

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

FORM 10-K

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

For the fiscal year ended December 31, 2021

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**

**DEXCOM, INC.**

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

33-0857544

(I.R.S. Employer Identification No.)

6340 Sequence Drive, San Diego, CA 92121

(Address of principal executive offices)

(858) 200-0200

(Registrant's telephone number, including area code)

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.001 Par Value Per Share	DXCM	The Nasdaq Stock Market LLC (Nasdaq Global Select Market)

Securities registered pursuant to Section 12(g) of the Act: None

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

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

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

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

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

Large accelerated filer  Accelerated filer  Non-accelerated filer  Smaller reporting company  Emerging growth company

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

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report.

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

As of June 30, 2021, the last business day of the registrant's most recently completed second fiscal quarter, the aggregate market value of the registrant's common stock held by non-affiliates of the registrant was approximately \$41.1 billion based on the closing sales price of \$427.00 per share as reported on the Nasdaq Global Select Market.

Indicate the number of shares outstanding of each of the registrant's classes of common stock, as of the latest practicable date.

Class	Outstanding at February 7, 2022
Common stock, \$0.001 par value per share	97,065,634

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's definitive proxy statement relating to its 2022 Annual Meeting of Stockholders (the "Proxy Statement") are incorporated by reference in Part III, Items 10 through 14 of this Annual Report on Form 10-K, as specified in the responses to those item numbers. Except with respect to information specifically incorporated by reference in the Form 10-K, the Proxy Statement is not deemed to be filed as part hereof.



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## CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

Except for historical financial information contained herein, the matters discussed in this Form 10-K may be considered forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, and subject to the safe harbor created by the Securities Litigation Reform Act of 1995. Such statements include declarations regarding our intent, belief, or current expectations and those of our management. Prospective investors are cautioned that any such forward-looking statements are not guarantees of future performance and involve a number of risks, uncertainties and other factors, some of which are beyond our control; actual results could differ materially from those indicated by such forward-looking statements. Important factors that could cause actual results to differ materially from those indicated by such forward-looking statements include, but are not limited to: (i) that the information is of a preliminary nature and may be subject to further adjustment; (ii) those risks and uncertainties identified under “Risk Factors”; and (iii) the other risks detailed from time-to-time in our reports and registration statements filed with the Securities and Exchange Commission, or SEC. Except as required by law, we undertake no obligation to revise or update publicly any forward-looking statements, whether as a result of new information, future events or otherwise.

## Summary of Risk Factors

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The below summary of risk factors provides an overview of many of the risks we are exposed to in the normal course of our business activities. As a result, the below summary risks do not contain all of the information that may be important to you, and you should read the summary risks together with the more detailed discussion of risks set forth following this section under the heading “Risk Factors,” as well as elsewhere in this Annual Report on Form 10-K. Additional risks, beyond those summarized below or discussed elsewhere in this Annual Report on Form 10-K, may apply to our activities or operations as currently conducted or as we may conduct them in the future or in the markets in which we operate or may in the future operate. Consistent with the foregoing, we are exposed to a variety of risks, including risks associated with the following:

- If we experience decreasing prices for our products and we are unable to reduce our expenses, including the per unit cost of producing our products, there may be a material adverse effect on our business, results of operations, financial condition and cash flows.
- We are subject to cost-containment efforts by our payors that could result in reduced product pricing and/or sales of our products and cause a reduction in future revenue.
- Although many third-party payors have adopted some form of coverage policy on continuous glucose monitoring devices, our products do not always have some form of coverage, including simple broad-based contractual coverage, with 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, our revenue may be negatively impacted.
- The research and development efforts we undertake independently, and in some instances in connection with our collaborations with third parties, may not result in the development of commercially viable products, the generation of significant future revenues or adequate profitability.
- Our products may not achieve or maintain market acceptance.
- 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.
- Manufacturing difficulties and/or any disruption at our facilities may adversely affect our manufacturing operations and related product sales, and increase our expenses.
- We depend upon third-party suppliers and outsource to other parties, making us vulnerable to supply disruptions, suboptimal quality, non-compliance and/or price fluctuations, which could harm our business.
- If we are unable to establish and maintain adequate sales, marketing and distribution capabilities or enter into and maintain arrangements with third parties to sell, market and distribute our products, we may have difficulty achieving market awareness and selling our products in the future.
- We operate in a highly competitive market and face competition from large, well-established companies with significant resources, and, as a result, we may not be able to compete effectively.
- The outbreak of the SARS-CoV-2 virus and its variants and the COVID-19 disease that it causes, or similar public health crises, could have a material adverse impact on our business, financial condition and results of operations, including our manufacturing, commercial operations and sales.
- We are subject to a variety of risks due to our international operations that could adversely affect our business, our operations or profitability and operating results.

- We have incurred significant losses in the past and may incur losses in the future.
- We are subject to complex and evolving U.S. and foreign laws and regulations and other requirements regarding privacy, data protection, security, 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.
- Cybersecurity risks and cyber incidents could result in the compromise of confidential data or critical data systems and give rise to potential harm to customers, remediation and other expenses, expose us to liability under HIPAA, consumer protection laws, or other common law theories, subject us to litigation and federal and state governmental inquiries, damage our reputation, and otherwise be disruptive to our business and operations.
- 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, be excluded from participation in government programs, and/or be required to make significant changes to our operations.
- Managed care trends and consolidation in the health care industry could have an adverse effect on our revenues and results of operations.
- Health care policy changes, including U.S. health care reform legislation, may have a material adverse effect on our business.
- If we are unable to successfully complete the pre-clinical studies or clinical trials necessary to support additional PMA, de novo, or 510(k) applications or supplements, we may be unable to commercialize our CGM systems under development, which could impair our business, financial condition and operating results.
- 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.
- 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.
- We face the risk of product liability claims and may be subject to damages, fines, penalties and injunctions, among other things.
- We could become the subject of governmental investigations, claims and litigation.
- 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.
- We have indebtedness in the form of convertible senior notes, which could adversely affect our financial health and our ability to respond to changes in our business.

## PART I

### ITEM 1 - BUSINESS

#### Overview

We are a medical device company primarily focused on the design, development and commercialization of continuous glucose monitoring, or CGM, systems for use by people with diabetes and by healthcare providers. We received approval from the United States Food and Drug Administration, or FDA, and commercialized our first product in 2006. We launched our latest generation system, the Dexcom G6<sup>®</sup> integrated Continuous Glucose Monitoring System, or G6, in 2018. Unless the context requires otherwise, the terms “we,” “us,” “our,” the “company,” or “Dexcom” refer to DexCom, Inc. and its subsidiaries. The mailing address of our headquarters is 6340 Sequence Drive, San Diego, California, 92121 and our telephone number at that location is (858) 200-0200. Our Internet website address is [www.dexcom.com](http://www.dexcom.com). We provide free access to various reports that we file with or furnish to the SEC through our website, as soon as reasonably practicable after they have been filed or furnished. These reports include, but are not limited to, our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and any amendments to those reports. Information on our website does not constitute part of this Annual Report on Form 10-K or other report we file or furnish with the SEC. The reports are also available at [www.sec.gov](http://www.sec.gov). Also available on our website are printable versions of our Audit Committee charter, Compensation Committee charter, Nominating and Corporate Governance Committee charter, and Code of Conduct and Business Ethics. Stockholders may request copies of these documents by mail or telephone, at the address or phone number provided above.

#### Product Candidates

##### Dexcom G7<sup>®</sup>

We are pursuing regulatory approvals for our next generation G7 CGM system. The G7 is designed with the goal of carrying forward many of the same features as our G6 CGM system and adding several new or improved features, including:

- **Reduced size.** A 60% reduction in size of the on-body wearable.
- **Fully disposable.** Sensor and transmitter combined into a single, disposable wearable.
- **Simple application.** New application process streamlines the number of steps required.
- **Faster warmup.** Warmup period expected to be reduced from the current two-hour warmup for G6.
- **Reduced packaging waste.** Significant reduction to the product packaging waste profile on a per unit basis.

#### Products

##### Dexcom G6<sup>®</sup>

In March 2018, we obtained marketing authorization from the FDA for the G6 via the *de novo* process. The G6 was the first type of CGM system permitted by the FDA to be used as part of an integrated system with other compatible medical devices and electronic interfaces, which may include automated insulin dosing systems, insulin pumps, blood glucose meters or other electronic devices used for diabetes management. G6 and substantially equivalent devices of this generic type that may later receive marketing authorization are referred to as integrated continuous glucose monitoring systems, or iCGMs, and have been classified as Class II devices by the FDA. Along with this classification, the FDA established criteria, called special controls, which outline requirements for assuring CGM accuracy, reliability and clinical relevance, and which also describe the type of studies and data required to demonstrate acceptable CGM performance. The G6 is designed to allow our transmitter to run an algorithm to generate a glucose value and to communicate directly to a patient’s compatible mobile device, including iPhone<sup>®</sup>, iPod touch<sup>®</sup>, iPad<sup>®</sup>, and certain Android<sup>®</sup> mobile devices. A patient’s glucose data can also be displayed on wearable devices, like the Apple Watch<sup>®</sup> and Wear OS by Google devices. The G6 transmitter has a labeled useful life of three months. Data from the G6 can be integrated with Dexcom CLARITY<sup>®</sup>, our cloud-based reporting software, for personalized, easy-to-understand analysis of trends that may improve diabetes management. In the United States, the G6 is covered by Medicare and Medicaid in the majority of states and by commercial insurers, subject to satisfaction of certain eligibility and coverage criteria for individuals with both Type 1 and Type 2 diabetes.

In June 2018, we received Conformité Européenne Marking, or CE Mark, approval for the G6, which allows us to market the system in the European Union and the countries in Asia and Latin America that recognize the CE Mark, as well as New Zealand, though certain countries may require compliance with certain local administrative requirements and/or additional marketing authorizations (for example, the inclusion of medical devices on the Australian Register of Therapeutic Goods in Australia).

In October 2019, we also received marketing authorization from the FDA for the Dexcom G6 Pro, or G6 Pro, which allows healthcare professionals to purchase the G6 for use with their patients. The G6 Pro has many of same features as the G6

and is intended for healthcare professionals to use with their patients ages two years and up. The G6 Pro may be used in a blinded or unblinded mode for up to 10 days.

For the G6, the sensor is inserted by the user and is intended to be used continuously for up to 10 days, after which it may be replaced with a new disposable sensor. Our transmitter is reusable until it reaches the end of its use life. Our receiver is also 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.

The G6 carries forward important features of prior generation Dexcom CGM systems:

- **Continuous glucose readings.** Automatically sends glucose readings to a Dexcom receiver or compatible mobile device every five minutes.
- **Mobile app and sharing.** Compatibility with mobile device applications allows for sharing glucose information with other people for added support and care coordination.
- **Customizable alarms and alerts.** Personalized alert schedule immediately warns the user of pending dangerous high and low blood sugars.

The G6 also has a number of new or improved features compared to our prior generation devices:

- **Finger stick elimination.** No finger sticks are needed for calibration or diabetes treatment decisions, consistent with the instructions for use.
- **Easy sensor application.** Complete redesign of the sensor applicator allows for one-touch, simple self-insertion.
- **Discreet and low profile.** A redesigned transmitter with a 28% lower profile than the previous generation Dexcom CGM system makes the device comfortable and easy to wear under clothing.
- **Medication blocking.** New feature allows for more accurate glucose readings without interference from common medications taken at typical indication doses, such as acetaminophen.
- **Predictive low alert.** New alert feature intended to predict hypoglycemia before it hits to help avoid dangerous low blood sugar events.
- **Extended 10-day disposable sensor.** Up to 10-day sensor use allows for 43% longer wear than previous generation Dexcom CGM systems.

Other than the foregoing, the features of the G6 are generally consistent with our prior generation CGM systems in its technical capabilities and its indications. Since the G6 is classified by the FDA as a Class II device, it is subject to special controls and modifications of, or revisions to, the device may be made under the 510(k) process.

#### *Dexcom Share®*

The Dexcom Share remote monitoring system, offered for use with any current Dexcom system, uses an app on the patient's compatible iPhone, iPod touch, iPad or Android mobile device to securely and wirelessly transmit glucose information to the cloud and then 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 a wireless connection. A patient's glucose data can also be displayed on a patient's or follower's wearable device, such as the Apple Watch and Wear OS by Google devices, when used in conjunction with the patient's or follower's compatible iPhone or Android mobile device.

#### *Dexcom Real-Time API*

In July 2021, we received FDA 510(k) clearance for our Real-Time API, which expands connectivity and interoperability of the Dexcom CGM digital ecosystem. Dexcom Real-Time API enables invited third-party developers to integrate real-time CGM data into their digital health apps and devices.

#### *Dexcom ONE®*

In July 2021, we obtained CE Mark approval for our new Dexcom ONE CGM system, or Dexcom ONE, which we have launched in four countries: Bulgaria, Estonia, Latvia and Lithuania. Dexcom ONE consists of three main components: a Dexcom ONE sensor, a Dexcom ONE transmitter, and a Dexcom ONE app as the display device for users with a compatible mobile device. Dexcom ONE carries many of the same features as the G6, and is indicated for persons, including pregnant women, ages 2 years and older. Like our other CGM systems, Dexcom ONE is designed to replace finger stick blood glucose testing for diabetes treatment decisions.

#### *Data and Insulin Delivery Collaborations*

We have entered into multiple collaboration agreements that leverage our technology platform to integrate our CGM products with insulin delivery systems. The general purpose of these development and commercial relationships is to integrate our technology into the insulin pump or pen product offerings of the respective partner, enabling the partner's insulin delivery

device to receive and display glucose readings from our transmitter and, in some cases, use the glucose readings for semi-automated insulin delivery. Currently, we have announced significant insulin delivery partnerships with Eli Lilly, Insulet, Novo Nordisk, Tandem Diabetes and The Ypsomed Group. In addition to these major partners, we are working with other companies that are pursuing varying strategies surrounding semi-automated insulin delivery and data analytics to improve outcomes and ease-of-use in diabetes management.

We have also entered into collaborations with several organizations that are currently using, or are developing, programs for the treatment of Type 2 diabetes that utilize our current CGM systems. These collaborations align with the strategy to seek broader access to our CGM systems for people with Type 2 diabetes, including those who are not treated with intensive insulin therapy.

#### *Verily Collaboration*

Our Restated Collaboration Agreement with Verily Life Science LLC (an Alphabet Company) and Verily Ireland Limited (collectively, Verily) provides us with an exclusive license to use intellectual property of Verily resulting from the collaboration, and certain Verily patents, in the development, manufacture and commercialization of blood-based or interstitial glucose monitoring products more generally (subject to certain exclusions, which are outside the CGM field as it is commonly understood). It also provides us with non-exclusive license rights under Verily's other intellectual property rights to develop, manufacture, and commercialize those kinds of glucose monitoring products and certain CGM product companion software functionalities.

In consideration of Verily's performance of its obligations under the joint development plan of the Restated Collaboration Agreement, the licenses granted to us and the amendment of the original agreement, we have made upfront and incentive payments, and will make potential additional milestone payments for future product regulatory approval and sales-based milestones. At our election, we may make these payments in shares of our common stock or cash. If we elect to make these milestone payments in cash, any such cash payment would be equal to the number of shares that would otherwise be issued for the given milestone payment multiplied by the value of our stock on the date the relevant milestone is achieved, adjusted for stock splits, dividends, and the like. See Note 2 "Development and Other Agreements" to the consolidated financial statements in Part II, Item 8 and Exhibit 10.31 of this Annual Report for a further description of the Restated Collaboration Agreement, including the number of shares of stock for milestone payments.

## **Market Opportunity**

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### *Diabetes*

Diabetes is a chronic, life-threatening disease for which there is no known cure and which has other significant adverse consequences for human health throughout the world. The disease is caused by the body's inability to produce or effectively utilize the hormone insulin. This inability prevents the body from adequately regulating blood glucose levels. Glucose, the primary source of energy for cells, must be maintained at certain concentrations in the blood in order to permit optimal cell function and health. Normally, the pancreas provides control of blood glucose levels by secreting the hormone insulin to decrease blood glucose levels when concentrations are too high. In people with diabetes, the body does not produce sufficient levels of insulin, or fails to utilize insulin effectively, causing blood glucose levels to rise above normal. This condition is called hyperglycemia and often results in acute complications as well as chronic long-term complications such as heart disease, limb amputations, loss of kidney function and blindness. When blood glucose levels are high, people with diabetes often administer insulin in an effort to decrease blood glucose levels. Unfortunately, insulin administration can drive blood glucose levels below the normal range, resulting in hypoglycemia. In cases of severe hypoglycemia, people with diabetes risk acute complications, such as loss of consciousness or death. Due to the drastic nature of acute complications associated with hypoglycemia, many people with diabetes are reluctant to reduce blood glucose levels. Consequently, these individuals often remain in a hyperglycemic state, increasing their odds of developing long-term chronic complications. Diabetes is typically classified into two major groups: Type 1 and Type 2.

The International Diabetes Federation, or IDF, estimates that in 2021, 537 million adults (aged 20-79) around the world had diabetes. IDF estimates that by 2045, the worldwide incidence of people suffering from diabetes will reach 783 million. According to the Centers for Disease Control and Prevention, or CDC, in its National Diabetes Statistics Report, 2022, or the 2022 CDC Report, crude estimates for the prevalence of diabetes in the United States as of 2019 include 37.3 million people with diabetes, of which 28.7 million people have diagnosed diabetes. The 2022 CDC Report also lists diabetes as the seventh leading cause of death by disease in the United States, excluding comorbidities associated with the disease. The report states that diabetes is the primary cause of death for more than 87,000 Americans each year, and contributes to the death of more than 280,000 Americans annually. According to the Congressional Diabetes Caucus website, diabetes is the leading cause of kidney failure, adult-onset blindness, lower-limb amputations, and a significant cause of heart disease, stroke, high blood pressure and nerve damage. According to the IDF, there were an estimated 6.7 million deaths attributable to diabetes globally in 2021 between the ages of 20 and 79 years.

According to the ADA, one in every four healthcare dollars was spent on treating people with diabetes in 2017, and the direct medical costs and indirect expenditures attributable to diabetes in the United States were an estimated \$327 billion, an inflation-adjusted increase of approximately 26% since 2012. Of the \$327 billion in overall expenses, the ADA estimated that approximately \$237 billion were direct costs associated with diabetes care, chronic complications and excess general medical costs, and \$90 billion were indirect costs. The ADA also found that in 2017, average medical expenditures among people with diagnosed diabetes were 2.3 times higher than for people without diabetes. According to the IDF, 2021 expenditures attributable to diabetes were estimated to be \$966 billion globally, an increase of 27% from their previous estimate in 2019.

### *Type 1 Diabetes*

According to the 2022 CDC Report, as of 2019 there were an estimated 1.8 million adults and youth with diagnosed Type 1 diabetes in the United States. Type 1 diabetes is an autoimmune disorder that usually develops during childhood and is characterized by an absence of insulin, resulting from destruction of the insulin producing cells of the pancreas. Individuals with Type 1 diabetes must rely on frequent insulin injections in order to regulate and maintain blood glucose levels.

According to JDRF, greater than 60,000 people are diagnosed with Type 1 diabetes each year in the United States and 5 million people in the U.S. are expected to have Type 1 diabetes by 2050. In addition, according to the ADA in 2019, nearly 18,000 youth are newly diagnosed with Type 1 diabetes every year in the United States.

### *Type 2 Diabetes*

Type 2 diabetes is a metabolic disorder which results when the body is unable to produce sufficient amounts of insulin or becomes insulin resistant. Depending on the severity of Type 2 diabetes, individuals may require diet and nutrition management, exercise, oral medications or insulin injections to regulate blood glucose levels. We estimate that between 5.0 and 6.0 million people with Type 2 diabetes in the United States must use insulin to manage their diabetes.

Type 2 diabetes is occurring with increasing frequency in young people, with the increase in prevalence related to an increase in obesity amongst children. According to the CDC, as of 2017-2018, approximately 19.3% of children and adolescents aged 2-19 years, or 14.4 million children, in the United States were obese. Childhood obesity has more than doubled in children and quadrupled in adolescents in the past 30 years.

### *Importance of Glucose Monitoring*

Blood glucose levels can be affected by many factors, including the carbohydrate and fat content of meals, exercise, stress, illness or impending illness, hormonal releases, variability in insulin absorption and changes in the effects of insulin in the body. Given the many factors that affect blood glucose levels, maintaining glucose within a normal range is difficult, resulting in frequent and unpredictable excursions above or below normal blood glucose levels. People with diabetes administer insulin or ingest carbohydrates throughout the day in order to maintain blood glucose levels within normal ranges. People with diabetes frequently overcorrect and fluctuate between hyperglycemic and hypoglycemic states, often multiple times during the same day. As a result, many people with diabetes are routinely outside the normal blood glucose range. Failure to maintain blood glucose levels within the normal range leads to numerous and significant health risks. These risks include eye disease, nerve disease, kidney disease, cardiovascular disease and potentially hypoglycemic events.

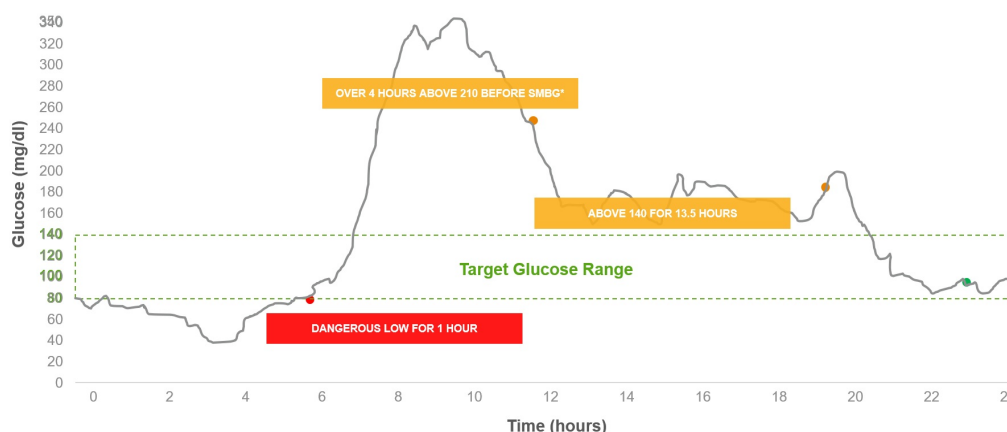
### *Limitations of Existing Glucose Monitoring Products*

Single-point finger stick devices are the most prevalent devices for glucose monitoring. These devices require taking a blood sample with a finger stick, placing a drop of blood on a test strip and inserting the strip into a glucose meter that yields a single point in time blood glucose measurement. We believe that these devices suffer from several limitations, including:

- **Limited Information.** Even if people with diabetes test several times each day, each measurement represents a single blood glucose value at a single point in time. Given the many factors that can affect blood glucose levels, excursions above and below the normal range often occur between these discrete measurement points in time. Without the ability to determine whether their blood glucose level is rising, falling or holding constant, and the rate at which their blood glucose level is changing, the individual's ability to effectively manage and maintain blood glucose levels within normal ranges is severely limited. Further, people with diabetes cannot test themselves during sleep, when the risk of hypoglycemia is significantly increased.

The illustrative graph below shows the limited information provided by four single-point measurements during a single day using a traditional single-point finger stick device, compared to the data provided by our continuous sensor. The continuous data indicates that, even with four finger sticks in one day, the patient's blood glucose levels were above the target range of 80-140 milligrams per deciliter ("mg/dl") for a period of 13.5 hours.

## Single Day Continuous Data



\*As compared to Self Monitoring of Blood Glucose (SMBG). Illustrative example.

- **Inconvenience.** The process of measuring blood glucose levels with single-point finger stick devices can cause significant disruption in the daily activities of people with diabetes and their families. People with diabetes using single-point finger stick devices must stop whatever they are doing several times per day, self-inflict a painful prick and draw blood to measure blood glucose levels. To do so, people with diabetes must always carry a fully supplied kit that may include a spring-loaded needle, or lancet, disposable test strips, cleansing wipes and the meter, and then safely dispose of the used supplies. This process is inconvenient and may cause uneasiness in social situations.
- **Difficulty of Use.** To obtain a sample with single-point finger stick devices, people with diabetes generally prick one of their fingertips or, occasionally, a forearm with a lancet. They then squeeze the area to produce the blood sample and another prick may be required if a sufficient volume of blood is not obtained the first time. The blood sample is then placed on a disposable test strip that is inserted into a blood glucose meter. This task can be difficult for individuals with decreased tactile sensation and visual acuity, which are common complications of diabetes.
- **Pain.** Although the fingertips are rich in blood flow and provide a good site to obtain a blood sample, they are also densely populated with highly sensitive nerve endings. This makes the lancing and subsequent manipulation of the finger to draw blood painful. The pain and discomfort are compounded by the fact that fingers offer limited surface area, so tests are often performed on areas that are sore from prior tests. People with diabetes may also suffer pain when the finger prick site is disturbed during regular activities.

### The Dexcom Solution

We believe continuous glucose monitoring has the potential to enable more people with diabetes to achieve and sustain tight glycemic control with minimal disruption to their daily lives.

The landmark 1993 Diabetes Control and Complications Trial, or DCCT, 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. However, 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.

Various clinical studies and real-world evidence also demonstrate the benefits of continuous glucose monitoring in the management of Type 1 diabetes and insulin-requiring Type-2 diabetes, when compared to regimens relying on self-monitoring of blood glucose. Results of several early clinical trials established that CGM usage was associated with improved glycemic outcomes.

Real-time alerts and multi-device integration further differentiate CGM-based and self-monitoring of blood glucose, or SMBG, based diabetes regimens. Alerts triggered by existing or impending abnormal glucose values are associated with less exposure to hypo- and hyperglycemia in large real-world data sets, and multi-device integration allows some CGM systems to communicate with automated insulin delivery systems. One such automated insulin delivery system that uses the G6 was studied in a large clinical trial that associated its use with numerous quality-of-life and glycemic benefits.

Our current target market consists primarily of people with Type 1 and Type 2 diabetes who utilize insulin pump therapy or who utilize multiple daily insulin injections. We also believe that our CGM systems are beginning to have a positive impact

on the broader Type 2 population that does not utilize mealtime insulin, a group that we estimate to be greater than 30 million people in the United States alone. We are extending our commercial efforts for this population through several channels, including through strategic partnerships. In the future, we plan to expand our product offering and cleared/approved indications to address people with pre-diabetes, people who are obese, people who are pregnant, and people in the hospital setting. Although the majority of our revenue has been generated in the United States, we have expanded our operations to include certain countries in Africa, Asia, Europe, Latin America, and the Middle East, as well as Australia, Canada, and New Zealand.

Our current CGM systems offer the following advantages to people with diabetes:

- **Improved Outcomes.** Randomized clinical trials and peer reviewed published data have demonstrated that patients with diabetes who used continuous glucose monitoring devices to help manage their disease experienced significant improvements in glucose control, including when compared to patients relying solely on single-point finger stick measurements (i.e., less time in hypoglycemia and hyperglycemia) and reductions in A1c levels when compared to baseline.
- **Access to Real-Time Values, Trend Information and Alerts.** At their fingertips, people with diabetes can view their current glucose value, along with a graphical display of the historical trend information on our receiver or alternate display device. Without continuous monitoring, the individual is often unaware if his or her glucose is rising, declining or remaining constant. Access to continuous real-time glucose measurements provides people with diabetes information that may aid in attaining better glucose control. Additionally, our current CGM systems alert people with diabetes when their glucose levels approach inappropriately high or low levels so that they may intervene.
- **Intuitive User Interface.** We have developed a user interface that we believe is intuitive and easy to use. Our current CGM system receivers are compact with an easy-to-read color display, simple navigation tools, audible alerts and graphical display of trend information. Similar benefits are available via the interfaces we have made available on compatible mobile devices. These devices can serve as substitutes for our receivers or alternate display units in certain geographies.
- **Convenience and Comfort.** Our current CGM systems provide people with diabetes with the benefits of continuous monitoring, without having to perform finger stick tests for every measurement. Additionally, the disposable sensor that is inserted under the skin is a very thin wire, minimizing potential discomfort associated with inserting or wearing the disposable sensor. The external portion of the sensor, attached to the transmitter, is small, has a low profile and is designed to be easily worn under clothing. The wireless receiver is the size of a small smart phone and can be carried discreetly in a pocket or purse. We believe that convenience is an important factor in achieving widespread adoption of a CGM system.
- **Connectivity to Wearables and Others.** Patients can monitor their glucose levels and trends on compatible wearable devices, such as Apple Watch and Wear OS by Google devices, when used with a compatible mobile device. Also, our Share remote monitoring systems enable users of our current CGM systems to have their sensor glucose information remotely monitored by their family, friends or other designated recipient, or follower, by wirelessly transmitting data from the user's smart phone to the cloud and then to the follower's mobile device. Several followers can remotely monitor a patient's glucose information and receive secondary alert notifications from almost anywhere with an Internet connection via each follower's mobile device.

### *Our Strategy*

Our objective is to remain a leading provider of CGM systems and related products to enable people with diabetes to more effectively and conveniently manage their condition. We are also developing and commercializing products that integrate our CGM technologies into the insulin delivery systems or data platforms of our respective partners. In addition, we continue to pursue development partnerships with other insulin delivery companies, including automated insulin delivery systems, as well as other players in the disease management sector. To achieve these objectives, we are focusing on the following business strategies:

- Establishing and maintaining our technology platform as the leading approach to CGM and leveraging our development expertise to rapidly bring products to market, including for expanded indications.
- Driving the adoption of our ambulatory products through a direct sales and marketing effort, as well as key distribution arrangements.
- Driving additional adoption through technology integration partnerships such as our current partnerships with Eli Lilly, Insulet, Novo Nordisk, Tandem Diabetes, The Ypsomed Group and others globally.
- Seeking broad coverage policies and reimbursement for our products from private third-party payors and national health systems.

- Driving increased utilization and adoption of our products through a cloud-based data repository platform that enables people with diabetes to aggregate and analyze data from numerous diabetes devices and share the data with their healthcare providers and other individuals involved in their diabetes management and care.
- Expanding the use of our products to other patient care settings and patient demographics, including use for people with Type 2 diabetes who are not on intensive insulin therapy, population health, patient monitoring including in the hospital setting, and people who are pregnant.
- Providing a high level of customer support, service and education.
- Pursuing the highest safety and quality levels for our products.

## **Our Technology Platform**

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We believe we have a broad technology platform that will support the development of multiple products for continuous glucose monitoring.

### **Sensor Technology**

The key enabling technologies for our sensors include biomaterials, membrane systems, electrochemistry and low power microelectronics. Our membrane technology consists of multiple polymer layers configured to selectively allow the appropriate mix of glucose and oxygen to travel through the membrane and react with a glucose specific enzyme to create an extremely low electrical signal, measured in pico-amperes. This electrical signal is then translated into glucose values. We believe that the capability to measure very low levels of an electrical signal and to accurately translate those measurements into glucose values is also a unique and distinguishing feature of our technology. We have also developed technology to allow sensitive electronics to be packaged in a small, fully contained, lightweight sealed unit that minimizes inconvenience and discomfort for the user.

### **Receiver and Transmitter Technology**

Our current CGM systems wirelessly transmit information from the transmitter, which sits in a pod atop the sensor, to our receiver or to a compatible mobile device. We have developed technology for reliable transmission and reception and have consistently demonstrated a high rate of successful transmissions from transmitter to receiver or compatible mobile device in our clinical trials. Our receiver or the mobile device, via our apps, then displays both real-time and trended glucose values, and provides alerts and alarms. We have used our extensive database of continuous glucose data to create and refine software, algorithms and other technology for the display of data to customers.

### **Disposable Sensor and Reusable Transmitter**

Our sensor includes a tiny wire-like electrode coated with our sensing membrane system. This disposable sensor comes packaged with an integrated insertion device and is contained in a small plastic housing platform, or pod. The base of the pod has adhesive that attaches it to the skin. The sensor is intended to be easily and reliably inserted by the user by exposing the adhesive, placing the pod against the surface of the skin of the abdomen or upper buttocks for people ages 2-17, and pushing down on the insertion device. The insertion device first extends a narrow gauge needle containing the sensor into the subcutaneous tissue and then retracts the needle, leaving behind the sensor in the tissue and the pod adhered to the skin. The user then disposes of the insertion device and snaps the transmitter to the pod.

After a stabilization period with the G6, the user will begin receiving CGM data on his or her mobile device or dedicated receiver through the ten-day usage period. Our G6 system has labeling from the FDA and CE Mark permitting their use as a replacement for finger sticks for making therapeutic adjustments.

The disposable sensor contained in the G6 system is intended to function for up to ten days, after which the sensor should be replaced. To replace a sensor, the user simply removes the pod and attached sensor from the skin and discards them while retaining the reusable transmitter. A new sensor and pod can then be inserted and used with the same receiver and transmitter for a subsequent use period.

### **Handheld Receiver**

Our small handheld receiver is carried by the user and wirelessly receives continuous glucose values from the transmitter. Proprietary algorithms and software, developed from our extensive database of continuous glucose data from clinical trials, are programmed into the G6 transmitter to process the glucose data from the sensor, which then sends the processed glucose data to the receiver and displays it on a user-friendly graphical user interface. With a push of a button, the user can access their current glucose value and one-, three-, six-, twelve- and twenty-four-hour trended data. Additionally, when glucose values are inappropriately high or low, the receiver provides an audible alert or vibrates. The receiver is a self-contained, durable unit with a rechargeable battery.

### Compatible Mobile Devices

With our G6 system, the functionalities of our proprietary receiver can be obtained through the use of a compatible mobile device, such as an iOS or Android device, and our mobile applications, depending on the patient's geographic location. A receiver may be required as the primary display device or a backup to the mobile device in some jurisdictions, including the United States.

### Products in Development

We have gained our technology expertise by learning to design implants that can withstand the rigors of functioning within the human body for extended periods of time, as well as other issues such as device sealing, miniaturization, durability and sensor geometry.

We are leveraging this technology platform to enhance the capabilities of our current products (including obtaining expanded indications of use) and to develop additional CGM 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 continue to develop and improve networked platforms with open architecture, connectivity and transmitters capable of communicating with other devices. We intend to expand our efforts to accumulate CGM patient data and metrics and apply predictive modeling and machine learning to generate interactive CGM insights that can inform patient behavior.

We continue to pursue and support development partnerships with insulin pump companies and companies or institutions developing insulin delivery systems, including automated insulin delivery systems.

We are also exploring how to extend our offerings to other populations, including for people with Type 2 diabetes that are non-insulin using, people with pre-diabetes, people who are obese, people who are pregnant, and people in the hospital setting. Eventually, we may apply our technological expertise to products beyond glucose monitoring.

### Commercial Operations

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We have built a direct sales organization in the United States, Australia, Canada, New Zealand, and some countries in Europe to call on health care professionals, such as endocrinologists, physicians 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, and to ensure that health care professionals and patients are knowledgeable about our products and their functionality. We focus on delivering this important information to participants to drive adoption of our current CGM systems. We directly market our products in the United States, Austria, Canada, Germany, Ireland, Switzerland, and the United Kingdom primarily to endocrinologists, physicians and diabetes educators.

To complement our direct sales efforts, we have entered into distribution arrangements in the United States, and certain countries in Africa, Asia, Europe, Latin America, and the Middle East, as well as Australia, Canada, and New Zealand that allow distributors to sell our products. We expect to continue investing in our field sales force and 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.

Direct to consumer marketing is one of our key initiatives to increase awareness of our CGM systems and drive new patient leads to our website. We target people with Type 1 and insulin intensive Type 2 diabetes. We advertise on television, in print, digital and video media, CRM, offer sponsorships, host or participate in diabetes related events, conduct public relations and maintain a brand ambassador program. Our campaigns target people with diabetes.

We use a variety of marketing tools to drive adoption, ensure continued usage and establish brand loyalty for our continuous glucose monitoring systems by:

- creating awareness of the benefits of continuous glucose monitoring and the advantages of our technology with endocrinologists, physicians, diabetes educators and people with diabetes;
- providing strong and simple educational and training programs to healthcare providers and people with diabetes to ensure easy, safe and effective use of our systems; and
- maintaining a readily accessible telephone and web-based technical and customer support infrastructure, which includes clinicians, diabetes educators and reimbursement specialists, to help referring physicians, diabetes educators and people with diabetes as necessary.

We typically experience seasonality, with lower sales in the first quarter of each year compared to the immediately preceding fourth quarter. This seasonal sales pattern relates to U.S. annual insurance deductible resets and unfunded flexible spending accounts.

## Competition

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The market for blood 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 our current CGM systems, we compete directly with the Diabetes Care division of Abbott Laboratories; Medtronic plc's Diabetes Group; Roche Diabetes Care, a division of Roche Diagnostics; privately-held LifeScan, Inc.; and Ascensia Diabetes Care, each of which manufactures and markets products for the single-point finger stick device market. Collectively, these companies currently account for the majority of the worldwide sales of self-monitored glucose testing systems.

Several companies are developing or commercializing products for continuous or periodic monitoring of glucose levels in the interstitial fluid under the skin that compete directly with our products. We have competed with Abbott and their Libre family of CGM products for many years. Medtronic markets and sells a standalone glucose monitoring product called Guardian Connect, both internationally and in the United States.

Medtronic and other third parties have developed or are developing, insulin pumps integrated with continuous glucose monitoring systems that provide, among other things, the ability to suspend insulin administration while the user's glucose levels are low and to automate basal or bolus insulin dosing.

We also have begun to become aware of companies outside the traditional medical device sector that are attempting to develop competitive products and services, including for the general health and wellness, or population health space. Some of the companies developing or marketing competing devices are large and well-known publicly traded companies.

We believe that the principal competitive factors in our market include:

- safe, reliable and high-quality performance of products;
- cost of products and eligibility for reimbursement;
- comfort and ease of use of products;
- effective sales, marketing and distribution networks;
- brand awareness and strong acceptance by healthcare professionals and people with diabetes;
- customer service and support and comprehensive education for people with diabetes and diabetes care providers;
- speed of product innovation and time to market;
- regulatory expertise; and
- technological leadership and superiority.

For additional information on competition, please see our Risk Factor entitled "*We operate in a highly competitive market and face competition from large, well-established companies with significant resources, and, as a result, we may not be able to compete effectively.*"

## Manufacturing

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We currently manufacture our products at our headquarters in San Diego, California and at our manufacturing facility in Mesa, Arizona. As of December 31, 2021, we had approximately 64,000 square feet of laboratory space and approximately 101,500 square feet of controlled environment rooms. In 2020, we commenced construction of a new facility in Malaysia that we anticipate will add substantial manufacturing capacity. There are technical challenges to increasing manufacturing capacity, finding or enhancing new manufacturing facilities capable of meeting regulatory requirements, U.S. state licensure of 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 and maintaining commercial-scale manufacturing facilities has and will continue to 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.

We manufacture our current CGM 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. The remaining components and assemblies are purchased from outside vendors. We then assemble, test, package and ship the finished systems, which may include a reusable transmitter, a receiver and disposable sensors.

We purchase certain components and materials used in manufacturing from single sources due to quality considerations, costs or constraints resulting from regulatory or other requirements. As of December 31, 2021, those single sources include

suppliers of application-specific integrated circuits used in our transmitters, seals used for the applicator and certain polymers used to synthesize polymeric membranes for our sensors. For additional information, please see our Risk Factor entitled, *“We depend upon third-party suppliers and outsource to other parties, making us vulnerable to supply disruptions, suboptimal quality, non-compliance and/or price fluctuations, which could harm our business.”* For supply risks related to COVID-19, see our Risk Factor entitled *“The outbreak of the SARS-Cov-2 virus and its variants and the COVID-19 disease that it causes, or similar public health crises, could have a material adverse impact on our business, financial condition and results of operations, including our manufacturing, commercial operations and sales.”*

## Third-Party Reimbursement

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As a medical device company, reimbursement from Medicare, Medicaid or other governmental healthcare programs or systems, and private third-party healthcare payors is an important element of our success. In January 2017, the Centers for Medicare and Medicaid, or CMS, established a classification of “Therapeutic Continuous Glucose Monitors” as durable medical equipment under Medicare Part B, subject to payment by Medicare under certain coverage conditions to be determined by CMS, by local Medicare Administrative Contractors or on a patient claim by claim basis. In September 2016, Germany’s Federal Joint Committee agreed to provide reimbursement for continuous glucose monitoring systems under certain conditions which we believe we meet. We also have coverage under certain international markets and Medicaid coverage in about 44 states.

As of December 31, 2021, the eight 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 of those third-party payors for the purchase of our current CGM systems by their members. We have personnel with 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 continued our efforts to create and liberalize coverage policies with third-party payors, including obtaining reimbursement for our products under pharmacy benefits and for more people with diabetes.

For additional information on third-party reimbursement, please see our see Risk Factors entitled *“Managed care trends and consolidation in the health care industry could have an adverse effect on our revenues and results of operations.”* and *“Health care policy changes, including U.S. health care reform legislation, may have a material adverse effect on our business.”*

## Intellectual Property

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Protection of our intellectual property is a strategic priority for our business. We rely on a combination of patents, copyrights, trademarks, trade names, trade secrets, nondisclosure agreements and other measures to establish and protect our proprietary rights.

Our patent portfolio includes numerous issued and pending patent applications in the U.S. and other parts of the world, which in the aggregate, we believe to be of material importance in the operation of our business. U.S. patents, as well as most foreign patents, are generally effective for 20 years from the date the earliest application was filed. In some cases, the patent term may be extended. Our issued patents as of December 31, 2021 are set to expire over a range of years, from 2022 with respect to some of our earlier patents, to 2039, subject to any extensions. We also have various registered U.S. trademarks, registered European Community trademarks, and many other trademark registrations and pending trademark applications around other parts of the world. In addition, we have entered into exclusive and non-exclusive licenses in the ordinary course of business relating to a wide array of technologies or other intellectual property rights or assets.

Our patents and patent applications seek to protect aspects of our core membrane and sensor technologies and our product concepts for continuous glucose monitoring. We believe that our patent position provides us with sufficient rights to protect our current and proposed commercial products. However, our patent applications may not result in issued patents, and any patents that have been issued or might be issued may not protect our intellectual property rights. Furthermore, we operate in an industry characterized by extensive patent litigation, and our patents may not be upheld if challenged. Any patents issued to us may be challenged by third parties as being invalid or unenforceable, and patent litigation may result in significant damage awards and injunctions that could prevent the manufacture and sale of affected products or result in significant royalty payments in order to continue selling the products. Third parties may also independently develop similar or competing technology that avoids our patents. The steps we have taken may not prevent the misappropriation of our intellectual property, particularly in foreign countries where the laws may not protect our proprietary rights as fully as in the United States. We also face risks associated with intellectual property infringement.

We also rely on trade secrets, technical know-how and continuing innovation to develop and maintain our competitive position. We seek to protect our proprietary information and other intellectual property by generally requiring our employees, consultants, contractors, suppliers, outside scientific collaborators and other advisors to execute non-disclosure and assignment of invention agreements on commencement of their employment or engagement. Agreements with our employees also forbid

them from bringing the proprietary rights of third parties to us. We also generally require confidentiality or material transfer agreements from third parties that receive our confidential data or materials. We cannot guarantee that employees and third parties will abide by the confidentiality or assignment terms of these agreements. Despite measures taken to protect our intellectual property, unauthorized parties might copy aspects of our products or obtain and use information that we regard as proprietary.

## Corporate Responsibility

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We strive to advance the interests of all our stakeholders – including patients, caregivers, employees, investors, and our communities – by operating in an ethical and sustainable way. We do this by holding true to our core values: Listen, Think Big, Be Dependable, and Serve with Integrity. These values are at the heart of our sustainability activities.

- *Listen* – We believe in listening to our customers and our employees. We have launched a number of programs to advocate for individuals living with diabetes and we support our employees and their families through a number of benefit programs that are available. In addition, we promote diversity, practice fairness, and treat everyone with respect and dignity.
- *Think Big* – We seek to expand global healthcare access for people with diabetes and actively work to increase access to our products. We also have committed to operate our business in a manner that is protective of the environment and conserves natural resources and reduces waste.
- *Be Dependable* – We are committed to quality and believe that is best achieved through a safe and healthy workplace as well as a Quality Management System that is compliant with all applicable regulatory requirements and which is continuously being improved.
- *Serve with Integrity* – While oversight of our ethics and governance structure begins with our Board of Directors and Executive Leadership Team, we expect all employees to foster a culture of accountability in line with our Code of Conduct and Business Ethics. We also maintain a compliance program to help enforce ethical conduct and adherence to applicable laws and regulations.

Our Nominating and Governance Committee of the Board of Directors oversees and reviews annually (a) our policies and programs concerning (i) corporate social responsibility and (ii) our participation and visibility as a global corporate citizen; (b) our sustainability performance; and (c) the assessment and management of environmental, sustainability and governance risks affecting our business.

Our Sustainability Report is available at <https://investors.dexcom.com/corporate-governance>, which is provided for reference only and is not incorporated by reference into this Annual Report on Form 10-K.

## Government Regulation

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The medical devices that we manufacture are subject to regulation by numerous regulatory bodies, including the FDA and comparable international regulatory agencies. These agencies require manufacturers of medical devices to comply with applicable laws and regulations governing the development, testing, manufacturing, labeling, marketing and distribution of medical devices. Devices are generally subject to varying levels of regulatory control, the most comprehensive of which requires that a clinical evaluation program be conducted before a device receives approval for commercial distribution. In addition, healthcare regulatory bodies in the United States and around the world impose a range of requirements related to the payment for medical devices and the procedures in which they are used, including laws intended to prevent fraud, waste, and abuse of healthcare dollars.

### U.S. Laws and Regulations

At the U.S. federal level, our products are medical devices subject to extensive and ongoing regulation by the FDA. The U.S. Federal Food, Drug and Cosmetic Act, referred to as the FDCA, and the FDA's implementing regulations govern product design and development, pre-clinical and clinical testing, pre-market clearance, authorization or approval, establishment registration and product listing, product manufacturing, product labeling, product storage, advertising and promotion, product sales, distribution, recalls and field actions, servicing and post-market clinical surveillance. A number of U.S. states also impose licensing and compliance regimes on companies that manufacture or distribute prescription devices in the state.

In addition, the delivery of our devices in the U.S market is subject to regulation by various U.S. Department of Health and Human Services divisions including CMS, the DHHS Office of the Inspector General, or OIG, the Department of Veterans Affairs, and comparable state agencies responsible for reimbursement and regulation of payment for health care items and services. U.S. laws and regulations are imposed primarily in connection with the Medicare, Medicaid, and TRICARE programs, as well as the government's interest in regulating the quality and cost of health care.

## FDA Regulation

Unless an exemption applies, each medical device we wish to commercially distribute in the United States will require either prior 510(k) clearance, prior *de novo* down-classification and a related grant of marketing authorization, or prior approval from the FDA through the premarket approval, or PMA process. The FDA classifies medical devices into one of three classes. Devices requiring fewer controls because they are deemed to pose lower risk are placed in Class I or II. Class I devices are subject to general controls such as labeling, pre-market notification, and adherence to the FDA's manufacturing requirements, which are contained in the Quality System Regulation, or QSR. Class II devices are subject to special controls such as performance standards, post-market surveillance, FDA guidelines, or particularized labeling, as well as general controls. Some Class I and Class II devices are exempted by regulation from the pre-market notification (i.e., 510(k) clearance) requirement, and/or the requirement of compliance with substantially all of the QSR. As an example, the mobile applications that comprise the Share System were classified by the FDA as Class II exempt. With the mobile applications classified as Class II exempt, we must comply with certain general and special controls required by the FDA but we do not need prior FDA review to commercialize changes to the mobile applications. Some devices are placed in Class III, which requires approval of a PMA application, if they are deemed by the FDA to pose the greatest risk, such as life-sustaining, life-supporting or certain implantable devices, or to be "not substantially equivalent" either to a previously 510(k) cleared device or to a "preamendment" Class III device in commercial distribution before May 28, 1976 for which PMA applications have not been required.

If a previously unclassified new medical device does not qualify for the 510(k) pre-market notification process because no predicate device to which it is substantially equivalent can be identified, the device is automatically classified into Class III. Under FDA law, the *de novo* classification procedure allows a manufacturer whose novel device is automatically classified into Class III to request down-classification of its medical device into Class I or Class II on the basis that the device presents low or moderate risk, rather than requiring the submission and approval of a PMA. If the FDA agrees with the down-classification, the *de novo* applicant will then receive authorization to market the device, and a classification regulation will be established for the device type. The device can then be used as a predicate device for future 510(k) submissions by the manufacturer or a competitor.

A PMA application must be supported by valid scientific evidence, which typically requires extensive data, including technical, pre-clinical, clinical, manufacturing and labeling data, to demonstrate to the FDA's satisfaction the safety and efficacy of the device. A PMA application also must include a complete description of the device and its components, a detailed description of the methods, facilities and controls used to manufacture the device, and proposed labeling.

FDA review of a PMA application generally takes between one and three years, but may take significantly longer. The FDA can delay, limit or deny approval of a PMA application for many reasons.

If an FDA evaluation of a PMA application or manufacturing facilities is favorable, the FDA will either issue an approval letter, or approvable letter, which usually contains a number of conditions which must be met in order to secure final approval of the PMA. When and if those conditions have been fulfilled to the satisfaction of the FDA, the agency will issue a PMA approval letter authorizing commercial marketing of a device, subject to the conditions of approval and the limitations established in the approval letter. If the FDA's evaluation of a PMA application or manufacturing facilities is not favorable, the FDA will deny approval of the PMA or issue a not approvable letter. The FDA may also determine that additional trials are necessary, in which case the PMA approval may be delayed for several months or years while the trials are conducted and data is submitted in an amendment to the PMA. The PMA process can be expensive, uncertain and lengthy and a number of devices for which FDA approval has been sought by other companies have never been approved by the FDA for marketing.

New PMA applications or PMA supplements may be required for modifications to the manufacturing process, labeling, device specifications, materials or design of a device that is approved through the PMA process. PMA supplements often require submission of the same type of information as an initial PMA application, except that the supplement is limited to information needed to support any changes from the device covered by the approved PMA application and may or may not require as extensive clinical data or the convening of an advisory panel.

Clinical trials are almost always required to support a PMA application and are sometimes required for a 510(k) clearance. All clinical trials must be conducted in accordance with the FDA's IDE regulations, which govern investigational device labeling, prohibit promotion, and specify an array of Good Clinical Practice requirements, which include among other things, recordkeeping, reporting and monitoring responsibilities of study sponsors and study investigators. Clinical trials must further comply with the FDA's regulations for institutional review board approval and for informed consent and other human subject protections. Required records and reports are subject to inspection by the FDA. The results of clinical testing may be unfavorable or, even if the intended safety and efficacy success criteria are achieved, may not be considered sufficient for the FDA to grant approval or clearance of a product. The commencement or completion of any of our clinical trials may be delayed or halted, or be inadequate to support approval of a PMA application, 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 is not 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 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 clinical trial protocol, good clinical practices or other FDA 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, which may, among other things, require us to undertake corrective action or suspend or terminate our clinical trials;
- changes in governmental regulations 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 effectiveness; and
- the FDA concludes that the results from our trial and/or trial design are inadequate to demonstrate safety and effectiveness of the product.

In addition to our CGM device, we have a Class I data management service which we market to clinics. This service helps healthcare providers and patients see, understand and use blood glucose meter data to diagnose and manage diabetes. The service also allows researchers to control the transfer of data from certain diabetes devices to research tools and databases according to their own research workflows.

The infrastructure of the data management service is considered “medical device data systems,” or MDDS. MDDS are hardware or software products that transfer, store, convert formats, and display medical device data. An MDDS does not modify the data or modify the display of the data, and it does not by itself control the functions or parameters of any other medical device. MDDS are not intended to be used for active patient monitoring. The 21st Century Cures Act excluded certain software functions from the definition of “device”, thus products meeting the definition of MDDS (which previously might have been regulated as Class I, 510(k)-exempt devices) are no longer considered devices and thus are not subject to FDA regulatory requirements.

Additional functions of, or intended uses for, our software platform may require us to obtain marketing authorization from the FDA.

After a device is authorized for marketing and placed in commercial distribution, numerous regulatory requirements apply. These include:

- establishment registration and device listing;
- QSR, which requires manufacturers to follow design, testing, control, storage, supplier/contractor selection, complaint handling, documentation and other quality assurance procedures;
- labeling regulations, which prohibit the promotion of products for unapproved or off-label uses or indications and impose other restrictions on labeling, advertising and promotion;
- medical device reporting regulations, which require that manufacturers report to the FDA if a device may have caused or contributed to a death or serious injury or malfunctioned in a way that would likely cause or contribute to a death or serious injury if it were to recur;
- voluntary and mandatory device recalls to address problems when a device is defective and/or could be a risk to health; and
- corrections and removal reporting regulations, which require that manufacturers report to the FDA field corrections and product recalls or removals if undertaken to reduce a risk to health posed by the device or to remedy a violation of the FDCA that may present a risk to health.

Also, the FDA may require us to conduct post-market surveillance studies or order us to establish and maintain a system for tracking our products through the chain of distribution to the patient level. The FDA and the Food and Drug Branch of the

California Department of Health Services enforce regulatory requirements by conducting periodic, unannounced inspections and market surveillance. Inspections may include the manufacturing facilities of our subcontractors.

Failure to comply with applicable regulatory requirements, including those applicable to the conduct of our clinical trials, can result in enforcement action by the FDA, which may lead to any of the following sanctions:

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

We and our contract manufacturers, specification developers, and some suppliers of components or device accessories, are also required to manufacture our products in compliance with current Good Manufacturing Practice requirements set forth in the QSR. The QSR requires a quality system for the design, manufacture, packaging, labeling, storage, installation and servicing of marketed devices, and includes extensive requirements with respect to quality management and organization, device design, buildings, equipment, purchase and handling of components or services, production and process controls, packaging and labeling controls, device evaluation, distribution, installation, complaint handling, servicing, and record keeping. The FDA evaluates compliance with the QSR through periodic unannounced inspections that may include the manufacturing facilities of our subcontractors. If the FDA believes we or any of our contract manufacturers or regulated suppliers are not in compliance with these requirements, it can shut down our manufacturing operations, require recall of our products, refuse to approve new marketing applications, institute legal proceedings to detain or seize products, enjoin future violations, or assess civil and criminal penalties against us or our officers or other employees. Any such action by the FDA would have a material adverse effect on our business. We may be unable to comply with all applicable FDA regulations.

#### ***U.S. Fraud and Abuse Laws and Other Compliance Requirements***

The healthcare industry is subject to various U.S. federal and state laws pertaining to healthcare fraud and abuse. Violations of these laws are punishable by criminal and civil sanctions, including, in some instances, exclusion from participation in U.S. federal and state healthcare programs, including Medicare and Medicaid.

*Anti-kickback Laws.* The federal Anti-Kickback Statute prohibits persons from knowingly and willfully soliciting, receiving, offering or providing remuneration directly or indirectly to induce either the referral of an individual, or the furnishing, recommending, or arranging for the referral of a good or service, for which payment may be made, in whole or in part, under a federal healthcare program such as Medicare and Medicaid. The definition of “remuneration” has been broadly interpreted to include anything of value, including such items as gifts, discounts, the furnishing of supplies or equipment, credit arrangements, waiver of payments, and providing anything at less than its fair market value. Given the breadth of this prohibition, Congress has issued a number of exceptions and has granted authority to the OIG to issue safe harbor regulations, each of which set forth certain provisions which, if satisfied in their entirety, will assure parties to the arrangement that they will not be prosecuted under the federal Anti-Kickback Statute. The failure of a transaction or arrangement to fit precisely within one or more exceptions or safe harbors is not per se illegal; rather, each arrangement is subject to a facts and circumstances analysis to determine whether the requisite improper intent exists. Therefore, conduct and business arrangements that do not fully satisfy each applicable exception or safe harbor element may result in increased scrutiny by government enforcement authorities or invite litigation by private citizens under federal whistleblower laws. Violation of the Anti-Kickback Statute is a felony and conviction could result in the assessment of fines of up to \$100,000 per violation or imprisonment for up to 10 years or both.

*Federal Civil False Claims Act.* The federal Civil False Claims Act prohibits knowingly presenting, or causing to be presented a false claim or the knowing use of false statements or records to obtain payment from the federal government. When an entity is determined to have violated the False Claims Act, it may be subject to repayment of three times the actual damages sustained by the government, plus mandatory civil penalties of between \$11,803 and \$23,607 (adjusted for inflation) for each separate false claim. Suits filed under the False Claims Act can be brought by any individual on behalf of the government and such individuals (known as “relators” or, more commonly, as “whistleblowers”) may share in any amounts paid by the entity to the government in fines or settlement. These whistleblower-initiated False Claims Act cases are commonly referred to as “qui

tam” actions. False Claims Act cases may also be initiated by the U.S. Department of Justice or any of its local U.S. Attorneys’ Offices. In addition, certain states have enacted laws modeled after the federal False Claims Act. Qui tam actions have increased significantly in recent years, causing greater numbers of healthcare companies to have to defend a false claim action, even before the validity of the claim is established and even if the government decides not to intervene in the lawsuit. Healthcare companies may decide to agree to large settlements with the government and/or whistleblowers to avoid the cost and negative publicity associated with litigation. Federal enforcement agencies also have showed increased interest in pharmaceutical companies’ product promotion, health care professional engagements, and patient assistance programs, including reimbursement and co-pay support services, and a number of investigations into these programs have resulted in significant civil and criminal settlements. In addition, the Affordable Care Act amended federal law to provide that the government may assert that a claim for items or services resulting from a violation of the federal Anti-Kickback Statute constitutes a false or fraudulent claim for purposes of the federal civil False Claims Act. Criminal prosecution is also possible for knowingly making or presenting a false or fictitious or fraudulent claim to the federal government.

*Federal Physician Self-Referral Law.* The Federal Physician Self-Referral Law, also referred to as the Stark Law, prohibits a physician (or an immediate family member of a physician) who has a financial relationship with an entity from referring patients to that entity for certain designated health services, including durable medical equipment such as the CGM receiver and supplies, payable by Medicare, unless an exception applies. The Stark Law also prohibits such an entity from presenting or causing to be presented a claim to the Medicare program for such designated health services provided pursuant to a prohibited referral, and provides that certain collections related to any such claims must be refunded in a timely manner. Exceptions to the Stark Law include, among other things, exceptions for certain financial relationships, including both ownership and compensation arrangements. The Stark Law is a strict liability statute, therefore, to the extent that the statute is implicated and an exception does not apply, the statute is violated. Violations of the Stark Law must be reported and payment for improper referrals returned to Medicare in order to avoid potential liability under the federal False Claims Act for avoiding a known obligation to return identified overpayments. In the fall of 2020, we transitioned our Medicare business to distributors and no longer bill Medicare directly for DME and related supplies. In doing so, we have limited our exposure under the Stark Law. In addition to the Stark Law, many states have implemented similar physician self-referral prohibitions that may extend to Medicaid, third party payors, and self-pay patients, and may be applicable to our relationships with physicians and other health care providers.

*Civil Monetary Penalties Law.* The Civil Monetary Penalties Law, or CMPL, authorizes the imposition of substantial civil money penalties against an entity that engages in certain prohibited activities including but not limited to violations of the Stark Law or Anti-Kickback Statute, knowing submission of a false or fraudulent claim, employment of an excluded individual, and the provision or offer of anything of value to a Medicare or Medicaid beneficiary that the transferring party knows or should know is likely to influence beneficiary selection of a particular provider or supplier for which payment may be made in whole or part by a federal health care program, commonly known as the Beneficiary Inducement CMP. Remuneration is defined under the CMPL as any transfer of items or services for free or for less than fair market value. There are certain exceptions to the definition of remuneration for offerings that meet the Financial Need, Preventative Care, or Promoting Access to Care exceptions. Sanctions for violations of the CMPL include civil monetary penalties and administrative penalties up to and including exclusion from participation in federal health care programs.

Violations of the Stark Law, the Anti-Kickback Statute, the Civil Monetary Penalties Law and/or the federal False Claims Act can also form the basis for exclusion from participation in federal and state healthcare programs.

*State Analogs of Federal Fraud and Abuse Laws.* Many U.S. states have their own laws intended to protect against fraud and abuse in the health care industry and more broadly. In some cases these laws prohibit or regulate additional conduct beyond that covered under federal law. Penalties for violating these laws can range from fines to criminal sanctions.

*Health Insurance Portability and Accountability Act of 1996 (HIPAA).* The Health Insurance Portability and Accountability Act of 1996, as amended by the American Recovery and Reinvestment Act of 2009, and implementing regulations, collectively HIPAA, created two federal crimes: healthcare fraud and false statements relating to healthcare matters. The healthcare fraud statute prohibits knowingly and willfully executing a scheme to defraud any healthcare benefit program, including private payors. A violation of this statute is a felony and may result in fines, imprisonment or exclusion from government sponsored programs. The false statements statute prohibits knowingly and willfully falsifying, concealing or covering up a material fact or making any materially false, fictitious or fraudulent statement in connection with the delivery of or payment for healthcare benefits, items or services.

*HIPAA and Other U.S. Privacy Laws and Regulations.* HIPAA, as well as a number of other federal and state privacy-related laws, also extensively regulate the use and disclosure of individually identifiable health information, known as “protected health information,” and require covered entities, including health plans and most health care providers, to implement administrative, physical and technical safeguards to protect the security of such information. Certain provisions of the security and privacy regulations apply to business associates (entities that handle protected health information on behalf of

covered entities), and business associates are subject to direct liability for violation of these provisions. In addition, a covered entity may be subject to criminal and civil penalties as a result of a business associate violating HIPAA, if the business associate is found to be an agent of the covered entity. Covered entities must report breaches of unsecured protected health information to affected individuals without unreasonable delay and notification must also be made to the U.S. Department of Health & Human Services, Office for Civil Rights, or OCR and, in certain situations involving large breaches, to the media. Various U.S. state laws and regulations may also require us to notify affected individuals and state agencies in the event of a data breach involving individually identifiable information. The OCR enforces the regulations and performs compliance audits. In addition to enforcement by OCR, state attorneys general are authorized to bring civil actions seeking either injunction or damages in response to violations that threaten the privacy of state residents. Dexcom is a covered entity under HIPAA and in certain circumstances, may also be a business associate of another covered entity. The HIPAA privacy regulations and security regulations impose and will continue to impose significant costs on us in order to comply with these standards.

There are numerous other laws and legislative and regulatory initiatives at the federal and state levels addressing privacy and security concerns. We also remain subject to federal or state privacy-related laws that are more restrictive than the privacy regulations issued under HIPAA. These laws vary and could impose additional penalties. For example, the Federal Trade Commission uses its consumer protection authority to initiate enforcement actions in response to alleged privacy and data security violations. Further, certain states have proposed or enacted legislation that will create new data privacy and security obligations for certain entities, such as the California Consumer Privacy Act, or CCPA, which came into effect January 1, 2020 and was amended and expanded by the California Privacy Rights Act, or CPRA, passed on November 3, 2020. The CCPA and CPRA, among other things, create new data privacy obligations for covered companies and provides new privacy rights to California residents, including the right to opt out of certain disclosures of their information. The CCPA also created a private right of action with statutory damages for certain data breaches, thereby potentially increasing risks associated with a data breach. It remains unclear what, if any, additional modifications will be made to the CPRA by the California legislature or how it will be interpreted. Therefore, the effects of the CCPA and CPRA are significant and have required us to modify our data processing practices, and may cause us to incur substantial costs and expenses to ensure ongoing compliance, particularly given our base of operations in California. Other states are also seeking to regulate consumer privacy stringently, and both Virginia and Colorado signed comprehensive privacy legislation into law in 2021. These laws (the Virginia Consumer Data Protection Act and the Colorado Privacy Act) are set to come into force in 2023 and a number of other state legislatures are actively considering passing similar consumer privacy laws, including those in New York and Washington.

In addition to the laws discussed above, we may see more stringent state and federal privacy legislation passed in 2022 and beyond, as the increased cyber-attacks during the COVID-19 pandemic have once again put a spotlight on data privacy and security in the U.S. and other jurisdictions. We cannot predict where new legislation might arise, the scope of such legislation, or the potential impact to our business and operations.

*FCPA and Other Anti-Bribery and Anti-Corruption Laws.* The U.S. Foreign Corrupt Practices Act, or FCPA, prohibits U.S. corporations and their representatives from offering, promising, authorizing or making payments to any foreign government official, government staff member, political party or political candidate in an attempt to obtain or retain business abroad. The scope of the FCPA would include interactions with certain healthcare professionals in many countries, either directly or through our contracted distributors. Our present and future business has been and will continue to be subject to various other U.S. and foreign laws, rules and/or regulations.

*Physician Payment Sunshine Act.* Pursuant to the Patient Protection and Affordable Care Act that was signed into law in March 2010, the federal government enacted the Physician Payment Sunshine Act. As a manufacturer of U.S. FDA-regulated devices reimbursable by federal healthcare programs, we are subject to this law, which requires us to track and annually report certain payments and other transfers of value we make to U.S.-licensed physicians or U.S. teaching hospitals. We are also required to report certain ownership interests held by physicians and their immediate family members. In 2018, the law was extended to require tracking and reporting of transfers of value to physician assistants, nurse practitioners, and other mid-level practitioners. Reporting requirements will go into effect in 2022 for payments and transfers of value made to these additional practitioner-types in 2021. CMS has the potential to impose penalties of up to \$1.15 million per year for violations of the Physician Payment Sunshine Act, depending on the circumstances, and reported payments also have the potential to draw scrutiny to our relationships with physicians and academic medical institutions, which may have implications under the Anti-Kickback Statute and other healthcare laws.

In addition, there has been a recent trend of increased federal and state regulation of payments and other transfers of value provided to healthcare professionals and entities. Similar to the federal law, certain states also have adopted marketing and/or transparency laws relevant to device manufacturers, some of which are broader in scope. Certain states also mandate that device manufacturers implement compliance programs. Other states impose restrictions on device manufacturer marketing practices and require tracking and reporting of gifts, compensation, and other remuneration to healthcare professionals and entities. The need to build and maintain a robust compliance program with different compliance and/or reporting requirements increases the possibility that a company may violate one or more of the requirements, resulting in fines and penalties.

## **International Regulation**

International sales of medical devices are subject to foreign government regulations, which may vary substantially from country to country. The time required to obtain approval in a foreign country may be longer or shorter than that required for FDA approval, and the requirements may differ. There is a trend towards harmonization of quality system standards among the European Union, United States, Canada and various other industrialized countries.

The regulatory framework governing medical devices is largely harmonized within the European Union, which includes most of the major countries in Europe (please note that the UK is effectively no longer part of the European Union as of January 1, 2021). Other countries, such as Switzerland, have voluntarily adopted laws and regulations that mirror those of the European Union with respect to medical devices. The European Union has adopted numerous directives and standards regulating the design, manufacture, clinical trials, labeling and adverse event reporting for medical devices. To be placed on the European Union market, devices must undergo a conformity assessment and bear the CE mark, indicating that the device conforms to the essential requirements of the applicable rules. The method of assessing conformity varies depending on the class of the product, but normally involves a combination of self-assessment by the manufacturer and a third-party assessment by a “Notified Body.” This third-party assessment, which may consist of an audit of the manufacturer’s quality system and specific testing of the manufacturer’s product, is always required in order for a manufacturer to commercially distribute the product throughout the European Union, except in case of Class I medical devices (those entailing the lowest level of risk). Outside of the European Union, regulatory approval needs to be sought on a country-by-country basis in order for us to market our products. The European Union Medical Device Regulation, or MDR, went into force in 2017, replacing the existing Directive and providing three years for transition and compliance, which has been extended by one additional year. The MDR became applicable in the European Union on May 26, 2021, changing several aspects of the existing regulatory framework. Other countries have adopted medical device regulatory regimes, such as the Classification Rules for Medical Devices published by the Hong Kong Department of Health, the Health Sciences Authority of Singapore regulation of medical devices under the Health Products Act, and Health Canada’s risk classification system for invasive devices, among others. Each country may have its own processes and requirements for medical device licensing, approval, and regulation, therefore requiring us to seek regulatory approvals on a country-by-country basis.

Outside the United States a range of anti-bribery and anti-corruption laws, as well as some industry-specific laws and codes of conduct, apply to the medical device industry and interactions with government officials and entities and healthcare professionals. Laws include the UK Bribery Act of 2010. Further, the EU member countries have emphasized a greater focus on healthcare fraud and abuse and have indicated greater attention to the industry by the European Anti-Fraud Office. MedTech Europe, the medical device industry association, also introduced the Code of Ethical Business Practices, which came into effect on January 1, 2017. Countries in Asia have also become more active in their enforcement of anti-bribery laws and with respect to procurement and supply chain fraud.

In the European Union, increasingly stringent data protection and privacy rules that have and will continue to have substantial impact on the use of patient data across the healthcare industry became effective in May 2018. The EU General Data Protection Regulation, or GDPR, applies across the European Union and includes, among other things, a requirement for prompt notice of data breaches to data subjects and supervisory authorities in certain circumstances and significant fines for non-compliance. The GDPR fine framework can be up to 20 million euros, or up to 4% of the company’s total global turnover of the preceding fiscal year, whichever is higher. The GDPR also requires companies processing personal data of individuals residing in the European Union to comply with EU privacy and data protection rules, even if the company itself does not have a physical presence in the European Union. Noncompliance could result in the imposition of fines, penalties, or orders to stop noncompliant activities. Due to the strong consumer protection aspects of the GDPR, companies subject to its purview are allocating substantial legal costs to the development of necessary policies and procedures and overall compliance efforts. We expect continued costs associated with maintaining compliance with GDPR into the future.

## **Environmental Regulation**

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.

## Advisory Boards and Consultants

We have relied upon the advice of experts in the development and commercialization of our products. Since 2005, we have used experts in various disciplines on a consulting basis as needed to solve problems or accelerate development pathways. We may continue to engage advisors from the academic, consultancy, governmental or other areas to assist us as necessary. Relationships between manufacturers and physicians, including in consultancy and advisory board roles, is subject to scrutiny under the Stark Law, the federal Anti-Kickback Statute, and their state law equivalents. Due to this scrutiny, we incur legal and consulting fees to ensure our relationships with physicians meet regulatory requirements, including that compensation paid to such physicians is within fair market value.

## Human Capital

As of December 31, 2021, we have approximately 6,300 full-time employees and approximately 700 contract and temporary employees around the globe.

Country	Female	Male	Grand Total	Ethnically Diverse (US Only)*
United States	2,000	2,500	4,500	2,800
Non-United States (“OUS”)	1,000	800	1,800	N/A
Grand Total	3,000	3,300	6,300	2,800

\*All diversity data is self-reported. We capture ethnic diversity data in the United States only, comprised of the following categories: Black or African American, Hispanic or Latino, Asian, American Indian/Alaskan Native, Native Hawaiian or Other Pacific Islander, Two or More Races.

None of our employees are represented by a labor union or covered by a collective bargaining agreement, except for our employees in our Mainz, Germany location that are represented by a Works Council. We have never experienced any employment-related work stoppages and we consider our employee relations to be good.

We are optimistic about the potential to expand our global workforce and create a more inclusive environment for all of our employees.

### Diversity, Equity and Inclusion

Our journey to create a more diverse, equitable and inclusive workplace continues. We are proud of the additional ground we have gained in 2021 to advance our efforts and the external recognition received in *Forbes* magazine, landing on its *Best Employers for Women*, *Best Employers for Diversity* and *Best in State Employer* lists for the U.S. offices, and the Investors In People Silver Certification awarded to our Dexcom Philippines office.

We established diversity, equity, and inclusion, or DEI, as a corporate objective under our 2021 corporate goal related to the employee experience and commitment. With expanded talent and diversity staff, we have evolved the DEI Leadership Council, or DLC, as a means for leaders to work closely together to advance the broader DEI strategy across the organization. We have also added several more employee resource groups for our employees globally. In 2021, we launched an interactive foundational training program on DEI for our managers, in each of Dexcom’s global locations. To date, more than 70% of our global people leaders have completed this optional training. In 2022, foundational DEI training will launch to all employees.

To continue to foster equity through our core talent processes, we rolled out a diversity snapshot data tool for our people leaders to establish a baseline understanding of the diversity of their teams and measure the effectiveness of DEI practices over time. Our annual talent planning reviews have evolved to include discussion of function-specific DEI strengths and opportunities throughout each team. In 2022, we plan to launch two pipeline development programs--one specifically aimed at developing top-performing diverse managers, and the other focused on fostering a diverse leadership pipeline. In 2021, our company internship program doubled the number of women and ethnically diverse participants. Ethnically diverse students accounted for nearly half of our 2021 internship class. Our annual employee experience survey included a DEI index to help track our efforts on diversity, equity, inclusion, accessibility and belonging, which was favorable across all questions. The work we have done to date represents the beginning of our DEI journey. We will continue to focus on building a pipeline of opportunities for both the hiring and advancement of qualified individuals, including for women, persons with disabilities, and minority groups that are underrepresented in science and engineering industries. We believe that diverse perspectives will help empower our employees, patients and industry.

### Communications and Engagement

Our success depends on employees understanding our strategic vision as well as our day-to-day objectives. To that end, we employ a mix of communication and engagement channels, including a global intranet and social network, and global

regional and functional town halls; regular leadership forums; and quarterly updates on our progress against our strategic goals. We have also deployed digital signage into our manufacturing and distribution areas to ensure that all our onsite employees remain connected to our mission and goals. In addition, we have a cross-functional team that focuses on improving the employee experience and driving engagement.

A central part of our communications and engagement efforts are connecting people to purpose. To this end, we regularly invite Dexcom users, called Warriors, to share their stories with our employees. Whether the Warrior is a professional athlete whose performance depends on Dexcom, or a parent who no longer has to stick their child's fingers during the night, their experiences reinforce our commitment to expand our reach into new patient populations, geographies and markets.

We value every employee's unique characteristics, contributions, and perspectives. In 2021, we launched a listening strategy across multiple points of the employee experience and engaged employees in co-creating our human-centered hybrid workplace and employee experience through their feedback.

As the COVID-19 pandemic continued to produce unpredictability and anxiety, we encouraged our leaders to check in frequently to gauge the well-being of their teams. We surveyed employee perspectives and expectations about returning to the workplace and continued to provide resources and support to drive productivity and connection as returns to the office were further delayed for many teams.

Our leadership defined a Dexcom-specific employee experience vision, against which we developed an employee engagement survey to measure our current state. Our survey had more than 80% participation rate. While employees in large part responded favorably, representing a positive experience and strong engagement, the feedback employees provided informs our action planning related to areas of opportunity, as we continue to evolve toward a world-class employee experience for our organization.

### *Health, Safety and Wellness*

We are deeply committed to the safety, health and wellness of our employees. The Dexcom Environmental, Health, Safety & Sustainability team develops global safety practices and procedures, trains employees, and monitors compliance. Through these efforts, along with leadership commitment and investment of resources in support of workplace safety initiatives, our total US injury rate has consistently tracked below industry averages.

We also provide comprehensive well-being programs that support our employees and their families. For example, Inspire, our newly launched global wellness platform, helps employees and their family members develop and achieve their physical, emotional, and financial well-being goals.

In 2021, to support our employees' continued needs related to the COVID-19 pandemic, we provided multiple vaccination clinics for employees and their families, proactive on-site testing for our employees who returned to the workplace, and continued support of remote work for employees whose roles allow for it. We also continue to evaluate how to maintain a hybrid workplace beyond the pandemic to ensure that we meet our employees' ever-changing needs outside the workplace.

### *Compensation*

We recognize that our employees are our most valuable asset. Our total rewards package includes market competitive pay, comprehensive and competitive global benefits and retirement offerings, paid time off and family leave, tuition reimbursement and on-site services. To foster a stronger sense of ownership and align the interests of employees with shareholders, we offer an Employee Stock Purchase Plan, and restricted stock units are provided to eligible employees under our broad-based stock incentive programs.

In 2021, we decided to implement a proactive year-end global market adjustment process intended to ensure we maintain pay equity between active employees and potential new external hires. Through this process, employees who meet predefined criteria may be eligible for an additional adjustment in base salary if they have fallen below Dexcom's determined minimum. During this first review we made proactive adjustments in pay to approximately 10% of Dexcom's global employees. We believe by continuing to ensure equitable pay between existing and new hires, we will be better positioned to retain valued employees.

Additionally, we continue to proactively review both gender and ethnicity pay equity for our global employees in the same or similar roles. The goal of these reviews is to identify and close any gaps in average pay, after accounting for legitimate business factors that may explain differences, such as performance, time in role, and tenure with the company. We have incorporated the findings into our compensation assessment cycles, and we recognize the need to regularly review pay equity to maintain our pay equity goals. With the implementation of our global market adjustment process, we will now conduct the gender and ethnicity review twice a year.

### *Growth and Development*

We value the talented and passionate individuals working at Dexcom and the culture we collectively create. To support their growth and drive their continued success, we continue to expand our portfolio of development offerings and empower employees and leaders alike to dedicate time to honing their craft. Because there is no one-size-fits-all approach to developing the skills and knowledge needed to be successful, we continue to evaluate and evolve our learning delivery to meet the needs of our workforce.

We continue to use industry research and feedback from our employees to ensure we provide opportunities for development and growth for employees at all levels across Dexcom. As we continue to function as a hybrid workplace, we will continue to invest in talent and technology to offer the learning experiences needed to grow and develop critical skills across the organization, regardless of level or location.

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## ITEM 1A - RISK FACTORS

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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 Annual Report on Form 10-K, 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, financial condition or results of operations. Refer to our disclaimer regarding forward-looking statements at the beginning of Management's Discussion and Analysis of Financial Condition and Results of Operations in Item 7 of this Annual Report.

### Risks Related to Our Business and Operations

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#### Risks Related to Pricing and Reimbursement

*If we experience decreasing prices for our products and we are unable to reduce our expenses, including the per unit cost of producing our products, there may be a material adverse effect on our business, results of operations, financial condition and cash flows.*

We have experienced, and anticipate that we will continue to experience, decreasing prices for our products due to pricing pressure from managed care organizations and other third-party payors, increased market power of our payors, as the medical device industry consolidates, and increased competition among suppliers, including manufacturing services providers. If the prices for our products and services decrease and we are unable to reduce our expenses, including the cost of sourcing materials, logistics and the cost to manufacture our products, our business, results of operations, financial condition and cash flows will be adversely affected. The COVID-19 pandemic may result in increased costs for manufacturing and outsourced services while also causing additional pressure to reduce the prices for our products if a recession or depression occurs and people are unable to afford our products. We cannot predict the ultimate impact that the COVID-19 pandemic and its effects could have on our business operations, financial condition and cash flows.

*We are subject to cost-containment efforts by third-party payors that could result in reduced product pricing and/or sales of our products and cause a reduction in future revenue.*

In the United States and other countries, government and private sector access to health care products continues to be a subject of focus, and efforts to reduce health care costs are being made by third-party payors. Most of our customers rely on third-party payors, including government programs and private health insurance plans, to cover the cost of our products. We expect that the continuing cost reduction and containment measures may reduce the cost or utilization of health care products and could lead to patients being unable to obtain approval for coverage or payment from these third-party payors. Additionally, as a result of the COVID-19 pandemic, some customers have and others may lose access to their private health insurance plan if they lose their job, and an impact to job status may extend for a prolonged period of time, beyond possible coverage periods through COBRA, or where the cost to maintain coverage may not be affordable to our customer. As most of our customers rely on third-party payors, including government programs and private health insurance plans, to cover the cost of our products, our customers may lose coverage for our products, which may harm our business and results of operations.

We have experienced, and anticipate that we will continue to experience, downward pressure on product pricing. To the extent these cost containment efforts are not offset by greater patient access to our products, our future revenue may be reduced and our business may be harmed.

*Although many third-party payors have adopted some form of coverage policy on continuous glucose monitoring devices, our products do not always have some form of coverage, including simple broad-based contractual coverage, with 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, our revenue may be negatively impacted.*

As a medical device company, reimbursement from government and/or commercial third-party healthcare payors, including Medicare and Medicaid, is an important element of our success. Medicare does not cover any items or services that are not "reasonable and necessary." Medicare covers the CGM system, which includes supplies necessary for the use of the device, under the Durable Medical Equipment, or DME, benefit category. In order to be covered under this benefit, one component of the CGM system must meet the criteria for a durable medical device. To date, the receiver satisfied this criteria.

To the extent that a receiver is not used by a Medicare beneficiary or CMS otherwise determines that the items and supplies ordered are not medically necessary, Medicare may not cover that CGM system or any associated supplies.

In January 2017, the Centers for Medicare & Medicaid Services, or CMS, established a classification of “Therapeutic Continuous Glucose Monitors” as durable medical equipment eligible for coverage under Medicare Part B. Coverage criteria for therapeutic CGMs is determined by CMS under national coverage determinations as well as by local Medicare Administrative Contractors under local coverage determinations. Therefore, Medicare reimbursement for our CGM devices is subject to various coverage conditions and often requires a patient-specific coverage analysis. In May 2017, CMS Medicare Administrative Contractors issued a revision to an existing joint Local Coverage Determination, which establishes the Medicare conditions of coverage for therapeutic CGM, including our G5 Mobile and G6 systems. On October 27, 2020, CMS proposed changes to Medicare Durable Medical Equipment, Prosthetics, Orthotic Devices, and Supplies, or DMEPOS, coverage and payment policies that would expand Medicare coverage for CGM devices and supplies by classifying all CGMs (not just therapeutic CGMs) as DME and establishing payment amounts for these items and related supplies. CMS finalized its proposal on December 21, 2021, expanding Medicare coverage for all types of CGMs. CGMs will now be categorized as adjunctive and non-adjunctive (i.e., therapeutic CGMs). The fee schedule amounts for the newly-covered adjunctive CGMs and related supplies will be established in accordance with existing regulations governing pricing for new DME items without a fee schedule pricing history. The expanded coverage for CGMs means that additional manufacturers would be able to obtain Medicare coverage and payment for their CGM devices and some of the new CGM options may be cheaper for Medicare beneficiaries, potentially resulting in decreased sales and resulting revenues. Effective July 18, 2021, CMS also amended local coverage determination L33822 to allow beneficiaries with diabetes to use CGM when prescribed “multiple daily administrations” of insulin, eliminating the “injection” requirement and the four times per day testing requirement for CGM coverage.

Similarly, in September 2016, Germany’s Federal Joint Committee agreed to provide reimbursement for continuous glucose monitoring systems under certain conditions, which we believe are met by our current CGM systems.

A number of regulatory and commercial hurdles remain relating to wide-scale sales where a government or commercial third-party payor provides reimbursement, including sales to Medicare beneficiaries. If we are unable to successfully address these hurdles, reimbursement of our products may be limited to a smaller subset of people with diabetes covered by Medicare or to those people with diabetes covered by other third-party payors that have adopted policies for CGM devices allowing for coverage of these devices if certain conditions are met. Adverse coverage or reimbursement decisions relating to our products by CMS, its Medicare Administrative Contractors, other state, federal or international payors, and/or third-party commercial payors could significantly reduce reimbursement, which could have an impact on the acceptance of, and demand for, our products and the prices that our customers are willing to pay for them.

As of December 31, 2021, the eight largest private third-party payors, in terms of the number of covered lives, have issued coverage policies for the category of CGM devices. In addition, we have negotiated contracted rates with all of those third-party payors for the purchase of our current CGM systems 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 CGM devices, in a sizeable percentage of cases, under durable medical equipment benefits, those coverage policies frequently are restrictive and require significant medical documentation and other requirements in order for policy holders to obtain reimbursement, and as a result, we have difficulty improving the efficiency of our customer service group. Moreover, it is not uncommon for governmental, including federal and/or state, agencies and their contractors to conduct periodic routine billing and compliance reviews that may entail extensive documentation requests, cooperation with which may require significant time and resources, and may result in identification of overpayments that may need to be refunded.

In addition, Medicare, Medicaid, other governmental health programs, 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 and existing medical devices, and, as a result, they may be restrictive, or they may not cover or provide adequate payment for our products. Many of these programs impose documentation and other eligibility requirements that make it more difficult to obtain reimbursement. 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 leveraging increased competition, increasing eligibility requirements such as second opinions and other documentation, purchasing in a bundle, 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 our current CGM 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 our current CGM systems, people without coverage who have diabetes may not use our products. Furthermore, payors are increasingly basing reimbursement rates on factors such as prior approvals and the effectiveness of the product, clinical outcomes associated with the product, and any factors that negatively impact the effectiveness 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, which 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 legislative efforts 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.

### **Risks Related to Product Development**

*The research and development efforts we undertake independently, and in some instances in connection with our collaborations with third parties, may not result in the development of commercially viable products, the generation of significant future revenues or adequate profitability.*

In order to address the anticipated needs of our customers, pursue new markets for our existing products, and remain competitive, we focus our research and development efforts and strategic third-party collaboration activities on the enhancement of our current CGM products, the development of next-generation products and the development of novel technologies and services.

The development of new products, or novel technologies and services and the enhancement of our current CGM products (including seeking and obtaining new indications for use), requires significant investment in research and development, intellectual property protection, clinical trials, regulatory approvals and third party reimbursement. The results of our product development and commercialization efforts may be affected by a range of factors, including our ability to anticipate customer needs, innovate and develop new products, determine a feasible or timely regulatory pathway or approach, and launch those products cost effectively into multiple markets and geographies. If we are unable to successfully anticipate customer needs, innovate, develop new products and successfully launch them, we may not be able to generate significant future revenues or profits from these efforts. Failing to timely launch our products may cause them to become obsolete and materially and adversely affect our business and financial position.

The development and commercial launch timelines for our products depend a great deal 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, or inquiries from regulators about our independent and collaborative product development activities, 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 products or may require additional product testing and clinical trials before approving the products, which would result in product launch delays and additional expense. If approved by the FDA, the products may not be accepted in the marketplace by physicians and people with diabetes.

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 Eli Lilly, Insulet, Novo Nordisk, Tandem Diabetes and The Ypsomed Group, to integrate our CGM technology into their insulin delivery systems, and our amended agreement with Verily to develop one or more next-generation CGM products. Our Eli Lilly, Insulet, Novo Nordisk, Verily and Ypsomed collaborations have not yet resulted in a commercial product. In December 2019, Tandem received FDA approval for its second sensor-augmented insulin delivery system, the t:slim X2™ Insulin Pump with Control-IQ™ technology, which integrates with our G6 system. We have also entered into collaborations with several organizations that are currently using, or are developing, programs for the treatment of Type 2 diabetes that utilize our current CGM systems.

As a result of these relationships, our operating results depend, to some extent, on the ability of our partners to successfully commercialize their insulin delivery systems or monitoring products. 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.

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, 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 provide assurance that any of our collaborations will result in the successful development of a commercially viable product or result in significant additional future revenues.

***Our products may not achieve or maintain market acceptance.***

We expect that sales of our current CGM systems will account for substantially all of our product revenue for the foreseeable future. If and when we receive FDA or other regulators' approval for, and begin commercialization of, our next-generation CGM systems, we expect most patients will migrate onto those systems. In the periods leading up to the launch of new or upgraded versions of our CGM systems, however, 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, financial condition and results of operations.

Notwithstanding our prior experience in marketing and selling our products, we might be unable to successfully expand the commercialization of our existing products or begin commercialization of our next-generation CGM systems on a wide-scale for a number of reasons, including:

- our G6 system prompts the user to replace the sensor no later than the tenth day, which might make it expensive for users;
- widespread market acceptance of our products by physicians and people with diabetes will largely depend on our ability to demonstrate their relative safety, effectiveness, 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 authority marketing application submissions and reviews may be delayed, or cleared or approved with limited product indications and labeling;
- we may not be able to manufacture our products in commercial quantities commensurate with demand or at an acceptable cost;
- people with Type 2 diabetes do not generally receive broad reimbursement from third-party payors for their purchase of CGM products in the United States, since many payors require that a policy holder meet specific medical criteria to qualify for reimbursement, which may reduce widespread access to or use of our products;
- the uncertainties associated with establishing and qualifying new manufacturing facilities;
- people with diabetes may need to incur the costs of single-point finger stick devices, in addition to our systems;
- the relative immaturity of the CGM market internationally, and limited international reimbursement of CGM systems by third-party payors and government healthcare providers outside the United States;
- the introduction and market acceptance of competing products and technologies, which may have a lower cost or price, allow for a convenience improvement and/or allow for improved accuracy and reliability;
- greater name or brand recognition and more established medical product distribution channels by some of our competitors;
- our inability to obtain sufficient quantities of supplies timely and at appropriate quality levels from our single- or sole-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.

In addition to the risks outlined above, our G6 systems are more invasive than many other 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 CGM and may be unwilling to change their current treatment regimens. Physicians may not recommend or prescribe our products unless and 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. 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, effectiveness, 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. We cannot predict when, if ever, healthcare professionals, including physicians, and people with diabetes may adopt more widespread use of CGM systems, including our systems. If our CGM systems do not achieve and maintain an adequate level of acceptance by people

with diabetes, healthcare professionals, including physicians, and third party payors, our future revenue may be reduced and our business may be harmed.

### **Risks Related to Manufacturing, Commercial Operations and Commercialization**

***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.***

Our existing manufacturing facilities are designed to manufacture current and next-generation sensors and transmitters, but may not be scaled quickly enough to permit us to manufacture one or more of our CGM systems in quantities sufficient to meet market demand. In the past, we have had difficulty scaling our manufacturing operations to provide a sufficient supply of product to support market demand and 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 guarantee that supply will not be constrained in the future. We may not adequately predict the market demand for our products, in order to produce our products in the quantities we anticipate will be necessary to meet market demand. We will need to adequately predict the market demand for our products and increase our manufacturing capacity by a significant factor over the current level to meet or exceed the anticipated market demand. In addition, we will have to modify our manufacturing design, reliability and process if and when our next-generation CGM technologies are approved, cleared or otherwise authorized by the applicable regulatory body and commercialized.

