Contractor is responsible in a timely manner, as more fully described in the General Conditions; and

.13 The costs incurred by Contractor resulting from the failure of Contractor or its Subcontractors to coordinate their work with the work of Owner and its contractors, if any, or otherwise to fail to comply with written directives of Owner not in conflict with the Schedule.

ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS

§ 9.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be obtained.

§ 9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS

§ 10.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or by other appropriate agreements with the Contractor. The Owner may designate specific persons from whom, or entities from which, the Contractor shall obtain bids. For each trade, Contractor shall obtain at least three (3) bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Contractor and the Architect, which bids will be accepted. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

§ 10.2 When a specific bidder (1) is recommended to the Owner by the Contractor; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Contractor may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 10.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Contractor shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Contractor in Article 11, below.

ARTICLE 11 ACCOUNTING RECORDS

The Contractor shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Contractor's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. Owner agrees that the lump sum amounts, rates, multipliers and other fixed percentages and amounts to which it has agreed in writing that Contractor may charge as a Cost of the Work are subject to Owner's audit rights only for Owner to confirm that such rates,

quantities, hours, multipliers, percentages or amounts have been charged by Contractor in accordance with this Agreement, and that the composition of such rates, multipliers, percentages or amounts are not subject to audit by the Owner. The Contractor shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 12 PAYMENTS

§ 12.1 PROGRESS PAYMENTS

§ 12.1.1 Based upon monthly Applications for Payment submitted to the Architect, Project Manager and Owner by the Contractor, including any supporting documentation reasonably required by Owner and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 12.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

On or before the twentieth (20th) day of the calendar month covered by an Application for Payment, the Owner (or its representative or Project Manager) and the Contractor shall meet to review a preliminary draft of the Application for Payment for such month (hereinafter referred to as a "Pencil Draw") prepared by the Contractor, which Pencil Draw shall be consistent with the requirements of the Contract Documents. The Contractor shall promptly revise the Pencil Draw in accordance with any objection or recommendation of the Owner that is consistent with the requirements of the Contract Documents. On or before the twenty-first (21st) day of such calendar month covered by an Application for Payment (or, if such day is not a business day, then the next succeeding business day), the Contractor and Owner shall walk the job to determine whether modification to the Pencil Draw should be made. A final Pencil Draw shall then be submitted by the Contractor to the Owner as the Application for Payment for such month, which is due by the first (1st) day of the month immediately following the month in which the Pencil Draw was first submitted.

§ 12.1.3 Provided that a complete Application for Payment is received by the Architect and the Owner, not later than the1st day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the1st day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Owner receives the Application for Payment, or such lesser time as is required by Arizona law.
(Federal, state or local laws may require payment within a certain period of time.)

§ 12.1.4 With each Application for Payment, the Contractor shall submit any evidence reasonably required by the Owner or Architect to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment. Further, with each Application for Payment, Contractor shall certify to Owner that except for claims previously submitted in writing, as of the date of each Application for Payment, Contractor has no claims for an increase in the Guaranteed Maximum Price.

§ 12.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Contractor's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner and Architect may require. This schedule, unless objected to by the Owner or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 12.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work for which the Contractor has made or intends to make actual payment prior to the next Application for Payment by (b)

the share of the Guaranteed Maximum Price allocated to that portion of the Work. The Contractor shall ensure that each Application for Payment is accompanied by the following items: (a) certification by the Contractor that the Work for which payment is being sought has been completed in accordance with the Contract Documents and all applicable permits; (b) a conditional waiver and release of lien upon progress payment that complies with the Arizona statutory waiver form, ARS § 33-1008, for the Contractor, each Subcontractor and each Sub-Subcontractor for which payment is being sought in the total amount of the progress payment being requested; (c) an unconditional waiver and release of lien upon progress payment that complies with the Arizona statutory waiver form, ARS § 33-1008 for the Contractor with respect to all Work previously billed and paid through the preceding Application for Payment; (d) an unconditional waiver and release of lien upon progress payment that complies with the Arizona statutory waiver form, ARS § 33-1008, for each Subcontractor and Sub-Subcontractor with respect to all Work previously billed and paid through the preceding Application for Payment; and (e) a log of all Change Orders and other Modifications issued through the date of the Application for Payment.

§ 12.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

.1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values, less retainage of ten percent (10%). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of the General Conditions;

.2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing, less retainage of five percent (5%);

.3 Add the Contractor's Fee, less retainage of zero percent (0 %).The Contractor's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;

.4 Subtract the aggregate of previous payments made by the Owner;

.5 Subtract the shortfall, if any, indicated by the Contractor in the documentation required by Section 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and

.6 Subtract amounts, if any, for which the Architect (or Owner) has withheld or nullified a Certificate for Payment as provided in Section 9.5 of the General Conditions and as allowed by the Arizona Prompt Pay Act, § 32-1129.01 *et seq*., if applicable.

§ 12.1.8 The Owner and the Contractor shall agree upon a (1) mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements. At Substantial Completion all retainage shall be released to Contractor less fifty percent (50%) of such retainage.

§ 12.1.9 In taking action on the Contractor's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 12.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 12.2 FINAL PAYMENT

§ 12.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor within thirty (30) days or such lesser time as is required by Arizona law.

.1 the Contractor has fully performed the Contract (including all Punch List work) except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of the General Conditions, and to satisfy other requirements, if any, which extend beyond final payment;

.2 the Contractor has submitted a final accounting for the Cost of the Work and a final Application for Payment;

.3 a final Certificate for Payment has been issued by the Architect;

.4 a Temporary Certificate of Occupancy has been issued by the appropriate governmental agencies or all governmental sign-offs for Work; and

.5 a Conditional Waiver and Release of Lien Upon Final Payment has been issued by Contractor and all of its Subcontractors, materialmen, vendors and suppliers of all tiers.

Owner shall have no obligation to make final payment of the Contract Sum until Contractor has property served and recorded a Notice of Completion of all of the Work pursuant to applicable Arizona law.

§ 12.2.2 As a condition to Owner's obligation to pay Contractor the Final Payment, (a) final building inspections shall have been completed and sign-offs on building permits by the appropriate governmental agency shall have been delivered by Contractor to Owner, Architect and Project Manager, (b) the Project shall have been completed in accordance with the Contract Documents; (c) Contractor must have delivered to Owner and Project Manager a final certificate certifying Substantial Completion of the Project in accordance with the Contract Documents; and (d) as-built plans for the entire Project shall have been delivered to Owner in PDF and hard copy formats.

§ 12.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Contractor's final accounting to be less than claimed by the Contractor, the Contractor shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201–2007. A request for mediation shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Contractor. Pending a final resolution of the disputed amount, the Owner shall pay the Contractor the amount certified in the Architect's final Certificate for Payment.

§ 12.2.4 The Owner's final payment to the Contractor shall be made no later than thirty (30) days after the issuance of the Architect's final Certificate for Payment and satisfaction of all other requirements under Sections 12.2.1 and 12.2.2.

§ 12.2.5 If, subsequent to final payment and at the Owner's request, the Contractor incurs costs described in Article 7 and not excluded by Article 8 to correct defective or nonconforming Work, the Owner shall reimburse the Contractor such costs and the Contractor's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Contractor has participated in savings as provided in Section 5.2, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Contractor.

ARTICLE 13 DISPUTE RESOLUTION

§ 13.1 INITIAL DECISION MAKER

The Architect will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007, unless the parties appoint below another individual, not a party to the Agreement, to serve as Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

§ 13.2 BINDING DISPUTE RESOLUTION

For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:

(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

[X] Arbitration pursuant to Section 15.4 of AIA Document A201–2007

[ ] Litigation in a court of competent jurisdiction

[ ] Other *(Specify)*

ARTICLE 14 TERMINATION OR SUSPENSION

§ 14.1 Subject to the provisions of Section 14.2 below, the Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2007.

§ 14.2 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2007, the amount, if any, to be paid to the Contractor under Section 14.2.4 of AIA Document A201–2007 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

.1 Take the Cost of the Work incurred by the Contractor to the date of termination;

.2 Add the Contractor's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and

.3 Subtract the aggregate of previous payments made by the Owner.

§ 14.3 The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 14.2.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 14, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

§ 14.4 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term "profit" shall be understood to mean the Contractor's Fee as described in Sections 5.1.1 and Section 6.4 of this Agreement.

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Where reference is made in this Agreement to a provision of AIA Document A201–2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 15.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
(Insert rate of interest agreed upon, if any.)

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§ 15.3 The Owner's representative:
(Name, address and other information)

Gary Ghio
G2 Facilities Management Consulting

Telephone:
Email:

Unless and until Owner notifies Contractor to the contrary or otherwise provides Contractor with different instructions, Gary Ghio is hereby designated by Owner as its authorized representative to make decisions for, and receive information on behalf of, Owner in connection with the Work, provided, however, all written notices required to Owner under the Contract Documents shall also be given to Owner at its address on Page 1 of this Agreement and to the following: Dexcom, 6340 Sequence Drive, San Diego, CA 92121, Attn: Timothy F. O'Brien, Director Legal Affairs. In addition, all submissions or notices made by Contractor to the Architect shall simultaneously be made to Owner's representative.

§ 15.4 The Contractor's representative:
(Name, address and other information)

Kevin E. Devlin, Project Executive
Skanska USA Building Inc.
4742 N. 24th Street, Suite 165
Phoenix, AZ 85016
Mobile: 1 787 466 8204 Kevin.Devlin@skanska.com

§ 15.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days' written notice to the other party.

§ 15.6 Other provisions.

§ 15.6.1 Contractor covenants that all the Work shall be done in a good and workmanlike manner and that all materials furnished and used in connection therewith shall be new and meet the criteria provided in the Contract Documents. Contractor shall cause all materials and other parts of the Work to be readily available as and when required or needed for or in connection with the construction of the Project.

§ 15.6.2 In performing its obligations under this Agreement, the Contractor shall be deemed an independent contractor and not an agent or employee of the Owner.

§ 15.6.3 Contractor agrees to make such revisions to this Agreement as may be reasonably required by Owner's construction lender, if any, and Contractor agrees to comply with customary requirements of construction and permanent lenders which may be reasonably imposed as a condition to payments due under this Agreement. Contractor further agrees to execute a mutually agreed upon consent of the Owner's assignment of this Agreement to Owner's lender within ten (10) days following a request therefor on such form as the lender may reasonably require.

§ 15.6.4 If any term, covenant or condition of the Contract Documents, or the application thereof to any persons or circumstance shall to any extent be invalid or unenforceable, then the remainder of the Contract Documents or the application of the term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term, covenant and condition of the Contract Documents shall be valid and enforceable to the fullest extent permitted by law.

§ 15.6.5 Owner may designate from time to time by written notice to Contractor one or more Owner's representatives or other parties to deal with Contractor on matters pertaining to administration of the provisions of the Contract Documents. However, only those signatories designated in writing by Owner shall have the authority to approve Change Orders increasing or decreasing the Guaranteed Maximum Price or extending the Contract Time.

§ 15.6.6 The parties agree and declare that Contractor and Owner are separate and independent entities and that Contractor has full responsibility for performance of Work and direction of the work force, subject to and under the duty of Contractor to cooperate with Owner and other contractors. Contractor recognizes that in the performance of its Work it will be required to work side by side with other contractors and representatives of Owner on the job site. Owner, Contractor and /or other contractors may or may not be signatory to collective bargaining agreements of the various labor organizations. Contractor agrees that should there be picketing or a threat of picketing by any labor organization at or near the site, (i) Contractor shall immediately notify Owner in writing of such circumstances and (ii) Owner may establish or require Contractor to establish a reserve gate system and may require Contractor's and Owner's employees, suppliers and subcontractors to use one or more designated gates. In that event, it shall be the affirmative obligation of Contractor as a material consideration of this Agreement to ensure that its employees, suppliers and Subcontractors use only the gate(s) or other entry way(s) so designated. Notwithstanding the establishment or non-establishment of a reserve gate system, it shall be the continuing obligation of Contractor (and its Subcontractors) to properly staff the job with qualified and skilled workmen and employees without interruption or delay and without any increase to the Guaranteed Maximum Price. Contractor agrees to cooperate fully and promptly with Owner and its representatives and attorneys with respect to any labor dispute that should arise on the site, including but not limited to the giving of testimony and evidence to the agent or judge of the National Labor Relations Board or in connection with proceedings in State or Federal court. Contractor agrees to undertake or cause to be undertaken in a prompt and expeditious manner, all action involved to resolve and/or minimize the consequences of any labor dispute that should arise on the site. Contractor hereby warrants that it is not now nor will Contractor be delinquent in the payment or reporting to any labor management benefit trust fund and further warrants that Contractor is not now nor will Contractor appear on any delinquency list published by any labor management benefit trust fund. Contractor indemnifies, defends and holds Owner entirely harmless from and against all costs, claims, liabilities, damages, delays, losses and expenses (including attorneys' fees and costs) arising directly or indirectly from Contractor's failure to comply with the provisions of this Section 15.6.6.