There are technical challenges to increasing manufacturing capacity, including equipment design, automation, validation and installation, contractor issues and delays, licensing and permitting delays or rejections, materials procurement, manufacturing site expansion, problems with production yields and quality control and assurance. Continuing to develop 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. Delays in the launch of next-generation products may result in unanticipated continuing increases in demand for current-generation products (to substitute for the unavailability of the next-generation products) which, if not adequately prepared for, may result in deficits in our ability to produce adequate amounts of the prior-generation products to meet demand at appropriate prices.

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 trigger the need for submissions or notifications to, and in some cases advance approval from, the FDA or other regulatory authorities because of the potential impact of changes on our previously cleared, approved and/or authorized devices. Our facilities are subject to inspections by the FDA and corresponding state agencies on an ongoing basis, and we must comply with Good Manufacturing Practices and FDA Quality Systems Regulations, as well as certain state requirements. We may be unable to adequately maintain, develop and expand our manufacturing process and operations or maintain compliance with FDA and state agency requirements, and manufacturing issues could impact our cleared and approved products. If we are unable to manufacture a sufficient supply of our current products or any future products for which we may receive approval or clearance, 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, contractual obligations, and our business will suffer.

***Manufacturing difficulties and/or any disruption at our facilities may adversely affect our manufacturing operations and related product sales, and increase our expenses.***

Our products are manufactured at certain facilities, with limited alternate facilities. If an event occurs at one of our facilities that results in damage to, or closure of, one or more of such facilities, or if our distributions from those facilities are limited or restricted in any way, we may be unable to manufacture the relevant products at the previous levels or at all. Because of the time required to approve and lease a manufacturing facility, an alternate facility and/or a third-party may not be available on a timely basis to replace production capacity in the event manufacturing capacity is lost.

Additionally, the majority of our operations are conducted at facilities located in San Diego, California and Mesa, Arizona. We take precautions to safeguard our facilities, which include manufacturing protocols, insurance, health and safety protocols, and off-site storage of data. However, a natural or man-made disaster, such as fire, flood, earthquake, act of terrorism, cyber-attack or other disruptive event, such as the COVID-19 pandemic or another public health emergency, could cause substantial delays in our operations, damage, destroy or limit our manufacturing equipment, inventory, or records and cause us to incur additional expenses. Earthquakes are of particular significance since our 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. Further, insurance coverage may not be available or successfully secured for loss profits or business interruption relating to the COVID-19 pandemic and its impacts.

***We depend upon third-party suppliers and outsource to other parties, making us vulnerable to supply disruptions, suboptimal quality, non-compliance and/or price fluctuations, which could harm our business.***

We manufacture the majority of our products and procure important third-party services, such as sterilization services, at numerous facilities worldwide. We purchase many of the components, materials and services needed to manufacture these products from numerous suppliers in various countries. We have generally been able to obtain adequate supplies of such materials, components and services. However, we also rely on single and/or sole sources for certain components and materials used in manufacturing, such as for the application-specific integrated circuit that is incorporated into the transmitter and certain polymers used to synthesize the polymeric biointerface membranes for our products. In some cases, our agreements with these and other suppliers can be terminated by either party upon short notice. Our contract manufacturers may also rely on single- or sole-source suppliers to manufacture some of the components used in our products.

Although we work with our suppliers to try to ensure continuity of supply while maintaining quality, timeliness and reliability, the supply of these components, materials and services has in some cases been, and may continue to be impacted, interrupted or insufficient. Our manufacturers and suppliers may also encounter problems during manufacturing for a variety of reasons. They may fail to follow specific protocols and procedures, fail to comply with applicable regulations, or be the subject of FDA or other regulatory authority audits or inspections that result in allegations of non-compliance (for example, resulting in Form 483 Observations, Warning Letters, or other FDA enforcement actions). Our manufacturers and suppliers may also experience or be impacted by equipment malfunction, environmental factors, and public health emergencies including but not limited to the COVID-19 pandemic, any of which could delay or impede their ability to meet our demand.

Further, if our sole- or single-source suppliers shift their manufacturing and assembly sites to other locations, depending on the circumstances and nature of the item supplied, in addition to quality system activities such as verification and validation, there could be a need for FDA notifications or submissions, and the new locations could be subject to regulatory inspections. If there are regulatory delays or impediments impacting our suppliers or us for any reason, we may not be able to quickly establish additional or replacement suppliers, particularly for our single-source components, in part 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. For supply risks related to the COVID-19 pandemic see our Risk Factor entitled, *“The outbreak of the SARS-Cov-2 virus and its variants and the COVID-19 disease that it causes, or similar public health crises, could have a material adverse impact on our business, financial condition and results of operations, including our manufacturing, commercial operations and sales.”*

Our reliance on these outside manufacturers and suppliers also subjects us to other risks that could harm our business, including:

- we may experience a reduction or interruption in supply, and may not be able to obtain adequate supply in a timely manner or on commercially reasonable terms from additional or replacement sources;
- 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 quality, effectiveness 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 new applications (such as new 510(k) submissions or PMA supplements) 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 or at the current pricing;
- our suppliers may discontinue the production of components that are critical to our products; and
- our suppliers may encounter financial and/or other hardships unrelated to our demand for components, including those related to changes in global economic conditions and/or disease outbreaks, which could inhibit their ability to fulfill our orders and meet our requirements.

We also outsource certain services to other parties, including inside sales, certain transaction processing, accounting, information technology, manufacturing, and other areas. Outsourcing of services to third parties could expose us to suboptimal quality of service delivery or deliverables and potentially result in repercussions such as missed deadlines or other timeliness issues, erroneous data, supply disruptions, non-compliance (including with applicable legal or regulatory requirements and industry standards) and/or reputational harm, with potential negative effects on our results. Closure of non-essential businesses and shelter-in-place orders occurring in the U.S. and globally as a result of the COVID-19 pandemic may also adversely impact our outsourced operations. We continue to monitor this situation closely.

We also require the suppliers, service providers and business partners of components or services for our products and related services to comply with law and certain of our policies regarding sourcing practices, but we do not control them or their practices. If any supplier, service provider or business partner violates laws or implements unethical practices, there could be disruptions to our supply chain, cancellation of our orders, a termination of the relationship with the partner or damage to our reputation, and the FDA or other regulators could seek to hold us responsible for such violations.

*If we are unable to establish and maintain adequate sales, marketing and distribution capabilities or enter into and maintain arrangements with third parties to sell, market and distribute our products, we may have difficulty achieving market awareness and selling our products in the future.*

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 and/or collaborate with third parties, including distributors and others, to market and sell our products to maintain the commercial success of our current systems and to achieve commercial success for any of our future products. If we are unable to establish and maintain adequate sales, marketing and distribution capabilities, independently or with others, our future revenue may be reduced and our business may be harmed.

Developing and managing a direct sales organization is a difficult, expensive and time-consuming process. Although we have shifted our sales and marketing activity to be conducted virtually and remotely, restrictions in connection with the COVID-19 outbreak may have a substantial impact on our customers and sales cycles and have impacted and/or interrupted our sales and marketing activity.

To continue to develop our sales and marketing organization to successfully achieve market awareness and sell our products, we must:

- recruit and retain adequate numbers of effective and experienced sales and marketing personnel;
- effectively train our sales and marketing personnel in the benefits and risks of our products;
- establish and maintain successful sales, marketing, training and education programs that educate health care professionals, including endocrinologists, physicians and diabetes educators, so they can appropriately inform their patients about our products;
- manage geographically dispersed sales and marketing operations; and
- effectively train our sales and marketing personnel on the applicable advertising and promotion, and fraud and abuse laws that govern interactions with healthcare professionals and institutions as well as current and prospective patients and maintain active oversight and auditing measures to ensure continued compliance.

We currently employ sales and marketing personnel for the direct sale and marketing of our products in the United States, Canada and certain countries in Europe. Our direct sales and marketing team calls on healthcare providers and people with diabetes throughout the applicable country to initiate sales of our products. Our sales and marketing 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. COVID-19 restrictions vary by location across the United States and other regions of the world, which may continue to limit or prohibit our sales force from having in-person interactions with healthcare professionals and people with diabetes, which may result in decreased sales of our products.

We have also entered into distribution arrangements to leverage existing distributors (including wholesalers) already engaged in the distribution of drugs, devices and/or products in the diabetes marketplace. Some of our U.S distributors are focused on accessing underrepresented regions and or third-party payors that contract exclusively with distributors in the United States, while some of our international distributors call directly on healthcare providers and patients to market and sell our products. 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.

Our distribution agreements with Byram and affiliates, Cardinal Health and affiliates (including Edgepark Medical Supplies), AmerisourceBergen, and McKesson, our four most significant distributors, each generated 10% or more of our total revenue during the twelve months ended December 31, 2021. 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. Moreover our shift of durable medical

equipment sales from our direct sales force to distributors could result in negative impacts on the quality or efficacy of our customer sales and support experience. A substantial decrease or loss of these sales could have a material adverse effect on our financial results and operating performance.

To the extent that we enter into additional arrangements with third parties to perform sales, marketing, distribution and billing services, our product margins could be lower than if we directly marketed and sold our products. 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.

If we do not adequately predict market demand or otherwise optimize and operate our distribution channel successfully, it could result in excess or insufficient inventory or fulfillment capacity, increased costs, immediate shortages in product or component supply, or harm our business in other ways. In addition, if we do not adequately expand and update certain aging and/or outdated infrastructure that help us, among other things, manage our purchasing and inventory, it could negatively impact our operating results and customer experience.

*We operate in a highly competitive market and face competition from large, well-established companies 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, including enhanced software capabilities, and related data and IT platforms. 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 or other regulatory approval of a commercially viable continuous glucose monitor or sensor produced by one of our competitors could significantly reduce market acceptance of our systems. In addition, certain development efforts throughout the diabetes industry, including that of 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 selling our current CGM systems, we compete directly with the Diabetes Care division of Abbott Laboratories; Medtronic plc's Diabetes Group; Roche Diabetes Care, a division of Roche Diagnostics; privately-held LifeScan, Inc.; and Ascensia Diabetes Care, each of which manufactures and markets products for the single-point finger stick device market. Collectively, these companies currently account for the majority of the worldwide sales of self-monitored glucose testing systems.

Several companies are developing and/or commercializing products for continuous or periodic monitoring of glucose levels in the interstitial fluid under the skin that compete directly with our products. We have competed with Abbott for several years and their Libre family of CGM products. Medtronic markets and sells a standalone glucose monitoring product called Guardian Connect both internationally and in the United States.

Medtronic and other third parties have developed or are developing insulin pumps integrated with CGM systems that provide, among other things, the ability to suspend insulin administration while the user's glucose levels are low and to automate basal and bolus insulin dosing.

We also have begun to become aware of companies outside the traditional medical device sector that are attempting to develop competitive products and services, including for the general health and wellness, or population health space. Some of the companies developing or marketing competing devices are large and well-known publicly traded companies, and these companies may possess competitive advantages over us, including:

- greater name recognition;
- established relations with healthcare professionals, customers and third-party payors;
- established distribution networks;
- additional lines of products, and the ability to 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;
- duration of sensor life;
- the ability to integrate multiple products to provide additional features beyond CGM systems; and
- greater financial and human resources for product development, manufacturing, 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.

***The outbreak of the SARS-CoV-2 virus and its variants and the COVID-19 disease that it causes, or similar public health crises, could have a material adverse impact on our business, financial condition and results of operations, including our manufacturing, commercial operations and sales.***

The outbreak of the SARS-CoV-2 virus and its variants and the COVID-19 disease that it causes has been and continues to be a global pandemic. The novel coronavirus as well as new variants of the coronavirus have spread to most regions of the world, including the United States and Europe. The extent to which this coronavirus impacts our business and operating results will depend on future developments that are highly uncertain and cannot be accurately predicted, including new variants of the virus and new information that may emerge concerning the virus and the actions to contain it or to mitigate the COVID-19 impact, among others. It is especially difficult to predict the impact on the global economic markets, which have been and will continue to be highly dependent upon the actions of governments, businesses, and other enterprises in response to the pandemic, as well as the effectiveness of those actions, and vaccine availability, distribution, efficacy and adoption. The COVID-19 pandemic and its adverse effects have become more prevalent in the locations where we, our customers, suppliers or third-party business partners conduct business and as a result, we have, and may continue to experience more pronounced disruptions in our operations.

The spread of COVID-19, which has caused a broad impact globally, including restrictions on travel and quarantine policies put into place by businesses and governments, may have a material economic effect on our business. For example, such restrictions may have a substantial impact on our customers and sales cycles. They have impacted our sales and marketing activity including quite significantly in Europe where more restrictive health protection measures and greater reliance on in-person sales efforts at doctors' offices create a greater impediment to our selling efforts. Furthermore, changes in hospital or physician policies, federal, state or local regulations, prioritization of hospital or medical resources toward pandemic efforts may negatively affect the demand for our devices. The COVID-19 pandemic has, and may continue to, put pressure on global economic conditions and overall spending for medical device products, and may cause our customers to modify spending priorities or delay or abandon purchasing decisions. Further, if the spread of the coronavirus pandemic continues and our operations are adversely impacted, we risk a delay, default and/or nonperformance under existing agreements.

Severe respiratory symptoms, infections and deaths related to the pandemic may disrupt healthcare delivery in the United States as well as the operations of regulatory bodies with responsibility for oversight of healthcare and health and medical products. Such disruptions could result in the focus and prioritization of regulatory resources on emergent matters, which could divert regulatory resources away from more routine regulatory matters that are not COVID-19 related but that have the potential to impact our business. For example, there have been and could continue to be delays in FDA review of applications for marketing authorization, including those which may be necessary for or in connection with proposed changes to our products or the changes to the processes by which they are manufactured. It is unknown how long these disruptions could continue, were they to occur. Any elongation or deprioritization or delay in regulatory review resulting from such disruptions could materially affect our ongoing device design, development, and commercialization plans.

Furthermore, the COVID-19 pandemic and associated shelter-in-place orders have and may continue to limit or restrict our ability to initiate, conduct or continue our clinical trials. Delays and disruptions in our clinical trials have and may continue to result in delays for new or expanded marketing authorizations for our products, which could materially affect our development and commercialization plans for our products. For example, we have experienced some delays in certain pivotal clinical trials for our next-generation CGM product.

Additionally, as a result of the impact of the COVID-19 pandemic, some customers have lost, and others may lose, access to their private health insurance plan if they have lost or lose their job. Any prolonged economic downturn or recession as a result of the COVID-19 pandemic could result in layoffs of employees and a significant increase in unemployment in the United States and elsewhere, which may continue even after the COVID-19 pandemic is contained. An impact to job status may extend for a prolonged period of time, beyond possible coverage periods through COBRA, or where the cost to maintain coverage may not be affordable to our customer. As most of our customers rely on third-party payors, including government programs and private health insurance plans, to cover the cost of our products, our customers may lose coverage to our products, which may harm our business and results of operations.

We currently utilize third parties to, among other things, manufacture components and materials for our devices, and to provide services such as sterilization services and we purchase these materials and services from numerous suppliers worldwide. The global COVID-19 pandemic has and may continue to have an adverse impact on our manufacturing and distribution capabilities. Disruptions relating to the COVID-19 pandemic, including current shelter-in-place orders in the U.S. and other countries, could prevent employees, suppliers, distributors, and others from accessing manufacturing facilities and from transporting our products or the components required to manufacture our products. For example, we have experienced some supply chain disruption due to the global restrictions resulting from the COVID-19 pandemic in the manufacture of our next-generation CGM product. Further, worldwide supply chain disruption relating to the COVID-19 pandemic has resulted in product shortages, that has and may continue to impact our ability to manufacture our devices. If either we or any third-party parties in the supply chain for materials used in the production of our devices continue to be adversely impacted by, and/or the

restrictions resulting from, the COVID-19 pandemic, our supply chain may be continue disrupted, limiting our ability to manufacture our devices. These disruptions may, among other things, impact our ability to produce and supply products in quantities necessary to meet market demand.

Reduction in our manufacturing and shipping capabilities may have a material economic effect on our business and the results of our operations. If either we or any third-parties in the supply chain for components, materials or services used in the production of our devices are adversely impacted by the disruptions caused by, or restrictions resulting from, the COVID-19 pandemic, our supply chain may be disrupted, which may impact and/or limit our ability to manufacture and distribute our devices.

As a medical device manufacturer, we fall within a “critical essential infrastructure” sector, specifically the “Healthcare/Public Health” sector, and are considered exempt under various stay at home/shelter in place orders, including the California Executive Order N-33-20, or the Stay at Home Order, dated March 19, 2020 that was previously in effect. Accordingly, our employees in California and other locations continue to work because of the importance of our operations to the health and well-being of citizens in the states in which we operate. Consistent with these stay at home/shelter in place orders, we implemented telework policies wherever possible for appropriate categories of “nonessential” employees, and appropriate safety measures for “essential” employees that were unable to telework, including social distancing, face covering, and increased sanitation standards. We also suspended any requirement for an employee to obtain a doctor’s note to be absent from or return to the workplace, and follow the latest guidance from the Center for Disease Control and the Occupational Safety and Health Administration regarding suspension of nonessential travel, self-isolation recommendations for employees returning from certain geographic areas, confirmed reports of any COVID-19 diagnosis among our employees, and the return of such employees to our workplace. Pursuant to updated guidance from the Equal Employment Opportunity Commission, we are engaging in limited and appropriate inquiries of employees regarding potential COVID-19 exposure, based on the direct threat that such exposure may present to our workforce.

On June 15, 2021, the Governor terminated the executive orders that put into place the Stay Home Order and as well as the framework for a gradual, risk-based reopening of the economy (Executive Order N-60-20, issued on May 4, 2020, which issued the Blueprint for a Safer Economy). He also phased out the vast majority of executive actions put in place since March 2020 as part of California’s response to the COVID-19 pandemic, leaving a subset of provisions that facilitate the ongoing recovery. Nonetheless, we continue to take precautions to protect the health and safety of our employees, including contact tracing, requiring masks for onsite employees and providing access to onsite vaccination clinics.

We continue to address other unique situations that arise among our workforce due to the COVID-19 pandemic on a case-by-case basis. While we believe that we have taken appropriate measures to ensure the health and well-being of our employees, there can be no assurances that our measures will be sufficient to protect our employees in our workplace or that they may otherwise be exposed to COVID-19 outside of our workplace. If a number of our essential employees become ill, incapacitated or are otherwise unable to continue working during the current or any future epidemic, our operations may be adversely impacted.

While the potential economic impact brought by, and the duration of, the pandemic is difficult to assess or predict, it has caused, and is likely to result in further, significant disruption of global financial markets. The trading prices for our common stock and other medical device companies have been highly volatile as a result of the COVID-19 pandemic, which may reduce our ability to access capital on favorable terms or at all. In addition, a recession, depression or other sustained adverse market event resulting from the impact of the COVID-19 pandemic could materially and adversely affect our business and the value of our common stock.

The ultimate impact of the current pandemic, or any other health epidemic, is highly uncertain and subject to change. We have experienced certain delays or impacts to our business, our clinical trials, our research programs, healthcare systems or the global economy as a whole as a result of the COVID-19 pandemic so far, but do not yet know the full extent of future delays or impacts. However, these effects could have a material impact on our business, and we will continue to monitor the situation closely.

## **Risks Related to our International Operations**

*We are subject to a variety of risks due to our international operations that could adversely affect our business, our operations or profitability and operating results.*

Our operations in countries outside the United States, which accounted for approximately 24% of our revenue for the twelve months ended December 31, 2021, are accompanied by certain financial and other risks. In addition to opening offices in Austria, Canada, Germany, the Philippines, Switzerland, Lithuania, and the United Kingdom, in connection with distributor acquisitions and otherwise, we intend to continue to pursue growth opportunities in sales outside the United States, especially in Asia (including Japan and Korea) and Europe, and we may increase our use of administrative and support functions from

locations outside the United States, which could expose us to greater risks associated with our sales and operations. As we pursue opportunities outside the United States, we may become more exposed to these risks and our ability to scale our operations effectively may be affected. For example, we are building out a manufacturing facility in Malaysia.

Additionally, our international expansion efforts, including our proposed manufacturing facility in Malaysia, may not be successful and we may experience difficulties in scaling these functions from locations outside the United States and may not experience the expected cost efficiencies.

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;
- fluctuations in trade policy and tariff regulations; and
- political and economic instability.

Moreover, the tax laws in which we and our subsidiaries do business could change on a prospective or retroactive basis, and any such changes could adversely affect our business and financial condition. There is growing pressure in many jurisdictions, including the United States, and from multinational organizations such as the Organization for Economic Cooperation and Development, or OECD, and the European Union to amend existing international tax rules in order to render them more responsive to current global business practices. For example, the OECD has published a package of measures for reform of the international tax rules as a product of its Base Erosion and Profit Shifting, or BEPS, initiative, which was endorsed by the G20 finance ministers. Many of the initiatives in the BEPS package require amendments to the domestic tax legislation of various jurisdictions. Separately, the European Union is asserting that a number of country-specific favorable tax regimes and rulings in certain member states may violate, or have violated, European Union law, and may require rebates of some or all of the associated tax benefits to be paid by benefited taxpayers in particular cases. In 2016, the European Union adopted the "Anti-Tax Avoidance Directive," which requires European Union member states to implement measures to prohibit tax avoidance practices, and Germany published the European Union Anti-Tax Avoidance Directive Implementation Law on June 30, 2021. We have a significant presence in the European Union, as well as significant sales in the European Union, such that any changes in tax laws in the European Union will impact our business. The overall impact of such legislation in European Union member states is uncertain, and our business and financial condition could be adversely affected by any laws impacting our tax rate.

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.

Changes in foreign currency exchange rates may reduce the reported value of our foreign currency denominated revenues, 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.

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, the U.K. left the European Union on January 31, 2020, and this began a transition period that ended on December 31, 2020, during which the U.K. government negotiated the terms of the U.K.'s future relationship with the E.U. In December 2020, the U.K. and E.U. agreed on a trade and cooperation agreement that was applied provisionally from January 1, 2021 until it was ratified by the parties to the agreement. On December 31, 2020, the U.K. passed legislation giving effect to the trade and cooperation agreement, and the E.U. formally adopted the agreement on May 1, 2021. The agreement sets out certain procedures for approval and recognition of medical products in each jurisdiction. Any delay in obtaining, or an inability to obtain, any marketing approvals, as a result of the trade and cooperation agreement or otherwise, could prevent us from marketing our CGM systems in the U.K. and/or the E.U. and restrict our ability to generate revenue and achieve and sustain profitability. Under the trade and cooperation agreement, U.K. service suppliers no longer benefit from automatic access to the entire E.U. single market, U.K. goods no longer benefit from the free movement of goods and there is no longer the free movement of people between the U.K. and the E.U. Depending on the application of the terms of the trade and cooperation agreement, we could face new regulatory costs and challenges which could have a material adverse effect on our business, results of operations, or financial condition.

***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 guarantee 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.

The outbreak of the SARS-CoV-2 virus and its variants and the COVID-19 disease that it causes have also led to healthcare equipment shortages in the U.S. and around the world. Certain U.S. federal government orders have limited companies from exporting certain equipment (such as ventilators) to other countries. Currently, no such orders have been issued with respect to CGMs, however, if supply chain disruption causes significant shortages in CGMs or other equipment, it is possible that we could face additional barriers to exporting our devices outside of the United States.

***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, the UK Bribery Act 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 and, in some instances, other persons 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 direct oversight and 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 agencies may seek to hold us liable for successor liability for anti-corruption law 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 business, financial condition, and results of operations.

***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 potential downgrade of U.S. sovereign debt and continued sovereign debt, monetary and financial uncertainties in Europe and other foreign countries, and global health pandemics such as the COVID-19 pandemic. 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. While the potential economic impact brought by and the duration of the COVID-19 pandemic may be difficult to assess or predict, it has already caused, and is likely to result in further, significant disruption of global financial markets, which may reduce our ability to access capital on favorable terms or at all. In addition, a recession, depression or other

sustained adverse market event resulting from the spread of COVID-19 could materially and adversely affect our business and the value of our common stock.

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 business, financial condition and results of operations.

***Failure to obtain any required regulatory authorization in foreign jurisdictions will prevent us from marketing our products abroad.***

We conduct limited commercial and marketing efforts in Africa, Asia, Australia, Canada, Europe, Latin America, the Middle East and New Zealand with respect to our CGM 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 marketing authorization procedures vary among countries and can involve additional testing, and the time required to obtain any required authorization or approval may differ from that required to obtain FDA marketing authorization(s). Foreign regulatory authorization or approval processes may include all of the risks associated with obtaining FDA marketing authorization(s) in addition to other risks. We may not obtain foreign regulatory authorizations or approvals on a timely basis, if at all. Obtaining a marketing authorization from the FDA does not ensure authorization or approval by regulatory authorities in other countries will follow, and authorization or approval by one foreign regulatory authority does not ensure authorization or approval by regulatory authorities in other foreign countries or by the FDA. In addition, in order to obtain the authorization to market 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 or marketing authorizations and may not receive necessary approvals or authorizations to commercialize our products in any market outside the United States on a timely basis, or at all.

## **Risks Related to Privacy and Security**

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***We are subject to complex and evolving U.S. and foreign laws and regulations and other requirements regarding privacy, data protection, security, 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 number of foreign, federal and state laws and regulations protecting the use, disclosure 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 consumer protection laws. As our customer base grows to include U.S. federal government agencies, Dexcom may also need comply with Federal Risk and Authorization Management Program and Cybersecurity Maturity Model Certification requirements. These frameworks impose stringent cybersecurity standards and potentially significant non-compliance penalties.

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 may be subject to inquiries, investigations and audits in Europe and around the world, particularly in the areas of consumer and data protection, which will arise in the ordinary course of business and may increase in frequency 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.

In the ordinary course of our business, we collect and store sensitive data, such as our proprietary business information and that of our clients, contractors, vendors and others as well as personally identifiable information of our customers, vendors and others, which data may include full names, social security numbers, addresses, and birth dates, in our data centers and on our networks. Our employees, contractor and vendors may also have access to and may use personal health information in the ordinary course of our business. The secure processing, maintenance and transmission of this information is critical to our operations. Despite our security measures and business controls, our information technology and infrastructure may be vulnerable to attacks by hackers, breaches due to employee, contractor or vendor error, or malfeasance or other disruptions or subject to the inadvertent or intentional unauthorized release of information. Any such occurrence could compromise our networks and the information stored thereon could be accessed, publicly disclosed, lost or stolen. Any such access, disclosure or other loss of information could result in legal claims or proceedings, and liability under laws that protect the privacy of personal information and regulatory penalties, disrupt our operations and the services we provide to our clients or damage our reputation, any of which could adversely affect our profitability, revenue and competitive position.

As we grow and expand our administrative, customer support or IT support services, we may also utilize the services of personnel and contractors located outside of the United States to perform certain functions. While we make every effort to review our applicable contracts and other payor requirements, a local, state, or federal government agency or one of our customers may find the use of offshore resources to be a violation of a legal or contractual requirement, which could result in termination of the contractual relationship, penalties, or changes in our business operations that could adversely affect our business, financial condition, and results of operations. Additionally, while we have implemented industry standard security measures for offshore access to protected health information and other personal information, unauthorized access or disclosure of such information by offshore personnel could result in legal claims or proceedings, and liability under laws that protect the privacy of personal information and regulatory penalties, disrupt our operations and the services we provide to our clients, damage to our reputation or result in the termination of contractual relationships, penalties or the loss of coverage, any of which could adversely affect our profitability, revenue and competitive position.

***Security breaches and other disruptions that compromise our information and expose us to liability, could cause our business and reputation to suffer and could subject us to substantial liabilities.***

The Administrative Simplification Provisions of the Health Insurance Portability and Accountability Act of 1996, as amended, and implementing regulations, or HIPAA, extensively regulate the use and disclosure of individually identifiable health information, known as “protected health information,” and require covered entities, including health plans and most health care providers, to implement administrative, physical and technical safeguards to protect the security of such information. Certain provisions of the security and privacy regulations apply to business associates (entities that handle protected health information on behalf of covered entities), and business associates are subject to direct liability for violation of these provisions. In addition, a covered entity may be subject to penalties as a result of a business associate violating HIPAA, if the business associate is found to be an agent of the covered entity. Dexcom is a covered entity under HIPAA and may also function in a business associate capacity to other covered entities.

Covered entities must report breaches of unsecured protected health information to affected individuals without unreasonable delay and notification must also be made to the U.S. Department of Health & Human Services, Office for Civil Rights, or OCR and, in certain situations involving large breaches, to the media. Various U.S. state laws and regulations may also require us to notify affected individuals and state agencies in the event of a data breach involving individually identifiable information.

Violations of the HIPAA privacy and security regulations may result in criminal and civil penalties. The OCR enforces the regulations and performs compliance audits. In addition to enforcement by OCR, state attorneys general are authorized to bring civil actions seeking either injunction or damages in response to violations that threaten the privacy of state residents. We follow and maintain a HIPAA compliance plan, which we believe complies with the HIPAA privacy and security regulations, but there can be no assurance that OCR or other regulators will agree. The HIPAA privacy regulations and security regulations have and will continue to impose significant costs on us in order to comply with these standards.

There are numerous other laws and legislative and regulatory initiatives at the federal and state levels addressing privacy and security concerns. We also remain subject to federal or state privacy-related laws that are more restrictive than the regulations issued under HIPAA. These laws vary and could impose additional penalties. For example, the Federal Trade Commission uses its consumer protection authority to initiate enforcement actions in response to alleged privacy and data security violations. California recently enacted the California Consumer Privacy Act, or CCPA, which came into effect January 1, 2020, was amended and expanded by the California Privacy Rights Act, or CPRA, passed on November 3, 2020. The CCPA and CPRA, among other things, create new data privacy obligations for covered companies and provide new privacy rights to California residents, including the right to opt out of certain disclosures of their information. The CCPA also creates a private right of action with statutory damages for certain data breaches, thereby potentially increasing risks associated with a data breach. It remains unclear what, if any, additional modifications will be made to this legislation or how it will be interpreted. Therefore the effects of the CCPA and CPRA are significant and will likely require us to modify our data processing practices, and may cause us to incur substantial costs and expenses to comply, particularly given our base of operations in California. There are also a number of other legislative proposals worldwide, including in the United States at both the federal and state level, that could impose additional and potentially conflicting obligations in areas affecting our business.

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.

For instance, in the European Union, increasingly stringent data protection and privacy rules that have and will continue to have substantial impact on the use of patient data across the healthcare industry became effective in May 2018. The EU General Data Protection Regulation, or GDPR, applies across the European Union and includes, among other things, a requirement for prompt notice of data breaches to data subjects and supervisory authorities in certain circumstances and significant fines for non-compliance. The GDPR fine framework can be up to 20 million euros, or up to 4% of the company's total global turnover of the preceding fiscal year, whichever is higher. The GDPR also requires companies processing personal

data of individuals residing in the European Union to comply with EU privacy and data protection rules, even if the company itself does not have a physical presence in the European Union. Noncompliance could result in the imposition of fines, penalties, or orders to stop noncompliant activities. Due to the strong consumer protection aspects of the GDPR, companies subject to its purview are allocating substantial legal costs to the development of necessary policies and procedures and overall compliance efforts. For example, following a decision of the Court of Justice of the EU in October 2015, the transfer of personal data to US companies that had certified as members of the US Safe Harbor Scheme was declared invalid. In July 2016, the European Commission adopted the EU-US Privacy Shield Framework, or the Privacy Shield Framework, which replaced the US Safe Harbor Scheme. On July 16, 2020, the Court of Justice of the European Union issued a decision that declared the Privacy Shield Framework invalid, and will also result in additional compliance obligations for companies that implement standard contractual clauses to ensure a valid basis for the transfer of personal data outside of Europe. We expect continued costs associated with maintaining compliance with GDPR into the future, and these provisions as interpreted by EU agencies, could negatively impact our business, financial condition and results of operations.

In addition to the laws discussed above, we may see more stringent state and federal privacy legislation in 2022 and beyond, as the increased cyber attacks during the COVID-19 pandemic have once again put a spotlight on data privacy and security in the U.S. and other jurisdictions. We cannot predict where new legislation might arise, the scope of such legislation, or the potential impact to our business and operations.

*Cybersecurity risks and cyber incidents could result in the compromise of confidential data or critical data systems and give rise to potential harm to customers, remediation and other expenses, expose us to liability under HIPAA, consumer protection laws, or other common law theories, subject us to litigation and federal and state governmental inquiries, damage our reputation, and otherwise be disruptive to our business and operations.*

Cyber incidents can result from deliberate attacks or unintentional events. We collect and store on our networks sensitive information, including intellectual property, proprietary business information and personally identifiable information of individuals, such as our customers and employees. The secure maintenance of this information and technology is critical to our business operations. We have implemented multiple layers of security measures to protect the confidentiality, integrity and availability of this data and the systems and devices that store and transmit such data. We utilize current security technologies, and our defenses are monitored and routinely tested internally and by external parties. Despite these efforts, threats from malicious persons and groups, new vulnerabilities and advanced new attacks against information systems create risk of cybersecurity incidents. These incidents can include, but are not limited to, gaining unauthorized access to digital systems for purposes of misappropriating assets or sensitive information, corrupting data, or causing operational disruption. Because the techniques used to obtain unauthorized access, disable or degrade service, or sabotage systems change frequently and may not immediately produce signs of intrusion, we may be unable to anticipate these incidents or techniques, timely discover them, or implement adequate preventative measures.

In response to the COVID-19 pandemic, we have modified our business practices and implemented telework policies wherever possible for appropriate categories of “nonessential” employees to minimize the disruption to our operations, to the extent possible. The continuation of these telework policies for “nonessential employees” also introduces additional operational risk, including increased cybersecurity risk. These cyber risks include, among other risks, greater phishing, malware, and other cybersecurity attacks, vulnerability to or disruptions of our information technology infrastructure and systems to support remote operations, increased risk of unauthorized access, use or dissemination of confidential information, limited ability to restore the systems in the event of a systems failure or interruption, greater risk of a security breach resulting in destruction, alteration or misuse of valuable information, including proprietary business information and personally identifiable information of individuals, all of which could expose us to risks of data or financial loss, litigation and liability.

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 criminal or other unauthorized threat actors, including state-sponsored attacks. Cyber threats may be generic, or they may be custom-crafted against our information systems. Over the past several years, cyber attacks have become more prevalent and much harder to detect and defend against. These threat actors may be able to penetrate our security measures, breach our information technology systems, misappropriate or compromise confidential and proprietary information of our company and our customers, cause system disruptions and shutdowns, or introduce ransomware, malware, or vulnerabilities into our products, systems, and networks or those of our customers and partners. Our network and storage applications, as well as those of our contractors, 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 or other problems that unexpectedly could interfere with the operation of our products. 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.

We are and may continue to be subject to cybersecurity incidents that bypass our security measures. Such incidents may impact the integrity, availability or privacy of personal health information or other data subject to privacy laws or disrupt our information systems, devices or business, including our ability to deliver services to our customers. As a result, cybersecurity, physical security and the continued development and enhancement of our controls, processes and practices designed to protect our enterprise, information systems and data from attack, damage or unauthorized access remain a priority for us. As cyber threats continue to evolve, we may be required to expend significant additional resources to continue to modify or enhance our protective measures or to investigate and remediate any cybersecurity vulnerabilities. The occurrence of any of these events could result in:

- harm to customers;
- business interruptions and delays;
- the loss, misappropriation, corruption or unauthorized access of data;
- litigation, including potential class action litigation, and potential liability under privacy, security and consumer protection laws or other applicable laws;
- reputational damage;
- increase to insurance premiums; and
- foreign, federal and state governmental inquiries, any of which could have a material, adverse effect on our financial position and results of operations and harm our business reputation.

***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. System failures or outages, including any potential disruptions due to significantly increased global demand on certain cloud based systems during or as a result of the COVID-19 pandemic, or failures to adequately scale our data platforms and architectures support patient care could compromise our ability to perform these functions in a timely manner, which could harm our ability to conduct business or delay our financial reporting. Such failures could materially adversely affect our operating results and financial condition. 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. In addition, certain countries have implemented or may implement legislative and technological actions that either do or can effectively regulate access to the internet, including the ability of internet service providers to limit access to specific websites or content. Other countries have attempted or are attempting to change or limit the legal protections available to businesses that depend on the internet for the delivery of their services. 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:

- additional government oversight of our operations;
- 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 notification and remediation costs;
- regulatory fines or penalties;
- individual actions or class actions for damages;
- loss of revenues (including through loss of coverage or reimbursement);
- product development delays;

- disruption of key business operations; and
- diversion of attention of management and key information technology resources.

*Cyber attacks aimed at accessing our devices, products, and services, or related devices, products, and services, and modifying or using them in a way inconsistent with our FDA clearances and approvals, could create risks to users.*

Medical devices are increasingly connected to the internet, hospital networks, and other medical devices to provide features that improve healthcare and increase the ability of healthcare providers to treat patients and patients to manage their conditions. For example, we are pursuing collaborations to enable the connectivity and interoperability of our current and next-generation sensors and transmitters with third-party patient monitoring products, which may in turn be connected with the internet, hospital networks and in some cases, other medical devices. These same features may also increase cybersecurity risks and the risks of unauthorized access and use by third parties. As such, cyber attacks aimed at accessing our devices, products, and services, or related devices, products, and services, and modifying or using them in a way inconsistent with our FDA clearances and approvals, which may create risks to users and potential exposure to the company.

## **Risks Related to Non-Compliance with Laws, Regulations and Contractual Requirements and Healthcare Industry Shifts**

*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, be excluded from participation in government programs, and/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:

- authorizations necessary for the clinical investigation and commercial marketing of products;
- the pricing of our products and services;
- the distribution of our products and services;
- the dispensing of our products;
- billing for products and services;
- the obligation to report and return identified overpayments;
- financial relationships with physicians and other referral sources;
- inducements and courtesies given to physicians and other health care providers and patients;
- labeling and promoting 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 adverse event reporting;
- prohibitions on kickbacks, including the Anti-Kickback Statute and related laws and/or regulations;
- any scheme to defraud any healthcare benefit program;
- physician and other healthcare professional payment disclosure requirements;
- use and disclosure of personal health information;
- privacy of health information and personal information;
- data protection and data localization;
- mobile communications;
- patient access and non-discrimination;
- patient consent;
- false claims; and
- professional licensure.

These laws and regulations are extremely complex and, in many 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, and applicable penalties associated with the violation, potentially including civil and criminal penalties, damages, fines, exclusion from participation in certain payor programs or curtailment of our operations. Compliance obligations under these various laws are oftentimes detailed and onerous, further contributing to the risk that we could be found to be out of compliance with particular requirements. The risk of being found in violation of these laws and regulations is

further increased by the fact that many of them have not been fully interpreted by the regulatory authorities or the courts, particularly with respect to new and emerging technologies and remote delivery of services, and their provisions are open to a variety of interpretations.

The FDA, CMS, OIG, OCR, FTC, 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 medical devices, payments intended to influence the referral of federal or state healthcare business, and submission of false claims for government reimbursement. While we make every effort to comply with applicable laws, 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. This likelihood of allegations of non-compliance is increased by the fact that under certain federal and state laws applicable to our business, individuals, known as relators, may bring an action on behalf of the government alleging violations of such laws, and potentially be awarded a share of any damages or penalties ultimately awarded to the applicable government body.

The FDA and the FTC, share oversight of medical device promotion. The FDA has broad authority over device marketing (including assessment and oversight of safety and effectiveness) and over FDA-approved "promotional labeling," while the FTC has authority over "advertising" for most medical devices (i.e., non-"restricted" devices, such as ours).

Any action against us alleging a 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, and have a material effect on our business.

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, including any changes in laws and regulations due to the COVID-19 pandemic. 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.

*If we or our suppliers or distributors fail to comply with ongoing regulatory requirements, or if we have 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, clearance or authorization (and the activities related to its production, distribution, and promotion, sale, and marketing) will be subject to continual review and periodic inspections by the FDA and other regulatory bodies, which may include inspection of our manufacturing processes, complaint handling and adverse event reporting, post-approval clinical data and promotional activities for such product. The FDA's Medical Device Reporting, or 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.

If the FDA determines that there is a reasonable probability that a device intended for human use would cause serious, adverse health consequences or death, the agency may issue a cease distribution and notification order and a mandatory recall order. We may also decide to recall a product voluntarily if we find a material deficiency, including unacceptable risks to health, manufacturing defects, design errors, component failures, labeling defects, or other issues. Recalls of our products could divert the attention of our management and have an adverse effect on our reputation, financial condition, and operating results.

We and certain of our suppliers are also required to comply with the FDA's Quality System Regulation, or 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 may enforce the QSR through announced (through prior notification) or unannounced inspections.

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 CGM systems;
- fines and civil or criminal 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 clearance or approval by the FDA or other regulatory bodies;
- product recall or seizure;
- administrative detention;
- interruption of production, partial suspension, or complete shutdown of production;
- interruption of the supply of components from our key component suppliers;
- operating restrictions;
- court consent decrees;
- FDA orders to repair, replace, or refund the cost of devices;
- injunctions; and
- criminal prosecution.

The potential effect of these events can in some cases 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 effectiveness 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, the imposition of civil or criminal penalties, or criminal prosecution. 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.

***Quality problems could lead to recalls or safety alerts, reputational harm, and could have a material adverse effect on our business, results of operations, financial condition and cash flows.***

Quality is very important to us and our customers due to the serious and costly consequences of product failure, and our business exposes us to potential product liability risks that are inherent in the design, manufacture, and marketing of medical devices. Since the first commercial launch of our products in 2006, we have had periodic field failures related to our products and associated services, including reports of sensor errors, sensor failures, broken sensors, receiver malfunctions, audible alarms and alert failures, as well as server and transmitter failures. To comply with the FDA's medical device reporting requirements, for example, we have filed reports of applicable field failures. Although we believe we have taken and are taking appropriate action aimed at reducing and/or eliminating field failures, we may have other product failures in the future. Product or component failures, manufacturing nonconformances, design defects, off-label use, or inadequate disclosure of product-related risks or product-related information with respect to our products, if they were to occur, could result in an unsafe condition or injury to, or death of, a patient. These problems could lead to recalls, corrections or removals of, or issuance of a safety alert relating to, our products, and could result in product liability claims and lawsuits.

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.

If we fail to meet any applicable product quality standards and our products are the subject of recalls or safety alerts, our reputation could be damaged, we could lose customers, our reputation could be harmed and our revenue and results of operations could decline.

***Potential long-term complications from our current or future products or other CGM 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 we have under development, we could be subject to liability and the adoption of our systems may become more limited. With respect to our G6 systems, our clinical trials have been limited to ten days of continuous use. It is possible that the data from our clinical studies and trials may not be indicative of long-term patient outcomes. We cannot assure you that repeated, long-term use would not result in unanticipated adverse effects, potentially even after the sensor is removed.

***We may never receive approval, marketing authorization or clearance from the U.S. FDA and other governmental agencies to market additional CGM systems, expanded indications for use of current and future generation CGM systems, future software platforms, or any other products under development.***

In March 2018, via the *de novo* process, the FDA classified the G6 and substantially equivalent devices of this generic type (i.e., “integrated continuous glucose monitoring systems” or “iCGMs”) into Class II, meaning that going forward products of this generic type may utilize the 510(k) pathway. Since then we have received 510(k) clearances for modifications to the G6.

Any subsequent modification of our G6 that could significantly affect its safety or effectiveness (for example, a significant change in design or manufacture), or that would constitute a major change in its intended use, will require us to obtain a new 510(k) clearance or could require a new *de novo* submission or a PMA. The FDA requires each manufacturer to make this determination initially, but the FDA may review any such decision and may disagree with a manufacturer’s determination. If the FDA disagrees with a manufacturer’s determination, the FDA may require the manufacturer to cease marketing and/or recall the modified device until appropriate clearance or approval is obtained. Under these circumstances, the FDA may also subject a manufacturer to significant regulatory fines or other penalties.

If future product candidates are not deemed by the FDA to meet the criteria for submission under the 510(k) pathway, or for down-classification under the *de novo* process or otherwise, we would need to pursue a PMA. The PMA process requires us to prove the safety and effectiveness of our systems 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. The FDA’s *de novo* classification of our G6 system under the generic name “integrated continuous glucose monitoring system,” makes it a predicate device for future 510(k) submissions. Complying with this classification requires ongoing compliance with the general controls required by the federal Food Drug and Cosmetic Act and the special controls specified by the FDA’s G6 order as a Class II device. Any future system or expanded indications for use of current generation 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 a *de novo* request for marketing authorization, 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 under the 510(k) pathway;
- the system may not satisfy the FDA’s safety or effectiveness requirements;
- the data from pre-clinical studies and clinical trials may be insufficient to support clearance or 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 CGM systems, expanded indications for use of current and future generation CGM systems, our software platforms or any other CGM system under development, may not be cleared or approved for the indications that are necessary or desirable for successful commercialization. We may not obtain the necessary regulatory approvals or clearances to market these CGM systems in the United States or outside of the United States. Any delay in, or failure to receive or maintain, clearance or approval for our products could prevent us from generating revenue from these products. 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 business, financial condition and operating results.

***Our failure to comply with laws, regulations and contract requirements relating to reimbursement of health care goods and services may subject us to penalties and adversely impact our reputation, business, financial condition and cash flows.***

We are subject to laws, regulations and contractual requirements regulating the provision of, and reimbursement for, health care goods and services, both in our capacity as a medical device manufacturer and/or as a supplier of covered items and services to federal health care program beneficiaries, with respect to which items and services we submit claims for reimbursement from such programs. The laws and regulations of health care goods and services that apply to us, including those described above, are subject to evolving interpretations and enforcement discretion. As part of our compliance program, we have reviewed our sales contracts, marketing materials, referral source relationships, programmatic offerings, and billing

practices (among others) to reduce the risk of non-compliance with these and other foreign, federal and state laws. If a governmental authority was to conclude that we are not in compliance with applicable laws and regulations, we and our officers, directors and employees could be subject to criminal and civil penalties, including, for example, exclusion from participation as a supplier of product to beneficiaries covered by federal healthcare programs, including but not limited to Medicare and Medicaid. Any failure to comply with laws, regulations or contractual requirements relating to reimbursement and health care goods and services could adversely affect our reputation, business, financial condition and cash flows.

Our products are purchased principally by individual patients, who may be eligible for insurance coverage of their devices from various third-party payors, such as governmental programs (e.g., Medicare, Medicaid, TRICARE, other federal and state health benefit plans, and comparable non-U.S. programs), private insurance plans, and managed care plans. The ability of our customers to obtain appropriate reimbursement for products and services from third-party payors is critical because it affects which products customers purchase and the prices they are willing to pay. As a result, our products are subject to regulation regarding quality and cost by the U.S. Department for Health & Human Services, including CMS, as well as comparable state and non-U.S. agencies responsible for reimbursement and regulation of health care goods and services. The principal U.S. federal laws relating to reimbursement include those that prohibit (i) the filing of false or improper claims for federal payment, known as the federal civil False Claims Act, (ii) unlawful inducements for the referral of items and services reimbursed by Federal health care programs, known as the federal Anti-Kickback Statute, and (iii) a physician from referring a Medicare patient for the provision of certain designated health services to an entity with the physician (or an immediate family member of the physician) has a financial relationship unless an exception applies, known as the federal Physician Self-Referral law, or commonly referred to as the “Stark Law.” Many states have similar laws that apply to reimbursement by state Medicaid and other government-funded programs, as well as, in some cases, to all payors, including self-pay patients. In addition, the federal civil False Claims Act requires the reporting and returning of identified overpayments received from federal health care programs within 60 days of identification and quantification, and requires the exercise of reasonable diligence to investigate credible information regarding potential overpayments. Failure to timely refund known overpayments from federal healthcare programs, such as Medicare and Medicaid, would subject a company to civil False Claims Act liability. Insurance companies can also bring a private cause of action claiming treble damages against a manufacturer for causing a false claim to be filed under the federal Racketeer Influenced and Corrupt Organizations Act, or RICO. Additionally, as a manufacturer of FDA-approved devices reimbursable by federal healthcare programs, we are subject to the federal Physician Payments Sunshine Act, which requires us to annually report certain payments and other transfers of value we make to U.S.-licensed physicians or U.S. teaching hospitals, and under an expansion of the law to physician assistants, nurse practitioners, and other mid-level practitioners. Reporting requirements will go into effect in 2022 for payments and transfers of value made to these additional practitioner-types in 2021.

With respect to the federal Anti-Kickback Statute, Congress and the OIG have established a large number of statutory exceptions and regulatory safe harbors. An arrangement that fits squarely into an exception or safe harbor is immune from prosecution under the Anti-Kickback Statute.

We train and educate employees and marketing representatives on the Anti-Kickback Statute and their obligations thereunder, and we endeavor to comply with the applicable safe harbors. However, some of our arrangements, like many other common and non-abusive arrangements, may implicate the Anti-Kickback Statute and are not covered by a safe harbor, but nevertheless do not present a material risk to beneficiaries or federal healthcare programs and, as such, would not likely invite government scrutiny or prosecution or warrant the imposition of sanctions. However, we cannot offer assurance that arrangements that do not squarely meet an exception or safe harbor will not be found to violate the Anti-Kickback Statute. Allegations of violations of the Anti-Kickback Statute can also trigger liability under the federal Civil Monetary Penalty Law and federal civil False Claims Act, thereby increasing the penalty structure for these violations.

During the period in which we directly billed Medicare, our financial relationships with referring physicians and their immediate family members were required to comply with the Stark Law by meeting an applicable exception. Unlike the Anti-Kickback Statute, failure to meet an exception under the Stark Law results in a violation of the Stark Law, even if such violation is unintentional. Violations of the Stark Law create overpayment liability under the federal civil False Claims Act and can also trigger separate penalties under the Civil Monetary Penalties Law. Knowing violations of the Stark Law carry increased civil monetary penalties and would likely be classified as the knowing submission of a false claim or knowingly making a false statement to the government, triggering liability under the federal civil False Claims Act. Certain Stark Law violations can also trigger exclusion from participation in federal healthcare programs. Historical violations of the Stark Law, if any, could continue to give rise to liability during the statute of limitations period.

***Managed care trends and consolidation in the health care industry could have an adverse effect on our revenues and results of operations.***

Private third-party payors and other managed care organizations, such as pharmacy benefit managers, continue to take action to manage utilization and control costs. Consolidation among managed care organizations has increased the negotiating power of managed care organizations and other private third-party payors. Private third-party payors, as well as governments,

increasingly employ formularies to control costs by taking into account discounts in connection with decisions about formulary inclusion or favorable formulary placement. Failure to obtain or maintain timely adequate pricing or favorable formulary placement for our products, or failure to obtain such formulary placement at favorable pricing, could adversely impact revenue. Private third-party payors, including self-insured employers, often implement formularies with co-payment tiers to encourage utilization of certain products and have also been raising co-payments required from beneficiaries, particularly for higher-cost products. Private third-party payors also use additional measures such as value-based pricing/contracting to improve their cost-containment efforts. Private third-party payors also are increasingly imposing utilization management tools, such as requiring prior authorization or requiring the patient to first fail on a lower-cost product before permitting access to a higher-cost product. On November 20, 2020, the OIG released a Final Rule, “Removal of Safe Harbor Protection for Rebates Involving Prescription Pharmaceuticals and Creation of New Safe Harbor for Certain Point of Sale Reductions in Price on Prescription Pharmaceuticals and Certain Pharmacy Benefit Manage Service Fees” which would revise the federal Anti-Kickback Statute’s Discount Safe Harbor at 42 CFR 1001.952(h) to explicitly exclude reductions in price offered by drug manufacturers to pharmacy benefit managers, or PBMs, and Part D plans from the safe harbor’s definition of a “discount.” OIG expressed concern that the retroactive rebate framework incentivizes manufacturers to increase list prices and provide larger rebates on the backend, preventing beneficiaries and the Medicare Program from sharing in savings. The new rule which was initially to go into effect January 1, 2022, will now not become effective until January 2026 at the earliest, due to a number of federal administrative and legislative developments. The new rule does not directly impact us since it is narrowly tailored to drug rather than device manufacturers, though it may have a larger impact on the PBM industry if it eventually passes. Given the delay of the implementation of the new rule until at least January 2026, we do not expect significant restructuring of our PBM relationships in the near term.

Many health care industry companies, including health care systems, distributors, manufacturers, providers, and insurers, are also consolidating or vertically integrating, or have formed strategic alliances. As the health care industry consolidates, competition to provide goods and services to industry participants may become more intense. This consolidation will continue to create larger enterprises with greater negotiating power, which they can try to use to negotiate price concessions or reductions for medical devices and components produced by us.

As the U.S. payor market consolidates further and we face greater pricing pressure from private third-party payors, who will continue to drive more of their patients to use lower-cost alternatives, we may lose customers, our revenues may decrease and our business, financial condition, results of operations and cash flows may suffer.

***If we are unable to successfully complete the pre-clinical studies or clinical trials necessary to support additional PMA, de novo, or 510(k) applications or supplements, we may be unable to commercialize our CGM systems under development, which could impair our business, financial condition and operating results.***

To support current and any future additional PMA, 510(k), *de novo* applications or supplements, we together with our partners, must successfully complete pre-clinical studies, bench-testing, and in some cases 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 (including any potential delays due to the ongoing COVID-19 pandemic) and failure at any stage. Furthermore, the data obtained from the studies and trials may be inadequate to support approval of an 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, or 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, *de novo* or 510(k) application or supplement, even if the trial’s intended safety and effectiveness endpoints are achieved.

***Changes to the regulatory landscape may impact our ability to obtain marketing authorization for future product developments.***

Development or changes to the FDA or foreign regulatory approval standards and processes, including both legal and policy changes, could also delay or prevent the approval of our products submitted for review. For example, as part of the 21st Century Cures Act passed in 2016, Congress enacted several reforms that further affect medical device regulation both pre- and post-approval, and FDA implementation and development of guidance in many areas is still ongoing. In addition, the FDA is in the process of reviewing the 510(k) approval process and criteria and has announced initiatives to improve the current pre- and post-market regulatory processes and requirements associated with infusion pumps and other home-use medical devices. As part of this effort, the FDA is reviewing the adverse event reporting and recall processes for insulin pumps. Any change in the laws or regulations that govern the clearance and approval processes relating to our current and future products could make it more difficult and costly to obtain clearance or approval for new products, or to produce, market and distribute existing products. The data contained in our submissions, including data drawn from our clinical trials, may not be sufficient to support clearance or 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 (and the market price of our senior convertible notes) could decline substantially. It is uncertain how these potential changes may impact our ability to gain clearance or approval from FDA for our products in the future.

***The commencement or completion of any of our clinical trials may be delayed or halted, or be inadequate to support approval of FDA marketing applications or supplements, 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 or study site personnel who do not comply with clinical 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 and third-party clinical investigators may delay or reject our clinical 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 institutional review board requirements;
- we or third-party organizations do not perform data collection, monitoring or 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 us or the study that the FDA deems to make the study results unreliable, or we or clinical investigators fail to disclose such interests;
- regulatory inspections of our clinical trials or manufacturing facilities may result in allegations or findings of noncompliance and, 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 the results from our trial and/or trial design are inadequate to demonstrate safety and effectiveness of the product.

Further, the COVID-19 pandemic and associated shelter-in-place orders could limit or restrict our ability to initiate, conduct or continue our clinical trials. Delays and disruptions in our clinical trials could result in delays for expanded FDA clearance or approval of our products. We are unable to predict the length of such delays or the scope of the ongoing impact of the COVID-19 pandemic on our clinical trials at this time. We are continuing to monitor this situation and to explore methods of remote monitoring, remote clinical assessments and other similar delivery methods to permit the continuation of clinical trial activities.

The results of pre-clinical studies or other forms of early product testing 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, product testing, and clinical trials, or may find the clinical trial design, conduct or results inadequate to prove safety or effectiveness, and may require us to pursue the development of additional data, which could further delay the approval of our products. If we are unable to demonstrate the safety and effectiveness of our products in our clinical trials to the FDA's satisfaction, where clinical data are required, 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 CGM systems for the treatment of diabetes. These types of studies, which often require substantial investment and effort, may not show adequate, or any, clinical benefit or value for the use of CGM systems.

***Our CGM systems currently have regulatory marketing authorization limited to individual patient home-use, and have otherwise not received clearance or approval from the FDA or other regulators for use in hospital or other in-patient facility settings, although the FDA has advised us that it will not object to the use of our CGM systems in such settings during the COVID-19 pandemic. Our potential supply of our CGM systems for use in this environment during the COVID-19 pandemic may present risks to our business.***

We have received, and may continue to receive, numerous inquiries from hospitals around the country about the use of our CGM devices to remotely monitor COVID-19 patients admitted into the hospital. Extension of CGM system use to

hospitalized patients during the COVID-19 pandemic allows hospital staff to monitor glucose remotely in patients and may reduce patient/provider interactions, which could help limit viral exposure for hospital staff and help conserve personal protective equipment. In the context of the COVID-19 pandemic, the FDA has permitted for regulatory flexibility in a variety of specific circumstances, to expedite the development and availability of critical medical products that may be helpful in COVID-19-related efforts.

Following direct communication with the FDA regarding the potential use of our CGM devices in a hospital or other in-patient setting, the FDA notified us on April 1, 2020 that in an exercise of its enforcement discretion it will not object, in the context of the COVID-19 pandemic, to Dexcom providing CGM devices and support to users to enable real-time remote patient monitoring in hospitals and other healthcare facilities, to support COVID-19 healthcare-related efforts, so long as we provide certain FDA-specified information with respect to the unique challenges that CGM technologies can raise in the hospital environment.

As a condition of its exercise of enforcement discretion, the FDA has advised that we communicate the following information related to implementing the use of CGM systems for remote monitoring of hospitalized patients:

- Hospitals should consider whether they have the resources and expertise necessary to adequately implement CGM use and provide appropriate training to healthcare providers.
- CGM glucose results are less accurate than blood glucose results obtained using traditional testing methods (e.g., lab glucose, blood glucose meters). Users should consider all CGM glucose information (e.g., trend) along with individual glucose values, and interpret CGM results in the context of the full clinical picture.
- CGM systems are subject to interferences that may generate falsely high and falsely low glucose readings. Levels of interference depend on drug concentration; substances that may not significantly interfere in non-hospitalized patients may interfere when used in the hospital setting because of higher dose levels. Most drugs used in hospital or critical care settings have not been evaluated and their interference with CGM systems is unknown. Known interferences vary by CGM brand, and can include Acetaminophen, Ascorbic acid, Hydroxyurea, or other reducing drugs/ compounds.
- Poor peripheral blood perfusion may cause inaccurate sensor readings. CGM results should be interpreted considering accompanying patient conditions and medications. Other clinical conditions may also cause inaccurate readings.

Our provision of our CGM systems to hospitals and other healthcare facilities for use during the COVID-19 pandemic have and will continue to have the above notice.

We are not actively promoting nor do we plan to actively promote our CGM devices (and related support) for inpatient use, but if we supply them to such facilities as currently permitted by the FDA, this supply could present an increased risk of product liability claims and associated damages should an adverse event occur. Given that our CGM devices have not yet been fully evaluated or tested by either us or the FDA to the extent that would be required in standard circumstances for product development and marketing authorization, there could be unknown or unanticipated risks presented by use in this environment.

The FDA can also decide, at any time, to change its position regarding enforcement discretion for our devices, and require that we seek marketing authorization for this additional intended use by submitting a 510(k) premarket notification, or that we seek and obtain Emergency Use Authorization. The FDA may determine this policy has expired if the impact of the COVID-19 pandemic subsides or the federal public health emergency declaration is lifted and there is no longer an urgent need to use our CGM systems for remote patient monitoring during the COVID-19 pandemic.

As we are unable to predict the duration or ultimate impact of the provision of our CGM systems to hospitals and other healthcare facilities for use during the COVID-19 pandemic at this time, we do not yet know the ultimate impact to our business or financial results. We will continue to monitor the situation closely.

***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.

As a result of the COVID-19 pandemic, many healthcare facilities were or remain closed or available on a limited basis for non-emergent and elective services. Accordingly, our clinical investigators may not have an opportunity to recruit and enroll patients in our clinical trials and there may be less interest by patients to participate. We cannot predict the trajectory of the COVID-19 pandemic, the impact of variants, the length or impact of current shelter-in-place orders or any limitation on the provision of non-emergent health services or the normal operation of our clinical sites. Therefore, we cannot predict the ultimate impact that such restrictions may have on our clinical trial enrollment and results.

***Health care policy changes, including U.S. health care reform legislation, may have a material adverse effect on our business.***

In response to perceived increases in health care costs in recent years, there have been and continue to be proposals by the federal government, state governments, regulators, and third-party payors to control these costs and, more generally, to reform the U.S. health care system. Certain of these proposals could limit the prices we are able to charge for our products or the amounts of reimbursement available for our products and could limit the acceptance and availability of our products. Further, while the United States has begun shifting to pay-for-performance rather than fee-for-service models and has been embracing many shared-risk arrangements, CMS and OIG specifically excluded medical device manufacturers from utilizing the new, more flexible Stark Law exceptions and Anti-Kickback Statute safe harbors under the Final Rules, part of the U.S. Department of Health and Human Services' Regulatory Sprint to Coordinated Care, which were published on December 2, 2020 in the Federal Register and were largely effective January 19, 2021. The exclusion of manufacturers from utilizing these exceptions and safe harbors will not allow us to avail ourselves of immunity from liability under the laws, potentially inviting greater scrutiny over our shared risk arrangements.

Additionally, on November 16, 2020 the OIG published a Special Fraud Alert addressing manufacturer Speaker Programs signaling both a more narrow government view of AKS compliance with respect to such programs as well as the potential for increased enforcement in this space by government oversight agencies such as the OIG and DOJ. In response to this Special Fraud Alert, PhRMA issued its Statement on Revisions to the PhRMA Code on Interactions with Health Care Professionals on August 6, 2021 asserting, among other things, that pharmaceutical companies should not pay for or provide alcohol in connection with speaker programs. The updated PhRMA Code updates also clarified that repeat attendance at a speaker program on the same or substantially the same topic where a meal is provided to the attendee is generally not appropriate. The updated PhRMA Code was made effective as of January 1, 2022. AdvaMed has not made corollary revisions to its Code of Ethics to date. We continue to assess industry response to the Special Fraud Alert and have and may continue to make modifications to certain aspects of our speaker programs, which may have a detrimental impact on our ability to educate healthcare providers about our products and to promote use of our products, which may lead to decreased product sales and negatively impact our business, financial condition and results of operations.

Comprehensive healthcare legislation, signed into law in the United States in March 2010, titled the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Affordability Reconciliation Act of 2010, collectively, the ACA, imposes certain stringent compliance, recordkeeping, and reporting requirements on companies in various sectors of the life sciences industry, and enhanced penalties for non-compliance. Despite the ACA going into effect over a decade ago, there have been numerous legal and Congressional challenges to the law's provisions and the effect of certain provisions have made compliance costly. More recently, in June 2021, a case challenging the constitutionality of the ACA's individual mandate (*California v. Texas*) was overturned at the Supreme Court.

We cannot predict what additional new legislation, agency priorities, and rulemakings may be on the horizon as the United States continues to reassess how it pays for healthcare. As a result, we cannot quantify or predict what impact any changes might have on our business and results of operations. However, any changes that lower reimbursement for our products could materially and adversely affect our business, financial condition and results of operations.

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 commercial 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.

## Risks Related to Intellectual Property Protection and Use

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*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 CGM 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 CGM systems or the methods we employ in the use of our systems are covered by U.S. or foreign patents held by them. We have in the past settled some such allegations and may need to do so again in the future. 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 CGM systems grows, the possibility of patent infringement by us or a patent infringement claim against us increases. If we are unable to successfully defend any such claims as they may arise or enter into or extend settlement and license agreements on acceptable terms or at all, our business operations may be harmed. We have been involved in various patent infringement actions in the past. For example, in March 2020, we settled certain patent infringement litigation and proceedings between us and AgaMatrix, Inc. and WaveForm Technologies, Inc. In addition, in July 2014, we entered into a Settlement and License Agreement with Abbott to settle all pending patent infringement legal proceedings brought by Abbott against us, which expired on March 31, 2021. Since the expiration of that agreement, we and certain Abbott entities have served complaints for patent infringement, validity, and other patent-related actions against each other in multiple jurisdictions, inside and outside the United States. We intend to vigorously pursue our claims and defenses in these cases to protect our intellectual property and to defend against Abbott's infringement allegations.

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. In addition, if the relevant patents are upheld as valid and enforceable and we are found to infringe such patents, we could be prohibited from selling any of our products 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. We may be unable to maintain or renew licenses on terms acceptable to us, if at all, and we may be prohibited from selling any of our products that required the technology covered by the relevant licensed patents. 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.

Any adverse determination in litigation or interference proceedings to which we are or may become a party relating to patents or other intellectual property rights could subject us to significant liabilities to third parties or require us to seek licenses from other third parties. If we are found to infringe third-party patents, a court could order us to pay damages to compensate the patent owner for the infringement, such as a reasonable royalty amount and/or profits lost by the patent owners, along with prejudgment and/or post-judgment interest. 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 if the court finds the case to be exceptional, we may be required to pay attorneys' fees for the prevailing party. If we are found to infringe third-party copyrights or trademarks or misappropriate third-party trade secrets, based on the intellectual property at issue, a court could order us to pay statutory damages, actual damages, or profits, such as reasonable royalty or lost profits of the owners, unjust enrichment, disgorgement of profits, and/or a reasonable royalty, and the court could potentially award attorneys' fees or exemplary or enhanced damages. 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 intellectual property licenses on satisfactory terms. If we do not obtain any such necessary licenses, we may not be able to redesign our products to avoid infringement and any redesign may not receive FDA approval or other requisite marketing authorization in a timely manner or at all. Adverse determinations in a judicial or administrative proceeding or failure to obtain necessary intellectual property licenses could prevent us from manufacturing and selling our products, which would have a significant adverse impact on our business. If litigation were to be initiated by intellectual property owners, there could be significant legal fees and costs incurred in defending litigation (which may include filing administrative actions to attack the intellectual property) as well as a potential monetary settlement payment to the owners, even if the matter is resolved before going to trial. Moreover, the owners may take an overly aggressive approach and/or include multiple allegations in a single litigation.

In addition, from time to time, we are subject to various claims, complaints and legal actions arising out of the ordinary course of business, including commercial insurance, product liability or employment-related matters. Also, 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 business, financial condition or results of operations. There can be no assurance that existing or future legal proceedings arising in the ordinary course of business or otherwise will not have a material adverse effect on our business, financial condition or results of operations.

*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 its 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 business, 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, or are 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.

## **Litigation Risks**

*We face the risk of product liability claims and may be subject to damages, fines, penalties and injunctions, among other things.*

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. This liability may vary based on the FDA classification associated with our devices. Notably, the classification of our G6 system as a Class II medical device is likely to weaken our ability to rely on federal preemption of state law claims that assert liability against us for harms arising from use of the G6. 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 now that our G5 Mobile system has obtained indications and approved labeling in the United States, in Canada, and in the countries utilizing the CE Mark that allow for our patients to make diabetes treatment decisions with our CGM system in conjunction with only two finger sticks required for calibration of the system and our G6 does not require confirmatory finger sticks when making treatment decisions or finger stick tests each day for calibration, although it does require finger stick tests when symptoms do not match readings and when readings are unavailable. 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.

Although we have insurance at levels 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 claims 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 or a partner 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 10 days for our G6 system, but the individual might be able to circumvent the safeguards designed into the systems and use the products for longer than 10 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, or require design changes to limit this potential off-label use once discovered. In addition, 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.

As a result of the COVID-19 pandemic, we have received and continue to receive, numerous requests from hospitals and healthcare facilities around the country regarding the use of our CGM devices to remotely monitor COVID-19 patients admitted into the hospital. As noted above, in 2020, the FDA informed us that they intend to exercise enforcement discretion and will not object to our provision of G6 CGM systems to such facilities for use in the inpatient setting during the pandemic. However, our CGM devices are currently approved only for in-home use by patients for the purpose of personal diabetes management and have not otherwise been cleared or approved by the FDA for hospital use. Given that the G6 CGM has not yet been fully evaluated or tested (by us or by the FDA) to the extent that would be required in standard circumstances for product development and marketing authorization, there could be unknown or unanticipated risks presented by use in this environment. To the extent that inpatient use of our CGM systems causes or contributes to an adverse event, we may be subjected to additional product liability lawsuits. Defending a suit, regardless of merit, could be costly, could divert management attention and might result in adverse publicity, which could result in reduced acceptance of our products in the market.

***We could become the subject of governmental investigations, claims and litigation.***

Health care companies are subject to numerous investigations and inquiries by various governmental agencies. Further, under the False Claims Act, private parties have the right to bring *qui tam*, or "whistleblower," suits against companies that submit false claims for payments to, or improperly retain overpayments from, the government. Some states have adopted similar state whistleblower and false claims provisions. Depending upon whether the underlying conduct alleged in such inquiries or investigations could be considered systemic, any resolution of any such investigations could have a material, adverse effect on our financial position and results of operations.

Governmental agencies and their agents, such as CMS Medicare Administrative Contractors and other CMS contractors, as well as the OIG, state Medicaid programs, and other state and federal agencies may conduct audits of our operations, relating to covered items and services including those furnished to beneficiaries, health care providers and distributors. Commercial and government-funded managed care payors may conduct similar post-payment audits. Depending on the nature of the conduct found in such audits and whether the underlying conduct could be considered systemic, the resolution of these audits could have a material adverse effect on our financial position and results of operations. Our compliance program includes internal audit and monitoring functions designed to identify potential issues and facilitate remediation as appropriate.

CMS contracts with Recovery Audit Contractors, or RACs, on a contingency fee basis to conduct post-payment reviews to detect and correct improper payments in the fee-for-service Medicare program. The ACA expanded the RAC program's scope to include managed Medicare plans and Medicaid claims. RAC denials are appealable; however, there currently are significant delays in the assignment of new Medicare appeals to Administrative Law Judges, which negatively impacts our ability to appeal RAC payment denials. In addition, CMS employs various other program integrity contractors – including unified program integrity contractors, Medicaid integrity contractors, or MICs, and Comprehensive Error Rate Testing contractors to perform post-payment audits of claims and identify overpayments, and state Medicaid agencies and other contractors have increased their review and audit activities as well.

We are not presently 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. Even if we are found to have complied with applicable law, the investigation or litigation may pose a considerable expense and would divert management's attention, and have a potentially negative impact on the public's perception of us, all of which could negatively impact our financial position and results of operations. Further, should we be found out of

compliance with any of these laws, regulations or programs, depending on the nature of the findings, our business, our financial position and our results of operations could be negatively impacted.

*We may be subject to fines, penalties and injunctions if we are determined to be promoting the use of our products for unapproved or improper off-label uses or determined to have made claims that are untruthful or misleading or not adequately substantiated.*

We believe our marketing, promotional and educational materials and practices comply with FDCA, Federal Trade Commission Act, and other applicable laws and regulations, as may be amended from time to time. If the FDA, FTC or other regulatory body with competent jurisdiction over us, our activities or products takes the position that our marketing, promotional or other materials or activities constitute improper promotion or marketing of an unapproved or improper use, or that they contain untruthful, misleading, or inadequately substantiated statements or claims, such regulatory body could request that we modify our materials or practices, or subject us to regulatory enforcement actions, including the issuance, depending on the regulatory body and the nature of the alleged violation, 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, marketing or other materials or activities to constitute improper 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. Recent court decisions have impacted the FDA's enforcement activity regarding off-label promotion in light of First Amendment considerations; however, there are still significant risks in this area in part due to the potential False Claims Act exposure and the FDA's continued focus on ensuring devices are marketed in a manner consistent with their FDA-required labeling.

We are not actively promoting nor do we plan to actively promote our G6 CGM systems for inpatient use, but if we supply them to such facilities as currently permitted by FDA, this supply could present an increased risk of product liability claims and associated damages should an adverse event occur. Given that the G6 CGM system has not yet been fully evaluated or tested (by us or by the FDA) to the extent that would be required in standard circumstances for product development and marketing authorization, there could be unknown or unanticipated risks presented by use in this environment.

*In some instances in our advertising and promotion, we may make claims regarding our product as compared to competing products, which may subject us to heightened regulatory scrutiny, enforcement risk, and litigation risks.*

The FDA applies a heightened level of scrutiny to comparative claims when applying its statutory standards for advertising and promotion, including with regard to its requirement that promotional labeling be truthful and not misleading. There is potential for differing interpretations of whether certain communications are consistent with a product's FDA-required labeling, and FDA will evaluate communications on a fact-specific basis.

In addition, making comparative claims may draw concerns from our competitors. Where a company makes a claim in advertising or promotion that its product is superior to the product of a competitor (or that the competitor's product is inferior), this creates a risk of a lawsuit by the competitor under federal and state false advertising or unfair and deceptive trade practices law, and possibly also state libel law. Such a suit may seek injunctive relief against further advertising, a court order directing corrective advertising, and compensatory and punitive damages where permitted by law.

*Direct-to-consumer marketing and social media efforts may expose us to additional regulatory scrutiny.*

Our efforts to promote our products via direct-to-consumer marketing and social media initiatives may subject us to additional scrutiny of our practices of effective communication of risk information, benefits or claims, under the oversight of the FDA, FTC, or both.

## **Other Risks Related to our Business and Financial Condition**

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*We have incurred significant losses in the past and may incur losses in the future.*

We have incurred significant operating losses in the past. 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 G6 system; 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 receivers, as well as other collaborations. We also expect that our general and administrative expenses will continue to increase due, among other things, to the additional operational and regulatory burdens applicable to public healthcare and medical device companies. As a result,

it is possible that we could incur operating losses in the future. These losses, among other things, may have an adverse effect on our stockholders' equity.

***Our success will depend on our ability to attract and retain our personnel and manage our human capital, while controlling labor costs.***

We depend to a significant degree on our senior management, especially Kevin Sayer, our President and Chief Executive Officer. Our success will depend on our ability to retain our senior management and to attract and retain qualified personnel in the future, including salespersons, scientists, clinicians, engineers and other highly skilled personnel. Competition for senior management personnel, as well as salespersons, 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 undertake reorganizations of our workforce, which may result in a temporary reduction in the number of employees in certain locations. We would undertake a reorganization to reduce operating expenses or achieve other business objectives, though we cannot guarantee any specific amount of long-term cost savings. Further, the turnover in our employee base could result in operational and administrative inefficiencies, which could adversely impact the results of our operations, stock price and customer relationships, and could make recruiting for future management and other positions more difficult.

***We may conduct additional financings to continue the development or commercialization of our current or future generation CGM systems.***

Our operations have consumed substantial amounts of cash since inception. We expect to continue to spend substantial amounts on commercialization of our products, including growth of our manufacturing capacity, on research and development, and conducting clinical trials for our next-generation ambulatory CGM sensors and systems. Although we raised substantial net proceeds through the private sale of our convertible notes, we could need funds to continue the commercialization of our current products and to develop and commercialize our next-generation sensors and systems or pursue other strategic initiatives. 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 technologies;
- 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 business, 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/or we may have to delay the development or commercialization of our 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 business and financial condition.

***Uncollectible uninsured and patient due accounts could adversely affect our results of operations.***

The primary collection risks for our accounts receivable relate to the uninsured patient accounts and patient accounts for which the primary insurance carrier has paid the amounts covered by the applicable agreement, but patient responsibility amounts (exclusions, deductibles and copayments) remain outstanding. In addition, as a result of the impact of the COVID-19 pandemic, some customers have, and others may, lose access to their private health insurance plan if they lose their job. As most of our customers rely on third-party payors, including private health insurance plans, to cover the cost of our products, there has been, and may continue to be, a shift in financial responsibility to our customers for the amounts previously covered by their primary insurance carrier.

In the event that we are unsuccessful in collecting payments owed by patients, and/or experience increases in the amount, or deterioration in the collectability, of uninsured and patient due accounts receivable, this could adversely affect our cash flows and results of operations. We may also be adversely affected by the growth in patient responsibility accounts, as a result of increases in the adoption of plan structures, due to evolving health care policy and insurance landscapes that shift greater responsibility for care to individuals through greater exclusions, prior authorizations, and copayment and deductible amounts.

***Changes in our business strategy or restructuring of our businesses may increase our costs or otherwise affect the profitability of our businesses or the value of our assets.***

As changes in our business environment occur we have adjusted, and may further, adjust our business strategies to meet these changes and we may otherwise decide to further restructure our operations or particular businesses or assets. Our new organization and strategies may not produce the anticipated benefits, such as supporting our growth strategies and enhancing shareholder value. Our new organization and strategies could be less successful than our previous organizational structure and strategies. In addition, external events including changing technology, changing consumer patterns, acceptance of our products and changes in macroeconomic conditions may impair the value of our assets. When these changes or events occur, we may incur costs to change our business strategy and may need to write-down the value of assets. For example, current conditions, including COVID-19 and our business decisions, may reduce the value of some of our assets. We also make investments in existing or new businesses, including investments in the international expansion of our sales efforts and the build-out of our future manufacturing facility in Malaysia. Additionally, we also invest in early to late-stage companies for strategic reasons and to support key business initiatives, and we may not realize a return on our equity investments. Many such companies generate net losses and the market for their products, services, or technologies may be slow to develop or never materialize. We are subject to risks associated with our equity investments including partial or complete loss of invested capital, and significant changes in the fair value of this portfolio could adversely impact our financial results. Some of these investments may have returns that are negative or low, the ultimate business prospects of the businesses related to these investments may be uncertain, and these risks may be exacerbated by COVID-19. In any of these events, our costs may increase or returns on new investments may be lower than prior to the change in strategy or restructuring.

## ***Risks Relating to Our Public Company Status, Tax Laws and Growth Through Acquisition***

***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. 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 anticipated. 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 or equity-linked securities to pay for any future acquisitions or investments, the issuance of which could be dilutive to our existing stockholders. In addition, our operating results may suffer because of acquisition-related costs, amortization expenses or charges relating to acquired intangible assets.

***Compliance with regulations relating to public company corporate governance matters and reporting may strain our resources and divert management's attention.***

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. These laws, regulations, and standards are subject to varying interpretations, in many cases due to their lack of specificity, and, as a result, their application in practice may evolve over time as new guidance is provided by regulatory and governing bodies. This could result in continuing uncertainty regarding compliance matters and higher costs necessitated by ongoing revisions to disclosure and governance practices. We intend to continue to invest resources to comply with evolving laws, regulations, and standards, and this investment may result in increased general and administrative expenses and a diversion of management's time and attention from revenue-generating activities to compliance activities. If our efforts to comply with new laws, regulations, and standards differ from the activities intended by regulatory or governing bodies due to ambiguities related to their application and practice, regulatory authorities may initiate legal proceedings against us and our business may be adversely affected.

***We could be subject to changes in our tax rates, new U.S. or international tax legislation or additional tax liabilities.***

We are subject to taxes in the United States and numerous foreign jurisdictions, where a number of our subsidiaries are organized. The tax laws in the United States and in other countries in which we and our subsidiaries do business could change on a prospective or retroactive basis, and any such changes could adversely affect our business and financial condition. Further, due to economic and political conditions, tax rates in various jurisdictions may be subject to change. Our effective tax rates could be affected by numerous factors, including changes in the mix of earnings in countries with differing statutory tax rates, changes in the valuation of deferred tax assets and liabilities, and changes in tax laws or their interpretation, both in and outside the United States.

There is growing pressure in many jurisdictions, including the United States, and from multinational organizations such as the OECD and the European Union to amend existing international tax rules in order to render them more responsive to current global business practices. For example, the OECD has published a package of measures for reform of the international tax rules as a product of its BEPS initiative, which was endorsed by the G20 finance ministers. Many of the initiatives in the BEPS package require amendments to the domestic tax legislation of various jurisdictions. Separately, the European Union is asserting that a number of country-specific favorable tax regimes and rulings in certain member states may violate, or have violated, European Union law, and may require rebates of some or all of the associated tax benefits to be paid by benefited taxpayers in particular cases. In 2016, the European Union adopted the "Anti-Tax Avoidance Directive," which requires European Union member states to implement measures to prohibit tax avoidance practices, and Germany published the European Union Anti-Tax Avoidance Directive Implementation Law on June 30, 2021. We have a significant presence in the European Union, as well as significant sales in the European Union, such that any changes in tax laws in the European Union will impact our business. The overall impact of such legislation in European Union member states is uncertain, and our business and financial condition could be adversely affected by any laws impacting our tax rate. The U.S. government has recently enacted comprehensive tax legislation that includes significant changes to the taxation of business entities. These changes include, among others, (i) a permanent reduction to the corporate income tax rate, (ii) a partial limitation on the deductibility of business interest expense, (iii) a shift of the U.S. taxation of multinational corporations from a tax on worldwide income to a territorial system (along with certain rules designed to prevent erosion of the U.S. income tax base) and (iv) a one-time tax on accumulated offshore earnings held in cash and illiquid assets, with the latter taxed at a lower rate. The overall impact of this tax reform is uncertain, and our business and financial condition could be adversely affected. In addition, it is uncertain if and to what extent various states will conform to the newly enacted federal tax law.

Our tax returns and other tax matters also are subject to examination by the U.S. Internal Revenue Service and other tax authorities and governmental bodies. We regularly assess the likelihood of an adverse outcome resulting from these examinations to determine the adequacy of our provision for taxes. We cannot guarantee the outcome of these examinations. If our effective tax rates were to increase, particularly in the United States, or in other countries implementing legislation to reform existing tax legislation, including the European Union and Germany, or if the ultimate determination of our taxes owed is for an amount in excess of amounts previously accrued, our financial condition, operating results and cash flows could be adversely affected.

***Our ability to use our net operating losses to offset future taxable income may be subject to certain limitations which could subject our business to higher tax liability.***

Our ability to use our net operating losses, or NOLs, to offset future taxable income may be subject to certain limitations which could subject our business to higher tax liability. We may be limited in the portion of NOL carryforwards that we can use in the future to offset taxable income for U.S. federal and state income tax purposes, and federal tax credits to offset federal tax liabilities. Sections 382 and 383 of the Internal Revenue Code of 1986, as amended, and similar state law provisions, limit the use of NOLs and tax credits after a cumulative change in corporate ownership of more than 50% occurs within a three-year period. The statutes place a formula limit on how much NOLs and tax credits a corporation can use in a tax year after a change in ownership. Avoiding an ownership change is generally beyond our control. Although the ownership changes we experienced in the past have not prevented us from using all NOLs and tax credits accumulated before such ownership changes, we could experience another ownership change that might limit our use of NOLs and tax credits in the future. In addition, realization of deferred tax assets, including net operating loss carryforwards, depends upon our future earnings in applicable tax jurisdictions. If we have insufficient future taxable income in the applicable tax jurisdiction for any reason, including any future corporate reorganization or restructuring activities, we may be limited in our ability to utilize some or all of our net operating losses to offset such income and reduce our tax liability in that jurisdiction. See Note 8 “Income Taxes” to the consolidated financial statements in Part II, Item 8 of this Annual Report for additional information.

There is also a risk that due to regulatory changes or changes to federal or state law, such as suspensions on the use of NOLs, or other unforeseen reasons, our existing NOLs could expire or otherwise be unavailable either in whole or in part to offset future income tax liabilities. For example, under the Coronavirus Aid, Relief, and Economic Security Act of 2020, or CARES Act, which amended certain provisions of the Tax Cuts and Jobs Act of 2017, or TCJA, NOLs arising in taxable years beginning after December 31, 2017 and before January 1, 2021 may be carried back to each of the five taxable years preceding the tax year of such loss, but NOLs arising in taxable years beginning after December 31, 2020 may not be carried back. The TCJA, as amended by the CARES Act, also provides that NOLs from tax years that began after December 31, 2017 may offset no more than 80% of current taxable income annually for taxable years beginning after December 31, 2020.

***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 statements 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. generally accepted accounting principles, or 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. 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.

## **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, especially as our business continues to grow and our business plan continues to evolve. From January 1, 2021 through December 31, 2021, the closing price of our common stock on the Nasdaq Global Select Market was as high as \$651.26 per share and as low as \$323.96 per share. In addition, the trading prices for our common stock and other medical device companies have been highly volatile as a result of the COVID-19 pandemic.

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 or product launches or discontinuations;
- changes in market valuation or earnings of our competitors;
- negative business or financial announcements regarding our partners;
- general economic conditions;
- regulatory actions;
- legislation and political conditions;
- global health pandemics, such as COVID-19; and
- terrorist acts.

Please also refer to the factors described elsewhere 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.

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.

*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, including by conversion of our senior convertible notes in certain circumstances, the issuance of shares of our common stock to partners, including up to 1,288,660 shares of our common stock that we may issue to Verily and Onduo LLC pursuant to the Restated Collaboration Agreement, 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 (including holders of our senior convertible notes who receive shares of our common stock, if any, upon conversion of their notes) 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.*

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, our Chief Executive Officer, our President or our Lead Independent Director;
- 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.

Section 22 of the Securities Act creates concurrent jurisdiction for federal and state courts over all claims brought to enforce any duty or liability created by the Securities Act or the rules and regulations thereunder. In September 2020, we amended and restated our restated bylaws to provide that the federal district courts of the United States will, to the fullest extent permitted by law, be the exclusive forum for resolving any complaint asserting a cause of action arising under the Securities Act, or a Federal Forum Provision. Our decision to adopt a Federal Forum Provision followed a decision by the Supreme Court of the State of Delaware holding that such provisions are facially valid under Delaware law. While there can be no assurance that federal or state courts will follow the holding of the Delaware Supreme Court or determine that the Federal Forum Provision should be enforced in a particular case, application of the Federal Forum Provision means that suits brought by our stockholders to enforce any duty or liability created by the Securities Act must be brought in federal court and cannot be brought in state court. Section 27 of the Exchange Act creates exclusive federal jurisdiction over all claims brought to enforce any duty or liability created by the Exchange Act or the rules and regulations thereunder. Neither the exclusive forum provision nor the Federal Forum Provision applies to suits brought to enforce any duty or liability created by the Exchange Act. Accordingly, actions by our stockholders to enforce any duty or liability created by the Exchange Act or the rules and regulations thereunder must be brought in federal court.

Notwithstanding the foregoing, our stockholders will not be deemed to have waived our compliance with the federal securities laws and the regulations promulgated thereunder.

Any person or entity purchasing or otherwise acquiring or holding any interest in any of our securities shall be deemed to have notice of and consented to our exclusive forum provisions, including the Federal Forum Provision. The exclusive forum provisions may limit a stockholder's ability to bring a claim in a judicial forum that it finds favorable for disputes with us or any of our directors, officers, or other employees, which may discourage lawsuits with respect to such claims. Alternatively, if a court were to find the choice of forum provisions contained in our restated certificate of incorporation or amended and restated bylaws to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving such action in other jurisdictions, which could harm our business, operating results, and financial condition.

Moreover, Section 203 of the Delaware General Corporation Law may discourage, delay, or prevent a change of control of our company. Section 203 imposes certain restrictions on mergers, business combinations, and other transactions between us and holders of 15% or more of our common stock.

## Risks Related to Our Debt

### *Increasing our financial leverage could affect our operations and profitability.*

In October 2021, we entered into a Second Amended and Restated Credit Agreement, or the Amended Credit Agreement, with JPMorgan Chase and other syndicate lenders, which amended and restated the credit agreement, or the Credit Agreement, we had previously entered into in December 2018 and amended in May 2020 with JPMorgan Chase Bank and other syndicate lenders. The Amended Credit Agreement is a five-year \$200.0 million revolving credit facility, or the Credit Facility. As of December 31, 2021, we had no outstanding borrowings, \$7.3 million in outstanding letters of credit, and a total available balance of \$192.7 million under the Amended Credit Agreement.

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.

***Failure to comply with covenants in the Amended Credit Agreement could result in our inability to borrow additional funds and adversely impact our business.***

The Amended Credit Agreement imposes numerous financial and other restrictive covenants on our operations, including covenants relating to our general profitability and our liquidity. As of December 31, 2021, we were in compliance with the covenants imposed by the Amended Credit Agreement. If we violate these or any other covenants, any outstanding amounts under the Amended Credit Agreement 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.

***We have indebtedness in the form of convertible senior notes, which could adversely affect our financial health and our ability to respond to changes in our business.***

In November 2018, we completed an offering of \$850.0 million aggregate principal amount of 0.75% convertible senior notes due 2023, or 2023 Notes, which offering we refer to as the 2018 Notes Offering. In May 2020, we completed an offering of approximately \$1.21 billion aggregate principal amount of 0.25% convertible senior notes due 2025, or 2025 Notes, which offering we refer to as the 2020 Notes Offering. We refer to the 2018 Notes Offering and the 2020 Notes Offering, collectively, as the Notes Offerings, and we refer to the 2023 Notes and the 2025 Notes, collectively, as the Notes. As a result of the Notes Offerings, we incurred \$2.06 billion principal amount of indebtedness, the principal amount of which we may be required to pay at maturity.

Holder of the Notes will have the right to require us to repurchase their notes upon the occurrence of a fundamental change (as defined in the indenture for each of the Notes) at a purchase price equal to 100% of the principal amount of the notes to be purchased, plus accrued and unpaid interest, if any. In addition, each indenture for the Notes provides that we are required to repay amounts due under each indenture in the event that there is an event of default for the Notes that results in the principal, premium, if any, and interest, if any, becoming due prior to the maturity date for the Notes. There can be no assurance that we will be able to repay this indebtedness when due, or that we will be able to refinance this indebtedness on acceptable terms or at all.

As a result of our level of increased debt after the completion of the Notes Offerings:

- our vulnerability to adverse general economic conditions and competitive pressures will be heightened;
- we will be required to dedicate a larger portion of our cash flow from operations to interest payments, limiting the availability of cash for other purposes;
- our flexibility in planning for, or reacting to, changes in our business and industry may be more limited; and
- our ability to obtain additional financing in the future for working capital, capital expenditures, acquisitions, general corporate purposes or other purposes may be impaired.

We cannot be sure that our leverage resulting from the level of increased debt after the completion of the Notes Offerings will not materially and adversely affect our ability to finance our operations or capital needs or to engage in other business activities. In addition, we cannot be sure that additional financing will be available when required or, if available, will be on terms satisfactory to us. Further, even if we are able to obtain additional financing, we may be required to use such proceeds to repay a portion of our debt.

***We may be unable to repurchase the Notes upon a fundamental change when required by the holders or repay prior to maturity any accelerated amounts due under the notes upon an event of default or redeem the Notes unless specified conditions are met under our Credit Facility, and our future debt may contain additional limitations on our ability to pay cash upon conversion, repurchase or repayment of the Notes.***

Holder of the Notes will have the right to require us to repurchase their Notes upon the occurrence of a fundamental change at a purchase price equal to 100% of the principal amount of the Notes to be purchased, plus accrued and unpaid interest, if any, to, but not including, the fundamental change purchase date. In addition, each indenture for the Notes provides that we are required to repay amounts due under each indenture in the event that there is an event of default for the Notes that results in the principal, premium, if any, and interest, if any, becoming due prior to the maturity date for the Notes. In addition, upon conversion of the Notes, unless we elect to deliver solely shares of our common stock to settle such conversion (other than cash in lieu of any fractional share), we will be required to make cash payments in respect of the Notes being converted. However, we may not have enough available cash or be able to obtain financing at the time we are required to repurchase Notes surrendered upon a fundamental change or repay prior to maturity any accelerated amounts or pay cash for Notes being converted.

In addition, our ability to purchase the Notes or repay prior to maturity any accelerated amounts under the Notes upon an event of default or pay cash upon conversions of the Notes may be limited by law, by regulatory authority or by agreements

governing our indebtedness outstanding at the time, including our Credit Facility. Under our Credit Facility, we are only permitted to use cash to purchase the Notes or repay prior to maturity any accelerated amounts under the Notes if we meet certain conditions that are defined under the Credit Agreement. We may not meet these conditions in the future. Our failure to repurchase Notes at a time when the repurchase is required by the respective indenture (whether upon a fundamental change or otherwise under each indenture) or pay cash payable on future conversions of the Notes as required by the indenture would constitute a default under each indenture. A default under each indenture or the fundamental change itself could also lead to a default under agreements governing our existing or future indebtedness, including our Credit Facility. If the repayment of the related indebtedness were to be accelerated after any applicable notice or grace periods, we may not have sufficient funds to repay the indebtedness, repurchase the Notes or make cash payments upon conversions thereof.

***We may still incur substantially more debt or take other actions which would intensify the risks discussed above.***

We may incur substantial additional debt in the future, subject to the restrictions contained in our debt instruments, some of which may be secured debt. We are not restricted under the terms of the indentures governing the Notes from incurring additional debt, securing existing or future debt, recapitalizing our debt, or taking a number of other actions that are not limited by the terms of the indenture governing the convertible senior notes that could have the effect of diminishing our ability to make payments on the Notes when due.

***The convertible note hedge and warrant transactions may affect the value of the 2023 Notes and our common stock.***

In connection with the sale of the 2023 Notes, we entered into convertible note hedge, or the 2023 Note Hedge, transactions with certain financial institutions, or option counterparties. We also entered into warrant transactions with the option counterparties pursuant to which we sold warrants for the purchase of our common stock, or the 2023 Warrants. The 2023 Note Hedge transactions are expected generally to reduce the potential dilution upon any conversion of the 2023 Notes and/or offset any cash payments we are required to make in excess of the principal amount of converted 2023 Notes. The 2023 Warrant transactions could separately have a dilutive effect to the extent that the market price per share of our common stock exceeds the exercise price of the 2023 Warrants, which is \$198.38.

The option counterparties and/or their respective affiliates may modify their hedge positions by entering into or unwinding various derivatives with respect to our common stock and/or purchasing or selling our common stock in secondary market transactions prior to the maturity of 2023 Notes (and are likely to do so during any observation period related to a conversion of 2023 Notes, or following any repurchase of Notes by us on any fundamental change repurchase date (as defined in the indenture for the 2023 Notes) or otherwise). This activity could also cause or avoid an increase or a decrease in the market price of our common stock or the 2023 Notes, which could affect note holders' ability to convert the 2023 Notes and, to the extent the activity occurs during any observation period related to a conversion of the 2023 Notes, it could affect the amount and value of the consideration that note holders will receive upon conversion of the 2023 Notes.

The potential effect, if any, of these transactions and activities on the market price of our common stock or the 2023 Notes will depend in part on market conditions and cannot be ascertained at this time. Any of these activities could adversely affect the value of our common stock and the value of the 2023 Notes (and as a result, the value of the consideration, the amount of cash and/or the number of shares, if any, that note holders would receive upon the conversion of the 2023 Notes) and, under certain circumstances, the ability of the note holders to convert the 2023 Notes.

We do not make any representation or prediction as to the direction or magnitude of any potential effect that the transactions described above may have on the price of the 2023 Notes or our common stock. In addition, we do not make any representation that the option counterparties will engage in these transactions or that these transactions, once commenced, will not be discontinued without notice.

***We are subject to counterparty risk with respect to the 2023 Note Hedge transactions.***

The option counterparties are financial institutions, and we will be subject to the risk that any or all of them may default under the 2023 Note Hedge transactions. Our exposure to the credit risk of the option counterparties will not be secured by any collateral. Recent global economic conditions have resulted in the actual or perceived failure or financial difficulties of many financial institutions. If an option counterparty becomes subject to insolvency proceedings, we will become an unsecured creditor in those proceedings, with a claim equal to our exposure at that time under our transactions with that option counterparty. Our exposure will depend on many factors but, generally, an increase in our exposure will be correlated to an increase in the market price and in the volatility of our common stock. In addition, upon a default by an option counterparty, we may suffer adverse tax consequences and more dilution than we currently anticipate with respect to our common stock. We can provide no assurances as to the financial stability or viability of the option counterparties.

***Servicing our debt requires a significant amount of cash, and we may not have sufficient cash flow from our business to pay our substantial debt.***

Our ability to make scheduled payments of the principal of, to pay interest on or to refinance our indebtedness, including the Notes, depends on our future financial condition and operating performance, which is subject to economic, financial, competitive and other factors beyond our control. Our business may not continue to generate cash flow from operations in the future sufficient to satisfy our obligations under the Notes, our existing indebtedness and any future indebtedness we may incur and to make necessary capital expenditures. We may not maintain a level of cash flows from operating activities sufficient to permit us to pay the principal, premium, if any, and interest on (as well as any cash due upon conversion of) our debt, including the Notes.

If we are unable to generate such cash flow, we may be required to adopt one or more alternatives, such as reducing or delaying investments or capital expenditures, selling assets, refinancing or obtaining additional equity capital on terms that may be onerous or highly dilutive. These alternative measures may not be successful and may not permit us to meet our scheduled debt servicing obligations. Further, we may need to refinance all or a portion of our debt on or before maturity, and our ability to refinance the Notes, existing indebtedness or future indebtedness will depend on the capital markets and our financial condition at such time. We may not be able to engage in any of these activities on commercially reasonable terms or at all, which could result in a default on the Notes or our current and future indebtedness.

***Our Credit Facility imposes restrictions on us that may adversely affect our ability to operate our business.***

Our Credit Facility contains restrictive covenants relating to our capital raising activities and other financial and operational matters which may make it more difficult for us to obtain additional capital and to pursue business opportunities, including potential acquisitions. In addition, our Credit Facility and the agreements governing the notes each contain cross-default provisions whereby a default under one agreement would likely result in cross defaults under agreements covering other borrowings. For example, the occurrence of a default with respect to any indebtedness or any failure to repay debt when due in an amount in excess of \$25.0 million, in the case of the 2023 Notes, and \$50.0 million, in the case of the 2025 Notes, that causes such indebtedness to become due prior to its scheduled maturity date would cause a cross-default under the indenture governing the Notes. In addition, the occurrence of a default with respect to any indebtedness or any failure to repay debt when due in an amount in excess of \$25.0 million that causes such indebtedness to become due prior to its scheduled maturity date would cause a default under our Credit Facility. The occurrence of a default under any of these borrowing arrangements would permit the holders of the Notes or the lenders under our Credit Facility to declare all amounts outstanding under those borrowing arrangements to be immediately due and payable. If the Note holders or the trustee under the indenture governing the Notes or the lenders under our Credit Facility accelerate the repayment of borrowings, we cannot assure you that we will have sufficient assets to repay those borrowings.

***Conversion of the Notes will, to the extent we deliver shares upon conversion of such Notes, dilute the ownership interest of existing stockholders, including holders who had previously converted their Notes, or may otherwise depress our stock price.***

The conversion of some or all of the Notes will dilute the ownership interests of existing stockholders to the extent we deliver shares upon conversion of any of the Notes. Any sales in the public market of the common stock issuable upon such conversion could adversely affect prevailing market prices of our common stock. In addition, the existence of the Notes may encourage short selling by market participants because the conversion of the Notes could be used to satisfy short positions, or anticipated conversion of the Notes into shares of our common stock could depress our stock price.

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

In the event the conditional conversion feature of the Notes is triggered, holders of the Notes will be entitled to convert the Notes at any time during specified periods at their option. If one or more holders elect to convert their Notes, unless we elect to satisfy our conversion obligation by delivering solely shares of our common stock (other than cash in lieu of any fractional share), we would be required to settle a portion or all of our conversion obligation through the payment of cash, which could adversely affect our liquidity. In addition, even if holders of the Notes do not elect to convert their Notes, we could be required under applicable accounting rules to reclassify all or a portion of the outstanding principal of the Notes as a current rather than long-term liability, which would result in a material reduction of our net working capital.

***The accounting method for convertible debt securities that may be settled in cash, such as the Notes, may have a material effect on our reported financial results.***

Under GAAP, an entity must separately account for the debt component and the embedded conversion option of convertible debt instruments that may be settled entirely or partially in cash upon conversion, such as the Notes, in a manner that reflects the issuer's economic interest cost. The effect of the accounting treatment for such instruments is that the value of such embedded conversion option would be treated as original issue discount for purposes of accounting for the debt component of the Notes, and that original issue discount is amortized into interest expense over the term of the Notes using an

effective yield method. As a result, we will be required to record a greater amount of non-cash interest expense because of the amortization of the original issue discount to the Notes' face amount over the term of the Notes and because of the amortization of the debt issuance costs. Accordingly, we will report greater interest expense and lower net income in our financial results because of the recognition of both the current period's amortization of the debt discount and the Notes' coupon interest, which could adversely affect our reported or future financial results, the trading price of our common stock and the trading price of the Notes.

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

***The fundamental change repurchase feature of the Notes may delay or prevent an otherwise beneficial attempt to take over Dexcom.***

The terms of the Notes require us to repurchase the Notes in the event of a fundamental change. A takeover of Dexcom would trigger an option of the holders of the Notes to require us to repurchase the Notes. In addition, if a make-whole fundamental change occurs prior to the maturity date of the Notes, we will in some cases be required to increase the conversion rate for a holder that elects to convert its Notes in connection with such make-whole fundamental change. Furthermore, each indenture for the Notes prohibits us from engaging in certain mergers or acquisitions unless, among other things, the surviving entity assumes our obligations under the notes. These and other provisions of each indenture may have the effect of delaying or preventing a takeover of Dexcom.

## **General Risk Factors**

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***Current uncertainty in domestic and 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 potential downgrade of U.S. sovereign debt and continued sovereign debt, monetary and financial uncertainties in Europe and other foreign countries, global health pandemics such as the COVID-19 pandemic, and domestic and global inflationary trends. 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. While the potential economic impact brought by and the duration of the COVID-19 pandemic may be difficult to assess or predict, it has already caused, and is likely to result in further, significant disruption of global financial markets, which may reduce our ability to access capital on favorable terms or at all. In addition, a recession, depression or other sustained adverse market event resulting from the spread of COVID-19 could materially and adversely affect our business and the value of our common stock.

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 business, financial condition and results of operations.

***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 Stock Market or any other securities exchange on which it is then listed.

***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.

***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;
- the purchasing patterns of our customers, including as a result of seasonality;
- 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 CGM systems;
- competition;
- inadequate financial and other resources; and
- global political and economic conditions, political instability and military hostilities.

***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 international and domestic (including federal, state and local) laws, rules 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 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.

***Environmental, social and corporate governance, or ESG regulations, policies and provisions may make our supply chain more complex and may adversely affect our relationships with customers.***

There is an increasing focus on the governance of environmental and social risks. A number of our customers who are payors or distributors have adopted, or may adopt, procurement policies that include ESG provisions that their suppliers or manufacturers must comply with, or they may seek to include such provisions in their terms and conditions. An increasing number of participants in the medical device industry are also joining voluntary ESG groups or organizations, such as the Responsible Business Alliance. These ESG provisions and initiatives are subject to change, can be unpredictable, and may be difficult and expensive for us to comply with, given the complexity of our supply chain and the outsourced manufacturing of

certain components of our products. If we are unable to comply, or are unable to cause our suppliers to comply, with such policies or provisions, a customer may stop purchasing products from us, and may take legal action against us, which could harm our reputation, revenue and results of operations.

*Our business could be negatively impacted by corporate citizenship and ESG matters and/or our reporting of such matters.*

There is an increasing focus from certain investors, customers, consumers, employees, and other stakeholders concerning corporate citizenship and sustainability matters. From time to time, we communicate certain initiatives, including goals, regarding environmental matters, responsible sourcing and social investments, including pursuant to our Sustainability Report. We could fail, or be perceived to fail, in our achievement of such initiatives or goals, or we could fail in fully and accurately reporting our progress on such initiatives and goals. In addition, we could be criticized for the scope of such initiatives or goals or perceived as not acting responsibly in connection with these matters. Our business could be negatively impacted by such matters. Any such matters, or related corporate citizenship and sustainability matters, could have a material adverse effect on our business.

*Climate change may have a long-term impact on our business.*

While we seek to partner with organizations that mitigate their business risks associated with climate change, we recognize that there are inherent risks related to climate change wherever business is conducted. Access to clean water and reliable energy in the communities where we conduct our business, whether for our offices or for our vendors, is a priority. Our manufacturing sites in California, Arizona and Malaysia and our operations in the Philippines are vulnerable to climate change effects. For example, in California and Arizona, increasing intensity of droughts throughout the states and annual periods of wildfire danger increase the probability of planned and unplanned power outages in the communities where we work and live. While this danger has a low-assessed risk of disrupting normal business operations, it has the potential impact on employees' abilities to commute to work or to work from home and stay connected effectively. Climate-related events, including the increasing frequency of extreme weather events and their impact on the U.S., the Philippines, Malaysia and other major regions' critical infrastructure, have the potential to disrupt our business, our third-party suppliers, and/or the business of our customers, and may cause us to experience higher attrition, losses, and additional costs to maintain or resume operations.

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**ITEM 1B - UNRESOLVED STAFF COMMENTS**

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None.

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## ITEM 2 - PROPERTIES

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We lease real property to support our business, including manufacturing, research and development, sales, marketing and administration. The following table lists those properties that we believe are material to our business. We believe our facilities are suitable and adequate for our current and near-term needs, and that we will be able to locate additional facilities as needed.

Location	Approximate Square Feet	Purpose	Lease Expiration Dates
San Diego, CA	698,000	Laboratory, Manufacturing, Research and Development, Warehouse, General and Administrative, Sales and Marketing	2028 <sup>(1)</sup>
Mesa, AZ	634,700	General and Administrative, Laboratory, Manufacturing, Warehouse	2030 <sup>(2)</sup>

<sup>(1)</sup> Excludes renewals that would be at our option to extend the term of a lease for approximately 351,400 square feet of space expiring in 2023 for two additional three to five-year terms, renewals that would be at our option to extend the term of a lease for approximately 148,400 square feet of space expiring in 2028 for one additional five-year term, and also excludes renewals that would be at our option to extend the term of a lease for approximately 92,500 square feet of space expiring in 2028 for two additional five-year terms.

<sup>(2)</sup> Excludes renewals that would be at our option to extend the term of a lease for approximately 148,800 square feet of space expiring in 2028 for four additional five-year terms and also excludes renewals that would be at our option to extend the term of a lease for approximately 485,900 square feet of space expiring in 2030 for two additional five-year terms.

We also lease various administrative, warehouse and customer support real properties throughout the world including North America, Europe, and the Asia-Pacific region. During 2020, we entered into a 60-year lease for approximately 28 acres of land in Penang, Malaysia, for the build out of our international manufacturing facility.

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## ITEM 3 - LEGAL PROCEEDINGS

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We are subject to various claims, complaints and legal actions that arise from time to time in the normal course of business, including commercial insurance, product liability, intellectual property 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.

During the fiscal year ended December 31, 2021, we and certain Abbott entities served complaints for patent infringement, validity and other patent related actions against each other in multiple jurisdictions, inside and outside the United States. We intend to vigorously pursue our claims and defenses in these cases to protect our intellectual property and to defend against Abbott's infringement allegations.

We do not believe we are party to any other currently pending legal proceedings, the outcome of which could have a material adverse effect on our business, financial condition or results of operations. There can be no assurance that existing or future legal proceedings arising in the ordinary course of business or otherwise will not have a material adverse effect on our business, financial condition or results of operations.

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## ITEM 4 - MINE SAFETY DISCLOSURES

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Not applicable.

## PART II

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

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#### *Market Information for Common Stock*

Our common stock is traded on the Nasdaq Global Select Market under the symbol "DXCM."

#### *Stockholders*

We had fewer than 40 stockholders of record as of December 31, 2021. The number of beneficial owners of our common stock at that date was substantially greater than the number of record holders because a large portion of our common stock is held of record through brokerage firms in "street name."

#### *Dividend Policy*

We have never declared or paid any 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.

#### *Recent Sales of Unregistered Securities*

There were no unregistered sales of equity securities which have not been previously disclosed in a quarterly report on Form 10-Q or a current report on Form 8-K during the fiscal year ended December 31, 2021.

#### *Purchases of Equity Securities by the Issuer and Affiliated Purchasers*

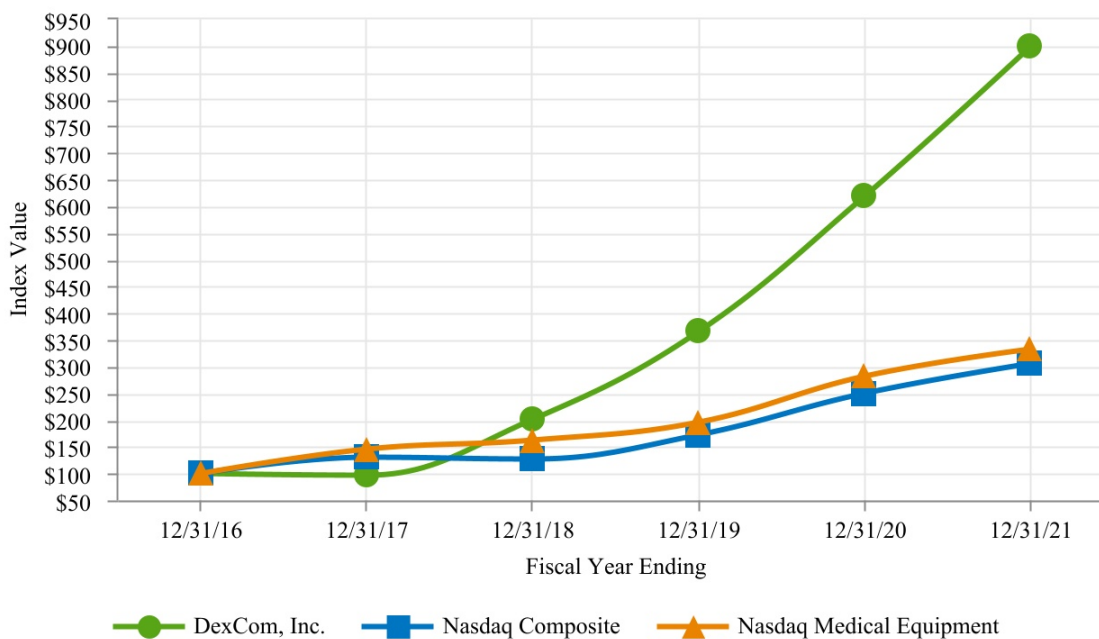
Neither we nor any affiliated purchaser repurchased any of our equity securities during the fiscal year ended December 31, 2021.

## Company Stock Price Performance

The graph below compares the cumulative total stockholder return on our common stock with the cumulative total returns on the Nasdaq Composite Index and the Nasdaq Medical Equipment Index over the five-year period ended December 31, 2021. The graph assumes that \$100 was invested in Dexcom common stock and in each of the other indices on December 31, 2016 and that all dividends were reinvested. The comparisons in the graph below are based on historical data and are not intended to forecast the possible future performance of Dexcom's common stock.

The graph below and related information shall not be deemed "soliciting material" or be deemed to be "filed" with the SEC, nor shall such information be incorporated by reference into any future filing, except to the extent that we specifically incorporate it by reference into such filing.

### COMPARISON OF FIVE-YEAR CUMULATIVE TOTAL RETURN\* AMONG DEXCOM, INC. THE NASDAQ COMPOSITE INDEX AND THE NASDAQ MEDICAL EQUIPMENT INDEX



\* \$100 invested on December 31, 2016 in stock or index, including reinvestment of any dividends.

	December 31, 2016	December 31, 2017	December 31, 2018	December 31, 2019	December 31, 2020	December 31, 2021
DexCom, Inc.	\$ 100.00	\$ 96.13	\$ 200.67	\$ 366.40	\$ 619.30	\$ 899.41
Nasdaq Composite	\$ 100.00	\$ 129.64	\$ 125.96	\$ 172.17	\$ 249.51	\$ 304.85
Nasdaq Medical Equipment	\$ 100.00	\$ 145.08	\$ 161.91	\$ 196.50	\$ 281.91	\$ 332.54

ITEM 6 - [RESERVED]

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

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 include, among other things, impacts on our business due to health pandemics or other contagious outbreaks, such as the current COVID-19 pandemic. 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. You should read the following discussion and analysis together with our consolidated financial statements and related notes in Part II, Item 8 of this Annual Report.

### Overview

#### WHO WE ARE

We are a medical device company primarily focused on the design, development and commercialization of continuous glucose monitoring, or CGM, systems for the management of diabetes by patients, caregivers, and clinicians around the world.

We received approval from the Food and Drug Administration, or FDA, and commercialized our first product in 2006. We launched our latest generation system, the Dexcom G6<sup>®</sup> integrated Continuous Glucose Monitoring System, or G6, in 2018.

Unless the context requires otherwise, the terms "we," "us," "our," the "company," or "Dexcom" refer to DexCom, Inc. and its subsidiaries.



Smart devices sold separately.



## Global Presence

We have built a direct sales organization in the United States, Australia, Canada, New Zealand, and certain countries in Europe to call on health care professionals, such as endocrinologists, physicians and diabetes educators, who can educate and influence patient adoption of continuous glucose monitoring. To complement our direct sales efforts, we have entered into distribution arrangements in the United States, and certain countries in Africa, Asia, Europe, Latin America, and the Middle East, as well as Australia, Canada, and New Zealand that allow distributors to sell our products.



## Future Developments

**Product Development:** We plan to develop future generations of technologies that are focused on improved performance and convenience and that will enable intelligent insulin administration. Over the longer term, we plan to continue to develop and improve networked platforms with open architecture, connectivity and transmitters capable of communicating with other devices. We also intend to expand our efforts to accumulate CGM patient data and metrics and apply predictive modeling and machine learning to generate interactive CGM insights that can inform patient behavior.

**Partnerships:** We also continue to pursue and support development partnerships with insulin pump companies and companies or institutions developing insulin delivery systems, including automated insulin delivery systems.

**New Opportunities:** We are also exploring how to extend our offerings to other opportunities, including for people with Type 2 diabetes that are non-insulin using, people with pre-diabetes, people who are obese, people who are pregnant, and people in the hospital setting. Eventually, we may apply our technological expertise to products beyond glucose monitoring.



## Impact of COVID-19 Pandemic

During 2020 and 2021, we have been subject to challenging social and economic conditions created as a result of the novel strain of coronavirus, SARS-CoV-2, or COVID-19. These conditions continue to create various financial impacts to our operations by necessitating precautions for our personnel to operate safely both in person as well as remotely. Costs incurred include items like incremental payroll costs, consulting support, IT infrastructure and facilities-related costs.

As the result of the COVID-19 pandemic, we made Dexcom CGM systems available for use in hospital settings and other healthcare facilities to assist frontline workers. The extent of the impact of the COVID-19 pandemic on our operational and financial performance will depend on certain developments, including the duration and spread of the outbreak, impact on our customers and our sales cycles, employee or industry events, and effect on our vendors, all of which are uncertain and cannot be predicted. The COVID-19 pandemic and its adverse effects have become more prevalent in the locations where we, our customers, suppliers or third-party business partners conduct business and as a result, we have experienced moderate disruptions in our global operations. We have experienced and may experience constrained supply or curtailed customer demand, including due to customer loss of private health insurance coverage for our products, that could materially adversely impact our business, results of operations and overall financial performance in future periods. We currently utilize third parties to, among other things, manufacture components and materials for our devices, and to provide services such as sterilization services and we purchase these materials and services from numerous suppliers worldwide.

The COVID-19 pandemic has and may continue to have an adverse impact on our manufacturing and distribution capabilities. Disruptions relating to the COVID-19 pandemic, including shelter-in-place orders in the U.S. and other countries, could prevent employees, suppliers, distributors, and others from accessing manufacturing facilities and from transporting our products or the components required to manufacture our products. For example, we have experienced some supply chain disruption due to the global restrictions resulting from the COVID-19 pandemic in the manufacturing of our next-generation CGM product. Further, worldwide supply chain disruption relating to the COVID-19 pandemic has resulted in product shortages that has and may continue to impact our ability to manufacture our devices. As of the filing date of this Annual Report, the extent to which COVID-19 may impact our financial condition or results of operations or guidance is uncertain. The effect of the COVID-19 pandemic will not be fully reflected in our results of operations and overall financial performance until future periods. See “Risk Factors” in Part I, Item 1A of this Annual Report for further discussion of the possible impact of the COVID-19 pandemic on our business.

## Critical Accounting 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. Variability reflected in the sensitivity analysis presented below is based on our recent historical experience. Actual results may differ from these estimates under different assumptions or conditions.

While our significant accounting policies are described in Note 1 to the consolidated financial statements in Part II, Item 8 of this Annual Report, we believe that the following accounting estimates are most critical to a full understanding and evaluation of our reported financial results. Members of our senior management have discussed the development and selection of these critical accounting estimates and their disclosure in this Annual Report with the Audit Committee of our Board of Directors.

### *Pharmacy Rebates*

We estimate provisions for pharmacy rebates based on contractual arrangements, estimates of products sold subject to rebate, known events or trends and channel inventory data. Estimates associated with rebates on products sold through our distributors under pharmacy benefits are the most significant component of our variable consideration estimates and most at risk for material adjustment because of the time delay between the recording of the accrual estimate and its ultimate settlement, an interval that generally ranges from 30 to 90 days, but can last up to one year. Due to this time lag, in any given period, our adjustments to reflect actual amounts can incorporate changes of estimates related to prior periods.

Historically, adjustments to these estimates to reflect actual results or updated expectations, have not been material to our overall business and generally have been less than 1% of revenue. An increase or decrease of 1% in our estimate of products sold subject to rebate during 2021, holding all other assumptions constant, would increase or decrease revenue by approximately \$11.5 million.

For more information, see *Revenue Recognition* in Note 1 to the consolidated financial statements in Part II, Item 8 of this Annual Report.

### *Excess and Obsolete Inventory*

We assess the value of our inventory on a quarterly basis and write down those inventories based on quality control testing data, obsolescence, or in excess of our forecasted demand to the lower of their cost or net realizable value. Our estimates of forecasted demand are based upon our analysis and assumptions including, but not limited to, expected product lifecycles, product development plans and historical usage by product. If actual market conditions are less favorable than our forecasts, or actual demand from our customers is lower than our estimates, we may be required to record additional inventory write-downs. If actual market conditions are more favorable than anticipated, inventory previously written down may be sold, resulting in lower cost of sales and higher income from operations than expected in that period.

### *Income Taxes*

We estimate our income taxes based on the various jurisdictions where we conduct business. Significant judgment is required in determining our worldwide income tax provision. The calculation of our tax liabilities involves dealing with uncertainties in the application of complex tax laws and regulations and the potential for future adjustment of our uncertain tax positions by the Internal Revenue Service or other taxing jurisdictions. While we believe we have appropriate support for the positions taken on our tax returns, we regularly assess the potential outcomes of examinations by tax authorities in determining the adequacy of our provision for income taxes. We continually assess the likelihood and amount of potential adjustments and adjust the income tax provision, income taxes payable, and deferred taxes in the period in which the facts that give rise to a revision become known.

We use the asset and liability approach to recognize deferred tax assets and liabilities for the expected future tax consequences of temporary differences between the carrying amounts and the tax basis of assets and liabilities as described in Note 1 to the consolidated financial statements in Part II, Item 8 of this Annual Report. Significant judgment is required to evaluate the need for a valuation allowance against deferred tax assets. A valuation allowance is established when it is more likely than not that some or all of the deferred tax assets will not be realized. Realization of deferred tax assets is dependent upon future earnings in applicable tax jurisdictions. We maintain a valuation allowance on our California research and

development tax credits, foreign tax credits, and certain foreign intangible assets, as it is more likely than not that those deferred tax assets will not be realized.

We recognize and measure benefits for uncertain tax positions using a two-step approach as described in Note 1 to the consolidated financial statements in Part II, Item 8 of this Annual Report. Significant judgment is required to evaluate uncertain tax positions and is based upon a number of factors, including changes in facts or circumstances, changes in tax law, correspondence with tax authorities during the course of audits and effective settlement of audit issues. Changes in the recognition or measurement of uncertain tax positions could result in material increases or decreases in our income tax expense in the period in which we make the change, which could have a material impact on our effective tax rate and operating results.

#### *Loss Contingencies*

We are subject to certain legal proceedings, as well as demands, claims and threatened litigation that arise in the normal course of our business. We review the status of each significant matter quarterly and assess our potential financial exposure. Significant judgment is required in the determination of whether a potential loss is probable, reasonably possible, or remote as well as in the determination of whether a potential exposure is reasonably estimable. We base our judgments on the best information available at the time. As additional information becomes available, we reassess the potential liability related to our pending claims and litigation and may revise our estimates. Any revision of our estimates of potential liability could have a material impact on our financial position and operating results.

## Overview of Financial Results

The most important financial indicators that we use to assess our business are revenue growth, gross profit, operating income, net income, and cash flow from operations.

**Key highlights for fiscal 2021 include the following:**

Revenue	Gross Profit	Operating Income	Net Income	Operating Cash Flow
<b>\$2.45 billion</b> up 27% from 2020	<b>\$1.68 billion</b> up 31% from 2020	<b>\$265.8 million</b> down 11% from 2020	<b>\$154.7 million</b> down 69% from 2020	<b>\$442.5 million</b> down 7% from 2020

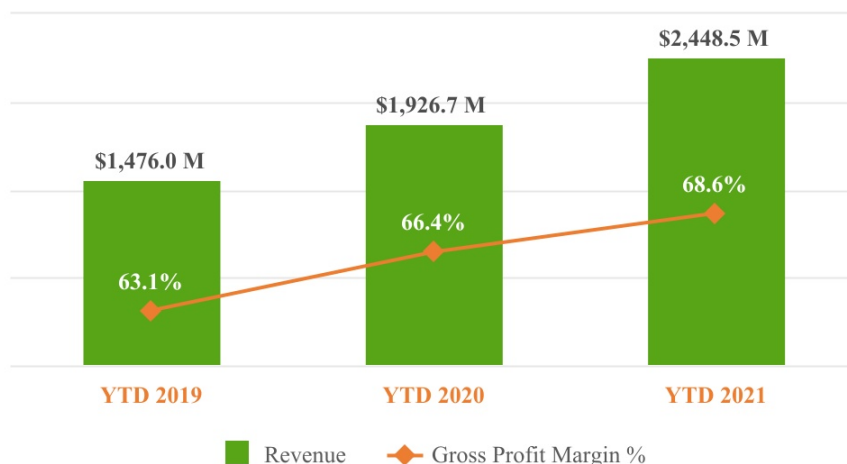
We ended fiscal 2021 with cash, cash equivalents and short-term marketable securities totaling \$2.73 billion.

## Business Trends

In addition to the general impacts of COVID-19 on our company as described in the Overview, looking ahead we expect our business could be affected by the following:

- Increase in the worldwide incidence of people diagnosed with diabetes and costs related to the management and treatment of diabetes.
- Changes in medical reimbursement policies and programs.
- Growing demand for digital health technologies by both healthcare providers and consumers to reduce costs, empower consumers to make better-informed decisions about their own health and provide new options for facilitating prevention, early diagnosis of life-threatening diseases, and management of chronic conditions outside of traditional health care settings.
- Continued product innovation and competition from other CGM device makers.
- Our ability to scale efficiently with the construction of our production facility in Malaysia.
- Our ability to successfully develop, obtain regulatory approval of and commercialize the products within our pipeline, in particular, our next generation G7 CGM system.

## Revenue and Gross Margin %



## Financial Overview

For discussion related to the results of operations and changes in financial condition for fiscal 2020 compared to fiscal 2019 refer to “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in Part II, Item 7 of our 2020 Annual Report on Form 10-K, which was filed with the United States Securities and Exchange Commission on February 11, 2021.

## Twelve Months Ended December 31, 2021 Compared to Twelve Months Ended December 31, 2020

(In millions, except per share amounts)	Twelve Months Ended December 31,				2021 - 2020	
	2021	% of Revenue <sup>(1)</sup>	2020	% of Revenue <sup>(1)</sup>	\$ Change	% Change
Revenue	\$ 2,448.5	100 %	\$ 1,926.7	100 %	\$ 521.8	27 %
Cost of sales	768.0	31 %	646.6	34 %	121.4	19 %
Gross profit	1,680.5	68.6 %	1,280.1	66.4 %	400.4	31 %
Operating expenses:						
Research and development	517.1	21 %	359.9	19 %	157.2	44 %
Collaborative research and development fee	87.1	4 %	—	— %	87.1	*
Selling, general and administrative	810.5	33 %	620.7	32 %	189.8	31 %
Total operating expenses	1,414.7	58 %	980.6	51 %	434.1	44 %
Operating income	265.8	11 %	299.5	16 %	(33.7)	(11)%
Interest expense	(100.3)	(4)%	(84.7)	(4)%	(15.6)	18 %
Loss on extinguishment of debt	(1.5)	— %	(5.9)	— %	4.4	(75)%
Income from equity investments	11.6	— %	—	— %	11.6	*
Interest and other income (expense), net	(1.7)	— %	16.1	1 %	(17.8)	*
Income before income taxes	173.9	7 %	225.0	12 %	(51.1)	(23)%
Income tax expense (benefit)	19.2	1 %	(268.6)	(14)%	287.8	*
Net income	\$ 154.7	6 %	\$ 493.6	26 %	\$ (338.9)	(69)%

<sup>(1)</sup> The sum of the individual percentages may not equal the total due to rounding.

\* Not meaningful

## Revenue

We expect that revenue 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 immediately preceding fourth quarter. This seasonal sales pattern relates to U.S. 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. 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.

### Twelve Months Ended December 31, 2021 Compared to Twelve Months Ended December 31, 2020

<b>Revenue</b>	<p>The revenue increase was primarily driven by increased sales volume of our disposable sensors due to the continued growth of our worldwide customer base, partially offset by mix shift and price associated with the evolution of our channel strategy.</p> <p>Disposable sensor and other revenue comprised approximately 84% of total revenue and Reusable Hardware revenue comprised approximately 16% of total revenue for the twelve months ended December 31, 2021. Disposable sensor and other revenue comprised approximately 81% of total revenue and Reusable Hardware revenue comprised approximately 19% of total revenue for the twelve months ended December 31, 2020.</p>
<b>Cost of Sales &amp; Gross Profit</b>	<p>Cost of sales increased primarily due to an increase in sales volume. The increase in gross profit and gross profit margin in 2021 compared to 2020 were primarily driven by increased revenue and cost savings associated with incremental improvements to product design, manufacturing efficiencies and economies of scale.</p>
<b>Research and Development Expense</b>	<p>Research and development expense increased primarily due to \$62.7 million in additional third party and consulting fees primarily related to software development for new products and significant enhancements, \$49.1 million in additional salaries, bonuses, and payroll-related costs primarily due to higher headcount, and \$13.2 million in additional clinical trials costs related to pivotal trials. We continue to believe that focused investments in research and development are critical to our future growth and competitive position in the marketplace, and to the development of new and updated products and services that are central to our core business strategy.</p>

<b><i>Collaborative Research and Development Fee</i></b>	Collaborative research and development fees of \$87.1 million for the twelve months ended December 31, 2021 represents expense incurred in the fourth quarter of 2021 associated with a contingent milestone under the 2018 collaboration and license agreement with Verily. See Note 2 “Development and Other Agreements” to the consolidated financial statements in Part II, Item 8 of this Annual Report for more information.
<b><i>Selling, General and Administrative Expense</i></b>	Selling, general and administrative expense increased primarily due to \$84.0 million in additional advertising and marketing costs due to an increase in worldwide marketing campaigns, \$60.5 million in additional salaries, bonuses, and payroll-related costs primarily due to higher headcount primarily related to an expansion in our sales force, \$16.3 million in additional legal expense related to litigation, \$7.4 million of investments in customer experience, partially offset by \$12.9 million in lower third party service provider fees due to a change in our channel strategy.
<b><i>Loss on Extinguishment of Debt</i></b>	The loss on extinguishment of debt of \$1.5 million and \$5.9 million is primarily related to the conversions and/or repurchases of our senior convertible notes for the twelve months ended December 31, 2021 and December 31, 2020, respectively. See Note 5 “Debt” to the consolidated financial statements in Part II, Item 8 of this Annual Report for more information about these transactions.
<b><i>Income from Equity Investments</i></b>	Income from equity investments of \$11.6 million for the twelve months ended December 31, 2021 consisted solely of realized gains from the sale of an equity investment.
<b><i>Interest Expense</i></b>	Interest expense is comprised primarily of costs related to our senior convertible notes. Interest expense increased primarily due to the May 2020 issuance of our 2025 Notes.
<b><i>Interest and Other Income (Expense), Net</i></b>	Interest and other income (expense), net, consists primarily of interest income on our short-term marketable securities portfolio and foreign currency transaction gains and losses due to the effects of foreign currency fluctuations. The decrease in interest income was primarily related to a decline in market interest rates.
<b><i>Income Tax Expense (Benefit)</i></b>	We recorded pre-tax income for the twelve months ended December 31, 2021 and December 31, 2020. The income tax expense we recorded for 2021 is primarily attributable to income tax expense from normal, recurring operations offset by excess tax benefits recognized for employee share-based compensation, generation of research and development tax credits, and a one-time tax benefit related to tax law changes. The income tax benefit we recorded for 2020 is primarily attributable to the release of our valuation allowance on specific U.S. and foreign deferred tax assets.

## Liquidity and Capital Resources

### Overview, Capital Resources, and Capital Requirements

Our principal sources of liquidity are our existing cash, cash equivalents and marketable securities, cash generated from operations, proceeds from our senior convertible notes issuances, and access to our Credit Facility. Our primary uses of cash have been for research and development programs, selling and marketing activities, capital expenditures, acquisitions of businesses, and debt service costs.

We expect that cash provided by our operations may fluctuate in future periods as a result of a number of factors, including fluctuations in our operating results, working capital requirements, and capital deployment decisions. We have historically invested our cash primarily in U.S. dollar-denominated, investment grade, highly liquid obligations of U.S. government agencies, commercial paper, corporate debt, and money market funds. Certain of these investments are subject to general credit, liquidity, and other market risks. The general condition of the financial markets and the economy may increase those risks and may affect the value and liquidity of investments and restrict our ability to access the capital markets.

Our future capital requirements will depend on many factors, including but not limited to:

The evolution of the international expansion of our business and the revenue generated by sales of our approved products and other future products;	Our ability to efficiently scale our operations to meet demand for our current and any future products;	The success of our research and development efforts;
The expenses we incur in manufacturing, developing, selling and marketing our 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 quality levels of our products and services;	The emergence of competing or complementary technological developments;	The terms and timing of any collaborative, licensing and other arrangements that we may establish;
The third-party reimbursement of our products for our customers;	The rate of progress and cost of our clinical trials and other development activities;	The acquisition of businesses, products and technologies and our ability to integrate and manage any acquired businesses, products and technologies.

We expect that existing cash and short-term investments and cash flows from our future operations will generally be sufficient to fund our ongoing core business. As current borrowing sources become due, we may be required to access the capital markets for additional funding. As we assess inorganic growth strategies, we may need to supplement our internally generated cash flow with outside sources. In the event that we are required to access the debt market, we believe that we will be able to secure reasonable borrowing rates. As part of our liquidity strategy, we will continue to monitor our current level of earnings and cash flow generation as well as our ability to access the market in light of those earning levels.

A substantial portion of our operations are located in the United States, and the majority of our sales since inception have been made in U.S. dollars. Accordingly, our assessment is that we have no material net exposure to foreign currency exchange rate fluctuations at this time. However, as our business in markets outside of the United States continues to increase, we will be exposed to foreign currency exchange risk related to our foreign operations. Fluctuations in the rate of exchange between the U.S. dollar and foreign currencies, primarily the Australian Dollar, the British Pound, the Canadian Dollar, the Euro and the Malaysian Ringgit, could adversely affect our financial results, including our revenues, revenue growth rates, gross margins, income and losses as well as assets and liabilities. We currently engage in hedging transactions to reduce foreign currency risks. We will continue to monitor and manage our financial exposures due to exchange rate fluctuations as an integral part of our overall risk management program.

## **Main Sources of Liquidity**

### *Cash, cash equivalents and short-term marketable securities*

Our cash, cash equivalents and short-term marketable securities totaled \$2.73 billion as of December 31, 2021. None of those funds were restricted and approximately 95% of those funds were located in the United States.

### *Cash flow from Operations*

For the twelve months ended December 31, 2021, we had positive cash inflows of \$442.5 million from operating activities. We anticipate that we will continue to generate positive cash inflows for the foreseeable future.

### *Senior Convertible Notes*

We received net proceeds of \$836.6 million in November 2018 from the 2023 Notes offering and net proceeds of \$1.19 billion in May 2020 from the 2025 Notes offering. We used \$100.0 million of the net proceeds from the offering of the 2023 Notes to repurchase a portion of our common stock in 2018. We used \$282.6 million of the net proceeds from the offering of the 2025 Notes to repurchase a portion of our senior convertible notes due 2022, or 2022 Notes. We intend to use the remainder of the net proceeds from the 2023 Notes and 2025 Notes offerings for general corporate purposes and capital expenditures, including working capital needs. We may also use the net proceeds to expand our current business through in-licensing or acquisitions of, or investments in, other businesses, products or technologies; however, we do not have any significant commitments with respect to any such acquisitions or investments at this time.

The 2023 Note Hedge is expected to reduce the potential equity dilution upon any conversion of the 2023 Notes and/or offset any cash payments we are required to make in excess of the principal amount of converted 2023 Notes. See Note 5 “Debt” to the consolidated financial statements in Part II, Item 8 of this Annual Report for conversion activity related to the 2023 Notes and shares received as the result of exercising a portion of the 2023 Note Hedge as well as for more information about the 2023 Notes and the 2025 Notes, the 2023 Note Hedge, and the 2023 Warrants.

### *Revolving Credit Agreement*

As of December 31, 2021, we had no outstanding borrowings, \$7.3 million in outstanding letters of credit, and a total available balance of \$192.7 million under the Amended Credit Agreement. We monitor counterparty risk associated with the institutional lenders that are providing the Credit Facility. We currently believe that the Credit Facility will be available to us should we choose to borrow under it. Revolving loans will be available for general corporate purposes, including working capital and capital expenditures. See Note 5 “Debt” to the consolidated financial statements in Part II, Item 8 of this Annual Report for more details on the Revolving Credit Agreement.

### *Short-term Liquidity Requirements*

Our short-term liquidity requirements primarily consist of regular operating costs, interest payments related to our senior convertible notes, capital expenditures for the development of our manufacturing facilities and office spaces, and short-term material cash requirements as described below. As of December 31, 2021, we had a working capital ratio of 5.11 and a quick ratio of 4.50, which indicates that our current assets are more than enough to cover our short-term liabilities. We expect to have significant capital expenditures for the next year to drive our strategic initiative of building out our manufacturing facility and equipment in Malaysia and the capacity scale-up in Mesa, Arizona.

We believe that our cash, cash equivalents, and marketable securities balances, projected cash contributions from our commercial operations, and borrowings under our Credit Facility will be sufficient to meet our anticipated seasonal working capital needs, all capital expenditure requirements, material cash requirements as described below, and other liquidity requirements associated with our operations for at least the next 12 months.

### *Long-term Liquidity Requirements*

Our long-term liquidity requirements primarily consist of interest and principal payments related to our senior convertible notes, capital expenditures for the development of our manufacturing facilities and office spaces, and long-term material cash requirements as described below. As of December 31, 2021, we had a debt-to-assets ratio of 0.35, which indicates that our total assets are more than enough to cover our short-term and long-term debts. As demand grows for our products, we will continue to expand global operations to meet demand through investments in manufacturing and operations. We expect to meet our long-term liquidity requirements from our main sources of liquidity as described above to support our future operations, capital expenditures, acquisitions, and other liquidity requirements associated with our operations beyond the next 12 months.

As of December 31, 2021, we have outstanding senior convertible notes that will mature in December 2023 for the 2023 Notes and November 2025 for the 2025 Notes. However, the outstanding principal of our senior convertible notes could be converted into cash and/or shares of our common stock prior to maturity once certain conditions are met. See Note 5 “Debt” to

the consolidated financial statements in Part II, Item 8 of this Annual Report for information on conversion rights prior to maturity.

### **Material Cash Requirements**

From time to time in the ordinary course of business, we enter into a variety of purchase arrangements including but not limited to, purchase arrangements related to capital expenditures, components used in manufacturing for the United States and Malaysia, and research and development activities. See *Purchase Commitments* in Note 6 to the consolidated financial statements in Part II, Item 8 of this Annual Report for more information.

We issued senior convertible notes in November 2018 and May 2020. The obligations presented above include both principal and interest for these notes. Although these notes mature in 2023 and 2025, they may be converted into cash and shares of our common stock prior to maturity if certain conditions are met. Any conversion prior to maturity can result in repayment of the principal amounts sooner than the scheduled repayment as indicated in the table. As of December 31, 2021, we had outstanding letters of credit of \$7.3 million for which we cannot forecast with certainty the amount and timing of repayments. See Note 5 “Debt” to the consolidated financial statements in Part II, Item 8 of this Annual Report for further discussion of the terms of our senior convertible notes.

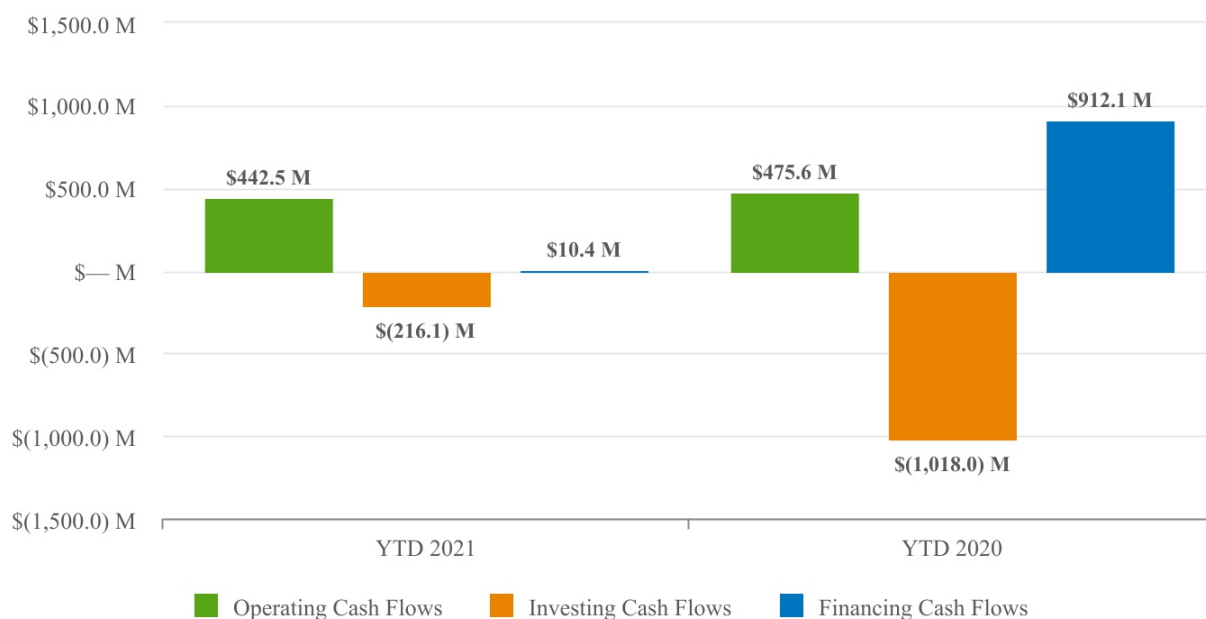
We are party to various leasing arrangements, primarily for office, manufacturing and warehouse space that expire at various times through December 2030, excluding any renewal options. We also have a land lease in Penang, Malaysia for the build-out of our international manufacturing facility lease that expires in 2080. We anticipate incurring significant expenditures related to the build-out of the Malaysia manufacturing facility and equipment in the next 24 months. See *Leases* in Note 6 to the consolidated financial statements in Part II, Item 8 of this Annual Report for more information.

Under our Restated Collaboration Agreement with Verily, upon the first regulatory approval of our next generation G7 CGM system, a regulatory approval milestone payment equivalent to 736,377 shares of our common stock, calculated based on the \$100.0 million initial milestone amount divided by the volume-weighted average trading price during the 15 consecutive days ending on the date of the Restated Collaboration Agreement, will become payable. Additional sales-based milestone payments equivalent to 1,288,660 shares of our common stock, calculated based on the \$175.0 million initial milestone amount divided by the volume-weighted average trading price during the 15 consecutive days ending on the date of the Restated Collaboration Agreement, may become due and payable by us upon achievement of certain sales-based milestones. All milestones may be paid in cash or shares of our common stock, at our election. If we elect to make these milestone payments in cash, any such cash payment would be equal to the number of shares that would otherwise be issued for the given milestone payment multiplied by the value of our stock on the date the relevant milestone is achieved, adjusted for stock splits, dividends, and the like. We intend to pay these milestones in shares of our common stock and as such we do not expect to have a material cash requirement for this agreement. See Note 2 “Development and Other Agreements” to the consolidated financial statements in Part II, Item 8 of this Annual Report for further discussion of the Collaboration Agreement with Verily.

## Cash Flows

The following table sets forth a summary of our cash flows for the periods indicated. See the consolidated financial statements in Part II, Item 8 of this Annual Report for complete statements of cash flows for these periods.

### Cash Flows Summary 2021 YTD vs. 2020 YTD



As of December 31, 2021, we had \$2.73 billion in cash, cash equivalents and short-term marketable securities, which is an increase of \$23.5 million compared to \$2.71 billion as of December 31, 2020.

The primary cash flows during the twelve months ended December 31, 2021 and 2020 are described below. See the consolidated financial statements in Part II, Item 8 of this Annual Report for complete consolidated statements of cash flows for these periods.

**Twelve Months Ended**

	<b>December 31, 2021</b>	<b>December 31, 2020</b>
<b>Operating Cash Flows</b>	<p>+ \$154.7 million of net income and \$419.8 million of net non-cash adjustments, partially offset by \$132.0 million of net changes in working capital balances</p> <p>Net non-cash adjustments were primarily related to collaborative research and development fees, share-based compensation, non-cash interest expense for our senior convertible notes, and depreciation and amortization.</p>	<p>+ \$493.6 million of net income and \$2.8 million of net non-cash adjustments, including \$285.5 million of net benefit to tax expense associated with the release of the valuation allowance related to deferred tax assets, partially offset by \$20.8 million of net changes in working capital balances</p> <p>Net non-cash adjustments were primarily related to a net benefit to tax expense associated with the release of the valuation allowance related to deferred tax assets, share-based compensation, non-cash interest expense for our senior convertible notes, and depreciation and amortization.</p>
<b>Investing Cash Flows</b>	<p>+ \$193.2 million net proceeds from marketable securities</p> <p>+ \$15.7 million in proceeds from the sale of an equity investment</p> <p>- \$389.2 million capital expenditures</p> <p>- \$30.2 million in acquisitions, net of cash acquired</p> <p>- \$5.0 million in purchases of equity investments</p>	<p>- \$807.7 million net purchases of marketable securities</p> <p>- \$199.0 million capital expenditures</p>
<b>Financing Cash Flows</b>	<p>+ \$20.3 million in proceeds from the issuance of common stock under our employee stock plans</p> <p>- \$9.9 million in payments for financing leases</p>	<p>+ \$1.19 billion in proceeds from issuance of our 2025 Notes, net of issuance costs</p> <p>+ \$15.3 million in proceeds from the issuance of common stock under our employee stock plans</p> <p>- \$282.6 million cash outflow for repurchase of a portion of our 2022 Notes</p>

**Recent Accounting Guidance**

For a description of recently issued accounting guidance that is applicable to our financial statements, see Note 1 “Organization and Significant Accounting Policies” to the consolidated financial statements in Part II, Item 8 of this Annual Report.

**ITEM 7A - 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.

**Market Price Sensitive Instruments**

In order to reduce potential equity dilution, in connection with the issuance of the 2023 Notes we entered into the 2023 Note Hedge which entitles us to purchase shares of our common stock. Upon conversion of the 2023 Notes, the 2023 Note Hedge is expected to reduce the equity dilution if the daily volume-weighted average price per share of our common stock exceeds the strike price of the hedge. We also entered into warrant transactions with the counterparties of the 2023 Note Hedge entitling them to acquire shares of our common stock. The warrant transactions could have a dilutive effect on our earnings per share to the extent that the price of our common stock during a given quarterly or annual measurement period exceeds the strike price of the warrants. See Note 5 “Debt” to the consolidated financial statements in Part II, Item 8 of this Annual Report for more information.

## **Foreign Currency Exchange Risk**

A substantial portion of our operations are located in the United States, and the majority of our sales since inception have been made in U.S. dollars. Accordingly, our assessment is that we have no material net exposure to foreign currency exchange rate fluctuations at this time. However, as our business in markets outside of the United States continues to increase, we will be exposed to foreign currency exchange risk related to our foreign operations. Fluctuations in the rate of exchange between the U.S. dollar and foreign currencies, primarily the Australian Dollar, the British Pound, the Canadian Dollar, the Euro and the Malaysian Ringgit, could adversely affect our financial results, including our revenues, revenue growth rates, gross margins, income and losses as well as assets and liabilities.

We translate the financial statements of our foreign subsidiaries with functional currencies other than the U.S. dollar into the U.S. dollar for consolidation using end-of-period exchange rates for assets and liabilities and average exchange rates during each reporting period for results of operations. We record net gains or losses resulting from the translation of foreign financial statements and the effect of exchange rate changes on intercompany receivables and payables of a long-term nature as a separate component of stockholders' equity. These adjustments will affect net income only upon sale or liquidation of the underlying investment in foreign subsidiaries.

We record exchange rate fluctuations resulting from the translation of the short-term intercompany balances between domestic entities and our foreign subsidiaries as foreign currency transaction gains or losses and include them in interest and other income (expense), net in our consolidated statements of operations. We occasionally enter into foreign currency forward contracts in order to partially offset the impact from fluctuation of the foreign currency rates. As of December 31, 2021, we had foreign currency forward contracts outstanding with a notional amount of \$40.0 million.

The fair values of these derivatives are based on quoted market prices, which are Level 1 inputs, and the derivative instruments are recorded in other current assets or other current liabilities in our balance sheets consistent with the nature of the instrument at period end. Derivative gains and losses are included in interest and other income (expense), net in our consolidated statements of operations.

Notional principal amounts provide one measure of the transaction volume outstanding as of period end, but they do not represent the amount of our exposure to market loss. Estimates of fair value are based on applicable and commonly used pricing models using prevailing financial market information. The amounts ultimately realized upon settlement of these financial instruments, together with the gains and losses on the underlying exposures, will depend on actual market conditions during the remaining life of the instruments. We monitor and manage our financial exposures due to exchange rate fluctuations as an integral part of our overall risk management program, which recognizes the unpredictability of financial markets and seeks to reduce potentially adverse effects on our financial results.

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## **ITEM 8 - FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA**

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The information required is set forth under "Report of Independent Registered Public Accounting Firm," "Consolidated Balance Sheets," "Consolidated Statements of Operations," "Consolidated Statements of Comprehensive Income," "Consolidated Statements of Stockholders' Equity," "Consolidated Statements of Cash Flows" and "Notes to Consolidated Financial Statements" on pages [F-2](#) to [F-40](#) of this Annual Report and is incorporated into this Item 8 by reference.

The report of Dexcom's independent registered public accounting firm (PCAOB ID:42) with respect to the above-referenced financial statements and their report on internal control over financial reporting are included in Item 8 and Item 9A of this Form 10-K. Their consent appears as Exhibit 23.01 of this Form 10-K.

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

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Not applicable.

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## **ITEM 9A - CONTROLS AND PROCEDURES**

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### ***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 as of December 31, 2021, our Chief Executive Officer and our Chief Financial Officer concluded that our disclosure controls and procedures were effective as of such date 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.

As a result of the COVID-19 pandemic, certain employees began working remotely in March 2020. We have not identified any material changes in our internal control over financial reporting as a result of these changes to the working environment. We are continually monitoring and assessing the COVID-19 situation to determine any potential impacts on the design and operating effectiveness of our internal controls over financial reporting.

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

Our management is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rule 13a-15(f) under the Securities Exchange Act of 1934. Our internal control over financial reporting is designed to provide reasonable assurance to our management and Board of Directors regarding the preparation and fair presentation of published financial statements.

Our management, with the participation of the Chief Executive and Chief Financial Officers, assessed the effectiveness of our internal control over financial reporting as of December 31, 2021. In making this assessment, our management used the criteria set forth by the 2013 Committee of Sponsoring Organizations of the Treadway Commission (COSO) in Internal Control—Integrated Framework. Based on this assessment, our management, with the participation of the Chief Executive and Chief Financial Officers, believes that, as of December 31, 2021, our internal control over financial reporting is effective based on those criteria. The effectiveness of our internal control over financial reporting as of December 31, 2021 has been audited by Ernst & Young LLP an Independent Registered Public Accounting Firm, as stated in their report which is included herein.

The certifications of our Chief Executive Officer and Chief Financial Officer required under Section 302 of the Sarbanes-Oxley Act have been filed as Exhibits 31.01 and 31.02 to this report.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Therefore, even those systems determined to be effective can provide only reasonable assurance with respect to financial statement preparation and presentation.

#### ***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, we cannot guaranty that any design will succeed in achieving its stated goals under all potential future conditions, regardless of how remote.

## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors and Stockholders of DexCom, Inc.

### Opinion on Internal Control over Financial Reporting

We have audited DexCom, Inc.'s internal control over financial reporting as of December 31, 2021, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 Framework) (the COSO criteria). In our opinion, DexCom, Inc. (the Company) maintained, in all material respects, effective internal control over financial reporting as of December 31, 2021, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated balance sheets of DexCom, Inc. as of December 31, 2021 and 2020, the related consolidated statements of operations, comprehensive income, stockholders' equity and cash flows for each of the three years in the period ended December 31, 2021, and the related notes and financial statement schedule listed in the Index at Item 15(a) and our report dated February 14, 2022 expressed an unqualified opinion thereon.

### Basis for Opinion

The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Management's Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects.

Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

### Definition and Limitations of Internal Control Over Financial Reporting

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

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ Ernst & Young LLP  
San Diego, California  
February 14, 2022

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**ITEM 9B - OTHER INFORMATION**

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None.

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**ITEM 9C - DISCLOSURE REGARDING FOREIGN JURISDICTIONS THAT PREVENT INSPECTIONS**

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None.

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**PART III**

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**ITEM 10 - DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE**

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The information concerning our directors required by this Item is incorporated by reference to the section in the Proxy Statement entitled “Proposal No. 1 – Election of Directors.”

The information concerning our executive officers required by this Item is incorporated by reference to the section in the Proxy Statement entitled “Executive Officers.”

We have adopted a written code of ethics for financial employees that applies to our principal executive officer, principal financial officer, principal accounting officer, controller and other employees of the finance department designated by our Chief Financial Officer. This code of ethics, titled the “Code of Conduct and Ethics for Chief Executive Officer and Senior Finance Personnel,” is publicly available on our Internet website at <https://dexcom.gcs-web.com/corporate-governance>. The information contained on our Internet website is not incorporated by reference into this Annual Report on Form 10-K.

The information concerning the Audit Committee of the Board of Directors required by this Item is incorporated by reference to information set forth in the Proxy Statement.

The information concerning material changes to the procedures by which stockholders may recommend nominees to the Board of Directors required by this Item is incorporated by reference to information set forth in the Proxy Statement.

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**ITEM 11 - EXECUTIVE COMPENSATION**

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The information required by this Item concerning executive compensation and our Compensation Committee is incorporated by reference to information set forth in the Proxy Statement under the heading “Executive Compensation.”

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**ITEM 12 - SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS**

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The information required by this Item is incorporated by reference to information set forth in the Proxy Statement under the headings “Principal Stockholders and Stock Ownership by Management” and “Equity Compensation Plan Information.”

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**ITEM 13 - CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE**

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The information required by this Item with respect to director independence is incorporated by reference to information set forth in the Proxy Statement.

The information concerning certain relationships and related transactions required by this Item is incorporated by reference to the section in the Proxy Statement entitled “Certain Transactions.”

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**ITEM 14 - PRINCIPAL ACCOUNTANT FEES AND SERVICES**

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The information concerning principal accountant fees and services required by this Item is incorporated by reference to the section in the Proxy Statement entitled “Ratification of Selection of Independent Registered Public Accounting Firm.”

## PART IV

### ITEM 15 - EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(a) The following documents are filed as part of this Annual Report:

1. Financial Statements.

The consolidated financial statements listed in Part II, Item 8 of this Annual Report.

2. Financial Statement Schedules.

For the three fiscal years ended December 31, 2021, Schedule II – Valuation and Qualifying Accounts.

Financial statement schedules not listed above have been omitted because information required to be set forth therein is not applicable, not required, or the information required by such schedules is shown in the consolidated financial statements or the notes thereto.

3. Exhibits.

Exhibit Number	Exhibit Description	Incorporated by Reference			Exhibit Number	Provided Herewith
		Form	File No.	Date of First Filing		
<a href="#">3.01</a>	<a href="#">Restated Certificate of Incorporation of Dexcom, Inc.</a>	8-K	000-51222	May 21, 2021	3.1	
<a href="#">3.02</a>	<a href="#">Amended and Restated Bylaws of DexCom, Inc.</a>	8-K	000-51222	May 21, 2021	3.3	
<a href="#">4.01</a>	<a href="#">Form of Specimen Certificate for Registrant's common stock</a>	S-1/A	333-122454	March 24, 2005	4.01	
<a href="#">4.02</a>	<a href="#">Indenture, dated as of November 30, 2018, between DexCom, Inc. and U.S. Bank National Association (including the form of 0.75% Convertible Senior Notes due 2023)</a>	8-K	000-51222	December 3, 2018	4.1	
<a href="#">4.03</a>	<a href="#">Indenture, dated as of May 14, 2020, between DexCom, Inc. and U.S. Bank National Association (including the form of 0.25% Convertible Senior Notes due 2025)</a>	8-K	000-51222	May 15, 2020	4.1	
<a href="#">4.04</a>	<a href="#">Description of Securities Registered Under Section 12 of the Exchange Act.</a>	10-K	000-51222	February 11, 2021	4.04	
<a href="#">10.01</a>	<a href="#">Office Lease Agreement, dated March 31, 2006, between DexCom, Inc. and Kilroy Realty, L.P.</a>	8-K	000-51222	April 7, 2006	99.01	
<a href="#">10.02</a>	<a href="#">First Amendment to Office Lease between DexCom, Inc. and Kilroy Realty, L.P., dated August 18, 2010.</a>	10-Q	000-51222	November 4, 2010	10.27	
<a href="#">10.03</a>	<a href="#">Amendment Number One to Non-Exclusive Distribution Agreement, between RGH Enterprises, Inc. and DexCom, Inc., dated March 29, 2011.**</a>	10-Q/A	000-51222	July 1, 2011	10.26	
<a href="#">10.04</a>	<a href="#">Offer letter between DexCom, Inc. and Kevin Sayer dated May 3, 2011.*</a>	10-Q	000-51222	August 3, 2011	10.28	
<a href="#">10.05</a>	<a href="#">Amendment Number Two to Non-Exclusive Distribution Agreement between RGH Enterprises, Inc. and DexCom, Inc., dated March 28, 2013.**</a>	10-Q	000-51222	May 1, 2013	10.27	
<a href="#">10.06</a>	<a href="#">Amendment Number Three to Non-Exclusive Distribution Agreement between RGH Enterprises, Inc. and DexCom, Inc., dated December 4, 2013.**</a>	10-K	000-51222	February 20, 2014	10.28	

**Incorporated by Reference**

Exhibit Number	Exhibit Description	Form	File No.	Date of First Filing	Exhibit Number	Provided Herewith
<a href="#">10.07</a>	<a href="#">Non-Exclusive Distribution Agreement between DexCom, Inc. and Diabetes Specialty Center, LLC dated October 12, 2009, as amended on September 30, 2010, October 11, 2011, November 14, 2012 and November 1, 2013.**</a>	10-K	000-51222	February 20, 2014	10.29	
<a href="#">10.08</a>	<a href="#">Amendment No. 5 to Non-Exclusive Distribution Agreement between DexCom, Inc. and Diabetes Specialty Center, LLC, dated March 14, 2014.</a>	10-Q	000-51222	August 6, 2014	10.32	
<a href="#">10.09</a>	<a href="#">Second Amendment to Office Lease between DexCom, Inc. and Kilroy Realty, L.P., dated October 1, 2014.</a>	10-K	000-51222	February 25, 2015	10.32	
<a href="#">10.10</a>	<a href="#">2015 Employee Stock Purchase Plan</a>	DEF 14A	000-51222	April 13, 2015	Appendix B	
<a href="#">10.11</a>	<a href="#">Form of Subscription Agreement under 2015 Employee Stock Purchase Plan</a>	8-K	000-51222	June 2, 2015	10.4	
<a href="#">10.12</a>	<a href="#">Sublease between DexCom, Inc. and Entropic Communications, LLC dated February 1, 2016.</a>	10-Q	000-51222	April 27, 2016	10.36	
<a href="#">10.13</a>	<a href="#">Amended and Restated Non-Exclusive Distribution Agreement with Byram Healthcare dated February 1, 2016.**</a>	10-Q	000-51222	April 27, 2016	10.37	
<a href="#">10.14</a>	<a href="#">Industrial Net Lease, Broadway dated April 28, 2016, by and between PRA/LB, L.L.C. and DexCom, Inc.</a>	10-Q	000-51222	August 2, 2016	10.39	
<a href="#">10.15</a>	<a href="#">Standard Form of Agreement dated May 2, 2016, by and between DexCom, Inc. and Skanska USA Building Inc.</a>	10-Q	000-51222	August 2, 2016	10.40	
<a href="#">10.16</a>	<a href="#">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. **</a>	10-Q	000-51222	August 2, 2016	10.41	
<a href="#">10.17</a>	<a href="#">Amendment No. 1 to Collaboration and License Agreement dated October 25, 2016 by and between DexCom, Inc. and Verily Life Sciences LLC (formerly Google Life Sciences LLC).</a>	10-K	000-51222	February 28, 2017	10.42	
<a href="#">10.18</a>	<a href="#">Severance and Change in Control Plan.</a>	8-K	000-51222	June 6, 2017	10.2	
<a href="#">10.19</a>	<a href="#">Form of Participation Agreement to the Severance and Change in Control Plan.</a>	8-K	000-51222	June 6, 2017	10.3	
<a href="#">10.20</a>	<a href="#">Standard Form of Agreement dated May 1, 2017, by and between DexCom, Inc. and Skanska USA Building Inc.</a>	10-Q	000-51222	August 1, 2017	10.47	
<a href="#">10.21</a>	<a href="#">Form of Indemnity Agreement</a>	10-Q	000-51222	August 1, 2017	10.43	
<a href="#">10.22</a>	<a href="#">Form of RSU Grant Agreement 2015 Plan Global Double Trigger</a>	10-K	000-51222	February 27, 2018	10.51	
<a href="#">10.23</a>	<a href="#">Form of RSU Grant Agreement 2015 Plan Global General</a>	10-K	000-51222	February 27, 2018	10.52	
<a href="#">10.24</a>	<a href="#">Amended and Restated Collaboration and License Agreement dated November 20, 2018 by and between DexCom, Inc., Verily Life Sciences LLC (an Alphabet Company) and Verily Ireland Limited.**</a>	10-K	000-51222	February 21, 2019	10.60	

**Incorporated by Reference**

Exhibit Number	Exhibit Description	Form	File No.	Date of First Filing	Exhibit Number	Provided Herewith
<a href="#">10.25</a>	<a href="#">Amended and Restated Credit Agreement dated December 19, 2018 by and among DexCom, Inc., Bank of America, Silicon Valley Bank and Union Bank, and JPMorgan Chase Bank, as Administrative Agent.</a>	10-K	000-51222	February 21, 2019	10.61	
<a href="#">10.26</a>	<a href="#">Amended and Restated 2015 Equity Incentive Plan</a>	8-K	000-51222	June 4, 2019	10.01	
<a href="#">10.27</a>	<a href="#">Executive Deferred Compensation Plan</a>	8-K	000-51222	June 4, 2019	10.02	
<a href="#">10.28</a>	<a href="#">Form of RSU Grant Agreement 2015 Plan (Board Members - Annual Grant)</a>	10-K	000-51222	February 13, 2020	10.36	
<a href="#">10.29</a>	<a href="#">Form of RSU Grant Agreement 2015 Plan (Board Members - Incoming Grant)</a>	10-K	000-51222	February 13, 2020	10.37	
<a href="#">10.30</a>	<a href="#">Distribution Services Agreement dated November 7, 2015 between DexCom, Inc. and AmerisourceBergen Drug Corporation.****</a>	10-K	000-51222	February 13, 2020	10.38	
<a href="#">10.31</a>	<a href="#">Amendment to the Distribution Services Agreement between DexCom Inc. and AmerisourceBergen Drug Corporation.****</a>	10-K	000-51222	February 13, 2020	10.39	
<a href="#">10.32</a>	<a href="#">Third Amendment to Office Lease between DexCom, Inc. and John Hancock Life Insurance Company, dated January 9, 2019.****</a>	10-K	000-51222	February 13, 2020	10.40	
<a href="#">10.33</a>	<a href="#">Fourth Amendment to Office Lease between DexCom, Inc. and Sequence Tech. Center CA LLC, dated September 9, 2019.****</a>	10-K	000-51222	February 13, 2020	10.41	
<a href="#">10.34</a>	<a href="#">Fifth Amendment to Office Lease between DexCom, Inc. and Sequence Tech. Center CA LLC, dated October 21, 2019.</a>	10-K	000-51222	February 13, 2020	10.42	
<a href="#">10.35</a>	<a href="#">Form of Indemnity Agreement between Registrant and each of its directors and executive officers.</a>	10-K	000-51222	February 11, 2021	10.43	
<a href="#">10.36</a>	<a href="#">2015 Employee Stock Purchase Plan, amended on December 13, 2019</a>	10-K	000-51222	February 11, 2021	10.44	
<a href="#">10.37</a>	<a href="#">Form of Subscription Agreement under 2015 Employee Stock Purchase Plan amended on December 13, 2019</a>	10-K	000-51222	February 11, 2021	10.45	
<a href="#">10.38</a>	<a href="#">DexCom Incentive Bonus Plan</a>	8-K	000-51222	March 17, 2021	10.1	
<a href="#">10.39</a>	<a href="#">Second Amended and Restated Credit Agreement dated October 13, 2021 by and among DexCom, Inc., Bank of America, Silicon Valley Bank and Union Bank, and JPMorgan Chase Bank, as Administrative Agent.</a>	10-K	000-51222	February 14, 2022		X
<a href="#">10.40</a>	<a href="#">Sixth Amendment to Office Lease between DexCom, Inc. and Sequence Tech. Center CA LLC, dated May 25, 2021</a>	10-K	000-51222	February 14, 2022		X
<a href="#">10.41</a>	<a href="#">Tenant Estoppel Certificate - Sequence</a>	10-K	000-51222	February 14, 2022		X
<a href="#">10.42</a>	<a href="#">Office Lease between DexCom, Inc. and GC Pacific Court Center Owner, LLC, dated January 31, 2020</a>	10-K	000-51222	February 14, 2022		X
<a href="#">10.43</a>	<a href="#">First Amendment to Office Lease between DexCom, Inc. and GC Pacific Court Center Owner, LLC, dated November 17, 2020</a>	10-K	000-51222	February 14, 2022		X
<a href="#">10.44</a>	<a href="#">Tenant Estoppel Certificate - Pacific Center</a>	10-K	000-51222	February 14, 2022		X

Exhibit Number	Exhibit Description	Incorporated by Reference			Provided Herewith
		Form	File No.	Date of First Filing	
<a href="#">10.45</a>	<a href="#">Tenant's Acceptance of Possession - Pacific Center</a>	10-K	000-51222	February 14, 2022	X
<a href="#">21.01</a>	<a href="#">List of Subsidiaries</a>				X
<a href="#">23.01</a>	<a href="#">Consent of Independent Registered Public Accounting Firm</a>				X
24.01	Power of Attorney (see signature page of this Form 10-K)				X
<a href="#">31.01</a>	<a href="#">Certification of Chief Executive Officer Pursuant to Securities Exchange Act Rule 13a-14(a).</a>				X
<a href="#">31.02</a>	<a href="#">Certification of Chief Financial Officer Pursuant to Securities Exchange Act Rule 13a-14(a).</a>				X
<a href="#">32.01</a>	<a href="#">Certification of Chief Executive Officer Pursuant to 18 U.S.C. Section 1350 and Securities Exchange Act Rule 13a-14(b).***</a>				X
<a href="#">32.02</a>	<a href="#">Certification of Chief Financial Officer Pursuant to 18 U.S.C. Section 1350 and Securities Exchange Act Rule 13a-14(b).***</a>				X
101.INS	Inline XBRL Instance Document				X
101.SCH	Inline XBRL Taxonomy Extension Schema Document				X
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document				X
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document				X
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document				X
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document				X
—	Cover Page Interactive Data File (Embedded within the Inline XBRL document and included in Exhibit 101)				X

\* Represents a management contract or compensatory plan.

\*\* 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.

\*\*\* 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.

\*\*\*\* Portions of this exhibit have been omitted pursuant to Item 601(b)(10)(iv) of Regulation S-K.

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## ITEM 16 - FORM 10-K SUMMARY

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None.



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**DEXCOM, INC.**  
**INDEX TO CONSOLIDATED FINANCIAL STATEMENTS**

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## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors and Stockholders of DexCom, Inc.

### Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of DexCom, Inc. (the Company) as of December 31, 2021 and 2020, the related consolidated statements of operations, comprehensive income, stockholders' equity and cash flows for each of the three years in the period ended December 31, 2021, and the related notes and financial statement schedule listed in the Index at Item 15(a) (collectively referred to as the "consolidated financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company at December 31, 2021 and 2020, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2021, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company's internal control over financial reporting as of December 31, 2021, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 Framework) and our report dated February 14, 2022 expressed an unqualified opinion thereon.

### Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

### Critical Audit Matter

The critical audit matter communicated below is a matter arising from the current period audit of the financial statements that was communicated or required to be communicated to the audit committee and that: (1) relates to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective or complex judgments. The communication of the critical audit matter does not alter in any way our opinion on the consolidated financial statements, taken as a whole, and we are not, by communicating the critical audit matter below, providing a separate opinion on the critical audit matter or on the accounts or disclosures to which it relates.

#### *Estimation of variable consideration for revenue recognition*

##### *Description of the Matter*

As discussed in Note 1 of the consolidated financial statements, the Company includes an estimate of variable consideration in the calculation of the transaction price at the time of sale. The Company estimates reductions for pharmacy rebates based on contractual arrangements, estimates of products sold subject to rebate, known events or trends and channel inventory data.

Auditing management's determination of transaction price including variable consideration involved a high degree of subjectivity in evaluating management's estimates. In estimating pharmacy rebates, management applies contracted rates to estimates of products sold subject to rebate, known market events or trends and channel inventory data.

##### *How We Addressed the Matter in Our Audit*

We obtained an understanding, evaluated the design and tested the operating effectiveness of controls over the Company's processes to determine pharmacy rebates, including the underlying assumptions.

Our audit procedures also included, among others, evaluating the significant assumptions and the accuracy and completeness of the underlying data used in management's calculations. This included testing contractual rates, management's estimates of products sold subject to rebate, and inventory held by third parties at the end of the period, through a combination of underlying data validation by inspection of source documents, agreement to underlying contracts, review for consistency against historical data, and trending of inventory held at third parties versus inventory sold into the channel. In addition, we inspected the results of the Company's retrospective review analysis of pharmacy rebates claimed, evaluated the estimates made based on historical experience and performed sensitivity analyses over the Company's significant assumptions.

/s/ Ernst & Young LLP

We have served as the Company's auditor since 2000.

San Diego, California

February 14, 2022

**DexCom, Inc.**  
**Consolidated Balance Sheets**

	December 31,	
	2021	2020
<i>(In millions, except par value data)</i>		
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 1,052.6	\$ 817.6
Short-term marketable securities	1,678.6	1,890.1
Accounts receivable, net	514.3	428.5
Inventory	357.3	234.7
Prepaid and other current assets	81.6	53.9
Total current assets	3,684.4	3,424.8
Property and equipment, net	801.8	515.3
Operating lease right-of-use assets	88.1	93.3
Goodwill	26.5	19.3
Deferred tax assets	220.8	216.4
Intangibles and other assets, net	42.0	21.4
Total assets	\$ 4,863.6	\$ 4,290.5
<b>Liabilities and Stockholders' Equity</b>		
Current liabilities:		
Accounts payable and accrued liabilities	\$ 573.0	\$ 481.1
Accrued payroll and related expenses	125.2	114.3
Short-term operating lease liabilities	20.5	16.5
Deferred revenue	2.1	2.2
Total current liabilities	720.8	614.1
Long-term senior convertible notes	1,702.7	1,667.2
Long-term operating lease liabilities	98.6	101.8
Other long-term liabilities	90.0	80.9
Total liabilities	2,612.1	2,464.0
Commitments and contingencies		
Stockholders' equity:		
Preferred stock, \$0.001 par value, 5.0 million shares authorized; no shares issued and outstanding at December 31, 2021 and December 31, 2020	—	—
Common stock, \$0.001 par value, 200.0 million shares authorized; 97.8 million and 97.0 million shares issued and outstanding, respectively, at December 31, 2021; and 96.9 million and 96.1 million shares issued and outstanding, respectively, at December 31, 2020	0.1	0.1
Additional paid-in capital	2,504.5	2,125.3
Accumulated other comprehensive income	0.5	3.2
Accumulated deficit	(47.4)	(202.1)
Treasury stock, at cost; 0.8 million shares at December 31, 2021 and 0.8 million shares at December 31, 2020	(206.2)	(100.0)
Total stockholders' equity	2,251.5	1,826.5
Total liabilities and stockholders' equity	\$ 4,863.6	\$ 4,290.5

See accompanying notes

**DexCom, Inc.**  
**Consolidated Statements of Operations**

<i>(In millions, except per share data)</i>	Twelve Months Ended December 31,		
	2021	2020	2019
Revenue	\$ 2,448.5	\$ 1,926.7	\$ 1,476.0
Cost of sales	768.0	646.6	544.5
Gross profit	1,680.5	1,280.1	931.5
Operating expenses:			
Research and development	517.1	359.9	273.5
Collaborative research and development fee	87.1	—	—
Selling, general and administrative	810.5	620.7	515.7
Total operating expenses	1,414.7	980.6	789.2
Operating income	265.8	299.5	142.3
Interest expense	(100.3)	(84.7)	(60.3)
Loss on extinguishment of debt	(1.5)	(5.9)	—
Income (loss) from equity investments	11.6	—	(4.2)
Interest and other income (expense), net	(1.7)	16.1	26.4
Income before income taxes	173.9	225.0	104.2
Income tax expense (benefit)	19.2	(268.6)	3.1
Net income	\$ 154.7	\$ 493.6	\$ 101.1
Basic net income per share	\$ 1.60	\$ 5.23	\$ 1.11
Shares used to compute basic net income per share	96.7	94.4	91.1
Diluted net income per share	\$ 1.55	\$ 5.06	\$ 1.10
Shares used to compute diluted net income per share	100.1	97.5	92.3

See accompanying notes

**DexCom, Inc.**  
**Consolidated Statements of Comprehensive Income**

<i>(In millions)</i>	Twelve Months Ended December 31,		
	2021	2020	2019
Net income	\$ 154.7	\$ 493.6	\$ 101.1
Other comprehensive income (loss), net of tax:			
Translation adjustments and other	(1.0)	1.1	0.4
Unrealized gain (loss) on marketable debt securities	(1.7)	(0.2)	0.4
Total other comprehensive income (loss), net of tax	(2.7)	0.9	0.8
Comprehensive income	\$ 152.0	\$ 494.5	\$ 101.9

See accompanying notes

## Consolidated Statements of Stockholders' Equity

(In millions)	Common Stock		Additional Paid-In Capital	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Treasury Stock	Total Stockholders' Equity
	Shares	Amount					
<b>Balance at December 31, 2018</b>	90.0	\$ 0.1	\$ 1,560.6	\$ 1.5	\$ (798.9)	\$ (100.0)	\$ 663.3
Cumulative-effect adjustment from adoption of new lease accounting standard (Note 6)	—	—	—	—	2.1	—	2.1
Issuance of common stock under equity incentive plans	1.4	—	0.3	—	—	—	0.3
Issuance of common stock for Employee Stock Purchase Plan	0.2	—	11.6	—	—	—	11.6
Realization of tax benefit related to 2023 Note Hedge	—	—	0.7	—	—	—	0.7
Share-based compensation expense	—	—	102.7	—	—	—	102.7
Net income	—	—	—	—	101.1	—	101.1
Other comprehensive income, net of tax	—	—	—	0.8	—	—	0.8
<b>Balance at December 31, 2019</b>	91.6	0.1	1,675.9	2.3	(695.7)	(100.0)	882.6
Issuance of common stock under equity incentive plans	1.1	—	0.3	—	—	—	0.3
Issuance of common stock for Employee Stock Purchase Plan	—	—	15.0	—	—	—	15.0
Equity component of 2025 Notes issuance, net of issuance costs	—	—	289.4	—	—	—	289.4
Tax benefit related to Senior Convertible Notes	—	—	(62.5)	—	—	—	(62.5)
Repurchase and conversions of 2022 Notes	3.4	—	87.8	—	—	—	87.8
Share-based compensation expense	—	—	119.4	—	—	—	119.4
Net income	—	—	—	—	493.6	—	493.6
Other comprehensive income, net of tax	—	—	—	0.9	—	—	0.9
<b>Balance at December 31, 2020</b>	96.1	0.1	2,125.3	3.2	(202.1)	(100.0)	1,826.5
Issuance of common stock under equity incentive plans	0.7	—	—	—	—	—	—
Issuance of common stock for Employee Stock Purchase Plan	—	—	20.3	—	—	—	20.3
Tax benefit related to Senior Convertible Notes	—	—	(1.1)	—	—	—	(1.1)
Conversions of 2023 Notes	0.4	—	28.7	—	—	24.6	53.3
Benefit of note hedge upon conversions of 2023 Notes	(0.2)	—	130.8	—	—	(130.8)	—
Share-based compensation expense	—	—	113.4	—	—	—	113.4
Collaborative research and development fee	—	—	87.1	—	—	—	87.1
Net income	—	—	—	—	154.7	—	154.7
Other comprehensive loss, net of tax	—	—	—	(2.7)	—	—	(2.7)
<b>Balance at December 31, 2021</b>	97.0	0.1	2,504.5	0.5	(47.4)	(206.2)	2,251.5

See accompanying notes

**DexCom, Inc.**  
**Consolidated Statements of Cash Flows**

<i>(In millions)</i>	Twelve Months Ended December 31,		
	2021	2020	2019
<b>Operating activities</b>			
Net income	\$ 154.7	\$ 493.6	\$ 101.1
Adjustments to reconcile net income to cash provided by operating activities:			
Depreciation and amortization	102.0	67.1	48.7
Share-based compensation	113.4	119.4	102.7
Collaborative research and development fee	87.1	—	—
Loss on extinguishment of debt	1.5	5.9	—
Non-cash interest expense	88.7	74.0	49.6
Realized (gain) loss on equity investment	(11.6)	—	4.2
Deferred income taxes (including benefit from valuation allowance release)	(4.9)	(277.3)	0.2
Other non-cash income and expenses	43.6	13.7	1.9
Changes in operating assets and liabilities:			
Accounts receivable, net	(75.5)	(142.3)	(60.0)
Inventory	(112.2)	(114.5)	(49.1)
Prepaid and other assets	(21.3)	(2.4)	(7.2)
Operating lease right-of-use assets and liabilities, net	(0.1)	(0.8)	(2.4)
Accounts payable and accrued liabilities	58.0	194.5	109.0
Accrued payroll and related expenses	10.4	26.1	16.0
Deferred revenue and other liabilities	8.7	18.6	(0.2)
<b>Net cash provided by operating activities</b>	<b>442.5</b>	<b>475.6</b>	<b>314.5</b>
<b>Investing activities</b>			
Purchase of marketable securities	(2,473.1)	(3,058.2)	(2,030.4)
Proceeds from sale and maturity of marketable securities	2,666.3	2,250.5	1,196.4
Purchases of property and equipment	(389.2)	(199.0)	(180.0)
Acquisitions, net of cash acquired	(30.2)	—	—
Other investing activities	10.1	(11.3)	(1.2)
<b>Net cash used in investing activities</b>	<b>(216.1)</b>	<b>(1,018.0)</b>	<b>(1,015.2)</b>
<b>Financing activities</b>			
Net proceeds from issuance of common stock	20.3	15.3	11.9
Proceeds from issuance of convertible notes, net of issuance costs	—	1,188.8	—
Repurchase of convertible notes	—	(282.6)	—
Other financing activities	(9.9)	(9.4)	(1.2)
<b>Net cash provided by financing activities</b>	<b>10.4</b>	<b>912.1</b>	<b>10.7</b>
Effect of exchange rate changes on cash, cash equivalents and restricted cash	(1.4)	2.1	(0.7)
<b>Increase (decrease) in cash, cash equivalents and restricted cash</b>	<b>235.4</b>	<b>371.8</b>	<b>(690.7)</b>
Cash, cash equivalents and restricted cash, beginning of period	818.2	446.4	1,137.1
<b>Cash, cash equivalents and restricted cash, end of period</b>	<b>\$ 1,053.6</b>	<b>\$ 818.2</b>	<b>\$ 446.4</b>
<b>Reconciliation of cash, cash equivalents and restricted cash, end of period:</b>			
Cash and cash equivalents	\$ 1,052.6	\$ 817.6	\$ 446.2
Restricted cash	1.0	0.6	0.2
<b>Total cash, cash equivalents and restricted cash</b>	<b>\$ 1,053.6</b>	<b>\$ 818.2</b>	<b>\$ 446.4</b>

	Twelve Months Ended December 31,		
	2021	2020	2019
<b>Supplemental disclosure of non-cash investing and financing transactions:</b>			
Shares issued for repurchase and conversions of senior convertible notes	\$ 157.7	\$ 1,350.9	\$ —
Shares received under note hedge upon conversion of 2023 Notes	\$ (130.8)	\$ —	\$ —
Acquisition of property and equipment included in accounts payable and accrued liabilities	\$ 45.4	\$ 35.3	\$ 14.2
<b>Supplemental cash flow information:</b>			
Cash paid during the year for interest	\$ 11.6	\$ 10.6	\$ 10.4
Cash paid during the year for income taxes	\$ 16.8	\$ 3.6	\$ 4.8

See accompanying notes

## **1. Organization and Significant Accounting Policies**

### ***Organization and Business***

DexCom, Inc. is a medical device company that develops and markets continuous glucose monitoring, or CGM, systems for the management of diabetes by patients, caregivers, and clinicians around the world. Unless the context requires otherwise, the terms “we,” “us,” “our,” the “company,” or “Dexcom” refer to DexCom, Inc. and its subsidiaries.

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

These 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. We have reclassified certain amounts previously reported in our financial statements to conform to the current presentation.

We determine the functional currencies of our international subsidiaries by reviewing the environment where each subsidiary primarily generates and expends cash. For international subsidiaries whose functional currencies are the local currencies, we translate the financial statements into U.S. dollars using period-end exchange rates for assets and liabilities and average exchange rates for each period for revenue, costs and expenses. We include translation-related adjustments in comprehensive income and in accumulated other comprehensive income in the equity section of our consolidated balance sheets. We record gains and losses resulting from transactions with customers and vendors that are denominated in currencies other than the functional currency and from certain intercompany transactions in interest and other income (expense), net in our consolidated statements of operations.

### ***Use of Estimates***

The preparation of consolidated financial statements in conformity with U.S. generally accepted accounting principles, or GAAP, requires us to make certain estimates and assumptions that affect the amounts reported in our consolidated financial statements and the disclosures made in the accompanying notes. Areas requiring significant estimates include rebates, transaction price, the collectibility of accounts receivable, excess or obsolete inventories and the valuation of inventory, accruals for litigation contingencies, and the amount of our worldwide tax provision and the realizability of deferred tax assets. Despite our intention to establish accurate estimates and use reasonable assumptions, actual results may differ from our estimates.

### ***Fair Value Measurements***

The authoritative guidance establishes a fair value hierarchy that is based on the extent and level of judgment used to estimate the fair value of assets and liabilities. In general, the authoritative guidance requires us to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. An asset or liability’s categorization within the fair value hierarchy is based upon the lowest level of input that is significant to the measurement of its fair value. The three levels of input defined by the authoritative guidance are as follows:

Level 1—Uses unadjusted quoted prices that are available in active markets for identical assets or liabilities.