§ 15.6.7 The Contractor and Owner entered into that certain Nondisclosure Agreement dated as of November 19, 2015 ("NDA") in order to protect certain confidential information of Owner, as further set forth in the NDA. Contractor and Owner hereby incorporate the terms, provisions and obligations of the NDA in this Agreement.

ARTICLE 16 ENUMERATION OF CONTRACT DOCUMENTS

§ 16.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 16.1.1 The Agreement is this executed AIA Document A102–2007, Standard Form of Agreement Between Owner and Contractor.

§ 16.1.2 The General Conditions (as modified) are attached hereto as **Exhibit C**.

§ 16.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

§ 16.1.4 The Specifications:
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)
See list of Exhibits at 16.1.7.2.

Section	Title	Date	Pages

§ 16.1.5 The Drawings:
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)
See list of Exhibits at 16.1.7.2.

Number	Title	Date

§ 16.1.6 The Addenda, if any:

Number	Date	Pages

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 16.

§ 16.1.7 Additional documents, if any, forming part of the Contract Documents:

.1 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:

.2 Other documents, if any, listed below:

Exhibit A – Approval Letter
Exhibit B Clarifications and Assumptions to GMP
Exhibit C – Lump Sum General Conditions & Schedule of Billable Rates
Exhibit D – Drawings
Exhibit E – Specifications
Exhibit F – CCIP Insurance Exhibit

ARTICLE 17 INSURANCE AND BONDS

§ 17.1.1 Contractor Controlled Insurance Program. Contractor will satisfy the requirements of Section 11.1.1 of the General Conditions through a project specific Contractor Controlled Insurance Program ("CCIP") as described in **Exhibit F**, which will afford similar coverage for the Subcontractors, in the minimum coverage amounts set forth below in this Article 17, with insurance written on an occurrence basis purchased from and maintained in a company or companies which have a Best's Rating of "A/VIII" or above and which are lawfully authorized to do business in the State of Arizona. The program will be administered through the Contractor and will be billed at the value set forth in the A102 Agreement, and will be included on all change orders though Final Completion. The Contractor is responsible for all deductibles. The CCIP will include coverage for completed operations through the statute of repose for the State of Arizona. The Owner, Contractor and all tiers of Subcontractors that enter the Project site are

expected to be covered, except structural demolition and abatement Subcontractors, if there are any. Any instances where work is contracted by the Owner directly (other than with Contractor) or with separate contractors are not covered by the CCIP. The Owner is required to obtain insurance from those parties, if any.

No cost saving have been guaranteed to Owner by Contractor and Contractor is not responsible for deducts in regard to any accounting for the CCIP.

§ 17.1.1.1 Workers' Compensation
Coverage A. Statutory Benefits
Coverage B. Employers Liability

Bodily injury by accident: $2,000,000 each accident
Bodily injury by disease: $2,000,000 policy limit
Bodily injury by disease: $2,000,000 each employee

§ 17.1.1.2 Commercial General Liability
Commercial General Liability coverage (equivalent in coverage to ISO Form CG 00 01 with an edition date of at least 11/88) of not less than:

Each Occurrence Limit: $2,000,000
Personal Advertising Injury Limit: $2,000,000
Products/Completed Operations Aggregate Limit: $4,000,000
General Aggregate Limit (other than Products/Completed Operations $4,000,000

§ 17.1.1.3 Excess Liability Umbrella
Excess Liability or Umbrella coverage of not less than and including all above liability policies in the underlying.

Each Occurrence $25,000,000
General Aggregate $25,000,000

ALL OF 17.1 SUBJECT TO SKANSKA RISK MANAGEMENT REVIEW
§ 17.2 INSURANCE REQUIRED OF THE OWNER
The Owner shall purchase and maintain liability insurance, including waivers of subrogation, as set forth in Sections 11.2 of the General Conditions.
This Agreement entered into as of the day and year first written above.

THE OWNER

DexCom, Inc.
a Delaware corporation

s/ Jess Roper

By: Jess Roper
Its: CFO
Date: 4/29/16

THE CONTRACTOR

Skanska USA Building Inc.

s/ Ross A Vroman

By: Ross A. Vroman
Its: Area General Manager, EVP
Date: 5/2/16

SKANSKA

AWARD APPROVAL LETTER NO. 014

May 16, 2016

DexCom
6340 Sequence Drive
San Diego, CA 92121 m

Attention: Gary Ghio
Project: DexCom Phoenix – Phase One
Phoenix, AZ

Subject: Subcontractor /Vendor Award Recommendation
Bid Package No.: 4415014-012
Trade: Fire Sprinkler System
Subcontractor: Fire Protection Systems
Award Amount: $832,500

In accordance with the Agreement, we submit as follows our Bid Package Report and Award recommendation for the above Subcontract. We have included the final bid leveling sheet detailing the costs proposals provided. The award to Fire PS was based on the price, availability and schedule to complete the Fire Sprinkler scope items.

Note, as directed by DexCom, **this Approval Letter includes the design and installation** of the sprinkler system. If the supply of materials and install is wanted at a later date, an official AL will need to be signed.

Attached is the bid leveling sheet and proposals issued previously on January 08th, 2016 from the fire sprinkler bidders for your reference. Fire alarm, wiring of equipment, permits have been excluded. Also excluded are sprinklers under the equipment platform. Proposals are based off of the 10/22/15 drawings and specifications.

1.0 Bid Submission Results and Analysis:

Vendor:	Firetrol Protection Systems
Fire PS	$ 832,500
Olympic	$ 880,028
Aero	$ 954,650
American	$ 968,200

2.0 Pricing Details:

a) Included/Excluded in the amount of this award is ALLOWANCE/Alternates:

1. EXCLUDED ALLOWANCE – Fire/Jockey Pumps/Control Panel $205,000
2. EXCLUDED ALLOWANCE – Sprinkler System under Equipment Platform per Fire Marshall $140,000
3. EXCLUDED Alternate – Nitrogen Gen System $49,385 plus Skanska's Markups
4. EXCLUDED Alternate – Credit to not remove the underground ductile pipe noted on FP-101A and cap riser with blind flange at riser stub up. ($17,000)

b) Recommended amount of this award. (Please refer to attached Bid Leveling Documentation for additional breakdown.)

As directed by DexCom, the price below only includes the design costs associated to the fire sprinkler system.

Fire PS (Design Only)		$	45,000
CCIP	1.88%	$	846.00
Subguard	0.90%	$	405.00
Builders Risk	1.25%	$	563.00
Skanska - Fee	3.25%	$	1,521.00
TAX			**EXCLUDED**
	Total:	$	48,335.00

As issued previously, the complete system for the fire sprinkler system for design, supply and install is as follows:

Fire PS		$	832,500
CCIP	1.88%	$	15,651.00
Subguard	0.90%	$	7,493.00
Builders Risk	1.25%	$	10,406.00
Skanska - Fee	3.25%	$	28,147.00
TAX			**EXCLUDED**
	Total:	$	894,197.00

** Note: Taxes have been excluded from this AL. A specific AL for taxes will be issued if taxes are ever to be included.

3.0 Alternates. The Award Recommendation amount includes the following alternates (as noted above):

☒ The Award Recommendation amount does not incorporate any alternates

OR

☐ The Award Recommendation amount includes the following alternates/allowances:

5. EXCLUDED ALLOWANCE – Fire/Jockey Pumps/Control Panel $205,000

Please refer to attached Bid Leveling Documentation for additional breakdown:

We have evaluated the Sub-contractors proposal, and have determined that the Sub-contractor has included the full scope of work. Any deviations from the original drawings, specifications, bid package documents or subcontract documents are clearly delineated in the revised scope of work which shall become part of the subcontract documents. The following documents shall be incorporated into the subcontract documents:

A	CM’s standard form of subcontract agreement with no changes	
B	CM’s project schedule dated	N/A
C	Site Logistics Plan dated	N/A
D	Issue for Construction specifications dated	10/22/2015
E	Pre-Bid Meeting Minutes dated	Dec. 2015
F	Meeting minutes from Scope review meeting dated	N/A
G	Bid Addendum (a) No(s). 2	Dated
H	Other items as appropriate	

Exhibit A - Approval Letter - Fire Sprinkler System 2

SKANSKA

4.0 Schedule. We have reviewed the subcontractor's proposal, and proposed execution of the scope, and confirm that the subcontractor will work to the Project Schedule as defined in the Contract Documents. Please note key schedule dates/durations:

5.0 M/WBE Participation.

The recommended Contractor **is not** a M/WBE and has submitted a M/WBE utilization plan, which lists 0% Dollars ($**0**) of M/WBE participation.

We hereby recommend that the award of this sub-contract is made to Fire PS for the purchase order price of:

Forty Eight Thousand Three Hundred Thirty Five	**$48,335.00**	Dollars

In making this recommendation, we have carried out certain checks and procedures to satisfy ourselves as to the present capability of (Firetrol) to perform the sub-contract work; details of these are given on the attached Bid Recording Sheet.

If you are in agreement with the above recommendation, please sign where indicated below and return one signed copy of this letter authorizing us to award the subcontract. Upon receipt of this signed approval letter we will incorporate the committed sub-contract price and pending items into our next Anticipated Cost Report.

Sincerely,

Todd Kadjan
Project Manager

Cc: Kevin Devlin, Skanska USA Building
Ian Miles, Aligned Energy

DexCom

Approved By: _____

Date: _____

Exhibit A - Approval Letter - Fire Sprinkler System 3

Exhibit B
GMP Assumptions & Clarifications

- N/A – to be issued when GMP is established

SKANSKA

EXHIBIT "C"

SCHEDULE OF BILLABLE RATES

Project Executive	$135/hr
Project Manager	$100/hr
Superintendent	$110/hr
Preconstruction Director	$100/hr
MEP Coordinator	$135/hr
Mechanical Estimator	$100/hr
C/S/A Estimator	$100/hr
Electrical Estimator	$100/hr
Accounting	$ 70/hr
Director of Accounting	$ 80/hr

SKANSKA

DEXCOM Preconstruction & Construction General Conditions, General Requirements & Closeout, Start-up & Commission Support