Level 2—Uses inputs other than quoted prices included in Level 1 that are observable, either directly or indirectly, through correlation with market data. These include quoted prices in active markets for similar assets or liabilities; quoted prices for identical or similar assets or liabilities in markets that are not active; and inputs to valuation models or other pricing methodologies that do not require significant judgment because the inputs used in the model, such as interest rates and volatility, can be corroborated by readily observable market data for substantially the full term of the assets or liabilities.

Level 3—Uses unobservable inputs that are supported by little or no market activity and that are significant to the determination of fair value. Level 3 assets and liabilities include those whose fair values are determined using pricing models, discounted cash flow methodologies, or similar valuation techniques and significant judgment or estimation.

We estimate the fair value of most of our cash equivalents using Level 1 inputs. We estimate the fair value of our marketable equity securities using Level 1 inputs and we estimate the fair value of our marketable debt securities using Level 2 inputs. We carry our marketable securities at fair value. We carry our other financial instruments, such as cash and cash equivalents, accounts receivable, prepaid expenses and other current assets, accounts payable and accrued liabilities, at cost,

which approximates the related fair values due to the short-term maturities of these instruments. See Note 3 “Fair Value Measurements” for more information.

### **Cash and Cash Equivalents**

We consider highly liquid investments with a maturity of 90 days or less at the time of purchase to be cash equivalents.

### **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 marketable securities. We have also classified marketable securities with remaining maturities of greater than one year as short-term marketable securities based upon our ability and intent to use any and all of those marketable securities to satisfy the liquidity needs of our current operations.

We calculate realized gains or losses on our marketable securities using the specific identification method. We carry our marketable debt securities at fair value with unrealized gains and losses reported as a separate component of stockholders’ equity in our consolidated balance sheets and included in comprehensive income. Realized gains and losses on marketable debt securities are included in interest and other income (expense), net in our consolidated statements of operations. We carry our marketable equity securities at fair value with realized and unrealized gains and losses reported in income (loss) from equity investments in our consolidated statements of operations.

We invest in various types of debt securities, including debt securities in government-sponsored entities, corporate debt securities, U.S. Treasury securities, supranational securities, and commercial paper. We do not generally intend to sell these 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. See Note 3 “Fair Value Measurements” and *Short-Term Marketable Securities* in Note 4 “Balance Sheet Details” for more information on our marketable securities.

### **Accounts Receivable and Allowance for Doubtful Accounts**

Accounts receivable are generally recorded at the invoiced amount, net of prompt pay discounts, for distributors and at net realizable value for direct customers, which is determined using estimates of claim denials and historical reimbursement experience without regard to aging category. Accounts receivable are not interest bearing. We evaluate the creditworthiness of significant customers based on historical trends, the financial condition of our customers, and external market factors. We generally do not require collateral from our customers. We maintain an allowance for doubtful accounts for potential credit losses. Uncollectible accounts are written off against the allowance after appropriate collection efforts have been exhausted and when it is deemed that a customer account is uncollectible. Generally, receivable balances greater than one year past due are deemed uncollectible.

### **Concentration of Credit Risk and Significant Customers**

Financial instruments which potentially subject us to concentrations of credit risk consist primarily of cash, cash equivalents, short-term marketable securities, and accounts receivable. We limit our exposure to credit risk by placing our cash and investments with a few major financial institutions. We have also established guidelines regarding diversification of our investments and their maturities that are designed to maintain principal and maximize liquidity. We review these guidelines periodically and modify them to take advantage of trends in yields and interest rates and changes in our operations and financial position.

The following table sets forth the percentages of total revenue or gross accounts receivable for customers that represent 10% or more of the respective amounts for the periods shown:

	Revenue			Gross Accounts Receivable	
	Twelve Months Ended December 31,			As of December 31,	
	2021	2020	2019	2021	2020
Distributor A	28 %	23 %	17 %	16 %	19 %
Distributor B	12 %	11 %	12 %	11 %	10 %
Distributor C	21 %	18 %	10 %	13 %	12 %
Distributor D	18 %	11 %	*	13 %	*

\* Less than 10%

## ***Inventory***

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Inventory is valued at the lower of cost or net realizable value on a part-by-part basis that approximates first in, first out. We capitalize inventory produced in preparation for commercial launches when it becomes probable that the product will receive regulatory approval and that the related costs will be recoverable through the commercialization of the product. A number of factors are considered, including the status of the regulatory application approval process, management's judgment of probable future commercial use, and net realizable value.

We record adjustments to inventory for potential excess or obsolete inventory, as well as inventory that does not pass quality control testing, in order to state inventory at net realizable value. 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 of.

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.

Historically, our inventory reserves have been adequate to cover our actual losses. However, if actual product life cycles, product quality or market conditions differ from our assumptions, additional inventory adjustments that would increase cost of goods sold could be required.

## ***Property and Equipment***

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Property and equipment is stated at cost less accumulated depreciation and amortization. We capitalize additions and improvements and expense maintenance and repairs as incurred. We also capitalize certain costs incurred for the development of enterprise-level business and finance software that we use internally in our operations. Costs incurred in the application development phase are capitalized while costs related to planning and other preliminary project activities and to post-implementation activities are expensed as incurred.

We calculate depreciation using the straight-line method over the estimated useful lives of the assets. Estimated useful lives are generally three years for computer software and hardware, including internal use software, four to fifteen years for machinery and equipment, and five years for furniture and fixtures. Leasehold improvements are amortized over the shorter of the estimated useful lives of the assets or the remaining lease term. Buildings are amortized over the shorter of the ownership of the building or forty years. We include the amortization of assets that are recorded under finance leases in depreciation expense. On retirement or disposition, the asset cost and related accumulated depreciation are removed from our consolidated balance sheets and any gain or loss is recognized in our consolidated statements of operations.

We review property and equipment for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. We estimate the recoverability of the asset by comparing the carrying amount to the future undiscounted cash flows that we expect the asset to generate. We estimate the fair value of the asset based on the present value of future cash flows for those assets. If the carrying value of an asset exceeds its estimated fair value, we would record an impairment loss equal to the difference.

## ***Goodwill***

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We record goodwill when the fair value of consideration transferred in a business combination exceeds the fair value of the identifiable assets acquired and liabilities assumed. Goodwill and other intangible assets that have indefinite useful lives are not amortized, but we test them annually for impairment in the fourth quarter of our fiscal year and whenever events or changes in circumstances indicate that 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.

We perform our goodwill impairment analysis at the reporting unit level, which aligns with Dexcom's reporting structure and the availability of discrete financial information. We perform the first step of our annual impairment analysis by either comparing a reporting unit's estimated fair value to its carrying amount or doing a qualitative assessment of a reporting unit's fair value from the last quantitative assessment to determine if there is potential impairment. We may do a qualitative assessment when the results of the previous quantitative test indicated the reporting unit's estimated fair value was significantly in excess of the carrying value of its net assets and we do not believe there have been significant changes in the reporting unit's operations that would significantly decrease its estimated fair value or significantly increase its net assets. If a quantitative assessment is performed the evaluation includes management estimates of cash flow projections based on internal future

projections and/or use of a market approach by looking at market values of comparable companies. Key assumptions for these projections include revenue growth, future gross margin and operating margin growth, and weighted cost of capital and terminal growth rates. The revenue and margin growth are based on increased sales of new and existing products as we maintain investments in research and development. Additional assumed value creators may include increased efficiencies from capital spending. The resulting cash flows are discounted using a weighted average cost of capital. Operating mechanisms and requirements to ensure that growth and efficiency assumptions will ultimately be realized are also considered in the evaluation, including the timing and probability of regulatory approvals for our products to be commercialized. We also consider Dexcom's market capitalization as a part of our analysis.

If the estimated fair value of a reporting unit exceeds the carrying amount of the net assets assigned to that unit, goodwill is not impaired and no further analysis is required. If the carrying value of the net assets assigned to a reporting unit exceeds the estimated fair value of the unit, we perform the second step of the impairment test. In this step we allocate the fair value of the reporting unit calculated in step one to all of the assets and liabilities of that unit, as if we had just acquired the reporting unit in a business combination. The excess of the fair value of the reporting unit over the total amount allocated to the assets and liabilities represents the implied fair value of goodwill. If the carrying amount of a reporting unit's goodwill exceeds its implied fair value, we would record an impairment loss equal to the difference. We recorded no goodwill impairment charges for the twelve months ended December 31, 2021, 2020 or 2019.

The change in goodwill for the twelve months ended December 31, 2021 consisted of goodwill we recorded for acquisitions that were not significant, individually or in the aggregate, and translation adjustments on our foreign currency denominated goodwill. The change in goodwill for the twelve months ended December 31, 2020 and 2019 consisted of translation adjustments on our foreign currency denominated goodwill.

### ***Intangible Assets and Other Long-Lived Assets***

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Intangible assets are included in intangibles and other assets, net in our consolidated balance sheets. We amortize intangible assets with a finite life, such as acquired technology, customer relationships, trade names and trademarks, on a straight-line basis over their estimated useful lives, which range from one to seven years. We review intangible assets that have finite lives and other long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. We estimate the fair value of the asset based on the present value of future cash flows for those assets. If the carrying value of an asset exceeds its estimated fair value, we would record an impairment loss equal to the difference.

For transactions other than a business combination, we also capitalize as intangible assets the cost of certain milestones payable by us to collaborative partners and incurred at or after the product has obtained regulatory approval for marketing. The intangible assets associated with these milestones are amortized over the remaining estimated useful life of the underlying asset.

We recorded no intangible asset impairment charges for the twelve months ended December 31, 2021, 2020 or 2019.

### ***Income Taxes***

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We account for income taxes under the asset and liability method, which requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of events that have been included in the financial statements. The effect of a change in tax rate on deferred tax assets and liabilities is recognized in income in the period that includes the enactment date.

We recognize deferred tax assets to the extent that we believe that these assets are more likely than not to be realized. In making such determination, we consider all available positive and negative evidence, including future reversals of existing taxable temporary differences, projected future taxable income, tax-planning strategies, carryback potential if permitted under tax law and results of recent operations. If we determine that we would be able to realize our deferred tax assets in the future in excess of their net recorded amount, we would make an adjustment to the deferred tax asset valuation allowance, which would reduce the provision for income taxes.

We record uncertain tax positions in accordance with ASC 740 on the basis of a two-step process in which (1) we determine whether it is more likely than not that the tax positions will be sustained on the basis of the technical merits of the position and (2) for those tax positions that meet the more-likely-than-not recognition threshold, we recognize the largest amount of tax benefit that is more than 50 percent likely to be realized upon ultimate settlement with the related tax authority.

We file federal and state income tax returns in the United States and income tax returns in various other foreign jurisdictions with varying statutes of limitations. Due to net operating losses incurred, our income tax returns from inception to date are subject to examination by taxing authorities. We recognize interest expense and penalties related to income tax matters, including unrecognized tax benefits, as a component of income tax expense.

## ***Warranty Accrual***

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Estimated warranty costs associated with a product are recorded at the time revenue is recognized. We estimate future warranty costs by analyzing historical warranty experience for the timing and amount of returned product, and expectations for future warranty activity based on changes and improvements to the product or process that are in place or will be in place in the future. We evaluate these estimates on at least a quarterly basis to determine the continued appropriateness of our assumptions.

## ***Loss Contingencies***

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We are subject to certain legal proceedings, as well as demands, claims and threatened litigation that arise in the normal course of our business. We review the status of each significant matter quarterly and assess our potential financial exposure. If the potential loss from a claim or legal proceeding is considered probable and the amount can be reasonably estimated, we record a liability and an expense for the estimated loss and disclose it in our financial statements if it is significant. If we determine that a loss is possible and the range of the loss can be reasonably determined, we do not record a liability or an expense but we disclose the range of the possible loss. We base our judgments on the best information available at the time. As additional information becomes available, we reassess the potential liability related to our pending claims and litigation and may revise our estimates. Any revision of our estimates of potential liability could have a material impact on our financial position and operating results.

## ***Comprehensive Income***

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

## ***Revenue Recognition***

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We generate our revenue from the sale of disposable sensors and our reusable transmitter and receiver, collectively referred to as Reusable Hardware. We also refer to Reusable Hardware and disposable sensors in this section as Components. We generally recognize revenue when control is transferred to our customers in an amount that reflects the net consideration to which we expect to be entitled.

In determining how revenue should be recognized, a five-step process is used, which includes identifying performance obligations in the contract, determining whether the performance obligations are separate, allocating the transaction price to each separate performance obligation, estimating the amount of variable consideration to include in the transaction price and determining the timing of revenue recognition for separate performance obligations.

### ***Contracts and Performance Obligations***

We consider customer purchase orders, which in most cases are governed by agreements with distributors or third-party payors, to be contracts with a customer. For each contract, we consider the obligation to transfer Components to the customer, each of which are distinct, to be separate performance obligations. We also provide free-of-charge software, mobile applications and updates for our Dexcom Share<sup>®</sup> remote monitoring system. The standalone selling prices of Dexcom Share<sup>®</sup> are estimated based on an expected cost plus a margin approach.

### ***Transaction Price***

Transaction price for the Components reflects the net consideration to which we expect to be entitled. Transaction price is typically based on the contracted rates less an estimate of claim denials and historical reimbursement experience by payor, which include current and future expectations regarding reimbursement rates and payor mix.

### ***Variable Consideration***

We include an estimate of variable consideration in the calculation of the transaction price at the time of sale, when control of the Components transfers to the customer. Variable consideration includes but is not limited to: rebates, chargebacks, consideration payable to customers such as specialty distributor and wholesaler fees, product returns provision, prompt payment discounts, and various other promotional or incentive arrangements. We classify our provisions related to variable consideration as a reduction of accounts receivable when we are not required to make a payment or as a liability when we are required to make a payment.

### *Estimates*

We review the adequacy of our estimates for transaction price adjustments and variable consideration at each reporting date. If the actual amounts of consideration that we receive differ from our estimates, we would adjust our estimates and that would affect reported revenue in the period that such variances become known. If any of these judgments were to change, it could cause a material increase or decrease in the amount of revenue we report in a particular period.

### *Rebates*

We are subject to rebates on pricing programs with managed care organizations, such as pharmacy benefit managers, governmental and third-party commercial payors, primarily in the U.S. We estimate provisions for rebates based on contractual arrangements, estimates of products sold subject to rebate, known events or trends, and channel inventory data.

### *Chargebacks*

We participate in chargeback programs, primarily with government entities in the U.S., under which pricing on products below negotiated list prices is provided to participating entities and equal to the difference between their acquisition cost and the lower negotiated price. We estimate provisions for chargebacks primarily based on historical experience on a product and program basis, current contract prices under the chargeback programs, and channel inventory data.

### *Consideration Payable to the Customer*

We pay administrative and service fees to certain of our distributors based on a fixed percentage of the product price. These fees are not in exchange for a distinct good or service and therefore are recognized as a reduction of the transaction price. We accrue for these fees based on actual net sales and contractual fee rates negotiated with the customer.

### *Product Returns*

In accordance with the terms of their distribution agreements, most distributors do not have rights of return. The distributors typically have a limited time frame to notify us of any missing, damaged, defective or non-conforming products. We generally provide a "30-day money back guarantee" program whereby first-time end-user customers may return Reusable Hardware. We estimate our product returns provision principally based on historical experience by applying a historical return rate to the amounts of revenue estimated to be subject to returns. Additionally, we consider other specific factors such as estimated shelf life of inventory in the distribution channel and changes to customer terms.

### *Prompt Payment Discounts*

We provide customers with prompt payment discounts which may result in adjustments to the price that is invoiced for the product transferred, in the case that payments are made within a defined period. We estimate prompt payment discount accruals based on actual net sales and contractual discount rates.

### *Various Other Promotional or Incentive Arrangements*

Other promotional or incentive arrangements are periodically offered to customers, including but not limited to co-payment assistance we provide to patients with commercial insurance, promotional programs related to the launch of products, or other targeted promotions. We record a provision for the incentive earned based on the number of estimated claims and our estimate of the cost per claim related to product sales that we have recognized as revenue.

### *Revenue Recognition*

The timing of revenue recognition is based on the satisfaction of performance obligations. Substantially all of the performance obligations associated with our Components are satisfied at a point in time, which typically occurs at shipment of our products. Terms of direct and distributor orders are generally Freight on Board (FOB) shipping point for U.S. orders or Free Carrier (FCA) shipping point for international orders. For certain sales transactions, control transfers at delivery of the product to the customer.

In cases where our free-of-charge software, mobile applications and updates are deemed to be separate performance obligations, revenue is recognized over time on a ratable basis over the estimated life of the related Reusable Hardware component.

Our sales of Components include an assurance-type warranty.

### *Contract Balances*

Contract balances represent amounts presented in our consolidated balance sheets when either we have transferred goods or services to the customer or the customer has paid consideration to us under the contract. These contract balances include accounts receivable and deferred revenue. Payment terms vary by contract type and type of customer and generally range from 30 to 90 days.

Accounts receivable as of December 31, 2021 included unbilled accounts receivable of \$9.6 million. We expect to invoice and collect all unbilled accounts receivable within twelve months.

We record deferred revenue when we have entered into a contract with a customer and cash payments are received or due prior to transfer of control or satisfaction of the related performance obligation.

Our performance obligations are generally satisfied within 12 months of the initial contract date. The deferred revenue balances related to performance obligations that will be satisfied after 12 months was \$16.1 million as of December 31, 2021 and \$8.2 million as of December 31, 2020. These balances are included in other long-term liabilities in our consolidated balance sheets. Revenue recognized in the period from performance obligations satisfied in previous periods was not material for the periods presented.

#### ***Deferred Cost of Sales***

Deferred cost of sales are associated with transactions for which revenue recognition criteria are not met but product has shipped and released from inventory. Deferred cost of sales are included in prepaid and other current assets in our consolidated balance sheets.

#### ***Incentive Compensation Costs***

We generally expense incentive compensation associated with our internal sales force when incurred because the amortization period for such costs, if capitalized, would have been one year or less. We record these costs in selling, general and administrative expense in our consolidated statements of operations.

#### ***Product Shipment Costs***

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We record the amounts we charge our customers for the shipping and handling of our products in revenue and we record the related costs as cost of sales in our consolidated statements of operations.

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

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We expense costs of research and development as we incur them. 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 primarily consist of employee compensation, including salary, fringe benefits, share-based compensation, and temporary employee expenses. We also incur significant expenses to operate our clinical trials that include 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.

Our CGM systems include certain software that we develop. We expense software development costs as we incur them until technological feasibility has been established, at which time we capitalize development costs until the product is available for general release to customers. To date, our software has been available for general release concurrent with the establishment of technological feasibility and, accordingly, we have not capitalized any development costs.

## Collaboration Agreements

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We may enter into agreements with collaboration partners for the development and commercialization of our products. These arrangements may include payments contingent on the occurrence of certain events such as development, regulatory or sales-based milestones.

When we account for these agreements, we consider the unique nature, terms and facts and circumstances of each transaction. Below are some example activities and how we account for them:

- Payments to collaboration partners through issuance of common stock as consideration in an asset acquisition are considered share-based payment to non-employees in exchange for goods within the scope of ASC Topic 718, "Compensation - Stock Compensation". The amount and the timing of the cost recognition of such milestones in our financial statements is driven by the accounting for the specific type of equity instrument under ASC 718 that aligns with the terms of the agreement, including any performance conditions.
- The value associated with in-process research and development ("IPR&D") in an asset acquisition incurred prior to regulatory approval is expensed as it does not have an alternative future use and is recorded as research and development expense.
- The value associated with IPR&D in an asset acquisition incurred at or after regulatory approval is usually capitalized as an intangible asset and amortized over the periods in which the related products are expected to contribute to future cash flows.

## Advertising Costs

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We expense costs to produce advertising as we incur them whereas costs to communicate advertising are expensed when the advertising is first run. Advertising costs are included in selling, general and administrative expenses. Advertising expense was \$126.4 million, \$76.5 million and \$33.1 million for the twelve months ended December 31, 2021, 2020 and 2019, respectively.

## Leases

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We determine if an arrangement is a lease at inception. Lease right-of-use assets represent our right to use an underlying asset for the lease term and lease liabilities represent our obligation to make lease payments arising from the lease. Operating lease right-of-use assets and liabilities are recognized at commencement date based on the present value of lease payments over the lease term. The interest rate used to determine the present value of the future lease payments is our incremental borrowing rate, because the interest rate implicit in most of our leases is not readily determinable. Our incremental borrowing rate is estimated to approximate the interest rate on a collateralized basis with similar terms and payments, and in similar economic environments. The operating lease right-of-use asset also includes any lease payments made and excludes lease incentives. We have lease agreements with lease and non-lease components, which are generally accounted for separately. Our lease terms may include options to extend or terminate the lease when it is reasonably certain that we will exercise that option. Lease expense for lease payments is recognized on a straight-line basis over the lease term. Variable lease payments that do not depend on a rate or index, payments associated with non-lease components, and costs related to leases with terms of less than 12 months are expensed as incurred.

## Share-Based Compensation

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Share-based compensation expense is measured at the grant date based on the estimated fair value of the award and is recognized straight-line over the requisite service period of the individual grants, which typically equals the vesting period.

We value time-based restricted stock units or RSUs at the date of grant using the intrinsic value method. Certain RSUs granted to senior management vest based on the achievement of pre-established performance or market goals. We estimate the fair value of performance/market-based RSUs at the date of grant using the intrinsic value method and the probability that the specified performance criteria will be met. We update our assessment of the probability that the specified performance criteria will be achieved each quarter and adjust our estimate of the fair value of the performance-based RSUs if necessary. The Monte Carlo methodology that we use to estimate the fair value of market-based RSUs at the date of grant incorporates into the valuation the possibility that the market condition may not be satisfied. Provided that the requisite service is rendered, the total fair value of the market-based RSUs at the date of grant must be recognized as compensation expense even if the market condition is not achieved. However, the number of shares that ultimately vest can vary significantly with the performance of the specified market criteria.

If any of the assumptions used change significantly, share-based compensation expense may differ materially from what we have recorded in the current period.

We account for forfeitures as they occur by reversing any share-based compensation expense related to awards that will not vest.

## Net Income Per Share

Basic net income per share attributable to common stockholders is calculated by dividing the net income attributable to common stockholders by the weighted-average number of common shares outstanding during the period. Diluted net income per share is computed using the weighted average number of common shares outstanding during the period and, when dilutive, potential common share equivalents.

Potentially dilutive common shares consist of shares issuable from restricted stock units, warrants and our senior convertible notes. Potentially dilutive common shares issuable upon vesting of restricted stock units and exercise of warrants are determined using the average share price for each period under the treasury stock method. Potentially dilutive common shares issuable upon conversion of our senior convertible notes are determined using the if-converted method. In periods of net losses, we exclude all potentially dilutive common shares from the computation of the diluted net loss per share for those periods as the effect would be anti-dilutive.

The following table sets forth the computation of basic and diluted net income per share for the periods shown.

(In millions)	Twelve Months Ended December 31,		
	2021	2020	2019
Net income	\$ 154.7	\$ 493.6	\$ 101.1
Net income per common share			
Basic	\$ 1.60	\$ 5.23	\$ 1.11
Diluted	\$ 1.55	\$ 5.06	\$ 1.10
Basic weighted average shares outstanding	96.7	94.4	91.1
Dilutive potential common stock outstanding:			
Restricted stock units	0.5	1.0	1.2
Warrants	2.9	2.1	—
Diluted weighted average shares outstanding	100.1	97.5	92.3

Outstanding anti-dilutive securities not included in the diluted net income per share attributable to common stockholders calculations were as follows:

(In millions)	Twelve Months Ended December 31,		
	2021	2020	2019
Restricted stock units	—	—	0.2
Warrants	—	—	5.2
Senior convertible notes	6.8	7.2	9.2
Total	6.8	7.2	14.6

## Recent Accounting Guidance

### Recently Adopted Accounting Pronouncements

In December 2019, the FASB issued ASU No. 2019-12, *Simplifying the Accounting for Income Taxes*, which is intended to simplify various aspects of the income tax accounting guidance, including requirements such as tax basis step-up in goodwill obtained in a transaction that is not a business combination, ownership changes in investments, and interim-period accounting for enacted changes in tax law. ASU 2019-12 is effective for public business entities for fiscal years beginning after December 15, 2020, including interim periods within those fiscal years, and early adoption is permitted. Our adoption of ASU 2019-12 at the beginning of the first quarter of 2021 did not have a significant impact on our consolidated financial statements.

## Recently Issued Accounting Pronouncements Not Yet Adopted

In August 2020, the FASB issued ASU No. 2020-06, *Debt—Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging—Contracts in Entity’s Own Equity (Subtopic 815-40)*. This new guidance is intended to reduce the complexity of accounting for convertible instruments. The guidance also addresses how convertible instruments are accounted for in the diluted earnings per share calculation and requires enhanced disclosures about the terms of convertible instruments. Entities may adopt ASU 2020-06 using either a partial retrospective or fully retrospective method of transition. This ASU is effective for public business entities for fiscal years beginning after December 15, 2021, including interim periods within those fiscal years. Early adoption is permitted for fiscal years beginning after December 15, 2020, including interim periods within those fiscal years. We will adopt ASU 2020-06 in the first quarter of 2022, and expect to use the full retrospective method, reflecting the application of the new standard in each prior reporting period. We have started the process of evaluating the impact of the full retrospective adoption of ASU 2020-06 on our consolidated financial statements. We continue to evaluate the effect of ASU 2020-06 on our consolidated financial statements. Under ASU 2020-06, we will account for our senior convertible notes entirely as a liability and will no longer separately account for them with liability and equity components. Therefore, we will no longer recognize a debt discount for the value of the conversion option, instead we will record the face value of our senior convertible notes as a liability on our consolidated balance sheet.

The derecognition of the unamortized debt discount will result in an increase in the Long-term senior convertible notes on our consolidated balance sheet. The elimination of the separation model for the convertible debt instruments is expected to reduce additional paid-in capital. As the separation of the embedded conversion feature will no longer be amortized into income as interest expense, non-cash interest expense will decrease by the full amount of the previous accretion of debt discount, offset by incremental interest expense from amortization of debt issuance costs that were allocated to the equity component. We will finalize our retrospective presentation of our historical financial statements under the new standard in connection with our Form 10-Q filings during fiscal year 2022 and our Form 10-K for the fiscal year ending December 31, 2022.

In October 2021, the FASB issued ASU No. 2021-08, *Business Combinations (Topic 805): Accounting for Contract Assets and Contract Liabilities from Contracts with Customers*. This guidance is intended improve the accounting for acquired revenue contracts with customers in a business combination. The new guidance requires that the acquirer recognize and measure contract assets and contract liabilities acquired in a business combination in accordance with Topic 606. ASU 2021-08 is effective for public business entities for fiscal years beginning after December 15, 2022, including interim periods within those fiscal years, and early adoption is permitted. The amendments should be applied prospectively to business combinations occurring on or after the the adoption date. We are currently evaluating the impact that this guidance will have on our consolidated financial statements.

## 2. Development and Other Agreements

### Collaboration with Verily Life Sciences

On November 20, 2018, we entered into an Amended and Restated Collaboration and License Agreement with Verily Life Sciences LLC (an Alphabet Company) and Verily Ireland Limited (collectively, Verily), which we refer to as the Restated Collaboration Agreement. This replaced our original Collaboration and License Agreement with Verily dated August 10, 2015, as amended in October 2016, including the royalty obligations provisions under that original agreement. Pursuant to the Restated Collaboration Agreement, we and Verily have agreed to continue to jointly develop a certain next-generation CGM product, and potentially one or more additional CGM products, for which we will have exclusive commercialization rights.

The Restated Collaboration Agreement also provides us with an exclusive license to use intellectual property of Verily resulting from the collaboration, and certain Verily patents, in the development, manufacture and commercialization of blood-based or interstitial glucose monitoring products more generally (subject to certain exclusions, which are outside of the CGM field as it is commonly understood). It also provides us with non-exclusive license rights under Verily’s other intellectual property rights to develop, manufacture and commercialize those kinds of glucose monitoring products and certain CGM-product companion software functionalities. The Restated Collaboration Agreement requires us to use commercially reasonable efforts to develop, launch and commercialize the CGM product(s) that are the subject of the collaboration according to certain timing and other objectives, and provides for one executive sponsor from each of Dexcom and Verily to meet periodically and make decisions related to the collaboration (within a limited scope of authority) by consensus.

In consideration of Verily’s performance of its obligations under the joint development plan of the Restated Collaboration Agreement, the licenses granted to us and the amendment of the original agreement, we have made upfront and incentive payments and we will make potential future payments for contingent milestones upon the achievement of certain goals.

In the fourth quarter of 2018, we made an initial payment for an upfront fee of \$250.0 million through the issuance of 1,840,943 shares of our common stock. We recorded a \$217.7 million charge in our consolidated statements of operations during 2018 relating to the issuance of this common stock because this milestone payment did not meet the capitalization criteria. The value of the charge was based on our closing stock price of \$118.28 per share on December 28, 2018, the date on

which we obtained the necessary regulatory approvals and represents the date the performance-based awards were issued. In 2019, we made a cash incentive payments of \$3.2 million due to the completion of certain development obligations and we recorded these payments as research and development expense in our consolidated statements of operations.

Upon the first regulatory approval of our next CGM system, a milestone payment equivalent to 736,377 shares of our common stock will become payable. Additional sales-based milestone payments equivalent to 1,288,660 shares of our common stock may become due and payable upon achievement of certain revenue targets. All milestones may be paid in cash or shares of our common stock, at our election. If we elect to make these milestone payments in cash, any such cash payment would be equal to the number of shares that would otherwise be issued for the given milestone payment multiplied by the value of our stock on the date the relevant milestone is achieved, adjusted for stock splits, dividends, and the like. We intend to pay the regulatory and sales-based contingent milestones in shares of our common stock.

We account for the contingent milestones payable in shares of our common stock as equity instruments within the scope of ASC Topic 718. The regulatory and sales-based milestones are accounted for as performance-based awards that vest when the performance conditions have been achieved and will be recognized if and when the achievement of the respective contingent milestones are deemed probable. The value of the contingent milestones is based on our closing stock price of \$118.28 per share on December 28, 2018.

In the fourth quarter of 2021, we determined the achievement of the regulatory approval milestone to be probable and recorded an \$87.1 million research and development charge in our consolidated statements of operations. This charge is associated with IPR&D obtained in an asset acquisition prior to regulatory approval and therefore does not have an alternative future use. The sales-based milestones are contingent upon the achievement of certain revenue targets for a future commercial product. As of December 31, 2021, we have not determined the achievement of the sales-based milestones to be probable and as such, no cost has been recognized for these milestones.

The Restated Collaboration Agreement will continue until December 31, 2028, unless terminated by either party upon uncured material breach of the Restated Collaboration Agreement by the other party. Upon achievement of the first sales-based milestone event and payment of the corresponding milestone fee by us, the term of the Restated Collaboration Agreement will be extended until December 31, 2033.

### 3. Fair Value Measurements

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

We estimate the fair value of our Level 1 financial instruments, which are in active markets, using unadjusted quoted market prices for identical instruments.

We obtain the fair values for our Level 2 financial instruments, which are not in active markets, from a primary professional pricing source that uses quoted market prices for identical or comparable instruments, rather than direct observations of quoted prices in active markets. Fair values obtained from this professional pricing source can also be based on pricing models whereby all significant observable inputs, including maturity dates, issue dates, settlement dates, 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 provided by our investment managers.

The following table summarizes financial assets that we measured at fair value on a recurring basis as of December 31, 2021, classified in accordance with the fair value hierarchy:

(In millions)	Fair Value Measurements Using			Total
	Level 1	Level 2	Level 3	
Cash equivalents	\$ 791.4	\$ 40.0	\$ —	\$ 831.4
Debt securities, available-for-sale:				
U.S. government agencies	—	1,210.6	—	1,210.6
Commercial paper	—	189.7	—	189.7
Corporate debt	—	224.3	—	224.3
Supranationals	—	54.0	—	54.0
Total debt securities, available-for-sale	—	1,678.6	—	1,678.6
Other assets <sup>(1)</sup>	7.0	—	—	7.0
Total assets measured at fair value on a recurring basis	\$ 798.4	\$ 1,718.6	\$ —	\$ 2,517.0

<sup>(1)</sup> Includes assets which are held pursuant to a deferred compensation plan for senior management, which consist mainly of mutual funds.

The following table summarizes financial assets that we measured at fair value on a recurring basis as of December 31, 2020, classified in accordance with the fair value hierarchy:

(In millions)	Fair Value Measurements Using			Total
	Level 1	Level 2	Level 3	
Cash equivalents	\$ 491.5	\$ 150.0	\$ —	\$ 641.5
Debt securities, available-for-sale:				
U.S. government agencies	—	1,570.4	—	1,570.4
Commercial paper	—	258.8	—	258.8
Corporate debt	—	60.9	—	60.9
Total debt securities, available-for-sale	—	1,890.1	—	1,890.1
Other assets <sup>(1)</sup>	3.4	—	—	3.4
Total assets measured at fair value on a recurring basis	\$ 494.9	\$ 2,040.1	\$ —	\$ 2,535.0

<sup>(1)</sup> Includes assets which are held pursuant to a deferred compensation plan for senior management, which consist mainly of mutual funds.

There were no transfers into or out of Level 3 securities during the twelve months ended December 31, 2021 and 2020.

We hold certain other investments that we do not measure at fair value on a recurring basis. The carrying values of these investments are not significant and we include them in other assets in our consolidated balance sheets. It is impracticable for us to estimate the fair value of these investments on a recurring basis due to the fact that these entities are privately held and limited information is available. We monitor the information that becomes available from time to time and adjust the carrying values of these investments if there are identified events or changes in circumstances that have a significant adverse effect on the fair values.

### Fair Value of Senior Convertible Notes

The fair value, based on trading prices (Level 1 inputs), of our senior convertible notes were as follows as of the dates indicated:

(In millions)	Fair Value Measurements Using Level 1	
	December 31, 2021	December 31, 2020
Senior Convertible Notes due 2023	\$ 2,589.6	\$ 1,936.4
Senior Convertible Notes due 2025	1,432.9	1,219.2
Total fair value of outstanding senior convertible notes	\$ 4,022.5	\$ 3,155.6

For more information on the carrying values of our senior convertible notes, see *Senior Convertible Notes* in Note 5 to the consolidated financial statements.

### Foreign Currency and Derivative Financial Instruments

From time to time we use foreign currency contracts to manage foreign currency risks. Our foreign currency contracts are not designated as hedges and, therefore, changes in the fair values of these derivatives are recognized in earnings, thereby offsetting the current earnings effect of the related foreign currency assets and liabilities. The fair values of these derivatives are based on quoted market prices, which are Level 1 inputs, and the derivative instruments are recorded in current assets or current liabilities in our consolidated balance sheets consistent with the nature of the instrument at period end. Derivative gains and losses are included in interest and other income (expense), net in our consolidated statements of operations.

As of December 31, 2021 and December 31, 2020, notional amounts of \$40.0 million and \$48.0 million, respectively, were outstanding to hedge certain foreign currency risk. The resulting impact on our consolidated financial statements from currency hedging activities was not significant for the twelve months ended December 31, 2021, 2020 and 2019.

Our foreign currency exposures vary but are primarily concentrated in the Australian Dollar, the British Pound, the Canadian Dollar, the Euro and the Malaysian Ringgit. We monitor the costs and the impact of foreign currency risks upon our financial results as part of our risk management program. We do not use derivative financial instruments for speculation or trading purposes or for activities other than risk management. We do not require and are not required to pledge collateral for these financial instruments and we do not carry any master netting arrangements to mitigate the credit risk.

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

In accordance with authoritative guidance, we measure certain non-financial assets and liabilities at fair value on a non-recurring basis. These measurements are usually performed using the discounted cash flow method or cost method and Level 3 inputs. These include items such as non-financial assets and liabilities initially measured at fair value in a business combination and non-financial long-lived assets measured at fair value for an impairment assessment. In general, non-financial assets, including goodwill, intangible assets, and property and equipment, are measured at fair value when there are indicators of impairment and are recorded at fair value only when an impairment is recognized. We recorded no significant impairment losses during the twelve months ended December 31, 2021, 2020 and 2019.

## 4. Balance Sheet Details

### Short-Term Marketable Securities

Short-term marketable securities, consisting of available-for-sale debt securities, were as follows as of the dates indicated:

(In millions)	December 31, 2021			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Market Value
Debt securities, available-for-sale:				
U.S. government agencies	\$ 1,212.1	\$ —	\$ (1.5)	\$ 1,210.6
Commercial paper	189.8	—	(0.1)	189.7
Corporate debt	224.6	—	(0.3)	224.3
Supranationals	54.1	—	(0.1)	54.0
Total debt securities, available-for-sale	<u>\$ 1,680.6</u>	<u>\$ —</u>	<u>\$ (2.0)</u>	<u>\$ 1,678.6</u>

(In millions)	December 31, 2020			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Market Value
Debt securities, available-for-sale:				
U.S. government agencies	\$ 1,570.4	\$ 0.1	\$ (0.1)	\$ 1,570.4
Commercial paper	258.7	0.1	—	258.8
Corporate debt	60.9	—	—	60.9
Total debt securities, available-for-sale	<u>\$ 1,890.0</u>	<u>\$ 0.2</u>	<u>\$ (0.1)</u>	<u>\$ 1,890.1</u>

As of December 31, 2021, the estimated market value of our debt securities with contractual maturities up to 12 months and up to 18 months were \$1.36 billion and \$320.7 million, respectively. As of December 31, 2020, all of our debt securities had contractual maturities of less than 12 months. Gross realized gains and losses on sales of our debt securities for the twelve months ended December 31, 2021, 2020 and 2019 were not significant.

We periodically review our portfolio of debt securities to determine if any investment is impaired due to credit loss or other potential valuation concerns. For debt securities where the fair value of the investment is less than the amortized cost basis, we have assessed at the individual security level for various quantitative factors including, but not limited to, the nature of the investments, changes in credit ratings, interest rate fluctuations, industry analyst reports, and the severity of impairment. Unrealized losses on available-for-sale debt securities at December 31, 2021 were not significant and were primarily due to changes in interest rates, including market credit spreads, and not due to increased credit risks associated with specific securities. Accordingly, we have not recorded an allowance for credit losses. We do not intend to sell these 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.

### Equity Investments

During the twelve months ended December 31, 2021, 2020 and 2019, we had no unrealized gains or losses recognized during the reporting period on equity investments. Realized gains from the sale of an equity investment were \$11.6 million for the twelve months ended December 31, 2021.

### Accounts Receivable

(In millions)	December 31,	
	2021	2020
Accounts receivable	\$ 519.7	\$ 435.7
Less allowance for doubtful accounts	(5.4)	(7.2)
Total accounts receivable, net	<u>\$ 514.3</u>	<u>\$ 428.5</u>

Reserve for prompt payment cash discounts recorded against accounts receivable, excluding allowance for doubtful accounts, was \$13.7 million, \$15.9 million, \$4.6 million as of December 31, 2021, 2020, and 2019, respectively.

## Inventory

(In millions)	December 31,	
	2021	2020
Raw materials	\$ 145.2	\$ 69.9
Work-in-process	16.2	14.2
Finished goods	195.9	150.6
Total inventory	\$ 357.3	\$ 234.7

During the twelve months ended December 31, 2021, 2020 and 2019, we recorded excess and obsolete inventory charges of \$28.1 million, \$24.4 million and \$14.1 million respectively, in cost of sales as a result of our ongoing assessment of sales demand, inventory on hand for each product and the continuous improvement and innovation of our products.

The raw materials inventory balance of \$145.2 million as of December 31, 2021 includes \$5.5 million of pre-launch inventory related to our next CGM product.

## Prepaid and Other Current Assets

Prepaid and other current assets were \$81.6 million and \$53.9 million as of December 31, 2021 and 2020, respectively. The increase in prepaid assets is driven primarily due to an increase in software and inventory related prepaid expenses.

## Property and Equipment

(In millions)	December 31,	
	2021	2020
Land <sup>(1)</sup>	\$ 15.6	\$ 15.6
Building <sup>(1)</sup>	49.1	49.2
Furniture and fixtures	30.7	15.3
Computer software and hardware	52.7	35.7
Machinery and equipment	272.9	198.9
Leasehold improvements	251.6	135.8
Construction in progress	360.7	219.0
Total cost	1,033.3	669.5
Less accumulated depreciation and amortization	(231.5)	(154.2)
Total property and equipment, net	\$ 801.8	\$ 515.3

<sup>(1)</sup> Represents finance lease right-of-use assets.

Depreciation expense related to property and equipment for the twelve months ended December 31, 2021, 2020 and 2019 was \$96.3 million, \$64.0 million and \$46.9 million, respectively.

Loss on disposal of property and equipment during the twelve months ended December 31, 2021, 2020 and 2019 recorded in operating expenses was \$24.5 million, \$13.6 million and \$10.5 million, respectively.

### **Intangibles and Other Assets, Net**

We recorded net intangible assets of \$22.6 million, consisting primarily of customer-related relationships, as result of an acquisition in the third quarter of 2021.

### **Accounts Payable and Accrued Liabilities**

<i>(In millions)</i>	December 31,	
	2021	2020
Accounts payable trade	\$ 196.0	\$ 163.3
Accrued tax, audit, and legal fees	40.7	15.3
Accrued rebates	260.5	247.0
Accrued warranty	12.9	11.7
Contractual obligations	15.0	—
Other accrued liabilities	47.9	43.8
Total accounts payable and accrued liabilities	\$ 573.0	\$ 481.1

### **Accrued Payroll and Related Expenses**

<i>(In millions)</i>	December 31,	
	2021	2020
Accrued wages, bonus and taxes	\$ 91.8	\$ 87.7
Other accrued employee benefits	33.4	26.6
Total accrued payroll and related expenses	\$ 125.2	\$ 114.3

### **Accrued Warranty**

Warranty costs are reflected in our statements of operations as cost of sales. Reconciliations of our accrued warranty costs for the twelve months ended December 31, 2021, 2020 and 2019 were as follows:

<i>(In millions)</i>	Twelve Months Ended December 31,		
	2021	2020	2019
Beginning balance	\$ 11.7	\$ 7.4	\$ 6.8
Charges to costs and expenses	41.5	41.3	32.7
Costs incurred	(40.3)	(37.0)	(32.1)
Ending balance	\$ 12.9	\$ 11.7	\$ 7.4

### **Other Long-Term Liabilities**

<i>(In millions)</i>	December 31,	
	2021	2020
Finance lease obligations	\$ 57.0	\$ 54.0
Contractual obligations	—	12.6
Deferred tax liabilities	5.9	—
Other liabilities	27.1	14.3
Total other long-term liabilities	\$ 90.0	\$ 80.9

## 5. Debt

### Senior Convertible Notes

The carrying amounts of our senior convertible notes were as follows as of the dates indicated:

<i>(Dollars in millions)</i>	December 31,	
	2021	2020
Principal amount:		
Senior Convertible Notes due 2023	\$ 792.3	\$ 850.0
Senior Convertible Notes due 2025	1,207.5	1,207.5
Total principal amount	1,999.8	2,057.5
Unamortized debt discount	(282.7)	(371.1)
Unamortized debt issuance costs	(14.4)	(19.2)
Carrying amount of liability component	\$ 1,702.7	\$ 1,667.2
Carrying value of equity component	\$ 449.4	\$ 461.0
Remaining amortization period of debt discount on the liability component:		
Senior Convertible Notes due 2023	1.9 years	2.9 years
Senior Convertible Notes due 2025	3.9 years	4.9 years

For our senior convertible notes for which the if-converted value exceeded the principal amount, the amount in excess of principal is as follows as of the dates indicated:

<i>(In millions)</i>	December 31,	
	2021	2020
Senior Convertible Notes due 2023	\$ 1,797.3	\$ 1,077.5
Senior Convertible Notes due 2025	141.8	—
Total by which the notes' if-converted value exceeds their principal amount	\$ 1,939.1	\$ 1,077.5

The following table summarizes the components of interest expense and the effective interest rates for each of our senior convertible notes for the periods shown.

(Dollars in millions)	Twelve Months Ended December 31,		
	2021	2020	2019
<b>Cash interest expense:</b>			
Contractual coupon interest <sup>(1)(2)</sup>	\$ 9.3	\$ 9.3	\$ 9.3
<b>Non-cash interest expense:</b>			
Accretion of debt discount	83.0	68.6	45.8
Amortization of debt issuance costs	4.4	4.0	3.7
<b>Total interest expense recognized on senior notes</b>	<b>\$ 96.7</b>	<b>\$ 81.9</b>	<b>\$ 58.8</b>
<b>Effective interest rates:</b>			
Senior Convertible Notes due 2022 <sup>(2)</sup>	*	5.1 %	5.1 %
Senior Convertible Notes due 2023	5.6 %	5.6 %	5.6 %
Senior Convertible Notes due 2025	5.5 %	5.5 %	*

<sup>(1)</sup> Interest on the 2022 Notes began accruing upon issuance and was payable semi-annually on May 15 and November 15 of each year. Interest on the 2023 Notes began accruing upon issuance and is payable semi-annually on June 1 and December 1 of each year. Interest on the 2025 Notes began accruing upon issuance and is payable semi-annually on May 15 and November 15 of each year.

<sup>(2)</sup> The effective interest rate presented represents the rate applicable for the period outstanding. Our \$400.0 million aggregate principal amount of unsecured senior convertible notes issued in June 2017 with a stated interest rate of 0.75% and maturity date of May 15, 2022 (the 2022 Notes) were repurchased and converted by August 2020.

\* Not applicable as no notes were outstanding at this date.

### **Repurchase, Conversion, and Redemption of 2022 Notes**

In May 2020, we used approximately \$282.6 million of the net proceeds from the 2025 Notes offering described below and issued 1,953,067 shares of Dexcom common stock to repurchase \$260.0 million principal amount outstanding of the 2022 Notes and the associated conversion feature of the repurchased notes (which was recorded in additional paid-in capital). Holders of \$140.0 million in aggregate principal amount of the 2022 Notes elected conversion at their option during the twelve months ended December 31, 2020. We settled these conversions by issuing 1,412,497 shares of our common stock.

As a result of the repurchase and conversions of the 2022 Notes, we recorded a loss on extinguishment of debt of \$5.9 million for the twelve months ended December 31, 2020. The loss on extinguishment of debt included the unamortized debt issuance costs for the 2022 Notes.

### **0.75% Senior Convertible Notes due 2023**

In November 2018, we completed an offering of \$850.0 million aggregate principal amount of unsecured senior convertible notes with a stated interest rate of 0.75% and a maturity date of December 1, 2023 (the 2023 Notes). The net proceeds from the offering, after deducting initial purchasers' discounts and costs directly related to the offering, were approximately \$836.6 million. The initial conversion rate of the 2023 Notes is 6.0869 shares per \$1,000 principal amount of notes, which is equivalent to a conversion price of approximately \$164.29 per share, subject to adjustments. We entered into transactions for a convertible note hedge (the 2023 Note Hedge) and warrants (the 2023 Warrants) concurrently with the issuance of the 2023 Notes. The 2023 Notes may be settled in cash, stock, or a combination thereof, solely at our discretion. We use the if-converted method for assumed conversion of the 2023 Notes to compute the weighted average shares of common stock outstanding for diluted earnings per share.

No principal payments are due on the 2023 Notes prior to maturity. Other than restrictions relating to certain fundamental changes and consolidations, mergers or asset sales and customary anti-dilution adjustments, the indenture relating to the 2023 Notes includes customary terms and covenants, including certain events of default after which the 2023 Notes may be due and payable immediately.

Since upon conversion by the holders we may elect to settle such conversion in shares of our common stock, cash, or a combination thereof, we accounted for the cash conversion option as an equity instrument classified to stockholders' equity. As a result, we recognized \$171.6 million in additional paid-in capital, net of debt issuance costs, during 2018.

Holders of \$57.7 million in aggregate principal amount of the 2023 Notes elected conversion at their option during the twelve months ended December 31, 2021. We settled these conversions by issuing a combination of common stock and treasury stock. We issued 350,778 shares to settle the converted 2023 Notes during the twelve months ended December 31, 2021, of which 198,647 shares were issued out of treasury stock. As a result of the elected conversions, we recorded a loss on extinguishment of debt of \$1.4 million. We received 241,845 shares of common stock from the exercise of a portion of the 2023 Note Hedge that we purchased concurrently with the issuance of the 2023 Notes, as described below.

#### *Conversion Rights at the Option of the Holders*

Holders of the 2023 Notes have the right to require us to repurchase for cash all or a portion of their notes at 100% of their principal amount, plus any accrued and unpaid interest, upon the occurrence of a fundamental change (as defined in the indenture relating to the notes). We will also be required to increase the conversion rate for holders who convert their 2023 Notes in connection with certain fundamental changes occurring prior to the maturity date or following the delivery by Dexcom of a notice of redemption.

Holders of the 2023 Notes may convert all or a portion of their notes at their option prior to 5:00 p.m., New York City time, on the business day immediately preceding September 1, 2023, in multiples of \$1,000 principal amount, only under the following circumstances:

- (1) during any calendar quarter commencing after March 31, 2019 (and only during such calendar quarter), if the last reported sale price of Dexcom's common stock for at least 20 trading days (whether or not consecutive) during the period of 30 consecutive trading days ending on the last trading day of the immediately preceding calendar quarter is greater than or equal to 130% of the applicable conversion price of the 2023 Notes on each such trading day;
- (2) during the five business day period after any five consecutive trading day period in which the trading price per \$1,000 principal amount of the 2023 Notes for each day of that five-day consecutive trading day period was less than 98% of the product of the last reported sale price of Dexcom's common stock and the applicable conversion rate of the 2023 Notes on such trading day;
- (3) if we call any or all of the 2023 Notes for redemption, at any time prior to the close of business on the scheduled trading day immediately preceding the redemption date; or
- (4) upon the occurrence of specified corporate transactions.

On or after September 1, 2023, until 5:00 p.m., New York City time, on the second scheduled trading day immediately preceding the maturity date, holders of the 2023 Notes may convert all or a portion of their notes regardless of the foregoing circumstances.

Circumstance (1) listed above occurred during the quarters ended December 31, 2020, March 31, 2021, June 30, 2021, and September 30, 2021. As a result, the 2023 Notes were convertible at the option of the holder from January 1, 2021 through December 31, 2021. Circumstance (1) listed above also occurred during the quarter ended December 31, 2021 and as a result, the 2023 Notes will remain convertible at the option of the holder from January 1, 2022 through March 31, 2022. See above for a description of conversion activity related to the 2023 Notes.

#### *Conversion Rights at Our Option*

Dexcom may not redeem the 2023 Notes prior to December 1, 2021. On or after December 1, 2021 and prior to September 1, 2023, Dexcom may redeem for cash all or part of the 2023 Notes, at its option, if the last reported sale price of our common stock has been at least 130% of the conversion price then in effect for at least 20 trading days (whether or not consecutive) during any 30 consecutive trading day period ending on, and including, the trading day immediately preceding the date on which Dexcom provides notice of redemption. The redemption price will be equal to 100% of the principal amount of the 2023 Notes to be redeemed plus accrued and unpaid interest to, but excluding, the redemption date.

#### *2023 Note Hedge*

In connection with the offering of the 2023 Notes, in November 2018 we entered into convertible note hedge transactions with two of the initial purchasers of the 2023 Notes (the 2023 Counterparties) entitling us to purchase up to 5.2 million shares of our common stock at an initial price of \$164.29 per share, each of which is subject to adjustment. The cost of the 2023 Note Hedge was \$218.9 million and we accounted for it as an equity instrument by recognizing \$218.9 million in additional paid-in capital during 2018. The 2023 Note Hedge will expire on December 1, 2023. The 2023 Note Hedge is expected to reduce the potential equity dilution upon any conversion of the 2023 Notes and/or offset any cash payments we are required to make in excess of the principal amount of converted 2023 Notes if the daily volume-weighted average price per share of our common stock exceeds the strike price of the 2023 Note Hedge. The strike price of the 2023 Note Hedge initially corresponds to the conversion price of the 2023 Notes and is subject to certain adjustments under the terms of the 2023 Note Hedge. An assumed exercise of the 2023 Note Hedge by us is considered anti-dilutive since the effect of the inclusion would always be anti-dilutive.

with respect to the calculation of diluted earnings per share. See above for a description of conversion activity related to the 2023 Notes and shares received as the result of exercising a portion of the 2023 Note Hedge.

### *2023 Warrants*

In November 2018, we also sold warrants to the 2023 Counterparties to acquire up to 5.2 million shares of our common stock. The 2023 Warrants require net share settlement and a pro rated number of warrants will expire on each of the 60 scheduled trading days starting on March 1, 2024. We received \$183.8 million in cash proceeds from the sale of the 2023 Warrants, which we recorded in additional paid-in capital during 2018. The 2023 Warrants could have a dilutive effect on our earnings per share to the extent that the price of our common stock during a given measurement period exceeds the strike price of the 2023 Warrants. The strike price of the 2023 Warrants is initially \$198.38 per share and is subject to certain adjustments under the terms of the warrant agreements. We use the treasury share method for assumed conversion of the 2023 Warrants when computing the weighted average common shares outstanding for diluted earnings per share.

### *0.25% Senior Convertible Notes due 2025*

In May 2020, we completed an offering of \$1.21 billion aggregate principal amount of unsecured senior convertible notes with a stated interest rate of 0.25% and a maturity date of November 15, 2025 (the 2025 Notes). The net proceeds from the offering, after deducting initial purchasers' discounts and estimated costs directly related to the offering, were approximately \$1.19 billion. The initial conversion rate of the 2025 Notes is 1.6655 shares per \$1,000 principal amount of notes, which is equivalent to a conversion price of approximately \$600.42 per share, subject to adjustments, with a maximum conversion rate of 2.3732. The 2025 Notes may be settled in cash, stock, or a combination thereof, solely at our discretion. We use the if-converted method for assumed conversion of the 2025 Notes to compute the weighted average shares of common stock outstanding for diluted earnings per share.

No principal payments are due on the 2025 Notes prior to maturity. Other than restrictions relating to certain fundamental changes and consolidations, mergers or asset sales and customary anti-dilution adjustments, the indenture relating to the 2025 Notes includes customary terms and covenants, including certain events of default after which the 2025 Notes may be due and payable immediately.

Since upon conversion by the holders we may elect to settle such conversion in shares of our common stock, cash, or a combination thereof, we accounted for the cash conversion option as an equity instrument classified to stockholders' equity. As a result, we recognized \$289.4 million in additional paid-in-capital, net of debt issuance costs, during 2020.

### *Conversion Rights at the Option of the Holders*

In the event of a fundamental change (as defined in the indenture related to the 2025 Notes), holders of the 2025 Notes have the right to require us to repurchase for cash all or a portion of their notes at a price equal to 100% of the principal amount of the 2025 Notes, plus any accrued and unpaid interest. Holders of the 2025 Notes who convert their notes in connection with a make-whole fundamental change (as defined in the indenture) or following the delivery by Dexcom of a notice of redemption are, under certain circumstances, entitled to an increase in the conversion rate.

Prior to 5:00 p.m., New York City time, on the business day immediately preceding August 15, 2025, holders of the 2025 Notes may convert all or a portion of their notes, in multiples of \$1,000 principal amount, only under the following circumstances:

- (1) during any calendar quarter commencing after September 30, 2020 (and only during such calendar quarter), if the last reported sale price of Dexcom's common stock for at least 20 trading days (whether or not consecutive) during the period of 30 consecutive trading days ending on the last trading day of the immediately preceding calendar quarter is greater than or equal to 130% of the applicable conversion price of the Notes on each such trading day;
- (2) during the five business day period after any five consecutive trading day period in which the trading price per \$1,000 principal amount of the Notes for each day of that five day consecutive trading day period was less than 98% of the product of the last reported sale price of Dexcom's common stock and the applicable conversion rate of the Notes on such trading day;
- (3) if we call any or all of the Notes for redemption, at any time prior to the close of business on the scheduled trading day immediately preceding the redemption date; or
- (4) upon the occurrence of specified corporate transactions.

On or after August 15, 2025, until 5:00 p.m., New York City time, on the business day immediately preceding the maturity date, holders of the 2025 Notes may convert all or a portion of their notes regardless of the foregoing circumstances.

### Conversion Rights at Our Option

Dexcom may not redeem the 2025 Notes prior to May 20, 2023. On or after May 20, 2023 and prior to August 15, 2025, Dexcom may redeem for cash all or part of the 2025 Notes, at its option, if the last reported sale price of our common stock has been at least 130% of the conversion price then in effect for at least 20 trading days (whether or not consecutive) during any 30 consecutive trading day period ending on, and including, the trading day immediately preceding the date on which Dexcom provides notice of redemption. The redemption price will be equal to 100% of the principal amount of the 2025 Notes to be redeemed plus accrued and unpaid interest to, but excluding, the redemption date.

### Revolving Credit Agreement

#### Terms of the Revolving Credit Agreement

In October 2021, we entered into a Second Amended and Restated Credit Agreement (the Amended Credit Agreement), which amended and restated the credit agreement we had previously entered into in December 2018 and amended in May 2020 (the Credit Agreement). The Amended Credit Agreement is a five-year revolving credit facility that provides for an available principal amount of \$200.0 million, which can be increased up to \$500.0 million at our option subject to customary conditions and approval of our lenders. The Amended Credit Agreement will mature on October 13, 2026. Borrowings under the Amended Credit Agreement are available for general corporate purposes, including working capital and capital expenditures.

Information related to availability and outstanding borrowings on our Amended Credit Agreement is as follows as of the date indicated:

<i>(In millions)</i>	<b>December 31, 2021</b>
Available principal amount	\$ 200.0
Letters of credit sub-facility	25.0
Outstanding borrowings	—
Outstanding letters of credit	7.3
Total available balance	\$ 192.7

Revolving loans under the Amended Credit Agreement bear interest at our choice of one of three base rates plus a range of applicable rates that are based on our leverage ratio. The first base rate is the Alternate Base Rate (“ABR”) and loans comprising each ABR borrowing shall bear interest at the ABR plus the applicable rate between 0.375% to 1.000%. The ABR is the highest of (a) the prime rate last quoted by The Wall Street Journal, (b) the Federal Reserve Bank of New York (“NYFRB”) rate plus one half of 1%, and (c) the Adjusted London Interbank Offered Rate (“LIBO Rate”) for a one month interest period plus 1%. The second base rate is the Term Benchmark rate and loans comprising each Term Benchmark borrowing shall bear interest at the Adjusted LIBO Rate, the Adjusted Euro Interbank Offered Rate (“EURIBOR Rate”), the Adjusted Stockholm Interbank Offered Rate (“STIBOR Rate”), the Adjusted Canadian Dollar Offered Rate (“CDOR”), Adjusted Australian Dollar (“AUD”) Rate, the Adjusted Bank Bill Benchmark Rate (“BKBM Rate”) or the Adjusted Tokyo Interbank Offered Rate (“TIBOR Rate”), as applicable based on the currency denomination borrowed, plus the applicable rate between 1.375% to 2.000%. The third base rate is the Daily Simple RepoFunds Rate (“RFR”) and loans comprising each Daily Simple RFR Loan shall bear interest at a rate per annum equal to the applicable Daily Simple RFR plus the applicable rate between 1.375% to 2.000% plus an additional 0.0326%. We will also pay a commitment fee of between 0.175% and 0.250%, payable quarterly in arrears, on the average daily unused amount of the revolving facility based on our leverage ratio.

Our obligations under the Amended Credit Agreement are guaranteed by our existing and future wholly-owned domestic subsidiaries, and are secured by a first-priority security interest in substantially all of the assets of Dexcom and the guarantors, including all or a portion of the equity interests of our domestic subsidiaries and first-tier foreign subsidiaries but excluding real property and intellectual property (which is subject to a negative pledge). The Amended Credit Agreement contains covenants that limit certain indebtedness, liens, investments, transactions with affiliates, dividends and other restricted payments, subordinated indebtedness and amendments to subordinated indebtedness documents, and sale and leaseback transactions of Dexcom or any of its domestic subsidiaries. The Amended Credit Agreement also requires us to maintain a maximum leverage ratio and a minimum fixed charge coverage ratio. We were in compliance with these covenants as of December 31, 2021.

## 6. Leases And Other Commitments

### Leases

We lease office, manufacturing and warehouse space facilities under various domestic and international non-cancellable operating and finance lease arrangements. We also have a land lease in Penang, Malaysia, that expires in 2080, for the build-out of our international manufacturing facility. Our leases, excluding our land lease in Penang, Malaysia, have remaining lease terms of up to nineteen years, some of which include one or more options to extend the leases for up to five years per option. Options to extend the lease are included in the lease liability if they are reasonably certain of being exercised. Leases are classified as operating or financing at lease commencement.

Operating lease right-of-use assets and lease liabilities are presented separately in our consolidated balance sheets. Finance lease right-of-use assets are included in property and equipment and finance lease liabilities are included in accounts payable and accrued liabilities and in other long-term liabilities in our consolidated balance sheets.

As of December 31, 2021, the maturities of our operating and finance lease liabilities were as shown in the table below:

<i>(In millions)</i>	<b>Operating Leases</b>	<b>Finance Leases</b>
2022	\$ 25.7	\$ 6.3
2023	25.2	6.4
2024	23.5	5.4
2025	22.5	4.8
2026	22.3	4.9
Thereafter	17.2	64.0
Total future lease cost <sup>(1)</sup>	136.4	91.8
Less: Imputed interest	(17.3)	(31.5)
Present value of future payments	119.1	60.3
Less: Current portion	(20.5)	(3.3)
Long-term portion	<u>\$ 98.6</u>	<u>\$ 57.0</u>

Certain lease agreements require us to return designated areas of leased space to its original condition upon termination of the lease agreement, for which we record an asset retirement obligation and a corresponding capital asset in an amount equal to the estimated fair value of the obligation. In subsequent periods, the asset retirement obligation is accreted for the change in its present value and the capitalized asset is depreciated, both over the term of the associated lease agreement. Asset retirement obligations of \$7.4 million and \$4.5 million as of December 31, 2021 and 2020, respectively, are included in other long-term liabilities in our consolidated balance sheets.

The components of lease expense for the twelve months ended December 31, 2021, 2020 and 2019 were as follows:

<i>(In millions)</i>	<b>Twelve Months Ended December 31,</b>		
	<b>2021</b>	<b>2020</b>	<b>2019</b>
Finance lease cost:			
Amortization of right-of-use assets	\$ 4.1	\$ 2.0	\$ 1.1
Interest on lease liabilities	3.0	1.9	0.8
Operating lease cost	23.3	18.4	12.2
Short-term lease cost <sup>(1)</sup>	2.3	1.3	3.5
Variable lease cost <sup>(2)</sup>	6.0	4.2	3.9
Total lease cost	<u>\$ 38.7</u>	<u>\$ 27.8</u>	<u>\$ 21.5</u>

<sup>(1)</sup> Short-term lease cost is primarily related to temporary office space associated with the transition of certain operations to the Philippines.

<sup>(2)</sup> Variable lease costs are primarily related to common area maintenance charges and property taxes.

Other information related to our leases is as follows:

<i>(Dollars in millions)</i>	Twelve Months Ended December 31,		
	2021	2020	2019
<b>Cash paid for amounts included in the measurement of lease liabilities:</b>			
Operating cash flows from operating leases	\$ 23.3	\$ 18.3	\$ 14.3
Operating cash flows from finance leases	1.9	0.7	0.8
Financing cash flows from finance leases	9.9	8.5	0.5
<b>Right-of-use assets obtained in exchange for lease liabilities:</b>			
Operating leases	13.1	33.5	80.6
Finance leases	\$ 6.4	\$ 41.7	\$ 15.5
<b>Weighted average remaining lease term:</b>			
Operating leases	5.5 years	6.1 years	6.2 years
Finance leases	15.9 years	23.3 years	13.3 years
<b>Weighted average discount rate:</b>			
Operating leases	5.0 %	5.0 %	5.0 %
Finance leases	5.1 %	5.0 %	5.0 %

Amortization of operating lease right-of-use asset included in cash flows from operating activities in our consolidated statements of cash flows was \$18.0 million for the twelve months ended December 31, 2021, \$12.4 million for the twelve months ended December 31, 2020 and \$9.1 million for the twelve months ended December 31, 2019.

### **Purchase Commitments**

We are party to various purchase arrangements related to our manufacturing and research and development activities. We had approximately \$324.1 million as of December 31, 2021 and \$335.6 million as of December 31, 2020 of open purchase orders and contractual obligations in the ordinary course of business, the majority of which are due within one year.

## **7. Contingencies**

### **Litigation**

We are subject to various claims, complaints and legal actions that arise from time to time in the normal course of business, including commercial insurance, product liability, intellectual property 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.

During the fiscal year ended December 31, 2021, we and certain Abbott entities served complaints for patent infringement, validity and other patent related actions against each other in multiple jurisdictions, inside and outside the United States. We intend to vigorously pursue our claims and defenses in these cases to protect our intellectual property and to defend against Abbott's infringement allegations.

We do not believe we are party to any other currently pending legal proceedings, the outcome of which could have a material adverse effect on our business, financial condition or results of operations. There can be no assurance that existing or future legal proceedings arising in the ordinary course of business or otherwise will not have a material adverse effect on our business, financial condition or results of operations.

## 8. Income Taxes

Income (loss) before income taxes subject to taxes in the following jurisdictions is as follows:

<i>(In millions)</i>	Twelve Months Ended December 31,		
	2021	2020	2019
United States	\$ 235.3	\$ 270.7	\$ 119.1
Outside of the United States	(61.4)	(45.7)	(14.9)
<b>Total</b>	<b>\$ 173.9</b>	<b>\$ 225.0</b>	<b>\$ 104.2</b>

Significant components of the provision for income taxes are as follows:

<i>(In millions)</i>	Twelve Months Ended December 31,		
	2021	2020	2019
<b>Current:</b>			
Federal	\$ 5.7	\$ —	\$ —
State	8.3	6.1	1.0
Foreign	10.1	2.6	1.9
<b>Total current income taxes</b>	<b>24.1</b>	<b>8.7</b>	<b>2.9</b>
<b>Deferred:</b>			
Federal	5.5	(198.8)	—
State	(3.4)	(51.4)	—
Foreign	(7.0)	(27.1)	0.2
<b>Total deferred income taxes</b>	<b>(4.9)</b>	<b>(277.3)</b>	<b>0.2</b>
<b>Total</b>	<b>\$ 19.2</b>	<b>\$ (268.6)</b>	<b>\$ 3.1</b>

Significant loss and tax credit carryforwards and years of expiration are as follows:

<i>(In millions)</i>	December 31,		Year of Expiration
	2021	2020	
<b>Net operating loss:</b>			
Federal	\$ 38.0	\$ 169.1	2027
California	236.3	236.3	2029
Other states	21.3	36.1	2029
UK	102.4	113.2	Indefinite
<b>Tax credits:</b>			
Federal			
R&D credits	80.1	73.1	2026
Foreign tax credits	1.5	—	2031
California R&D credits	\$ 81.4	\$ 66.2	Indefinite

On June 29, 2020, California's Governor Newsom signed AB 85 into law, suspending California net operating loss utilization and imposing a \$5.0 million cap on the amount of business incentive tax credits companies can utilize, effective for tax years 2020 through 2022. As a result of the legislation, we are utilizing \$2.2 million of California research and development credits for the tax year ended December 31, 2021.

Utilization of net operating losses and credit carryforwards is subject to an annual limitation due to ownership change limitations provided by Section 382 and 383 of the Internal Revenue Code of 1986, as amended, and similar state provisions. An ownership change limitation occurred as a result of the stock offering completed in February 2009. The limitation will result in approximately \$1.8 million of U.S. research and development tax credits that will expire unused. The related deferred tax

assets have been removed from the components of our deferred tax assets as summarized in the table below. The tax benefits related to the remaining federal and state net operating losses and tax credit carryforwards may be further limited or lost if future cumulative changes in ownership exceed 50% within any three-year period.

Significant components of our deferred tax assets and liabilities as of December 31, 2021 and 2020 are shown below. Significant judgment is required to evaluate the need for a valuation allowance against deferred tax assets. We review all available positive and negative evidence, including projections of pre-tax book income, earnings history, reliability of forecasting, and reversal of temporary differences. A valuation allowance is established when it is more likely than not that some or all of the deferred tax assets will not be realized. Realization of deferred tax assets is dependent upon future earnings in applicable tax jurisdictions.

<i>(In millions)</i>	December 31,	
	2021	2020
<b>Deferred tax assets:</b>		
Net operating loss carryforwards	\$ 53.0	\$ 69.2
Capitalized research and development expenses	49.3	53.6
Tax credits	105.5	101.1
Share-based compensation	13.3	13.0
Fixed and intangible assets	26.4	16.9
Accrued liabilities and reserves	105.5	110.3
Collaborative agreement milestone accrual <sup>(1)</sup>	21.9	—
Other	0.5	—
Total gross deferred tax assets	375.4	364.1
Less: valuation allowance	(69.9)	(55.5)
Total net deferred tax assets	305.5	308.6
<b>Deferred tax liabilities:</b>		
Fixed assets and acquired intangibles assets	(42.5)	(36.3)
Convertible debt discount	(48.1)	(55.9)
Total deferred tax liabilities	(90.6)	(92.2)
<b>Net deferred tax assets (liabilities)</b>	\$ 214.9	\$ 216.4

<sup>(1)</sup> This amount is related to the \$87.1 million charge recorded in the fourth quarter of 2021 associated with our Restated Collaboration Agreement with Verily, as discussed in Note 2 to the consolidated financial statements.

The current year change in net deferred tax assets of \$1.5 million is primarily comprised of purchase accounting adjustments of \$7.3 million recorded in goodwill and \$0.5 million tax effect of unrealized loss on investments recorded in other comprehensive income, offset by \$4.9 million of deferred tax benefit recorded through income tax expense and \$1.1 million of convertible debt adjustments recorded as a reduction to additional paid-in capital.

We maintain a valuation allowance of \$69.9 million against our California research and development tax credits, foreign tax credits, and certain foreign intangible assets.

The reconciliation between our effective tax rate on income (loss) from continuing operations and the statutory rate is as follows:

<i>(In millions)</i>	Twelve Months Ended December 31,		
	2021	2020	2019
U.S. federal statutory tax rate	\$ 36.5	\$ 47.3	\$ 21.9
State income tax, net of federal benefit	5.6	3.2	(2.3)
Permanent items	26.2	13.1	1.0
Research and development credits	(28.9)	(24.4)	(10.8)
Foreign tax credit	(3.7)	—	—
Foreign rate differential	(0.1)	(0.1)	5.6
Stock and officers compensation	(20.4)	(28.7)	(14.7)
Change in statutory tax rates	(10.0)	(4.1)	—
Other	(0.4)	0.1	(1.0)
Change in valuation allowance	14.4	(275.0)	3.4
Income taxes at effective rates	<u>\$ 19.2</u>	<u>\$ (268.6)</u>	<u>\$ 3.1</u>

We have elected to account for Global Intangible Low-Taxed Income (“GILTI”) in the period the tax is incurred.

The following table summarizes the activity related to our gross unrecognized tax benefits:

<i>(In millions)</i>	
Balance at January 1, 2019	\$ 25.9
Decreases related to prior year tax positions	(0.9)
Increases related to current year tax positions	4.5
Balance at December 31, 2019	29.5
Decreases related to prior year tax positions	(0.9)
Increases related to current year tax positions	8.0
Balance at December 31, 2020	36.6
Increases related to prior year tax positions	0.4
Increases related to current year tax positions	9.8
Balance at December 31, 2021	<u>\$ 46.8</u>

Of the total unrecognized tax benefits at December 31, 2021, 2020, and 2019, \$29.5 million, \$23.5 million, and \$0, respectively, would reduce our annual effective tax rate if recognized. Interest and penalties are classified as a component of income tax expense and were not material for any period presented. Although the timing and outcome of audit settlements are uncertain, it is unlikely there will be a significant reduction of the uncertain tax benefits in the next twelve months.

Due to our global business activities, we file income tax returns and are subject to routine compliance audits in numerous jurisdictions, including those material jurisdictions listed in the following table. The U.S. net operating losses generated since 1999 and utilized in recent years are open for examination. The years remaining subject to audit, by major jurisdiction, are as follows:

Jurisdiction	Fiscal Year
United States (Federal and state)	1999 - 2021
Germany	2016 - 2021
United Kingdom	2016 - 2021
Canada	2017 - 2021

We operate under a tax holiday in the Philippines, which is effective through December 31, 2023, and may be extended for another three years if certain additional requirements are satisfied. The tax holiday is conditional upon remaining in good standing, committing no violation of Philippine Economic Zone Authority Rules and Regulations, pertinent circulars and directives. The impact of this tax holiday was immaterial in 2021 and 2020. We have been granted an investment tax

allowance incentive by the Malaysian Investment Development Authority (MIDA) in Malaysia, which is effective through December 31, 2025. The tax incentive had no effect on foreign taxes during 2021 or 2020.

We have approximately \$15.3 million of undistributed earnings attributable to operations in our controlled foreign corporations as of December 31, 2021. We assert that any foreign earnings will be indefinitely reinvested. Accordingly, we have not recorded a liability for taxes associated with these undistributed earnings. If we determine that all or a portion of such foreign earnings are no longer indefinitely reinvested, we may be subject to additional foreign withholding taxes and U.S. state income taxes. Determination of the amount of unrecognized deferred tax liability on these unremitted earnings is not practicable.

## 9. Employee Benefit Plans and Stockholders' Equity

### *401(k) Plan*

We have a defined contribution 401(k) retirement plan (the 401(k) Plan) covering substantially all employees in the United States that meet certain age requirements. Employees who participate in the 401(k) Plan may contribute up to 90% of their compensation each year, subject to Internal Revenue Service limitations and the terms and conditions of the plan. Under the terms of the 401(k) Plan, we may elect to match a discretionary percentage of contributions. We match 50% of contributions up to 5% of annual compensation. Total matching contributions were \$9.9 million, \$6.7 million and \$4.8 million for the twelve months ended December 31, 2021, 2020 and 2019, respectively.

### *Employee Stock Purchase Plan ("ESPP")*

Under the 2015 Employee Stock Purchase Plan (the 2015 ESPP), amended in December 2019, eligible employees may purchase shares of our common stock at semi-annual intervals through periodic payroll deductions during defined Offering Periods. Payroll deductions may not exceed 10% of the participant's cash compensation subject to certain limitations, and the purchase price will be 85% of the lower of the fair market value of the common stock at either the beginning of the applicable Offering Period or the Purchase Date. A total of 1.5 million shares of common stock are reserved for issuance under the 2015 ESPP. The 2015 ESPP shall continue until the earlier to occur of (a) termination of the 2015 ESPP by our Board of Directors, (b) issuance of all of the shares of common stock reserved for issuance under the plan, or (c) May 28, 2025.

We issued 59,810, 89,194 and 150,408 shares of common stock under the 2015 ESPP during the twelve months ended December 31, 2021, 2020 and 2019, respectively. As of December 31, 2021, approximately 0.8 million shares remained available for future issuance under the 2015 ESPP.

### *Equity Incentive Plans*

In May 2015, we adopted the Amended and Restated 2015 Equity Incentive Plan (the 2015 Plan), which replaced our 2005 Equity Incentive Plan and provides for the grant of incentive and nonstatutory stock options, restricted stock, stock bonuses, stock appreciation rights, restricted stock units or RSUs, and performance stock units or PSUs to employees, directors or consultants of the Company. On May 30, 2019, our stockholders approved an increase to the maximum number of shares that may be issued under the 2015 Plan.

We are authorized to issue up to 9.8 million shares of our common stock under the 2015 Plan. As of December 31, 2021, approximately 4.2 million shares remained available for future issuance under the 2015 Plan.

RSU awards typically vest in annual installments over three or four years and vesting is subject to continued service. PSUs are granted to a group of senior officers and the number of shares of our common stock to be received at vesting will range from 0% to 200% of the target award based on the achievement of pre-established performance and market goals. PSUs vest three years from the date of grant, subject to continued employment through that date.

### *Treasury Stock*

Repurchased shares of our common stock are held as treasury shares until they are reissued or retired. When we reissue treasury stock, if the proceeds from the sale are more than the average price we paid to acquire the shares we record an increase in additional paid-in capital. Conversely, if the proceeds from the sale are less than the average price we paid to acquire the shares, we record a decrease in additional paid-in capital to the extent of increases previously recorded for similar transactions and a decrease in retained earnings for any remaining amount.

We issue new shares of common stock to satisfy RSU and PSU vesting under our employee equity incentive plans. We repurchased 0.8 million shares of our common stock in 2018. No shares of our common stock were repurchased during 2019 or 2020. Treasury stock increased by 43,198 net shares during 2021 as a result of shares received from the exercise of a portion of the 2023 Note Hedge less the issuance of shares to settle the converted 2023 Notes. We have not yet determined the ultimate disposition of our treasury shares and consequently we continue to hold them as treasury shares rather than retiring them.

### Stock Options

We have not granted any stock options since 2010. As of December 31, 2021 and December 31, 2020, we had no stock options outstanding. The total intrinsic value of stock options exercised during the twelve months ended December 31, 2020 and 2019 was \$7.9 million and \$7.4 million, respectively.

### Equity Award Activity

A summary of RSU and PSU activity under the 2015 Plan for the twelve months ended December 31, 2021, 2020 and 2019 is as follows:

<i>(In millions except weighted average grant date fair value)</i>	Shares Available for Grant	Nonvested RSU and PSU Activity		
		Shares	Weighted Average Grant Date Fair Value	Aggregate Intrinsic Value
Balance at December 31, 2018	3.2	2.7	\$ 69.19	
Additional shares authorized	2.2	—		
Granted	(0.7)	0.7	144.37	
Vested	—	(1.4)	69.45	
Forfeited	0.2	(0.2)	83.45	
Balance at December 31, 2019	4.9	1.8	96.63	\$ 392.0
Granted	(0.5)	0.5	300.36	
Vested	—	(1.0)	92.07	
Forfeited	0.1	(0.1)	137.44	
Balance at December 31, 2020	4.5	1.2	183.51	430.6
Granted	(0.4)	0.4	351.32	
Vested	—	(0.7)	137.90	
Forfeited	0.1	(0.1)	279.12	
Balance at December 31, 2021	4.2	0.8	\$ 307.86	\$ 411.3

The total vest-date fair value of RSUs and PSUs that vested during the twelve months ended December 31, 2021, 2020 and 2019 was \$284.5 million, \$331.8 million and \$207.2 million, respectively. As of December 31, 2021, 0.7 million unvested RSUs and 0.1 million unvested PSUs were outstanding under the 2015 Plan.

### Share-based Compensation

Our share-based compensation expense is associated with RSUs, PSUs, and the 2015 ESPP. The following table summarizes the share-based compensation expense included in our consolidated statements of operations for the periods shown.

<i>(In millions)</i>	Twelve Months Ended December 31,		
	2021	2020	2019
Cost of sales	\$ 8.5	\$ 14.6	\$ 9.0
Research and development	41.0	37.8	33.5
Selling, general and administrative	63.9	67.0	60.2
Total share-based compensation expense	\$ 113.4	\$ 119.4	\$ 102.7

We value RSUs at the date of grant using the intrinsic value method. We estimate the fair value of PSUs at the date of grant using the intrinsic value method and the probability that the specified performance criteria will be met. We estimate the fair value of ESPP purchase rights on the date of grant using the Black-Scholes option pricing model and the assumptions below for the specified reporting periods.

	Twelve Months Ended December 31,		
	2021	2020	2019
Risk free interest rate	0.06% - 0.07%	0.13% - 0.95%	1.72% - 2.55%
Dividend yield	— %	— %	— %
Expected volatility of Dexcom common stock	36% - 45%	51% - 63%	40% - 51%
Expected life (in years)	0.5	0.5	1

At December 31, 2021, unrecognized estimated compensation costs related to RSUs, PSUs, and the 2015 ESPP totaled \$157.8 million and are expected to be recognized through 2024.

## 10. Business Segment and Geographic Information

### Reportable Segments

An operating segment is identified as a component of a business that has discrete financial information available and for which the chief operating decision maker must decide the level of resource allocation. In addition, the guidance for segment reporting indicates certain quantitative materiality thresholds. None of the components of our business meet the definition of an operating segment.

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.

### Disaggregation of Revenue

We disaggregate revenue by geographic region and by major sales channel. We have determined that disaggregating revenue into these categories achieves the ASC Topic 606 disclosure objectives of depicting how the nature, amount, timing and uncertainty of revenue and cash flows are affected by economic factors.

Dexcom is domiciled in the United States. We sell our CGM systems through a direct sales force in United States, Australia, Canada, New Zealand, and some countries in Europe, and through distribution arrangements in the United States, and certain countries in Africa, Asia, Europe, Latin America, and the Middle East, as well as Australia, Canada, and New Zealand.

### Revenue by geographic region

During the twelve months ended December 31, 2021, 2020 and 2019, no individual country outside the United States generated revenue that represented more than 10% of our total revenue. The table below sets forth revenue by our two primary geographical markets, the United States and outside of the United States, based on the geographic location to which we deliver the components. The majority of our long-lived assets are located in the United States.

(Dollars in millions)	Twelve Months Ended December 31,					
	2021		2020		2019	
	Amount	% of Total	Amount	% of Total	Amount	% of Total
United States	\$ 1,849.4	76 %	\$ 1,509.5	78 %	\$ 1,161.5	79 %
Outside of the United States	599.1	24 %	417.2	22 %	314.5	21 %
Total revenue	\$ 2,448.5	100 %	\$ 1,926.7	100 %	\$ 1,476.0	100 %

### Revenue by customer sales channel

The following table sets forth revenue by major sales channel for the twelve months ended December 31, 2021, 2020 and 2019:

<i>(Dollars in millions)</i>	Twelve Months Ended December 31,					
	2021		2020		2019	
	Amount	% of Total	Amount	% of Total	Amount	% of Total
Distributor	\$ 2,024.3	83 %	\$ 1,437.6	75 %	\$ 1,011.6	69 %
Direct	424.2	17 %	489.1	25 %	464.4	31 %
Total revenue	<u>\$ 2,448.5</u>	<u>100 %</u>	<u>\$ 1,926.7</u>	<u>100 %</u>	<u>\$ 1,476.0</u>	<u>100 %</u>

**DexCom, Inc.**  
**SCHEDULE II – VALUATION AND QUALIFYING ACCOUNTS**  
(In millions)

**Allowance for doubtful accounts**

Balance at December 31, 2018	\$	7.2
Provision for doubtful accounts		0.9
Write-offs and adjustments		(3.0)
Recoveries		0.7
Balance at December 31, 2019	\$	<u>5.8</u>

**Allowance for doubtful accounts**

Balance at December 31, 2019	\$	5.8
Provision for doubtful accounts		3.2
Write-offs and adjustments		(2.1)
Recoveries		0.3
Balance at December 31, 2020	\$	<u>7.2</u>

**Allowance for doubtful accounts**

Balance at December 31, 2020	\$	7.2
Provision for doubtful accounts		(1.4)
Write-offs and adjustments		(0.5)
Recoveries		0.1
Balance at December 31, 2021	\$	<u>5.4</u>

# J.P.Morgan

## SECOND AMENDED AND RESTATED CREDIT AGREEMENT

dated as of

October 13, 2021

by and among

DEXCOM, INC.,  
as Borrower,

the Lenders party hereto,

and

JPMORGAN CHASE BANK,  
NATIONAL ASSOCIATION,  
as Administrative Agent

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JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,  
and  
MERRILL LYNCH, PIERCE, FENNER & SMITH INC.,  
as Joint Bookrunners and Joint Lead Arrangers

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

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- Exhibit B – [RESERVED]
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- Exhibit C-2 – U.S. Tax Compliance Certificate (For Foreign Lenders That Are Partnerships for U.S. Federal Income Tax Purposes)
- Exhibit C-3 – U.S. Tax Compliance Certificate (For Foreign Participants That Are Not Partnerships for U.S. Federal Income Tax Purposes)
- Exhibit C-4 – U.S. Tax Compliance Certificate (For Foreign Participants That Are Partnerships for U.S. Federal Income Tax Purposes)

SECOND AMENDED AND RESTATED CREDIT AGREEMENT dated as of October 13, 2021 (as it may be amended, restated, supplemented or otherwise modified from time to time, this “**Agreement**”), by and among DEXCOM, INC., a Delaware corporation (the “**Borrower**”), the Lenders party hereto, and JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, as Administrative Agent.

#### RECITALS:

WHEREAS, the Borrower is a party to that certain Amended and Restated Credit Agreement dated as of December 19, 2018 by and among the Borrower, the lenders party thereto (collectively, the “**Existing Lenders**”) and JPMorgan, as administrative agent, (as amended, restated, supplemented or otherwise modified prior to the date hereof, the “**Existing Credit Agreement**”), pursuant to which the Existing Lenders provided certain loans and other financial accommodations to the Borrower;

WHEREAS, the parties hereto desire to amend and restate the Existing Credit Agreement to, among other things, extend the maturity of the Loans; and

WHEREAS, in connection with the foregoing, the parties hereto agree that upon satisfaction of the conditions set forth in Sections 4.01 and 4.02, the Existing Credit Agreement shall be amended and restated in its entirety and superseded by this Agreement; provided, however, the obligation to repay the Obligations under the Existing Credit Agreement shall continue in full force and effect and shall be governed by the terms of this Agreement and corresponding Loan Documents.

#### AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual covenants set forth below, and intending to be legally bound, 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:

“**2018 Call Spread**” means call or capped call options (or a substantively equivalent derivative transaction) on Borrower’s common stock purchased by, and warrants (if any) on the Borrower’s common stock issued by, the Borrower, in each case, on or after the Second Amendment Effective Date and prior to December 31, 2018, with respect to its Equity Interests, such that (i) in the case of a purchase of a call option, the initial strike price per share is approximately equal to the initial conversion price of the 2018 Convertible Notes, (ii) the purpose of which is to hedge certain of the Borrower’s obligations in respect of the 2018 Convertible Notes and (iii) the net premium payable (based on the aggregate premium paid by the Borrower for such purchased call options less the aggregate premium received by the Borrower for any such warrants) shall not exceed \$75,000,000. As used herein, references to the “2018 Call Spread” include any component thereof.

“**2018 Convertible Notes**” means the unsecured convertible notes issued by the Borrower in November 2018, maturing December 1, 2023 and in an aggregate principal amount as of the Restatement Effective Date of \$850,000,000.

“**2020 Convertible Notes**” means the unsecured convertible notes issued by the Borrower in May 2020, maturing November 15, 2025 and in an aggregate principal amount as of the Restatement Effective Date of \$1,207,500,000.

“**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. All ABR Loans shall be denominated in Dollars.

**“Adjusted AUD Rate”** means, with respect to any Term Benchmark Borrowing denominated in Australian Dollars for any Interest Period, an interest rate *per annum* equal to (a) the AUD Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate.

**“Adjusted BKBM Rate”** means, with respect to any Term Benchmark Borrowing denominated in New Zealand Dollars for any Interest Period, an interest rate *per annum* equal to (a) the BKBM Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate.

**“Adjusted CDOR”** means, with respect to any Eurocurrency Borrowing denominated in Canadian Dollars for any interest period, an interest rate *per annum* equal to (a) the CDOR for such interest period multiplied by (b) the Statutory Reserve Rate.

**“Adjusted EURIBOR Rate”** means, with respect to any Term Benchmark Borrowing denominated in Euros for any Interest Period, an interest rate *per annum* equal to (a) the EURIBOR Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate.

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

**“Adjusted STIBOR Rate”** means, with respect to any Eurocurrency Borrowing denominated in Swedish Kroner for any interest period, an interest rate *per annum* equal to (a) the STIBOR Rate for such interest period multiplied by (b) the Statutory Reserve Rate.

**“Adjusted TIBOR Rate”** means, with respect to any Term Benchmark Borrowing denominated in Yen for any Interest Period, an interest rate *per annum* equal to (a) the TIBOR Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate.

**“Administrative Agent”** means JPMorgan Chase Bank, N.A. (or any of its designated branch offices or 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.

**“Affected Financial Institution”** means (a) any EEA Financial Institution or (b) any UK Financial Institution.

**“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-Related Person”** has the meaning assigned to it in Section 9.03(d).

**“Agreed Currencies”** means Dollars and each Applicable Currency.

**“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, for the purpose of this definition, the Adjusted LIBO Rate for any day shall be based on the LIBO Screen Rate (or if the LIBO Screen Rate is not available for such one month Interest Period, the LIBO Interpolated 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. If the Alternate Base Rate is being used as an alternate rate of interest pursuant to Section 2.14, (for the avoidance of doubt, only until the Benchmark Replacement has been determined pursuant to Section 2.14(b)), then the Alternate Base Rate shall be the greater of clauses (a) and (b) above and shall be determined without

reference to clause (c) above. For the avoidance of doubt, if the Alternate Base Rate as determined pursuant to the foregoing would be less than 1.00%, such rate shall be deemed to be 1.00% for purposes of this Agreement.

“**Ancillary Document**” has the meaning assigned to it in Section 9.06(b).

“**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 Kroner, Japanese Yen, Australian Dollars, New Zealand Dollars and any other currency determined after the Restatement Effective Date by mutual agreement of the Borrower, the Administrative Agent and each of the Lenders; provided that at all times each of the foregoing currencies (other than dollars) is a lawful currency that is readily available, freely transferable and not restricted, able to be converted into dollars and available in the London interbank deposit market.

“**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, Term Benchmark Revolving Loan, RFR 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”, “Term Benchmark/CDOR Spread”, “RFR Spread”, “CBR 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 September 30, 2021, the “Applicable Rate” shall be the applicable rates per annum set forth below in Level I:

<u>Level:</u>	<u>Total Leverage Ratio</u>	<u>ABR Spread</u>	<u>Term Benchmark/CDOR Spread</u>	<u>RFR Spread</u>	<u>Unused Commitment Fee Rate</u>
Level I	Less than 1.00 to 1.00	0.375%	1.375%	1.375% + 0.0326%	0.175%
Level II	Greater than or equal to 1.00 to 1.00 but less than 2.00 to 1.00	0.500%	1.500%	1.500% + 0.0326%	0.200%
Level III	Greater than or equal to 2.00 to 1.00 but less than 3.00 to 1.00	0.750%	1.750%	1.750% + 0.0326%	0.225%
Level IV	Greater than or equal to 3.00 to 1.00	1.000%	2.000%	2.000% + 0.0326%	0.250%

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 IV 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.

**"Applicable Time"** means, with respect to any Borrowings and payments in any Applicable Currency, the local time in the place of settlement for such Applicable Currency as may be determined by the Administrative Agent or the Issuing Bank, as the case may be, to be necessary for timely settlement on the relevant date in accordance with normal banking procedures in the place of payment.

**"Approved Electronic Platform"** has the meaning assigned to it in Section 8.03(a).

**"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 (including electronic records generated by the use of an electronic platform) approved by the Administrative Agent.

**“AUD Interpolated Rate”** means, at any time, with respect to any Term Benchmark Borrowing denominated in Australian Dollars and for any Interest Period, the rate per annum (rounded to the same number of decimal places as the AUD Screen Rate) 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 AUD Screen Rate for the longest period (for which the AUD Screen Rate is available for Australian Dollars) that is shorter than the Impacted AUD Rate Interest Period; and (b) the AUD Screen Rate for the shortest period (for which the AUD Screen Rate is available for Australian Dollars) that exceeds the Impacted AUD Rate Interest Period, in each case, at such time; provided that, if any AUD Interpolated Rate shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

**“AUD Rate”** means, with respect to any Term Benchmark Borrowing denominated in Australian Dollars and for any Interest Period, the AUD Screen Rate at approximately 11:00 a.m., Local Time, two Business Days prior to the commencement of such Interest Period; provided that, if the AUD Screen Rate shall not be available at such time for such Interest Period (an **“Impacted AUD Rate Interest Period”**) with respect to Australian Dollars then the AUD Rate shall be the AUD Interpolated Rate.

**“AUD Screen Rate”** means with respect to any Interest Period, the average bid reference rate administered by ASX Benchmarks Pty Limited (ACN 616 075 417) (or any other Person that takes over the administration of such rate) for Australian dollar bills of exchange with a tenor equal in length to such Interest Period as displayed on page BBSY of the Reuters screen (or, in the event such rate does not appear on such Reuters page, 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 as shall be selected by the Administrative Agent from time to time in its reasonable discretion) at or about 11:00 a.m. (Local Time) on the first day of such Interest Period. If the AUD Screen Rate shall be less than zero, the AUD Screen Rate shall be deemed to be zero for purposes of this Agreement.

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

**“Available Tenor”** means, as of any date of determination and with respect to the then-current Benchmark for any Agreed Currency, as applicable, any tenor for such Benchmark (or component thereof) or payment period for interest calculated with reference to such Benchmark (or component thereof), as applicable, that is or may be used for determining the length of an Interest Period for any term rate or otherwise, for determining any frequency of making payments of interest calculated pursuant to this Agreement as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to [clause \(f\) of Section 2.14](#).

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

**“Bail-In Legislation”** means (a) 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, regulation rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

**“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 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.

“**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.

“**Benchmark**” means, initially, with respect to any (i) RFR Loan in any Agreed Currency, the applicable Relevant Rate for such Agreed Currency or (ii) Term Benchmark Loan, the Relevant Rate for such Agreed Currency; provided that if a Benchmark Transition Event, a Term SOFR Transition Event, an Early Opt-in Election or an Other Benchmark Rate Election, as applicable, and its related Benchmark Replacement Date have occurred with respect to the applicable Relevant Rate or the then-current Benchmark for such Agreed Currency, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to clause (b) or clause (c) of Section 2.14.

“**Benchmark Replacement**” means, for any Available Tenor, the first alternative set forth in the order below that can be determined by the Administrative Agent for the applicable Benchmark Replacement Date; provided that, in the case of any Loan denominated in a Foreign Currency or in the case of an Other Benchmark Rate Election, “Benchmark Replacement” shall mean the alternative set forth in (iii) below:

(i) in the case of any Loan denominated in Dollars, the sum of: (a) Term SOFR and (b) the related Benchmark Replacement Adjustment;

(ii) in the case of any Loan denominated in Dollars, the sum of: (a) Daily Simple SOFR and (b) the related Benchmark Replacement Adjustment;

(iii) the sum of: (a) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for syndicated credit facilities denominated in the applicable Agreed Currency at such time in the United States and (b) the related Benchmark Replacement Adjustment;

provided that, in the case of clause (i), such Unadjusted Benchmark Replacement is displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion; provided further that, in the case of clause (iii), when such clause is

used to determine the Benchmark Replacement in connection with the occurrence of an Other Benchmark Rate Election, the alternate benchmark rate selected by the Administrative Agent and the Borrower shall be the term benchmark rate that is used in lieu of a LIBOR-based rate in the relevant other Dollar-denominated syndicated credit facilities; provided further that, notwithstanding anything to the contrary in this Agreement or in any other Loan Document, upon the occurrence of a Term SOFR Transition Event, and the delivery of a Term SOFR Notice, on the applicable Benchmark Replacement Date the “Benchmark Replacement” shall revert to and shall be deemed to be the sum of (a) Term SOFR and (b) the related Benchmark Replacement Adjustment, as set forth in clause (i) of this definition (subject to the first proviso above).

If the Benchmark Replacement as determined pursuant to clause (i), (ii) or (iii) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

“**Benchmark Replacement Adjustment**” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Interest Period and Available Tenor for any setting of such Unadjusted Benchmark Replacement:

(i) for purposes of clauses (i) and (ii) of the definition of “Benchmark Replacement,” the first alternative set forth in the order below that can be determined by the Administrative Agent:

(a) the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that has been selected or recommended by the Relevant Governmental Body for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for the applicable Corresponding Tenor;

(b) the spread adjustment (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that would apply to the fallback rate for a derivative transaction referencing the ISDA Definitions to be effective upon an index cessation event with respect to such Benchmark for the applicable Corresponding Tenor; and

(ii) for purposes of clause (iii) of the definition of “Benchmark Replacement,” the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body on the applicable Benchmark Replacement Date and/or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for syndicated credit facilities denominated in the applicable Agreed Currency at such time;

provided that, in the case of clause (i) above, such adjustment is displayed on a screen or other information service that publishes such Benchmark Replacement Adjustment from time to time as selected by the Administrative Agent in its reasonable discretion.

“**Benchmark Replacement Conforming Changes**” means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Alternate Base Rate,” the definition of “Business Day,” the definition of “Interest Period,” timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Administrative Agent

decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

“**Benchmark Replacement Date**” means, with respect to any Benchmark, the earliest to occur of the following events with respect to such then-current Benchmark:

(i) in the case of clause (i) or (ii) of the definition of “Benchmark Transition Event,” the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof);

(ii) in the case of clause (iii) of the definition of “Benchmark Transition Event,” the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be no longer representative; provided, that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date;

(iii) in the case of a Term SOFR Transition Event, the date that is thirty (30) days after the date a Term SOFR Notice is provided to the Lenders and the Borrower pursuant to Section 2.14(c); or

(iv) in the case of an Early Opt-in Election or an Other Benchmark Rate Election, the sixth (6th) Business Day after the date notice of such Early Opt-in Election or Other Benchmark Rate Election, as applicable, is provided to the Lenders, so long as the Administrative Agent has not received, by 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Early Opt-in Election or Other Benchmark Rate Election, as applicable, is provided to the Lenders, written notice of objection to such Early Opt-in Election or Other Benchmark Rate Election, as applicable, from Lenders comprising the Required Lenders.

For the avoidance of doubt, (i) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (ii) the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (i) or (ii) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“**Benchmark Transition Event**” means, with respect to any Benchmark, the occurrence of one or more of the following events with respect to such then-current Benchmark:

(i) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(ii) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the NYFRB, the central bank for the Agreed

Currency applicable to such Benchmark, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), in each case, which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(iii) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer, or as of a specified future date will no longer be, representative.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“**Benchmark Unavailability Period**” means, with respect to any Benchmark, the period (if any) (x) beginning at the time that a Benchmark Replacement Date pursuant to clauses (1) or (2) of that definition has occurred if, at such time, no Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.14 and (y) ending at the time that a Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.14.

“**Beneficial Ownership Certification**” means a certification regarding beneficial ownership or control as required by the Beneficial Ownership Regulation.

“**Beneficial Ownership Regulation**” means 31 C.F.R. § 1010.230.

“**Benefit Plan**” means any of (a) an “employee benefit plan” (as defined in Section 3(3) of ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in Section 4975 of the Code to which Section 4975 of the Code applies, and (c) any Person whose assets include (for purposes of the Plan Asset Regulations or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

“**BKBM Interpolated Rate**” means, at any time, with respect to any Term Benchmark Borrowing denominated in New Zealand Dollars and for any Interest Period, the rate per annum (rounded to the same number of decimal places as the BKBM Screen Rate) 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 BKBM Screen Rate for the longest period (for which the BKBM Screen Rate is available for New Zealand Dollars) that is shorter than the Impacted BKBM Rate Interest Period; and (b) the BKBM Screen Rate for the shortest period (for which the BKBM Screen Rate is available for New Zealand Dollars) that exceeds the Impacted BKBM Rate Interest Period, in each case, at such time; provided that, if any BKBM Interpolated Rate shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

“**BKBM Rate**” means, with respect to any Term Benchmark Borrowing denominated in New Zealand Dollars and for any Interest Period, the BKBM Screen Rate at approximately 11:00 a.m., Local Time, two Business Days prior to the commencement of such Interest Period; provided that, if the BKBM Screen Rate shall not be available at such time for such Interest Period (an “Impacted BKBM Rate Interest Period”) with respect to New Zealand Dollars then the BKBM Rate shall be the BKBM Interpolated Rate.

“**BKBM Screen Rate**” means, with respect to any Interest Period, the rate per annum determined by the Administrative Agent which is equal to the average bank bill reference rate as administered by the

New Zealand Financial Markets Association (or any other person that takes over the administration of such rate) for bills of exchange with a tenor equal in length to such Interest Period as displayed on page BKBM of the Reuters screen (or, in the event such rate does not appear on such page, 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, or on the appropriate page of such other information service that publishes such rate as shall be selected by the Administrative Agent from time to time in its reasonable discretion) at or about 11:00 a.m. (Local Time) on the first day of such Interest Period. If the BKBM Screen Rate shall be less than zero, the BKBM Screen Rate shall be deemed to be zero for purposes of this Agreement.

“**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 Term Benchmark 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 (other than a Saturday or a Sunday) on which banks are open for business in New York City; provided that the term “Business Day” means, (a) in relation to Loans denominated in Sterling and in relation to the calculation or computation of LIBOR, any day (other than a Saturday or a Sunday) on which banks are open for business in London, (b) in relation to Loans denominated in Yen and in relation to the calculation or computation of TIBOR, any day (other than a Saturday or a Sunday) on which banks are open for business in Japan, (c) in relation to Loans denominated in Euros and in relation to the calculation or computation of EURIBOR, any day which is a TARGET Day, (d) if such day relates to the making of a Loan denominated in Canadian Dollars, a day on which commercial banks are open for business in Toronto, Ontario, (e) if such day relates to the making of a Loan denominated in Australian Dollars, a day on which commercial banks are open for business in Sydney, Australia, (e) in relation to RFR Loans and any interest rate settings, fundings, disbursements, settlements or payments of any such RFR Loan, or any other dealings in the applicable Applicable Currency of such RFR Loan, any such day that is only an RFR Business Day, (f) if such day relates to an interest rate setting for a Loan denominated in a currency other than Dollars, Canadian Dollars, British Pounds Sterling or Euro, any such day on which dealings in deposits in the relevant currency are conducted by and between banks in the London or other applicable offshore interbank market for such currency and (g) if such day relates to the making of a Loan denominated in a currency other than Dollars, Canadian Dollars, British Pounds Sterling or Euro (but not an interest rate setting), any such day on which banks are open for foreign exchange business in the principal financial center of the country of such currency.

“**Finance Leases Obligations**” of any Person means the amount of the obligations of such Person under finance leases which would be shown as a liability on a balance sheet of such Person prepared in accordance with GAAP.

“**CBR Loan**” means a Loan that bears interest at a rate determined by reference to the Central Bank Rate.

“**CBR Spread**” means, for any CBR Loan, the Applicable Rate applicable to the Loan that was replaced by such CBR Loan.

“**CDOR Interpolated Rate**” means, at any time, with respect to any Term Benchmark Borrowing denominated in Canadian Dollars and for any Interest Period, the rate per annum (rounded to the same

number of decimal places as the CDOR Screen Rate) 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 CDOR Screen Rate for the longest period (for which the CDOR Screen Rate is available for Canadian Dollars) that is shorter than the Impacted CDOR Rate Interest Period; and (b) the CDOR Screen Rate for the shortest period (for which the CDOR Screen Rate is available for Canadian Dollars) that exceeds the Impacted CDOR Rate Interest Period, in each case, at such time; provided that, if any CDOR Interpolated Rate shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

“**CDOR Rate**” means, with respect to any Term Benchmark Borrowing denominated in Canadian Dollars and for any Interest Period, the CDOR Screen Rate at approximately 11:00 a.m., Local Time, two Business Days prior to the commencement of such Interest Period; provided that, if the CDOR Screen Rate shall not be available at such time for such Interest Period (an “Impacted CDOR Rate Interest Period”) with respect to Canadian Dollars then the CDOR Rate shall be the CDOR Interpolated Rate.

“**CDOR Screen Rate**” means on any day for the relevant Interest Period, the annual rate of interest equal to the average rate applicable to Canadian dollar Canadian bankers’ acceptances for the applicable period that appears on the “Reuters Screen CDOR Page” as defined in the International Swap Dealer Association, Inc. definitions, as modified and amended from time to time (or, in the event such rate does not appear on such page or screen, on any successor or substitute page or 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), rounded to the nearest 1/100<sup>th</sup> of 1% (with .005% being rounded up), as of 10:15 a.m. Toronto local time on the first day of such Interest Period and, if such day is not a business day, then on the immediately preceding business day (as adjusted by Administrative Agent after 10:15 a.m. Toronto local time to reflect any error in the posted rate of interest or in the posted average annual rate of interest). If the CDOR Screen Rate shall be less than zero, the CDOR Screen Rate shall be deemed to be zero for purposes of this Agreement.

“**Central Bank Rate**” means, (A) the greater of (i) for any Loan denominated in (a) Sterling, the Bank of England (or any successor thereto)’s “Bank Rate” as published by the Bank of England (or any successor thereto) from time to time, (b) Euro, one of the following three rates as may be selected by the Administrative Agent in its reasonable discretion: (1) the fixed rate for the main refinancing operations of the European Central Bank (or any successor thereto), or, if that rate is not published, the minimum bid rate for the main refinancing operations of the European Central Bank (or any successor thereto), each as published by the European Central Bank (or any successor thereto) from time to time, (2) the rate for the marginal lending facility of the European Central Bank (or any successor thereto), as published by the European Central Bank (or any successor thereto) from time to time or (3) the rate for the deposit facility of the central banking system of the Participating Member States, as published by the European Central Bank (or any successor thereto) from time to time, (c) Yen, the “short-term prime rate” as publicly announced by the Bank of Japan (or any successor thereto) from time to time, and (d) any other Foreign Currency, a central bank rate as determined by the Administrative Agent in its reasonable discretion and (ii) zero; plus (B) the applicable Central Bank Rate Adjustment.

“**Central Bank Rate Adjustment**” means, for any day, for any Loan denominated in (a) Euro, a rate equal to the difference (which may be a positive or negative value or zero) of (i) the average of the EURIBOR Rate for the five most recent Business Days preceding such day for which the EURIBOR Screen Rate was available (excluding, from such averaging, the highest and the lowest EURIBOR Rate applicable during such period of five Business Days) minus (ii) the Central Bank Rate in respect of Euro in effect on the last Business Day in such period, (b) Sterling, a rate equal to the difference (which may be a positive or negative value or zero) of (i) the average of SONIA for the five most recent RFR Business Days preceding such day for which SONIA was available (excluding, from such averaging, the highest and the lowest SONIA applicable during such period of five RFR Business Days) minus (ii) the Central Bank Rate in respect of Sterling in effect on the last RFR Business Day in such period, (c) Yen, a rate equal to the difference (which may be a positive or negative value or zero) of (i) the average of the TIBOR Rate for the five most recent Business Days preceding such day for which the TIBOR Screen Rate was available (excluding, from such averaging, the highest and the lowest TIBOR Rate applicable during such period of five Business Days) minus (ii) the Central Bank Rate in respect of Yen in effect on the last Business Day in such period and (d) any other Applicable Currency, a Central Bank Rate

Adjustment as determined by the Administrative Agent in its reasonable discretion. For purposes of this definition, (x) the term Central Bank Rate shall be determined disregarding clause (B) of the definition of such term and (y) each of the EURIBOR Rate and the TIBOR Rate on any day shall be based on the EURIBOR Screen Rate or the TIBOR Screen Rate, as applicable, on such day at approximately the time referred to in the definition of such term for deposits in the applicable Applicable Currency for a maturity of one month (or, in the event the EURIBOR Screen Rate or the TIBOR Screen Rate, as applicable, for deposits in the applicable Applicable Currency is not available for such maturity of one month, shall be based on the EURIBOR Interpolated Rate or the TIBOR Interpolated Rate, as applicable, as of such time); provided that if such rate shall be less than zero, such rate shall be deemed to be zero.

“**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 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.

“**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 administration, interpretation, implementation 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, requirement 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, requirements or directives thereunder or issued in connection therewith or in the implementation thereof and (y) all requests, rules, guidelines, requirements 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 or implemented.

“**Charges**” has the meaning assigned to it in Section 9.14.

“**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 be 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 8.03(c).

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

**"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.

**"Corresponding Tenor"** with respect to any Available Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

**"Convertible Notes"** means the 2018 Convertible Notes, the 2020 Convertible Notes and any other unsecured convertible notes issued by the Borrower from time to time to the extent such issuance is permitted under Section 6.01.

**"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.

**"Covered Entity"** means any of the following:

- (i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);
- (ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or
- (iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

**"Covered Party"** has the meaning assigned to it in Section 9.19.

**"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.

**"Daily Simple RFR"** means, for any day (an "RFR Interest Day"), an interest rate per annum equal to the greater of (a) for any RFR Loan denominated in Sterling, SONIA for the day that is five (5) Business Days prior to (A) if such RFR Interest Day is a Business Day, such RFR Interest Day or (B) if such RFR Interest Day is not a Business Day, the Business Day immediately preceding such RFR Interest

Day and (b) zero. Any change in Daily Simple RFR due to a change in the applicable RFR shall be effective from and including the effective date of such change in the RFR without notice to the Borrower.

**“Daily Simple SOFR”** means, for any day, SOFR, with the conventions for this rate (which may include a lookback) being established by the Administrative Agent in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining “Daily Simple SOFR” for business loans; provided, that if the Administrative Agent decides that any such convention is not administratively feasible for the Administrative Agent, then the Administrative Agent may establish another convention in its reasonable discretion.

**“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.

**“Default Right”** has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

**“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 as of the date of certification) 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 (i) a Bankruptcy Event or (ii) a Bail-In Action.

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

**“Dividing Person”** has the meaning assigned to it in the definition of **“Division”**.

**“Division”** means the division of the assets, liabilities and/or obligations of a Person (the **“Dividing Person”**) among two or more Persons (whether pursuant to a “plan of division” or similar arrangement), which may or may not include the Dividing Person and pursuant to which the Dividing Person may or may not survive.

**“Division Successor”** means any Person that, upon the consummation of a Division of a Dividing Person, holds all or any portion of the assets, liabilities and/or obligations previously held by such Dividing Person immediately prior to the consummation of such Division. A Dividing Person which retains any of its assets, liabilities and/or obligations after a Division shall be deemed a Division Successor upon the occurrence of such Division.

**“Dollar Equivalent”** means, for any amount, at the time of determination thereof, (a) if such amount is expressed in dollars, such amount, (b) if such amount is expressed in a Foreign Currency, the equivalent of such amount in dollars determined by using the rate of exchange for the purchase of dollars with the Foreign Currency last provided (either by publication or otherwise provided to the Administrative Agent) by the applicable Thompson Reuters Corp. (**“Reuters”**) source on the Business Day (New York City time) immediately preceding the date of determination or if such service ceases to

be available or ceases to provide a rate of exchange for the purchase of dollars with the Foreign Currency, as provided by such other publicly available information service which provides that rate of exchange at such time in place of Reuters chosen by the Administrative Agent in its sole discretion (or if such service ceases to be available or ceases to provide such rate of exchange, the equivalent of such amount in dollars as determined by the Administrative Agent using any method of determination it deems appropriate in its sole discretion) and (c) if such amount is denominated in any other currency, the equivalent of such amount in dollars as determined by the Administrative Agent using any method of determination it deems appropriate in its sole discretion.

“**Dollars**”, “**dollars**” or “**\$**” refers to lawful money of the United States of America.

“**Early Opt-in Election**” means, if the then current Benchmark with respect to Dollars is LIBO Rate, the occurrence of:

(i) a notification by the Administrative Agent to (or the request by the Borrower to the Administrative Agent to notify) each of the other parties hereto that at least five currently outstanding Dollar denominated syndicated credit facilities at such time contain (as a result of amendment or as originally executed) a SOFR-based rate (including SOFR, a term SOFR or any other rate based upon SOFR) as a benchmark rate (and such syndicated credit facilities are identified in such notice and are publicly available for review), and

(ii) the joint election by the Administrative Agent and the Borrower to trigger a fallback from LIBO Rate and the provision, as applicable, by the Administrative Agent of written notice of such election to the Borrower and the Lenders.

“**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), (vi) costs arising from or related to mergers, acquisitions, divestitures, or similar transactions permitted hereunder (including transition, retention and integration), in each case regardless of whether such transactions have been consummated, (vii) expenses with respect to earn-outs payable as a purchase price (or a portion thereof) in acquisitions, (viii) extraordinary, unusual and/or non-recurring charges, costs, credits or items or loss, determined on a consolidated basis in accordance with GAAP, (ix) any expenses or charges related to any equity financing or offering, investment, indebtedness or restricted payment permitted hereunder, or any modification to any instrument of indebtedness permitted hereunder, in each case regardless of whether such transaction has been consummated and including the Transaction Costs, (x) all expenses or charges (including deferred financing costs written off and premiums paid) in connection with any early extinguishment of debt, including hedging obligations or other derivative instruments, (xi) restructuring costs, reorganization costs, integration costs and other related one-time charges, provided that, for any trailing twelve month period, the aggregate amount added pursuant to this clause (xi) and clause (xii) shall not exceed 15% of EBITDA for the applicable Reference Period (calculated before giving effect to such addbacks), (xii) pro forma cost savings and synergies that are reasonably identifiable and factually supportable and realizable within 12 months of the closing of the applicable acquisition to which such add backs relate, provided that, for any trailing twelve month period, the aggregate amount added pursuant to this clause (xii) and clause (xi) shall not exceed 15% of EBITDA for the applicable Reference Period (calculated before giving effect to such addbacks), and (xiii) cash expenses or charges to the extent fully indemnified by a third party or covered by insurance, but only to the extent (1) the applicable indemnification obligation or insurance policy remains in full force and effect, and (2) the counterparty to such indemnification obligation or applicable insurance provider has not refused or challenged a claim in writing for such indemnification or insurance payment, without duplication of any gains from such indemnification payment or insurance proceeds received in any subsequent 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 credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“**EEA Member Country**” 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.

“**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, web portal access for the Borrower 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 Parties 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) any violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) any 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, and the rules and regulations promulgated thereunder.

“**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 Section 4001(14) of ERISA 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 failure to satisfy the “minimum funding standard” (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(c) of the Code or Section 302(c) 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 of the Borrower or any ERISA Affiliate 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 upon the Borrower or any ERISA Affiliate of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent, in critical status 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.

**“EURIBOR Interpolated Rate”** means, at any time, with respect to any Term Benchmark Borrowing denominated in Euros and for any Interest Period, the rate per annum (rounded to the same number of decimal places as the EURIBOR Screen Rate) 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 EURIBOR Screen Rate for the longest period (for which the EURIBOR Screen Rate is available for Euros) that is shorter than the Impacted EURIBOR Rate Interest Period; and (b) the EURIBOR Screen Rate for the shortest period (for which the EURIBOR Screen Rate is available for Euros) that exceeds the Impacted EURIBOR Rate Interest Period, in each case, at such time; provided that, if any EURIBOR Interpolated Rate shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

**“EURIBOR Rate”** means, with respect to any Term Benchmark Borrowing denominated in Euros and for any Interest Period, the EURIBOR Screen Rate at approximately 11:00 a.m., Local Time, two TARGET Days prior to the commencement of such Interest Period; provided that, if the EURIBOR Screen Rate shall not be available at such time for such Interest Period (an “Impacted EURIBOR Rate Interest Period”) with respect to Euros then the EURIBOR Rate shall be the EURIBOR Interpolated Rate.

**“EURIBOR Screen Rate”** means the euro interbank offered rate administered by the European Money Markets Institute (or any other person which takes over the administration of that rate) for the relevant period displayed (before any correction, recalculation or republication by the administrator) on page EURIBOR01 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters as of 11:00 a.m. Local Time two TARGET Days prior to the commencement of such Interest Period. If such page or service ceases to be available, the Administrative Agent may specify another page or service displaying the relevant rate after consultation with the Borrower. If the EURIBOR Screen Rate shall be less than zero, the EURIBOR Screen Rate shall be deemed to be zero for purposes of this Agreement.

**“Euro”** and “€” means the single currency of the Participating Member States.

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

**“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”**), (iii) any Subsidiary of a CFC and (iv) any Immaterial Subsidiary.

**“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.

**"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 and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

**"FCA"** has the meaning assigned to such term in Section 1.06.

**"Federal Funds Effective Rate"** means, for any day, the rate calculated by the NYFRB based on such day's federal funds transactions by depository institutions, as determined in such manner as shall be set forth on the NYFRB's Website from time to time, and published on the next succeeding Business Day by the NYFRB as the effective federal funds rate; *provided* that if the Federal Funds Effective Rate as so determined would be less than zero percent, such rate shall be deemed to be zero percent for the purposes of this Agreement.

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

**"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).

**"First Amendment Effective Date"** means May 11, 2020.

**"Flood Laws"** has the meaning assigned to such term in Section 8.10.

**"Floor"** means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to the LIBO Rate, EURIBOR Rate, TIBOR Rate, STIBOR Rate, CDOR, AUD Rate, BKBM Rate or each Daily Simple RFR, as applicable.

**“Foreign Currency”** means each Applicable Currency, other than dollars.

**“Foreign Currency LC Exposure”** means, at any time, the sum of (a) the Dollar Equivalent of the aggregate undrawn and unexpired amount of all outstanding Foreign Currency Letters of Credit at such time plus (b) the aggregate principal Dollar Equivalent 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 \$50,000,000.

**“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: (a) any substance, material, or waste that is included within the definitions of “hazardous substances,” “hazardous materials,” “hazardous waste,” “toxic substances,” “toxic materials,” “toxic waste,” or words of similar import in any Environmental Law, (b) those substances listed as hazardous substances by the United States Department of Transportation (or any successor agency) (49 C.F.R. Part 302 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) (40 C.F.R. Part 302 and amendments thereto); and (c) any substance, material, or waste that is petroleum, petroleum related, or a petroleum by-product, asbestos or asbestos-containing material, polychlorinated biphenyls, flammable, explosive, radioactive, freon gas, radon, or a pesticide, herbicide, or any other agricultural chemical.

**“Immaterial Subsidiary”** means, at any date, unless otherwise designated by Borrower in a written notice to the Administrative Agent, any Subsidiary that, together with such Subsidiary’s consolidated Subsidiaries, does not, as of the end of the most recently ended Reference Period are

available to the Administrative Agent pursuant to Section 5.1, have assets with a book value (or, if determined in good faith by Borrower to be greater, fair market value) in excess of 5.0% of Total Assets; *provided* that the aggregate assets or revenues of all Immaterial Subsidiaries, determined in accordance with GAAP, as of the end of or for any Reference Period may not exceed 10.0% of Total Assets, respectively, of Borrower and its Subsidiaries on a consolidated basis (and Borrower will designate in writing to the Administrative Agent from time to time as necessary the Subsidiaries that will cease to be “Immaterial Subsidiaries” in order to comply with the foregoing limitation).

**“Impacted AUD Rate Interest Period”** has the meaning assigned to such term in the definition of “AUD Rate.”

**“Impacted BKBM Rate Interest Period”** has the meaning assigned to such term in the definition of “BKBM Rate.”

**“Impacted CDOR Rate Interest Period”** has the meaning assigned to such term in the definition of “CDOR Rate.”

**“Impacted EURIBOR Rate Interest Period”** has the meaning assigned to such term in the definition of “EURIBOR Rate.”

**“Impacted LIBO Rate Interest Period”** has the meaning assigned to such term in the definition of “LIBO Rate.”

**“Impacted STIBOR Rate Interest Period”** has the meaning assigned to such term in the definition of “STIBOR Rate.”

**“Impacted TIBOR Rate Interest Period”** has the meaning assigned to such term in the definition of “TIBOR 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 Finance Lease Obligations of such Person, (i) any earn-out obligation to the extent such obligation is a liability on the balance sheet of such Person in accordance with GAAP, (j) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty and (k) 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.

**“Indemnitee”** has the meaning assigned to it in Section 9.03(c).

**“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 Coverage Ratio”** means, for any period, the ratio of (a) EBITDA to (b) cash Interest Expense in the four consecutive fiscal quarters ended on the last day of such period, all calculated for the Borrower and its Subsidiaries on a consolidated basis in accordance with GAAP.

**“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 Finance Leases 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, (b) with respect to any RFR Loan, (1) each date that is on the numerically corresponding day in each calendar month that is one month after the Borrowing of such Loan (or, if there is no such numerically corresponding day in such month, then the last day of such month) and (c) with respect to any Term Benchmark 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 Term Benchmark 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 Term Benchmark Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, three or six months thereafter (in each case, subject to the availability for the Benchmark applicable to the relevant Loan or Commitment for any Applicable Currency), 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 Term Benchmark 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, (ii) any Interest Period pertaining to a Term Benchmark 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 and (iii) no tenor that has been removed from this definition pursuant to Section 2.14(f) shall be available for specification in such Borrowing Request or Interest Election Request. 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.

**“IRS”** means the United States Internal Revenue Service.

**“ISDA Definitions”** means the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time by the International Swaps and Derivatives Association, Inc. or such successor thereto.

**“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 Equivalent of all outstanding Letters of Credit at such time plus (b) the aggregate Dollar Equivalent 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.

“**Lender-Related Person**” has the meaning assigned to it in Section 9.03(b).

“**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.

“**Liabilities**” means any losses, claims (including intraparty claims), demands, damages or liabilities of any kind.

“**LIBO Interpolated Rate**” means, at any time, with respect to any Term Benchmark Borrowing denominated in Dollars and for any Interest Period, the rate per annum (rounded to the same number of decimal places as the LIBO Screen Rate) 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 for the longest period (for which the LIBO Screen Rate is available for the applicable Applicable Currency) that is shorter than the Impacted LIBO Rate Interest Period; and (b) the LIBO Screen Rate for the shortest period (for which the LIBO Screen Rate is available for the applicable Applicable Currency) that exceeds the Impacted LIBO Rate Interest Period, in each case, at such time; provided that if any LIBO Interpolated Rate shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

“**LIBO Rate**” means, with respect to any Term Benchmark Borrowing denominated in Dollars and for any Interest Period, 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 not be available at such time for such Interest Period (an “Impacted LIBO Rate Interest Period”) with respect to such Applicable Currency then the LIBO Rate shall be the LIBO Interpolated Rate.

“**LIBO Screen Rate**” means, for any day and time, with respect to any Term Benchmark Borrowing denominated in Dollars 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 such Applicable Currency for a period equal in length to such Interest Period as displayed

on such day and time on pages LIBOR01 or LIBOR02 of the Reuters screen that displays such rate (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); provided that if the LIBO Screen Rate as so determined would be less than zero, such rate shall be deemed to zero for the purposes of this Agreement.

“**LIBOR**” has the meaning assigned to such term in Section 1.06.

“**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.

“**Liquidity**” means, with respect to the Borrower at any date, the sum of unrestricted domestic cash, cash equivalents and other short-term domestic investments of the Borrower and its Subsidiaries on such date, determined in accordance with GAAP.

“**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, and each other written matter whether heretofore, now or hereafter executed by or on behalf of any Loan Party, or any employee of any Loan Party, and delivered to the Administrative Agent or any Lender in connection with this Agreement or the transactions contemplated hereby. Any reference in this Agreement or any other Loan Document to a Loan Document shall include all appendices, exhibits or schedules thereto, and all amendments, restatements, supplements or other modifications thereto, and shall refer to this Agreement or such Loan Document as the same may be in effect at any and all times such reference becomes operative.

“**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 Original Effective Date, 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, (ii) Sydney, Australia time in the case of a Loan, Borrowing or LC Disbursement denominated in Australian Dollars, (iii) Toronto, Ontario time in the case of a Loan, Borrowing or LC Disbursement denominated in Canadian Dollars, (iv) Wellington, New Zealand time in the case of a Loan, Borrowing or LC Disbursement denominated in New Zealand Dollars, (v) Brussels time in the case of a Loan, Borrowing or LC Disbursement denominated in Euros, (vi) Tokyo time in the case of a Loan, Borrowing or LC Disbursement denominated in Yen and (vii) 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 \$25,000,000. 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 October 13, 2026.

“**Maximum Rate**” has the meaning assigned to it in Section 9.14.

“**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 1.06 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.

“**Non-Consenting Lender**” has the meaning assigned to such term in Section 9.02(d).

“**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 by the Administrative Agent from a federal funds broker of recognized standing selected by it; provided, further, that if any of the aforesaid rates as so determined shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“**NYFRB’s Website**” means the website of the NYFRB at <http://www.newyorkfed.org>, or any successor source.

“**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 Restatement 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.

**“Original Effective Date”** means June 17, 2016.

**“Other Benchmark Rate Election”** means, with respect to any Loan denominated in Dollars, if the then-current Benchmark is the LIBO Rate, the occurrence of:

(i) a request by the Borrower to the Administrative Agent to notify each of the other parties hereto that, at the determination of the Borrower, Dollar-denominated syndicated credit facilities at such time contain (as a result of amendment or as originally executed), in lieu of a LIBOR-based rate, a term benchmark rate as a benchmark rate, and

(ii) the Administrative Agent, in its sole discretion, and the Borrower jointly elect to trigger a fallback from the LIBO Rate and the provision, as applicable, by the Administrative Agent of written notice of such election to the Borrower and the Lenders.

**“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 Term Benchmark borrowings denominated in Dollars by U.S.-managed banking offices of depository institutions (as such composite rate shall be determined by the NYFRB as set forth on the NYFRB’s 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 Rate”** means, for any day, (a) with respect to any amount denominated in Dollars, the NYFRB Rate and (b) with respect to any amount denominated in an Applicable Currency, an overnight rate determined by the Administrative Agent or the Issuing Bank, as the case may be, in accordance with banking industry rules on interbank compensation.

**“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\(c\)](#).

**“Participating Member State”** means any member state of the European Union that has the Euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union.

“**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.

“**Payment**” has the meaning assigned to it in Section 8.06(c).

“**Payment Notice**” has the meaning assigned to it in Section 8.06(c).

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

“**Permitted Bond Hedge Transaction**” means any call or capped call option (or substantively equivalent or similar derivative transaction) on the Borrower’s common stock purchased by the Borrower in connection with the issuance of any Convertible Notes; provided that the purchase price for such Permitted Bond Hedge Transaction does not exceed the net proceeds received by the Borrower from the sale of such Convertible Notes issued in connection with the Permitted Bond Hedge Transaction.

“**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, or cash collateral securing letters of credit or bank guarantees securing the performance of such obligations or securing obligations to vendors, and deposits to secure the performance of appeal bonds (or letters of credit securing such performance) in respect of judgments that do not constitute an Event of Default under clause (k) of Article VII;

(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 A2 or Moody's rating of P1 or P2;

(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 Restatement Effective Date;

(g) local currencies held by any foreign Subsidiary;

(h) investments that are permitted by the Borrower's investment policy as in effect on the date hereof; and

(i) investments of the type described in clauses (a) through (d) and (h) 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.

**"Plan Asset Regulations"** means 29 CFR § 2510.3-101 et seq., as modified by Section 3(42) of ERISA, as amended from time to time.

**“Prime Rate”** means the rate of interest last quoted by The Wall Street Journal as the “Prime Rate” in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent) or any similar release by the Federal Reserve Board (as determined by the Administrative Agent). Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective.

**“Projections”** has the meaning assigned to such term in [Section 5.01\(d\)](#).

**“PTE”** means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

**“QFC”** has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

**“QFC Credit Support”** has the meaning assigned to it in [Section 9.19](#).

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

**“Reference Period”** means any period of four consecutive fiscal quarters of the Borrower for which financial statements have been or are required to have been delivered.

**“Reference Time”** with respect to any setting of the then-current Benchmark means (1) if such Benchmark is LIBO Rate, 11:00 a.m. (London time) on the day that is two London banking days preceding the date of such setting, (2) if such Benchmark is EURIBOR Rate, 11:00 a.m. Local Time two TARGET Days preceding the date of such setting, (3) if such Benchmark is TIBOR Rate, 11:00 a.m. Local Time two Business Days preceding the date of such setting, (4) if the RFR for such Benchmark is SONIA, then four (4) Business Days prior to such setting or (5) if such Benchmark is none of the LIBO Rate, the EURIBOR Rate, TIBOR Rate or SONIA, the time determined by the Administrative Agent in its reasonable discretion.

**“Register”** has the meaning assigned to such term in [Section 9.04\(b\)](#).

**“Regulation D”** means Regulation D of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

**“Regulation T”** means Regulation T of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

**“Regulation U”** means Regulation U of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

**“Regulation X”** means Regulation X of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

**“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.

**“Release”** means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, migrating, disposing, or dumping of any substance into the environment.

**“Relevant Governmental Body”** means (i) with respect to a Benchmark Replacement in respect of Loans denominated in Dollars, the Federal Reserve Board and/or the NYFRB, or a committee officially endorsed or convened by the Federal Reserve Board and/or the NYFRB or, in each case, any

successor thereto, (ii) with respect to a Benchmark Replacement in respect of Loans denominated in Sterling, the Bank of England, or a committee officially endorsed or convened by the Bank of England or, in each case, any successor thereto, (iii) with respect to a Benchmark Replacement in respect of Loans denominated in Euros, the European Central Bank, or a committee officially endorsed or convened by the European Central Bank or, in each case, any successor thereto, (iv) with respect to a Benchmark Replacement in respect of Loans denominated in Yen, the Bank of Japan, or a committee officially endorsed or convened by the Bank of Japan or, in each case, any successor thereto, and (v) with respect to a Benchmark Replacement in respect of Loan denominated in any other currency, (a) the central bank for the currency in which such Benchmark Replacement is denominated or any central bank or other supervisor which is responsible for supervising either (1) such Benchmark Replacement or (2) the administrator of such Benchmark Replacement or (b) any working group or committee officially endorsed or convened by (1) the central bank for the currency in which such Benchmark Replacement is denominated, (2) any central bank or other supervisor that is responsible for supervising either (A) such Benchmark Replacement or (B) the administrator of such Benchmark Replacement, (3) a group of those central banks or other supervisors or (4) the Financial Stability Board or any part thereof.

**“Relevant Rate”** means (i) with respect to any Term Benchmark Borrowing denominated in Dollars, the LIBO Rate, (ii) with respect to any Term Benchmark Borrowing denominated in Euros, the EURIBOR Rate, (iii) with respect to any Term Benchmark Borrowing denominated in Yen, the TIBOR Rate, as applicable or (iv) with respect to any Term Benchmark Borrowing denominated in Canadian Dollars, the CDOR, (v) with respect to any Term Benchmark Borrowing denominated in Swedish Kroner, the STIBOR Rate, (vi) with respect to any Term Benchmark Borrowing denominated in British Pounds Sterling, the applicable Daily Simple RFR, as applicable, (vii) with respect to any Term Benchmark Borrowing denominated in Australian Dollar, the applicable AUD Rate and (viii) with respect to any Term Benchmark Borrowing denominated in New Zealand Dollar, the BKBM Screen Rate.

**“Relevant Screen Rate”** means (i) with respect to any Term Benchmark Borrowing denominated in Dollars, the LIBO Screen Rate, (ii) with respect to any Term Benchmark Borrowing denominated in Euros, the EURIBOR Screen Rate, (iii) with respect to any Term Benchmark Borrowing denominated in Yen, the TIBOR Screen Rate, as applicable, as applicable, (iv) with respect to any Term Benchmark Borrowing denominated in Canadian Dollars, the CDOR Screen Rate, (v) with respect to any Term Benchmark Borrowing denominated in Swedish Kroner, the STIBOR Screen Rate, (vi) with respect to any Term Benchmark Borrowing denominated in British Pounds Sterling, the applicable Daily Simple RFR, as applicable, (vii) with respect to any Term Benchmark Borrowing denominated in Australian Dollar, the applicable AUD Screen Rate and (viii) with respect to any Term Benchmark Borrowing denominated in New Zealand Dollar, the BKBM Screen Rate.

**“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.

**“Requirement of Law”** means, with respect to any Person, (a) the charter, articles or certificate of organization or incorporation and bylaws or operating, management or partnership agreement, or other organizational or governing documents of such Person and (b) any statute, law (including common law), treaty, rule, regulation, code, ordinance, order, decree, writ, judgment, injunction or determination of any arbitrator or court or other Governmental Authority (including Environmental Laws), in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

**“Resolution Authority”** means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

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

**“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, but excluding any payment of principal of any of the Convertible Notes, any payment on account of the purchase, redemption, retirement, repayment, acquisition, cancellation or termination of Convertible Notes, and any settlement of the Convertible Notes on the conversion thereof, whether in cash, securities, other property or a combination thereof.

**“Revaluation Date”** shall mean (a) with respect to any Loan denominated in any Applicable Currency, each of the following: (i) the date of the Borrowing of such Loan and (ii) with respect to any Term Benchmark Loan, each date of a conversion into or continuation of such Loan pursuant to the terms of this Agreement; (b) with respect to any Letter of Credit denominated in an Applicable Currency, each of the following: (i) the date on which such Letter of Credit is issued, (ii) the first Business Day of each calendar month and (iii) the date of any amendment of such Letter of Credit that has the effect of increasing the face amount thereof; and (c) any additional date as the Administrative Agent may determine at any time when an Event of Default exists.

**“Revolving Borrowing”** means Revolving Loans of the same Type and Applicable Currency, made, converted or continued on the same date and, in the case of Term Benchmark Loans, as to which a single Interest Period is in effect.

**“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.

**“RFR”** means, for any RFR Loan denominated in Sterling, SONIA.

**“RFR Administrator”** means the SONIA Administrator.

**“RFR Borrowing”** means, as to any Borrowing, the RFR Loans comprising such Borrowing.

**“RFR Business Day”** means, for any Loan denominated in (a) Sterling, any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which banks are closed for general business in London.

**“RFR Interest Day”** has the meaning specified in the definition of “Daily Simple RFR”.

**“RFR Loan”** means a Loan that bears interest at a rate based on Daily Simple RFR.

**“S&P”** means Standard & Poor’s Rating Services, a Standard & Poor’s Financial Services LLC business.

**“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, Crimea, Cuba, Iran, North Korea, and Syria).

**“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, (c) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a) or (b), or (d) any Person otherwise the subject of any Sanctions.

**“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 States of America.

“**Second Amendment Effective Date**” means November 26, 2018.

“**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 Original Effective Date 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.

“**Senior Secured Leverage Covenant Holiday**” has the meaning assigned to such term in Section 6.13(b).

“**Senior Secured Leverage Ratio**” means, on any date, the ratio of (a) Total Indebtedness which is secured by a Lien of the Borrower and its Subsidiaries on such date minus Liquidity in excess of \$50,000,000 to (b) EBITDA for the period of four consecutive fiscal quarters ended on or most recently prior to such date.

“**SOFR**” means, with respect to any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day published by the SOFR Administrator on the SOFR Administrator's Website on the immediately succeeding Business Day.

“**SOFR Administrator**” means the NYFRB (or a successor administrator of the secured overnight financing rate).

“**SOFR Administrator's Website**” means the NYFRB's website, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

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

“**SONIA**” means, with respect to any Business Day, a rate per annum equal to the Sterling Overnight Index Average for such Business Day published by the SONIA Administrator on the SONIA Administrator’s Website on the immediately succeeding Business Day.

“**SONIA Administrator**” means the Bank of England (or any successor administrator of the Sterling Overnight Index Average).

“**SONIA Administrator’s Website**” means the Bank of England’s website, currently at <http://www.bankofengland.co.uk>, or any successor source for the Sterling Overnight Index Average identified as such by the SONIA Administrator 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 Federal Reserve Board to which the Administrative Agent is subject with respect to the Adjusted LIBO Rate, Adjusted EURIBOR Rate, Adjusted TIBOR Rate, Adjusted CDOR, Adjusted STIBOR Rate, Adjusted AUD Rate or Adjusted BKBM Rate, as applicable, for eurocurrency funding (currently referred to as “Eurocurrency liabilities” in Regulation D) or any other reserve ratio or analogous requirement of any central banking or financial regulatory authority imposed in respect of the maintenance of the Commitments or the funding of the Loans. Such reserve percentage shall include those imposed pursuant to Regulation D. Term Benchmark 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 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.

“**Sterling**” or “**£**” means the lawful currency of the United Kingdom.

“**STIBOR Interpolated Rate**” means, at any time, with respect to any Term Benchmark Borrowing denominated in Swedish Kroner and for any Interest Period, the rate per annum (rounded to the same number of decimal places as the STIBOR Screen Rate) 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 STIBOR Screen Rate for the longest period (for which the STIBOR Screen Rate is available for Swedish Kroner) that is shorter than the Impacted STIBOR Rate Interest Period; and (b) the STIBOR Screen Rate for the shortest period (for which the STIBOR Screen Rate is available for Swedish Kroner) that exceeds the Impacted STIBOR Rate Interest Period, in each case, at such time; provided that, if any STIBOR Interpolated Rate shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

“**STIBOR Rate**” means, with respect to any Term Benchmark Borrowing denominated in Swedish Kroner and for any Interest Period, the STIBOR Screen Rate at approximately 11:00 a.m., Local Time, two Business Days prior to the commencement of such Interest Period; provided that, if the STIBOR Screen Rate shall not be available at such time for such Interest Period (an “Impacted STIBOR Rate Interest Period”) with respect to Swedish Kroner then the STIBOR Rate shall be the STIBOR Interpolated Rate.

“**STIBOR Screen Rate**” means, with respect to any Interest Period, the Stockholm interbank offered rate administered by the Swedish Bankers’ Association ( or any other person that takes over the administration of that rate) for deposits in Swedish Kroner with a term equivalent to such Interest Period as displayed on the Reuters screen page that displays such rate (or, in the event such rate does not appear on such Reuters page, 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 as shall be selected by the Administrative Agent from time to time in its reasonable discretion) as of 11:00 a.m. London time two business days prior to the commencement of such Interest Period. If the STIBOR Screen Rate shall be less than zero, the STIBOR Screen Rate shall be deemed to be zero for purposes of this Agreement.

“**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.

“**Supported QFC**” has the meaning assigned to it in [Section 9.19](#).

“**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.

“**Swap Obligation**” means, with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act or any rules or regulations promulgated thereunder.

“**Swedish Kroner**” means the lawful currency of Sweden.

“**Syndication Agent**” means, collectively, Bank of America, N.A. and Silicon Valley Bank.

“**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.

“**Term Benchmark**” 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, the Adjusted EURIBOR Rate, the Adjusted STIBOR Rate, the Adjusted CDOR, Adjusted AUD Rate, the Adjusted BKBM Rate or the Adjusted TIBOR Rate.

“**Term SOFR**” means, for the applicable Corresponding Tenor as of the applicable Reference Time, the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

“**Term SOFR Notice**” means a notification by the Administrative Agent to the Lenders and the Borrower of the occurrence of a Term SOFR Transition Event.

**“Term SOFR Transition Event”** means the determination by the Administrative Agent that (a) Term SOFR has been recommended for use by the Relevant Governmental Body, (b) the administration of Term SOFR is administratively feasible for the Administrative Agent and (c) a Benchmark Transition Event or an Early Opt-in Election, as applicable (and, for the avoidance of doubt, not in the case of an Other Benchmark Rate Election), has previously occurred resulting in a Benchmark Replacement in accordance with Section 2.14 that is not Term SOFR.

**“TIBOR Interpolated Rate”** means, at any time, with respect to any Term Benchmark Borrowing denominated in Yen and for any Interest Period, the rate per annum (rounded to the same number of decimal places as the TIBOR Screen Rate) 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 TIBOR Screen Rate for the longest period (for which the TIBOR Screen Rate is available for Yen) that is shorter than the Impacted TIBOR Rate Interest Period; and (b) the TIBOR Screen Rate for the shortest period (for which the TIBOR Screen Rate is available for Yen) that exceeds the Impacted TIBOR Rate Interest Period, in each case, at such time; provided that, if any TIBOR Interpolated Rate shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

**“TIBOR Rate”** means, with respect to any Term Benchmark Borrowing denominated in Yen and for any Interest Period, the TIBOR Screen Rate at approximately 11:00 a.m., Japan time, two Business Days prior to the commencement of such Interest Period; provided that, if the TIBOR Screen Rate shall not be available at such time for such Interest Period (an **“Impacted TIBOR Rate Interest Period”**) with respect to Yen then the TIBOR Rate shall be the TIBOR Interpolated Rate.

**“TIBOR Screen Rate”** means the Tokyo interbank offered rate administered by the Ippan Shadan Hojin JBA TIBOR Administration (or any other person which takes over the administration of that rate) for the relevant currency and period displayed on page DTIBOR01 of the Reuters screen (or, in the event such rate does not appear on such 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 as selected by the Administrative Agent from time to time in its reasonable discretion) as of 11:00 a.m. Japan time two Business Days prior to the commencement of such Interest Period. If the TIBOR Screen Rate shall be less than zero the TIBOR Screen Rate shall be deemed to be zero, for purposes of this Agreement.

**“Total Assets”** means, at any date, the amount that would, in conformity with GAAP, be set forth opposite the caption “total assets” (or any like caption) on a consolidated balance sheet of the Borrower and its Subsidiaries on such date.

**“Total Indebtedness”** means, at any date, the aggregate principal amount of all Indebtedness of the type specified in clauses (a) through (j) 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, other than earn-out obligations which are not yet due and payable or are being contested in good faith and adequate reserves are maintained with respect thereto to the extent required by GAAP, on such date minus Liquidity in excess of \$50,000,000 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.

**“Transaction Costs”** means all fees, costs and expenses incurred or paid by the Borrower or any Subsidiary in connection with the Transactions, this Agreement and the other Loan Documents and the transactions contemplated hereby and thereby.

**“Transactions”** means the execution, delivery and performance by the Borrower of this Agreement and the other Loan Documents, the borrowing of Loans and other credit extensions, 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, the Adjusted CDOR, the Adjusted EURIBOR Rate, the Adjusted TIBOR Rate, the Adjusted AUD Rate, the Adjusted BKBM Rate, the Adjusted STIBOR Rate, the Alternate Base Rate or the Daily Simple RFR.

**“UK Financial Institutions”** means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

**“UK Resolution Authority”** means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

**“Unadjusted Benchmark Replacement”** means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

**“U.S. Dollar Equivalent”** means, for any amount, at the time of determination thereof, (a) if such amount is expressed in dollars, such amount, (b) if such amount is expressed in a Foreign Currency, the equivalent of such amount in dollars determined by using the rate of exchange for the purchase of dollars with the Foreign Currency last provided (either by publication or otherwise provided to the Administrative Agent) by Reuters on the Business Day (New York City time) immediately preceding the date of determination or if such service ceases to be available or ceases to provide a rate of exchange for the purchase of dollars with the Applicable Currency, as provided by such other publicly available information service which provides that rate of exchange at such time in place of Reuters chosen by the Administrative Agent in its sole discretion (or if such service ceases to be available or ceases to provide such rate of exchange, the equivalent of such amount in dollars as determined by the Administrative Agent using any method of determination it deems appropriate in its sole discretion) and (c) if such amount is denominated in any other currency, the equivalent of such amount in dollars as determined by the Administrative Agent using any method of determination it deems appropriate in its sole discretion. **“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\(f\)\(ii\)\(B\)\(3\)](#).

**“USA Patriot Act”** means the United and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001.

**“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 (a) 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, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

“**Yen**” or “**Y**” mean the lawful currency of Japan.

SECTION 1.02. Classification of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Type (e.g., a “**Term Benchmark Loan**” or an “**RFR Loan**”) or by class and Type (e.g., a “**Term Benchmark Revolving Loan**” or an “**RFR Revolving Loan**”). Borrowings also may be classified and referred to by Type (e.g., a “**Term Benchmark Borrowing**” or an “**RFR Borrowing**”) or by class and Type (e.g., a “**Term Benchmark 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 “law” shall be construed as referring to all statutes, rules, regulations, codes and other laws (including official rulings and interpretations thereunder having the force of law or with which affected Persons customarily comply) and all judgments, orders and decrees of all Governmental Authorities. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, supplemented or otherwise modified (subject to any restrictions on such amendments, restatements, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person’s successors and assigns (subject to any restrictions on assignments set forth herein) and, in the case of any Governmental Authority, any other Governmental Authority that shall have succeeded to any or all functions thereof, (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, (f) any reference in any definition to the phrase “at any time” or “for any period” shall refer to the same time or period for all calculations or determinations within such definition, and (g) 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.

(a) 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, 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 and any treatment of Indebtedness under Accounting

Standards Codification 470-20 or 2015-03 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof.

(b) Notwithstanding anything to the contrary contained in Section 1.04(a) or in the definition of “Finance Lease Obligations,” any change in accounting for leases pursuant to GAAP resulting from the adoption of Financial Accounting Standards Board Accounting Standards Update No. 2016-02, Leases (Topic 842) (“*FAS 842*”), or other accounting change requiring leases that were not required to be capitalized on the date hereof to be capitalized, to the extent such adoption or change would require treating any lease (or similar arrangement conveying the right to use) as a capital lease where such lease (or similar arrangement) would not have been required to be so treated under GAAP as in effect on December 31, 2015, or (y) recognizing liabilities on the balance sheet with respect to operating leases, such lease shall not be considered a capital lease, and all calculations and deliverables under this Agreement or any other Loan Document shall be made or delivered, as applicable, in accordance therewith and without giving effect to such adoption or change.

#### SECTION 1.05. Exchange Rates; Currency Equivalents

(a) The Administrative Agent or the Issuing Bank, as applicable, shall determine the Dollar Equivalent amounts of Term Benchmark Borrowings or Letter of Credit extensions denominated in Alternative Currencies. Such Dollar Equivalent shall become effective as of such Revaluation Date and shall be the Dollar Equivalent of such amounts until the next Revaluation Date to occur. Except for purposes of financial statements delivered by the Borrower hereunder or calculating financial covenants hereunder or except as otherwise provided herein, the applicable amount of any Agreed Currency (other than Dollars) for purposes of the Loan Documents shall be such Dollar Equivalent amount as so determined by the Administrative Agent or the Issuing Bank, as applicable.

(b) Wherever in this Agreement in connection with a Borrowing, conversion, continuation or prepayment of a Term Benchmark Loan or an RFR Loan or the issuance, amendment or extension of a Letter of Credit, an amount, such as a required minimum or multiple amount, is expressed in Dollars, but such Borrowing, Loan or Letter of Credit is denominated in an Applicable Currency, such amount shall be the Dollar Equivalent of such amount (rounded to the nearest unit of such Applicable Currency, with 0.5 of a unit being rounded upward), as determined by the Administrative Agent or the Issuing Bank, as the case may be.

SECTION 1.06. Interest Rates; LIBOR Notification. The interest rate on a Loan denominated in dollars or an Applicable Currency may be derived from an interest rate benchmark that is, or may in the future become, the subject of regulatory reform. Regulators have signaled the need to use alternative benchmark reference rates for some of these interest rate benchmarks and, as a result, such interest rate benchmarks may cease to comply with applicable laws and regulations, may be permanently discontinued, and/or the basis on which they are calculated may change. The London interbank offered rate (“LIBOR”) is intended to represent the rate at which contributing banks may obtain short-term borrowings from each other in the London interbank market. On March 5, 2021, the U.K. Financial Conduct Authority (“FCA”) publicly announced that: (a) immediately after December 31, 2021, publication of all seven euro LIBOR settings, all seven Swiss Franc LIBOR settings, the spot next, 1-week, 2-month and 12-month Japanese Yen LIBOR settings, the overnight, 1-week, 2-month and 12-month British Pound Sterling LIBOR settings, and the 1-week and 2-month U.S. Dollar LIBOR settings will permanently cease; immediately after June 30, 2023, publication of the overnight and 12-month U.S. Dollar LIBOR settings will permanently cease; immediately after December 31, 2021, the 1-month, 3-month and 6-month Japanese Yen LIBOR settings and the 1-month, 3-month and 6-month British Pound Sterling LIBOR settings will cease to be provided or, subject to consultation by the FCA, be provided on a changed methodology (or “synthetic”) basis and no longer be representative of the underlying market and economic reality they are intended to measure and that representativeness will not be restored; and immediately after June 30, 2023, the 1-month, 3-month and 6-month U.S. Dollar LIBOR settings will cease to be provided or, subject to the FCA’s consideration of the case, be provided on a synthetic basis and no longer be representative of the underlying market and economic reality they are intended to measure and that representativeness will not be restored. There is no assurance that dates announced by

the FCA will not change or that the administrator of LIBOR and/or regulators will not take further action that could impact the availability, composition, or characteristics of LIBOR or the currencies and/or tenors for which LIBOR is published. Each party to this agreement should consult its own advisors to stay informed of any such developments. Public and private sector industry initiatives are currently underway to identify new or alternative reference rates to be used in place of LIBOR. Upon the occurrence of a Benchmark Transition Event, a Term SOFR Transition Event, an Early Opt-in Election or an Other Benchmark Rate Election, Section 2.14(b) and (c) provide a mechanism for determining an alternative rate of interest. The Administrative Agent will promptly notify the Borrowers, pursuant to Section 2.14(e), of any change to the reference rate upon which the interest rate on Term Benchmark Loans is based. However, the Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, the administration, submission, performance or any other matter related to the Daily Simple RFR, LIBOR or other rates in the definition of "LIBO Rate" (or "EURIBOR Rate", "TIBOR Rate", "STIBOR Rate", "CDOR", "AUD Rate" or "BKBM Rate", as applicable) or with respect to any alternative or successor rate thereto, or replacement rate thereof (including, without limitation, (i) any such alternative, successor or replacement rate implemented pursuant to Section 2.14(b) or (c), whether upon the occurrence of a Benchmark Transition Event, a Term SOFR Transition Event, an Early Opt-in Election or an Other Benchmark Rate Election, and (ii) the implementation of any Benchmark Replacement Conforming Changes pursuant to Section 2.14(d)), including without limitation, whether the composition or characteristics of any such alternative, successor or replacement reference rate will be similar to, or produce the same value or economic equivalence of, the Daily Simple RFR, the LIBO Rate (or the EURIBOR Rate, or the TIBOR Rate, as applicable) or have the same volume or liquidity as did the London interbank offered rate (or the euro interbank offered rate or the Tokyo interbank offered rate, as applicable) prior to its discontinuance or unavailability. The Administrative Agent and its affiliates and/or other related entities may engage in transactions that affect the calculation of any Daily Simple RFR, any alternative, successor or alternative rate (including any Benchmark Replacement) and/or any relevant adjustments thereto, in each case, in a manner adverse to the Borrowers. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain any RFR, Daily Simple RFR or the term benchmark rate, any component thereof, or rates referenced in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrowers, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

**SECTION 1.07. Letter of Credit Amounts.** Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the Dollar Equivalent of the stated amount of such Letter of Credit available to be drawn at such time; provided that with respect to any Letter of Credit that, by its terms or the terms of any Letter of Credit Agreement related thereto, provides for one or more automatic increases in the available amount thereof, the amount of such Letter of Credit shall be deemed to be the Dollar Equivalent of the maximum amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum amount is available to be drawn at such time.

**SECTION 1.08. 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 Senior Secured Leverage Ratio and 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 1.09. 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 1.01. Commitments. Subject to the terms and conditions set forth herein, each Lender agrees to make Revolving Loans to the Borrower in Dollars or in one or more Foreign Currencies 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 Equivalent of any Lender’s Revolving Credit Exposure exceeding such Lender’s Commitment, (b) the sum of the Dollar Equivalent of the Total Revolving Credit Exposures exceeding the total Commitments or (c) the Dollar Equivalent 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 1.02. Loans and Borrowings. 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 (A) in the case of Borrowings in Dollars, entirely of ABR Loans or Term Benchmark Loans and (B) in the case of Borrowings in any other Applicable Currency, entirely of Term Benchmark Loans or RFR Loans, as applicable in each case of the same Applicable Currency, as the Borrower may request in accordance herewith. Each Lender at its option may make any Term Benchmark 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 Term Benchmark Revolving Borrowing, such Borrowing shall be in an aggregate Dollar Equivalent that is an integral multiple of the U.S. Dollar Equivalent of \$1,000,000 and not less than the U.S. Dollar Equivalent of \$5,000,000. At the time that each ABR Revolving Borrowing and/or RFR Borrowing is made, such Borrowing shall be in an aggregate Dollar Equivalent that is an integral multiple of the U.S. Dollar Equivalent of \$100,000 and not less than \$500,000; provided that an ABR Revolving Borrowing may be in an aggregate Dollar Equivalent 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 may be outstanding at the same time; provided that there shall not at any time be more than a total of ten (10) Term Benchmark Revolving Borrowings or RFR 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 1.03. Requests for Revolving Borrowings. To request a Revolving Borrowing, the Borrower shall notify the Administrative Agent of such request by telephone (a)(i) in the case of a Term Benchmark 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, (ii) in the case of a Term Benchmark

Borrowing denominated in Euros or Yen, not later than 12:00 p.m., New York City time, four (4) Business Days before the date of the proposed Borrowing and (iii) in the case of an RFR Borrowing denominated in Sterling, not later than 11:00 a.m., New York City time, three (3) Business Days before the date of the proposed Borrowing or (b) 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 Applicable Currency and 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, a Term Benchmark Borrowing or an RFR Borrowing;
- (iv) in the case of a Term Benchmark 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 currency of a Borrowing is specified, then the requested Revolving Borrowing shall be made in Dollars. If no election as to the Type of Revolving Borrowing to be made in Dollars is specified, then the requested Revolving Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested Term Benchmark 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 2.03, 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 1.04. [Intentionally Omitted].

SECTION 1.05. [Intentionally Omitted].

SECTION 1.06. Letters of Credit. 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 (i) the proceeds of which would be made available to any Person (A) 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 (B) in any manner that would result in a violation of any Sanctions by any party to this Agreement, (ii) if any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the Issuing Bank from issuing such Letter of Credit, or any Requirement of Law relating to the Issuing Bank or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the Issuing Bank shall prohibit, or request that the Issuing Bank refrain from, the issuance of letters of credit

generally or such Letter of Credit in particular or shall impose upon the Issuing Bank with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the Issuing Bank is not otherwise compensated hereunder) not in effect on the Restatement Effective Date, or shall impose upon the Issuing Bank any unreimbursed loss, cost or expense which was not applicable on the Restatement Effective Date and which the Issuing Bank in good faith deems material to it, or (iii) if the issuance of such Letter of Credit would violate one or more policies of the Issuing Bank applicable to letters of credit generally; provided that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements or directives thereunder or issued in connection therewith or in the implementation thereof, and (y) all requests, rules, guidelines, requirements or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed not to be in effect on the Restatement Effective Date for purposes of clause (ii) above, regardless of the date enacted, adopted, issued or implemented.

(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 through Electronic System, if arrangements for doing so have been approved by the Issuing Bank) 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 Kroner, 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 2.06), 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 Equivalent of all outstanding Letters of Credit issued by the Issuing Bank at such time plus (y) the aggregate Dollar Equivalent 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 Equivalent of any Lender's Revolving Credit Exposure shall not exceed its Commitment and (iii) the sum of the Dollar Equivalent 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 2.06, 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 Equivalent 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 2.06 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 2.06, 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 teletype or through Electronic Systems) 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 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 2.06, 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 2.06 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. 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 Equivalent 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 1.07. Funding of Borrowings.** 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. 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 2.07 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 applicable Overnight Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or (ii) in the case of the Borrower, the interest rate applicable to ABR Loans, or in the case of Foreign Currencies, in accordance with such market practice, in each case, as applicable. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such Borrowing.

SECTION 1.08. Interest Elections. Each Revolving Borrowing initially shall be of the Type and Applicable Currency specified in the applicable Borrowing Request and, in the case of a Term Benchmark 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 Term Benchmark Revolving Borrowing, may elect Interest Periods therefor, all as provided in this Section 2.08. 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 2.08, 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 teletype (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; provided, that any interest received from the Borrower by the Administrative Agent during the period beginning when the Administrative Agent funded the Borrowing until such Lender pays such amount shall be solely for the account of the Administrative Agent.

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

(i) the Applicable Currency and principal amount of 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 (in the case of Borrowings denominated in Dollars) or a Term Benchmark Borrowing; and

(iv) if the resulting Borrowing is a Term Benchmark 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 Term Benchmark 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 Term Benchmark Revolving Borrowing in Dollars 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 such Borrowing shall be converted to an ABR Borrowing at the end of such Interest Period. If the Borrower fails to deliver a timely and complete Interest Election Request with respect to a Term Benchmark Borrowing in a Foreign Currency prior to the end of the Interest Period therefor, then, unless such Term Benchmark Borrowing is repaid as provided herein, such Borrower shall be deemed to have selected that such Term Benchmark Borrowing shall automatically be continued as a Term Benchmark Borrowing in its original Applicable Currency with an Interest Period of one month at the end of such Interest Period. 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 (i) no outstanding Revolving Borrowing may be converted to or continued as a Term Benchmark Borrowing, (ii) unless repaid, (x) each Term Benchmark Revolving Borrowing denominated in Dollars shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto and (z) each Term Benchmark Revolving Borrowing denominated in a Foreign Currency shall bear interest at the Central Bank Rate for the applicable Applicable Currency plus the Applicable Rate; provided that, if the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that the Central Bank Rate for the applicable Applicable Currency cannot be determined, any outstanding affected Term Benchmark Loans denominated in any Applicable Currency other than Dollars shall either be (a) converted to an ABR Borrowing denominated in Dollars (in an amount equal to the U.S. Dollar Equivalent of such Applicable Currency) at the end of the Interest Period, as applicable, therefor or (b) prepaid at the end of the applicable Interest Period, as applicable, in full; provided that if no election is made by the Borrower by the earlier of (x) the date that is three Business Days after receipt by such Borrower of such notice and (y) the last day of the current Interest Period for the applicable Term Benchmark Loan, such Borrower shall be deemed to have elected clause (A) above.

**SECTION 1.09. Termination and Reduction of Commitments.** 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 Equivalent 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 Equivalent 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 2.09 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 2.09 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 1.10. Repayment of Loans; Evidence of Debt. 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 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 2.10 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 1.11. Prepayment of Loans. 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 2.11.

(b) The Borrower shall notify the Administrative Agent by telephone (confirmed by telecopy or electronic mail) of any prepayment hereunder (w) in the case of prepayment of a Term Benchmark Revolving Borrowing denominated in Dollars, not later than 11:00 a.m., New York City time, three Business Days before the date of prepayment, (x) in the case of prepayment of a Term Benchmark Revolving Borrowing, not later than 12:00 p.m., Local Time, three Business Days before the date of prepayment and (y) in the case of prepayment of an RFR Revolving Borrowing denominated in Sterling, not later than 11:00 a.m., Local Time, five Business Days before the date of prepayment or in the case of prepayment of an ABR Revolving Borrowing, not later than 11:00 a.m., New York City time, one Business Day before 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 Equivalent of all of the Revolving Credit Exposures (calculated, with respect to those Credit Events denominated in Foreign Currencies, as of the most recent Revaluation Date with respect to each such Credit Event) exceeds (A) the aggregate Commitments or (B) the sum of the aggregate principal Dollar Equivalent of all of the outstanding Revolving Credit Exposures denominated in a Foreign Currency, as of the most recent Revaluation 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 Equivalent 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 1.12. Fees. 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 Restatement 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 Term Benchmark Revolving Loans on the average daily Dollar Equivalent of such Lender's LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Restatement 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 Equivalent of the LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Restatement 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 (3<sup>rd</sup>) Business Day following such last day, commencing on the first such date to occur after the Restatement 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 1.13. Interest. The Loans comprising each ABR Borrowing shall bear interest at the Alternate Base Rate plus the Applicable Rate.

(b) The Loans comprising each Term Benchmark Borrowing shall bear interest in the case of a Term Benchmark Revolving Loan, at the Adjusted LIBO Rate, the Adjusted EURIBOR Rate, the Adjusted STIBOR Rate, the Adjusted CDOR, Adjusted AUD Rate, the Adjusted BKBM Rate or the Adjusted TIBOR Rate, as applicable, for the Interest Period in effect for such Borrowing plus the Applicable Rate.

(c) Each Daily Simple RFR Loan shall bear interest at a rate per annum equal to the applicable Daily Simple RFR plus the Applicable Rate.

(d) 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 2.13 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 2.13.

(e) 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 2.13 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 Term Benchmark 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.

(f) All interest hereunder shall be computed on the basis of a year of 360 days, except that (i) interest computed by reference to the Daily Simple RFR with respect to Sterling or 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 Term Benchmark Borrowings denominated in a Foreign Currency (other than Canadian Dollars) shall be computed on the basis of a year of 365 days, and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). All interest hereunder on any Loan shall be computed on a daily basis based upon the outstanding principal amount of such Loan as of the applicable date of determination. The applicable Alternate Base Rate, Adjusted LIBO Rate, LIBO Rate, Adjusted EURIBOR Rate, EURIBOR Rate, Adjusted STIBOR Rate, STIBOR Rate, Adjusted CDOR, CDOR, Adjusted AUD Rate, AUD Rate, Adjusted BKBM Rate, BKBM Rate, Adjusted TIBOR Rate, TIBOR Rate or Daily Simple RFR shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

#### SECTION 1.14. Alternate Rate of Interest.

(a) Subject to clauses (b), (c), (d), (e), (f) and (g) of this Section 2.14:

(i) if the Administrative Agent determines (which determination shall be conclusive absent manifest error) (A) prior to the commencement of any Interest Period for a Term Benchmark Borrowing, that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate, LIBO Rate, Adjusted EURIBOR Rate, EURIBOR Rate, Adjusted STIBOR Rate, STIBOR Rate, Adjusted CDOR, CDOR, Adjusted AUD Rate, AUD Rate, Adjusted BKBM Rate, BKBM Rate, Adjusted TIBOR Rate or TIBOR Rate (including because the Relevant Screen Rate is not available or published on a current basis), for the applicable Applicable Currency and such Interest Period or (B) at any time, that adequate and reasonable means do not exist for ascertaining the applicable Daily Simple RFR or RFR for the applicable Applicable Currency, as applicable; or

(ii) the Administrative Agent is advised by the Required Lenders that (A) prior to the commencement of any Interest Period for a Term Benchmark Borrowing, the Adjusted LIBO Rate, LIBO Rate, Adjusted EURIBOR Rate, EURIBOR Rate, Adjusted STIBOR Rate, STIBOR Rate, Adjusted CDOR, CDOR, Adjusted AUD Rate, AUD Rate, Adjusted BKBM Rate, BKBM Rate, Adjusted TIBOR Rate or TIBOR Rate for the applicable Applicable Currency and 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 the applicable Applicable Currency and such Interest Period or (B) at any time, the applicable Daily Simple RFR or RFR for the applicable Applicable Currency 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 the applicable Applicable Currency, as applicable;

then the Administrative Agent shall give notice thereof to the Borrower and the Lenders by telephone, telecopy or electronic mail 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, (A) any Interest Election Request that requests the conversion of any Revolving Borrowing to, or continuation of any Revolving Borrowing as, a Term Benchmark Borrowing shall be ineffective, (B) if any Borrowing Request requests a Term Benchmark Revolving Borrowing in Dollars, such Borrowing shall be made as an ABR Borrowing and (C) if any Borrowing Request requests a Term Benchmark Borrowing or an RFR Borrowing for the relevant rate above in an Applicable Currency, then such request shall be ineffective; provided that if the circumstances giving rise to such notice affect only one Type of Borrowings, then all other Types of Borrowings shall be permitted. Furthermore, if any Term Benchmark Loan or RFR Loan in any Agreed Currency is outstanding on the date of the Borrower's receipt of the notice from the Administrative Agent referred to in this Section 2.14(a) with respect to a Relevant Rate applicable to such Term Benchmark Loan or RFR Loan, then until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (i) if such Term Benchmark Loan is denominated in Dollars, then on the last day of the Interest Period applicable to such Loan (or the next succeeding Business Day if such day is not a Business Day), such Loan shall be converted by the Administrative Agent to, and shall constitute, an ABR Loan denominated in Dollars on such day, (ii) if such Term Benchmark Loan is denominated in any Agreed Currency other than Dollars, then such Loan shall, on the last day of the Interest Period applicable to such Loan (or the next succeeding Business Day if such day is not a Business Day) bear interest at the Central Bank Rate for the applicable Agreed Currency plus the Applicable Rate; provided that, if the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that the Central Bank Rate for the applicable Agreed Currency cannot be determined, any outstanding affected Term Benchmark Loans denominated in any Agreed Currency other than Dollars shall, at the Borrower's election prior to such day: (A) be prepaid by the Borrower on such day or (B) solely for the purpose of calculating the interest rate applicable to such Term Benchmark Loan, such Term Benchmark Loan denominated in any Agreed Currency other than Dollars shall be deemed to be a Term Benchmark Loan denominated in Dollars and shall accrue interest at the same interest rate applicable to Term Benchmark Loans denominated in Dollars at such time or (iii) if such RFR Loan is denominated in any Agreed Currency other than Dollars, then such Loan shall bear interest at the Central Bank Rate for the applicable Agreed Currency plus the Applicable Rate; provided that, if the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that the Central Bank Rate for the applicable Agreed Currency cannot be determined, any outstanding affected RFR Loans denominated in any Agreed Currency other than Dollars, at the Borrower's election, shall either (A) be converted into ABR Loans denominated in Dollars (in an amount equal to the Dollar Equivalent of such Applicable Currency) immediately or (B) be prepaid in full immediately.

(b) Notwithstanding anything to the contrary herein or in any other Loan Document, if a Benchmark Transition Event, an Early Opt-in Election or an Other Benchmark Rate Election, as applicable, and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (1) or (2) of the definition of "Benchmark Replacement" with respect to Dollars for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (3) of the definition of "Benchmark Replacement" with respect to any Applicable Currency for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders.

(c) Notwithstanding anything to the contrary herein or in any other Loan Document and subject to the proviso below in this paragraph, with respect to a Loan denominated in Dollars, if a Term SOFR Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then the applicable Benchmark Replacement will replace the then-current Benchmark for all purposes hereunder or under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings, without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document; provided that, this clause (c) shall not be effective unless the Administrative Agent has delivered to the Lenders and the Borrower a Term SOFR Notice. For the avoidance of doubt, the Administrative Agent shall not be required to deliver a Term SOFR Notice after the occurrence of a Term SOFR Transition Event and may do so in its sole discretion.

(d) In connection with the implementation of a Benchmark Replacement, the Administrative Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(e) The Administrative Agent will promptly notify the Borrower and the Lenders of (i) any occurrence of a Benchmark Transition Event, an Early Opt-in Election or an Other Benchmark Rate Election, as applicable, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes, (iv) the removal or reinstatement of any tenor of a Benchmark pursuant to clause (f), below and (v) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.14, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2.14.

(f) Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including Term SOFR, LIBO Rate, EURIBOR Rate or TIBOR Rate) and either (a) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (b) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is or will be no longer representative, then the Administrative Agent may modify the definition of "Interest Period" for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (a) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (b) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of "Interest Period" for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(g) Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for a Term Benchmark Borrowing or RFR Borrowing of, conversion to or continuation of Term Benchmark Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, either (x) the Borrower will be deemed to have converted any request for a Term Benchmark Borrowing denominated in Dollars into a request for a Borrowing of or conversion to ABR Loans or (y) any Term Benchmark Borrowing or RFR Borrowing denominated in an Applicable Currency shall be ineffective. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of ABR based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of ABR. Furthermore, if any Term Benchmark Loan or RFR Loan in any Applicable Currency is outstanding on the date of the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period with respect to a Relevant Rate applicable to

such Term Benchmark Loan or RFR Loan, then until such time as a Benchmark Replacement for such Applicable Currency is implemented pursuant to this Section 2.14, (i) if such Term Benchmark Loan is denominated in Dollars, then on the last day of the Interest Period applicable to such Loan (or the next succeeding Business Day if such day is not a Business Day), such Loan shall be converted by the Administrative Agent to, and shall constitute, an ABR Loan denominated in Dollars on such day, (ii) if such Term Benchmark Loan is denominated in any Applicable Currency other than Dollars, then such Loan shall, on the last day of the Interest Period applicable to such Loan (or the next succeeding Business Day if such day is not a Business Day) bear interest at the Central Bank Rate for the applicable Applicable Currency plus the Applicable Rate; provided that, if the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that the Central Bank Rate for the applicable Applicable Currency cannot be determined, any outstanding affected Term Benchmark Loans denominated in any Applicable Currency other than Dollars shall, at the Borrower's election prior to such day: (a) be prepaid by the Borrower on such day or (b) solely for the purpose of calculating the interest rate applicable to such Term Benchmark Loan, such Term Benchmark Loan denominated in any Applicable Currency other than Dollars shall be deemed to be a Term Benchmark Loan denominated in Dollars and shall accrue interest at the same interest rate applicable to Term Benchmark Loans denominated in Dollars at such time or (iii) if such RFR Loan is denominated in any Applicable Currency other than Dollars, then such Loan shall bear interest at the Central Bank Rate for the applicable Applicable Currency plus the Applicable Rate; provided that, if the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that the Central Bank Rate for the applicable Applicable Currency cannot be determined, any outstanding affected RFR Loans denominated in any Applicable Currency, at the Borrower's election, shall either (a) be converted into ABR Loans denominated in Dollars (in an amount equal to the U.S. Dollar Equivalent of such Applicable Currency) immediately or (b) be prepaid in full immediately.

SECTION 1.15. Increased Costs. If any Change in Law shall:

(i) 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 Adjusted EURIBOR Rate or Adjusted TIBOR Rate, as applicable) or the Issuing Bank;

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

(iii) 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 Term Benchmark 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 2.15 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 2.15 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 2.15 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 1.16. Break Funding Payments.** With respect to Loans that are not RFR Loans, in the event of (i) the payment of any principal of any Term Benchmark Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default or an optional or mandatory prepayment of Loans), (ii) the conversion of any Term Benchmark Loan other than on the last day of the Interest Period applicable thereto, (iii) the failure to borrow, convert, continue or prepay any Term Benchmark 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 (iv) the assignment of any Term Benchmark 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 or 9.02(d) or (v) the failure by the Borrower to make any payment of any Loan or drawing under any Letter of Credit (or interest due thereof) denominated in a Foreign Currency on its scheduled due date or any payment thereof in a different currency, 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 Term Benchmark 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 applicable term benchmark 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 deposits in the applicable currency of a comparable amount and period from other banks in the applicable offshore interbank market for such currency, whether or not such Term Benchmark Loan was in fact so funded. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section 2.16 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.

(b) With respect to RFR Loans, in the event of (i) the payment of any principal of any RFR Loan other than on the Interest Payment Date applicable thereto (including as a result of an Event of Default or an optional or mandatory prepayment of Loans), (ii) the failure to borrow or prepay any RFR Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.10(b) and is revoked in accordance therewith), (iii) the assignment of any RFR Loan other than on the Interest Payment Date applicable thereto as a result of a request by the Borrower pursuant to Section 2.18 or (iv) the failure by the Borrower to make any payment of any Loan or drawing under any Letter of Credit (or interest due thereof) denominated in an Applicable Currency on its scheduled due date or any payment thereof in a different currency, then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event. 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 10 days after receipt thereof.

**SECTION 1.17. Payments Free of Taxes.** 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 2.17) 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 setoff 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. 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 giving rise to such refund had never been paid. This paragraph (g) 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 1.18. Payments Generally; Pro Rata Treatment; Sharing of Set-offs. (i) Except with respect to principal of and interest on Loans denominated in a Foreign Currency, each 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) in Dollars prior to (x) in the case of payments denominated in dollars, 12:00 noon, New York City time and (y) in the case of payments denominated in a Foreign Currency, 12:00 noon, New York City time, in each case on the date when due, and (ii) all payments with respect to principal and interest on Loans denominated in a Foreign Currency shall be made in such Applicable Currency not later than the Applicable Time specified by the Administrative Agent on the dates specified herein, in each case, 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 383 Madison Avenue, New York, New York, 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 2.18, 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 Equivalent (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. Without limiting the generality of the foregoing, the Administrative Agent may require that any payments due under this Agreement be made in the United States. If, for any reason, the Borrower is prohibited by any Law from making any required payment hereunder in an Applicable Currency, such Borrower shall make such payment in Dollars in the U.S. Dollar Equivalent of the Foreign Currency payment amount.

(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, 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.

(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 at the applicable Overnight Rate.

**SECTION 1.19. Mitigation Obligations; Replacement of Lenders.** 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 or all affected 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 1.20. 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) such Defaulting Lender shall not have the right to vote on any issue on which voting is required (other than to the extent expressly provided in Section 9.02(b)) and 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, except as otherwise provided in Section 9.02, 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;

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

(i) 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;

(ii) 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;

(iii) 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;

(iv) 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

(v) 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; and

(d) so long as any Lender is a Defaulting Lender, the Issuing Bank shall not be required to issue, amend or increase any Letter of Credit, unless it is satisfied that the related exposure and the Defaulting Lender's then outstanding LC Exposure will be 100% covered by the Commitments of the non-Defaulting Lenders and/or cash collateral will be provided by the Borrower in accordance with Section 2.20(c), and LC Exposure related to any newly issued or increased Letter of Credit shall be allocated among non-Defaulting Lenders in a manner consistent with Section 2.20(d)(i) (and Defaulting Lenders shall not participate therein).

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 1.21. 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 \$300,000,000; 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 Financial 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, 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 2.21.

(e) Conflicting Provisions. This Section 2.21 shall supersede any provisions in Section 2.18 or 9.02 to the contrary.

SECTION 1.22. Returned Payments. If, after receipt of any payment which is applied to the payment of all or any part of the Obligations (including a payment effected through exercise of a right of setoff), the Administrative Agent or any Lender is for any reason compelled to surrender such payment or proceeds to any Person because such payment or application of proceeds is invalidated, declared fraudulent, set aside, determined to be void or voidable as a preference, impermissible setoff, or a diversion of trust funds, or for any other reason (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion), then the Obligations or part thereof intended to be satisfied shall be revived and continued and this Agreement shall continue in full force as if such payment or proceeds had not been received by the Administrative Agent or such Lender. The provisions of this Section 2.22 shall be and remain effective notwithstanding any contrary action which may have been taken by the Administrative Agent or any Lender in reliance upon such payment or application of proceeds. The provisions of this Section 2.22 shall survive the termination of this Agreement.

SECTION 1.23. 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 1.01. 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 1.02. 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 1.03. 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, and except for filings necessary to perfect Liens created pursuant to the Loan Documents, (b) will not violate any Requirement of Law applicable to any Loan Party or any Subsidiary, (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, except Liens created pursuant to the Loan Documents.

SECTION 1.04. Financial Condition; No Material Adverse Change. 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, 2020, audited by Ernst & Young LLP, independent public accountants, and (ii) as of and for the fiscal quarter and the portion of the fiscal year ended June 30, 2021, 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, 2020, there has been no event, development or circumstance that has had or would reasonably be expected to have a Material Adverse Effect.

SECTION 1.05. Properties. 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.

(b) As of the Restatement Effective Date, the Loan Parties do not have any interest in, or title to, any United States federally registered 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 1.06. Litigation and Environmental Matters. 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 that 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 any Loan Document or the Transactions.

(b) Except for the Disclosed Matters, (i) as of the Restatement Effective Date, no Loan Party or any Subsidiary has received notice of any claim with respect to any Environmental Liability or knows of any basis for any Environmental Liability and (ii) 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 (A) 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, (B) has become subject to any Environmental Liability, (C) has received notice of any claim with respect to any Environmental Liability or (D) knows of any basis for any Environmental Liability.

(c) 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 1.07. Compliance with Laws and Agreements. Each Loan Party and its Subsidiaries is in compliance with (i) all Requirements of Law applicable to it or its property and (ii) 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 1.08. 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 1.09. 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 1.10. 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 or subsequent recodification thereof, as applicable) 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 1.11. 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).

(b) As of the Restatement Effective Date, to the best knowledge of the Borrower, the information included in the Beneficial Ownership Certification provided on or prior to the Restatement Effective Date to any Lender in connection with this Agreement is true and correct in all respects.

SECTION 1.12. 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 1.13. Affected Financial Institutions. No Loan Party is an Affected Financial Institution.

SECTION 1.14. Capitalization and Subsidiaries. Schedule 3.14 sets forth as of the Restatement 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 1.15. Employment Matters. As of the Restatement 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 1.16. 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 1.17. Use of Proceeds. The proceeds of the Loans and the Letters of Credit will be used as set forth in Section 5.08.

SECTION 1.18. Security Interest in Collateral. The provisions of this Agreement and the other Loan Documents create legal and valid Liens on all the Collateral in favor of the Administrative Agent, for the benefit of the Secured Parties, and such Liens constitute perfected and continuing Liens on the Collateral, securing the Secured Obligations, enforceable against the applicable Loan Party and all third parties, and having priority over all other Liens on the Collateral except in the case of (a) Permitted Encumbrances, to the extent any such Permitted Encumbrances would have priority over the Liens in favor of the Administrative Agent pursuant to any applicable law or agreement and (b) Liens perfected only by possession (including possession of any certificate of title), to the extent the Administrative Agent has not obtained or does not maintain possession of such Collateral.

SECTION 1.19. Plan Assets; Prohibited Transactions. None of the Loan Parties or any of their Subsidiaries is an entity deemed to hold "plan assets" (within the meaning of the Plan Asset Regulations), and neither the execution, delivery nor performance of the transactions contemplated under this Agreement, including the making of any Loan and the issuance of any Letter of Credit hereunder, will give rise to a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code.

SECTION 1.20. Solvency. The Borrower and its Subsidiaries taken as a whole are Solvent as of the Restatement Effective Date.

## ARTICLE IV

### Conditions

SECTION 1.01. Restatement 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):

(a) Credit Agreement and Loan Documents. 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 Restatement Effective Date, including any promissory notes requested by a Lender pursuant to Section 2.10 payable to the order of each such requesting Lender.

(b) Lien Searches. 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 Restatement Effective Date pursuant to a pay-off letter or other documentation satisfactory to the Administrative Agent.

(c) Filings, Registrations and Recordings. 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.

(d) Pledged Equity Interests; Stock Powers; Pledged Notes. The Administrative Agent shall have received (i) the certificates representing the Equity Interests required to be pledged pursuant to the Security Agreement on the Restatement 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.

(e) Closing Certificates; Certified Certificate of Incorporation; Good Standing Certificates. The Administrative Agent shall have received (i) a certificate of each Loan Party, dated the Restatement 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.

(f) No Default Certificate. 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 Restatement Effective Date and signed by the president, a vice president or a Financial Officer of the Borrower.

(g) Legal Opinion. The Administrative Agent shall have received a favorable written opinion (addressed to the Administrative Agent and the Lenders and dated the Restatement Effective Date) of Fenwick & West LLP, counsel for the Loan Parties, 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.

(h) Insurance. 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.

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

(j) USA PATRIOT Act, Etc. (i) The Administrative Agent shall have received, (x) at least five (5) days prior to the Restatement Effective Date, all documentation and other information regarding the Borrower requested in connection with applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act, to the extent requested in writing of the Borrower at least ten (10) days prior to the Restatement Effective Date, and (y) a properly completed and signed IRS Form W-8 or W-9, as applicable, for each Loan Party, and (ii) to the extent the Borrower qualifies as a “legal entity customer” under the Beneficial Ownership Regulation, at least five (5) days prior to the Restatement Effective Date, any Lender that has requested, in a written notice to the Borrower at least (10) days prior to the Restatement Effective Date, a Beneficial Ownership Certification in relation to the Borrower shall have received such Beneficial Ownership Certification (provided that, upon the execution and delivery by such Lender of its signature page to this Agreement, the condition set forth in this clause (ii) shall be deemed to be satisfied).

The Administrative Agent shall notify the Borrower and the Lenders of the Restatement 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 October 13, 2021 (and, in the event such conditions are not so satisfied or waived, the Commitments shall terminate at such time).

SECTION 1.02. Each Credit Event. The obligation of each Lender to make a Loan on the occasion of any Borrowing (other than a Borrowing consisting solely of a conversion of Loans of one Type to another Type or a continuation of a Term Benchmark Loan or RFR Loan following the expiration of the applicable Interest Period), and of the Issuing Bank to issue, amend, renew or extend any Letter of Credit, is subject to the satisfaction of the following conditions:

(a) The representations and warranties of the Loan Parties set forth in the Loan Documents 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).

(b) 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 4.02.