Description				2016														
				Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr
Preconstruction GC's	**Rate**	**Unit**																	
Mechanical Estimator	$ 100.00	hour		70	40	40													
C/S/A Estimator	$ 100.00	hour		30	30	20													
Electrical Estimator	$ 100.00	hour		30	30	20													
Admin	$ 55.00																		
Accountant	$ 70.00	hour		8	8	8													
Director of accounting	$ 80.00	hour		4															
IT	$ 45.00	hour																	
VDC Budget																			
VDC Director	$ 110.00	Hour		19	5	5													
VDC Manager	$ 75.00	Hour		20	20	20													
VDC travel	$ 1,100.00	Per Trip		1															
General travel to SAN (single day)	$ 600.00	Per Trip		10	5	5													
General travel to SAN (with overnight)	$ 1,100.00	Per Trip		7	5	5													
Meeting Expenses	$ 750.00	ea		2	2	2													
Blueprints	$ 250.00	per month		2	2	2													
FEDEX	$ 175.00	per month		1	1	1													
Project Management Software	$ 150.00	ea		2	2	2													
Construction GC's																			
Project Executive	$ 135.00	hour						70	70	70	70	70	70	70	70	70	70	70	70
Project Manager	$ 100.00	hour						175	175	175	175	175	175	175	175	175	175	175	175
Project Engineer	$ 85.00	hour						175	175	175	175	175	175	175	175	175	175	175	175
Superintendent	$ 110.00	hour						175	175	175	175	175	175	175	175	175	175	175	175
Precon Dir/Coordination Specialist	$ 100.00	hour						40	40	40	40	40	40	40	40	40	40	40	40
Safety	$ 75.00	hour						20	20	20	20	20	20	20	20	20	20	20	20
QA/QC - TOP Manager	$ 75.00	hour						40	88	175	175	175	175	175	175	175	175	175	40
Admin	$ 55.00	hour						175	175	175	175	175	175	175	175	175	175	155	20
Accountant	$ 70.00	hour						15	15	15	15	15	15	15	15	15	15	15	15
Director of accounting	$ 80.00	hour						5	5	5	5	5	5	5	5	5	5	5	5
IT	$ 45.00	hour						8	8	8	8	8	8	8	8	8	8	8	8
VDC Budget																			
VDC Director	$ 110.00	Hour						8	8	8	8	8	8	8	8	8	8	8	8
VDC Manager	$ 75.00	Hour						20	64	64	20	20	20	20	20	20	20	20	20
VDC travel	$ 2,500.00	Per Trip						2											
Check Processing	$ 175.00	per million	29																
Archiving	$ 135.00	per million	29																
Meeting Expenses	$ 750.00	ea						1	1	1	1	1	1	1	1	1	1	1	1
Legal Costs for Contract Nego	$ 5,000.00	LS																	
Job Meetings	$ 150.00	per month						3	3	3	3	3	3	3	3	3	3	3	3
Blueprints	$ 250.00	per month						1	1	1	1	1	1	1	1	1	1	1	1
FEDEX	$ 175.00	per month						1	1	1	1	1	1	1	1	1	1	1	1
Water	$ 200.00	per month						1	1	1	1	1	1	1	1	1	1	1	1
VDC software license	$ 950.00	per month						1	1	1	1	1	1	1	1	1	1	1	1
Project Management Software	$ 150.00	ea						3	3	3	3	3	3	3	3	3	3	3	3
Office Supplies	$ 200.00	per month						1	1	1	1	1	1	1	1	1	1	1	1
WIFI	$ 250.00	per month						1	1	1	1	1	1	1	1	1	1	1	1
Computers/Printers	$ 5,000.00	LS	2																
Owner Connectivity	$ 5,000.00	Is	1																
Prolog for 5 users	$ 350.00		5																
Safety Orientation	$ 50.00	ea						1	1	1	1	1	1	1	1	1	1	1	1
Hardhats	$ 50.00	ea						1	1	1	1	1	1	1	1	1	1	1	1
Safety Glasses	$ 50.00	ea						1	1	1	1	1	1	1	1	1	1	1	1
OSHA PPE	$ 250.00	ea						1											
Safety Equipment	$ 150.00	ea							1	1	1	1	1	1	1	1	1	1	1
Fuel/Oil/Truck	$ 900.00	ea							2	2	2	2	2	2	2	2	2	2	2
GR's - FROM GC's																			
Jobsite signage	$ 3,000.00	LS	1																
Office Furniture (In Existing Facility)	$ 15,000.00	LS	1																
Field Toilets	$ 350.00	ea						2	4	4	4	4	4	4	4	4	4	4	4
Temporary Fencing (access control)		LS																	
Office Cleaning	$ 150.00	ea						2	4	4	4	4	4	4	4	4	4	4	4
Permits	By Owner																		
Subguard	0.90%																		
Dumpsters - Below																			
Laborer - Below																			
GR's - FROM Logistics																			
General Conditions — Laborers	32.50	HR																	
Cleanroom Protocol — Consumables	15,000.00	MO																	
Final Clean — Cleanroom — 2ea	3.00	SF																	
Final Clean — Site	25,000.00	LS																	
HEPA Filter — Replacement	150.00	EA																	
SuperClean — Certification																			
General Requirements — Misc Equipment																			
Dumpsters	650.00	EA						2	4	4	4	6	6	6	6	6	6	6	4
Start-up & Commission - FROM Logistics																			
Closeout, Start-up, Functional Testing & Commissioning Support	$ 1.00	LS																	
TOTALS																			

Description				Total MH	Cost	Precon Allowance	GC- Original	Re-Allocation 1-28-16	4-19-16	Logistics - Original	Logistics - Revised	General Req. 1-28-16	General Req. 4-19-16
				=sum(D:P)	=T x B								
Preconstruction GC's	Rate	Unit											
Mechanical Estimator	$ 100.00	hour		150	$ 15,000.00	$15,000.00							
C/S/A Estimator	$ 100.00	hour		80	$ 8,000.00	$ 8,000.00							
Electrical Estimator	$ 100.00	hour		80	$ 8,000.00	$ 8,000.00							
Admin	$ 55.00			0	$ —	$ —							
Accountant	$ 70.00	hour		24	$ 1,680.00	$ 1,680.00							
Director of accounting	$ 80.00	hour		4	$ 320.00	$ 320.00							
IT	$ 45.00	hour		0	$ —	$ —							
VDC Budget													
VDC Director	$ 110.00	Hour		29	$ 3,190.00	$ 3,190.00							
VDC Manager	$ 75.00	Hour		60	$ 4,500.00	$ 4,500.00							
VDC travel	$ 1,100.00	Per Trip		1	$ 1,100.00	$ 1,100.00							
General travel to SAN (single day)	$ 600.00	Per Trip		20	$ 12,000.00	$12,000.00							
General travel to SAN (with overnight)	$ 1,100.00	Per Trip		17	$ 18,700.00	$18,700.00							
Meeting Expenses	$ 750.00	ea		6	$ 4,500.00	$ 4,500.00							
Blueprints	$ 250.00	per month		6	$ 1,500.00	$ 1,500.00							
FEDEX	$ 175.00	per month		3	$ 525.00	$ 525.00							
Project Management Software	$ 150.00	ea		6	$ 900.00	$ 900.00							
Construction GC's													
Project Executive	$ 135.00	hour		840	$113,400.00		$ 68,040.00	$ 68,040.00	$113,400.00	$ —	$ —		
Project Manager	$ 100.00	hour		2,100	$210,000.00		$122,300.00	$ 122,300.00	$210,000.00	$ —	$ —		
Project Engineer	$ 85.00	hour		2,100	$178,500.00		$103,955.00	$ 103,955.00	$178,500.00	$ —	$ —		
Superintendent	$ 110.00	hour		2,100	$231,000.00		$134,530.00	$ 134,530.00	$231,000.00	$ —	$ —		
Precon Dir/Coordination Specialist	$ 100.00	hour		480	$ 48,000.00		$ 28,000.00	$ 28,000.00	$ 48,000.00	$ —	$ —		
Safety	$ 75.00	hour		240	$ 18,000.00		$ 11,100.00	$ 11,100.00	$ 18,000.00	$ —	$ —		
QA/QC - TOP Manager	$ 75.00	hour		1,743	$130,725.00		$ 65,100.00	$ 65,100.00	$130,725.00	$ —	$ —		
Admin	$ 55.00	hour		1,945	$106,975.00		$ 59,950.00	$ 59,950.00	$106,975.00	$ —	$ —		
Accountant	$ 70.00	hour		180	$ 12,600.00		$ 8,400.00	$ 8,400.00	$ 12,600.00	$ —	$ —		
Director of accounting	$ 80.00	hour		60	$ 4,800.00		$ 3,200.00	$ 3,200.00	$ 4,800.00	$ —	$ —		
IT	$ 45.00	hour		96	$ 4,320.00		$ 4,320.00	$ 4,320.00	$ 4,320.00	$ —	$ —		
VDC Budget													
VDC Director	$ 110.00	Hour		96	$ 10,560.00		$ 7,040.00	$ 7,040.00	$ 10,560.00	$ —	$ —		
VDC Manager	$ 75.00	Hour		328	$ 24,600.00		$ 18,600.00	$ 18,600.00	$ 24,600.00	$ —	$ —		
VDC travel	$ 2,500.00	Per Trip		2	$ 5,000.00		$ 5,000.00	$ 5,000.00	$ 5,000.00	$ —	$ —		
Check Processing	$ 175.00	per million	29	29	$ 5,075.00		$ 3,150.00	$ 3,150.00	$ 5,075.00				
Archiving	$ 135.00	per million	29	29	$ 3,915.00		$ 2,430.00	$ 2,430.00	$ 3,915.00				
Meeting Expenses	$ 750.00	ea		12	$ 9,000.00		$ 6,000.00	$ 6,000.00	$ 9,000.00				
Legal Costs for Contract Nego	$ 5,000.00	LS		0	$ —		$ —	$ —	$ —				
Job Meetings	$ 150.00	per month		36	$ 5,400.00		$ 3,150.00	$ 3,150.00	$ 5,400.00				
Blueprints	$ 250.00	per month		12	$ 3,000.00		$ 2,000.00	$ 2,000.00	$ 3,000.00				
FEDEX	$ 175.00	per month		12	$ 2,100.00		$ 1,400.00	$ 1,400.00	$ 2,100.00				
Water	$ 200.00	per month		12	$ 2,400.00		$ 1,600.00	$ 1,600.00	$ 2,400.00				
VDC software license	$ 950.00	per month		12	$ 11,400.00		$ 7,600.00	$ 7,600.00	$ 11,400.00				
Project Management Software	$ 150.00	ea		36	$ 5,400.00		$ 3,600.00	$ 3,600.00	$ 5,400.00				
Office Supplies	$ 200.00	per month		12	$ 2,400.00		$ 1,600.00	$ 1,600.00	$ 2,400.00				
WIFI	$ 250.00	per month	2	12	$ 3,000.00		$ 2,000.00	$ 2,000.00	$ 3,000.00				
Computers/Printers	$ 5,000.00	LS	1	2	$ 10,000.00		$ 5,000.00	$ 5,000.00	$ 10,000.00				
Owner Connectivity	$ 5,000.00	Is	5	1	$ 5,000.00		$ 5,000.00	$ 5,000.00	$ 5,000.00				
Prolog for 5 users	$ 350.00			5	$ 1,750.00		$ 1,750.00	$ 1,750.00	$ 1,750.00				
Safety Orientation	$ 50.00	ea		12	$ 600.00		$ 400.00	$ 400.00	$ 600.00				
Hardhats	$ 50.00	ea		12	$ 600.00		$ 400.00	$ 400.00	$ 600.00				
Safety Glasses	$ 50.00	ea		12	$ 600.00		$ 400.00	$ 400.00	$ 600.00				
OSHA PPE	$ 250.00	ea		1	$ 250.00		$ 250.00	$ 250.00	$ 250.00				
Safety Equipment	$ 150.00	ea		11	$ 1,650.00		$ 1,050.00	$ 1,050.00	$ 1,650.00				
Fuel/Oil/Truck	$ 900.00	ea		22	$ 19,800.00		$ 12,600.00	$ 12,600.00	$ 19,800.00				
GR's - FROM GC's													
Jobsite signage	$ 3,000.00	LS	1	1	$ 3,000.00		$ 3,000.00			$ —	$ —	$ 3,000.00	$ 3,000.00
Office Furniture (In Existing Facility)	$ 15,000.00	LS	1	1	$ 15,000.00		$ 15,000.00			$ —	$ —	$ 15,000.00	$ 15,000.00
Field Toilets	$ 350.00	ea		46	$ 16,100.00		$ 9,800.00			$ —	$ —	$ 9,800.00	$ 16,100.00
Temporary Fencing (access control)		LS		0	$ —		$ —			$ —	$ —	$ —	$ —
Office Cleaning	$ 150.00	ea		46	$ 6,900.00		$ 4,200.00			$ —	$ —	$ 4,200.00	$ 6,900.00
Permits	By Owner			0									
Subguard	0.90%			0									
Dumpsters - Below				0									
Laborer - Below				0									
GR's - FROM Logistics													
General Conditions — Laborers	32.50	HR		4,160	$135,200.00					$270,400.00		$ 135,200.00	$ 135,200.00
Cleanroom Protocol — Consumables	15,000.00	MO		6	$ 90,000.00					$ 90,000.00		$ 90,000.00	$ 90,000.00
Final Clean — Cleanroom — 2ea	3.00	SF		28,000	$ 84,000.00					$ 84,000.00		$ 84,000.00	$ 84,000.00
Final Clean — Site	25,000.00	LS		1	$ 25,000.00					$ 25,000.00		$ 25,000.00	$ 25,000.00
HEPA Filter — Replacement	150.00	EA		351	$ 52,650.00					$ 52,650.00		$ 52,650.00	$ 52,650.00
SuperClean — Certification				0						By Owner	By Owner	By Owner	$ —
General Requirements — Misc Equipment Dumpsters	650.00	EA		60	$ 39,000.00					$ 50,000.00		$ 20,800.00	$ 39,000.00

Start-up &

Commission - FROM Logistics													
Closeout, Start-up, Functional Testing & Commissioning Support	$	1.00	LS								$160,900.00		
TOTALS				**1,738,585**	**79,915**	**732,915**	**700,915**	**1,191,820**	**572,050**	**160,900**	**439,650**	**466,850**

Exhibit D – Drawings

N/A – Drawing List to be issued when GMP is established.