Notwithstanding the failure to satisfy the conditions precedent set forth in paragraphs (a) or (b) of this Section 4.02, unless otherwise directed by the Required Lenders, the Administrative Agent may, but shall

have no obligation to, continue to make Loans and an Issuing Bank may, but shall have no obligation to, issue, amend, renew or extend, or cause to be issued, amended, renewed or extended, any Letter of Credit for the ratable account and risk of Lenders from time to time if the Administrative Agent believes that making such Loans or issuing, amending, renewing or extending, or causing the issuance, amendment, renewal or extension of, any such Letter of Credit is in the best interests of the Lenders.

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

(a) 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 audited 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;

(b) 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;

(c) 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;

(d) 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**");

(e) 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;

(f) 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; and

(g) promptly following any request therefor, such information and documentation reasonably requested by the Administrative Agent or any Lender, and reasonably available to the Borrower, for purposes of compliance with applicable “know your customer” and anti-money laundering rules and regulations, including the Patriot Act and the Beneficial Ownership Regulation.

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 the 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 1.02. 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:

(a) the occurrence of any Default;

(b) 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;

(c) 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;

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

(e) any change in the credit ratings from a credit rating agency, or the placement by a credit rating agency of the Borrower on a “CreditWatch” or “WatchList” or any similar list, in each case with negative implications, or the cessation by a credit rating agency of, or its intent to cease, rating the Borrower’s debt; and

(f) any change in the information provided in the Beneficial Ownership Certification delivered to such Lender that would result in a change to the list of beneficial owners identified in such certification.

Each notice delivered under this Section 5.02 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 1.03. 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, Division, liquidation or dissolution permitted under Section 6.03.

**SECTION 1.04. 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) to the extent required by GAAP, 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 1.05. 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 1.06. 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 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 1.07. 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 1.08. 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 Federal Reserve 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 1.09. 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 1.10. Additional Collateral; Further Assurances. Subject to applicable law and the Collateral Documents, the Borrower shall cause (x) each Division Successor and (y) each wholly-owned domestic Subsidiary (other than any Excluded Subsidiary), in each case, 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.

(b) 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).

(c) If any assets which constitute or are required to constitute Collateral are acquired by any Loan Party after the Restatement 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.

(d) Each Loan Party agrees that each action required by Section 5.10(a) shall be completed not less than sixty (60) days after the formation or acquisition of a Subsidiary, or redesignation of a Subsidiary to not be an Immaterial Subsidiary as provided in Section 5.10(f) (or such longer period of time as designated by the Administrative Agent in its reasonable discretion).

(e) 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.

(f) Immaterial Subsidiaries. Notwithstanding anything in this Agreement to the contrary, if the Total Assets of all Immaterial Subsidiaries constitute, in the aggregate, more than 10.0% of the Total Assets of Borrower and its Subsidiaries (determined as of the last day of the most recent fiscal quarter of Borrower for which financial statements are available to the Administrative Agent pursuant to Section 5.1), Borrower shall redesignate one or more of such Subsidiaries to not be Immaterial Subsidiaries within 10 Business Days after delivery of the compliance certificate for such fiscal quarter such that after giving effect thereto the Total Assets of all Immaterial Subsidiaries constitute, in the aggregate, no more than 10.0% of the Total Assets of Borrower and its Subsidiaries on a consolidated basis.

SECTION 1.11. Intellectual Property. 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.

(b) The Borrower will, and will cause each of its Subsidiaries to promptly sue, or pursue such other enforcement action as is reasonably deemed appropriate by Borrower, for any known 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 determine that such Patent, Trademark or Copyright is not 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 1.12. Post-Closing Matters. Within forty-five (45) days (or such longer period as the Administrative Agent may agree to in its sole discretion) after the Restatement Effective Date, the Company shall deliver to the Administrative Agent stock certificates and related stock powers representing the Equity Interest of such Subsidiaries as are required to be delivered pursuant to the Security Agreement.

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

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

(b) 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;

(c) 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;

(d) 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;

(e) Indebtedness of the Borrower or any Subsidiary incurred to finance the acquisition, construction or improvement of any fixed or capital assets, including Finance Leases 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 \$250,000,000 and 10% of the total consolidated assets of the Borrower and its Subsidiaries at any time outstanding;

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

(g) Indebtedness which may be deemed to exist pursuant to any Guarantees, performance, statutory or similar obligations (including in connection with workers' compensation) or obligations in respect of letters of credit, surety bonds, bank guarantees or similar instruments related thereto, or to obligations to vendors, incurred in the ordinary course of business, such obligations or pursuant to any appeal obligation, appeal bond or letter of credit in respect of judgments that do not constitute an Event of Default under clause (k) of Article VII;

(h) Indebtedness of any Person that becomes a Subsidiary of the Borrower in connection with an acquisition permitted hereunder; provided that (i) such Indebtedness exists at the time such Person becomes a Subsidiary of the Borrower and is not incurred in contemplation of or in connection with such Person becoming a Subsidiary of the Borrower, (ii) immediately before and after such Person becomes a Subsidiary of the Borrower, no Default or Event of Default shall have occurred and be continuing and (iii) the aggregate outstanding principal amount of Indebtedness permitted by this clause shall not to exceed \$50,000,000; and

(i) 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 as of the last day of the most recently ended fiscal quarter for which financial statements are available 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 1.02. 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:

(a) Permitted Encumbrances;

(b) 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;

(c) 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

(d) 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.

(e) 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;

(f) 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;

(g) 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

(h) 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 1.03. Fundamental Changes.** 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, consummate a Division as the Dividing Person 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 (x) that is a Loan Party may sell, transfer, lease or otherwise dispose of its assets to the Borrower or to another Loan Party and (y) that is not a Loan Party may sell, transfer, lease or otherwise dispose of its assets to the Borrower, to any other Subsidiary or to any other Person; provided that in the case of any such sale, transfer, lease or other disposition to a Person that is not the Borrower or a Subsidiary, (A) such transaction shall be for fair market value, (B) after giving effect to such transaction as of the last day of the most recently ended fiscal quarter for which financial statements are available, the Borrower is in pro forma compliance with each of the covenants contained in Section 6.13, (C) no Default or Event of Default shall have occurred and be continuing and (D) the assets which are subject to such transaction are not material to the business of the Borrower and is Subsidiaries taken as a whole, (iv) any Subsidiary may merge into or consolidate with the Borrower or another Loan Party and any Subsidiary that is not a Loan Party may merge into or consolidate with other Subsidiary that is not a Loan Party or to any other Person; provided that in the case of any such merger into or consolidation with a Person that is not the Borrower or a Subsidiary, (x) such merger or consolidation shall be for fair market value, (y) after giving effect to such merger or consolidation as of the last day of the most recently ended fiscal quarter for which financial statements are available, the Borrower is in pro forma compliance with each of the covenants contained in Section 6.13, (z) no Default or Event of Default shall have occurred and be continuing and (aa) such Subsidiary and its assets are not material to the business of the Borrower and is Subsidiaries taken as a whole, (v) 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 and (vi) any Subsidiary that is a limited liability company may consummate a Division as the Dividing Person if, immediately upon the consummation of the Division, the assets of the applicable Dividing Person are held by one or more Subsidiaries at such time so long as, in the case of a Division pursuant to which the Dividing Person is a Guarantor, any such Subsidiaries which hold such assets upon the consummation of such Division are Guarantors or become Guarantors concurrently with such Division.

(b) 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 Restatement Effective Date and any other businesses reasonably related or otherwise complimentary or similar thereto.

**SECTION 1.04. 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, or as a Division Successor pursuant to the Division of, with any Person that was not a wholly owned Subsidiary prior to such merger or Division) 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:

(a) cash or Permitted Investments;

(b) investments (other than investments permitted under clauses (a) and (c) of this Section 6.04) existing on the Restatement Effective Date and set forth on Schedule 6.04 and any investment that replaces, refinances or refunds any investment made pursuant to this Section 6.04(b); provided that the amount of any such investment may be increased (x) as required by the terms of such investment as in existence on the date hereof or (y) as otherwise permitted hereunder;

(c) investments by the Borrower existing on the date hereof in the capital stock of its Subsidiaries;

(d) (i) loans or advances made by the Borrower to any Loan Party and made by any Loan Party to the Borrower or any other Loan Party, (ii) loans or advances made by any Subsidiary that is not a Loan Party to the Borrower or any Loan Party or to any non-Loan Party, (iii) loans or advances made by the Borrower or any Loan Party to any foreign Subsidiary, provided that the aggregate amount of such loans or advances under this clause (iii) shall not exceed \$50,000,000 for the fiscal year ending December 31, 2019 and each fiscal year ending thereafter;

(e) Guarantees constituting Indebtedness permitted by Section 6.01;

(f) other acquisitions, investments, loans or advancements made by the Loan Parties, so long as, after giving effect thereto (i) pro forma Senior Secured Leverage Ratio is less than or equal to (x) 2.00 to 1.00 or (y) if a Senior Secured Leverage Covenant Holiday is then in effect, 2.50 to 1.00, (ii) the Borrower is in pro forma compliance with each of the other covenants contained in Section 6.13, and (iii) no Default or Event of Default shall have occurred and be continuing;

(g) other acquisitions, investments, loans or advancements made by the Loan Parties, so long as, after giving effect thereto (i) the Borrower shall have not less than \$350,000,000 in the aggregate of (x) Borrowing Availability and (y) unrestricted domestic cash and (ii) no Default or Event of Default shall have occurred and be continuing;

(h) acquisitions or investments made by foreign Subsidiaries that are not Loan Parties in an aggregate amount not to exceed in any fiscal year the greater of (x) \$200,000,000 in the aggregate, net of any returns on such investment to such foreign Subsidiary and (y) 5% of the total consolidated assets of the Borrower and its Subsidiaries at any time outstanding;

(i) 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;

(j) investments in the form of Swap Agreements permitted by Section 6.05;

(k) 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;

(l) investments constituting deposits described in clauses (c) and (d) of the definition of the term "Permitted Encumbrances";

(m) advances or extensions of credit 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 \$10,000,000 in the aggregate at any one time outstanding;

(n) 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; and

(o) investments in the form of Indebtedness of, or equity interests in, foreign Subsidiaries that are not Loan Parties representing consideration for licenses to any rights to Intellectual Property outside of the United States so long as the Loan Party licensing such Intellectual Property retains ownership of such Intellectual Property, provided that the Borrower determine in good faith that any such license has been effected for fair value.

**SECTION 1.05. 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), (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, (c) the 2018 Call Spread and (d) any Permitted Bond Hedge Transaction.

**SECTION 1.06. Restricted Payments; Certain Payments of Indebtedness.**

(a) 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 (i) the Borrower may declare and pay dividends with respect to its Equity Interests payable solely in additional shares of its common stock, (ii) Subsidiaries of the Borrower may declare and pay dividends ratably with respect to their Equity Interests, (iii) the Borrower may make Restricted Payments pursuant to and in accordance with stock option plans or other benefit plans for management, directors or employees of the Borrower and its Subsidiaries, (iv) the Borrower may make 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 (x) the Borrower shall have not less than \$25,000,000 of Liquidity and (y) no Default or Event of Default shall have occurred and be continuing, (v) the Borrower may make any other Restricted Payments so long as after giving effect thereto (w) the pro forma Total Leverage Ratio is less than or equal to 1.75 to 1.00, (x) the Borrower is in pro forma compliance with each of the covenants contained in Section 6.13, (y) the Borrower shall have not less than \$25,000,000 of Liquidity and (z) no Default or Event of Default shall have occurred and be continuing, (vi) the Borrower may make any other Restricted Payments so long as after giving effect thereto (x) the Borrower shall have not less than \$350,000,000 of Liquidity, (y) the Borrower is in pro forma compliance with each of the covenants contained in Section 6.13, and (z) no Default or Event of Default shall have occurred and be continuing and (vii) the Borrower may (x) enter into Permitted Bond Hedge Transactions and (y) make payments in connection with any Permitted Bond Hedge Transaction (I) by delivery of shares of the Borrower's common stock upon settlement thereof or

(II) payment of an early termination amount thereof in common stock upon any early termination thereof; provided, however, that this Section 6.06 shall not prohibit the repurchase of Equity Interests pursuant to any accelerated stock repurchase or similar agreement so long as any payment made by the Borrower with respect to such repurchase is permitted under this Section 6.06(a) (without regard to this proviso) at the time of such payment.

(b) The Borrower will not, nor will it permit any Subsidiary to, pay or make, directly or indirectly, any cash payment of principal of any of the Convertible Notes, or any cash payment on account of the purchase, redemption, settlement on conversion, retirement, acquisition, cancellation or termination of any such Indebtedness, unless (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 \$100,000,000 of Liquidity on a pro forma basis, (iii) no Default or Event of Default shall have occurred and be continuing, in each case of clauses (i), (ii) and (iii), on the date of such payment and giving effect thereto and (iv) in the case of redemption, the Borrower shall deliver to the Administrative Agent a certificate of a Financial Officer to effect that the Borrower is in compliance with the conditions set forth in clauses (i), (ii) and (iii) of this Section 6.06(b); provided that for the avoidance of doubt, this Section 6.06(b) shall not restrict (w) the repayment of the principal amount of Convertible Notes at the stated maturity thereof, (x) the payment of interest (including any additional interest payable upon specified events) on the Convertible Notes, (y) the settlement of conversion of Convertible Notes for securities, other property (excluding cash other than cash in lieu of any fractional share) or a combination thereof or (z) the redemption or repurchase of Convertible Notes using the net cash proceeds of any new issuance of Convertible Notes or other unsecured Indebtedness permitted hereunder; provided further that clause (ii) of this Section 6.06(b) shall not apply in the case of any settlement on conversion for cash.

SECTION 1.07. 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, excluding any transfer or other disposition of Intellectual Property rights of any Loan Party or any of their United States Subsidiaries which are material to the ongoing business of the Loan Parties and their Subsidiaries, taken as a whole, provided that licenses of such Intellectual Property shall be permitted so long as the Loan Party or United States Subsidiary licensing such Intellectual Property retains ownership thereof, and (c) any Restricted Payment permitted by Section 6.06.

SECTION 1.08. 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 any Requirement of Law or by any Loan Document, (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 1.09. 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 1.10. 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 1.11. 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 1.12. 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 1.13. Financial Covenants.

(a) Minimum Interest Coverage Ratio. The Borrower will not permit the Interest 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 December 31, 2021) to be less than 4.00 to 1.00.

(b) Maximum Senior Secured Leverage Ratio. The Borrower will not permit the Senior Secured Leverage Ratio, on the last day of any fiscal quarter (commencing with the fiscal quarter ending December 31, 2021) to be greater than 2.00 to 1.00. Notwithstanding the foregoing, in the event that the Borrower and/or one or more of its Subsidiaries makes an acquisition which is permitted hereunder with a total purchase price greater than \$150,000,000 during the fiscal quarter then most recently ended, the maximum Senior Secured Leverage Ratio may be increased at the election of the Borrower to 2.50 to 1.00 for such fiscal quarter and for each of the three (3) subsequent fiscal quarters (a “**Senior Secured Leverage Covenant Holiday**”); provided however, the Borrower shall not be permitted to elect an additional Senior Secured Leverage Covenant Holiday until the Senior Secured Leverage Ratio has returned, after the Senior Secured Leverage Covenant Holiday, to a ratio of less than or equal to 2.00 to 1.00 for a period of four (4) full fiscal quarters.

## ARTICLE VII

### Events of Default

If any of the following events (“**Events of Default**”) shall occur:

(a) 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;

(b) 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;

(c) 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 hereof or thereof or waiver hereunder or 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 hereof or thereof or waiver hereunder or thereunder, shall prove to have been incorrect in any material respect when made or deemed made;

(d) 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;

(e) 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);

(f) 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 (other than earn-out obligations to the extent such obligations are being contested in good faith and adequate reserves are maintained with respect thereto to the extent required by GAAP), after giving effect to any applicable grace or cure period;

(g) 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 (i) secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, (ii) any event or condition that gives a holder the right to convert any Convertible Note (other than an event of default under the Convertible Notes), (iii) any conversion of the Convertible Notes (and the settlement thereof, whether in securities, other property (excluding cash) or a combination thereof) or (iv) any purchase, redemption, retirement, settlement on conversion for cash, acquisition, cancellation or termination of any Convertible Notes that is permitted by Section 6.06(b);

(h) 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;

(i) 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;

(j) 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;

(k) 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;

(l) 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;

(m) a Change in Control shall occur;

(n) except for expiration, termination or release in accordance with its terms, (i) the Loan Guaranty or any Obligation Guaranty shall fail to remain in full force or effect or (ii) any action shall be taken to discontinue or to assert the invalidity or unenforceability of the Loan Guaranty or any Obligation Guaranty, or any Guarantor shall deny in writing to the Administrative Agent that it has any further liability under the Loan Guaranty or any Obligation Guaranty to which it is a party;

(o) except as permitted by the terms of any Loan Document, (i) any Collateral Document shall for any reason fail to create a valid security interest in any Collateral purported to be covered thereby, or (ii) any Lien securing any Secured Obligation shall cease to be a perfected, first priority Lien;

(p) except for expiration, termination or release in accordance with its terms, any Collateral Document shall fail to remain in full force or effect or any action shall be taken by any Loan Party or any of their Subsidiaries to discontinue or to assert the invalidity or unenforceability of any Collateral Document; or

(q) any material provision of any Loan Document for any reason ceases to be valid, binding and enforceable (except solely as a result of applicable law) in accordance with its terms (or any Loan Party shall challenge the enforceability of any Loan Document or shall assert in writing that any material provision of any of the Loan Documents has ceased to be or otherwise is not valid, binding and enforceable in accordance with its terms);

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. Without limiting the generality of the foregoing, the Administrative Agent, without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by law referred to below) to or upon any Loan Party or any other Person (all and each of which demands, defenses, advertisements and notices are hereby waived by the Borrower on behalf of itself and its Subsidiaries), may in such circumstances forthwith collect, receive, appropriate and realize upon the Collateral, or any part thereof, or consent to the use by any Loan Party of any cash collateral

arising in respect of the Collateral on such terms as the Administrative Agent deems reasonable, and/or may forthwith sell, lease, assign give an option or options to purchase or otherwise dispose of and deliver, or acquire by credit bid on behalf of the Lenders, the Collateral or any part thereof (or contract to do any of the foregoing), in one or more parcels at public or private sale or sales, at any exchange, broker's board or office of the Administrative Agent or any Lender or elsewhere, upon such terms and conditions as it may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery, all without assumption of any credit risk. The Administrative Agent or any Lender shall have the right upon any such public sale or sales, and, to the extent permitted by law, upon any such private sale or sales, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption in any Loan Party, which right or equity is hereby waived and released by the Borrower on behalf of itself and its Subsidiaries. The Borrower further agrees on behalf of itself and its Subsidiaries, at the Administrative Agent's request, to assemble the Collateral and make it available to the Administrative Agent at places which the Administrative Agent shall reasonably select, whether at the premises of the Borrower, another Loan Party or elsewhere. The Administrative Agent shall apply the net proceeds of any action taken by it pursuant to this Article 7, after deducting all reasonable costs and expenses of every kind incurred in connection therewith or incidental to the care or safekeeping of any of the Collateral or in any other way relating to the Collateral or the rights of the Administrative Agent and the Lenders hereunder, including reasonable attorneys' fees and disbursements, to the payment in whole or in part of the obligations of the Loan Parties under the Loan Documents, in such order as the Administrative Agent may elect, and only after such application and after the payment by the Administrative Agent of any other amount required by any provision of law, including Section 9-615(a)(3) of the New York Uniform Commercial Code, need the Administrative Agent account for the surplus, if any, to any Loan Party. To the extent permitted by applicable law, the Borrower on behalf of itself and its Subsidiaries waives all Liabilities it may acquire against the Administrative Agent or any Lender arising out of the exercise by them of any rights hereunder. If any notice of a proposed sale or other disposition of Collateral shall be required by law, such notice shall be deemed reasonable and proper if given at least 10 days before such sale or other disposition.

## ARTICLE VIII

### The Administrative Agent; Credit Bidding

#### SECTION 1.01. The Administrative Agent.

(a) Each Lender, on behalf of itself and any of its Affiliates that are Secured Parties and each Issuing Bank hereby irrevocably appoints the entity named as Administrative Agent in the heading of this Agreement and its successors and assigns to serve as the administrative agent and collateral agent under the Loan Documents and each Lender and each Issuing Bank authorizes the Administrative Agent to take such actions as agent on its behalf and to exercise such powers under this Agreement and the other Loan Documents as are delegated to the Administrative Agent under such agreements and to exercise such powers as are reasonably incidental thereto. In addition, to the extent required under the laws of any jurisdiction other than within the United States, each Lender and each Issuing Bank hereby grants to the Administrative Agent any required powers of attorney to execute and enforce any Collateral Document governed by the laws of such jurisdiction on such Lender's or such Issuing Bank's behalf. Without limiting the foregoing, each Lender and each Issuing Bank hereby authorizes the Administrative Agent to execute and deliver, and to perform its obligations under, each of the Loan Documents to which the Administrative Agent is a party, and to exercise all rights, powers and remedies that the Administrative Agent may have under such Loan Documents

(b) As to any matters not expressly provided for herein and in the other Loan Documents (including enforcement or collection), the Administrative Agent shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the written instructions of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, pursuant to the terms in the Loan Documents), and, unless and until revoked in writing, such instructions shall be binding upon each Lender and each Issuing Bank; provided, however, that the Administrative Agent shall not be required to take any action that (i) the Administrative Agent in good faith believes exposes it to liability unless the Administrative Agent receives an indemnification and is exculpated in a manner satisfactory to it from the

Lenders and the Issuing Banks with respect to such action or (ii) is contrary to this Agreement or any other Loan Document or applicable law, including any action that may be in violation of the automatic stay under any requirement of law relating to bankruptcy, insolvency or reorganization or relief of debtors or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any requirement of law relating to bankruptcy, insolvency or reorganization or relief of debtors; provided, further, that the Administrative Agent may seek clarification or direction from the Required Lenders prior to the exercise of any such instructed action and may refrain from acting until such clarification or direction has been provided. Except as expressly set forth in the Loan Documents, the Administrative Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower, any other Loan Party, any Subsidiary or any Affiliate of any of the foregoing that is communicated to or obtained by the Person serving as Administrative Agent or any of its Affiliates in any capacity. Nothing in this Agreement shall require the Administrative Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(c) In performing its functions and duties hereunder and under the other Loan Documents, the Administrative Agent is acting solely on behalf of the Lenders and the Issuing Banks (except in limited circumstances expressly provided for herein relating to the maintenance of the Register), and its duties are entirely mechanical and administrative in nature. Without limiting the generality of the foregoing:

(i) the Administrative Agent does not assume and shall not be deemed to have assumed any obligation or duty or any other relationship as the agent, fiduciary or trustee of or for any Lender, Issuing Bank, any other Secured Party or holder of any other obligation other than as expressly set forth herein and in the other Loan Documents, regardless of whether a Default or an Event of Default has occurred and is continuing (and it is understood and agreed that the use of the term “agent” (or any similar term) herein or in any other Loan Document with reference to the Administrative Agent is not intended to connote any fiduciary duty or other implied (or express) obligations arising under agency doctrine of any applicable law, and that such term is used as a matter of market custom and is intended to create or reflect only an administrative relationship between contracting parties); additionally, each Lender agrees that it will not assert any claim against the Administrative Agent based on an alleged breach of fiduciary duty by the Administrative Agent in connection with this Agreement and/or the transactions contemplated hereby;

(ii) where the Administrative Agent is required or deemed to act as a trustee in respect of any Collateral over which a security interest has been created pursuant to a Loan Document expressed to be governed by the laws of the United States of America, or is required or deemed to hold any Collateral “on trust” pursuant to the foregoing, the obligations and liabilities of the Administrative Agent to the Secured Parties in its capacity as trustee shall be excluded to the fullest extent permitted by applicable law;

(iii) to the extent that English law is applicable to the duties of the Administrative Agent under any of the Loan Documents, Section 1 of the Trustee Act 2000 of the United Kingdom shall not apply to the duties of the Administrative Agent in relation to the trusts constituted by that Loan Document; where there are inconsistencies between the Trustee Act 1925 or the Trustee Act 2000 of the United Kingdom and the provisions of this Agreement or such Loan Document, the provisions of this Agreement shall, to the extent permitted by applicable law, prevail and, in the case of any inconsistency with the Trustee Act 2000 of the United Kingdom, the provisions of this Agreement shall constitute a restriction or exclusion for the purposes of that Act; and

(iv) nothing in this Agreement or any Loan Document shall require the Administrative Agent to account to any Lender for any sum or the profit element of any sum received by the Administrative Agent for its own account;

(d) The Administrative Agent may perform any of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any of their respective duties and exercise their respective rights and powers through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities pursuant to this Agreement. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agent except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agent.

(e) None of any Syndication Agent, or any Arranger shall have obligations or duties whatsoever in such capacity under this Agreement or any other Loan Document and shall incur no liability hereunder or thereunder in such capacity, but all such persons shall have the benefit of the indemnities provided for hereunder.

(f) In case of the pendency of any proceeding with respect to any Loan Party under any federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, the Administrative Agent (irrespective of whether the principal of any Loan or any reimbursement obligation in respect of any LC Disbursement shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(i) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, LC Disbursements and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Issuing Banks and the Administrative Agent (including any claim under Sections 2.12, 2.13, 2.15, 2.17 and 9.03) allowed in such judicial proceeding; and

(ii) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such proceeding is hereby authorized by each Lender, each Issuing Bank and each other Secured Party to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, the Issuing Banks or the other Secured Parties, to pay to the Administrative Agent any amount due to it, in its capacity as the Administrative Agent, under the Loan Documents (including under Section 9.03). Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or Issuing Bank any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or Issuing Bank or to authorize the Administrative Agent to vote in respect of the claim of any Lender or Issuing Bank in any such proceeding.

(g) The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the Issuing Banks, and, except solely to the extent of the Borrower's rights to consent pursuant to and subject to the conditions set forth in this Article, none of the Borrower or any Subsidiary, or any of their respective Affiliates, shall have any rights as a third party beneficiary under any such provisions. Each Secured Party, whether or not a party hereto, will be deemed, by its acceptance of the benefits of the Collateral and of the Guarantees of the Secured Obligations provided under the Loan Documents, to have agreed to the provisions of this Article.

#### SECTION 1.02. Administrative Agent's Reliance, Limitation of Liability, Etc.

(a) Neither the Administrative Agent nor any of its Related Parties shall be (i) liable for any action taken or omitted to be taken by such party, the Administrative Agent or any of its Related Parties under or in connection with this Agreement or the other Loan Documents (x) with the consent of or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary,

or as the Administrative Agent shall believe in good faith to be necessary, under the circumstances as provided in the Loan Documents) or (y) in the absence of its own gross negligence or willful misconduct (such absence to be presumed unless otherwise determined by a court of competent jurisdiction by a final and non-appealable judgment) or (ii) responsible in any manner to any of the Lenders for any recitals, statements, representations or warranties made by any Loan Party or any officer thereof contained in this Agreement or any other Loan Document or in any certificate, report, statement or other document referred to or provided for in, or received by the Administrative Agent under or in connection with, this Agreement or any other Loan Document or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document (including, for the avoidance of doubt, in connection with the Administrative Agent's reliance on any Electronic Signature transmitted by teletype, emailed pdf, or any other electronic means that reproduces an image of an actual executed signature page) or for any failure of any Loan Party to perform its obligations hereunder or thereunder.

(b) The Administrative Agent shall be deemed not to have knowledge of any Default unless and until written notice thereof (stating that it is a "notice of default") is given to the Administrative Agent by the Borrower, a Lender or an Issuing Bank, 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 any Loan Document, (ii) the contents of any certificate, report or other document delivered thereunder or in connection therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document or the occurrence of any Default, (iv) the sufficiency, validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, (v) the satisfaction of any condition set forth in Article IV or elsewhere in any Loan Document, other than to confirm receipt of items (which on their face purport to be such items) expressly required to be delivered to the Administrative Agent or satisfaction of any condition that expressly refers to the matters described therein being acceptable or satisfactory to the Administrative Agent, or (vi) the creation, perfection or priority of Liens on the Collateral. Notwithstanding anything herein to the contrary, the Administrative Agent shall not be liable for, or be responsible for any Liabilities, costs or expenses suffered by the Borrower, any other Loan Party, any Subsidiary, any Lender or any Issuing Bank as a result of, any determination of the Revolving Credit Exposure, any of the component amounts thereof or any portion thereof attributable to each Lender or Issuing Bank, or any exchange rate or Dollar Equivalent, except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in making such determination.

(c) Without limiting the foregoing, the Administrative Agent (i) may treat the payee of any promissory note as its holder until such promissory note has been assigned in accordance with Section 9.04, (ii) may rely on the Register to the extent set forth in Section 9.04(b), (iii) may consult with legal counsel (including counsel to the Borrower), independent public accountants and other experts selected by it, and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts, (iv) makes no warranty or representation to any Lender or Issuing Bank and shall not be responsible to any Lender or Issuing Bank for any statements, warranties or representations made by or on behalf of any Loan Party in connection with this Agreement or any other Loan Document, (v) in determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or an Issuing Bank, may presume that such condition is satisfactory to such Lender or Issuing Bank unless the Administrative Agent shall have received notice to the contrary from such Lender or Issuing Bank sufficiently in advance of the making of such Loan or the issuance of such Letter of Credit and (vi) shall be entitled to rely on, and shall incur no liability under or in respect of this Agreement or any other Loan Document by acting upon, any notice, consent, certificate or other instrument or writing (which writing may be a fax, any electronic message, Internet or intranet website posting or other distribution) or any statement made to it orally or by telephone and believed by it to be genuine and signed or sent or otherwise authenticated by the proper party or parties (whether or not such Person in fact meets the requirements set forth in the Loan Documents for being the maker thereof).

#### SECTION 1.03. Posting of Communications.

(a) The Borrower agrees that the Administrative Agent may, but shall not be obligated to, make any Communications available to the Lenders and the Issuing Banks by posting the

Communications on IntraLinks™, DebtDomain, SyndTrak, ClearPar or any other electronic system chosen by the Administrative Agent to be its electronic transmission system (the “Approved Electronic Platform”).

(b) Although the Approved Electronic Platform and its primary web portal are secured with generally-applicable security procedures and policies implemented or modified by the Administrative Agent from time to time (including, as of the Restatement Effective Date, a user ID/password authorization system) and the Approved Electronic Platform is secured through a per-deal authorization method whereby each user may access the Approved Electronic Platform only on a deal-by-deal basis, each of the Lenders, each of the Issuing Banks and the Borrower acknowledges and agrees that the distribution of material through an electronic medium is not necessarily secure, that the Administrative Agent is not responsible for approving or vetting the representatives or contacts of any Lender that are added to the Approved Electronic Platform, and that there may be confidentiality and other risks associated with such distribution. Each of the Lenders, each of the Issuing Banks and the Borrower hereby approves distribution of the Communications through the Approved Electronic Platform and understands and assumes the risks of such distribution.

(c) THE APPROVED ELECTRONIC PLATFORM AND THE COMMUNICATIONS ARE PROVIDED “AS IS” AND “AS AVAILABLE”. THE APPLICABLE PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE COMMUNICATIONS, OR THE ADEQUACY OF THE APPROVED ELECTRONIC PLATFORM AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS OR OMISSIONS IN THE APPROVED ELECTRONIC PLATFORM AND 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 THE APPLICABLE PARTIES IN CONNECTION WITH THE COMMUNICATIONS OR THE APPROVED ELECTRONIC PLATFORM. IN NO EVENT SHALL THE ADMINISTRATIVE AGENT, ANY ARRANGER, ANY SYNDICATION AGENT OR ANY OF THEIR RESPECTIVE RELATED PARTIES (COLLECTIVELY, “APPLICABLE PARTIES”) HAVE ANY LIABILITY TO ANY LOAN PARTY, ANY LENDER, ANY 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 ANY LOAN PARTY’S OR THE ADMINISTRATIVE AGENT’S TRANSMISSION OF COMMUNICATIONS THROUGH THE INTERNET OR THE APPROVED ELECTRONIC PLATFORM.

“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 8.03, including through an Approved Electronic Platform.

(d) Each Lender and each Issuing Bank agrees that notice to it (as provided in the next sentence) specifying that Communications have been posted to the Approved Electronic Platform shall constitute effective delivery of the Communications to such Lender for purposes of the Loan Documents. Each Lender and Issuing Bank agrees (i) to notify the Administrative Agent in writing (which could be in the form of electronic communication) from time to time of such Lender’s or Issuing Bank’s (as applicable) email address to which the foregoing notice may be sent by electronic transmission and (ii) that the foregoing notice may be sent to such email address.

(e) Each of the Lenders, each of the Issuing Banks and the Borrower agrees that the Administrative Agent may, but (except as may be required by applicable law) shall not be obligated to, store the Communications on the Approved Electronic Platform in accordance with the Administrative Agent’s generally applicable document retention procedures and policies.

(f) Nothing herein shall prejudice the right of the Administrative Agent, any Lender or any Issuing Bank to give any notice or other communication pursuant to any Loan Document in any other manner specified in such Loan Document.

**SECTION 1.04. The Administrative Agent Individually.** With respect to its Commitment, Loans and Letters of Credit, the Person serving as the Administrative Agent shall have and may exercise the same rights and powers hereunder and is subject to the same obligations and liabilities as and to the extent set forth herein for any other Lender or Issuing Bank, as the case may be. The terms “Issuing Banks”, “Lenders”, “Required Lenders” and any similar terms shall, unless the context clearly otherwise indicates, include the Administrative Agent in its individual capacity as a Lender, Issuing Bank or as one of the Required Lenders, as applicable. The Person serving as the Administrative Agent and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of banking, trust or other business with, any Loan Party, any Subsidiary or any Affiliate of any of the foregoing as if such Person was not acting as the Administrative Agent and without any duty to account therefor to the Lenders or the Issuing Banks.

**SECTION 1.05. Successor Administrative Agent.**

(a) The Administrative Agent may resign at any time by giving 30 days’ prior written notice thereof to the Lenders, the Issuing Banks and the Borrower, whether or not a successor Administrative Agent has been appointed. Upon any such resignation, the Required Lenders shall have the right to appoint a successor Administrative Agent. If no successor Administrative Agent shall have been so appointed by the Required Lenders, and shall have accepted such appointment, within thirty (30) days after the retiring Administrative Agent’s giving of notice of resignation, then the retiring Administrative Agent may, on behalf of the Lenders and the Issuing Banks, 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. In either case, such appointment shall be subject to the prior written approval of the Borrower (which approval may not be unreasonably withheld and shall not be required while an Event of Default has occurred and is continuing). Upon the acceptance of any appointment as Administrative Agent by a successor Administrative Agent, such successor Administrative Agent shall succeed to, and become vested with, all the rights, powers, privileges and duties of the retiring Administrative Agent. Upon the acceptance of appointment as Administrative Agent by a successor Administrative Agent, the retiring Administrative Agent shall be discharged from its duties and obligations under this Agreement and the other Loan Documents. Prior to any retiring Administrative Agent’s resignation hereunder as Administrative Agent, the retiring Administrative Agent shall take such action as may be reasonably necessary to assign to the successor Administrative Agent its rights as Administrative Agent under the Loan Documents.

(b) Notwithstanding paragraph (a) of this Section 8.05, in the event no successor Administrative Agent shall have been so appointed and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its intent to resign, the retiring Administrative Agent may give notice of the effectiveness of its resignation to the Lenders, the Issuing Banks and the Borrower, whereupon, on the date of effectiveness of such resignation stated in such notice, (i) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents; provided that, solely for purposes of maintaining any security interest granted to the Administrative Agent under any Collateral Document for the benefit of the Secured Parties, the retiring Administrative Agent shall continue to be vested with such security interest as collateral agent for the benefit of the Secured Parties, and continue to be entitled to the rights set forth in such Collateral Document and Loan Document, and, in the case of any Collateral in the possession of the Administrative Agent, shall continue to hold such Collateral, in each case until such time as a successor Administrative Agent is appointed and accepts such appointment in accordance with this Section 8.05 (it being understood and agreed that the retiring Administrative Agent shall have no duty or obligation to take any further action under any Security Document, including any action required to maintain the perfection of any such security interest), and (ii) the Required Lenders shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent; provided that (A) all payments required to be made hereunder or under any other Loan Document to the Administrative Agent for the account of any Person other than the Administrative Agent shall be made directly to such Person and (B) all notices and other communications required or contemplated to be given or made to the

Administrative Agent shall directly be given or made to each Lender and each Issuing Bank. Following the effectiveness of the Administrative Agent's resignation from its capacity as such, the provisions of this Article, Section 2.17(d) and Section 9.03, as well as any exculpatory, reimbursement and indemnification provisions set forth in any other Loan Document, 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 the retiring Administrative Agent was acting as Administrative Agent and in respect of the matters referred to in the proviso under clause (a) above.

SECTION 1.06. Acknowledgements of Lenders and Issuing Banks.

(a) Each Lender represents that it is engaged in making, acquiring or holding commercial loans in the ordinary course of its business and that it has, independently and without reliance upon the Administrative Agent, any Arranger, any Syndication Agent, or any other Lender, or any of the Related Parties of any of the foregoing, 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 also acknowledges that it will, independently and without reliance upon the Administrative Agent, any Arranger, any Syndication Agent, or any other Lender, or any of the Related Parties of any of the foregoing, 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 other Loan Document or any related agreement or any document furnished hereunder or thereunder.

(b) Each Lender, by delivering its signature page to this Agreement on the Restatement Effective Date, or delivering its signature page to an Assignment and Assumption or any other Loan Document pursuant to which it shall become a Lender hereunder, shall be deemed to have acknowledged receipt of, and consented to and approved, each Loan Document and each other document required to be delivered to, or be approved by or satisfactory to, the Administrative Agent or the Lenders on the Restatement Effective Date or the effective date of any such Assignment and Assumption or any other Loan document pursuant to which it shall have become a Lender hereunder.

(c) Each Lender hereby agrees that (x) if the Administrative Agent notifies such Lender that the Administrative Agent has determined in its sole discretion that any funds received by such Lender from the Administrative Agent or any of its Affiliates (whether as a payment, prepayment or repayment of principal, interest, fees or otherwise; individually and collectively, a "Payment") were erroneously transmitted to such Lender (whether or not known to such Lender), and demands the return of such Payment (or a portion thereof), such Lender shall promptly, but in no event later than one Business Day thereafter, return to the Administrative Agent the amount of any such Payment (or portion thereof) as to which such a demand was made in same day funds, together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Lender to the date such amount is repaid to the Administrative Agent at the greater of the NYFRB Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect, and (y) to the extent permitted by applicable law, such Lender shall not assert, and hereby waives, as to the Administrative Agent, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Payments received, including without limitation any defense based on "discharge for value" or any similar doctrine. A notice of the Administrative Agent to any Lender under this Section 8.06(c) shall be conclusive, absent manifest error.

(ii) Each Lender hereby further agrees that if it receives a Payment from the Administrative Agent or any of its Affiliates (x) that is in a different amount than, or on a different date from, that specified in a notice of payment sent by the Administrative Agent (or any of its Affiliates) with respect to such Payment (a "Payment Notice") or (y) that was not preceded or accompanied by a Payment Notice, it shall be on notice, in each such case, that an error has been made with respect to such Payment. Each Lender agrees that, in each such case, or if it otherwise becomes aware a Payment (or portion thereof) may have been sent in error, such Lender shall promptly notify the Administrative Agent of such occurrence and, upon demand from the Administrative Agent, it shall promptly, but in no event later than one Business Day

thereafter, return to the Administrative Agent the amount of any such Payment (or portion thereof) as to which such a demand was made in same day funds, together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Lender to the date such amount is repaid to the Administrative Agent at the greater of the NYFRB Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect.

(iii) Each Borrower and each other Loan Party hereby agrees that (x) in the event an erroneous Payment (or portion thereof) are not recovered from any Lender that has received such Payment (or portion thereof) for any reason, the Administrative Agent shall be subrogated to all the rights of such Lender with respect to such amount and (y) an erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by any Borrower or any other Loan Party.

(iv) Each party's obligations under this Section 8.06(c) shall survive the resignation or replacement of the Administrative Agent or any transfer of rights or obligations by, or the replacement of, a Lender, the termination of the Commitments or the repayment, satisfaction or discharge of all Obligations under any Loan Document.

(d) Each Lender hereby agrees that (i) it has requested a copy of each Report prepared by or on behalf of the Administrative Agent; (ii) the Administrative Agent (A) makes no representation or warranty, express or implied, as to the completeness or accuracy of any Report or any of the information contained therein or any inaccuracy or omission contained in or relating to a Report and (B) shall not be liable for any information contained in any Report; (iii) the Reports are not comprehensive audits or examinations, and that any Person performing any field examination will inspect only specific information regarding the Loan Parties and will rely significantly upon the Loan Parties' books and records, as well as on representations of the Loan Parties' personnel and that the Administrative Agent undertakes no obligation to update, correct or supplement the Reports; (iv) it will keep all Reports confidential and strictly for its internal use, not share the Report with any Loan Party or any other Person except as otherwise permitted pursuant to this Agreement; and (v) without limiting the generality of any other indemnification provision contained in this Agreement, (A) it will hold the Administrative Agent and any such other Person preparing a Report harmless from any action the indemnifying Lender may take or conclusion the indemnifying Lender may reach or draw from any Report in connection with any extension of credit that the indemnifying Lender has made or may make to the Borrower, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a Loan or Loans; and (B) it will pay and protect, and indemnify, defend, and hold the Administrative Agent and any such other Person preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including reasonable attorneys' fees) incurred by the Administrative Agent or any such other Person as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

#### SECTION 1.07. Collateral Matters.

(a) Except with respect to the exercise of setoff rights in accordance with Section 9.08 or with respect to a Secured Party's right to file a proof of claim in an insolvency proceeding, no Secured Party shall have any right individually to realize upon any of the Collateral or to enforce any Guarantee of the Secured Obligations, it being understood and agreed that all powers, rights and remedies under the Loan Documents may be exercised solely by the Administrative Agent on behalf of the Secured Parties in accordance with the terms thereof. In its capacity, the Administrative Agent is a "representative" of the Secured Parties within the meaning of the term "secured party" as defined in the UCC. In the event that any Collateral is hereafter pledged by any Person as collateral security for the Secured Obligations, the Administrative Agent is hereby authorized, and hereby granted a power of attorney, to execute and deliver on behalf of the Secured Parties any Loan Documents necessary or appropriate to grant and perfect a Lien on such Collateral in favor of the Administrative Agent on behalf of the Secured Parties.

(b) In furtherance of the foregoing and not in limitation thereof, no arrangements in respect of Banking Services, the obligations under which constitute Secured Obligations, and no Swap Agreement, the obligations under which constitute Secured Obligations, will create (or be deemed to

create) in favor of any Secured Party that is a party thereto any rights in connection with the management or release of any Collateral or of the obligations of any Loan Party under any Loan Document. By accepting the benefits of the Collateral, each Secured Party that is a party to any such arrangement in respect of Banking Services or Swap Agreement, as applicable, shall be deemed to have appointed the Administrative Agent to serve as administrative agent and collateral agent under the Loan Documents and agreed to be bound by the Loan Documents as a Secured Party thereunder, subject to the limitations set forth in this paragraph.

(c) The Secured Parties irrevocably authorize the Administrative Agent, at its option and in its discretion, to subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 6.02(b). The Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Administrative Agent's Lien thereon or any certificate prepared by any Loan Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders or any other Secured Party for any failure to monitor or maintain any portion of the Collateral.

**SECTION 1.08. 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 Loan 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 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 interests, 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 with their original interest in such Obligations 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.

#### SECTION 1.09. Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and each Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using “plan assets” (within the meaning of the Plan Asset Regulations) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Lender has not provided another representation, warranty and covenant as provided in sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, and each Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that none of the Administrative Agent, or any Arranger, any Syndication Agent, or any of their respective Affiliates is a fiduciary with respect to the Collateral or the assets of such Lender (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related to hereto or thereto).

(c) The Administrative Agent, each Arranger and each Syndication Agent hereby informs the Lenders that each such Person is not undertaking to provide investment advice or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Loans, the Letters of Credit, the Commitments, this Agreement and any other Loan Documents (ii) may recognize a gain if it extended the Loans, the

Letters of Credit or the Commitments for an amount less than the amount being paid for an interest in the Loans, the Letters of Credit or the Commitments by such Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

SECTION 1.10. Flood Laws. JPMorgan Chase has adopted internal policies and procedures that address requirements placed on federally regulated lenders under the National Flood Insurance Reform Act of 1994 and related legislation (the "Flood Laws"). JPMorgan Chase, as administrative agent or collateral agent on a syndicated facility, will post on the applicable electronic platform (or otherwise distribute to each Lender in the syndicate) documents that it receives in connection with the Flood Laws. However, JPMorgan Chase reminds each Lender and Participant in the facility that, pursuant to the Flood Laws, each federally regulated Lender (whether acting as a Lender or Participant in the facility) is responsible for assuring its own compliance with the flood insurance requirements.

## ARTICLE IX

### Miscellaneous

SECTION 1.01. Notices. Except in the case of notices and other communications expressly permitted to be given by telephone or Electronic System (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: Jereme Sylvain  
Telephone No.: (858) 203-6538  
Email: [jereme.sylvain@dexcom.com](mailto:jereme.sylvain@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 L2S  
Chicago, IL 60603  
Attention: LaDesiree Williams  
Telephone No: (312) 732-2007  
Email: [ladesiree.williams@jpmorgan.com](mailto:ladesiree.williams@jpmorgan.com)

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](mailto: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: Adam Wolk  
Telephone No.: (212) 506-2257  
Fax No.: (212) 849-5957  
Email: awolk@mayerbrown.com

- (iii) if to any other Lender, to it at its address (or teletype 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).

(b) Notices and other communications to the Lenders and the Issuing Bank hereunder may be delivered or furnished by using Electronic Systems or Approved Electronic Platforms, as applicable, or 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 using Electronic Systems or Approved Electronic Platforms, as applicable, 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.

(c) Any party hereto may change its address or teletype number for notices and other communications hereunder by notice to the other parties hereto.

**SECTION 1.02. Waivers; Amendments.** No failure or delay by the Administrative Agent, the Issuing Bank or any Lender in exercising any right or power hereunder or under any other Loan Document 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 and under any other Loan Document are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of any Loan Document 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 9.02, 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.

(b) Subject to Section 9.02(c) below, neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except (i) in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders or (ii) in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by the Administrative Agent and the Loan Party or Loan Parties that are parties thereto, with the consent of the Required Lenders; provided that no such agreement shall (A) increase the Commitment of any Lender without the written consent of such Lender, (B) reduce or forgive the principal amount of any Loan or LC Disbursement or reduce or the rate of interest thereon (other than to reduce the default rate accruing under and in accordance with Section 2.13(c)), or reduce or forgive any interest or fees or other amount payable hereunder, without the written consent of each Lender (including any such Lender that is a Defaulting 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 8.08 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 9.02(b) 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 (or any Lien securing any of the Obligations) to any other Indebtedness (or any Lien securing 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.

(c) The Lenders and the Issuing Bank hereby irrevocably authorize the Administrative Agent, at its option and in its sole discretion, to release any Liens granted to the Administrative Agent by the Loan Parties on any Collateral (i) upon the Payment in Full of all Secured Obligations, and the cash collateralization of all unliquidated obligations in a manner satisfactory to each affected Lender, (ii) constituting property being sold or disposed of if the Loan Party disposing of such property certifies to the Administrative Agent that the sale or disposition is made in compliance with the terms of this Agreement (and the Administrative Agent may rely conclusively on any such certificate, without further inquiry), and to the extent that the property being sold or disposed of constitutes 100% of the Equity Interests of a Subsidiary, the Administrative Agent is authorized to release any Loan Guaranty or Obligation Guaranty provided by such Subsidiary, (iii) constituting property leased to a Loan Party under a lease which has expired or been terminated in a transaction permitted under this Agreement, (iv) as required to effect any sale or other disposition of such Collateral in connection with any exercise of remedies of the Administrative Agent and the Lenders pursuant to Article VII or (v) as required pursuant to the terms of the Security Agreement or any other Loan Document. Any such release shall not in any manner discharge, affect, or impair the Obligations or any Liens (other than those expressly being released) upon (or obligations of the Loan Parties in respect of) all interests retained by the Loan Parties, including the proceeds of any sale, all of which shall continue to constitute part of the Collateral. Any execution and

delivery by the Administrative Agent of documents in connection with any such release shall be without recourse to or warranty by the Administrative Agent.

(d) If, in connection with any proposed amendment, waiver or consent requiring the consent of “each Lender” or “each Lender affected thereby,” the consent of the Required Lenders is obtained, but the consent of other necessary Lenders is not obtained (any such Lender whose consent is necessary but has not been obtained being referred to herein as a “**Non-Consenting Lender**”), then the Borrower may elect to replace a Non-Consenting Lender as a Lender party to this Agreement, provided that, concurrently with such replacement, (i) another bank or other entity which is reasonably satisfactory to the Borrower, the Administrative Agent and the Issuing Bank shall agree, as of such date, to purchase for cash the Loans and other Obligations due to the Non-Consenting Lender pursuant to an Assignment and Assumption and to become a Lender for all purposes under this Agreement and to assume all obligations of the Non-Consenting Lender to be terminated as of such date and to comply with the requirements of clause (b) of Section 9.04, and (ii) the Borrower shall pay to such Non-Consenting Lender in same day funds on the day of such replacement (1) all interest, fees and other amounts then accrued but unpaid to such Non-Consenting Lender by the Borrower hereunder to and including the date of termination, including without limitation payments due to such Non-Consenting Lender under Sections 2.15 and 2.17, and (2) an amount, if any, equal to the payment which would have been due to such Lender on the day of such replacement under Section 2.16 had the Loans of such Non-Consenting Lender been prepaid on such date rather than sold to the replacement Lender. Each party hereto agrees that an assignment required pursuant to this paragraph may be effected pursuant to an Assignment and Assumption executed by the Borrower, the Administrative Agent and the assignee (or, to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to an Approved Electronic Platform as to which the Administrative Agent and such parties are participants), and (b) the Lender required to make such assignment need not be a party thereto in order for such assignment to be effective and shall be deemed to have consented to and be bound by the terms thereof; provided that, following the effectiveness of any such assignment, the other parties to such assignment agree to execute and deliver such documents necessary to evidence such assignment as reasonably requested by the applicable Lender, provided that any such documents shall be without recourse to or warranty by the parties thereto.

SECTION 1.03. Expenses; Limitation of Liability; Indemnity Etc. Expenses. The Borrower shall pay all reasonable and documented out of pocket expenses incurred by the Administrative Agent and its Affiliates, including the reasonable fees, charges and disbursements of counsel for the Administrative Agent (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) and the Lead Arrangers in connection with the syndication and distribution (including, without limitation, via the internet or through an Electronic System or Approved Electronic Platform) 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), all reasonable and documented out-of-pocket expenses incurred by any Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent, any 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 9.03(a), or in connection with the Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) Limitation of Liability. To the extent permitted by applicable law the Borrower and any Loan Party shall not assert, and the Borrower and each Loan Party hereby waives, any claim against the Administrative Agent, any Arranger and any Lender, and any Related Party of any of the foregoing Persons (each such Person being called a “**Lender-Related Person**”) for any Liabilities arising from the use by others of information or other materials (including, without limitation, any personal data) obtained

through telecommunications, electronic or other information transmission systems (including the Internet), and no party hereto shall assert, and each such party hereby waives, any Liabilities 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 Section 9.03(b) shall relieve the Borrower and each Loan Party of any obligation it may have to indemnify an Indemnitee, as provided in Section 9.03(c), against any special, indirect, consequential or punitive damages asserted against such Indemnitee by a third party.

(c) *Indemnity.* The Borrower shall indemnify the Administrative Agent, each Arranger, each 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 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 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, any Loan or Letter of Credit or the use of the proceeds therefrom (including any refusal by an 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), 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 any actual or prospective Proceeding relating to any of the foregoing, whether or not such Proceeding is brought by the Borrower or any other Loan Party 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 Liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted primarily from the gross negligence or willful misconduct of such Indemnitee. This Section 9.03(c) shall not apply with respect to Taxes other than any Taxes that represent losses, claims or damages arising from any non-Tax claim..

(d) *Lender Reimbursement.* Each Lender severally agrees to pay any amount required to be paid by the Borrower under paragraphs (a), (b) or (c) of this Section 9.03 to the Administrative Agent, each Issuing Bank and each Related Party of any of the foregoing Persons (each, an “**Agent-Related Person**”) (to the extent not reimbursed by the Borrower and without limiting the obligation of the Borrower to do so), ratably according to their respective Applicable Percentage in effect on the date on which such payment is sought under this Section 9.03 (or, if such payment is sought after the date upon which the Commitments shall have terminated and the Loans shall have been paid in full, ratably in accordance with such Applicable Percentage immediately prior to such date), and agrees to indemnify and hold each Agent-Related Person harmless from and against any and all Liabilities and related expenses, including the fees, charges and disbursements of any kind whatsoever that may at any time (whether before or after the payment of the Loans) be imposed on, incurred by or asserted against such Agent-Related Person in any way relating to or arising out of the Commitments, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by such Agent-Related Person under or in connection with any of the foregoing; *provided* that the unreimbursed expense or Liability or related expense, as the case may be, was incurred by or asserted against such Agent-Related Person in its capacity as such; *provided further* that no Lender shall be liable for the payment of any portion of such Liabilities, costs, expenses or disbursements that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted primarily from such Agent-Related Party’s gross negligence or willful misconduct. The agreements in this Section 9.03 shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder..

(e) All amounts due under this Section 9.03 shall be payable promptly after written demand therefor.

SECTION 1.04. Successors and Assigns. 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 9.04. 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 9.04) 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.

(b) 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 ten (10) 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.

(ii) 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, 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 agree to a lesser amount, 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 its 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 an Approved Electronic 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.

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(iv) of this Section 9.04, 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 9.04.

(iv) 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.

(v) 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 an Approved Electronic 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 9.04 and any written consent to such assignment required by paragraph (b) of this

Section 9.04, 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.

(c) Any Lender may, without the consent of, or notice to, 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 9.04; 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 a non-fiduciary 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.

(d) 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 9.04 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 1.05. 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 1.06. Counterparts; Integration; Effectiveness; Electronic Execution. 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.

(b) Delivery of an executed counterpart of a signature page of (x) this Agreement, (y) any other Loan Document and/or (z) any document, amendment, approval, consent, information, notice (including, for the avoidance of doubt, any notice delivered pursuant to Section 9.01), certificate, request, statement, disclosure or authorization related to this Agreement, any other Loan Document and/or the transactions contemplated hereby and/or thereby (each an "**Ancillary Document**") that is an Electronic Signature transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement, such other Loan Document or such Ancillary Document, as applicable. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to this Agreement, any other Loan Document and/or any Ancillary Document shall be deemed to include Electronic Signatures, deliveries or the keeping of records in any electronic form (including deliveries by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page), 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; *provided* that nothing herein shall require the Administrative Agent to accept Electronic Signatures in any form or format without its prior written consent and pursuant to procedures approved by it; *provided, further*, without limiting the foregoing, to the extent the Administrative Agent has agreed to accept any Electronic Signature, the Administrative Agent and each of the Lenders shall be entitled to rely on such Electronic Signature purportedly given by or on behalf of the Borrower or any other Loan Party without further verification thereof and without any obligation to review the appearance or form of any such Electronic signature and upon the request of the Administrative Agent or any Lender, any Electronic Signature shall be promptly followed by a manually executed counterpart. Without limiting the generality of the foregoing, the Borrower and each Loan Party hereby agrees that, for all purposes, including without limitation, in connection with any workout, restructuring, enforcement of remedies, bankruptcy proceedings or litigation among the Administrative Agent, the Lenders, the Borrower and the Loan Parties, Electronic Signatures transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page and/or any electronic images of this Agreement, any other Loan Document and/or any Ancillary Document shall have the same legal effect, validity and enforceability as any paper original, the Administrative Agent and each of the Lenders may, at its option, create one or more copies of this Agreement, any other Loan Document and/or any Ancillary

Document in the form of an imaged electronic record in any format, which shall be deemed created in the ordinary course of such Person's business, and destroy the original paper document (and all such electronic records shall be considered an original for all purposes and shall have the same legal effect, validity and enforceability as a paper record), waives any argument, defense or right to contest the legal effect, validity or enforceability of this Agreement, any other Loan Document and/or any Ancillary Document based solely on the lack of paper original copies of this Agreement, such other Loan Document and/or such Ancillary Document, respectively, including with respect to any signature pages thereto and waives any claim against any Lender-Related Person for any Liabilities arising solely from the Administrative Agent's and/or any Lender's reliance on or use of Electronic Signatures and/or transmissions by telecopy, emailed pdf, or any other electronic means that reproduces an image of an actual executed signature page, including any Liabilities arising as a result of the failure of the Borrower and/or any Loan Party to use any available security measures in connection with the execution, delivery or transmission of any Electronic Signature.

SECTION 1.07. Severability. Any provision of any Loan Document 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 thereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

SECTION 1.08. 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 unmaturing. The rights of each Lender under this Section 9.08 are in addition to other rights and remedies (including other rights of setoff) which such Lender may have.

SECTION 1.09. Governing Law; Jurisdiction; Consent to Service of Process. (a) The Loan Documents (other than those containing a contrary express choice of law provision) shall be governed by and construed in accordance with the internal laws of the State of New York, but giving effect to federal laws applicable to national banks.

(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 any Loan Documents, the transactions relating hereto or thereto, 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 (and any such claims, cross-claims or third party claims brought against the Administrative Agent or any of its Related Parties may only) 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 or any other Loan Document 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 or any other Loan Document in any court referred to in paragraph (b) of this Section 9.09. 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 or any other Loan Document will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

SECTION 1.10. 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, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER 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 9.10.

SECTION 1.11. 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 1.12. 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 any Requirement of Law 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 under any other Loan Document or any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section 9.12, 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, (h) on a confidential basis to any rating agency in connection with rating the Borrower or its Subsidiaries or the credit facilities provided for herein or the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of identification numbers with respect to the credit facilities provided for herein or (i) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section 9.12 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 9.12, "**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 9.12 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 1.13. Material Non-Public Information.

(a) 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.

(b) 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 1.14. 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 9.14 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 Overnight Rate to the date of repayment, shall have been received by such Lender.

SECTION 1.15. USA PATRIOT Act. Each Lender that is subject to the requirements of the USA PATRIOT Act of 2001 (the "**Patriot Act**") hereby notifies the Borrower that pursuant to the requirements of the Patriot 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 Patriot Act.

SECTION 1.16. Acknowledgement and Consent to Bail-In of Affected 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 Affected Financial Institution arising under any Loan Document may be subject to the Write-Down and Conversion Powers of the applicable 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 the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected 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 Affected 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 the applicable Resolution Authority.

SECTION 1.17. No Fiduciary Duty, etc.

(a) The Borrower acknowledges and agrees, and acknowledges its Subsidiaries' understanding, that no Credit Party will have any obligations except those obligations expressly set forth herein and in the other Loan Documents and each Credit Party is acting solely in the capacity of an arm's length contractual counterparty to the Borrower with respect to the Loan Documents and the transactions contemplated herein and therein and not as a financial advisor or a fiduciary to, or an agent of, the Borrower or any other person. The Borrower agrees that it will not assert any claim against any Credit Party based on an alleged breach of fiduciary duty by such Credit Party in connection with this Agreement and the transactions contemplated hereby. Additionally, the Borrower acknowledges and agrees that no Credit Party is advising the Borrower as to any legal, tax, investment, accounting, regulatory or any other matters in any jurisdiction. The Borrower shall consult with its own advisors concerning such matters and shall be responsible for making its own independent investigation and appraisal of the transactions contemplated herein or in the other Loan Documents, and the Credit Parties shall have no responsibility or liability to the Borrower with respect thereto.

(b) The Borrower further acknowledges and agrees, and acknowledges its Subsidiaries' understanding, that each Credit Party, together with its Affiliates, is a full service securities or banking firm engaged in securities trading and brokerage activities as well as providing investment banking and other financial services. In the ordinary course of business, any Credit Party may provide investment banking and other financial services to, and/or acquire, hold or sell, for its own accounts and the accounts of customers, equity, debt and other securities and financial instruments (including bank loans and other obligations) of, the Borrower and other companies with which the Borrower may have commercial or other relationships. With respect to any securities and/or financial instruments so held by any Credit Party or any of its customers, all rights in respect of such securities and financial instruments, including any voting rights, will be exercised by the holder of the rights, in its sole discretion.

(c) In addition, the Borrower acknowledges and agrees, and acknowledges its Subsidiaries' understanding, that each Credit Party and its affiliates may be providing debt financing, equity capital or other services (including financial advisory services) to other companies in respect of which the Borrower may have conflicting interests regarding the transactions described herein and otherwise. No Credit Party will use confidential information obtained from the Borrower by virtue of the transactions contemplated by the Loan Documents or its other relationships with the Borrower in connection with the performance by such Credit Party of services for other companies, and no Credit Party will furnish any such information to other companies. The Borrower also acknowledges that no Credit Party has any obligation to use in connection with the transactions contemplated by the Loan Documents, or to furnish to the Borrower, confidential information obtained from other companies.

SECTION 1.18. Amendment and Restatement; Reaffirmation. The parties hereto agree that, on the Restatement Effective Date, the following transactions shall be deemed to occur automatically, without further action by any party hereto:

(a) The Existing Credit Agreement shall be deemed to be amended and restated in its entirety in the form of and pursuant to this Agreement and the terms of this Agreement shall replace and supersede the Existing Credit Agreement (which shall hereafter have no further effect upon the parties thereto other than with respect to any action, event, representation, warranty or covenant occurring, made or applying prior to the Restatement Effective Date).

(b) All "Revolving Loans" outstanding under the Existing Credit Agreement shall be deemed to be Revolving Loans under this Agreement. All other "Obligations" existing under the Existing Credit Agreement shall be deemed to be outstanding under this Agreement and, in each case (i) are in all respects enforceable with only the terms thereof being modified as provided by this Agreement and (ii) shall in all respects be continuing after the Restatement Effective Date and shall be deemed to be Obligations governed by this Agreement.

(c) All references to the Existing Credit Agreement or the "Credit Agreement" in the existing Loan Documents executed in connection with the Original Credit Agreement (the "**Existing Loan Documents**"), whether on the Existing Credit Agreement's "Restatement Effective Date" or at any

time thereafter but prior to the Restatement Effective Date, shall be deemed to include references to this Agreement, as amended, restated, supplemented or otherwise modified from time to time.

(d) The Borrower hereby acknowledges and agrees that each of the Existing Loan Documents that are not superseded by corresponding Loan Documents executed and delivered in connection with this Agreement to which the Borrower is a party remains in full force and effect. The Borrower hereby (i) ratifies and reaffirms all of its repayment and performance obligations, including obligations to indemnify, contingent or otherwise, under each of such Existing Loan Documents to which it is a party, (ii) ratifies and reaffirms its grant of liens on, or security interests in, its properties pursuant to such Existing Loan Documents to which it is a party as security for the Secured Obligations under or with respect to this Agreement, (iii) confirms and agrees that such liens and security interests secure all of the Secured Obligations, in each case as if each reference in such Existing Loan Documents to the obligations secured thereby are construed to mean and refer to such Secured Obligations under this Agreement. To the extent the Borrower guaranteed any of the Secured Obligations as defined in the Existing Credit Agreement pursuant to any of such Existing Loan Documents as security for such Secured Obligations, the Borrower, hereby ratifies and reaffirms such guaranty and agrees that such guaranty secures all of the Secured Obligations under this Agreement and remain in full force and effect after giving effect to this Agreement. The execution, delivery and effectiveness of this Agreement shall not operate as a waiver of any right, power or remedy of the Administrative Agent or the Lenders under the Existing Credit Agreement or any Existing Loan Document, nor constitute a waiver of any provision of the Existing Credit Agreement or any other Existing Loan Document, except as specifically set forth therein or in a corresponding Loan Document.

(e) Each party to this Agreement acknowledges and agrees that this Agreement and the documents executed and delivered in connection herewith do not constitute a novation, payment and reborrowing or termination of any of the Obligations under the Existing Credit Agreement as in effect prior to the Restatement Effective Date or a novation or payment and reborrowing of any amount owing under the Existing Credit Agreement as in effect prior to the Restatement Effective Date.

**SECTION 1.19. Acknowledgement Regarding Any Supported QFCs .** To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Swap Agreements or any other agreement or instrument that is a QFC (such support “**QFC Credit Support**” and each such QFC a “**Supported QFC**”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “**U.S. Special Resolution Regimes**”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

In the event a Covered Entity that is party to a Supported QFC (each, a “**Covered Party**”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

*[Signatures Immediately Follow]*





BANK OF AMERICA N.A.

By: \_\_\_\_\_ /s/ Sebastian Lurie

Name: Sebastian Lurie

Title: SVP

*Signature Page to Second Amended and Restated Credit Agreement*

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UNICREDIT BANK AG, NEW YORK  
BRANCH

By:       /s/ Christine Macinnes      

Name: Christine Macinnes

Title: Director

By:       /s/ Laura Shelmerdine      

Name: Laura Shelmerdine

Title: Associate Director

*Signature Page to Second Amended and Restated Credit Agreement*



SCHEDULE 2.01

Commitment Schedule

<b>Lender</b>	<b>Commitment</b>	<b>Letter of Credit Commitment</b>
JPMorgan Chase Bank, National Association	\$60,000,000.00	\$25,000,000
Bank of America N.A.	\$55,000,000.00	--
Silicon Valley Bank	\$40,000,000.00	--
UniCredit Bank AG, New York Branch	\$22,500,000.00	--
Santander Bank, N.A.	\$22,500,000.00	--
<b>Total</b>	<b>\$200,000,000.00</b>	<b>\$25,000,000</b>

Sched. 2.01

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]<sup>1</sup> ]
3. Borrower: DexCom, Inc.
4. Administrative Agent: JPMorgan Chase Bank, N.A., as the administrative agent under the Credit Agreement
5. Credit Agreement: The \$200,000,000 Second Amended and Restated Credit Agreement dated as of October 13, 2021 among DexCom, Inc., the Lenders parties thereto, JPMorgan Chase Bank, National Association, as Administrative Agent
6. Assigned Interest: \_\_\_\_\_

<sup>1</sup> Select as applicable.

Facility Assigned <sup>2</sup>	Aggregate Amount of Commitment/Loans for all Lenders	Amount of Commitment/Loans Assigned	Percentage Assigned of Commitment/Loans <sup>3</sup>
	\$	\$	%
	\$	\$	%
	\$	\$	%

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:

<sup>2</sup> Fill in the appropriate terminology for the types of facilities under the Credit Agreement that are being assigned under this Assignment (e.g., “Revolving Commitment”).

<sup>3</sup> Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.

[Consented to and]<sup>4</sup> Accepted:

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, as  
Administrative Agent

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

[Consented to:]<sup>5</sup>

[NAME OF RELEVANT PARTY]

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

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<sup>4</sup> To be added only if the consent of the Administrative Agent is required by the terms of the Credit Agreement.

<sup>5</sup> To be added only if the consent of the Borrower and/or other parties (e.g. Issuing Bank) is required by the terms of the Credit Agreement.

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 or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents 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, (iv) any requirements under applicable law for the Assignee to become a lender under the Credit Agreement or any other Loan Document or to charge interest at the rate set forth therein from time to time or (v) 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 any Loan Document.

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 and under applicable law 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 Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents 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 (as defined in the Credit Agreement) or delivery of an executed counterpart of a signature page of this Assignment and Assumption by any Approved Electronic Platform (as defined in the Credit Agreement) 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  
[RESERVED]

Ex. B - 1

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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 Second Amended and Restated Credit Agreement dated as of October[\_\_\_], 2021 (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 prior to the first payment 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 Second Amended and Restated Credit Agreement dated as of October 13, 2021 (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 prior to the first payment 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 Second Amended and Restated Credit Agreement dated as of October 13, 2021 (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 a withholding statement together with 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 prior to the first payment 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 Second Amended and Restated Credit Agreement dated as of October 13, 2021 (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 a withholding statement together with 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 prior to the first payment 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[ ]

## SIXTH AMENDMENT TO OFFICE LEASE

This SIXTH AMENDMENT TO OFFICE LEASE ("**Sixth Amendment**") is made and entered into as of the 25th day of May, 2021, by and between SEQUENCE TECH. CENTER CA LLC, a Delaware limited liability company ("**Landlord**"), and DEXCOM, INC., a Delaware corporation ("**Tenant**").

## R E C I T A L S :

A. Landlord's predecessor-in-interest, JOHN HANCOCK LIFE INSURANCE COMPANY (U.S.A.), a wholly owned subsidiary of Manulife Financial Corporation, a Michigan corporation, in turn the predecessor-in-interest to Kilroy Realty, L.P., a Delaware limited partnership ("**Original Landlord**"), and Tenant entered into that certain Office Lease dated March 31, 2006 (the "**Lease**"), as amended by (i) that certain First Amendment to Office Lease dated August 18, 2010 ("**First Amendment**"), (ii) that certain Second Amendment to Office Lease dated October 1, 2014 ("**Second Amendment**"), (iii) that certain Third Amendment to Office Lease dated as of February 7, 2019 by and between Landlord and Tenant ("**Third Amendment**") (iv) that certain Fourth Amendment to Lease dated as of September 9, 2019 by and between Landlord and Tenant ("**Fourth Amendment**"), and (v) that certain Fifth Amendment to Lease dated as of October 28, 2019 by and between Landlord and Tenant ("**Fifth Amendment**"), whereby Landlord leases to Tenant and Tenant leases from Landlord those certain premises (collectively, the "**Premises**") located in the following buildings: (i) that certain office building located at 6340 Sequence Drive, San Diego, California ("**6340 Building**"), (ii) that certain office building located at 6310 Sequence Drive, San Diego, California ("**6310 Building**"), (iii) that certain office building located at 6290 Sequence Drive, San Diego, California ("**6290 Building**") and (iv) that certain office building located at 6350 Sequence Drive, San Diego, California ("**6350 Building**") (collectively, the "**Buildings**"), which buildings are located in the Project (as defined in the Lease). The Original Lease, as amended by the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment and the Fifth Amendment, may be referred to herein as the "**Lease**". Landlord is the successor-in-interest in the Lease to Original Landlord.

B. Tenant desires, as part of its plan to renovate material portions of the interior of the 6350 Building, to perform sprinkler renovation work in the 6350 Building and Landlord has agreed to provide Tenant with an improvement allowance in connection with such work.

C. In connection with the foregoing, Landlord and Tenant desire to amend the Lease as hereinafter provided.

## A G R E E M E N T :

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Capitalized Terms.** All capitalized terms when used herein shall have the same meaning as is given such terms in the Lease unless expressly superseded by the terms of this Sixth Amendment.

2. **Sprinkler Renovation.** Subject to the full execution and delivery of this Sixth Amendment by Landlord and Tenant, Tenant shall commence performing the Sprinkler Renovation Work (as defined the Tenant Work Letter attached hereto as **Exhibit "A"**) in the 6350 Building pursuant to the terms and conditions of the Tenant Work Letter attached hereto as **Exhibit "A"**.

3. **No Further Modification.** Except as set forth in this Sixth Amendment, all of the terms and provisions of the Lease shall remain unmodified and in full force and effect.

IN WITNESS WHEREOF, this Sixth Amendment has been executed as of the day and year first above written.

**"LANDLORD":**

SEQUENCE TECH. CENTER CA LLC,  
a Delaware limited liability company

By: /s/ Ryan Lewis  
Name: Ryan Lewis  
Title: Director, Western US  
Date: 6/2/2021

By: /s/ Erik T. Gustafson  
Name: Erik T. Gustafson  
Title: Senior Managing Director  
Date: 6/2/2021

**"TENANT":**

DEXCOM, INC.,  
a Delaware corporation

By: /s/ Jereme Sylvain  
Name: Jereme Sylvain  
Its: EVP, Chief Financial Officer

**EXHIBIT A**

**TENANT WORK LETTER**

This Tenant Work Letter ("**Tenant Work Letter**") shall set forth the terms and conditions relating to the Sprinkler Renovation Work described below.

**SECTION 1**

**GENERAL**

Except for the Improvement Allowance set forth below and as otherwise set forth in the Lease, Landlord shall not be obligated to make or pay for any alterations or improvements to the Buildings or the Project.

**SECTION 2**

**IMPROVEMENT ALLOWANCE AND SPRINKLER RENOVATION WORK**

2.1 **Improvement Allowance.** Tenant shall be entitled to an improvement allowance (the "**Improvement Allowance**") in the amount of up to, but not exceeding, One Million Six Hundred Thirty-Three Thousand Dollars (\$1,633,000.00), to help Tenant pay for the costs of the design, permitting and construction of the sprinkler renovation work in the 6350 Building (collectively, the "**Sprinkler Renovation Work**"); provided, however, that Landlord shall have no obligation to disburse all or any portion of the Improvement Allowance to Tenant unless Tenant makes a request for disbursement pursuant to the terms and conditions of Section 2.2 below prior to April 30, 2022. Landlord shall not be obligated to disburse any portion of the Improvement Allowance for disbursement requests beyond April 30, 2022. In no event shall Landlord be obligated to make disbursements pursuant to this Tenant Work Letter in a total amount which exceeds the Improvement Allowance. Tenant shall not be entitled to receive any cash payment or credit against Rent or otherwise for any unused portion of the Improvement Allowance which is not used to pay for the Improvement Allowance Items (as defined below).

2.2 **Disbursement of the Improvement Allowance.**

2.2.1 **Improvement Allowance Items.** Except as otherwise set forth in this Tenant Work Letter, the Improvement Allowance shall be disbursed by Landlord only for the following items and costs (collectively, the "**Improvement Allowance Items**"):

2.2.1.1 Payment of (i) the fees of the Architect and the Engineers (as such terms are defined below), and (ii) the fees incurred by, and the cost of documents and materials supplied by, Landlord and Landlord's consultants in connection with the preparation and review of the Construction Drawings (as defined below);

2.2.1.2 The payment of plan check, permit and license fees relating to construction of the Sprinkler Renovation Work;

2.2.1.3 The cost of construction of the Sprinkler Renovation Work, including, without limitation, contractors' fees and general conditions, testing and inspection costs, costs of utilities, trash removal, parking and hoists, and the costs of after-hours freight elevator usage.

2.2.1.4 The cost of any changes to the Construction Drawings or Sprinkler Renovation Work required by applicable laws;

2.2.1.5 Sales and use taxes and Title 24 fees; and

2.2.1.6 All other costs to be expended by Landlord or Tenant in connection with the design, permitting and construction of the Sprinkler Renovation Work.

2.2.2 Disbursement of Improvement Allowance. Subject to Section 2.1 above, during and after the construction of the Sprinkler Renovation Work, Landlord shall make monthly disbursements of the Improvement Allowance for Improvement Allowance Items for the benefit of Tenant and shall authorize the release of monies for the benefit of Tenant as follows:

2.2.2.1 Monthly Disbursements. From time to time during and after the construction of the Sprinkler Renovation Work (but in no event sooner than August 1, 2021 and no more frequently than monthly), Tenant shall deliver to Landlord: (i) a request for payment by Tenant, in a form to be provided by Landlord, showing the schedule, by trade, of percentage of completion of the Sprinkler Renovation Work, detailing the portion of the work completed and the portion not completed, and demonstrating that the relationship between the cost of the work completed and the cost of the work to be completed complies with the terms of the budget included in the Contract (as defined below); (ii) paid invoices from all of Tenant's Agents (as defined below), for labor rendered and materials delivered to the 6350 Building; (iii) executed mechanic's lien releases from all of Tenant's Agents which shall comply with the appropriate provisions, as reasonably determined by Landlord, of California Civil Code Section 8138; and (iv) each of the general disbursement items referenced in Section 2.2.2.2 below, and all other information reasonably requested by Landlord. Following Landlord's receipt of a completed disbursement request submission, Landlord shall deliver a check to Tenant made payable to Tenant in payment of the lesser of (A) the amounts so requested by Tenant, as set forth in this Section 2.2.2.1, above, less a ten percent (10%) retention (the aggregate amount of such retentions to be known as the "**Final Retention**") and (B) the balance of any remaining available portion of the Improvement Allowance (not including the Final Retention), provided that Landlord does not reasonably dispute any request for payment based on non-compliance of any work with the Approved Working Drawings (as defined below) or due to any substandard work. Landlord's payment of such amounts shall not be deemed Landlord's approval or acceptance of the work furnished or materials supplied as set forth in Tenant's payment request.

2.2.2.2 Final Retention. Subject to the provisions of this Tenant Work Letter, a check for the Final Retention payable to Tenant shall be delivered by Landlord to Tenant following the completion of construction of the Sprinkler Renovation Work, provided that (i) Landlord has determined that no substandard work exists which adversely affects the mechanical, electrical, plumbing, HVAC, life-safety or other systems of the 6350 Building, the curtain wall of the 6350 Building, or the structure or exterior appearance of the 6350 Building; and (ii) Tenant has delivered to Landlord: (A) properly executed and final unconditional mechanics lien releases in compliance with applicable California law; (B) if applicable, permit cards signed off by the City of San Diego (the "**City**") with respect to the Sprinkler Renovation Work; (C) as-built plans and City-permitted plans for the Sprinkler Renovation Work; (D) operation manuals and warranties for equipment included within the Sprinkler Renovation Work, if applicable; (E) copy of the contract with the Contractor (if not previously delivered to Landlord); (F) copy of the Contractor's certificate of insurance, including Additional Insured endorsement naming Landlord (and any other party requested by Landlord) as additional insureds; and (G) the Contractor's schedule of values, showing total contract value.

2.2.2.3 Other Terms. Landlord shall only be obligated to make disbursements from the Improvement Allowance to the extent costs are incurred by Tenant for Improvement Allowance Items.

### **SECTION 3**

#### **CONSTRUCTION DRAWINGS**

3.1 Selection of Architect/Construction Drawings. Tenant shall retain the architect/space planner (the "**Architect**") and engineering consultants ("**Engineers**") approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed, to prepare the Construction Drawings. The plans and drawings to be prepared by Architect and the Engineers hereunder shall be known collectively as the "**Construction Drawings**." All Construction Drawings shall comply with the drawing format and specifications reasonably determined by Landlord, and shall be subject to Landlord's reasonable approval. Tenant and Architect shall verify, in the field, the dimensions and conditions as shown on the relevant portions of the base building plans, and Tenant and Architect shall be solely responsible for the same, and Landlord shall have no responsibility in connection therewith. Landlord's review of the Construction Drawings as set forth in this Section 3, shall be for its sole purpose and shall not imply Landlord's review of the same, or obligate Landlord to review the same, for quality, design, code compliance or other like matters. Accordingly, notwithstanding that any Construction Drawings are reviewed by Landlord or its space planner, architect, engineers and consultants, and notwithstanding any advice or assistance which may be rendered to Tenant by Landlord or Landlord's space planner, architect, engineers, and consultants, Landlord shall have no liability whatsoever in connection therewith and shall not be responsible for any omissions or errors contained in the Construction Drawings.

3.2 Final Working Drawings. As soon as reasonably possible after the date hereof, Tenant shall cause the Architect and the Engineers to complete the architectural and engineering drawings for the Sprinkler Renovation Work, and cause the Architect to compile a fully coordinated set of architectural, structural, mechanical, electrical and plumbing working drawings in a form which is complete to obtain all applicable permits for the Sprinkler Renovation Work (collectively, the "**Final Working Drawings**"), and shall submit the same to Landlord for Landlord's approval. Tenant shall supply Landlord with four (4) copies signed by Tenant of such Final Working Drawings. Landlord shall advise Tenant within five (5) business days after Landlord's receipt of the Final Working Drawings for the Sprinkler Renovation Work if the same is unsatisfactory or incomplete in any respect. If Tenant is so advised, Tenant shall promptly (i) revise the Final Working Drawings in accordance with such review and any disapproval of Landlord in connection therewith, and (ii) deliver such revised Final Working Drawings to Landlord.

3.4 Approved Working Drawings. The Final Working Drawings shall be approved by Landlord (the "**Approved Working Drawings**") prior to the commencement of the Sprinkler Renovation Work. After approval by Landlord of the Final Working Drawings, Tenant shall promptly submit the same to the appropriate governmental authorities for all applicable building permits. Tenant hereby agrees that neither Landlord nor Landlord's consultants shall be responsible for obtaining any building permit and that obtaining the same shall be Tenant's responsibility; provided, however, that Landlord shall cooperate with Tenant in executing permit applications and performing other ministerial acts reasonably necessary to enable Tenant to obtain any such permit. No material changes, modifications or alterations in the Approved Working Drawings may be made without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed.

3.5 Electronic Approvals. Notwithstanding any provision to the contrary contained in the Lease or this Tenant Work Letter Agreement, Landlord may, in Landlord's sole and absolute discretion, transmit or otherwise deliver any of the approvals from Landlord required under this Tenant Work Letter via electronic mail to Tenant's representative identified in Section 5.1 of this Tenant Work Letter, or by any of the other means identified in Section 29.18 of the Lease.

## SECTION 4

### CONSTRUCTION OF THE SPRINKLER RENOVATION WORK

#### 4.1 Tenant's Selection of Contractor and Tenant's Agents.

4.1.1 The Contractor. Tenant shall select a general contractor to construct the Sprinkler Renovation Work (the "**Contractor**"), which Contractor shall be subject to Landlord's reasonable approval.

4.1.2 Tenant's Agents. All subcontractors, laborers, materialmen, and suppliers used by Tenant (such subcontractors, laborers, materialmen, and suppliers, and the Contractor to be known collectively as "**Tenant's Agents**") must be approved in writing by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed.

#### 4.2 Construction of Sprinkler Renovation Work by Tenant's Agents.

4.2.1 Construction Contract; Cost Budget. Prior to Tenant's execution of the construction contract and general conditions with Contractor (the "**Contract**"), Tenant shall submit the Contract to Landlord for its approval, which approval shall not be unreasonably withheld, conditioned or delayed. Prior to the commencement of the construction of the Sprinkler Renovation Work, Tenant shall provide Landlord with a written detailed cost breakdown (the "**Final Costs Statement**"), by trade, of the final costs to be incurred, or which have been incurred, as set forth more particularly in Section 2.2.1.1 through 2.2.1.6 above, in connection with the design, permitting and construction of the Sprinkler Renovation Work to be performed by or at the direction of Tenant or the Contractor, which costs form a basis for the amount of the Contract, if any (the "**Final Costs**").

#### 4.2.2 Tenant's Agents.

4.2.2.1 Landlord's General Conditions for Tenant's Agents and Sprinkler Renovation Work. Tenant's and Tenant's Agents' construction of the Sprinkler Renovation Work shall comply with the following: (i) the Sprinkler Renovation Work shall be constructed in strict accordance with the Approved Working Drawings; (ii) Tenant's Agents shall submit schedules of all work relating to the Sprinkler Renovation Work to Contractor and Contractor shall, within five (5) business days after Tenant's receipt thereof, inform Tenant's Agents of any changes which are necessary thereto, and Tenant's Agents shall adhere to such corrected schedule; and (iii) Tenant shall abide by all rules made by Landlord's Building contractor or Landlord's Building manager with respect to the use of freight, loading dock and service elevators, storage of materials, and any other matter in connection with this Tenant Work Letter, including, without limitation, the construction of the Sprinkler Renovation Work.

4.2.2.2 Indemnity. Tenant's indemnity of Landlord as set forth in the Lease shall also apply with respect to any and all costs, losses, damages, injuries and liabilities related in any way to any act or omission of Tenant or Tenant's Agents, or anyone directly or indirectly employed by any of them, or in connection with Tenant's non-payment of any amount arising out of the Sprinkler Renovation Work and/or Tenant's disapproval of all or any portion of any request for payment. Such indemnity by Tenant, as set forth in the Lease, shall also apply

with respect to any and all costs, losses, damages, injuries and liabilities related in any way to Landlord's performance of any ministerial acts reasonably necessary (i) to permit Tenant to complete the Sprinkler Renovation Work, and (ii) to enable Tenant to obtain any building permit for the 6350 Building required for the Sprinkler Renovation Work.

#### 4.2.2.3 Insurance Requirements.

4.2.2.3.1 General Coverages. All of Tenant's Agents shall carry worker's compensation insurance covering all of their respective employees, and shall also carry public liability insurance, including property damage, all with limits, in form and with companies as are required to be carried by Tenant as set forth in the Lease.

4.2.2.3.2 Special Coverages. Tenant shall carry "Builder's All Risk" insurance in an amount equal to the full replacement cost of the improvements being constructed by Tenant for the Sprinkler Renovation Work, and such other insurance as Landlord may reasonably require; provided, however, to the extent such other insurance is not available on a commercially reasonable basis, then Tenant shall not be required to carry such insurance. Such insurance shall be in amounts and shall include such extended coverage endorsements as may be reasonably required by Landlord, and in form and with companies as are required to be carried by Tenant as set forth in the Lease.

4.2.2.3.3 General Terms. Certificates for all insurance carried pursuant to this Section 4.2.2.4 shall be delivered to Landlord before the commencement of construction of the Sprinkler Renovation Work and before the Contractor's equipment is moved onto the site. All such policies of insurance must contain a provision that the company writing said policy will give Landlord thirty (30) days prior written notice of any cancellation or lapse of the effective date or any reduction in the amounts of such insurance. If the Sprinkler Renovation Work are damaged by any cause during the course of the construction thereof, Tenant shall immediately repair the same at Tenant's sole cost and expense. All policies carried under this Section 4.2.2.4 shall insure Landlord and Tenant, as their interests may appear, as well as Contractor and Tenant's Agents, and shall name as additional insureds Landlord's property manager, Landlord's asset manager, and all mortgagees and ground lessors of the 6350 Building and any other parties, each to the extent specified by Landlord to Tenant in writing. All insurance, except Workers' Compensation, maintained by Tenant's Agents shall preclude subrogation claims by the insurer against anyone insured thereunder. Such insurance shall provide that it is primary insurance as respects the owner and that any other insurance maintained by owner is excess and noncontributing with the insurance required hereunder. The requirements for the foregoing insurance shall not derogate from the provisions for indemnification of Landlord by Tenant under Section 4.2.2.3 of this Tenant Work Letter.

4.2.3 Governmental Compliance. The Sprinkler Renovation Work shall comply in all material respects with the following: (i) the Code and other state, federal, city or quasi-governmental laws, codes, ordinances and regulations, as each may apply according to the rulings of the controlling public official, agent or other person; (ii) applicable standards of the American Insurance Association (formerly, the National Board of Fire Underwriters) and the National Electrical Code; and (iii) building material manufacturer's specifications.

4.2.4 Inspection by Landlord. Landlord shall have the right to inspect the Sprinkler Renovation Work at reasonable times, provided however, that Landlord's failure to inspect the Sprinkler Renovation Work shall in no event constitute a waiver of any of Landlord's rights hereunder nor shall Landlord's inspection of the Sprinkler Renovation Work constitute Landlord's approval of the same. Should Landlord disapprove any portion of the Sprinkler Renovation Work, Landlord shall notify Tenant in writing of such disapproval and shall specify the items disapproved. Any defects or deviations in, and/or disapproval by Landlord of, the

Sprinkler Renovation Work shall be rectified by Tenant at no expense to Landlord, provided however, that if Landlord determines that a defect or deviation exists or disapproves of any matter in connection with any portion of the Sprinkler Renovation Work and such defect, deviation or matter might adversely affect the mechanical, electrical, plumbing, HVAC or life-safety systems of the 6350 Building, or the structure or exterior appearance of the 6350 Building, Landlord may, take such action as Landlord deems necessary, at Tenant's expense and without incurring any liability on Landlord's part, to correct any such defect, deviation and/or matter, including, without limitation, causing the cessation of performance of the construction of the Sprinkler Renovation Work until such time as the defect, deviation and/or matter is corrected to Landlord's satisfaction.

4.2.5 Meetings. Subsequent to the execution of the Sixth Amendment, Tenant shall hold regularly-scheduled meetings at a reasonable time with the Architect and the Contractor regarding the progress of the preparation of Construction Drawings and the construction of the Sprinkler Renovation Work, which meetings shall be held at a location designated by Tenant. Landlord and/or its agents shall receive prior notice of, and shall have the right to attend, all such meetings, and, upon Landlord's request, certain of Tenant's Agents shall attend such meetings. In addition, minutes shall be taken at all such meetings, a copy of which minutes shall be promptly delivered to Landlord. One such meeting each month shall include the review of Contractor's current request for payment.

4.3 Notice of Completion; Copy of "As Built" Plans. Within ten (10) business days after completion of construction of the Sprinkler Renovation Work, Tenant shall cause a Notice of Completion to be recorded in the office of the Recorder of the County in which the 6350 Building is located in accordance with Section 3093 of the Civil Code of the State of California or any successor statute, and shall furnish a copy thereof to Landlord upon such recordation. If Tenant fails to do so, Landlord may execute and file the same on behalf of Tenant as Tenant's agent for such purpose, at Tenant's sole cost and expense. At the conclusion of construction, (i) Tenant shall cause the Architect and Contractor (A) to update the Approved Working Drawings as necessary to reflect all changes made to the Approved Working Drawings during the course of construction, (B) to certify to the best of their knowledge that the "record-set" of as-built drawings are true and correct, which certification shall survive the expiration or termination of the Lease, (C) to deliver to Landlord two (2) sets of sepias of such as-built drawings within ninety (90) days following completion of construction of the Sprinkler Renovation Work, and (D) to deliver to Landlord a computer disk containing the Approved Working Drawings in AutoCAD format, (ii) Tenant shall deliver to Landlord a copy of all warranties, guaranties, and operating manuals and information relating to the Sprinkler Renovation Work in the 6350 Building, and (iii) Tenant shall assign to Landlord all warranties and guaranties pertaining to the Sprinkler Renovation Work.

4.4 Coordination by Tenant's Agents with Landlord. Upon Tenant's delivery of the Contract to Landlord under Section 4.2.1 of this Tenant Work Letter, Tenant shall furnish Landlord with a schedule setting forth the projected date of the completion of the Sprinkler Renovation Work and showing the critical time deadlines for each phase, item or trade relating to the construction of the Sprinkler Renovation Work.