Exhibit E – Specifications

N/A – no final specifications have been issued on the project to date.

FORMS

Forward the completed Enrollment Application to the Aon administrator identified at the bottom of page 2 of this form. The administrator prior to the start of your work on-site must receive this form.

EXHIBIT 1 – Sample Enrolled Off-Site Certificate of Insurance

ACORD© **CERTIFICATE OF INSURANCE**						**ISSUE DATE: CURRENT DATE**	
PRODUCER Insurance Agent's Name And Address **TELEPHONE #**					THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW **COMPANIES AFFORDING COVERAGE**	
INSURED Subcontractor's Name and Address **Sample Certificate for <u>Enrolled Parties</u>** Required Insurance					COMPANY A LETTER — INSURANCE CARRIER COMPANY B LETTER COMPANY C LETTER COMPANY D LETTER		
COVERAGES THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.							
CO LTR	**TYPE OF INSURANCE**	**POLICY NO.**	**POLICY EFF. DATE** MM/DD/YY	**POLICY EXP. DATE** MM/DD/YY	**ALL LIMITS**		
A	**GENERAL LIABILITY** ☒ COMMERCIAL GEN. LIABILITY ☐ CLAIMS MADE ☒ OCCUR. ☐ OWNER'S & CONTRACTOR'S PROT. ☒ <u>PER PROJECT AGGREGATE</u> <u>ENDORSEMENT</u>	Policy Number			GENERAL AGGREGATE PRODUCTS-COMP/OPS AGGREGATE PERSONAL & ADVERTISING INJURY EACH OCCURRENCE FIRE DAMAGE (Any one fire) MEDICAL EXPENSE (Any one person)	$2,000,000 $2,000,000 $1,000,000 $1,000,000	
A	AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ ALL OWNED AUTOS ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ☒ NON-OWNED AUTOS	Policy Number			COMBINED SINGLE LIMIT BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE	$1,000,000	
A	EXCESS LIABILITY ☒ UMBRELLA ☐ OTHER THAN UMBRELLA FORM	Policy Number			EACH OCCURRENCE AGGREGATE	$5,000,000 $5,000,000	
A	WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY	Policy Number			STATUTORY LIMITS ☒ <u>Florida</u> (Each accident) (Disease-policy limit) (Disease-each employee)	 $500,000 $500,000 $500,000	
A	OTHER: EQUIPMENT FLOATER	Policy Number			Limit equal to Full Coverage of Subcontractor's owned or rented machinery, equipment, tools, & temporary structures not designed to become a permanent part of the Work		
DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS: RE: Work performed at the Skanska USA Building ABC Project. Certificate Holders are Additional Insureds on a Primary and Non-contributing basis on the General Liability (ISO endorsement CG 20 10-11/85 or its equivalent), Automobile and Excess/Umbrella Liability Policies. Waiver of Subrogation in favor of Certificate Holders applies to all policies. GL and WC coverage apply off-site.							
CERTIFICATE HOLDER Skanska USA Building Inc., Skanska USA, Inc. Indemnified Parties, any other parties as required by the Owner contract, Skanska Inc., and their respective directors, officers, employees and affiliates and ALL ENROLLED PARTIES c/o Aon Risk Services, Inc. 4 Overlook Point Lincolnshire, IL 60069 Attention:					**CANCELLATION** SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ~~**ENDEAVOR TO**~~ MAIL **<u>30</u>** DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, ~~**BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES**~~. **AUTHORIZED REPRESENTATIVE** **By:** (original signature)		
ACORD 25-S (3/93)						**© ACORD CORPORATION 1993**	

FORMS

EXHIBIT 2 – Sample Excluded On/Off-Site Certificate of Insurance

ACORD© **CERTIFICATE OF INSURANCE**						**ISSUE DATE: CURRENT DATE**
PRODUCER Insurance Agent's Name and Address **TELEPHONE #**					THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW **COMPANIES AFFORDING COVERAGE**	
INSURED Name and Address **Sample Certificate for <u>Excluded Parties</u>** Required Insurance					COMPANY A LETTER — INSURANCE CARRIER COMPANY B LETTER COMPANY C LETTER COMPANY D LETTER	
COVERAGES THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.						
CO LTR	**TYPE OF INSURANCE**	**POLICY NO.**	**POLICY EFF. DATE** MM/DD/YY	**POLICY EXP. DATE** MM/DD/YY	**ALL LIMITS**	
A	GENERAL LIABILITY ☒ COMMERCIAL GEN. LIABILITY ☐ CLAIMS MADE ☒ OCCUR. ☐ OWNER'S & CONTRACTOR'S PROT. ☒ <u>PER PROJECT AGGREGATE</u> <u>ENDORSEMENT</u>	Policy Number			GENERAL AGGREGATE PRODUCTS-COMP/OPS AGGREGATE PERSONAL & ADVERTISING INJURY EACH OCCURRENCE FIRE DAMAGE (Any one fire) MEDICAL EXPENSE (Any one person)	$2,000,000 $2,000,000 $1,000,000 $1,000,000
A	AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ ALL OWNED AUTOS ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ☒ NON-OWNED AUTOS	Policy Number			COMBINED SINGLE LIMIT BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE	$1,000,000
A	EXCESS LIABILITY ☒ UMBRELLA ☐ OTHER THAN UMBRELLA FORM	Policy Number			EACH OCCURRENCE AGGREGATE	$5,000,000 $5,000,000
A	WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY	Policy Number			STATUTORY LIMITS ☒ <u>Florida</u> (Each accident) (Disease-policy limit) (Disease-each employee)	 $500,000 $500,000 $500,000
A	OTHER: EQUIPMENT FLOATER	Policy Number			Limit equal to Full Coverage of Subcontractor's owned or rented machinery, equipment, tools, & temporary structures not designed to become a permanent part of the Work	
DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS: RE: Work performed at the Skanska USA Building ABC Project. Certificate Holders are Additional Insureds on a Primary and Non-contributing basis on the General Liability (ISO endorsement CG 20 10-11/85 or its equivalent – attached a copy with this Certificate of Insurance), Automobile and Excess/Umbrella Liability Policies. Waiver of Subrogation in favor of Certificate Holders applies to all policies. **ALL COVERAGES LISTED APPLY ON AND OFF-SITE FOR ALL OPERATIONS OF THE INSURED.**						
Skanska USA Building Inc., Skanska USA, Inc. Indemnified Parties, any other parties as required by the Owner contract, Skanska Inc., and their respective directors, officers, employees and affiliates and ALL ENROLLED PARTIES c/o Aon Risk Services, Inc. 4 Overlook Point Lincolnshire, IL 60069 Attention:					**CANCELLATION** SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ~~**ENDEAVOR TO**~~ MAIL **<u>30</u>** DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, ~~**BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES**~~**.** **AUTHORIZED REPRESENTATIVE** **By:** (original signature)	
ACORD 25-S (3/93)						**© ACORD CORPORATION 1993**

AIA® Document A201™ - 2007
General Conditions of the Contract for Construction

for the following PROJECT:
(Name and location or address)
Tenant Improvements at
232 South Dobson Road,
Mesa, AZ 85202

THE OWNER:
(Name, legal status and address)
DexCom, Inc.
6340 Sequence Drive
San Diego, CA 92121
Attn: James Gillard

THE CONTRACTOR:
(Name, legal status, address and other information)

Skanska USA Building Inc.
4742 N. 24th Street, Suite 165
Phoenix, AZ 85016
Attn: Ross Vroman

THE ARCHITECT:
(Name, legal status and address)

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

TABLE OF ARTICLES

INDEX
(Topics and numbers in bold are section headings.)

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Owner or Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. Except as set forth in Section 5.3 and 5.4, below, the Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.1.9 THE GUARANTEED MAXIMUM PRICE

The Guaranteed Maximum Price or "GMP" as used herein shall refer to the Contractor's Guaranteed Maximum Price as defined in Section 5.2 of the Agreement. Except for its use in Sections 9.1, 9.4.2 and 14.2.4, the term "Contract Sum" as used in this A201™–2007, as modified, refers to the Guaranteed Maximum Price as defined in Section 5.2 of the Agreement.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. Contractor represents that the Subcontractors, manufacturers and suppliers engaged or to be engaged by Contractor are and will be familiar with the requirements of the Contract Documents for performance by them of their obligations.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 CAPITALIZATION
Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 INTERPRETATION
In the interest of brevity the Contract Documents frequently omit modifying words such as “all” and “any” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE
§ 1.5.1 All Drawings, Specifications, and other documents prepared by the Architect are and shall remain the property of Owner, and Owner shall retain all common law, statutory and other reserved rights with respect thereto. They shall not be used by Contractor on any other project without the prior written consent of Owner, and Contractor shall take such action as may be necessary to prevent their use on any other project or for additions to the Project outside the scope of the Work by any Subcontractor, Sub-subcontractor, or material or equipment supplier. Contractor, Subcontractors, Subsubcontractors, and material and equipment suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications, and other documents prepared by Architect appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this license shall bear the statutory copyright notice, if any, shown on the originals. Submittals or distributions necessary to meet official regulatory requirements or for other purposes relating to completion of the Project are not to be construed as a publication in derogation of the Owner's copyright or other reserved rights.

§ 1.5.2 Contractor acknowledges that it has taken measures reasonably necessary to verify and ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to all general and local conditions that may affect the Work or its cost, including but not limited to: (a) conditions relating to transportation, handling, storage and disposal of materials and equipment; (b) availability of labor, power, water and other utilities, and roads; (c) uncertainties of weather, river stages, and similar physical characteristics of the site and its surroundings; and (d) character of equipment and other facilities required relative to the Work, both prior to commencement of the Work at the site and during the performance of the Work. Contractor further acknowledges that it has fully satisfied itself as to the nature, character, quality and quantity of surface conditions, materials or obstacles to be encountered to the extent that such information is reasonably available from the local municipality and other public bodies, and from the Contract Documents.

§ 1.5.3 Owner assumes no responsibility for any conclusions or interpretations made by Contractor based on the information made available by Owner, unless such information is included in the Contract Documents.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM
If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents, and such protocols, when agreed, shall be incorporated into the Contract Documents by amendment.

ARTICLE 2 OWNER
§ 2.1 GENERAL
§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner’s approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term “Owner” means the Owner or the Owner’s authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic’s lien rights. Such information shall include a

correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to and after commencement of the Work, but not more than once every three (3) months, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements or has the financial ability to fulfill the Owner's obligations under the Contract. The Owner shall furnish such evidence within fifteen (15) days after written request thereof from Contractor as a condition precedent to commencement of the Work. Thereafter, the furnishing of such evidence shall be a condition precedent to continuation of the Work if the request is made because (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially increases the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence or as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements, if applicable, without prior notice to the Contractor.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. Owner does not assume any responsibility whatsoever with respect to the sufficiency or accuracy of surveys or reports of borings made, or of the logs of test borings, or other investigations, or of the interpretations made thereof, and there is no warranty or guaranty, expressed or implied, that the conditions indicated by such investigations, borings, logs or information are representative of those existing throughout the Project site, or any part thereof, or the concealed conditions may be different from those described or may not have been identified.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may, after giving Contractor written notice and a reasonable opportunity to cure, but such notice shall only be required for the first such failure as to any particular issue or obligation, issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3. Owner's exercise of the right described in this Section 2.3 shall not give rise to any extension of the Contract Time nor shall the Contract Sum include any sums, costs, or charges directly attributable to Owner's exercise of this right.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner, upon receipt of a written demand accompanied by documentation substantiating the amounts claimed.

§ 2.5 At all times prior to the completion of the Work, Owner, Architect, Project Manager, Owner's lender(s) ("Lender(s)"), if any, and all of their employees and agents, subject to Contractor's reasonable requirements, shall have the right to have full

access and use of the Work site. Owner's right hereunder shall include, without limitation, making inspections of the Work, including inspections carried out by Owner's agents (such as without limitation, Project Manager, Architect, engineers or other professional inspectors), stationing a Project director, a job supervisor and other personnel employed by Owner at the Work site, showing the Work to prospective concessionaires, tenants, lenders and other interested persons, and carrying out the work of fixturing the improvements comprising the Work for Owner's purposes in using the completed Work. Such use shall not constitute acceptance of the Work or any part thereof, or waive any of Owner's rights under the Contract Documents.

§ 2.6 Owner will not be responsible for and will not have control or charge over construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and Owner will not be responsible for Contractor's failure to carry out the Work in accordance with the Contract Documents and applicable laws, rules and regulations. Owner will not be responsible for or have control or charge over the acts or omissions of Contractor, Subcontractors, or any of their agents or employees, or any other person performing any of the Work.

§ 2.7 Owner has the authority to reject the Work which does not conform to the Contract Documents. Whenever, in its opinion, Owner considers it necessary or advisable for implementation of the intent of the Contract Documents, Owner will have the authority to require special inspection or testing of the Work in accordance with Section 13.5.2 whether or not such Work is then fabricated, installed or completed. However, neither Owner's authority to act under this Section 2.7, nor any decision made by Owner in good faith, either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of Owner to Contractor, any Subcontractor, any of their agents or employees, or any other person performing any of the Work.

§ 2.8 In the event Owner reasonably determines that the progress of Work affecting the critical path of construction is behind the progress anticipated in the schedule for the Work set forth in the GMP Amendment (the “Schedule”) , and Contractor is not entitled to receive an extension of the Contract Time in accordance with Contract Documents, Contractor shall submit to Owner for its approval a “Recovery Plan” which will indicate the manner in which Contractor intends to get the Work back on schedule in accordance with the Schedule. The cost of preparing the Recovery Plan shall be borne solely by Contractor, and shall not be the subject of a Change Order or the use of any contingency funds. In addition, Owner may require Contractor to take such actions as Owner reasonably deems necessary to expedite progress of the Work in conformance with the progress anticipated by the Schedule, which actions may include, without limitation, increasing the number of workmen performing the Work, utilizing overtime work and requiring additional work shifts. Such action by Owner to place Contractor back on schedule shall not entitle Contractor to receive any additional compensation for these activities unless Contractor would be entitled to receive an extension of Contract Time and Contractor has made such a request, all in accordance with Section 8.3.1, below.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term “Contractor” means the Contractor or the Contractor’s authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect’s administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor, unless the Contract Documents require the Contractor to rely upon such administration, tests, inspections or approvals.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including without limitation, (1) the location, condition, layout, nature of the Project site and surrounding areas, (2) generally prevailing climactic conditions, (3) anticipated labor supply and cost, (4) availability and costs of materials, tools and equipment and (5) other similar issues. Owner assumes no responsibility or liability for the safety of the Project site or any improvements located at the Project site. The Owner shall not be required to make any adjustment in either the Contract Sum or the Contract Time in connection with any failure by the Contractor or any Subcontractor to comply with the requirements of this Section 3.2.1. The Contract Sum includes provisions for all Work that may be performed by Contractor to overcome patent site and soil conditions and, except as expressly provided in Section 3.7.4,

below, claims for additional compensation or extension of time because of the Contractor's failure to familiarize himself with such conditions will not be allowed.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. Contractor shall at once report to Architect, Project Manager and Owner errors, inconsistencies or omissions discovered. If Contractor fails to so report such discovered errors, inconsistencies or omissions, or those that it discovered in the exercise of reasonable care, it shall be responsible for the cost of correction or, at Owner's option, the reduction in value of any defective portion of the Work thereafter performed. Contractor further acknowledges that it has visited the site, examined all conditions affecting the Work, is fully familiar with all of the conditions thereon and affecting the same, and having carefully examined all Drawings, Specifications, and documents. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 Except as otherwise provided in the Contract Documents, the Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Owner, Project Manager and Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, it shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.2.5 Any ambiguities, missing information, illegible words or numbers or discrepancies discovered by Contractor shall be promptly submitted to Owner, Project Manager and Architect for a recommendation before products are ordered or construction initiated for that portion of the Work. Contractor shall perform the Work reflecting the correction of such errors, inconsistencies, and omissions subject to Owner's execution of appropriate Change Orders.

§ 3.2.5.1 Work ordered, fabricated or constructed by Contractor, when the Contract Documents do not clearly specify in detail the Work to be done or where the Work conflicts with the Contract Documents without such Change Orders, shall be corrected by Contractor at its own expense.

§ 3.2.5.2 Recommendations of Architect with regard to such ambiguities or discrepancies shall not make Architect an arbitrator to establish responsibilities of Subcontractors to Contractor with regard to such portions of the Work.

§ 3.2.6 Contractor shall notify Architect, Project Manager and Owner in writing, of materials, systems, procedures or methods of construction either shown on the Drawings or specified in the Specifications which Contractor believes are incorrect or inappropriate for the purposes intended, or for which Contractor objects to furnishing the warranties required by the Contract Documents. Architect and Owner will make a determination of such matters in writing, Contractor shall be responsible for any additional costs resulting from its failure to so notify Architect, Project Manager and Owner that such materials, systems, procedures and methods, are incorrect or inappropriate.

§ 3.2.7 Dimensions indicated on the Drawings are required dimensions, regardless of measurement per given scale. Contractor shall verify at site necessary levels, measurements, etc., for complete fabrication, assembly and installation, fitting of equipment, fixtures and the Work. Where dimensions are not indicated and exact location is not apparent, Contractor shall promptly notify Architect, Project Manager and Owner's Representative, and Architect shall compute the required measurements.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures (excluding any separate work performed by a third party under a separate contract directly with Owner). If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect, and the GMP or Contract Time or both shall be equitably adjusted. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

The Contractor shall engage workers who are skilled in performing the Work, and all Work shall be performed with care and skill and in a good workmanlike manner under the full-time supervision of an approved superintendent. The Contractor shall be liable for all property damage, including repairs and replacements of the Work, which proximately result from the breach of this duty. The Contractor shall advise the Owner:

a) if a specified product deviates from good construction practices.

b) If following the Specifications will affect any warranties; or

c) any objections which the Contractor may have to the Specifications.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.3.4 In addition to Section 10.2, below, Contractor shall institute and supervise reasonable precautions to prevent damage, injury or loss to (i) all employees involved with the Work and other persons who may be affected thereby, including, without limitation, invitees, licensees, trespassers and persons on adjacent properties, (ii) all the Work and all materials and equipment to be incorporated therein, including those in storage on or off site under the care, custody or control of Contractor or any Subcontractor, (iii) Owner's personal and real property and other property at the Work site or adjacent thereto, including without limitation, fixtures, carpets, and other related items, and (iv) all of Owner's employees, agents and representatives. Contractor shall at all times take such precautions as may be necessary to shore, brace, secure and protect the Work and shall protect such parts of the Work and shall provide and maintain such security, including, without limitation, rules, guards, fences, lights and signs, as may be necessary or required to comply with this Section 3.3.4. Contractor shall further post necessary danger signs and other warnings against hazards, promulgate and enforce safety codes, rules and regulations and notify owners, lessees and users of adjacent property. Contractor shall particularly ensure and be responsible for compliance with all applicable state and federal safety laws, ordinances, rules, regulations and lawful orders of all governmental authorities and other persons or entities having jurisdiction. In any emergency threatening the Work or adjoining property, Contractor may act pursuant to Section 10.4. Contractor shall not be responsible for the costs of such emergency work, unless the emergency was due to Contractor's own fault or neglect. The Contractor shall inspect all materials delivered to the Project and shall reject any materials that will not conform with the Contract Documents when properly installed.

§ 3.3.5 Contractor shall not cause or permit any disruption to the streets and utilities serving any occupied portion of the Project, the remainder of the Project, or other properties without Owner's prior consent, which may be conditioned upon restrictions in the time, place and manner of such disruption.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, and temporary water, heat, utilities (including connections), transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.4.4 Where the Contract Documents refer to particular construction means, methods, techniques, sequences or procedures or indicate or imply that such are to be used on the Work, such mention is intended only to indicate that the operations of Contractor shall be such as to produce the quality of work implied by the operations described, but that the actual determination of whether the described operations may be safely or suitably employed on the Work shall be the responsibility of Contractor, who shall notify Architect, Project Manager and Owner in writing of the actual means, methods, techniques, sequences or procedures which will be employed on the Work, if these differ from those mentioned in the Contract Documents. All loss, damage, or liability, or cost of correcting defective work arising from the employment of any construction means, methods, techniques, sequences or procedures shall be borne by the Contractor, notwithstanding that such construction means, methods, techniques, sequences or procedures are referred to, indicated or implied by the Contract Documents.

§ 3.4.5 Any material specified by reference to the number, symbol, or title of a specific standard such as that of the American Society for Testing materials (ASTM), a Product or Commercial Standard, Federal Specification or other similar standards, shall comply with the requirements of the dated revisions stated in the Specifications, or where the Specifications contain no revision date, shall comply with the requirements of the latest revision thereof and any supplement or amendment thereto, in effect on the date of receipt of bids. The standards referred to, except as specifically modified in the Specifications, shall have the same force as if they were printed in full context within the Specifications.

§ 3.4.6 Contractor shall coordinate all Work of like material in order to produce harmony of matching finishes, textures, colors, etc., throughout the various components of the Project.

§ 3.4.7 Where it is required in the Specifications that materials, products, processes, equipment or the like be installed or applied in accord with manufacturer's instructions, directions, or specifications or words to this effect, it shall be construed to mean that said application or installation shall be in strict accord with current printed instructions furnished by the manufacturer of the material concerned for use under conditions similar to those at the job site. Unless otherwise stated, Contractor shall furnish one (1) copy of instructions to Owner and one (1) copy to Architect.

§ 3.5 WARRANTY

Subject to the provisions of Section 12.2 herein, the Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements shall be defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Contractor agrees to assign to Owner at the time of final completion of the Work, any and all manufacturer's warranties relating to material and labor used in the Work and further agrees to perform the Work in such a manner so as to preserve any and all such manufacturer's warranties. Contractor shall furnish seventy-two (72) hour callback service for the equipment provided by Contractor for a period of one (1) year after final payment and acceptance of the Work. Provided, however, Contractor shall provide twenty-four (24) hours emergency call back service for all pumping systems, emergency generator, electric switch gear, smoke exhaust fans, chillers and a domestic water heaters.

§ 3.5.2 During the warranty period, Owner shall (i) establish and conduct a reasonable maintenance and repair program in and around the property; (ii) comply in all respects with the requirements set forth in the manufacturers' warranties on all equipment, fixtures and systems; (iii) notify Contractor in writing within ten (10) business days after Owner has actual knowledge of any defect or deficiency which Owner believes is covered by Contractor's warranty; and (iv) provide to Contractor such reasonable access necessary to inspect the work during the warranty period and correct or replace any defect covered by Contractor's warranty. Contractor shall not be liable for any damages that could have been prevented but occurred as a result of Owner's failure to give Contractor such notice pursuant to this Section.