## SECTION 5

### MISCELLANEOUS

5.1 Tenant's Representative. Tenant has designated Jon Haigis (858) 281-7013 and jon.haigis@dexcom.com as its sole representative with respect to the matters set forth in this Tenant Work Letter, who shall have full authority and responsibility to act on behalf of the Tenant as required in this Tenant Work Letter.

5.2 Landlord's Representative. Landlord has designated Holly Jump at (858) 292-1667 and [holly\\_jump@jhancock.com](mailto:holly_jump@jhancock.com) as its sole representative with respect to the matters set forth in this Tenant Work Letter, who, until further notice to Tenant, shall have full authority and responsibility to act on behalf of the Landlord as required in this Tenant Work Letter.

5.3 Time of the Essence in This Tenant Work Letter. Unless otherwise indicated, all references herein to a "number of days" shall mean and refer to calendar days. If any item requiring approval is timely disapproved by Landlord, the procedure for preparation of the document and approval thereof shall be repeated until the document is approved by Landlord.

5.4 Tenant's Lease Default. Notwithstanding any provision to the contrary contained in the Lease, if an event of default by Tenant of this Tenant Work Letter or the Lease has occurred at any time on or before the completion of the Sprinkler Renovation Work, then (i) in addition to all other rights and remedies granted to Landlord pursuant to the Lease, at law and/or in equity, Landlord shall have the right to withhold payment of all or any portion of the Improvement Allowance and/or Landlord may cause Contractor to cease the construction of the Sprinkler Renovation Work, and (ii) all other obligations of Landlord under the terms of this Tenant Work Letter shall be postponed until such time as such default is cured pursuant to the terms of the Lease.

TENANT ESTOPPEL CERTIFICATE

June 8, 2021

ARE-SD REGION NO. 76, LLC (“Buyer”)  
c/o Alexandria Real Estate Equities, Inc. 26 North Euclid Avenue  
Pasadena, California 91101

Re: Lease dated March 31, 2006 (together with all amendments, modifications, supplements, guarantees, and restatements thereof set forth in items 1 and 2 of Schedule A attached hereto, the “Lease”) executed between Kilroy Realty, L.P., a Delaware limited partnership, predecessor in interest to Sequence Tech. Center CA LLC, a Delaware limited liability company (“Landlord”), and Dexcom, Inc., a Delaware corporation (“Tenant”), for those premises comprised of 90,000 rentable square feet and located at 6290 Sequence Drive, 62,415 rentable square feet and located at 6310 Sequence Drive, 66,400 rentable square feet and located at 6340 Sequence Drive, and 132,600 rentable square feet and located at 6350 Sequence Drive located in San Diego, California (the “Premises”)

To whom it may concern:

The undersigned Tenant understands that you or your assigns intend to acquire that property located at 6290, 6310, 6340 and 6350 Sequence Drive, San Diego, California 92121 (the “Property”) from Landlord. The undersigned Tenant does hereby certify to you as follows:

- A. The Lease consists of the documents identified in items 1 and 2 on Schedule A attached hereto (“Schedule A”). The Lease represents the entire agreement between the parties with respect to the Property. Attached hereto as Exhibit A is a true, correct and complete copy of the Lease.
- B. The Lease is in full force and effect and has not been modified, supplemented, amended, subleased or assigned except as indicated in Item 2 on Schedule A.
- C. To Tenant’s knowledge, there are no defaults under the Lease by Landlord, including, without limitation, defaults relating to the design, construction, condition and tenant uses of the Property. Tenant knows of no event or condition which, with the passage of time, the giving of notice, or both, would constitute a default by Landlord under the Lease. To Tenant’s knowledge, Tenant is not in default under the Lease and, to Tenant’s knowledge, no events or conditions exist which, with the passage of time or giving of notice or both, would constitute a default by Tenant under the Lease.
- D. As of the date hereof, Tenant does not claim any offsets or credits against rents payable under the Lease.
- E. Tenant has not paid a security or other deposit with respect to the Lease, except as shown in Item 3 on Schedule A.
- F. Tenant has fully paid rent on account of the month of June 2021; the current base rent under the Lease is as shown in Item 4 on Schedule A. The current monthly payment of operating expenses and real estate taxes is shown in Item 4 on Schedule A. Tenant’s percentage share for operating expenses and real estate taxes is 100%.

- G. Tenant has not paid any rentals in advance except for the current month of June 2021.
- H. The term of the Lease has commenced and will terminate on the dates indicated in Item 5 on Schedule A. Tenant does not have any right or option to renew or extend the term of the Lease, except as indicated in Item 5 of Schedule A.
- I. Except as shown in Item 6 on Schedule A, Tenant has no right of first refusal, right of first offer, or option to purchase the Property or any part thereof.
- J. There are no unexpired free or reduced rent or abated rents periods or other rental concessions under the Lease except as set forth on Item 7 of Schedule A.
- K. The improvements and space required to be furnished according to the Lease (if any) have been duly delivered by the Landlord and accepted by Tenant. Any payments by Landlord to Tenant for tenant improvements which are required under the Lease (whether due or to come due) have been made, except as may be indicated on Item 8 of Schedule A. Tenant has accepted the Premises and is in occupancy.
- L. Tenant has not filed on its behalf, nor to Tenant's knowledge, has any party initiated against Tenant, proceedings for relief under bankruptcy, insolvency, or other proceedings.
- M. Except as shown in Item 9 of Schedule A, Tenant has no right of first refusal or right of first offer to lease additional space at the Property.
- N. Except as set forth in Item 2 on Schedule A, Tenant has not transferred, assigned, or sublet any portion of the Premises nor entered into any license or concession agreement with respect thereto.
- O. The address for notices to be sent to Tenant under the Lease is indicated in Item 10 of Schedule A.
- P. Tenant has not exercised any of its rights under Section 8.3 (captioned "Additional Parking") of the Second Amendment to Office Lease, and such rights have lapsed and are of no further force or effect.

Tenant acknowledges that the undersigned individual signing this Estoppel Certificate on behalf of Tenant is duly authorized to execute and deliver it on behalf of Tenant. Tenant further acknowledges that this Estoppel Certificate may be relied upon by Buyer (and any assignee of Buyer's right to purchase the above-described Property), any lender which makes a loan to Buyer, and such lender's successors and assigns. This Estoppel Certificate shall be binding upon Tenant and its permitted successors and assigns.

TENANT:

DEXCOM, INC.,  
a Delaware corporation

By: /s/ Jereme Sylvain

Name: Jereme Sylvain

Title: EVP, Chief  
Financial Officer

SCHEDULE A

1. Lease:

Landlord: Kilroy Realty, L.P., a Delaware limited partnership, predecessor in interest to Sequence Tech. Center CA LLC, a Delaware limited liability company

Tenant: Dexcom, Inc., a Delaware corporation

Premises Entire buildings located at 6290, 6310, 6340 and 6350 Sequence Drive, San Diego, California, consisting of 351,415 rentable square feet.

Date: March 31, 2006

2. Modifications, Amendments and/or Assignments

- (a) Date: August 18, 2010 (First Amendment to Office Lease)
- (b) Date: July 10, 2012 (License Agreement (re: Mobile Food Trucks))
- (c) Date: October 1, 2014 (Second Amendment to Office Lease)
- (d) Date: March 10, 2015 (Letter re: Notice of Early Business Operations 6290 Must-Take Premises)
- (e) Date: August 3, 2017 (Letter re: DexCom Amenities)
- (f) Date: February 7, 2019 (Third Amendment to Office Lease)
- (f) Date: September 9, 2019 (Fourth Amendment to Office Lease)
- (g) Date: October 24, 2019 (Fifth Amendment to Lease)
- (h) Date: October 13, 2020 (Letter re: New Fire System)
- (i) Date: May 25, 2021 (Sixth Amendment to Office Lease)

3. Security Deposit  
(currently held by Landlord) \$89,640.00

Letter of Credit  
(currently held by Landlord) \$664,000.00

4. Monthly Base Rent for current term  
of Lease 6290 Sequence Drive

\$196,280.76 with future escalations as follows:  
\$202,500.00 commencing 03/01/2022  
\$208,530.00 commencing 03/01/2023

6310 Sequence Drive

\$127,679.66 with future escalations as follows:  
\$131,829.25 commencing 12/01/2022

\$140,433.75 commencing 03/01/2022

\$144,615.55 commencing 03/01/2023

6340 Sequence Drive

\$135,831.60 with future escalations as follows:

\$140,246.13 commencing 12/01/2021

\$149,400.00 commencing 03/01/2022

\$153,848.80 commencing 03/01/2023

6350 Sequence Drive

\$293,398.66 with future escalation as follows:

\$285,090.00 commencing 02/01/22

\$298,350.00 commencing 03/01/22

\$307,234.20 commencing 03/01/23

Monthly Operating Expense, Real Estate

Tax and Insurance	6290 Sequence Drive	\$54,700.00
	6310 Sequence Drive	\$38,034.00
	6340 Sequence Drive	\$42,364.00
	6350 Sequence Drive	\$87,192.00

5. Commencement Date: May 1, 2006  
Commencement Date (6310 Sequence Drive): September 15, 2010  
Commencement Date (6290 Sequence Drive): February 13, 2015  
Expansion Commencement Date (6350 Sequence Drive): October 1, 2019  
Termination Date: December 31, 2023  
Options to Extend: Two (2) separate options to extend the Lease Term for a period of not less than three (3) years and not more than five (5) years each, as more particularly set forth in the Lease.
6. Right of First Refusal/Purchase Option: None.
7. Unexpired Free Rent / Rent Abatement: None.
8. Unpaid Tenant Improvement Allowance:
  - (a) An aggregate amount of \$58,397 as Landlord's contribution towards fire alarm control panel upgrades in each of the 6290, 6310, 6340 and 6350 Buildings, as more particularly set forth in the October 13, 2020 Letter re: New Fire System; and
  - (b) An amount up to \$1,633,000 for the "Sprinkler Renovation Work" for the 6350 Building, pursuant to the Sixth Amendment to Office Lease dated May 25, 2021
9. Right of First Refusal to Lease: Tenant has an on-going right of first refusal to lease space in the building located at 6260 Sequence Drive, 10390 Pacific Center Court, 10394 Pacific Center Court, 10398 Pacific Center Court, 10421 Pacific Center Court, 10445 Pacific Center Court and 10455 Pacific Center Court, as more particularly set forth in the Lease
10. Tenant's Notice Address:

DexCom, Inc.  
6340 Sequence Drive  
San Diego, California 92121  
Attention: Chief Executive Officer

with copies to:

DexCom, Inc.  
6340 Sequence Drive  
San Diego, California 92121  
Attention: Legal Department

and

Stuart Kane LLP  
620 Newport Center Drive, Suite 200  
Newport Beach, California 92660  
Attention: Josh C. Grushkin

**Exhibit A**

**Lease**

[Attached]

LEASE  
10455 Pacific Center Court  
San Diego, California

Basic Lease Information

Date: January 31, 2020

Landlord: GC Pacific Center Court Owner LLC,  
a Delaware limited liability company

Tenant: Dexcom, Inc.,  
a Delaware corporation

Building (section 1.1): That certain building located at 10455 Pacific Center Court, San Diego, California 92121

Premises (section 1.1): A portion of the Building comprising 49,152 square feet of rentable area and commonly known as Suites 150 and 250

Parking (section 1.4): 2.95 unreserved parking spaces per 1,000 rentable square feet of Premises (for an initial parking space total of 145 as of the Commencement Date)

Lease Term (section 2.1): Approximately eighty-four (84) months

Delivery Date (section 2.1): The date on which Landlord tenders possession of the Premises to Tenant with the Landlord Delivery Date Work (as such term is defined in Exhibit B) Substantially Complete.

Commencement Date (section 2.1): September 1, 2020

Expiration Date (section 2.1): August 31, 2027

Base Rent (section 3.1(a)):

<u>Month</u>	<u>Monthly Base Rent</u>
09/01/20 – 08/31/21	\$103,219.20
09/01/21 – 08/31/22	\$106,315.78
09/01/22 – 08/31/23	\$109,505.25
09/01/23 – 08/31/24	\$112,790.41
09/01/24 – 08/31/25	\$116,174.12
09/01/25 – 08/31/26	\$119,659.34
09/01/26 – 08/31/27	\$123,249.12

Rent Payment Address (section 3.3): c/o Graymark Capital, Inc.  
180 Sutter Street, Suite 400  
San Francisco, CA 94104

Tenant's Percentage Share (section 4.1(c)): 55.00%

Permitted Use (section 6.1): General office, research and development and warehouse

Service Hours (section 7.2): 8 A.M. to 6 P.M. ("Business Hours") Monday through Friday (except union holidays and legal holidays) ("Business Days")

Deposit (section 27.1): None

Tenant's Address (section 30.1):  
  
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

Landlord's Address (section 30.1): c/o Graymark Capital, Inc.  
180 Sutter Street, Suite 400  
San Francisco, CA 94104

Landlord's Broker (section 32.1): Kidder Mathews

Tenant's Broker (section 32.1): Cushman & Wakefield

Exhibits: Exhibit A – Plan Outlining Premises  
Exhibit B – Work Letter  
Exhibit C – Rules and Regulations  
Exhibit D – Tenant's Building Signage  
Exhibit E – Appraisal Method  
Exhibit F – Dish / Antenna

The foregoing Basic Lease Information is incorporated in and made a part of this Lease. If there is any conflict between the Basic Lease Information and any other part of this Lease, the former shall control.

TENANT:

DEXCOM, INC.,  
a Delaware corporation

By /s/ Jereme Sylvain

Name Jereme Sylvain

Title VP, Finance

LANDLORD:

GC PACIFIC CENTER COURT OWNER LLC,  
a Delaware limited liability company

By /s/ Brian Hecktman

Name Brian Hecktman

Title Authorized Signatory

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LEASE

THIS LEASE is made as of the date specified in the Basic Lease Information by and between the landlord specified in the Basic Lease Information ("Landlord"), and the tenant specified in the Basic Lease Information ("Tenant").

W I T N E S S E T H:

ARTICLE 1  
Premises

1.1 Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, subject to the terms, covenants and conditions set forth in this Lease, the space (the "Premises") substantially shown outlined on the floor plan attached hereto as Exhibit A and described in the Basic Lease Information, which Premises are located in the building (the "Building") described in the Basic Lease Information. As used in this Lease, the term "Building" shall include the parcel or parcels of land on which the Building is located and all appurtenances thereto. During the Lease Term, Tenant shall have the nonexclusive right, in common with other tenants of the Building, to use only for their intended purposes of lobbies, entrances, stairs, elevators and other public portions of the Building, that are designated by Landlord from time to time as common areas and not leased to or allocated for the exclusive use of another tenant of the Building. Landlord shall have the right from time to time to change the size, location, configuration, character or use of any such common areas, construct additional improvements or facilities in any such common areas, or close any such common areas; provided, however, Landlord shall use commercially reasonable efforts to not materially adversely affect Tenant's access to and use of the Premises and parking areas. Tenant shall not interfere with the rights of Landlord and other tenants of the Building to use such common areas. All of the windows and outside decks or terraces and walls of the Premises and any space in the Premises used for shafts, stacks, pipes, conduits, ducts, electric or other utilities, sinks or other Building facilities, and the use thereof and access thereto through the Premises for the purposes of operation, maintenance and repairs, are reserved to Landlord; provided, however, at no additional cost to Tenant, Landlord shall permit Tenant the nonexclusive right, in common with Landlord and other tenants of the Building, to utilize the existing Building risers, raceways, shafts and conduit for the installation and operation of Tenant's telecommunications systems, including voice, video, data, internet, and any other services provided over wire, fiber optic, microwave, wireless, and any other transmission systems, and Landlord shall provide Tenant with reasonable access, at reasonable times determined by Landlord, to other areas within the Building (other than the premises of other tenants), including the Building's MPOE (main point of entry), as reasonably necessary for the installation of required infrastructure for Tenant's telecommunications systems.

1.2 Tenant acknowledges that Tenant has inspected the Premises and the Building or has had the Premises and the Building inspected by professional consultants retained by Tenant, Tenant is familiar with the condition of the Premises and the Building, the Premises and the Building are suitable for Tenant's purposes, and, except for the Landlord's Work (as defined in Exhibit B) to be constructed or installed by Landlord pursuant to Exhibit B, the condition of the Premises and the Building is acceptable to Tenant. Except for the Landlord's Work to be constructed or installed by Landlord pursuant to Exhibit B, and as otherwise expressly set forth in this Lease, Landlord shall have no obligation to construct or install any improvements in the Premises or the Building or to remodel, renovate, recondition, alter or improve the Premises or the Building in any manner, and Tenant shall accept the Premises "as is" on the Commencement Date subject to Landlord's Work being substantially complete and the Landlord's Warranty (as defined below). Landlord and Tenant expressly agree that there are and shall be no implied warranties of merchantability, habitability, fitness for a particular purpose, or any other kind arising out of this Lease and there are and shall be no warranties that extend beyond the warranties, if any, expressly set forth in this Lease. Notwithstanding the foregoing, subject to Landlord's substantial completion of the Landlord's Work, Landlord shall be responsible for causing as of the Delivery Date, at no cost to Tenant, the structural portions of the roof, and the Base Building systems (as defined below) to be in good condition and repair, and the Building and Premises to be in compliance with all applicable codes, laws, ordinances, rules and regulations (including, but not limited to in compliance with the American with Disabilities Act ("ADA")) that were in effect as of the date such

improvements were constructed (the "Landlord's Warranty"). If a non-compliance with the Landlord Warranty exists as of the Delivery Date or any non-compliance is discovered by Tenant within one hundred twenty (120) days following the Delivery Date, then Tenant shall provide written notice of same to Landlord, and Landlord shall rectify such lack of compliance at Landlord's sole cost and expense; provided, however, that the foregoing shall not diminish Tenant's responsibility to perform any repairs, modifications or improvements if necessitated after the Delivery Date due to Tenant's use of the same, Tenant's Alterations, ordinary wear and tear. For purposes of this Lease "Base Building systems" means all Base Building systems (including, elevator, plumbing, air conditioning, heating, ventilation, electrical, security, life safety and power, and other mechanical and emergency systems for the Building), except (A) those special systems installed for specific tenants (including Tenant), (B) any systems installed by Tenant as part of the Alterations performed by Tenant to the Premises and (C) the portion of any Building system within any specific tenant space (including the Premises) or which exclusively serves such tenant or is otherwise the responsibility of such tenant pursuant to its lease.

1.3 No easement for light, air or view is included with or appurtenant to the Premises. Any diminution or shutting off of light, air or view by any structure which may hereafter be erected (whether or not constructed by Landlord) shall in no way affect this Lease or impose any liability on Landlord.

1.4 Notwithstanding section 1.1 of this Lease relating to use of the common areas of the Building for parking, Tenant shall have the right to use only the number of parking spaces specified in the Basic Lease Information at no additional cost or expense throughout the Lease Term. No parking spaces shall be reserved for the exclusive use of Tenant. Tenant shall use such parking spaces solely for parking automobiles of Tenant's officers and employees. Tenant shall not, at any time, use more than the number of parking spaces specified in the Basic Lease Information. Tenant shall comply with all Rules and Regulations and all laws now or hereafter in effect relating to the use of parking spaces. Without limiting the foregoing, in no event shall this Lease be void or voidable, nor shall Landlord be liable to Tenant for any loss or damage, nor shall there be any abatement of rent hereunder, by reason of any reduction in Tenant's parking rights hereunder by reason of strikes, lock-outs, labor disputes, shortages of material or labor, fire, flood or other casualty, acts of God or any other cause beyond the control of Landlord.

1.5 As required by Section 1938(a) of the California Civil Code, Landlord discloses to Tenant that the Premises have not undergone inspection by a Certified Access Specialist ("CASp"). As required by Section 1938(e) of the California Civil Code, Landlord also states that:

"A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises."

As permitted by the quoted language above, it is agreed that: (a) any CASp inspection requested by Tenant shall be requested by Tenant within ten (10) days after the date on which this Lease has been executed by Landlord and Tenant, (b) the contract under which the inspection is to be performed shall not limit the CASp's liability if the CASp fails to perform the inspection in accordance with the standard of care applicable to experts performing such inspections, Landlord shall be an intended third party beneficiary of such contract and the contract shall otherwise comply with the provisions of this Lease applicable to Tenant contracts for construction; (c) the CASp inspection shall be conducted (i) at Tenant's sole cost and expense, (ii) by a CASp approved in advance by Landlord, (iii) after normal business hours, (iv) in a manner reasonably satisfactory to Landlord, and (v) shall be addressed to, and, upon completion, promptly delivered to, Landlord and Tenant; (d) the information in the inspection shall not be disclosed by Tenant to anyone other than contractors, subcontractors, and consultants of Tenant who have a need to know the information therein and who agree in writing not to further disclose such information; and (e) to the extent that such CASp inspection identifies any necessary repairs to correct violations of construction-related accessibility standards within the Premises, the provisions of Article 14 below shall govern

Tenant's responsibility to make such repairs to the Premises. Landlord may elect to perform any portion of such work at Tenant's expense, which expense shall be estimated by Landlord and prepaid by Tenant within ten (10) days after Landlord's request. When the work is substantially completed, the estimated and actual costs and charges for such work shall be compared and Tenant shall receive a credit against future Rent for any overpayment and shall pay any underpayment to Landlord with the next installment of Rent due hereunder.

ARTICLE 2  
Term

2.1 The terms and provisions of this Lease shall be effective as of the date of this Lease. The term of this Lease shall be the term specified in the Basic Lease Information (the "Lease Term"), which shall commence on the commencement date specified in the Basic Lease Information (the "Commencement Date") and, unless extended or sooner terminated as hereinafter provided, shall end on the expiration date specified in the Basic Lease Information (the "Expiration Date"). If Landlord, for any reason whatsoever, does not deliver possession of the Premises to Tenant with the Landlord Delivery Date Work Substantially Completed on or before June 1, 2020, as such date may be extended by Tenant Delay (as such term is defined in Exhibit B) or Force Majeure (as such term is defined below) (such date being referred to herein as the "Target Delivery Date"), and Tenant has Substantially Completed the components of Tenant's Work (as defined in Exhibit B) required for issuance of a certificate of occupancy by the City of San Diego, this Lease shall not be void or voidable and Landlord shall not be liable to Tenant for any loss or damage resulting therefrom, but in such event, (a) Landlord shall provide to Tenant a credit against Base Rent equal to (i) one (1) day of Base Rent for each day (if any) that passes from the Target Delivery Date until the actual Delivery Date occurs (such number of days referred to herein as the "Delay Period"), and (b) the Commencement Date shall be extended by the number of days equal to the Delay Period, however the Expiration Date shall not be extended due to such Delay Period. For purposes of this Lease, "Force Majeure" shall mean strikes, lock-outs, labor disputes, shortages of material or labor, fire, earthquake, flood or other casualty, acts of terror, acts of God, tenant holdover, or any other cause (other than financial inability) beyond the reasonable control of Landlord.

2.2 At any time during the Lease Term, Landlord may deliver to Tenant a notice confirming the Commencement Date and the Expiration Date, as determined in accordance with this Lease, which notice Tenant shall execute and return to Landlord within ten (10) business days following receipt.

2.3 Landlord shall construct or install in the Premises those improvements to be constructed or installed by Landlord pursuant to Exhibit B. Landlord shall deliver and Tenant shall accept the Premises upon Substantial Completion of the Landlord Delivery Date Work (as such is defined in Exhibit B). Substantial Completion of the Landlord Delivery Date Work shall be deemed to occur when Landlord has completed the Landlord Delivery Date Work pursuant to Exhibit B, subject to the completion or correction of items on a punch list mutually agreed upon by Landlord and Tenant. Landlord shall complete or correct the items on such punch list promptly, and in any event within thirty (30) days after the Delivery Date.

2.4 Tenant shall have the right to enter and utilize the Premises from the Delivery Date through the Commencement Date (the "Early Access Period") solely for the purpose of constructing improvements and installing fixtures and equipment in the Premises for use by Tenant following the Commencement Date. If Tenant enters the Premises for any such permitted purpose prior to the Commencement Date, all of the agreements and covenants of Tenant in this Lease, except the payment of rent (including, but not limited to, Base Rent and Tenant's Share of Operating Expenses and Property Taxes), shall apply and be in force, including, without limitation, the provisions of Article 6, Article 7 and Article 8 of this Lease (provided, to the extent the provisions of Article 8 conflict with those of Exhibit B, the provisions of Exhibit B shall control). Before Tenant enters the Premises, Tenant shall deliver certificates of insurance to Landlord as required by Article 13 of this Lease. During any such entry into the Premises before the Commencement Date, Tenant shall not interfere in any way with any construction work or other activity by Landlord in the Premises and Tenant shall cooperate in all reasonable ways with Landlord while Landlord is carrying on any construction work or other activity within the Premises. Tenant shall be solely responsible for all furniture, fixtures and equipment and for any loss or damage thereto caused by Tenant's early entry. In the event Tenant completes Tenant's Work and receives a

Certificate of Occupancy from the City of San Diego for the Premises, and after providing Landlord with a copy of such Certificate of Occupancy, occupies and/or commences business operations in the Premises prior to the Commencement Date, such occupancy and use shall not advance the Commencement Date, however commencing as of such date that Tenant occupies and/or commences business operations in the Premises, Tenant shall be obligated to pay Tenant's Share of Operating Expenses and Property Taxes pursuant to Articles 3 and 4 of this Lease. Tenant shall be obligated to pay for all utilities (including, without limitation, Tenant's Monthly Utility Charge pursuant to Section 3.1(d) of this Lease) at all times during the Early Access Period.

ARTICLE 3  
Rent

3.1 Tenant shall pay to Landlord the following amounts as rent for the Premises:

(a) During the Lease Term, Tenant shall pay to Landlord, as monthly rent, the base rent specified in the Basic Lease Information (the "Base Rent").

(b) During each calendar year or part thereof during the Lease Term, Tenant shall pay to Landlord, as additional rent, Tenant's Percentage Share (as hereinafter defined) of all Operating Expenses (as hereinafter defined) paid or incurred by Landlord in such calendar year.

(c) During each calendar year or part thereof during the Lease Term, Tenant shall pay to Landlord, as additional rent, Tenant's Percentage Share of all Property Taxes (as hereinafter defined) paid or incurred by Landlord in such calendar year.

(d) During each calendar year or part thereof during the Lease Term, Tenant shall pay to Landlord, as additional rent, the actual cost incurred by Landlord with respect to all electricity, chilled water, air conditioning, gas, fuel, steam, heat, light, power and other utilities consumed within the Premises, as more particularly described herein (all such costs payable by Tenant pursuant to this section 3.1(d) shall be referred to as "Tenant's Monthly Utility Charge", and all such amounts shall constitute rent hereunder).

(i) All electricity directly serving the Premises ("Direct Electrical Costs") shall be metered or submetered and Tenant shall pay, as monthly rental, the actual cost (without mark up by Landlord) of all such Direct Electrical Costs either to Landlord as a reimbursement, or, at Landlord's election, as a payment directly to the entity providing such electricity. Such payments to Landlord of Direct Electrical Costs shall be made within thirty (30) days of Landlord's delivery of an invoice to Tenant therefor.

(ii) With respect to all utility costs for the Premises other than Direct Electrical Costs (collectively, "Other Utility Costs"), Landlord shall have the right, from time to time, to equitably allocate some or all of such Other Utility Costs among different portions or occupants of the Building ("Cost Pools"), in Landlord's reasonable discretion. Such Cost Pools may include, but shall not be limited to, office space tenants, residential space occupants, and retail space tenants of the Building. The utility costs within each such Cost Pool shall be allocated and charged to the tenants within such Cost Pool in an equitable manner (without markup by Landlord).

(e) Throughout the Lease Term, Tenant shall pay, as additional rent, all other amounts of money and charges required to be paid by Tenant under this Lease, whether or not such amounts of money and charges are otherwise designated "additional rent." As used in this Lease, "rent" shall mean and include all Base Rent, all additional rent and all other amounts payable by Tenant in accordance with this Lease.

3.2 The additional rent payable pursuant to sections 3.1(b), 3.1(c), and 3.1(d)(ii) hereof shall be calculated and paid in accordance with the following procedures:

(a) On or before the first day of each calendar year during the Lease Term, or as soon thereafter as practicable, Landlord shall give Tenant written notice of Landlord's estimate of the amounts payable under sections 3.1(b), 3.1(c), and 3.1(d)(ii) hereof for the ensuing calendar year. On or before the first day of each month during such ensuing calendar year, Tenant shall pay to Landlord, as monthly rent, one-twelfth of such estimated amounts. If such notice is not given for any calendar year, Tenant shall continue to pay on the basis of the prior calendar year's estimate until the month after such notice is given. If at any time it appears to Landlord that the amounts payable under sections 3.1(b), 3.1(c), and 3.1(d)(ii) hereof for the current calendar year will vary from Landlord's estimate, Landlord may, by giving written notice to Tenant, revise its estimate for such calendar year. If Landlord delivers its estimate after the first day of a calendar year, or if Landlord revises its estimate for a calendar year, then subsequent payments by Tenant for such calendar year shall be based on such late or revised estimate, as the case may be, with an appropriate adjustment to the amount of such subsequent payments such that, prior to the end of such calendar year or portion thereof during the Lease Term, Tenant shall have paid Landlord's entire estimate of the amounts payable under sections 3.1(b), 3.1(c), and 3.1(d)(ii) hereof for such calendar year.

(b) Within a reasonable time after the end of each calendar year, Landlord shall give Tenant a written statement of the amounts payable under sections 3.1(b), 3.1(c), and 3.1(d)(ii) hereof for such calendar year certified by Landlord. If such statement shows an amount owing by Tenant that is less than the estimated payments for such calendar year previously made by Tenant, Landlord shall credit the excess to the next succeeding monthly installments payable under sections 3.1(b), 3.1(c), and 3.1(d)(ii) hereof. If such statement shows an amount owing by Tenant that is more than the estimated payments for such calendar year previously made by Tenant, Tenant shall pay the deficiency to Landlord within thirty (30) days after delivery of such statement. Failure by Landlord to give any notice or statement to Tenant under this section 3.2 shall not waive Landlord's right to receive, and Tenant's obligation to pay, the amounts payable by Tenant under sections 3.1(b), 3.1(c), and 3.1(d)(ii) hereof. During the Lease Term, but in no event more often than once in any one (1) year period, Tenant or its authorized employee or representative shall have the right to inspect the books of Landlord relating to Operating Expenses and Property Taxes, after giving reasonable prior written notice to Landlord and during the business hours of Landlord at Landlord's office in the Building or at such other location as Landlord may designate, for the purpose of verifying the information in such statement; provided that, if Tenant utilizes an independent accountant to perform such review, then such accountant shall be one of national standing which is reasonably acceptable to Landlord and is not compensated on a contingency basis; and provided further that Tenant shall have no right to inspect such books pertaining to any given period more than one hundred eighty (180) days after Landlord shall have delivered the written statement pertaining to such period. If Tenant wishes to dispute an amount shown on the annual statement, Tenant shall give Landlord written notice of such dispute within one hundred eighty (180) days after Tenant's receipt of the annual statement. If Tenant does not give Landlord such notice within such time, Tenant shall have waived its right to dispute the annual statement. Promptly after the receipt of such written notice from Tenant, Landlord and Tenant shall endeavor in good faith to resolve such dispute. If such efforts do not succeed, Tenant shall have the right to cause a nationally recognized independent certified public accountant designated by Tenant, to be paid on an hourly and not a contingent fee basis, to audit the items questioned by Tenant in its original notice contesting the annual statement, provided that Tenant (i) notifies Landlord in writing of Tenant's intention to exercise such audit right within thirty (30) days after the relevant initial written notice from Tenant to Landlord with respect to such dispute, (ii) actually begins such audit within thirty (30) days after the notice from Tenant to Landlord advising Landlord that Tenant will require an audit (provided that such 30-day period within which the audit must be commenced shall be extended by the length of any delay in the commencement of the audit that is caused by Landlord) and (iii) diligently pursues such audit to completion as quickly as reasonably possible. Landlord agrees to make available to Tenant's auditors, at Landlord's office in San Francisco and/or at Landlord's office in the Building (at Landlord's sole option), the books and records relevant to the audit for review and copying, but such books and records may not be removed from Landlord's offices. Tenant shall bear all costs of such audit, including Landlord's actual copying costs and personnel costs, if any incurred in connection with such audit (provided that, prior to incurring any personnel costs in connection with any such audit, Landlord shall advise Tenant of Landlord's anticipated personnel costs so that Tenant may, at Tenant's option, modify Tenant's activities with regard to such audit in order to preclude the need for Landlord to incur such personnel costs), except that, if the audit (as conducted and certified by the auditor) shows an aggregate overstatement of Operating Expenses of five (5%) or more, and Landlord's auditors concur in

such findings (or, in the absence of such concurrence, such overstatement is confirmed by a court of competent jurisdiction or such other dispute resolution mechanism as to which the parties mutually agree in writing), then Landlord shall bear all costs of the audit. If the agreed or confirmed audit shows an underpayment of Operating Expenses by Tenant, Tenant shall pay to Landlord, within thirty (30) days after the audit is agreed to or confirmed, the amount owed to Landlord, and, if the agreed or confirmed audit shows an overpayment of Operating Expenses by Tenant, Landlord shall reimburse Tenant for such overpayment within thirty (30) days after the audit is agreed to or confirmed. Notwithstanding anything to the contrary set forth above, Tenant's audit rights under this section 3.2(b) shall be conditioned upon (i) Tenant having paid the total amounts billed by Landlord under this Article 3 within the time stipulated herein for payment (including, without limitation, the contested amounts) and (ii) Tenant executing, prior to the commencement of the audit, a confidentiality agreement in form and substance reasonably satisfactory to Landlord in which Tenant shall agree to keep confidential, and not disclose to any other party, the results of any such audit or any action taken by Landlord in response thereto.

(c) If the Lease Term ends on a day other than the last day of a calendar year, the amounts payable by Tenant under sections 3.1(b), 3.1(c), and 3.1(d)(ii) hereof applicable to the calendar year in which the end of the term occurs shall be prorated on the basis which the number of days from the commencement of such calendar year to and including the date on which the end of the term occurs bears to three hundred sixty-five (365). Termination of this Lease shall not affect the obligations of Landlord and Tenant pursuant to section 3.2(b) hereof to be performed after such termination.

3.3 Tenant shall pay all monthly installments of Base Rent and monthly installments of Landlord's estimates of amounts payable under sections 3.1(b), 3.1(c), and 3.1(d)(ii) hereof (collectively, "Monthly Rent") to Landlord, in advance, on or before the first day of each and every calendar month during the Lease Term, without notice, demand, deduction or offset except as otherwise expressly set forth in this Lease, in lawful money of the United States of America. Landlord instructs Tenant to pay all such Monthly Rent to the address specified therefor in the Basic Lease Information, or to such other person or at such other place as Landlord may from time to time designate in writing. Landlord shall have the right to apply payments received from Tenant pursuant to this Lease, regardless of Tenant's designation of such payments, to satisfy any obligations of Tenant hereunder, in such order and amounts as Landlord, in its sole discretion, may elect. If Tenant's obligation to pay Base Rent hereunder commences on a day other than the first day of a calendar month, or if the Lease Term terminates on a day other than the last day of a calendar month, then the Base Rent payable for such partial month shall be appropriately prorated on the basis of a thirty (30)-day month. Upon signing this Lease, Tenant shall pay to Landlord an amount equal to the Base Rent for the first full calendar month of the Term in which monthly Base Rent is payable, which amount Landlord shall apply to the Base Rent for such first full calendar month.

#### ARTICLE 4

#### Operating Expenses and Property Taxes Definitions

4.1 The following terms shall have the definitions herein specified:

(a) "Operating Expenses" shall mean all costs and expenses paid or incurred by Landlord in connection with the ownership, management, operation, replacement, maintenance or repair of the Building or providing services in accordance with this Lease, including, without limitation, the following: (i) salaries, wages, other compensation and benefits for personnel engaged in the management, operation, maintenance or repair of the Building; (ii) uniforms provided to such personnel; (iii) premiums and other charges incurred by Landlord with respect to fire, other casualty, rent and liability insurance, any other insurance as is deemed necessary or advisable in the reasonable judgment of Landlord, or any insurance required by the holder of any mortgage or deed of trust encumbering the Building; (iv) costs of repairing an insured casualty to the extent of the deductible amount under the applicable insurance policy; (v) water and sewer charges or fees; (vi) license, permit and inspection fees; (vii) sales, use and excise taxes on goods and services purchased by Landlord; (viii) telephone, delivery, postage, stationery supplies and other expenses; (ix) management fees and expenses; (x) costs and expenses for electricity, chilled water, air conditioning, water for heating, gas, fuel, steam, heat, lights, power and other energy related utilities required in connection with the operation, maintenance and repair of the common areas; (xi) equipment lease payments; (xii) repairs to and physical maintenance of the

Building, including Building systems and accessories thereto and repair and replacement of worn-out or broken equipment, facilities, parts and installations; (xiii) window cleaning, security, guard, extermination, water treatment, garbage and waste disposal, rubbish removal, plumbing and other services; (xiv) inspection or service contracts for elevator, electrical, mechanical and other Building equipment and systems; (xv) supplies, tools, materials and equipment used in connection with the management, operation, maintenance or repair of the Building; (xvi) accounting, legal and other professional fees and expenses (excluding legal fees incurred by Landlord relating to disputes with specific tenants or the negotiation, interpretation or enforcement of specific leases); (xvii) painting the exterior or the public or common areas of the Building and the cost of maintaining the sidewalks, landscaping and other common areas of the Building; (xviii) the cost of furniture, draperies, carpeting and other customary and ordinary items of personal property (excluding paintings, sculptures or other works of fine art) provided by Landlord for use in common areas of the Building or in the Building office, such costs to be reasonably amortized as determined by Landlord; (xix) all costs and expenses resulting from work, labor, supplies, materials or services similar or in addition to, or in lieu of, any of the foregoing, or resulting from compliance with any laws, ordinances, rules, regulations or orders, or to comply with any amendment or other change to the enactment or interpretation of any applicable laws from its enactment or interpretation; (xx) Building office rent or rental value for office space reasonably necessary for the proper management and operation of the Building; (xxi) all costs and expenses of contesting by appropriate legal proceedings any matter concerning managing, operating, maintaining or repairing the Building or the amount or validity of any Property Taxes; (xxii) reasonable depreciation as determined by Landlord on all personal property, fixtures and equipment (including window washing machinery) used in the management, operation, maintenance or repair of the Building and on exterior window coverings provided by Landlord and carpeting in public corridors and common areas; and (xxiii) the cost, reasonably amortized as determined by Landlord, together with interest at the rate of ten percent (10%) per annum, or such higher annual rate as Landlord may actually have to pay, on the unamortized balance, of all capital improvements made to the Building or capital assets acquired by Landlord that are (A) required to comply with any conservation program or required by any law, ordinance, rule, regulation or order that are first enacted, or first interpreted to apply to the Building, after the date of this Lease or (B) performed primarily to reduce current or future operating costs, to upgrade Building security, to otherwise improve the operating efficiency of the Building, or for the protection of the health and safety of the occupants of the Building.

Operating Expenses shall not include (1) Property Taxes, (2) depreciation on the Building (except as specified above), (3) costs of tenants' improvements, (4) real estate brokers' commissions, (5) interest and capital improvements (except the cost of capital improvements and capital assets and interest thereon as specified above), (6) Direct Electrical Costs or any other amounts for which Tenant is billed pursuant to section 3.1(d) above, (7) subject to the provisions of item (iv) above, repairs and other work occasioned by fire, windstorm or other casualty, to the extent Landlord is reimbursed by insurance proceeds, and other work paid from insurance or condemnation proceeds; (8) all direct costs of refinancing, selling or exchanging the Building, including broker commissions, attorney's fees and closing costs, (9) the cost (including permits, licenses and inspection fees) of decorating, improving for tenant occupancy, renovating, painting or redecorating portions of the Building to be demised to tenants, (10) advertising and promotional expenditures, (11) costs, penalties or fines arising from Landlord's violation of any applicable governmental rule or authority, except to the extent such costs reflect costs that would have been incurred by Landlord absent such violation, (12) penalties or other costs incurred due to a violation by Landlord, as determined by written admission, stipulation, final judgment or arbitration award, of any of the terms and conditions of this Lease or any other lease relating to the Building, except to the extent such costs reflect costs that would have been incurred by Landlord absent such violation, (13) accountants' and attorneys' fees and expenses incurred in connection with lease negotiations or lease disputes with current or prospective Building tenants or in connection with the defense of Landlord's title to the Building, (14) the cost of services made available at no special cost to any tenant in the Building but not to Tenant, and (15) Landlord's general corporate office overhead and administrative expenses (which shall not be deemed to include a management fee).

Actual Operating Expenses for each calendar year of the Lease Term shall be adjusted to equal Landlord's reasonable estimate of Operating Expenses for a full calendar year with one hundred percent (100%) of the total rentable area of the Building occupied during such full calendar year. Landlord shall have the right, from time to time, to equitably allocate some or all of the Operating

Expenses for the Building among different portions or occupants of the Building (the "Cost Pools"), in Landlord's discretion. The Operating Expenses within each such Cost Pool shall be allocated and charged to the tenants within such Cost Pool in an equitable and consistent manner over all expense years.

(b) "Property Taxes" shall mean all taxes, assessments, excises, levies, fees and charges (and any tax, assessment, excise, levy, fee or charge levied wholly or partly in lieu thereof or as a substitute therefor or as an addition thereto) of every kind and description, general or special, ordinary or extraordinary, foreseen or unforeseen, secured or unsecured, whether or not now customary or within the contemplation of Landlord and Tenant, that are levied, assessed, charged, confirmed or imposed by any public or government authority on or against, or otherwise with respect to, the Building or any part thereof, any personal property used in connection with the Building and any taxes based upon the receipt of rent, including gross receipts or sales taxes applicable to the receipt of rent. Property Taxes shall also include any assessment, tax, fee, levy or charge in addition to, or in substitution, partially or totally, of any assessment, tax, fee, levy or charge previously included within the definition of real property taxes. Property Taxes shall not include (i) net income (measured by the income of Landlord from all sources or from sources other than solely rent), franchise, documentary transfer, inheritance or capital stock taxes of Landlord, unless levied or assessed against Landlord in whole or in part in lieu of, as a substitute for, or as an addition to any Property Taxes, or (ii) any tax, assessment, fee or charge paid by Tenant pursuant to section 5.1 hereof.

(c) "Tenant's Percentage Share" shall mean the percentage specified in the Basic Lease Information.

#### ARTICLE 5 Other Taxes Payable by Tenant

5.1 In addition to all monthly rent and other charges to be paid by Tenant under this Lease, Tenant shall reimburse Landlord upon demand for all taxes, assessments, excises, levies, fees and charges, including, without limitation, all transit impact development fees, housing impact development fees and other payments related to the cost of providing facilities or services, whether or not now customary or within the contemplation of Landlord and Tenant, that are payable by Landlord and levied, assessed, charged, confirmed or imposed by any public or government authority upon, or measured by, or reasonably attributable to (a) the Premises, (b) the cost or value of any equipment, furniture, fixtures and other personal property located in the Premises or the cost or value of any leasehold improvements made in or to the Premises by or for Tenant, regardless of whether title to such improvements is vested in Tenant or Landlord, (c) any monthly rent or any additional rent payable under this Lease, including, without limitation, any gross income tax or excise tax levied by any public or government authority with respect to the receipt of any such rent, (d) the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises, or (e) this transaction or any document to which Tenant is a party creating or transferring an interest or an estate in the Premises. Such taxes, assessments, excises, levies, fees and charges shall not include net income (measured by the income of Landlord from all sources or from sources other than solely rent), franchise, documentary transfer, inheritance or capital stock taxes of Landlord, unless levied or assessed against Landlord in whole or in part in lieu of, as a substitute for, or as an addition to any such taxes, assessments, excises, levies, fees and charges. If it is unlawful for Tenant to reimburse Landlord for any such taxes, assessments, excises, levies, fees or charges, the Base Rent payable prior to the imposition thereof shall be increased to provide Landlord the same net Base Rent after the imposition thereof as Landlord received prior to the imposition of such taxes, assessments, excises, levies, fees or charges. All taxes, assessments, excises, levies, fees and charges payable by Tenant under this Article 5 shall be deemed to be, and shall be paid as, additional rent.

#### ARTICLE 6 Use; Environmental Matters

6.1 Tenant shall use the Premises only for the purposes described in the Basic Lease Information for Tenant's business and no other purpose whatsoever without the prior written consent of Landlord, which may be withheld in Landlord's sole discretion. Tenant shall not do or permit to be done in, on or about the Premises, nor bring or keep or permit to be brought or kept therein, anything which is

prohibited by or will in any way conflict with any law, ordinance, rule, regulation or order now in force or which may hereafter be enacted, or which is prohibited by any property insurance policy carried by Landlord for the Building, or will in any way increase the existing rate of, or cause a cancellation of, or affect any property or other insurance for the Building or any part thereof or any of its contents. Tenant shall not do or permit anything to be done in, on or about the Premises which will in any way obstruct or interfere with the rights of Landlord or other tenants of the Building, or injure or unreasonably annoy them. Tenant shall not use or allow the Premises to be used for any improper, immoral, unlawful or objectionable activity, nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises or commit or suffer to be committed any waste in, on or about the Premises. Tenant shall not bring into the Building any furniture, equipment, materials or other objects which overload the Building or any portion thereof.

6.2 Except as expressly permitted in this Section 6.2, Tenant shall not bring or keep, or permit to be brought or kept, in the Premises or the Building any "hazardous substance" (as hereinafter defined). Except as may be done in compliance with all applicable "environmental laws" (as hereinafter defined) in connection with the operation of Tenant's business at the Premises for the Permitted Use, Tenant shall not use, produce, process, manufacture, generate, treat, handle, store or dispose of any hazardous substance in the Premises or the Building, or use the Premises for any such purpose, or emit, release or discharge any hazardous substance into any air, soil, surface water or groundwater comprising the Premises or the Building, or permit any person using or occupying the Premises to do any of the foregoing. The preceding sentence shall not prohibit the ordinary use of any hazardous substance normally used in the operation and cleaning of a general office for Tenant's business as permitted by this Lease, provided the amount of any such hazardous substance does not exceed the quantity necessary for the normal operation of a general office in the ordinary course of business and the use, storage and disposal of any such hazardous substance strictly comply with all applicable environmental laws. Tenant shall comply, and shall cause all persons using or occupying the Premises to comply, with all environmental laws applicable to the use or occupancy of the Premises by Tenant or any operation or activity of Tenant therein.

6.3 Tenant shall indemnify and defend Landlord and the Landlord Parties (as defined in Section 13.1 below) against and hold Landlord and the Landlord Parties harmless from all claims, demands, actions, judgments, liabilities, costs, expenses, losses, damages, penalties, fines and obligations of any nature (including reasonable attorneys' fees and disbursements incurred in the investigation, defense or settlement of claims) that Landlord may incur as a result of, or in connection with, claims arising from the presence, use, storage, transportation, treatment, disposal, release or other handling, on or about or beneath the Premises, of any hazardous substances introduced or permitted on or about or beneath the Premises by any act or omission of Tenant or its agents, officers, employees, contractors, invitees or licensees. The liability of Tenant under this section 6.3 shall survive the termination of this Lease with respect to acts or omissions that occur before such termination.

6.4 Landlord shall be responsible, at its sole cost, for the prompt investigation, removal, mitigation, and/or remediation of any actionable levels of Hazardous Materials located on the Premises prior to the Delivery Date. Landlord shall, at Landlord's sole cost and expense, remediate (i) any actionable levels of Hazardous Materials existing on the Premises on the Delivery Date, and (ii) actionable levels of Hazardous Materials released on the Premises after the date hereof by Landlord or any Landlord Party.

6.5 As used in this Lease, "hazardous substance" shall mean any substance or material that is described as a toxic or hazardous substance, waste or material or a pollutant or contaminant, or words of similar import, in any of the environmental laws, and includes asbestos, petroleum, petroleum products, polychlorinated biphenyls, radon gas, radioactive matter, and chemicals which may cause cancer or reproductive toxicity. As used in this Lease, "environmental laws" shall mean all federal, state and local laws, ordinances, rules and regulations now or hereafter in force, as amended from time to time, in any way relating to or regulating human health or safety, or industrial hygiene or environmental conditions, or protection of the environment, or pollution or contamination of the air, soil, surface water or groundwater.

ARTICLE 7  
Services

7.1 Landlord shall maintain the public and common areas of the Building (such as lobbies, stairs, corridors and restrooms in the common areas, but not including any such areas located within any tenant's premises), the roof and exterior elements of the Building, and the mechanical (heating, ventilating and air conditioning) and electrical systems of the Building in reasonably good order and condition. Any damage in or to any such areas, elements or systems caused by Tenant or any agent, employee, contractor, licensee or invitee of Tenant shall be repaired by Landlord at Tenant's expense and Tenant shall reimburse Landlord therefor on demand, as additional rent. Landlord shall not be liable for any criminal acts of others or for any direct, consequential or other loss or damage related to any malfunction, circumvention or other failure of any access control service, device or personnel.

7.2 Landlord shall furnish the following utilities and services ("Basic Services") for the Premises: (i) during Business Days (as defined in the Basic Lease Information), electricity for Building standard lighting and power suitable for the use of the Premises for ordinary general office purposes, (ii) during Business Hours (as defined in the Basic Lease Information) on Business Days, heat and air conditioning required in Landlord's judgment for the comfortable use and occupancy of the Premises for ordinary general office purposes, and (iii) elevator service to the floor(s) of the Premises by nonattended automatic elevators for general office pedestrian usage. Notwithstanding the foregoing, however, Tenant may use water, heat, air conditioning, electric current, elevator and other services in excess of that provided in Basic Services ("Excess Services," which shall include without limitation any power usage other than through existing standard 110-volt AC outlets; electricity and/or water consumed by Tenant in connection with any dedicated or supplemental heating, ventilating and/or air conditioning, computer power, telecommunications and/or other special units or systems of Tenant; chilled, heated or condenser water; or water used for any purpose other than ordinary drinking and lavatory purposes), provided that the Excess Services desired by Tenant are reasonably available to Landlord and to the Premises (it being understood that in no event shall Landlord be obligated to make available to the Premises more than the pro rata share of the capacity of any Excess Service available to the Building or the applicable floor of the Building, as the case may be), and provided further that Tenant complies with the procedures established by Landlord from time to time for requesting and paying for such Excess Services and with all other provisions of this Article 7. Landlord reserves the right to install in the Premises or the Building electric current and/or water meters (including, without limitation, any additional wiring, conduit or panel required therefor) to measure the electric current or water consumed by Tenant or to cause the usage to be measured by other reasonable methods (e.g. by temporary "check" meters or by survey).

7.3 Except for the cost of utilities (which are addressed in section 3.1(d) above), the cost of Basic Services shall be included in Operating Expenses. In addition, Tenant shall pay to Landlord upon demand (i) the cost, at Landlord's prevailing rate, of any Excess Services used by Tenant, (ii) the cost of installing, operating, maintaining or repairing any meter or other device used to measure Tenant's consumption of utilities, (iii) the cost of installing, operating, maintaining or repairing any Temperature Balance Equipment (as defined in section 7.4 below) for the Premises and/or any equipment required in connection with any Excess Services requested by Tenant, and (iv) any cost otherwise incurred by Landlord in keeping account of or determining any Excess Services used by Tenant. Landlord's failure to bill Tenant for any of the foregoing shall not waive Landlord's right to bill Tenant for the same at a later time.

7.4 If the temperature otherwise maintained in any portion of the Premises by the heating, air conditioning or ventilation system is affected as a result of (i) the type or quantity of any lights, machines or equipment (including without limitation typical office equipment) used by Tenant in the Premises, (ii) the occupancy of such portion of the Premises to exceed the normal occupancy for use of the Premises described in the Basic Lease Information, as reasonably determined by Landlord, or (iii) any rearrangement of partitioning or other improvements, then at Tenant's sole cost, Landlord may install any equipment, or modify any existing equipment (including the standard air conditioning equipment) Landlord deems necessary to restore the temperature balance (such new equipment or modifications to existing equipment termed herein "Temperature Balance Equipment"). Tenant agrees to keep closed, when necessary, draperies and/or window treatments which, because of the sun's position, must be closed to provide for the efficient operation of the air conditioning system, and Tenant agrees to cooperate with

Landlord and to abide by the regulations and requirements which Landlord may prescribe for the proper functioning and protection of the heating, ventilating and air conditioning system. Landlord makes no representation to Tenant regarding the adequacy or fitness of the heating, air conditioning or ventilation equipment in the Building to maintain temperatures that may be required for, or because of, any computer or communications rooms, machine rooms, conference rooms or other areas of high concentration of personnel or electrical usage, or any other uses other than or in excess of the fractional horsepower normally required for office equipment, and Landlord shall have no liability for loss or damage suffered by Tenant or others in connection therewith.

7.5 Landlord's obligation to provide utilities and services for the Premises are subject to the Rules and Regulations of the Building, applicable laws (including the rules or actions of the public utility company furnishing the utility or service), and shutdowns for maintenance and repairs, for security purposes, or due to strikes, lockouts, labor disputes, fire or other casualty, acts of God, or other causes beyond the control of Landlord. In the event of an interruption in, or failure or inability to provide any service or utility for the Premises for any reason, such interruption, failure or inability shall not constitute an eviction of Tenant, constructive or otherwise, or impose upon Landlord any liability whatsoever, including, but not limited to, liability for consequential damages or loss of business by Tenant. Tenant hereby waives the provisions of California Civil Code Section 1932(1) or any other applicable existing or future laws permitting the termination of this Lease due to such interruption, failure or inability. Notwithstanding the foregoing, if any interruption in, or failure or inability to provide any of the services or utilities described in Section 7.2 is (i) within Landlord's reasonable control and continues for four (4) or more consecutive Business Days after Tenant's written notice thereof to Landlord, or (ii) outside of Landlord's reasonable control and continues for thirty (30) or more consecutive days after Tenant's written notice thereof to Landlord, and Tenant is unable to use and does not use a material portion of the Premises for Tenant's business purposes as a result thereof, then Tenant shall be entitled to an abatement of Base Rent and Additional Rent, which abatement shall commence as of the first day after the expiration of such four (4) Business Day or thirty (30) day period, as the case may be, and shall be based on the extent of Tenant's inability to use the Premises for Tenant's business, and in the case of an interruption, failure or inability described in clause (ii) above, such abatement shall be applicable only to the extent and for so long as Landlord is reimbursed for the so abated rent pursuant to Landlord's rental loss insurance. The abatement provisions set forth above shall be inapplicable to any interruption in, or failure or inability to provide any of the services or utilities described in Section 7.2 that is caused by (x) damage by fire or other casualty or a taking (it being acknowledged that such situations shall be governed by Articles 11 and 21, respectively), or (y) the negligence or willful misconduct of Tenant or any agents, employees, contractors, licensees, subtenants, customers, guests or invitees of Tenant (collectively with Tenant, "Tenant Parties").

7.6 In the event any governmental authority having jurisdiction over the Building promulgates or revises any applicable laws or building, fire or other code or imposes mandatory or voluntary controls or guidelines on Landlord or the Building relating to the use or conservation of energy or utilities or the reduction of automobile or other emissions (collectively "Controls") or in the event Landlord is required or elects to make alterations to the Building in order to comply with such mandatory or voluntary Controls, Landlord may, in its sole discretion, comply with such Controls or make such commercially reasonable alterations to the Building related thereto. Such compliance and the making of such commercially reasonable alterations shall not constitute an eviction of Tenant, constructive or otherwise, or impose upon Landlord any liability whatsoever, including, but not limited to, liability for consequential damages or loss of business by Tenant.

7.7 Tenant acknowledges that Landlord may, from time to time, be required to disclose certain information concerning the Building's energy use pursuant to California Public Resources Code Section 25402.10 and the regulations promulgated pursuant thereto (collectively, together with any future law or regulation regarding disclosure of energy efficiency data with respect to the Building, "Energy Disclosure Regulations"). Tenant shall reasonably cooperate with Landlord with respect to any disclosure and/or reporting requirements pursuant to any Energy Disclosure Regulations. Without limiting the generality of the foregoing, Tenant shall, within ten (10) business days following request from Landlord, disclose to Landlord all information reasonably requested by Landlord in connection with the Energy Disclosure Regulations, including, but not limited to, the amount of power or other utilities consumed within the Premises for which the meters for such utilities are in Tenant's name, the number of employees

working within the Premises, the operating hours for Tenant's business in the Premises, and the type and number of equipment operated by Tenant in the Premises. Tenant acknowledges that this information shall be provided on a non-confidential basis and may be provided by Landlord to the applicable utility providers, the California Energy Commission (and other governmental entities having jurisdiction with respect to the Energy Disclosure Regulations), and any third parties to whom Landlord is required to make the disclosures pursuant to the Energy Disclosure Regulations. Tenant agrees that none of the Landlord Parties (as defined below) shall be liable for any loss, cost, damage, expense or liability related to Landlord's disclosure of such information provided by Tenant. In addition, Tenant represents to Landlord that any and all information provided by Tenant to Landlord pursuant to this paragraph shall be, to the best of Tenant's knowledge, true and correct in all material respects.

## ARTICLE 8 Alterations

8.1 Tenant shall not make any alterations, additions, modifications or improvements in or to the Premises or any part thereof, or attach any fixtures or equipment thereto (collectively, "Alterations"), without Landlord's prior written consent. Notwithstanding the preceding sentence, Tenant may make such Alterations without Landlord's consent only if the total cost is fifty thousand dollars (\$50,000) or less and it will not affect in any way the structural, exterior, entry or roof elements of the Building or the Premises, or the mechanical, electrical, plumbing, utility or life safety systems of the Building, but Tenant shall give prior written notice of any such Alterations to Landlord. All Alterations (except the Landlord's Work to be installed by Landlord pursuant to Exhibit B and the Tenant's Work to be installed by Landlord pursuant to Exhibit B) in or to the Premises to which Landlord consents shall be made by Tenant at Tenant's sole cost and expense as follows:

(a) Tenant shall submit to Landlord in accordance with the delivery requirements of Section 30.1 below and via email, for Landlord's prior written approval, complete plans and specifications for all work to be done by Tenant. Such plans and specifications shall be prepared by responsible licensed architect(s) and engineer(s) approved in writing by Landlord, shall comply with all applicable codes, laws, ordinances, rules and regulations, shall not adversely affect the basic Building shell or any systems, components or elements of the Building, shall be in a form sufficient to secure the approval of all government authorities with jurisdiction over the approval thereof, and shall be otherwise satisfactory to Landlord in Landlord's reasonable discretion. Landlord shall respond to Tenant's plans and specifications (and to any resubmittal of plans) within ten (10) business days of Landlord's receipt thereof, and Landlord's approval shall not be unreasonably withheld, conditioned or delayed. In the event Tenant submits (or resubmits) such plans and specifications in accordance with the delivery requirements set forth in this Section 8.1(a) and Landlord fails to respond within such ten (10) business day period, the submitted plans and specifications shall be deemed approved by Landlord. Tenant shall provide Landlord advance written notice of the licensed architect(s) and engineer(s) whom Tenant proposes to engage to prepare such plans and specifications; provided, however, Landlord hereby approves of Tenant using Mansour Architecture Corporation as Tenant's architect, as well as Pacific Rim Mechanical (Design Build) for mechanical/plumbing engineering, WME (Michael Wall and Associates) and/or MPE Electric for electrical engineering, and GSSI Structural Engineers for structural engineering. To the extent Tenant desires to use any alternative architects or engineers, Landlord shall notify Tenant in writing whether Landlord approves or disapproves such alternative architect(s) and engineer(s), provided that Landlord's approval shall not be unreasonably withheld, conditioned or delayed, and any disapproval shall be accompanied by a reasonable explanation as to why the approval was withheld. Landlord's approval or consent to any such work shall not impose any liability upon Landlord, and no action taken by Landlord in connection with such approval, including, without limitation, attending construction meetings of Tenant's contractors, shall render Tenant the agent of Landlord for purposes of constructing any Alterations.

(b) If Landlord disapproves such plans and specifications, or any portion thereof, Landlord shall notify Tenant in writing of such disapproval and the reason for such disapproval, and of the reasonable revisions which Landlord requires in order to obtain Landlord's approval. Thereafter, Tenant shall submit to Landlord, in accordance with the delivery requirements of Section 30.1 below and via email, revised plans and specifications incorporating the revisions required by Landlord. Such revisions shall be subject to Landlord's prior written approval. Landlord shall respond to Tenant's

resubmitted plans and specifications (and to any subsequent resubmittal of plans) within three (3) business days of Landlord's receipt thereof, such approval not to be unreasonably withheld, conditioned or delayed. In the event Tenant resubmits such plans and specifications in accordance with the delivery requirements set forth in this Section 8.1(b) and Landlord fails to respond within such three (3) business day period, the resubmitted plans and specifications shall be deemed approved by Landlord. If Landlord again disapproves such revised plans and specifications, or any portion thereof, Landlord shall notify Tenant in writing of such disapproval, the reason for such disapproval and of the reasonable revisions which Landlord requires in order to obtain Landlord's approval. The process shall repeat until such time as Landlord has approved or is deemed to have approved the further revised plans and specifications. Tenant shall pay all costs, including the fees and expenses of the licensed architect(s) and engineer(s), in preparing such plans and specifications.

(c) Tenant shall pay for all work (including, without limitation, the cost of all utilities, permits, fees, taxes, and property and liability insurance premiums in connection therewith) required to make the Alterations. Tenant shall engage responsible licensed contractor(s) approved in writing by Landlord to perform all work, such approval not to be unreasonably withheld, conditioned or delayed; provided, however, Landlord hereby approves of Tenant using BN Builders or DPR Construction as the general contractor, Neal Electric, Bergelectric and/or Ickler Electric as the electrical contractor, and Pacific Rim Mechanical for mechanical/plumbing contracting. Tenant shall provide Landlord advance written notice of the contractors, subcontractors, mechanics and materialmen whom Tenant proposes to engage for the work, all of which shall be licensed in the State of in which the Building is located and capable of being bonded. To the extent Tenant desires to use any alternative contractors, Landlord shall notify Tenant in writing whether Landlord approves or disapproves such contractor(s) within a reasonable period of time, such approval not to be unreasonably withheld, conditioned, or delayed. All contractors and other persons shall at all times be subject to Landlord's control while in the Building. Prior to the commencement of any Alterations, if required by Landlord, Tenant shall provide Landlord with evidence that Tenant carries "Builder's All Risk" insurance in form and amount approved by Landlord covering such Alterations. Under no circumstances shall Landlord be liable to Tenant for any liability, loss, cost or expense incurred by Tenant on account of Tenant's plans and specifications, Tenant's contractors or subcontractors, design of any work, construction of any work, or delay in completion of any work. In addition, Tenant acknowledges and agrees that any and all Alterations have not been expressly or impliedly required as a condition to the execution of this Lease for the use of the Premises permitted under this Lease or in lieu of payment of rent.

(d) Tenant shall give written notice to Landlord of the date on which construction of any work will be commenced at least ten (10) business days prior to such date (or such additional time as may be necessary under applicable laws) to afford Landlord the opportunity of posting and recording appropriate notices of non-responsibility. Tenant shall cause all work to be performed by the licensed contractor(s) approved in writing by Landlord in accordance with the plans and specifications approved in writing by Landlord and in full compliance with all applicable codes, laws, ordinances, rules and regulations.

(e) All changes in the plans and specifications approved by Landlord shall be subject to Landlord's prior written approval, such approval not to be unreasonably withheld, conditioned or delayed. If Tenant wishes to make any such change in such approved plans and specifications, Tenant shall have Tenant's architect(s) and engineer(s) prepare plans and specifications for such change and submit them to Landlord for Landlord's written approval. If Landlord disapproves such change, Landlord shall specify in writing the reasons for disapproval and such plans and specifications shall be revised by Tenant and resubmitted to Landlord for Landlord's written approval. After Landlord's written approval of such change, such change shall become part of the plans and specifications approved by Landlord.

(f) Tenant shall pay Landlord on demand prior to or during the course of construction of any Alterations an amount (the "Supervision Fee") equal to five percent (5%) of the total cost of such Alteration (and for purposes of calculating the Supervision Fee, such cost shall include architectural and engineering fees, but shall not include permit fees) as compensation to Landlord for Landlord's review of the plans and specifications for such Alterations and general oversight of the construction; provided, however, in the event the cost of any Alteration is greater than Fifty Thousand Dollars (\$50,000), then the Supervision Fee shall be equal to one percent (1%) of the total cost of such

Alteration. In addition, Tenant shall pay to Landlord any direct costs incurred by Landlord with respect to any Alterations made by Tenant (beyond the normal services provided to tenants in the Building) and shall reimburse Landlord for all out-of-pocket expenses incurred by Landlord in connection with the review, approval and supervision of such Alterations.

8.2 All Alterations, including, without limitation, carpeting and all other improvements made pursuant to Exhibit B, if any, whether temporary or permanent in character, made in or to the Premises either by Tenant or by Landlord shall become part of the Building and Landlord's property. At Landlord's sole election any or all Alterations made for or by Tenant shall be removed by Tenant from the Premises at the expiration or sooner termination of this Lease. Upon Tenant's express written request making specific reference to this Section 8.2, Landlord shall advise Tenant at the time of Landlord's approval of any Alteration requested by Tenant (or within ten (10) Business Days after receipt of Tenant's notice to Landlord with respect to those Alterations not requiring Landlord's approval) whether Landlord will require the removal of the Alteration and restoration of the Premises to its previous condition at the expiration or sooner termination of this Lease. Landlord's failure to expressly waive in writing Tenant's removal obligation as to any Alterations shall preserve Landlord's right to make its foregoing election with respect to such Alterations. In the event Landlord requires such removal, the Premises shall be restored by Tenant to their condition prior to the making of the Alterations, ordinary wear and tear excepted. The removal of the Alterations and the restoration of the Premises shall be performed by a general contractor selected by Tenant and approved by Landlord, in which event Tenant shall pay the general contractor's fees and costs in connection with such work. Movable furniture, equipment, trade fixtures and personal property (except partitions) shall remain the property of Tenant and Tenant shall, at Tenant's expense, remove all such property from the Building at the end of the Lease Term. Termination of this Lease shall not affect the obligations of Tenant pursuant to this section 8.2 to be performed after such termination.

8.3 Intentionally Omitted.

#### ARTICLE 9 Liens

9.1 Tenant shall keep the Premises and the Building free from mechanics', materialmen's and all other liens arising out of any work performed, materials furnished or obligations incurred by Tenant. Tenant shall promptly and fully pay and discharge all claims on which any such lien could be based within ten (10) days after Tenant has notice of any such lien. Tenant shall have the right to contest the amount or validity of any such lien, provided Tenant gives prior written notice of such contest to Landlord, prosecutes such contest by appropriate proceedings in good faith and with diligence, and, upon request by Landlord, furnishes such bond as may be required by law to protect the Building and the Premises from such lien. Landlord shall have the right to post and keep posted on the Premises any notices that may be provided by law or which Landlord may deem to be proper for the protection of Landlord, the Premises and the Building from such liens, and to take any other action Landlord deems necessary to remove or discharge liens or encumbrances at the expense of Tenant.

#### ARTICLE 10 Maintenance and Repairs

10.1 Tenant shall, at all times during the Lease Term and at Tenant's sole cost and expense, maintain and repair the non-structural portions of the Premises and every part thereof (including, without limitation (i) any portions of the Buildings systems located within and/or exclusively serving the Premises, (ii) any supplemental systems (including air-conditioning systems or power generators, regardless of whether they are located inside or outside the Premises), and (iii) any equipment used in connection with the Premises and installed specifically for Tenant) and all equipment, fixtures and improvements therein and keep all of the foregoing clean and in good order and operating condition, ordinary wear and tear and damage thereto by fire or other casualty excepted. For clarity, the maintenance and repair obligations of Landlord and Tenant are summarized on the Maintenance and Repair Responsibility Matrix attached hereto as Exhibit G. In the event of a conflict between Exhibit G and the other provisions of this Lease, Exhibit G shall control. Tenant hereby waives all rights under California Civil Code section 1941 and all rights to make repairs at the expense of Landlord or in lieu

thereof to vacate the Premises as provided by California Civil Code section 1942 or any other law, statute or ordinance now or hereafter in effect. Landlord has no obligation and has made no promise to alter, remodel, improve, repair, maintain, decorate or paint the Premises or the Building or any part thereof or any equipment, fixtures or improvements therein. No representations respecting the condition of the Premises or the Building have been made to Tenant either by Landlord or by any real estate broker. Tenant's obligation to keep the Premises and every part thereof and all equipment, fixtures and improvements located therein and/or exclusively serving the Premises in good condition and repair in accordance with this section 10.1 is part of the consideration for Landlord's leasing the Premises to Tenant.

#### ARTICLE 11 Damage or Destruction

11.1 If the Building or the Premises, or any part thereof, is damaged by fire or other casualty before the Commencement Date or during the Lease Term, and this Lease is not terminated pursuant to sections 11.2 or 11.3 hereof, Landlord shall repair such damage and restore the Building and the Premises to substantially the same condition in which the Building and the Premises existed before the occurrence of such fire or other casualty (provided that Landlord shall have no obligation to restore any above-Building standard improvements or Alterations in the Premises, unless the cost thereof is paid by Tenant in advance of such restoration, or any Alterations made by or for Tenant in the Premises following the Commencement Date) and this Lease shall, subject to the provisions of this Article 11, remain in full force and effect. If such fire or other casualty damages the Premises or common areas of the Building necessary for Tenant's use and occupancy of the Premises and Tenant ceases to use any portion of the Premises as a result thereof, then during the period the Premises are rendered untenable by such damage Tenant shall be entitled to a reduction in Monthly Rent in the proportion that the area of the Premises rendered unusable by such damage bears to the total area of the Premises. Landlord shall not be obligated to repair any damage to, or to make any replacement of, any movable furniture, equipment, trade fixtures or personal property in the Premises or Alterations made by or for Tenant in the Premises following the Commencement Date. Tenant shall, at Tenant's sole cost and expense, repair and replace all such movable furniture, equipment, trade fixtures, personal property and any Alterations made by or for Tenant in the Premises following the Commencement Date. Such repair and replacement by Tenant shall be done in accordance with Article 8 hereof. Tenant hereby waives California Civil Code sections 1932(2) and 1933(4), or any successor statute, providing for termination of hiring upon destruction of the thing hired.

11.2 If the Building or the Premises, or any part thereof, is damaged by fire or other casualty before the Commencement Date or during the Lease Term and (a) such fire or other casualty occurs during the last twelve (12) months of the Lease Term and the repair and restoration work to be performed by Landlord in accordance with section 11.1 hereof cannot, as reasonably estimated by Landlord, be completed within two (2) months after the occurrence of such fire or other casualty, or (b) the insurance proceeds received by Landlord in respect of such damage are not adequate to pay the entire cost, as reasonably estimated by Landlord, of the repair and restoration work to be performed by Landlord in accordance with section 11.1 hereof, or (c) the repair and restoration work to be performed by Landlord in accordance with section 11.1 hereof cannot, as reasonably estimated by Landlord, be completed within six (6) months after the occurrence of such fire or other casualty, then, in any such event, Landlord shall have the right, by giving written notice to Tenant within sixty (60) days after the occurrence of such fire or other casualty, to terminate this Lease as of the date specified in such notice, which date shall be not less than thirty (30) days nor more than sixty (60) days after the date such notice is given.

11.3 A total destruction of the Building shall automatically terminate this Lease effective as of the date of such total destruction.

#### ARTICLE 12 Subrogation

12.1 Each party hereto hereby releases the other respective party and the respective partners, shareholders, agents, employees, officers, directors and authorized representatives of such released party, from any claims such releasing party may have for damage to the Building, the Premises or any of such

releasing party's fixtures, personal property, improvements and alterations in or about the Premises or the Building that is caused by or results from risks insured against under any fire and extended coverage insurance policies actually carried by such releasing party or deemed to be carried by such releasing party; provided, however, that such waiver shall be limited to the extent of the net insurance proceeds payable by the relevant insurance company with respect to such loss or damage (or in the case of deemed coverage, the net proceeds that would have been payable). For purposes of this section 12.1, Tenant shall be deemed to be carrying any of the insurance policies required pursuant to section 13.2 but not actually carried by Tenant, and Landlord shall be deemed to carry standard fire and extended coverage policies on the Building. Each party hereto shall cause each such fire and extended coverage insurance policy obtained by it to provide that the insurance company waives all rights of recovery by way of subrogation against the other respective party and the other released parties in connection with any matter covered by such policy.

ARTICLE 13  
Indemnification and Insurance

13.1 Waiver and Indemnity.

(a) Tenant hereby waives all claims against Landlord, Landlord's members, partners, shareholders, trustees, and beneficiaries, the Building's property manager, and Landlord's asset manager, and their respective officers, directors, agents, servants, employees and independent contractors (collectively, the "Landlord Parties"), for damage to or loss or theft of any property or for any bodily or personal injury, illness or death of any person in, on or about the Premises or the Building arising at any time and from any cause whatsoever other than solely by reason of the gross negligence or willful misconduct of Landlord. Tenant further assumes all risk of, and agrees that Landlord and the Landlord Parties shall not be liable for, any and all loss, cost, damage, expense and liability (including without limitation court costs and reasonable attorneys' fees) sustained as a result of the Premises not having been inspected by a Certified Access Specialist (CASp).

(b) Tenant shall indemnify, defend and hold harmless the Landlord Parties from and against all claims, demands, liabilities, damages, losses, costs and expenses, including, without limitation, reasonable attorneys' fees, incurred in connection with or arising from (a) any cause whatsoever in, on or about the Premises or any part thereof arising at any time other than solely by reason of the gross negligence or willful misconduct of Landlord or any Landlord Parties, or (b) any act or omission of Tenant or its agents, employees, contractors, invitees or licensees in, on or about any part of the Building other than the Premises (including, without limitation, any damage, bodily or personal injury, illness or death which is caused in part by Landlord), or (c) any breach by Tenant of the terms of this Lease.

(c) Landlord shall indemnify, defend and hold harmless the Tenant Parties from and against all claims, demands, liabilities, damages, losses, costs and expenses, including, without limitation, reasonable attorneys' fees, directly and solely arising from the gross negligence or willful misconduct of Landlord or any Landlord Parties in, on or about the Building or any part thereof.

(d) This Article 13 shall survive the termination of this Lease with respect to any damage, bodily or personal injury, illness or death occurring prior to such termination.

13.2 Tenant shall, at Tenant's sole cost and expense, obtain and keep in force during the term of this Lease the following insurance:

(a) Intentionally Omitted.

(b) Automobile liability insurance policy containing liability symbol "1" (any automobile), including owned, non-owned and hired automobiles, with a combined single limit of \$1,000,000 for bodily injury and property damage or equivalent approved by Landlord.

(c) An occurrence form commercial general liability insurance policy with coverage at least as broad as ISO form CG0001 with limits of not less than \$2,000,000 combined single limit, each occurrence and aggregate, and will not provide for a self-insured retention or deductible in excess of

\$100,000. Such insurance shall include Legal Liability limits of \$1,000,000 per occurrence, and \$2,000,000 products/completed operations coverage and such insurance shall be primary insurance as respects any claims, losses or liability arising directly or indirectly from the Tenant's operations and/or occupancy, and any other insurance maintained by Landlord shall be excess and not contributory with the insurance required hereunder. Said insurance policies shall include an endorsement, providing that the Landlord Parties and their officers and employees are additional insured using CG 2011 or comparable wording. The Additional Insured(s) endorsement shall be at no cost to Landlord or the other additional insured(s). All such insurance shall insure the performance by Tenant of the indemnity agreement set forth in section 13.1 hereof.

(d) Umbrella liability insurance policy with a limit of not less than \$6,000,000 or such higher limit as may be required by Landlord. The policy shall provide excess coverage over Tenant's Employers' Liability, Automobile Liability and Commercial General Liability coverages.

(e) Insurance policy for full replacement cost of Tenant's movable furniture, equipment, trade fixtures and personal property in the Premises and any Alterations made by or for Tenant after the Commencement Date, with special form cause of loss (including earthquake and flood if applicable) with agreed value endorsement. Loss of business income and continuing expense coverage will be included for a minimum of 12 months rental value. Tenant will name Landlord as additional insured for loss of business income and continuing expenses. All amounts received by Tenant under the insurance specified in this section 13.2 shall first be applied to the payment of the cost of the repair and replacement Tenant is obligated to do under Article 11 hereof.

13.3 Landlord reserves the right to increase the amounts of coverage specified in section 13.2 above from time to time as Landlord determines is required to adequately protect Landlord and the other parties designated by Landlord from the matters insured thereby (provided, however, that Landlord makes no representation that the limits of liability required hereunder from time to time shall be adequate to protect Tenant). In addition, Landlord reserves the right to require that Tenant cause any of its contractors, vendors, movers or other parties conducting activities in or about or occupying the Premises to obtain and maintain insurance as determined by Landlord (which insurance coverages may be greater than those set forth in section 13.2 above and which may include types of insurance not specified above with respect to Tenant) and as to which Landlord and such other parties designated by Landlord shall be additional insureds.

13.4 All insurance required under this Article 13 and all renewals thereof shall be issued by good and responsible companies rated not less than A-:VIII in Best's Insurance Guide and qualified to do and doing business in the State in which the Building is located. Each policy, other than Tenant's workers' compensation insurance, shall: (a) provide that the policy shall not be canceled or altered without thirty (30) days' prior written notice to Landlord and shall remain in effect notwithstanding any such cancellation or alteration until such notice shall have been given to Landlord and such period of thirty (30) days shall have expired; (b) protect Tenant, as named insured, and Landlord and all the other Landlord Parties and any other parties designated by Landlord, as additional insureds, using such ISO or other form of endorsement as directed in writing by Landlord; (c) shall insure Landlord's and such other parties' contingent liability with regard to acts or omissions of Tenant; (d) include all waiver of subrogation rights endorsements necessary to effect the provisions of Article 12 above; (e) provide that the policy and the coverage provided shall be primary, that Landlord, although an additional insured, shall nevertheless be entitled to recovery under such policy for any damage to Landlord or the other Landlord Parties by reason of acts or omissions of Tenant, and that any coverage carried by Landlord shall be noncontributory with respect to policies carried by Tenant; (f) specifically include all liability assumed by Tenant under this Lease (provided, however, that such contractual liability coverage shall not limit or be deemed to satisfy Tenant's indemnity obligations under this Lease); and (g) if subject to deductibles, shall provide for deductible amounts not in excess of those approved in advance in writing by Landlord in its sole discretion. Tenant shall deliver certificates of insurance, acceptable to Landlord, to Landlord at least ten (10) days before the Commencement Date and at least ten (10) days before expiration of each policy. In addition, upon the issuance thereof, Tenant shall deliver each such policy or a certified copy thereof to Landlord for retention by Landlord. If Tenant fails to insure or fails to furnish to Landlord upon notice to do so any such policy or certified copy and certificate thereof as required, Landlord shall have the right

from time to time to effect such insurance for the benefit of Tenant or Landlord or both of them and all premiums paid by Landlord shall be payable by Tenant as additional rent on demand.

ARTICLE 14  
Compliance With Legal Requirements

14.1 Tenant shall, at its sole cost and expense, promptly comply with all laws, ordinances, rules, regulations, orders and other requirements of any government or public authority now in force or which may hereafter be in force, with the requirements of any board of fire underwriters or other similar body now or hereafter constituted, and with any direction or certificate of occupancy issued pursuant to any law by any governmental agency or officer, insofar as any thereof relate to or affect the condition, use or occupancy of the Premises or the operation, use or maintenance of any equipment, fixtures or improvements in the Premises (collectively, "Legal Requirements"), excluding requirements of structural changes not related to or affected by Tenant's acts or use of the Premises or by Alterations made by or for Tenant.

ARTICLE 15  
Assignment and Subletting

15.1 Except as to a Permitted Transfer (as defined below), Tenant shall not, directly or indirectly, without the prior written consent of Landlord, which consent shall not be unreasonably withheld, assign this Lease or any interest herein or sublease the Premises or any part thereof, or permit the use or occupancy of the Premises by any person other than Tenant. Except as to a Permitted Transfer, Tenant shall not, directly or indirectly, without the prior written consent of Landlord, pledge, mortgage or hypothecate this Lease or any interest herein. This Lease shall not, nor shall any interest herein, be assignable as to the interest of Tenant involuntarily or by operation of law without the prior written consent of Landlord. For purposes of this Lease, except as to a Permitted Transfer, any of the following transfers on a cumulative basis shall constitute an assignment of this Lease that requires the prior written consent of Landlord: if Tenant is a corporation, the transfer of more than forty-nine percent (49%) of the stock of the corporation; if Tenant is a partnership or a limited liability company, the transfer of more than forty-nine percent (49%) of the capital or profits or partnership or membership interests in the partnership or limited liability company; and if Tenant is a trust, the transfer of more than forty-nine (49%) of the beneficial interest under the trust. Any of the foregoing acts without such prior written consent of Landlord shall be void and shall, at the option of Landlord, constitute a default that entitles Landlord to terminate this Lease.

15.2 Except as to a Permitted Transfer, if Tenant wishes to assign this Lease or sublease all or any part of the Premises, Tenant shall provide Landlord written notice identifying the intended assignee or subtenant by name and address and specifying all of the terms of the intended assignment or sublease, and a copy of all documentation pertaining to such assignment or sublease (except that Landlord shall have the right to require that Tenant and such assignee or subtenant execute Landlord's standard form of consent document). Tenant shall give Landlord such additional information as Landlord requests concerning the intended assignee or subtenant (including, without limitation, current financial statements) or the intended assignment or sublease. Without limiting or excluding other reasonable grounds for withholding Landlord's consent to a proposed assignment or sublease, Landlord shall have the right to withhold consent if (a) the proposed assignee or subtenant or the use of the Premises to be made by the proposed assignee or subtenant is not consistent with the character and nature of other tenants and uses in the Building or is prohibited by this Lease or any laws, covenants, or restrictions applicable to the Building, (b) it is not demonstrated to the satisfaction of Landlord that the proposed assignee or subtenant has good business and moral character and reputation and is financially able to perform all of the obligations of Tenant under this Lease, (c) the assignment or subletting would increase the operating costs for the Building or the burden on the Building services, (d) the space will be used for a personnel or employment agency, an office or facility of any governmental or quasi-governmental agency or authority, or any use by or affiliation with a foreign government (including without limitation an embassy or consulate or similar office), (e) the proposed assignee or subtenant is a current tenant of the Building or a prospective tenant of the Building, or (f) the proposed assignee or subtenant is an entity or related to an entity with whom Landlord or any affiliate of Landlord has had adverse dealings.

15.3 Intentionally omitted.

15.4 Tenant shall pay to Landlord, as Landlord's cost of processing each proposed assignment or subletting, an amount equal to the sum of (i) Landlord's reasonable attorneys' and other professional fees, plus (ii) the sum of \$750.00 for the cost of Landlord's administrative, accounting and clerical time (collectively, "Processing Costs"), and the amount of all direct and indirect costs and expenses incurred by Landlord arising from the assignee or sublessee taking occupancy of the subject space (including, without limitation, costs of freight elevator operation for moving of furnishings and trade fixtures, security service, janitorial and cleaning service, and rubbish removal service). Notwithstanding anything to the contrary herein, Landlord shall not be required to process any request for Landlord's consent to an assignment or subletting until Tenant has paid to Landlord the amount of Landlord's estimate of the Processing Costs and all other direct and indirect costs and expenses of Landlord and its agents arising from the assignee or subtenant taking occupancy.

15.5 No assignment, sublease, pledge, mortgage, hypothecation or other transfer, nor any consent by Landlord to any of the foregoing, shall release Tenant from any of Tenant's obligations and liabilities under this Lease or alter the primary liability of Tenant to pay rent and to perform all other obligations to be performed by Tenant hereunder (and Landlord may proceed directly against Tenant without the necessity of exhausting any remedies against such assignee, subtenant or successor), or shall be deemed to be a consent to any subsequent pledge, mortgage, hypothecation, assignment, sublease, or occupation or use by another person. Tenant hereby acknowledges and agrees, and any instrument by which an assignment or sublease is accomplished shall expressly provide: (a) that the assignee or subtenant will perform and observe all the agreements, covenants and conditions to be performed and observed by Tenant under this Lease as and when performance and observance is due after the effective date of the assignment or sublease, (b) that Landlord will have the right to enforce such agreements, covenants and conditions directly against such assignee or subtenant, (c) in the case of a sublease, the subtenant shall, at Landlord's election, attorn directly to Landlord in the event that this Lease is terminated for any reason, (d) in the case of an assignment, the assignee assumes all of Tenant's obligations under this Lease arising on or after the date of the assignment, and (e) in the case of a sublease, the subtenant agrees to be and remain jointly and severally liable with Tenant for the payment of rent pertaining to the sublet space in the amount set forth in the sublease, and for the performance of all of the terms and provisions of this Lease. Any assignment or sublease without an instrument containing the foregoing provisions shall be void and shall, at the option of Landlord, constitute a default under this Lease. No assignment or sublease shall be valid and no assignee or subtenant shall take possession of the Premises or any part thereof until an executed duplicate original of such assignment or sublease (and any standard form of consent document required by Landlord) has been delivered to Landlord, together with the written consent to such assignment or sublease of any guarantor of Tenant's obligations hereunder, if any, and certificates evidencing that such subtenant or assignee is carrying all insurance coverage required under this Lease has been provided to Landlord.

15.6 If Landlord consents in writing, then as condition to and in consideration for such consent, all "excess rent" (as hereinafter defined) derived from such assignment or sublease that is not a Permitted Transfer shall be divided and paid fifty percent (50%) to Tenant and fifty percent (50%) to Landlord during each month of the sublease term. Landlord's share of such excess rent shall be computed monthly and shall be deemed to be, and shall be paid by Tenant to Landlord as, additional rent. Tenant shall pay Landlord's share of such excess rent to Landlord immediately as and when such excess rent is receivable by Tenant. As used in this section 15.6, "excess rent" shall mean the amount by which the total money and other economic consideration to be paid by the assignee or subtenant as a result of an assignment or sublease, whether denominated rent or otherwise, for any given month exceeds, in the aggregate, the total amount of rent which Tenant is obligated to pay to Landlord under this Lease for such month (prorated to reflect the rent allocable to the portion of the Premises subject to such assignment or sublease), less the reasonable costs paid by Tenant for tenant improvements, rent concessions, and brokers' commissions and attorneys' fees with respect to such sublease or assignment, which costs shall be amortized without interest over the term of such assignment or sublease. As a condition to Tenant recapturing its assignment or subletting costs as provided herein, Tenant shall provide to Landlord, within thirty (30) days of Landlord's execution of Landlord's consent to the assignment or subletting, a detailed accounting of such costs and reasonable supporting documents.

15.7 Any sublease hereunder, including a Permitted Transfer, shall be subordinate and subject to the provisions of this Lease, and if this Lease shall be terminated during the term of any sublease, Landlord shall have the right to: (a) treat such sublease as canceled and repossess the entire Premises by any lawful means, or (b) require that such subtenant attorn to and recognize Landlord as its landlord under any such sublease. If Tenant shall be in default under this Lease, Landlord is hereby irrevocably authorized, as Tenant's agent and attorney-in-fact, to direct any subtenant to make all payments under or in connection with a sublease directly to Landlord (which Landlord shall apply towards Tenant's obligations under this Lease) until such default is cured. Such subtenant shall rely on any representation by Landlord that Tenant is in default hereunder, without any need for confirmation thereof by Tenant.

15.8 Notwithstanding anything to the contrary in sections 15.1, 15.2 or 15.6, but subject to sections 15.4, 15.5 and 15.7, Tenant may assign this Lease or sublet the Premises or any portion thereof, without Landlord's consent (each, a "Permitted Transfer"), to any partnership, corporation or other entity which controls, is controlled by, or is under common control with Tenant or Tenant's parent (control being defined for such purposes as ownership of at least 50% of the equity interests in, and the power to direct the management of, the relevant entity), or to any partnership, corporation or other entity resulting from a merger or consolidation with Tenant or Tenant's parent, or to any person or entity which acquires all or substantially all the assets of Tenant as a going concern (including by means of a purchase of all or substantially all of Tenant's stock) (collectively, an "Affiliate"), provided that (i) Landlord receives at least ten (10) days' prior written notice of the assignment or subletting, together with evidence that the requirements of this section 15.8 have been met, (ii) the Affiliate's net worth is not less than Tenant's net worth as of the date of this Lease or as of the date immediately prior to the assignment or subletting (or series of transactions of which the same is a part), whichever is greater, (iii) the Affiliate has proven experience in the operation of a first-class business of a type consistent with the use of the Building as a first-class office Building, (iv) except in the case of an assignment where the assignor is dissolved as a matter of law following the series of transactions of which the assignment is a part (e.g. a merger) and where such assignor makes sufficient reserves for contingent liabilities (including its obligations under this Lease) as required by applicable law, the Affiliate remains an Affiliate for the duration of the subletting or the balance of the term in the event of an assignment, (v) the Affiliate assumes (in the event of an assignment) in writing all of Tenant's obligations under this Lease, and agrees (in the event of a sublease) that such subtenant will, at Landlord's election, attorn directly to Landlord in the event that this Lease is terminated for any reason, (vi) Landlord receives a fully executed copy of an assignment or sublease agreement between Tenant and the Affiliate, (vii) in the case of an assignment by means of a purchase of all or substantially all of Tenant's stock, the essential purpose of such assignment is to transfer an active, ongoing business with substantial assets in addition to this Lease, and in the case of an assignment (by any means), or a sublease, the transaction is for legitimate business purposes unrelated to this Lease and the transaction is not a subterfuge by Tenant to avoid its obligations under this Lease or the restrictions on assignment and subletting contained herein, and (viii) in the case of a sublease, the Affiliate executes and Tenant delivers to Landlord a fully executed counterpart of Landlord's waiver and acknowledgement form for an Affiliate sublease.