§ 3.6 TAXES

The Contractor shall pay, as a Cost of the Work, sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. Unless otherwise provided in the Contract Documents, the Owner shall secure and pay for all non-construction-related permits as well as any permits necessary for the operation of the facility post-completion.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders, and all other requirements of public authorities applicable to performance of the Work. If Contractor fails to give such notice, Contractor shall be liable for and shall indemnify and hold harmless Owner, Project Manager, and their respective employees, officers, and agents, against any resulting fines, penalties, liabilities, judgments or damages, including reasonable attorneys' fees, imposed on or incurred by the parties indemnified hereunder.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders or other requirements of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction, and shall, in addition to Owner's other remedies, pay all costs of correction, and reimburse Owner for any diminution in value of the Project and expenses incurred by Owner as a result of Contractor's actions. Contractor shall send all notices, make all necessary arrangements, and provide all labor and materials required to protect and maintain in operation of all public utilities within the Project site or affected by the Work.

§ 3.7.4 Concealed or Unknown Conditions. If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor’s cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum, Guaranteed Maximum Price, Contract Time, or any of them. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect’s determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum, Guaranteed Maximum Price, and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

.1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

.2 Contractor’s and its Subcontractors’ (of every tier), and suppliers’ costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and

.3 Whenever costs are more than or less than allowances, the Contract Sum and Guaranteed Maximum Price shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference

between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness so as not to delay the Work.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent approved in writing by Owner and necessary assistants who shall be in attendance at the Project site during performance of the Work. Contractor shall notify Owner in writing of any proposed change in such personnel, including the reason therefore, prior to making any change. Such personnel shall not be changed except with the consent of Owner, unless such personnel cease to be in the employ of Contractor. Ross Vroman and Kevin Devlin of Contractor shall, subject to change by prior written notice from Contractor to Owner, represent Contractor, and written communications given to them shall be binding on Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner, Project Manager and Architect the name and qualifications of a proposed superintendent. The Owner, Project Manager and Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner, Project Manager or the Architect have reasonable objection to the proposed superintendent or (2) that the Owner, Project Manager and Architect requires additional time to review. Failure of the Owner, Project Manager and Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner, Project Manager or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after the Agreement is executed by both Owner and Contractor, shall prepare and submit for the Owner's, Project Manager's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the submittal schedule for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Owner and Architect and shall be delivered to the Owner upon completion of the Work as a record of the Work as constructed. The Contractor shall also maintain all approved permit drawings and other documents at the site, so as to make them accessible to inspectors and the Owner at all times that the Work is in progress. Such documents shall be delivered to the Owner before final payment.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, and submit for approval to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed them, and (2) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering including, but not limited to, seismic engineering design and/or structural design required as a result of construction sequences. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.14.3 The Contractor shall locate, protect, and save from injury utilities of all kinds, either above or below grade, (i) of which Contractor has actual knowledge, (ii) that are set forth in plans given to, or obtained by, Contractor or (iii) that are marked by Underground Service Alert, inside or outside of any structure, found in the areas affected by its work. Contractor shall be responsible for all damage caused to such utility by the operation of equipment or delivery of materials or as the direct or indirect result of any of its work and shall repair all such damage at its expense and as a part of the work included in the Contract Documents. The Contractor shall not be entitled to any increase in the Contract Sum or the Contract Time on account of such damage to any utility, so long as Contractor either had actual knowledge of such utility, such utility was set forth in plans given to, or obtained by, Contractor, or such utility was marked by Underground Service Alert.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

§ 3.15.3 Contractor shall be responsible for broken glass, and at or before completion of the Work, as directed by Owner, shall replace such damaged or broken glass. After broken glass has been replaced, Contractor shall remove all labels, wash, and policy both sides of all glass. Further, in addition to general broom cleaning, Contractor shall perform the final cleaning for all trades immediately upon completion of the Work, which shall include, but not limited to, the following: (a) remove temporary protections; (b) remove marks, stains, fingerprints and other soil or dirt from painted, decorated, and natural finished woodwork and other Work; (c) remove spots, mortar, plaster, soil and paint from ceramic tile, marble, and other finish materials and wash or wipe clean; (d) clean fixtures, cabinet work and equipment, removing stains, paint, dirt, and dust and leave in undamaged, new condition; (e) clean aluminum in accordance with recommendations of the manufacturer; and (f) clean resilient floors thoroughly with a well rinsed mop containing only enough moisture to clean off any surface dirt or dust and buff dry by machine to bring the surfaces to sheen.

§ 3.15.4 Costs incurred by Owner under this Section 3.15 shall be deducted from amounts otherwise due to Contractor, or at Owner's option, reimbursed by Contractor to Owner immediately following Owner's demand.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to know that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify, defend and hold harmless the Owner, Project Manager, Owner's Lender and agents and employees of any of them (collectively, the "Indemnitees") from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, brought by or alleged by a third party arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.18.3 Contractor shall include in all agreements with Subcontractors clauses substantially similar to Subparagraph 3.18.1 where the Subcontractor agrees to indemnify Contractor and Indemnitees.

§ 3.19 LENDER'S CERTIFICATE

§ 3.19.1 Within ten (10) days of Owner's request, Contractor shall execute and deliver to Owner and its lender(s) having an interest in the Project, a certificate addressed to Owner and such lender(s) concerning the compliance of the Work with the Contract Documents and applicable laws and regulations, the status of completion of the Work, the status of payments and defaults, and such other matters as such lender(s) may request. Such requests shall not be made an unreasonable number of times.

§ 3.20 REPRESENTATIONS AND WARRANTIES
§ 3.20.1 Contractor represents and warrants the following to Owner (in addition to the other representations and warranties contained in the Contract Documents), which representations and warranties shall survive any termination of the Owner-Contractor Agreement and the final completion of the Work:

§ 3.20.1.1 that it is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under Contract Documents;

§ 3.20.1.2 that it is able to furnish the tools, materials, supplies, equipment, and labor required to complete the Work and perform its obligations under the Contract Documents and has sufficient experience and competence to do so; and

§ 3.20.1.3 that it is authorized to do business in the State of Arizona and properly licensed by all necessary governmental authorities having jurisdiction over it and over the Work and the site of the Project.

§ 3.21 PUBLICITY
§ 3.21.1 The Contractor shall not divulge information concerning this Project to anyone (including, without limitation, information in applications for permits, variances, etc.) without the Owner's prior written consent. The Contractor shall obtain a similar agreement from firms, subcontractors, suppliers, and others employed by the Contractor. The Owner reserves the right to release all information as well as to time its release, form, and content. This requirement shall survive the expiration of the Contract. Contractor's ultimate parent company, Skanska AB, the shares of which are publicly traded on the NASDAQ OMX Stockholm, will be required by applicable securities laws and regulations to issue one or more press releases concerning this Agreement if the total amount of this Agreement exceeds $35,000,000.00. Attached hereto as Schedule 1 is a press release in form approved by Owner for such a press release in the event the total amount of this Agreement exceeds $35,000,000.00, provided, however, the Contractor shall give the Owner five (5) business days' prior written notice of issuance of it. Contractor shall give Owner any other press release(s) at least five (5) business days prior to issuance for Owner to review and approve by written notice to Contractor, provided that such approval shall not to be unreasonably withheld, conditioned or delayed.

§ 3.22 LENDER'S ARCHITECT
§ 3.22.1 If the Owner's lender requires the services of an inspecting architect or other representative, the Owner may require the concurrence of such inspecting architect or lender's representative in each instance where the approval of the Owner or the Architect herein is required by any provision of the Contract Documents. The Contractor shall fully cooperate with such inspecting architect or lender representative.

ARTICLE 4 ARCHITECT
§ 4.1 GENERAL
§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness so as not to delay the Work. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 [Intentionally Deleted.]

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness so as not to delay the Progress of the Work. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner, with copies to, Architect and Project Manager, the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner and Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect have reasonable objection to any such proposed person or entity or (2) that the Owner or Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum, Guaranteed Maximum Price or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.2.5 All portions of the Work that the Contractor's organization does not perform with its own personnel shall be performed under Subcontracts or by other appropriate agreements with Contractor. Prior to awarding a portion of the Work to any proposed Subcontractor, Contractor shall deliver to Owner a copy of any proposed Subcontractor's bid. All Subcontracts shall conform to the requirements of the Contract Documents. Contractor shall deliver to Owner copies of all Subcontracts both prior to and following their execution.

§ 5.3 SUBCONTRACTUAL RELATIONS

§ 5.3.1 By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3.2 All Work performed for Contractor by a Subcontractor shall be pursuant to an appropriate written agreement between Contractor and the Subcontractor (and where appropriate between Subcontractors and Sub-subcontractors) which shall include a schedule of value approved by Owner, and which shall contain provisions that:

§ 5.3.2.1 provide that Owner is an express third party beneficiary of the subcontract, and preserve and protect the rights of Owner under the Contract with respect to the Work to be performed under the subcontract so that the subcontracting thereof will not prejudice such right;

§ 5.3.2.2 require such Work be performed in accordance with the requirements of the Contract Documents;

§ 5.3.2.3 include the Subcontractor's acknowledgment that Contractor has assigned its interest in the subcontract to Owner, which assignment shall become effective upon Contractor's default under the Contract Documents and Subcontractor's receipt of notification from Owner that (a) Contractor is in default under the Contract Documents or Owner has terminated the Contract; and (b) the assignment is effective;

§ 5.3.2.4 require submission to Contractor of applications for payment under each subcontract to which Contractor is a party, in reasonable time to enable the Contractor to apply for payment in accordance with Article 9 of the General Conditions and Article 12 of the Agreement;

§ 5.3.2.5 require that all claims for additional costs, extensions of time, damages for delays or otherwise with respect to subcontracted portions of the Work shall be submitted to Contractor (via any Subcontractor or Sub-subcontractor where appropriate) in sufficient time so that Contractor may comply in the manner provided in the Contract Documents for like claims by Contractor upon Owner; and

§ 5.3.2.6 waive all rights Contractor and Subcontractor may have against one another for damages caused by fire or other perils covered by property insurance.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

.1 assignment is effective only after termination of the Contract by the Owner pursuant to Article 14 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and

.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts in writing the assignment of a subcontract agreement, the Owner, on a going forward basis, assumes the Contractor's rights and obligations under the subcontract. In no event shall Owner have any obligation to cure the Contractor's breach of the subcontract.

§ 5.4.2 [Intentionally Deleted]

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity.

§ 5.4.4 Upon such assignment, the Owner shall defend, indemnify and hold Contractor harmless against any and all claims of Subcontractors arising after the effective date of such assignment based on acts occurring thereafter whose Subcontracts have been assigned to the Owner.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement, and Contract Sum and Contract Time will be equitably adjusted as is appropriate. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate reasonably the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 7.1.4 Owner shall order changes in the Work by giving Contractor a written change order request ("Change Order Request"), setting forth in detail the nature of the requested change. Contractor shall, as soon as reasonably possible, but not later than ten (10) days following receipt of a Change Order Request, furnish to Owner a statement setting forth in detail, with suitable breakdown by trades and work classifications, the changes, if any, in the Contract Sum attributable to the changes set forth in such Change Order Request, the proposed adjustment, if any, to the Contract Time resulting from such Change Order Request and any proposed adjustments of time and costs related to unchanged Work resulting from such Change Order Request. If Owner approves such changes in writing, a change order ("Change Order") shall be executed and the Contract Sum and Contract Time shall be adjusted as set forth in such Change Order. Failure to agree on the price of any Change Order shall not excuse Contractor from proceeding with the prosecution of the Work as changed (provided Owner issues a Construction Change Directive) for an amount equal to the amount undisputed by Owner for such a Change Order, with Contractor reserving its rights to claim additional compensation for the disputed portion of such Change Order work.

§ 7.1.5 Owner and Contractor shall be entitled to receive a Change Order equitably adjusting (either by decrease or increase) the Guaranteed Maximum Price or the Contract Time or both for adverse or beneficial cost and schedule impacts to the Work from the a change in any applicable law, including the interpretation or application thereof, after the date the GMP is established.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

.1 The change in the Work;

.2 The amount of the adjustment, if any, in the Contract Sum and Guaranteed Maximum Price; and

.3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the Contract Time. In the event a Change Order increases the Contract Sum, Contractor shall include the Work covered by such Change Orders in Applications for Payment as if such Work were originally part of the Contract Documents.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum, Guaranteed Maximum Price, or Contract Time, or any of them. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum, Guaranteed Maximum Price and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

.1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

.2 Unit prices stated in the Contract Documents or subsequently agreed upon;

.3 Cost to be determined in a manner agreed upon by the parties, plus the Contractor's Fee set forth in Section 5.1.1 of the Agreement; or

.4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum, Guaranteed Maximum Price or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum, Guaranteed Maximum Price and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

.1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;

.2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

.3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

.4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work;

.5 Additional costs of supervision and field office personnel directly attributable to the change; and

.6 Any additional costs allowed by Article 6 of the Agreement.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum and Guaranteed Maximum Price on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum, Guaranteed Maximum Price and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum, Guaranteed Maximum Price or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor, subject to the right of Contractor to reasonably disagree and assert a Claim in accordance with Article 15.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract with respect to its obligation to achieve Substantial and Final Completion of the Work as adjusted by change order. By executing the Agreement the Contractor confirms that the Contract Time, subject to adjustments as provided for in the Contract Documents, is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time, subject to adjustments as provided for in the Contract Documents.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If Contractor is delayed in the performance of the Work by any act or neglect of Owner or Architect, or by an employee, agent or representative of Owner or by changes ordered in the Work, or by the combined action of workmen (either those employed on the Work or in any industry essential to the conduct of the Work) not caused by or resulting from default, negligence or collusion on the part of Contractor or its Subcontractors of every tier, or if Contractor is delayed by separate contractors, or by unusually severe weather conditions not reasonably anticipatable for the locale, or by fire, unavoidable casualty, acts of God, "Excusable Labor Disputes" or "Excusable Transportation Delays" (as those terms are defined below), or national emergency, then the Contract Time shall be extended by Change Order for a period equal to the length of such delay as measured on the critical path of the Schedule if, within fourteen (14) days after the commencement of any such delay, or fourteen (14) days after Contractor learned of the delay, whichever is later, Contractor delivers to Owner a written notice of such delay stating the nature thereof, and within fourteen (14) days following the expiration of any such delay, provides a written request for extension of the Contract Time by reason of such delay and such extension is approved by Owner, which approval shall not be unreasonably withheld; provided, however, that no such extension shall be given unless the delay for which a request for extension is made is included in those items for which an extension of the Contract Time is appropriate pursuant to the provisions of this Subparagraph 8.3.1. As used herein, the term "Excusable Labor Dispute" shall be defined as any labor dispute directed against an entire industry, or any labor dispute that is not directed solely against the Project, the Contractor or any of its Subcontractors or suppliers, and which prevents Contractor from obtaining labor or materials necessary for performance of the Work and actually delays the performance of the Work; provided, however, that suitable substitute materials or labor are not reasonably obtainable. As used herein, the term "Excusable Transportation Delay" shall be defined as any labor dispute directed against an entire industry, or any labor dispute that is not directed solely against the Project, the Contractor or any of its Subcontractors or suppliers, or other delay not within the reasonable control of Contractor which prevents the transportation of necessary materials to the Project and actually delays the performance of the Work; provided, however, that suitable substitute transportation for such materials is not reasonably available. In the event Contractor fails to deliver to Owner either or both of the above-described written notices within the required fourteen (14) day period, then the extension of the Contract Time attributable to the delay for which such notices are required shall be decreased by one (1) day for each day (beyond the applicable fourteen (14) day period) Contractor fails to deliver any required notice to Owner. In the case of a continuing cause of delay of a particular nature, Contractor shall be required to make only one such request for extension with respect thereto. No delay of the Contract Time (or right on the part of Contractor to secure any such delay) pursuant to this Section 8.3.1 shall prejudice any right Owner may have under the Contract, or otherwise, to terminate the Contract.

§ 8.3.2 In addition to the increased time due to a delay set forth in Section 8.3.1, Contractor shall be entitled to a commensurate increase in the Contract Sum and Guaranteed Maximum Price for delays which impact the Schedule.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. The schedule of values shall not constitute, or be construed as, a line item Guaranteed Maximum Price.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in writing and in advance by the Owner and Lender, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures reasonably satisfactory to the Owner and Lender to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and the Lender's security interest therein, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site in third party warehouses.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from

Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

.1 defective Work not remedied;

.2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;

.3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;

.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

.5 damage to the Owner or a separate contractor;

.6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or

.7 material failure to carry out the Work in accordance with the Contract Documents.

Notwithstanding the issuance of a Certificate for Payment, the Owner, may withhold payment for the reasons described in Sections 9.5.1.1 - 9.5.1.7, but shall make payment of amounts that are not in dispute.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld. All non-disputed amounts shall be paid to the Contractor within the time requirements of the
Contract Documents. In no event will Owner withhold more than 150% of any disputed amount or of the amount reasonably necessary to correct or address the reason for withholding. The Owner shall not be deemed to be in default of the Contract by reason of withholding payment while any of the grounds above in Section 9.5.1 remain uncured.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, and after providing five (5) days prior written notice to Contractor, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 With each Application for Payment, Contractor shall furnish a conditional progress waiver and release of lien for itself, each Subcontractor who furnished labor, equipment, materials or services to the Project, and each materialman and vendor who furnished materials to the Project during the period covered by the Application for Payment. Upon each payment by Owner, Contractor shall execute, and cause all such materialman, vendors and Subcontractors to execute an unconditional progress waiver and release of lien acknowledging receipt of all payments due through the period covered by the previous Application for Payment for which payment was received by the Contractor. The conditional and unconditional lien releases shall be in statutory form, and provided Owner is making progress payments in accordance with the Contract Documents, Contractor shall deliver the executed unconditional releases to Owner with its next succeeding Application for Payment, including the Final Application for Payment to assure an effective waiver of mechanics' or materialmen's liens in compliance with the laws of the State of Arizona. In addition to providing lien releases, and provided Owner is making required progress payments in accordance with the Contract Documents, Contractor shall indemnify and hold Owner and Lender harmless from and against any and all liens and charges of every type, nature, kind or description which may at any time be filed or claimed against the Project, or any portion thereof, or the improvements situated thereon, including attorneys' fees, as a consequence, direct or indirect, of any act or omission of Contractor, its agents, servants, employees, suppliers, subcontractors, or any or all of them. Prior to commencement of Work as reasonably required by Owner or Lender, Contractor shall furnish to Owner and Lender an affidavit, subordination and lien waiver agreement executed by Contractor and each Subcontractor which has furnished and supplied or will furnish or supply materials and services in connection with the prosecution of the Work, which agreement shall be in a commercially reasonable form. To the extent not inconsistent with existing law, each party executing such agreement shall, prior to commencement of Work, agree to subordinate all of its liens for Work to be performed or materials to be furnished pursuant to the Contract Documents to the liens and security interests securing payment of any loan made for the Project by Lender, and shall furnish a release of all liens for Work performed and materials furnished up to the date of execution of such agreement to the extent such party has been paid. Further, each such party shall certify that all amounts owing to such party for the Work through the date of such agreement have been paid in full, or if not paid in full, such agreement shall set forth such amounts which have not been paid through the date of such agreement.

§ 9.6.9 If any lien, bonded stop notice or claim is recorded or served in connection with the Work for which the Contractor has been paid, Contractor shall, immediately and at its own expense, record or file, or cause to be recorded or filed, in the office of the county recorder in which the lien or claim was recorded, or with the person(s) on whom the bonded stop notice was served, a bond executed by a good and sufficient surety, and approved by Owner, in a sum equal to one hundred fifty percent (150%) of the amount of such lien, bonded stop notice or claim, which bond shall guarantee the payment of any amounts which the claimant may recover on the lien, bonded stop notice or claim, together with the claimant's costs of suit in the action if the claimant recovers therein.

§ 9.6.10 If Contractor fails to cause any lien to be removed in connection with the Work for which the Contractor has been paid (if payment is past due) from the Project or any bonded stop notices or other notices to be negated, Owner may employ whatever means it may, in its reasonable discretion, to cause the lien to be removed, and the effect of any bonded stop notices or other notices to be negated. Contractor shall, upon demand, reimburse Owner for all costs, including without limitation actual attorneys' fees incurred by Owner in connection with any suit, lien or bonded stop notice. Owner may offset any such costs against amounts otherwise owing to Contractor hereunder.

§ 9.7 FAILURE OF PAYMENT

§ 9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor’s Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days’ written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased

by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.7.2 If Owner is entitled to reimbursement or payment from Contractor under or pursuant to the Contract Documents, such payments shall be made within thirty (30) days after demand by Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if Contractor fails to promptly make any payment due Owner, or Owner incurs any costs and expenses to cure any default of Contractor or to correct defective Work, Owner shall have an absolute right to offset such amount against the Contract Sum and may, in Owner's sole discretion, elect either to: (1) deduct an amount equal to that which Owner is entitled from any payment then or thereafter due Contractor from Owner, or (2) issue a written notice to Contractor reducing the Contract Sum by an amount equal to that which Owner is entitled.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use and a temporary certificate of occupancy (or its functional equivalent) has been issued by the appropriate governmental agency.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Owner and Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner and Architect will promptly (but in no event later than ten (10) days after receipt of said notice and final Application for Payment and Contractor's written request to Owner for final inspection) make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and Contractor shall not allow such insurance to be cancelled or to expire until it gives Owner at least 30 days' prior written notice thereof, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner, and (6) all warranties, guarantees, operating manuals and record drawings for the Project. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees. Contractor's obligations hereunder with respect to liens shall not apply to the extent the Owner's breach of any payment obligations under the Contract Documents has resulted in such lien.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Owner and Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Owner and Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

.1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;

.2 failure of the Work to comply with the requirements of the Contract Documents; or

.3 terms of special warranties required by the Contract Documents.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

.1 employees on the Work and other persons who may be affected thereby;

.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and

.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss. If the Contractor fails to give such notices or fails to comply with such laws, ordinances, rules, regulations, and lawful orders, it shall to the extent due to such failures be liable for and shall indemnify, defend (at Contractor's sole cost, and with legal counsel reasonably approved by Owner) and hold harmless the Owner, Project Manager and their respective employees, officers, and agents, against any resulting fines, penalties, judgments, or damages, including reasonable attorneys' fees, imposed on or incurred by Owner.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities. The Contractor shall promptly report to the Owner in writing all accidents arising out of or in connection with the Work that cause death, personal injury, or property damage. The report shall give full details, including statements of witnesses, hospital reports, and other information in the possession of the Contractor. In addition, in the event of any serious injury or damage, the Contractor shall immediately notify the Owner by telephone of such accident.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to the extent of the negligence or willful misconduct of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor’s obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor’s organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor’s superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY
If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 HAZARDOUS MATERIALS
§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor’s written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or

not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum and Guaranteed Maximum Price shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall defend, indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify and defend the Contractor for all cost and expense thereby incurred.

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE THIS ARTICLE 11 IS STILL SUBJECT TO REVIEW BY SKANSKA RISK MANAGEMENT

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies to which Owner has no reasonable objection, which have a Best's Rating of "A/VIII" or above and which are lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

.1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
.4 Claims for damages insured by usual personal injury liability coverage;
.5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property;
.6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
.7 Claims for bodily injury or property damage arising out of completed operations; and
.8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, shall be written on an occurrence basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations

coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance reasonably acceptable to the Owner, and copies of the insurance policies if requested in writing, shall be filed with the Owner and the additional insureds at least ten (10) days prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness upon Owner's written request. Upon receipt of any notice of cancellation or alteration, Contractor, within ten (10) days, shall procure other policies of insurance, similar in all material respects to the policy or policies, about to be canceled or altered; and, if Contractor fails to provide, procure and deliver acceptable policies of insurance or satisfactory evidence thereof, in accordance with the terms hereof, then at Owner 's option, Owner may obtain such insurance at the cost and expense of Contractor without the need of any notice to Contractor. The Contractor shall provide written notification to the Owner of the cancellation or expiration of any insurance required by Section 11.1. The Contractor shall provide such written notice within five (5) days of the date the Contractor is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Lender, as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.2 OWNER'S LIABILITY INSURANCE
The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.3 PROPERTY INSURANCE
§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include the Owner, the Contractor, Subcontractors and Sub-subcontractors in as insured.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles, unless the loss was caused by Contractor and/or its Subcontractors of any tier, then Contractor shall be responsible for a deductible up to Ten Thousand Dollars and Zero Cents ($10,000.00).

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The

Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE [Intentionally Deleted]

§ 11.3.3 LOSS OF USE INSURANCE [Intentionally Deleted]

§ 11.3.4 [Intentionally Deleted]

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy, to the extent the issuing insurance company will so provide without additional material cost, shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§ 11.3.7 WAIVERS OF SUBROGATION
The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered and paid by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7. Owner shall not have any responsibility to any party other than Contractor with respect to the proceeds of any insurance policy. After a loss, Owner may choose to terminate the Contract for convenience as described herein, or continue with the construction of the Project. If after such loss no other special agreement is made and unless Owner terminates the Contract for convenience, replacement of damaged property shall be performed by Contractor after notification of a change in the Work in accordance with Article 7.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as

fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Owner, as an addition to the Cost of the Work and Guaranteed Maximum Price, shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense, except as may be reimbursable from the Construction Contingency.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly at Contractor's sole expense after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails promptly to notify the Contractor in writing, as required under Section 3.5.2, and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.2.6 Nothing contained in this Contract shall in any way limit the right of Owner to assert claims for damages resulting from patent or latent defects in the Work for the period of limitations prescribed by Arizona law, and the foregoing shall be in addition to any other rights and remedies Owner may have hereunder or at law or in equity.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the State of Arizona except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Contractor may not assign, in whole or in part, the Contract without first obtaining the written consent of the Owner, which consent may be withheld in Owner's sole discretion.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

§ 13.4.3 Notwithstanding any other provision to the contrary contained in the Contract Documents, provided that Owner continues to make payments of amounts not in dispute in accordance with the provisions of the Contract Documents, during all disputes, actions or claims and other matters in question arising out of, or relating to, the Contract Documents or the breach thereof, Contractor shall carry on the Work and maintain the Schedule, unless otherwise agreed between Contractor and Owner in writing.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or

approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate of six percent (6%) per annum, not to exceed the maximum rate permitted by law.

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

§ 13.8 CONFIDENTIALITY

§13.8.1 The Contractor and Owner entered into that certain Nondisclosure Agreement dated as of November 19, 2015 ("NDA") in order to protect certain confidential information of Owner, as further set forth in the NDA. Contractor and Owner hereby incorporate the terms, provisions and obligations of the NDA in these General Conditions.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

.1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;

.2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;

.3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or

.4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract (provided, however, if Owner commences the cure within such seven (7)-day period and thereafter diligently pursues such cure to completion, no default shall be deemed to have occurred) and recover from the Owner payment for Work executed, including Contractor's Fee and general conditions costs on such work, costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

.1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

.2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;

.3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or

.4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner may, by written notice, demand that the Contractor cure the default. If Contractor fails to commence and diligently pursue curing the default within seven (7) days after receipt of said written notice, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner, terminate employment of the Contractor and may, subject to any prior rights of the surety:

.1 Exclude the Contractor from the site and take possession of all materials, and equipment stored on the site that are intended to be incorporated into the Work;

.2 Accept assignment of subcontracts pursuant to Section 5.4; and

.3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and direct damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract. The costs of finishing the Work include, without limitation, all reasonable attorneys' fees, additional insurance premiums, additional interest because of any delay in completing the Work, and all other direct costs incurred by the Owner by reason of the termination of the Contractor as stated herein.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum, Guaranteed Maximum Price and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum and Guaranteed Maximum Price shall include profit. No adjustment shall be made to the extent

.1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or

.2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

.1 cease operations as directed by the Owner in the notice;

.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, including termination payments to subcontractors and demobilization costs, along with Contractor's Fee on the Work not executed.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum and/or the Guaranteed Maximum Price, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive Claims against each other for consequential, indirect, special, punitive or exemplary damages arising out of or relating to this Contract. This mutual waiver includes, without limitation

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential, indirect, special, punitive or exemplary damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution, excluding any equitable proceeding for emergency relief to prevent irreparable harm or the filing of any lawsuit or recording of any legal document that may be necessary to preserve a party's rights under applicable law..

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the City of San Diego, California, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 ARBITRATION

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in the City of San Diego, California, in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement, and venue for such proceedings shall be in the City of San Diego, California. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

Exhibit 10.41

Amendment to Non-Exclusive Distribution Agreement

This Amendment to the Non-Exclusive Distribution Agreement ("**Amendment**") is made as of April 30, 2016, by and between DexCom, Inc., a Delaware corporation, with a principal place of business at 6340 Sequence Drive, San Diego, California 92121 ("**DexCom**") and RGH Enterprises, Inc., an Ohio corporation with offices at 1810 Summit Commerce Park, Twinsburg, Ohio 44087 (the "**Distributor**"). Each of DexCom and the Distributor are sometimes referred to individually herein as a "**Party**" and collectively as the "**Parties.**" Capitalized terms not defined herein shall have the meanings set forth in the Agreement (as defined in the first recital below).

RECITALS

WHEREAS, DexCom and Distributor previously entered into a Non-Exclusive Distribution Agreement, effective April 30, 2008, as has been and may be amended from time to time, (collectively, the "**Agreement**").

WHEREAS, DexCom and Distributor wish to amend the Agreement as set forth herein in accordance with Section 6.1 and 16.9 of the Agreement.

NOW, THEREFORE, BE IT RESOLVED, that for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

A. Rebates

1. Sales Reports. Each week during the Term, Distributor agrees to provide DexCom with a weekly report identifying the volume of continuous glucose monitoring products that are listed on Schedule 1 to the Agreement (the "Products") purchased by Distributor from DexCom during the preceding 45 days.

2. Rebate. DexCom shall pay Distributor a monthly rebate equal to [***]% of Distributor's aggregate dollar value of purchases of Products from DexCom during the preceding month, net of any rebates or returns (the "Rebate"). The Rebate shall be payable by DexCom to Distributor in the form of a credit memo within thirty (30) days following the end of each month, commencing on the Effective Date. The credit memo shall fully and accurately describe the amount of the Rebate earned during the previous month. Should Distributor not receive the credit memo within this time period, Distributor may deduct the amount of the Rebate from any subsequent payment owed by Distributor to DexCom.

3. Term and Termination. The earning and calculation of the Rebate payable under this Amendment shall commence on July 1, 2016 (the "Effective Date") and shall continue each month thereafter until the [***]. The Agreement, except as amended by this Amendment, shall remain in full force and effect. The obligation to pay Rebates accrued during the Term shall survive any termination of the Agreement.

4. Compliance with Law. The prices provided for Products under the Agreement reflect discounts, and the Rebates constitute additional discounts. Each of the Parties shall comply with applicable provisions of 42 C.F.R. § 1001.952(h) (the Anti-Kickback Statute discount safe harbor regulations). Distributor shall fully and accurately reflect such discounts in submissions to federal healthcare programs (if any) and, upon request by the Secretary of the U.S. Department of Health and Human Services or a state agency, shall make available information provided to it by DexCom concerning the discounts. Each of the Parties will act in compliance with all federal and state laws in the performance of their respective obligations under the Agreement as amended by this Amendment.

B. Sales Tracing Data

1. Schedule 3 to the Agreement, setting forth the Sales Tracing Report Format, is amended and restated in its entirety to be as set forth in Schedule 3 to this Amendment.

C. Stocking Requirement

1. Distributor shall stock not more than one (1) month of Product inventory at all times with the exact amount of inventory so stocked to vary based on demand fluctuations. Distributor agrees not to sell any sensors where the shelf-life on the sensors is less than the time of reasonable consumption by its Customers, and in no instance to ship sensors with a shelf-life of less than two (2) months.

2. Distributor shall use good faith efforts to provide, within five (5) business days of the end of each calendar month, a report detailing Distributor's month-end inventory balance of Products (which report shall be subject to the audit right in Section 6.1.9 of the Agreement).

[Signature Page Follows]

The Parties hereto have caused this Amendment to be duly executed on their behalf by the first date written above.

DEXCOM, INC.		**RGH ENTERPRISES, INC. D/B/A CARDINAL HEALTH AT HOME**	
	/s/ Jess Roper		/s/ Steve Briggs
Print Name:	Jess Roper	Print Name:	Steve Briggs
Title:	CFO	Title:	VP/ GM Category Management

[***] = CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY BRACKETS AND ASTERISKS, HAS BEEN OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO RULE 24b-2 OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED INFORMATION.

SCHEDULE 3

Sales Tracing Report Format

Core Data Elements – Edgepark

Reporting Frequency	Daily
Reporting Period	Rolling 45 Days
File Format	Pipe Delimited CSV
Delivery Method	Dexcom Provided sFTP

Not required in tracing files, but provide to Dexcom to keep on file:
- Distributor Location NPI

Type	Field Name	Sample Value	Comments
[***]	[***]	[***]	[***]
	[***]	[***]	[***]
	[***]	[***]	[***]
[***]	[***]	[***]	[***]
	[***]	[***]	[***]
	[***]	[***]	[***]
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	[***]	[***]	[***]
	[***]	[***] [***]	[***]
	[***]	[***]	[***]
	[***]	[***]	[***]

[1] [***]

[2] [***]

Exhibit 31.01

CERTIFICATION OF CHIEF EXECUTIVE OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Kevin R. Sayer, certify that:

1. I have reviewed this quarterly report on Form 10-Q of DexCom, 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 any consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer 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.

August 2, 2016

By: /s/ Kevin R. Sayer

Kevin R. Sayer
President & Chief Executive Officer
(Principal Executive Officer)

Exhibit 31.02

CERTIFICATION OF CHIEF FINANCIAL OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Jess Roper, certify that:

1. I have reviewed this quarterly report on Form 10-Q of DexCom, 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 any consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer 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.

August 2, 2016

By: /s/ Jess Roper

Jess Roper
Senior Vice President & Chief Financial Officer
(Principal Financial and Accounting Officer)

Exhibit 32.01

CERTIFICATION OF CHIEF EXECUTIVE OFFICER
PURSUANT TO
18 U.S.C SECTION 1350

The undersigned, Kevin R. Sayer, the President and Chief Executive Officer of DexCom, Inc. (the "Company"), pursuant to 18 U.S.C. §1350, hereby certifies that:

(i) the Quarterly Report on Form 10-Q for the period ended June 30, 2016 of the Company (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934.

(ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: August 2, 2016

/s/ Kevin R. Sayer

Kevin R. Sayer
President & Chief Executive Officer
(Principal Executive Officer)

Exhibit 32.02

CERTIFICATION OF CHIEF FINANCIAL OFFICER
PURSUANT TO
18 U.S.C. SECTION 1350

The undersigned, Jess Roper, Chief Financial Officer of DexCom, Inc. (the "Company"), pursuant to 18 U.S.C. §1350, hereby certifies:

(i) the Quarterly Report on Form 10-Q for the period ended June 30, 2016 of the Company (the "Report") fully complies with the requirements of Section 13(a) and 15(d) of the Securities Exchange Act of 1934; and

(ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: August 2, 2016

/s/ Jess Roper

Jess Roper
Senior Vice President & Chief Financial Officer
(Principal Financial and Accounting Officer)