#### ARTICLE 16 Rules and Regulations

16.1 Tenant shall faithfully observe and comply with the rules and regulations (the "Rules and Regulations") set forth in Exhibit C and, after notice thereof, all modifications thereof and additions thereto from time to time made in writing by Landlord. If there is any conflict, this Lease shall prevail over the Rules and Regulations and any modifications thereof or additions thereto. Landlord shall not be responsible to Tenant for the noncompliance by any other tenant or occupant of the Building with any Rules and Regulations; provided, Landlord shall not discriminate in the enforcement of any Rules and Regulations against Tenant.

#### ARTICLE 17 Entry by Landlord

17.1 Landlord shall have the right to enter the Premises reasonable times and upon first giving at least 48 hours' notice to Tenant (except in the case of an emergency, in which reasonable notice may be less than 48 hours) (a) inspect the Premises, (b) exhibit the Premises to prospective purchasers or lenders,

and during the final twelve (12) months of the Lease Term, to prospective tenants, (c) determine whether Tenant is performing all of its obligations hereunder, (d) supply any service to be provided by Landlord, (e) post notices of nonresponsibility, and (f) make any repairs to the Premises, or make any repairs to any adjoining space or utility services, or make any repairs, alterations or improvements to any other portion of the Building, provided all such work shall be done as promptly as reasonably practicable and so as to cause as little interference to Tenant as reasonably practicable. So long as such entry by Landlord does not materially adversely affect Tenant's access to and use of the Premises, Tenant waives all claims for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises or any other loss occasioned by such entry. Landlord shall at all times have and retain a key with which to unlock all of the doors in, on or about the Premises (but excluding Tenant's vaults, safes, and special security areas designated in writing by Tenant and approved in writing by Landlord in advance), and Landlord shall have the right to use any and all means which Landlord may deem proper to open such doors in an emergency to obtain entry to the Premises. Any entry to the Premises obtained by Landlord by any of such means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into or a detainer of the Premises or an eviction, actual or constructive, of Tenant from the Premises or any portion thereof.

ARTICLE 18  
Events of Default

18.1 The occurrence of any one or more of the following events ("Event of Default") shall constitute a breach of this Lease by Tenant:

(a) Tenant fails to pay any Monthly Rent as and when such rent becomes due and payable and such failure continues for more than five (5) business days; or

(b) Tenant fails to pay any other additional rent or other amount of money or charge payable by Tenant hereunder as and when such additional rent or amount or charge becomes due and payable and such failure continues for more than ten (10) days after Landlord gives written notice thereof to Tenant; provided, however, that after the second such failure in a calendar year, only the passage of time, but no further notice, shall be required to establish an Event of Default in the same calendar year; or

(c) Tenant fails to perform or observe any agreement, covenant or condition according to the provisions of Articles 6, 9, 15, 22 or 25 of this Lease as and when performance or observance is due and such failure continues for more than two (2) business days after Landlord gives written notice thereof to Tenant; or

(d) Tenant fails to perform or observe any other agreement, covenant or condition of this Lease to be performed or observed by Tenant as and when performance or observance is due and such failure continues for more than ten (10) days after Landlord gives written notice thereof to Tenant; provided, however, that if, by the nature of such agreement, covenant or condition, such failure cannot reasonably be cured within such period of ten (10) days, an Event of Default shall not exist as long as Tenant commences with due diligence and dispatch the curing of such failure within such period of ten (10) days and, having so commenced, thereafter prosecutes with diligence and dispatch and completes the curing of such failure within a reasonable time; or

(e) Tenant or any guarantor of Tenant's obligations under this Lease (i) is generally not paying its debts as they become due, (ii) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction, (iii) makes an assignment for the benefit of its creditors, (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Tenant (or such guarantor) or of any substantial part of Tenant's (or such guarantor's) property, or (v) takes action for the purpose of any of the foregoing; or

(f) A court or governmental authority of competent jurisdiction enters an order appointing a custodian, receiver, trustee or other officer with similar powers with respect to Tenant (or any guarantor of Tenant's obligations under this Lease) or with respect to any substantial part of Tenant's (or such guarantor's) property, or constituting an order for relief or approving a petition for relief or

reorganization or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding-up or liquidation of Tenant (or such guarantor), or if any such petition is filed against Tenant (or such guarantor) and such petition is not dismissed within sixty (60) days; or

(g) This Lease or any estate of Tenant or any guarantor of Tenant's obligations under this Lease hereunder is levied upon under any attachment or execution and such attachment or execution is not vacated within thirty (30) days; or

(h) Tenant abandons the Premises; or

(i) Any guarantor of Tenant's obligations under this Lease fails to perform or observe any agreement, covenant or condition of the guaranty to be performed or observed by such guarantor as and when performance or observance is due and such failure continues for more than ten (10) days after Landlord gives written notice thereof to such guarantor.

#### ARTICLE 19 Remedies Upon Default

19.1 Landlord shall have the remedy described in California Civil Code section 1951.2. If an Event of Default occurs, Landlord at any time thereafter shall have the right to give a written termination notice to Tenant (which may be included in a single notice given by Landlord under section 18.1 hereof) and on the date specified in such notice, Tenant's right to possession shall terminate and this Lease shall terminate. Upon such termination, Landlord shall have the right to recover from Tenant:

(a) The worth at the time of award of all unpaid rent which had been earned at the time of termination;

(b) The worth at the time of award of the amount by which all unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided;

(c) The worth at the time of award of the amount by which all unpaid rent for the balance of the Lease Term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; and

(d) All other amounts necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom.

The "worth at the time of award" of the amounts referred to in clauses (a) and (b) above shall be computed by allowing interest at the Interest Rate (as defined in section 31.2 below). The "worth at the time of award" of the amount referred to in clause (c) above shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%). For the purpose of determining unpaid rent under clauses (a), (b) and (c) above, the rent reserved in this Lease shall be deemed to be all sums of every nature required to be paid by Tenant pursuant to the terms of this Lease, whether to Landlord or to others.

19.2 Landlord shall have the remedy described in California Civil Code section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has the right to sublet or assign, subject only to reasonable limitations). Accordingly, even though Tenant has breached this Lease and an Event of Default has occurred, this Lease shall continue in effect for so long as Landlord does not terminate Tenant's right to possession, and Landlord shall have the right to enforce all its rights and remedies under this Lease, including the right to recover all rent as it becomes due under this Lease. Acts of maintenance or preservation or efforts to relet the Premises or the appointment of a receiver upon initiative of Landlord to protect Landlord's interest under this Lease shall not constitute a termination of Tenant's right to possession unless written notice of termination is given by Landlord to Tenant.

19.3 The remedies provided for in this Lease are in addition to all other remedies available to Landlord at law or in equity by statute or otherwise. Tenant hereby waives, for Tenant and for all those claiming under Tenant, any and all rights now or hereafter existing to redeem by order or judgment of any court or by any legal process or writ, Tenant's right of occupancy of the Premises after any termination of this Lease.

19.4 If Landlord defaults under this Lease, Tenant shall give written notice to Landlord specifying such default with particularity, and Landlord shall have thirty (30) days after receipt of such notice within which to cure such default; provided, however, that if such default cannot reasonably be cured within such period of thirty (30) days, a default by Landlord shall not exist as long as Landlord commences with due diligence and dispatch the curing of such default within such period of thirty (30) days and, having so commenced, thereafter prosecutes with diligence and dispatch and completes the curing of such default within a reasonable time. In the event of any default by Landlord, Tenant's exclusive remedy shall be an action for damages. Notwithstanding any other provision of this Lease, neither Landlord nor any of the other Landlord Parties shall have any personal liability under this Lease. In the event of any default by Landlord under this Lease, Tenant agrees to look solely to the equity or interest then owned by Landlord in the Building, and in no event shall any deficiency judgment or personal money judgment of any kind be sought or obtained against Landlord or any of the other Landlord Parties.

#### ARTICLE 20

##### Landlord's Right to Cure Defaults

20.1 All agreements to be performed by Tenant under this Lease shall be at Tenant's sole cost and expense and without any abatement of rent. If Tenant fails to pay any sum of money required to be paid by Tenant hereunder or fails to perform any other act on Tenant's part to be performed hereunder, Landlord shall have the right, without waiving or releasing Tenant from any obligations of Tenant, but shall not be obligated, to make any such payment or to perform any such other act on behalf of Tenant in accordance with this Lease. All sums so paid by Landlord and all necessary incidental costs shall be deemed additional rent hereunder and shall be payable by Tenant to Landlord on demand, together with interest on all such sums from the date of expenditure by Landlord to the date of repayment by Tenant at the Interest Rate. Landlord shall have, in addition to all other rights and remedies of Landlord, the same rights and remedies in the event of the nonpayment of such sums plus interest by Tenant as in the case of default by Tenant in the payment of rent.

#### ARTICLE 21

##### Eminent Domain

21.1 If a material part of the Premises is taken for a period in excess of one hundred eighty (180) days by exercise of the power of eminent domain before the Commencement Date or during the Lease Term, Landlord and Tenant each shall have the right, by giving written notice to the other within thirty (30) days after the date of such taking, to terminate this Lease. If either Landlord or Tenant exercises such right to terminate this Lease in accordance with this section 21.1, this Lease shall terminate as of the date of such taking. If neither Landlord nor Tenant exercises such right to terminate this Lease in accordance with this section 21.1, or if less than a material part of the Premises is so taken, this Lease shall terminate as to the portion of the Premises so taken as of the date of such taking and shall remain in full force and effect as to the portion of the Premises not so taken, and the Base Rent and amounts payable under sections 3.1(b) and 3.1(c) hereof shall be reduced as of the date of such taking in the proportion that the usable area of the Premises so taken bears to the total usable area of the Premises. If all of the Premises is taken by exercise of the power of eminent domain before the Commencement Date or during the Lease Term, this Lease shall terminate as of the date of such taking.

21.2 If all or any part of the Premises is taken by exercise of the power of eminent domain, all awards, compensation, damages, income, rent and interest payable in connection with such taking shall, except as expressly set forth in this section 21.2, be paid to and become the property of Landlord, and Tenant hereby assigns to Landlord all of the foregoing. Without limiting the generality of the foregoing, Tenant shall have no claim against Landlord or the entity exercising the power of eminent domain for the value of the leasehold estate created by this Lease or any unexpired Lease Term. Tenant shall have the

right to claim and receive directly from the entity exercising the power of eminent domain only the share of any award determined to be owing to Tenant for the taking of improvements installed in the portion of the Premises so taken by Tenant at Tenant's sole cost and expense based on the unamortized cost paid by Tenant for such improvements, for the taking of Tenant's movable furniture, equipment, trade fixtures and personal property, for loss of goodwill, for interference with or interruption of Tenant's business, or for removal and relocation expenses, but only if such share does not reduce the amount otherwise payable to Landlord.

21.3 Notwithstanding anything to the contrary contained in this Article 21, in the event of a temporary taking of all or any portion of the Premises for a period of one hundred and eighty (180) days or less, then this Lease shall not terminate but the Base Rent and amounts payable under sections 3.1(b) and 3.1(c) hereof shall be abated for the period of such taking in proportion to the ratio that the amount of rentable square feet of the Premises taken bears to the total rentable square feet of the Premises. Landlord shall be entitled to receive the entire award made in connection with any such temporary taking.

21.4 As used in this Article 21, a "taking" means the acquisition of all or part of the Premises for a public use by exercise of the power of eminent domain and the taking shall be considered to occur as of the earlier of the date on which possession of the Premises (or part so taken) by the entity exercising the power of eminent domain is authorized as stated in an order for possession or the date on which title to the Premises (or part so taken) vests in the entity exercising the power of eminent domain. Tenant hereby waives any and all rights it might otherwise have pursuant to section 1265.130 of the California Code of Civil Procedure.

#### ARTICLE 22 Subordination to Mortgages

22.1 This Lease shall be subject and subordinate at all times to the lien of all mortgages and deeds of trust securing any amount or amounts whatsoever which may now exist or hereafter be placed on or against the Building or on or against Landlord's interest or estate therein, all without the necessity of having further instruments executed by Tenant to effect such subordination. Notwithstanding the foregoing, in the event of a foreclosure of any such mortgage or deed of trust or of any other action or proceeding for the enforcement thereof, or of any sale thereunder, this Lease shall not be terminated or extinguished, nor shall the rights and possession of Tenant hereunder be disturbed, if no Event of Default exists under this Lease, and Tenant shall attorn to the person who acquires Landlord's interest hereunder through any such mortgage or deed of trust. Tenant agrees to execute, acknowledge and deliver upon demand such further instruments evidencing such subordination of this Lease to the lien of all such mortgages and deeds of trust as may reasonably be required by Landlord, so long as the same includes a non-disturbance agreement in a form reasonably acceptable to Tenant. Tenant hereby acknowledges that, after the date hereof, Landlord may obtain secured financing for the Building secured by a mortgage or deed of trust. If any lender secured or to be secured by a mortgage or deed of trust should require, as a condition to such financing, either execution by Tenant of an agreement requiring Tenant to send such lender written notice of any default by Landlord under this Lease, giving such lender the right to cure such default until such lender has completed foreclosure and preventing Tenant from terminating this Lease unless such default remains uncured after foreclosure has been completed, or any modification of the agreements, covenants or conditions of this Lease, or both of them, then Tenant agrees to execute and deliver such agreement or modification as required by such lender within ten (10) days after receipt thereof; provided, however, that no such modification shall affect the length of the Lease Term or increase the rent payable by Tenant under Article 3 hereof.

#### ARTICLE 23 Surrender of Premises; Ownership and Removal of Trade Fixtures

23.1 No act or thing done by Landlord or any agent or employee of Landlord during the Lease Term shall be deemed to constitute an acceptance by Landlord of a surrender of the Premises unless such intent is specifically acknowledged in writing by Landlord. The delivery of keys to the Premises to Landlord or any agent or employee of Landlord shall not constitute a surrender of the Premises or effect a termination of this Lease, whether or not the keys are thereafter retained by Landlord, and notwithstanding such delivery Tenant shall be entitled to the return of such keys at any reasonable time

upon request until this Lease shall have been properly terminated. The voluntary or other surrender of this Lease by Tenant, whether accepted by Landlord or not, or a mutual termination hereof, shall not work a merger, and at the option of Landlord shall operate as an assignment to Landlord of all subleases or subtenancies affecting the Premises or terminate any or all such subtenants or subtenancies.

23.2 Upon the expiration of the Lease Term, or upon any earlier termination of this Lease, Tenant shall, subject to the provisions of this Article 23 and section 8.2 above, quit and surrender possession of the Premises to Landlord in the condition required under this Lease, ordinary wear and tear and damage thereto by fire or other casualty excepted. Upon such expiration or termination, Tenant shall, without expense to Landlord, remove or cause to be removed from the Premises all debris and rubbish, and such items of furniture, equipment, business and trade fixtures, free-standing cabinet work, movable partitions, voice and data cabling and other articles of personal property owned by Tenant or installed or placed by Tenant at its expense in the Premises, and such similar articles of any other persons claiming under Tenant, as Landlord may, in its sole discretion, require to be removed; provided, however, that in lieu of removing certain cabling, Tenant shall, at Landlord's request, abandon and leave in place, without additional payment to Tenant or credit against rent, any cabling (including conduit) designated by Landlord and installed in the Premises or elsewhere in the Building by or on behalf of Tenant (including all connections for such cabling), in a neat and safe condition in accordance with the requirements of all applicable Legal Requirements, including the National Electric Code or any successor statute, and terminated at both ends of a connector, properly labeled at each end and in each electrical closet and junction box. Any such property not so removed by Tenant shall be deemed to be abandoned and at the option of Landlord shall either (a) become Landlord's property without any payment to Tenant or (b) remain Tenant's property, but Landlord shall have the right to sell or otherwise dispose of such personal property in any commercially reasonable manner, provided that any proceeds realized from the sale of Tenant's property shall be applied first to offset all expenses of storage and sale, then credited against Tenant's outstanding obligations under this Lease (including, without limitation, past due rent amounts and any termination damages owing by Tenant to Landlord pursuant to Article 19 hereof), and any remaining balance shall be returned to Tenant.

#### ARTICLE 24 Sale

24.1 If the original Landlord hereunder, or any successor owner of the Building, sells or conveys the Building, all liabilities and obligations on the part of the original Landlord, or such successor owner, under this Lease accruing after such sale or conveyance shall terminate and the original Landlord, or such successor owner, shall automatically be released therefrom, and thereupon all such liabilities and obligations shall be binding upon the new owner. Tenant agrees to attorn to such new owner so long as any such written attornment agreement includes a non-disturbance agreement for the benefit of Tenant. All liabilities and obligations on the part of the original Landlord or such successor owner that accrued before the sale or conveyance shall remain the responsibility of the original Landlord or such successor owner. This Article 24 shall survive termination of the Lease.

#### ARTICLE 25 Estoppel Certificate

25.1 At any time and from time to time, Tenant shall, within ten (10) business days after written request by Landlord, execute, acknowledge and deliver to Landlord a certificate certifying: (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect as modified, and stating the date and nature of each modification); (b) the Commencement Date and the Expiration Date determined in accordance with Article 2 hereof and the date, if any, to which all rent and other sums payable hereunder have been paid; (c) that no notice has been received by Tenant of any default by Tenant hereunder which has not been cured, except as to defaults specified in such certificate; (d) that Landlord is not in default hereunder, except as to defaults specified in such certificate; and (e) such other matters as may be reasonably requested by Landlord or any actual or prospective purchaser or mortgage lender. Any such certificate may be relied upon by Landlord and any actual or prospective purchaser, mortgagee or beneficiary under any deed of trust of the Building or any part thereof.

ARTICLE 26  
Holding Over

26.1 Any holding over after the expiration or other termination of the Lease Term without the express written consent of Landlord delivered to Tenant shall be construed to be a tenancy at sufferance. Any holding over after the expiration or other termination of the Lease Term with the express written consent of Landlord delivered to Tenant shall be construed to be a tenancy from month to month only, and shall be on all the terms set forth herein, except that the monthly Base Rent shall be an amount equal to one hundred fifty percent (150%) of the monthly Base Rent payable for the last full month of the Lease Term (without giving consideration to any period of abatement arising as a result of the occurrence of any casualty or for any other reason). Acceptance by Landlord of any rent after the expiration or termination of this Lease shall not constitute a consent by Landlord to any such tenancy from month to month or result in any other tenancy or any renewal of the Lease Term. The provisions of this section are in addition to, and do not affect, Landlord's right to re-entry or other rights hereunder or provided by law.

26.2 Tenant shall indemnify, defend and hold Landlord and the Landlord Parties harmless from and against all claims, demands, liabilities, damages, losses, costs and expenses, including, without limitation, attorneys' fees, incurred by or asserted against Landlord or the Landlord Parties and arising directly or indirectly from Tenant's failure to timely surrender the Premises, including but not limited to (i) any rent payable by or any loss, cost, or damages, including lost profits, claimed by any prospective tenant of the Premises or any portion thereof, and (ii) Landlord's damages as a result of such prospective tenant rescinding or refusing to enter into the prospective lease of the Premises or any portion thereof by reason of such failure to timely surrender the Premises; provided, however, as a condition to Tenant's obligations under this Section 26.2, Landlord shall give Tenant written notice of the existence of a prospective successor tenant for the Premises or any portion thereof, or the existence of any other matter which might give rise to a claim by Landlord under the foregoing indemnity, at least thirty (30) days prior to the date Landlord shall require Tenant's surrender of the Premises, and Tenant shall not be responsible to Landlord under the foregoing indemnity if Tenant shall surrender the Premises on or prior to the expiration of such thirty (30) day period (it being agreed, however, that Landlord need not identify the prospective tenant by name in its notice, and it being further agreed that such notice may be given prior to the scheduled expiration date of this Lease).

ARTICLE 27  
Intentionally Omitted

ARTICLE 28  
Signage

28.1 Tenant may, at Tenant's expense, install Building standard suite signage identifying Tenant's business at the entrance to the Premises, provided that the design, size, color and location of the sign shall be subject to Landlord's prior reasonable approval. Tenant shall be entitled, at no cost to Tenant, to have the name of Tenant's company listed on the Building directory situated in the lobby of the Building. If, after Tenant's name is initially listed on the directories, Tenant requests a change in Tenant's name as printed thereon, Tenant shall reimburse Landlord for Landlord's cost of reprinting Tenant's name for the directories.

28.2 Tenant, at Tenant's sole cost and expense (including, without limitation, costs and expenses to construct any such signage to the extent the same does not exist as of the date of this Lease), and subject to Tenant's compliance with applicable Legal Requirements (including signage ordinances), shall be entitled to signage on the exterior of the Building in the maximum size and number of locations as permitted by the City and Legal Requirements, and in locations reasonably approved by Landlord identifying Tenant's business ("Tenant's Building Signage"). Except for Tenant's Building Signage, Tenant shall have no other right to maintain any signage at any other location in, on or about the exterior of the Building. Tenant's Building Signage, and any changes to Tenant's Building Signage, shall be subject to Landlord's reasonable approval as to the design, size, color, material, content, location and illumination, shall be appropriate for the Building, shall be in conformity with the overall design and ambiance of the Building, and shall comply with all applicable Legal Requirements and the Project signage criteria. Tenant shall be responsible for obtaining any governmental permits or approvals

required for Tenant's Building Signage, all at Tenant's sole cost and expense; provided, however, that Landlord, at no cost to Landlord, shall reasonably cooperate with Tenant as reasonably required for obtaining any governmental permits or approvals required for Tenant's Building Signage. Tenant's repair, maintenance, construction and/or improvement of Tenant's Building Signage shall be at its sole cost and expense and shall comply with all applicable Legal Requirements, the requirements applicable to construction of Alterations pursuant to Article 8 of this Lease, and such other reasonable rules, procedures and requirements as Landlord shall impose with respect to such work, including insurance coverage in connection therewith. Any cost or reimbursement obligations of Tenant under this section 28.2, including with respect to the installation, maintenance or removal of Tenant's Building Signage, shall survive the expiration or earlier termination of this Lease. Tenant's rights to maintain Tenant's Building Signage shall terminate upon the earlier to occur of: (a) the expiration or earlier termination of the Lease or Tenant's right to possession of the Premises; (b) if the original tenant hereunder (i.e. Dexcom, Inc.) ("Original Tenant") or an Affiliate to whom this Lease has been assigned or the Premises subleased in accordance with section 15.8 above fails to occupy at least one (1) full floor in the Building; (c) Tenant assigns this Lease other than to an Affiliate; or (d) an Event of Default occurs under this Lease. If Tenant's signage rights shall terminate pursuant to the foregoing, the same shall not be reinstated, notwithstanding that the cause for termination may have been cured. Upon the termination of Tenant's signage rights under this section 28.2, Tenant shall remove any of Tenant's Building Signage at Tenant's sole cost and expense, and repair and restore to good condition the areas of the Building on which the signage was located or that were otherwise affected by such signage or the removal thereof (including, without limitation, patching any holes or other penetrations caused by such signage and otherwise restoring the Building to the condition existing prior to the initial installation of such signage), or at Landlord's election, Landlord may perform any such removal and/or repair and restoration and Tenant shall pay Landlord the reasonable cost thereof within thirty (30) days after Landlord's written demand. If any signs, projections, awnings, signals or advertisements is installed by Tenant in violation of this section 28.2, or done by Tenant through any person not approved by Landlord, Landlord shall notify Tenant in writing and if Tenant fails to remove such signage within ten (10) Business Days after Landlord's notice, Landlord shall have the right to remove such signs, projections, awnings, signals or advertisements without being liable to the Tenant by reason thereof and to charge the cost of such removal to Tenant, payable within thirty (30) days of Landlord's demand therefor.

ARTICLE 29  
Waiver

29.1 The waiver by Landlord or Tenant of any breach of any agreement, covenant or condition in this Lease shall not be deemed to be a waiver of any subsequent breach of the same or any other agreement, covenant or condition in this Lease, nor shall any custom or practice which may grow up between Landlord and Tenant in the administration of this Lease be construed to waive or to lessen the right of Landlord or Tenant to insist upon the performance by Landlord or Tenant in strict accordance with this Lease. The subsequent acceptance of rent hereunder by Landlord or the payment of rent by Tenant shall not waive any preceding breach by Tenant of any agreement, covenant or condition in this Lease, nor cure any Event of Default, nor waive any forfeiture of this Lease or unlawful detainer action, other than the failure of Tenant to pay the particular rent so accepted, regardless of Landlord's or Tenant's knowledge of such preceding breach at the time of acceptance or payment of such rent.

ARTICLE 30  
Notices

30.1 All notices that may be given or are required to be given by either Landlord or Tenant to the other under this Lease shall be in writing and shall be either hand delivered, delivered by a nationally recognized overnight courier, or deposited in the United States mail, postage prepaid, certified mail with return receipt requested, and addressed as follows: to Tenant, before the Commencement Date, at the address of Tenant specified in the Basic Lease Information, or at such other place as Tenant may from time to time designate in a notice to Landlord, and, after the Commencement Date, to Tenant at the Premises, or at such other place as Tenant may from time to time designate in a notice to Landlord; to Landlord at the address of Landlord specified in the Basic Lease Information, or at such other place as Landlord may from time to time designate in a notice to Tenant. All notices shall be effective on the date of delivery. If any notice is not delivered or cannot be delivered because the receiving party changed the

address of the receiving party and did not previously give notice of such change to the sending party, or due to a refusal to accept the notice by the receiving party, such notice shall be effective on the date delivery is attempted. Any notice under this Lease may be given on behalf of a party by the attorney for such party.

ARTICLE 31  
Miscellaneous

31.1 The words "Landlord" and "Tenant" as used herein shall include the plural as well as the singular. If there is more than one Tenant, the obligations hereunder imposed upon Tenant shall be joint and several. Time is of the essence of this Lease and each and all of its provisions. Submission of this instrument for examination or signature by Tenant does not constitute a reservation of or option for lease, and it is not effective as a lease or otherwise until execution and delivery by both Landlord and Tenant. Subject to Article 15 hereof, this Lease shall benefit and bind Landlord and Tenant and the personal representatives, heirs, successors and assigns of Landlord and Tenant. Unless required by a lender pursuant to section 22.1, neither this Lease nor any memorandum, short form, affidavit or other writing with respect thereto, shall be recorded by Tenant or anyone acting through, under or on behalf of Tenant. Tenant shall not, without the prior written consent of Landlord, use the name of the Building for any purpose other than as the address of the business to be conducted by Tenant in the Premises. If any provision of this Lease is determined to be illegal or unenforceable, such determination shall not affect any other provision of this Lease and all such other provisions shall remain in full force and effect. This Lease shall be construed as though the covenants herein between Landlord and Tenant are independent and not dependent and Tenant hereby expressly waives the benefit of any statute to the contrary and agrees that if Landlord fails to perform its obligations set forth herein, Tenant shall not be entitled to make any repairs or perform any acts hereunder at Landlord's expense or to any setoff of the rent or other amounts owing hereunder against Landlord. If Tenant requests the consent or approval of Landlord to any assignment, sublease or other action by Tenant, including without limitation Landlord's consent and execution of any lien waiver or estoppel certificate, Tenant shall pay on demand to Landlord all costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by Landlord in connection therewith. This Lease shall be governed by and construed in accordance with the laws of the State in which the Building is located.

31.2 Tenant acknowledges that the late payment by Tenant of any monthly installment of Monthly Rent will cause Landlord to incur costs and expenses, the exact amount of which is extremely difficult and impractical to fix. Such costs and expenses will include, without limitation, administration and collection costs and processing and accounting expenses. Therefore, if any monthly installment of Monthly Rent is not received by Landlord from Tenant within five (5) days after such installment is due, Tenant shall immediately pay to Landlord a late charge equal to five percent (5%) of such delinquent installment. Landlord and Tenant agree that such late charge represents a reasonable estimate of such costs and expenses and is fair compensation to Landlord for its loss suffered by Tenant's failure to make timely payment. In no event shall such late charge be deemed to grant to Tenant a grace period or extension of time within which to pay any Monthly Rent or prevent Landlord from exercising any right or remedy available to Landlord upon Tenant's failure to pay each installment of Monthly Rent due under this Lease in a timely fashion, including the right to terminate this Lease. Notwithstanding the foregoing, no late charge will be imposed with respect to the first late payment in the twelve (12) months following the Commencement Date or with respect to the first late payment in any succeeding twelve (12) month period during the Term unless the applicable payment due from Tenant is not received by Landlord within five (5) business days following written notice from Landlord that such payment was not received when due. All amounts of money payable by Tenant to Landlord hereunder, if not paid when due, shall bear interest from the due date until paid at the rate (the "Interest Rate") equal to ten percent (10%) per annum.

31.3 If there is any legal action or proceeding between Landlord and Tenant to enforce any provision of this Lease or to protect or establish any right or remedy of either Landlord or Tenant hereunder, the unsuccessful party to such action or proceeding shall pay to the prevailing party all costs and expenses, including reasonable attorneys' fees, incurred by such prevailing party in such action or proceeding and in any appeal in connection therewith. If such prevailing party recovers a judgment in any such action, proceeding or appeal, such costs, expenses and attorneys' fees shall be included in and as a part of such judgment. Notwithstanding the foregoing, however, Landlord shall be deemed the

prevailing party in any unlawful detainer or other action or proceeding instituted by Landlord based upon any default or alleged default of Tenant hereunder if (a) judgment is entered in favor of Landlord, or (b) prior to trial or judgment Tenant pays all or any portion of the rent claimed by Landlord, vacates the Premises, or otherwise cures the default claimed by Landlord.

31.4 Exhibit A (Plan Outlining the Premises), Exhibit B (Work Letter), Exhibit C (Rules and Regulations), Exhibit D (Tenant's Building Signage), Exhibit E (Appraisal Method), and Exhibit F (Dish / Antenna), and any other attachments specified in the Basic Lease Information are attached to and made a part of this Lease.

31.5 Landlord and Tenant each hereby expressly, irrevocably, fully and forever releases, waives and relinquishes any and all right to trial by jury and any and all right to receive from the other (or any past, present or future board member, trustee, director, officer, employee, agent, representative, or advisor of the other) punitive, exemplary or consequential damages, in each case, however occurring in any claim, demand, action, suit, proceeding or cause of action in which Landlord and Tenant are parties, which in any way (directly or indirectly) arises out of, results from or relates to any of the following, in each case whether now existing or hereafter arising and whether based on contract or tort or any other legal basis: this Lease; any past, present or future act, omission, conduct or activity with respect to this Lease; any transaction, event or occurrence contemplated by this Lease; or the performance of any obligation or the exercise of any right under this Lease. Landlord and Tenant reserve the right to recover actual or compensatory damages, with interest, attorneys' fees, costs and expenses as provided in this Lease, for any breach of this Lease.

31.6 Intentionally Omitted.

31.7 Landlord reserves the right (upon thirty (30) days' prior notice to, but otherwise without the consent of Tenant) to make improvements and/or additions to portions of the Building, including, without limitation, adding floor area to one or more existing floors of the Building, and to undertake structural and seismic improvement projects in the Building; provided, however, in no event will such construction activity result in the need for any construction activity within the Premises. Such construction activity may result in columns, beams and other structural components being placed in the Premises to accommodate the construction work and/or the permanent additions and/or expansions to be constructed. Any such construction activity is entirely discretionary with Landlord, and Tenant agrees that no representation, express or implied, with respect to the future condition of the Building or any improvements thereto have been made to Tenant by Landlord or any Landlord representative. In the event Landlord elects to engage in such construction activity, Landlord shall consult with Tenant and seek Tenant's input on how to perform such proposed improvements or additions in a manner that minimizes disruption to Tenant, and shall use commercially reasonable efforts to (i) ensure Tenant continues to have unfettered access to and use of the Premises and parking areas, and (ii) minimize any disruption of Tenant's business caused by such construction activities. Tenant hereby waives any and all rights or claims of any kind for rent offsets or based on constructive eviction, nuisance, or interference with enjoyment which may arise in connection with or result from such construction activities, to the extent Landlord uses commercially reasonable efforts to minimize disruption of Tenant's business caused by such construction activities. Notwithstanding anything in this section 31.7 to the contrary, if Landlord reasonably determines that any of the foregoing construction activities will result in a material interference with or disruption to Tenant's business in the Premises, Landlord, upon ninety (90) days' prior written notice to Tenant that Landlord intends to commence such construction activity, may relocate Tenant, temporarily, to other space in the Building or other properties owned by affiliates of Landlord, which relocation shall be performed at Landlord's cost. If the Premises are altered by reason of such improvements, Landlord agrees to re-measure the Premises following the completion of the improvements and to adjust Tenant's rental obligations hereunder based on the new square footage of the Premises, as determined by Landlord.

31.8 Subject to the Publicly-Traded Exemption (as defined below), within sixty (60) days following the end of Tenant's fiscal year, Tenant shall furnish to Landlord copies of true and accurate audited financial statements for such fiscal year, as prepared on an audited basis by the independent certified public accountants of Tenant (which accountants shall be from a reputable national or regional accounting firm) in accordance with GAAP, and certified by a responsible officer of Tenant as presenting

fairly in all material respects the financial condition and results of operations of Tenant. In addition, and also subject to the Publicly-Traded Exemption, at any time within fifteen (15) days after Landlord's request therefor, Tenant shall furnish to Landlord copies of Tenant's most recent internally prepared financial statements reflecting Tenant's then current financial situation. Landlord shall use good faith efforts to keep such information received from Tenant confidential, except that Landlord may disclose such financial information received from Tenant to any lender or prospective lender for, or purchaser or prospective purchaser of, the Building, as necessary in the course of any litigation arising out of or concerning this Lease, or as required by applicable law, and provided however that the foregoing confidentiality requirement shall be inapplicable in the event the subject financial information is made publicly available by the Securities and Exchange Commission or any other governmental body. "GAAP" means those generally accepted accounting principles and practices that are recognized as such by the American Institute of Certified Public Accountants or by the Financial Accounting Standards Board or through other appropriate boards or committees thereof, and that are consistently applied for all periods, after the date hereof, so as to properly reflect the financial position of Tenant, except that any accounting principle or practice required to be changed by the Financial Accounting Standards Board (or other appropriate board or committee of the said Board) in order to continue as a generally accepted accounting principle or practice may be so changed. Notwithstanding the foregoing, the provisions of this section 31.8 shall not apply so long as Tenant is publicly-traded on a recognized national stock exchange and Tenant's financial statements and information are available to the public over the internet and are discernible from any parent or affiliate entity (the "Publicly-Traded Exemption").

31.9 Notwithstanding any other provision of this Lease, the liability of Landlord for its obligations under this Lease is limited solely to Landlord's interest in the Building as the same may from time to time be encumbered, and no personal liability shall at any time be asserted or enforceable against any other assets of Landlord, any of the Landlord Parties, or against the constituent shareholders, partners or other owners of Landlord, or the directors, officers, employees and agents of Landlord or such constituent shareholder, partner or other owner, on account of any of Landlord's obligations or actions under this Lease.

31.10 Tenant agrees that the terms of this Lease are confidential and constitute proprietary information of Landlord, and that disclosure of the terms hereof could adversely affect the ability of Landlord to negotiate with other tenants. Tenant hereby agrees that Tenant and its partners, officers, directors, employees, agents, real estate brokers and sales persons and attorneys shall not disclose the terms of this Lease to any other person without Landlord's prior written consent, except to any accountants of Tenant in connection with the preparation of Tenant's financial statements or tax returns, to an assignee of this Lease or sublessee of the Premises, or to an entity or person to whom disclosure is required by applicable law or in connection with any action brought to enforce this Lease.

31.11 Landlord and Tenant agree that the rentable area of the Premises as calculated as of the date of this Lease is accurately set forth in the Basic Lease Information. The rentable square footage of the Premises and the Building shall be subject to verification from time to time by Landlord's architect. That verification shall be made in accordance with Landlord's then current adopted standard with respect to the Building), which may result in an increase or decrease in the number of rentable square feet contained therein, provided that such remeasurement shall not under any circumstances entitle Tenant to a refund or credit for any sums paid under this Lease, nor shall such remeasurement under any circumstances obligate Tenant to pay any additional sums under this Lease as a result of any adjustment in the measurement of the Premises or Building. The determination of Landlord's architect shall be conclusive and binding on the parties, but shall not increase any economic obligations of Tenant under this Lease. In the event of such an adjustment in the rentable square footage, all amounts, percentages and figures (other than any Landlord allowance or contribution for construction of improvements already completed) determined based on rentable square footage, such as Tenant's Percentage Share, Base Rent, and parking rights, if any, shall be adjusted prospectively; provided, however, notwithstanding the foregoing, there shall be no increase in Tenant's Percentage Share or Base Rent as a result of such adjustment during the initial Term of this Lease. The parties shall execute an amendment to the Lease confirming any measurement change within thirty (30) days after Landlord shall request the same. Subject to the foregoing, the square footage figures contained in this Lease are final and binding on the parties.

ARTICLE 32  
Real Estate Brokers

32.1 Tenant warrants and represents that it has negotiated this Lease directly with the real estate brokers specified in the Basic Lease Information and has not authorized or employed, or acted by implication to authorize or to employ, any other real estate broker or salesperson to act for Tenant in connection with this Lease. Landlord and Tenant shall each indemnify and defend the other against and hold the other harmless from all claims, demands, liabilities, damages, losses, costs and expenses, including, without limitation, reasonable attorneys' fees, arising from any claim for any compensation, commission or finder's fee by any real estate broker or salesperson actually or allegedly representing or acting on behalf of such party other than those specified in this Article 32.

ARTICLE 33  
Authority

33.1 If Tenant is a corporation, partnership, limited liability company, trust, association or other entity, Tenant and each person executing this Lease on behalf of Tenant, hereby covenants and warrants that (a) Tenant is duly incorporated or otherwise established or formed and validly existing under the laws of its state of incorporation, establishment or formation, (b) Tenant has and is duly qualified to do business in the state in which the Building is located, (c) Tenant has full corporate, partnership, trust, association or other appropriate power and authority to enter into this Lease and to perform all Tenant's obligations hereunder, and (d) each person (and all of the persons if more than one signs) signing this Lease on behalf of Tenant is duly and validly authorized to do so. Concurrently with signing this Lease, Tenant shall deliver to Landlord a true and correct copy of resolutions duly adopted by the board of directors or other governing body of Tenant, certified by the secretary or assistant secretary of Tenant to be true and correct, unmodified and in full force, which authorize and approve this Lease and authorize each person signing this Lease on behalf of Tenant to do so.

ARTICLE 34  
Complete Agreement

34.1 There are no oral agreements between Landlord and Tenant affecting this Lease, and this Lease supersedes and cancels any and all previous negotiations, arrangements, brochures, offers, agreements and understandings, oral or written, if any, between Landlord and Tenant or displayed by Landlord to Tenant with respect to the subject matter of this Lease, the Premises or the Building. There are no representations between Landlord and Tenant or between any real estate broker and Tenant other than those expressly set forth in this Lease and all reliance with respect to any representations is solely upon representations expressly set forth in this Lease. This Lease may not be amended or modified in any respect whatsoever except by an instrument in writing signed by Landlord and Tenant.

ARTICLE 35  
Option to Renew

35.1 Tenant shall have the option to renew this Lease for one (1) additional term of five (5) years, commencing upon the expiration of the initial Lease Term. The renewal option must be exercised, if at all, by written notice given by Tenant to Landlord not later than nine (9) months nor earlier than twelve (12) months prior to expiration of the initial Lease Term. Notwithstanding the foregoing, at Landlord's election, this renewal option shall be null and void and Tenant shall have no right to renew this Lease if on the date that Tenant exercises its renewal option or as of the date immediately preceding the commencement of the renewal period: (a) Tenant is not in, and has not during the Lease Term been in, default under the Lease beyond any applicable cure periods; (b) all or any portion of the Premises is sublet (other than to an Affiliate of Tenant); (c) the Lease has been assigned prior to such date; (d) the Tenant originally named herein is not occupying the Premises; or (e) the Premises is not intended for the exclusive use of Tenant during the renewal term.

35.2 If Tenant exercises the renewal option, then all of the terms and conditions set forth in this Lease as applicable to the Premises during the initial Lease Term shall apply during the renewal term, except that (a) Tenant shall have no further right to renew this Lease, (b) Tenant shall take the Premises in

their then "as-is" state and condition, (c) the rates for parking in the Building shall be as reasonably determined by Landlord based on the then current rates for parking in the Building, and (d) subject to section 35.5 below, the Base Rent payable by Tenant for the Premises shall be the then fair market rent for the Premises based upon the terms of this Lease, as renewed. Fair market rent shall include the periodic rental increases, if any, that would be included for space leased for the period the space will be covered by the Lease.

35.3 For purposes of this Article 35, the term "fair market rent" shall mean the rental rate for comparable space under primary lease (and not sublease) to new tenants, taking into consideration the quality of the Building and such amenities as existing improvements and the like, situated in similar buildings in comparable locations in the Sorrento Mesa submarket of San Diego, California, in comparable physical and economic condition, taking into consideration the then prevailing ordinary rental market practices with respect to tenant concessions (if any) (e.g., not offering extraordinary rental, promotional deals and other concessions to tenants which deviate from what is the then prevailing ordinary practice in an effort to alleviate cash flow problems, difficulties in meeting loan obligations or other financial distress, or in response to a greater than average vacancy rate).

35.4 The fair market rent shall be mutually agreed upon by Landlord and Tenant in writing within the thirty (30) calendar day period commencing four (4) months prior to commencement of the renewal period. If Landlord and Tenant are unable to agree upon the fair market monthly rent within said thirty (30) day period, then the fair market rent shall be established by appraisal in accordance with the procedures set forth in Exhibit D attached hereto.

35.5 Notwithstanding anything in the foregoing or Exhibit E attached hereto to the contrary, in no event shall the Base Rent during the renewal period be less than the amount of Base Rent payable by Tenant (for all of the Premises leased hereunder) under this Lease for the calendar month immediately preceding the commencement of the renewal period.

#### ARTICLE 36 Right of First Offer

36.1 Tenant shall have a continuous and ongoing right of first offer (the "Right of First Offer") with respect to any space located in the Building (the "Offering Space"). Tenant's Right of First Offer shall be exercised, if at all, as set forth in section 36.2 below.

36.2 At any time after Landlord has determined that (i) the existing tenant in the Offering Space will not extend or renew the term of its lease for the Offering Space, whether pursuant to a then existing right or pursuant to new arrangements with Landlord and (ii) Landlord intends to market the Offering Space through a third party broker to the general public, then prior to leasing such Offering Space to a party other than the existing tenant, Landlord shall advise Tenant (the "Advice") of the terms under which Landlord is prepared to lease the Offering Space to Tenant, which terms shall reflect the fair market (hereinafter defined) rate for such Offering Space as reasonably determined by Landlord. Tenant may lease such Offering Space in its entirety only, under such terms, or such other terms as mutually agreed upon in writing by Landlord and Tenant, by delivering written notice of exercise to Landlord (the "Notice of Exercise") within five (5) business days after the date of the Advice, except that Tenant shall have no such Right of First Offer and Landlord need not provide Tenant with an Advice, if at the time that Landlord would otherwise deliver the Advice: (a) Tenant is in default under the Lease beyond any applicable cure periods; (b) more than 40% of the Premises is sublet (other than to an Affiliate); (c) the Lease has been assigned prior to such date (other than to an Affiliate); (d) Original Tenant or an Affiliate is not occupying the Premises; or (e) the Offering Space is not intended for the exclusive use of Original Tenant (or an Affiliate) during the Lease Term.

36.3 If Tenant timely and validly exercises the Right of First Offer, the lease of the Offering Space shall be on the terms stated in the Advice, or on such other terms as mutually agreed upon in writing by Landlord and Tenant (such terms to be applicable to the Offering Space referred to herein as the "Expansion Terms"), and the terms and conditions of this Lease (but to the extent that the Expansion Terms and this Lease conflict, the terms and conditions of the Advice shall govern), subject to the following:

(a) The lease term for the Offering Space shall be coterminous with the Lease Term, unless otherwise stated in the Expansion Terms;

(b) Tenant shall pay Base Rent and additional rent for the Offering Space in accordance with the Expansion Terms, which terms and conditions shall reflect the fair market rate for the Offering Space as determined in Landlord's reasonable judgment. For purposes hereof, the term "fair market rent" shall mean the rental rate for comparable space under primary lease (and not sublease) to new tenants, taking into consideration the quality of the Building and such amenities as existing improvements, view, floor on which the Premises are situated and the like, situated in first-class, reputable, established office buildings in comparable locations in the Sorrento Mesa submarket of San Diego, California, in comparable physical and economic condition, taking into consideration the then prevailing ordinary rental market practices with respect to tenant concessions (if any) (e.g., not offering extraordinary rental, promotional deals and other concessions to tenants which deviate from what is the then-prevailing ordinary practice in an effort to alleviate cash flow problems, difficulties in meeting loan obligations or other financial distress, or in response to a greater than average vacancy rate); and

(c) The Offering Space (including improvements and personalty, if any) shall be accepted by Tenant in its condition and as-built configuration existing on the earlier of the date Tenant takes possession of the Offering Space or as of the date the term for such Offering Space commences, unless the Expansion Terms specify any work to be performed or improvements allowances to be given by Landlord in the Offering Space, in which case Landlord shall perform such work or give such improvement allowances in the Offering Space. If Landlord is delayed delivering possession of the Offering Space due to the holdover or unlawful possession of such space by any party, Landlord shall use reasonable efforts to obtain possession of the space, and the commencement of the term for the Offering Space shall be postponed until the date Landlord delivers possession of the Offering Space to Tenant free from occupancy by any party.

36.4 The rights of Tenant hereunder with respect to the Offering Space shall terminate on the earlier to occur of: (a) Tenant's failure to exercise its Right of First Offer within the period provided in section 36.1 above; (b) the date Landlord would have provided Tenant an Advice if Tenant had not been in violation of one or more of the conditions set forth in section 35.1 above; or (c) that date that is thirty-six (36) months prior to the expiration of the term of this Lease. If Tenant fails to exercise its Right of First Offer within the period provided in section 36.1 above, Landlord may lease the Offering Space to a third party on any terms or conditions acceptable to Landlord without any obligation to re-offer the space to Tenant.

36.5 If Tenant exercises its Right of First Offer, Landlord shall prepare an amendment (the "Offering Amendment") adding the Offering Space to the Premises on the terms set forth in the Advice and reflecting the changes in the Base Rent, rentable square footage of the Premises, Tenant's Percentage Share and other appropriate terms. A copy of the Offering Amendment shall be sent to Tenant within a reasonable time after Landlord's receipt of the Notice of Exercise executed by Tenant, and Tenant shall execute and return the Offering Amendment to Landlord within fifteen (15) days thereafter, but an otherwise valid exercise of the Right of First Offer shall be fully effective whether or not the Offering Amendment is executed.

ARTICLE 37  
Intentionally Omitted

ARTICLE 38  
Rooftop Equipment

38.1 Tenant shall have the right, at no additional cost, to utilize space on the roof of the Building for the purpose of installing (in accordance with the terms and conditions of Article 8 of this Lease), operating and maintaining the rooftop dishes/antennas described in Exhibit F attached hereto (collectively the "Dish/Antenna"). The exact location of the space on the roof to be used by Tenant shall be reasonably designated by Landlord (the "Roof Space"). Landlord reserves the right to relocate the location of the designated Roof Space as reasonably necessary during the remainder of the Lease Term, provided that such relocation shall be at Landlord's cost and expense and shall not diminish the intended

signal, nor unreasonably interfere with Tenant's use of any Dish/Antenna in the original Roof Space. Landlord's designation shall take into account Tenant's use of the Dish/Antenna. Notwithstanding the foregoing, Tenant's right to install the Dish/Antenna shall be subject to the reasonable approval rights of Landlord and Landlord's architect and/or engineer with respect to the plans and specifications of the Dish/Antenna, the manner in which the Dish/Antenna is attached to the roof of the Building and the manner in which any cables are run to and from the Dish/Antenna. Tenant shall be solely responsible for obtaining all necessary governmental and regulatory approvals and for the cost of installing, operating, maintaining and removing the Dish/Antenna. Tenant shall notify Landlord upon completion of the installation of the Dish/Antenna. If Landlord reasonably determines that the Dish/Antenna equipment does not comply with the approved plans and specifications, that the Building has been damaged during installation of the Dish/Antenna or that the installation was defective, Landlord shall notify Tenant of any noncompliance or detected problems and Tenant immediately shall cure the defects. If the Tenant fails to immediately cure the defects, Tenant shall pay to Landlord upon demand the cost, as reasonably determined by Landlord, of correcting any defects and repairing any damage to the Building caused by such installation. If at any time Landlord, in its sole discretion, deems it necessary, Tenant shall provide and install, at Tenant's sole cost and expense, appropriate aesthetic screening, reasonably satisfactory to Landlord, for the Dish/Antenna (the "Aesthetic Screening").

38.2 Landlord agrees that Tenant, upon reasonable prior written notice to Landlord, shall have access to the roof of the Building and the Roof Space for the purpose of installing, maintaining, repairing and removing the Dish/Antenna, the appurtenances and the Aesthetic Screening, if any, all of which shall be performed by Tenant or Tenant's authorized representative or contractors, which shall be reasonably approved by Landlord (such approval not to be unreasonably withheld, conditioned or delayed), at Tenant's sole cost and risk. It is agreed, however, that only authorized engineers, employees or properly authorized contractors of Tenant, FCC (defined below) inspectors, or persons under their direct supervision will be permitted to have access to the roof of the Building and the Roof Space. Tenant further agrees to exercise control over the people requiring access to the roof of the Building and the Roof Space in order to keep to a minimum the number of people having access to the roof of the Building and the Roof Space and the frequency of their visits. It is further understood and agreed that the installation, maintenance, operation and removal of the Dish/Antenna, the appurtenances and the Aesthetic Screening, if any, is not permitted to damage the Building or the roof thereof, or interfere with the use of the Building and roof by Landlord. Tenant agrees to be responsible for any damage caused to the roof or any other part of the Building, which may be caused by Tenant or any of its agents or representatives.

38.3 Tenant agrees to install only equipment of types and frequencies which will not cause unreasonable interference to Landlord or existing tenants of the Building. In the event Tenant's equipment causes such interference, Tenant will change the frequency on which it transmits and/or receives and take any other steps necessary to eliminate the interference. If said interference cannot be eliminated within a reasonable period of time, in the reasonable judgment of Landlord, then Tenant agrees to remove the Dish/Antenna from the Roof Space. Tenant shall, at its sole cost and expense, and at its sole risk, install, operate and maintain the Dish/Antenna in a good and workmanlike manner, and in compliance with all Building, electric, communication, and safety codes, ordinances, standards, regulations and requirements, now in effect or hereafter promulgated, of the Federal Government, including, without limitation, the Federal Communications Commission (the "FCC"), the Federal Aviation Administration ("FAA") or any successor agency of either the FCC or FAA having jurisdiction over radio or telecommunications, and of the state, city and county in which the Building is located. Under this Lease, Landlord and its agents assume no responsibility for the licensing, operation and/or maintenance of Tenant's equipment. Tenant has the responsibility of carrying out the terms of its FCC license in all respects. The Dish/Antenna shall be connected to Landlord's power supply in strict compliance with all applicable Building, electrical, fire and safety codes. Neither Landlord nor its agents shall be liable to Tenant for any stoppages or shortages of electrical power furnished to the Dish/Antenna or the Roof Space because of any act, omission or requirement of the public utility serving the Building, or the act or omission of any other tenant, invitee or licensee or their respective agents, employees or contractors, or for any other cause beyond the reasonable control of Landlord, and Tenant shall not be entitled to any rental abatement for any such stoppage or shortage of electrical power. Neither Landlord nor its agents shall have any responsibility or liability for the conduct or safety of any of Tenant's representatives, repair, maintenance and engineering personnel while in or on any part of the Building or the Roof Space.

38.4 The Dish/Antenna, the appurtenances and the Aesthetic Screening, if any, shall remain the personal property of Tenant, and shall be removed by Tenant at its own expense at the expiration or earlier termination of the Lease or Tenant's right to possession hereunder. Tenant shall repair any damage caused by such removal, including the patching of any holes to match, as closely as possible, the color surrounding the area where the equipment and appurtenances were attached. Tenant agrees to maintain all of the Tenant's equipment placed on or about the roof or in any other part of the Building in proper operating condition and maintain same in satisfactory condition as to appearance and safety in Landlord's reasonable discretion. Such maintenance and operation shall be performed in a manner to avoid any interference with any other tenants or Landlord. Tenant agrees that at all times during the Lease Term, it will keep the roof of the Building and the Roof Space free of all trash or waste materials produced by Tenant or Tenant's agents, employees or contractors.

38.5 In light of the specialized nature of the Dish/Antenna, Tenant shall be permitted to utilize the services of its choice for installation, operation, removal and repair of the Dish/Antenna, the appurtenances and the Aesthetic Screening, if any, subject to the reasonable approval of Landlord. Notwithstanding the foregoing, Tenant must provide Landlord with prior written notice of any such installation, removal or repair and coordinate such work with Landlord in order to avoid voiding or otherwise adversely affecting any warranties granted to Landlord with respect to the roof. If necessary, Tenant, at its sole cost and expense, shall retain any contractor having a then existing warranty in effect on the roof to perform such work (to the extent that it involves the roof), or, at Tenant's option, to perform such work in conjunction with Tenant's contractor. In the event Landlord contemplates roof repairs that could affect Tenant's Dish/Antenna, or which may result in an Interruption of the Tenant's telecommunication service, Landlord shall formally notify Tenant at least thirty (30) days in advance (except in cases of an emergency) prior to the commencement of such contemplated work in order to allow Tenant to make other arrangements for such service.

38.6 Tenant specifically acknowledges and agrees that the terms and conditions of Articles 8 and 13 of this Lease shall apply with full force and effect to the Roof Space and any other portions of the roof accessed or utilized by Tenant, its representatives, agents, employees or contractors.

#### ARTICLE 39 Generator

39.1 Subject to the terms hereof and applicable laws, Tenant shall have the right to use one (1) back-up electrical generator of a type, size and specifications reasonably approved by Landlord (the "Generator") in a location reasonably approved by Landlord (the "Generator Area"). In no event shall Tenant permit the Generator to interfere with normal and customary use or operation of the Building by Landlord or other tenants and/or occupants (including, without limitation, by means of noise or odor). Tenant shall be responsible for obtaining all permits and other approvals required by any governmental or quasi-governmental authority in connection with the operation and use of the Generator, and Tenant shall be solely responsible for any and all costs, if any, incurred by Landlord as a result of or in connection with Tenant's operation and use of the Generator. In the event that Landlord shall incur any costs as a result of or in connection with the rights granted to Tenant herein, Tenant shall reimburse Landlord for the same within ten (10) days following billing. Tenant shall be responsible for all maintenance and repairs and compliance with law obligations related to the Generator and acknowledges and that Landlord shall have no responsibility in connection therewith and that Landlord shall not be liable for any damage that may occur with respect to the Generator. The Generator shall be used by Tenant only during (i) testing and regular maintenance, and (ii) the period of any electrical power outage in the Building. Tenant shall be entitled to operate the Generator and such connections to the Building for testing and regular maintenance only upon notice to Landlord and at times reasonably approved by Landlord. All repairs and maintenance and compliance with laws with respect to the Generator shall be the sole responsibility of Tenant (at Tenant's sole cost and expense), and Landlord makes no representation or warranty of any kind with respect to such Generator. The Generator shall be deemed to be a part of the Premises for purposes of the insurance provisions of this Lease, as amended hereby, and, in addition, Tenant shall maintain, at Tenant's cost, industry standard "boiler and machinery" insurance coverage with respect thereto. At Landlord's request, Tenant shall be required to remove the Generator and restore such area to the condition that existed prior to the installation of the Generator upon the expiration or earlier termination of this Lease.

39.2 Tenant shall indemnify, defend, protect, and hold harmless Landlord, its partners, subpartners and their respective officers, agents, servants, employees, and independent contractors from any and all loss, cost, damage, expense and liability (including, without limitation, court costs and reasonable attorneys' fees) incurred in connection with or arising from any cause related to or connected with the use, operation, and/or repair of the Generator and/or any acts, omissions or negligence of Tenant or of any person claiming by, through or under Tenant, or of the contractors, agents, servants, employees, invitees, guests or licensees of Tenant or any such person, in connection with the Generator. In the event that Tenant shall fail to comply with the requirements set forth herein, without limitation of Landlord's other remedies (a) Landlord shall have the right to terminate Tenant's rights with respect to the Generator, and/or (b) Landlord shall have the right, at Tenant's sole cost and expense, to cure such breach, in which event Tenant shall be obligated to pay to Landlord, within ten (10) days following demand by Landlord, the amount expended by Landlord, plus Landlord's standard administration fee.

*[no further text on this page]*

IN WITNESS WHEREOF, Landlord and Tenant have executed this Office Lease as of the date first hereinabove written.

TENANT:

DEXCOM, INC.,  
a Delaware corporation

By \_\_

Name \_\_

Title \_\_

LANDLORD:

GC PACIFIC CENTER COURT OWNER LLC,  
a Delaware limited liability company

By \_\_

Name \_\_

Title \_\_



## EXHIBIT B

### Work Letter

1. **LANDLORD WORK.** At Landlord's sole cost and expense, Landlord shall perform the work described in **Schedule 1** attached hereto (the "Landlord's Work") in the Building and in the Premises, which work may be performed in the Building and Premises concurrently with Tenant's Improvements; provided, however, Landlord shall perform a portion of the Landlord's Work (the "Landlord Delivery Date Work") consisting of (i) demolishing the existing office improvements on the second floor of the Building per the space plan attached as Schedule 1-A, (ii) performing all required exterior accessibility work, including ADA parking and associated striping and signage, and (iii) completing the restroom work, all of which shall be Substantially Completed on or before the Delivery Date. Except as set forth in such **Schedule 1**, and the Lease, Tenant shall accept the Premises in its existing "as-is" condition. Landlord hereby appoints Rick Lafranchi (phone: (415) 596-0494, email: rlafranchi@graymarkcapital.com) as Landlord's representative to act for Landlord in all matters covered by this Work Letter. Tenant hereby appoints Jon Haigis, Director of Facilities (cell: (858) 736-7039, email: jon.haigis@dexcom.com) as Tenant's representative to act for Tenant in all matters covered by this Work Letter. All inquiries, requests, instructions, authorizations and other communications with respect to the matters covered by this Work Letter shall be directed to Landlord's representative or Tenant's representative, as the case may be. Tenant will not make any inquiries of or request to, and will not give any instructions or authorizations to, any other employee or agent of Landlord, including Landlord's architects, engineers, and contractors or any of their agents or employees, with regard to matters covered by this Work Letter. Either Landlord or Tenant may change its representative at any time by written notice to the other. Tenant warrants and represents to Landlord that Tenant's representative is duly authorized to act on Tenant's behalf with respect to all matters covered by this Work Letter, and agrees that Landlord and Landlord's Agents shall be entitled to rely on all requests, instructions, authorizations, approvals and other communications of any nature by, of or from such Tenant's representative, it being agreed to by Tenant that such requests, instructions, authorizations, approvals and other communications shall be binding on Tenant for all purposes.

2. **TENANT IMPROVEMENTS.** As used in the Lease and this Work Letter, the term "Tenant Improvements" or "Tenant Improvement Work" or "Tenant's Work" means those items of general tenant improvement construction shown on the Final Plans (described in **Section 4** below), more particularly described in **Section 5** below.

3. **INTENTIONALLY OMITTED.**

4. **TENANT IMPROVEMENT PLANS.**

a. **Preliminary Space Plan.** Landlord has approved Tenant's preliminary space plans attached hereto as **Schedule 2** (the "Preliminary Space Plan").

b. **Preparation of Final Plans.** Based on the approved Preliminary Space Plan, Tenant's architect will prepare complete architectural plans, drawings and specifications and complete engineered mechanical, structural and electrical working drawings for all of the Tenant Improvements for the Premises (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 Premises; (b) all internal and external communications and utility facilities which will require conduiting or other improvements from the base Building shell work and/or within common areas; and (c) all other specifications for the Tenant Improvements. The Final Plans will be submitted to Landlord in accordance with the delivery requirements of Section 30.1 of the Lease and via email for signature to confirm that they are consistent with the Preliminary Space Plan. Landlord shall respond to Tenant's submittal of Final Plans within seven (7) business days of Landlord's receipt thereof, such approval not to be unreasonably withheld, conditioned or delayed. In the event Tenant submits the Final Plans to Landlord in accordance with the delivery requirements set forth in this Section 4(b) and Landlord fails to respond within such seven (7) business day period, then the submitted plans and specifications shall be deemed approved by Landlord. If Landlord reasonably disapproves any aspect of the Final Plans based on any inconsistency with the Preliminary Space Plan, Landlord agrees to advise Tenant in writing

of such disapproval and the reasons therefor within such seven (7) business day period. Tenant will then cause Tenant's architect to redesign the Final Plans incorporating the revisions reasonably requested by Landlord so as to make the Final Plans consistent with the Preliminary Space Plan. Tenant shall resubmit the Final Plans to Landlord in accordance with the delivery requirements of Section 30.1 of the Lease and via email, and Landlord shall respond to Tenant's resubmitted Final Plans (and to any subsequent resubmittal of Final Plans) within three (3) business days of Landlord's receipt thereof, such approval not to be unreasonably withheld, conditioned or delayed. In the event Tenant resubmits the Final Plans to Landlord in accordance with the delivery requirements set forth in this Section 4(b) and Landlord fails to respond within such three (3) business day period, then the resubmitted plans and specifications shall be deemed approved by Landlord. If Landlord again disapproves such revised Final Plans, or any portion thereof, Landlord shall notify Tenant in writing of such disapproval, the reason for such disapproval and of the reasonable revisions which Landlord requires in order to obtain Landlord's approval. The process shall repeat until such time as Landlord has approved or is deemed to have approved the further revised Final Plans.

c. Requirements of Tenant's Final Plans. Tenant's Final Plans will include locations and complete dimensions, and the Tenant Improvements, as shown on the Final Plans, will: (i) be compatible with the Building shell and with the design, construction and equipment of the Building; (ii) if not comprised of the Building standards set forth in the written description thereof (the "Standards"), then compatible with and of at least equal quality as the Standards and approved by Landlord; (iii) comply with all applicable laws, ordinances, rules and regulations of all governmental authorities having jurisdiction, and all applicable insurance regulations; (iv) not require Building service beyond the level normally provided to other tenants in the Building and will not overload the Building floors; and (v) be of a nature and quality consistent with the overall objectives of Landlord for the Building, as determined by Landlord in its reasonable but subjective discretion.

d. Submittal of Final Plans. Once approved by Landlord and Tenant, Tenant's architect will submit the Final Plans to the appropriate governmental agencies for plan checking and the issuance of a building permit. Tenant's architect, with Landlord's cooperation, will make any changes to the Final Plans which are requested by the applicable governmental authorities to obtain the building permit. After approval of the Final Plans no further material changes may be made without the prior written approval of both Landlord and Tenant, and then only after agreement by Tenant to pay any excess costs resulting from the design and/or construction of such changes, if any.

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 "Tenant Improvement Allowance" described in Section 5 below.

f. Work Cost Estimate and Statement. Prior to the commencement of construction of any of the Tenant Improvements shown on the Final Plans, Tenant will submit to Landlord a written estimate of the cost to complete the Tenant Improvement Work, which written estimate will be based on the Final Plans taking into account any modifications which may be required to reflect changes in the Final Plans required by the City or County in which the Premises are located (the "Work Cost Estimate"). Landlord will either approve the Work Cost Estimate or disapprove specific items and submit to Tenant revisions to the Final Plans to reflect deletions of and/or substitutions for such disapproved items. Upon Landlord's approval of the Work Cost Estimate (such approved Work Cost Estimate to be hereinafter known as the "Work Cost Statement"), Tenant will have the right to purchase materials and to commence the construction of the items included in the Work Cost Statement pursuant to Section 6 hereof. If the total costs reflected in the Work Cost Statement exceed the Tenant Improvement Allowance described in Section 5 below, Tenant agrees to pay such excess.

## 5. PAYMENT FOR THE TENANT IMPROVEMENTS.

a. Tenant Improvement Allowance. Landlord hereby grants to Tenant a tenant improvement allowance of \$65.00 per rentable square foot of the Premises (i.e., \$3,194,880.00) (the "Tenant Improvement Allowance"). The Tenant Improvement Allowance is to be used only for:

(i) Payment of the cost of preparing the Final Plans, including mechanical, electrical, plumbing and structural drawings and of all other aspects necessary to complete the Final Plans. The Tenant Improvement Allowance will not be used for the payment of extraordinary design work not consistent with the scope of the Standards (i.e., above-standard design work) or for payments to any other consultants, designers or architects other than Landlord's architect and/or Tenant's architect.

(iii) The payment of plan check, permit and license fees relating to construction of the Tenant Improvements.

(iv) Construction of the Tenant Improvements, including, without limitation, the following:

(aa) Installation within the Premises of all partitioning, doors, floor coverings, ceilings, wall coverings and painting, millwork and similar items;

(bb) All electrical wiring, lighting fixtures, outlets and switches, and other electrical work necessary for the Premises;

(cc) The furnishing and installation of all duct work, terminal boxes, diffusers and accessories necessary for the heating, ventilation and air conditioning systems within the Premises, including the cost of meter and key control for after-hour air conditioning;

(dd) Any additional improvements to the Premises required for Tenant's use of the Premises including, but not limited to, odor control, special heating, ventilation and air conditioning, noise or vibration control or other special systems or improvements;

(ee) All fire and life safety control systems such as fire walls, sprinklers, halon, fire alarms, including piping, wiring and accessories, necessary for the Premises;

(ff) All plumbing, fixtures, pipes and accessories necessary for the Premises;

(gg) Testing and inspection costs; and

(hh) Fees and costs attributable to general conditions associated with the construction of the Tenant Improvements plus a one percent (1%) construction administration fee ("Construction Administration Fee") to cover the services of Landlord's tenant improvement coordinator.

(v) All costs incurred by Landlord for construction of elements of the Tenant Improvements in the Premises, which construction was performed by Landlord prior to the execution of this Lease by Landlord and Tenant and which construction is for the benefit of tenants and is customarily performed by Landlord prior the execution of leases for space in the Building for reasons of economics (examples of such construction would include, but not be limited to, the extension of mechanical [including heating, ventilating and air conditioning systems] and electrical distribution systems outside of the core of the Building, wall construction, column enclosures and painting outside of the core of the Building, ceiling hanger wires and window treatment).

In no event shall the Tenant Improvement Allowance be used for data cabling, telecom installation, signage, or any of Tenant's furniture, fixtures or equipment.

b. Over-Allowance Amount. All costs of the Tenant Improvements in excess of the Tenant Improvement Allowance shall be paid by Tenant at Tenant's sole cost and expense. Tenant shall pay for all costs of the Tenant Improvements and shall complete the Tenant Improvements prior to any

disbursement of the Tenant Improvement Allowance by Landlord. Upon Tenant's completion of the Tenant Improvements, the Tenant Improvement Allowance shall be disbursed to Tenant in accordance with the provisions of Section 5(g) below. In no event will 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 Premises. In addition to the Allowance, Landlord shall be responsible at its sole cost, not to exceed an amount equal to \$0.15 per rentable square foot of the Premises (i.e., \$7,372.80), for an initial test fit of the Premises by Tenant's architect.

c. Changes. Any material changes to the Final Plans will be approved by Landlord and Tenant in the manner set forth in Section 4 above. Tenant shall be solely responsible for any additional costs associated with such changes including the Construction Administration Fee, which fee shall be paid to Landlord within ten (10) business days after invoice therefor. Landlord will have the right to decline Tenant's request for a material change to the Final Plans if such changes are inconsistent with the provisions of Section 4 above.

d. Governmental Cost Increases. If increases in the cost of the Tenant Improvements as set forth in the Work Cost Statement are due to requirements of any governmental agency, Tenant shall be solely responsible for such additional costs including the Construction Administration Fee, which fee shall be paid to Landlord within five (5) business days after invoice therefor; provided, however, that Landlord will first apply toward any such increase any remaining balance of the Tenant Improvement Allowance.

e. Unused Allowance Amounts. Any portion of the Tenant Improvement Allowance which exceeds the cost of the Tenant Improvements or is otherwise remaining after December 31, 2020, will not be refunded to Tenant or be available to Tenant as a credit against any obligations of Tenant under the Lease.

f. Additional Reimbursable Work. In connection with Landlord's Work related to the replacement of the HVAC systems, as further set forth on Schedule 1 attached hereto, Landlord and Tenant may mutually agree that Tenant, instead of Landlord, shall perform certain demolition, preparation and installation work related to such new HVAC systems (the "HVAC Work") concurrently with Tenant performing the Tenant's Work, but such HVAC Work shall be done at Landlord's sole cost and expense, not to exceed Five Hundred Sixteen Thousand Dollars (\$516,000); provided, however, in the event the cost of the HVAC Work exceeds such amount, Tenant shall be solely responsible for all such excess cost at Tenant's sole cost and expense. In the event Landlord and Tenant agree in writing that Tenant shall perform the HVAC, Tenant shall cause its contractor to separately account for the costs of performing the HVAC Work, and Tenant may submit a request for reimbursement to Landlord for the cost of the HVAC Work as part of a request for disbursement of the Tenant Improvement Allowance; provided that the amounts payable by Landlord for the HVAC Work shall be in addition to the Tenant Improvement Allowance (and shall not be deducted from the Tenant Improvement Allowance).

g. Disbursement of the Tenant Improvement Allowance. Provided Tenant is not in default following the giving of notice and passage of any applicable cure period under the Lease or this Work Letter, Landlord shall disburse the Tenant Improvement Allowance to Tenant to reimburse Tenant for the actual construction costs which Tenant incurs in connection with the construction of the Tenant Improvements within thirty (30) days after Tenant's satisfaction of the following conditions:

(i) Landlord has received the following "Evidence of Completion and Payment" with respect to the Tenant's Work:

(A) Tenant has delivered to Landlord a draw request ("Draw Request") in a form satisfactory to Landlord and Landlord's lender with respect to the Tenant Improvements specifying that the Tenant's Work has been completed, together with invoices, receipts and bills evidencing the costs and expenses and evidence of payment by Tenant for all costs which are payable in connection with the Tenant's Work. The Draw Request shall constitute a representation by Tenant that the Tenant's Work identified has been completed in a good and workmanlike manner and in accordance with the Final Plans and has been paid for;

(B) The architect for the Tenant Improvements has certified to Landlord that the Tenant Improvements have been completed in accordance with the Final Plans;

(C) Tenant has delivered to Landlord such other evidence of Tenant's payment of the general contractor and subcontractors for the Tenant's Work and the absence of any liens generated by the Tenant's Work as may be required by Landlord (i.e., either unconditional lien releases in accordance with the applicable provisions of the California Civil Code);

(D) Landlord or Landlord's architect or construction representative has inspected the Tenant Improvements and determined that the Tenant's Work has been completed in a good and workmanlike manner;

(ii) Thirty-five (35) days shall have elapsed following the filing of a valid notice of completion by Tenant for the Tenant Improvements;

(iii) A certificate of occupancy for the Tenant Improvements and the Premises has been issued by the appropriate governmental body;

(iv) Tenant has delivered to Landlord: (i) properly executed mechanics lien releases from all of Tenant's contractors, agents and suppliers in compliance with the applicable provisions of the California Civil Code, which lien releases shall be conditional with respect to the then-requested payment amounts and unconditional with respect to payment amounts previously disbursed by Landlord; (ii) an application and certificate for payment (AIA form G702-1992 or equivalent) signed by Tenant's architect/space planner; (iii) original stamped building permit plans; (iv) copy of the building permit; (v) original stamped building permit inspection card with all final sign-offs; (vi) a reproducible copy (in a form approved by Landlord) of the "as-built" drawings of the Tenant Improvements; (vii) air balance reports; (viii) excess energy use calculations; (ix) one year warranty letters from Tenant's contractors; (x) manufacturer's warranties and operating instructions; (xi) final punchlist completed and signed off by Tenant's architect/space planner; and (xii) an acceptance of the Premises signed by Tenant;

(v) Landlord has determined that no work exists which adversely affects the mechanical, electrical, plumbing, heating, ventilating and air conditioning, life-safety or other systems of the Building, the curtain wall of the Building, the structure or exterior appearance of the Building, or any other tenant's use of such other tenant's leased premises in the Building;

(vi) The satisfaction of any other requirements or conditions which may be required or imposed by Landlord's lender with respect to the construction of the Tenant Improvements; and

(vii) Tenant has delivered to Landlord evidence satisfactory to Landlord that all construction costs in excess of the Tenant Improvement Allowance have been paid for by Tenant.

Notwithstanding anything to the contrary contained hereinabove, all disbursements of the Tenant Improvement Allowance shall be subject to the prior deduction of the portion of the Construction Administration Fee allocable to the Tenant Improvements described in the applicable Draw Request.

h. Books and Records. At its option, Landlord, at any time within three (3) years after final disbursement of the Tenant Improvement Allowance to Tenant, and upon at least ten (10) 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 Premises within ten (10) business days following 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. **CONSTRUCTION OF TENANT IMPROVEMENTS.** Following the later of (i) the Delivery Date, and (ii) Landlord's approval of the Final Plans and the Work Cost Statement described in Section 4(f) above, Tenant's contractor (selected as provided in Section 9(n)) will commence and diligently proceed with the construction of the Tenant Improvements. Tenant shall use diligent efforts to cause its contractor to complete the Tenant Improvements in a good and workmanlike manner in accordance with the Final Plans. Tenant agrees to use diligent efforts to cause construction of the Tenant Improvements to commence promptly following the issuance of a building permit for the Tenant Improvements. Landlord shall have the right to enter upon the Premises to inspect Tenant's construction activities following reasonable advance notice Tenant, and at times when a representative of Tenant is available to accompany Landlord during such inspection.

7. **TENANT DELAY.** Any delay in the completion of the Landlord's Work caused by (a) Tenant's failure to prepare and submit information or instructions within the time periods required herein or inadequacies in such information or instructions, (b) Tenant's failure to approve the Final Plans within the time periods required herein, (c) any changes in the Landlord's Work requested by Tenant, (d) any interruption or interference in the improvement work caused by Tenant, (e) the inclusion of any so-called "long lead" materials in the improvements (such as fabrics, paneling, carpeting or other items that are not readily available within industry standard lead times (e.g., custom made items that require time to procure beyond that customarily required for standard items, or items that are currently out of stock and will require extra time to back order) and for which suitable substitutes exist), and (f) any other delay requested or caused by Tenant (each, a "Tenant Delay"). Under no circumstances shall Landlord be liable to Tenant for any loss, cost or expense resulting to Tenant on account of delay in completion of the improvement work.

8. **SUBSTANTIAL COMPLETION.** The Tenant Improvements will be deemed to be "substantially completed" when Tenant's contractor certifies in writing to Landlord and Tenant that Tenant has substantially performed all of the Tenant Improvement Work required to be performed by Tenant under this Work Letter, other than decoration and minor "punch-list" type items and adjustments which do not materially interfere with Tenant's use of the Premises; and Tenant has obtained a temporary certificate of occupancy or other required equivalent approval from the local governmental authority permitting occupancy of the Premises. Within ten (10) days after receipt of such certificates, Tenant and Landlord will conduct a walk-through inspection of the Premises and Landlord shall provide to Tenant a written punch-list specifying those decoration and other punch-list items which require completion, which items Tenant will thereafter diligently complete.

9. **MISCELLANEOUS CONSTRUCTION COVENANTS.**

a. **No Liens.** Tenant shall not allow the Tenant Improvements or the Building or any portion thereof to be subjected to any mechanic's, materialmen's or other liens or encumbrances arising out of the construction of the Tenant Improvements.

b. **Diligent Construction.** Tenant will promptly, diligently and continuously pursue construction of the Tenant Improvements to successful completion in full compliance with the Final Plans and this Work Letter. Landlord and Tenant shall cooperate with one another during the performance of Tenant's Work to effectuate such work in a timely and compatible manner.

c. **Compliance with Laws.** Tenant will construct the Tenant Improvements in a safe and lawful manner. Subject to the other terms and conditions set forth in this Lease, Tenant shall, at its sole cost and expense, comply with all applicable laws and all regulations and requirements of, and all licenses and permits issued by, all municipal or other governmental bodies with jurisdiction which pertain to the installation of the Tenant Improvements. Copies of all filed documents and all permits and licenses shall be provided to Landlord. Any portion of the Tenant Improvements which is not acceptable to any applicable governmental body, agency or department, or not reasonably satisfactory to Landlord, shall be promptly repaired or replaced by Tenant at Tenant's expense. Notwithstanding any failure by Landlord to object to any such Tenant Improvements, Landlord shall have no responsibility therefor.

d. Indemnification. Subject to the terms of the Lease regarding insurance and waiver of subrogation by the parties, Tenant hereby indemnifies and agrees to defend and hold Landlord, the Landlord Parties, the Premises and the Building harmless from and against any and all suits, claims, actions, losses, costs or expenses of any nature whatsoever, together with reasonable attorneys' fees for counsel of Landlord's choice, arising out of or in connection with the Tenant Improvements or the performance of Tenant's Work (including, but not limited to, claims for breach of warranty, worker's compensation, personal injury or property damage, and any materialmen's and mechanic's liens).

e. Insurance. Construction of the Tenant Improvements shall not proceed without Tenant first acquiring workers' compensation and commercial general liability insurance and property damage insurance as well as "All Risks" builders' risk insurance, with minimum coverage of \$2,000,000 or such other amount as may be approved by Landlord in writing and issued by an insurance company reasonably satisfactory to Landlord. In addition to the foregoing, at Landlord's request, Tenant shall furnish to Landlord a completion and lien indemnity bond or other surety satisfactory to Landlord with respect to the performance of the Tenant Improvements. Not less than thirty (30) days before commencing the construction of the Tenant Improvements, certificates of such insurance shall be furnished to Landlord or, if requested, the original policies thereof shall be submitted for Landlord's approval. All such policies shall provide that thirty (30) days prior notice must be given to Landlord before modification, termination or cancellation. All insurance policies maintained by Tenant pursuant to this Work Letter shall name Landlord and any lender with an interest in the Premises as additional insureds, shall be primary and non-contributory and comply with all of the applicable terms and provisions of the Lease relating to insurance. Tenant's contractor shall be required to maintain the same insurance policies as Tenant, and such policies shall name Tenant, Landlord and any lender with an interest in the Premises as additional insureds on a primary, non-contributory basis.

f. Construction Defects. Landlord shall have no responsibility for the Tenant Improvements and Tenant will remedy, at Tenant's own expense, and be responsible for any and all defects in the Tenant Improvements that may appear during or after the completion thereof whether the same shall affect the Tenant Improvements in particular or any parts of the Premises in general. Tenant shall indemnify, hold harmless and reimburse Landlord for any costs or expenses incurred by Landlord by reason of any defect in any portion of the Tenant Improvements constructed by Tenant or Tenant's contractor or subcontractors, or by reason of inadequate cleanup following completion of the Tenant Improvements.

g. Additional Services. If the construction of the Tenant Improvements shall require 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 by Landlord, then Tenant shall pay Landlord for such items at Landlord's cost or at a reasonable charge if the item involves time of Landlord's personnel only. Electrical power and heating, ventilation and air conditioning shall be available to Tenant during normal business hours for construction purposes at no charge to Tenant.

h. 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 Building.

i. Work in Adjacent Areas. Any work to be performed in areas adjacent to the Premises 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; Tenant will reimburse Landlord for the expense of any such employee or agent.

j. 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.

k. 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.

l. Approval of Plans. Landlord will not check Tenant drawings for building code compliance. Approval of the Final Plans by Landlord is not a representation that the drawings are in compliance with the requirements of governing authorities, and it shall be Tenant's responsibility to meet and comply with all federal, state, and local code requirements. Approval of the Final Plans does not constitute assumption of responsibility by Landlord or its architect for their accuracy, sufficiency or efficiency, and Tenant shall be solely responsible for such matters.

m. Tenant's Deliveries. Tenant shall deliver to Landlord, at least five (5) days prior to the commencement of construction of Tenant's Work, the following information:

(i) The names, addresses, telephone numbers, and primary contacts for the general, mechanical and electrical contractors Tenant intends to engage in the performance of Tenant's Work; and

(ii) The date on which Tenant's Work will commence, together with the estimated dates of completion of Tenant's construction and fixturing work.

n. Qualification of Contractors. Once the Final Plans have been proposed and approved, Tenant shall select and retain a contractor and subcontractors from a list of contractors and subcontractors approved by Landlord for the construction of the Tenant Improvement Work in accordance with the Final Plans. All contractors engaged by Tenant shall be bondable, licensed contractors, possessing good labor relations, capable of performing quality workmanship and working in harmony with Landlord's general contractor and other contractors on the job, if any, all as determined by Landlord. All work shall be coordinated with general construction work within the Building, if any.

o. Warranties. Tenant shall cause its contractor to provide warranties for not less than one (1) year (or such shorter time as may be customary and available without additional expense to Tenant) against defects in workmanship, materials and equipment, which warranties shall run to the benefit of Landlord or shall be assignable to Landlord to the extent that Landlord is obligated to maintain any of the improvements covered by such warranties.

p. Landlord's Performance of Work. Within ten (10) working 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 Tenant's Work which Landlord determines, in its reasonable discretion, should be performed immediately and on an emergency basis for the best interest of the Premises 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 prior notice to the performance of any of Tenant's Work.

q. As-Built Drawings. Tenant shall cause "As-Built Drawings" (excluding furniture, fixtures and equipment) to be delivered to Landlord and/or Landlord's representative no later than sixty (60) days after the completion of Tenant's Work. In the event these drawings are not received by such date, Landlord may, at its election, cause said drawings to be obtained and Tenant shall pay to Landlord, as additional rent, the cost of producing these drawings.

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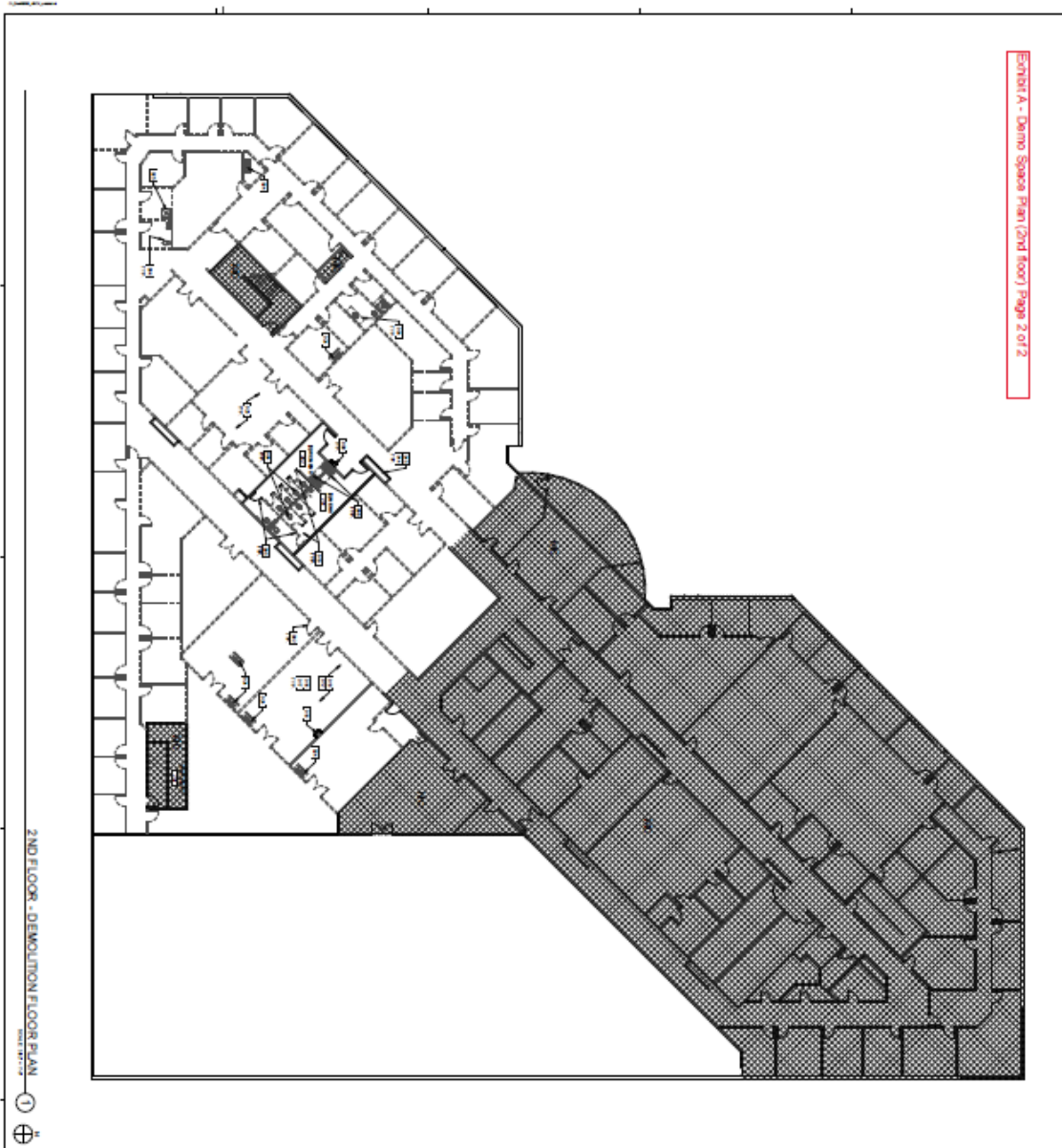
B-9

SCHEDULE 1

Landlord's Work

- (i) Intentionally Omitted;
- (ii) Deliver all parking areas, walk paths, and the portions of the Common Areas in Tenant's path of travel to the Premises in compliance with the American with Disabilities Act ("ADA") as applicable on the date of construction of such areas. Subject to the provisions of the Lease, any ADA items that are required due to tenant improvements will be the responsibility of the Tenant;
- (iii) Deliver the Base Building systems (as defined in Section 1.2 of the Lease), including, but not limited to, Fire Protection alarm system, communication system, Fire Sprinkler system, life support systems and security systems installed according to building code as applicable on the original installation date of the applicable system, Any improvements that are required due to tenant improvements will be the responsibility of the Tenant;
- (v) Demolish the existing office improvements on the first and second floors per the floor plan attached hereto as Schedule 1-A.
- (vi) Demolish the second floor restrooms and provide new building-standard fixtures and finishes in the first floor and second floor restrooms, provided, however, in no event shall Landlord's cost with respect to such fixtures and finishes exceed \$310,150.00, and cost in excess thereof shall be deducted by Landlord from the Tenant Improvement Allowance. Demolish the second floor individual restrooms, replace carpet in both stairwells and paint walls, cover the light wells between the ground floor and second floor, removal of fenced area immediately east of the roll up door on the south side of the Building, renovate the materials storage area in the south parking area, replace the transformer east of the roll up door on the south side of the Building, and replace all roll-up doors and exterior man doors serving the Premises.
- (vii) Completion of all of the elements of the Pacific Center Remodel plan set, as approved by the City of San Diego November 25, 2019, other than any and all work related to the interior of the first floor premises except the restroom core, referred to as rooms 103 and 104 (which restroom core work will be completed).
- (viii) Completion of all of the elements outlined in the ACO Construction Management letter dated October 22, 2019, with the subject line: "The Canyons – 10455 Pacific Center Court – CAP EX Scope".





2ND FLOOR - DEMOLITION FLOOR PLAN



**LEGEND**

- [Hatched Box] DEMOLITION AREAS
- [Dashed Box] EXISTING STRUCTURE
- [Solid Box] EXISTING STRUCTURE TO REMAIN

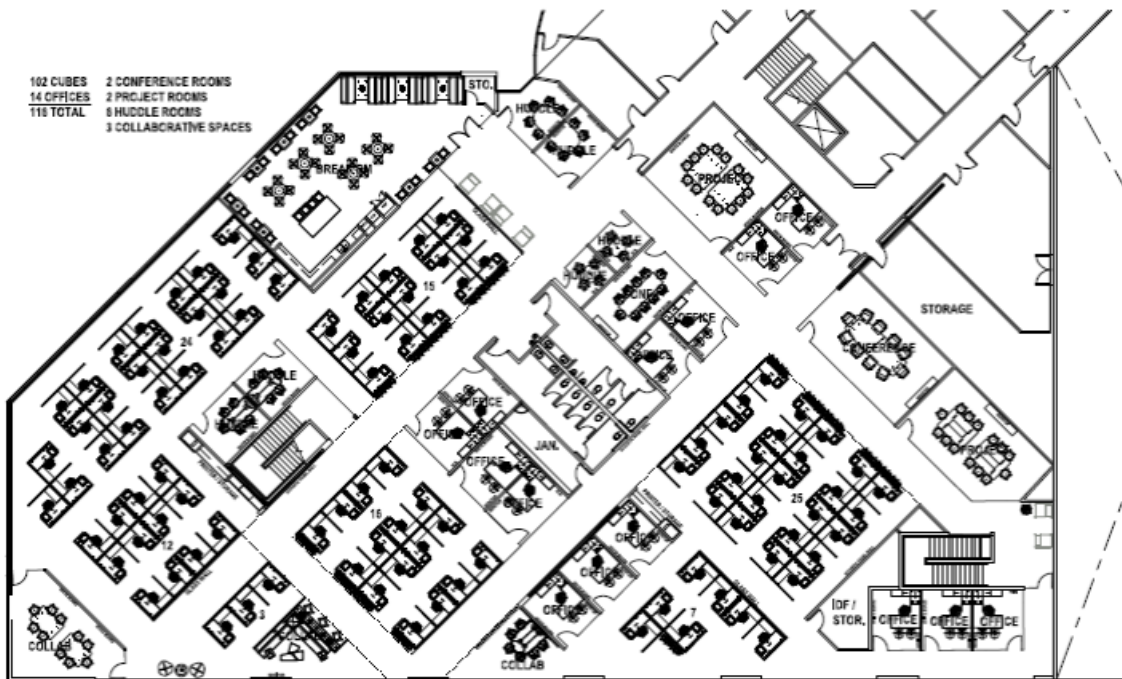
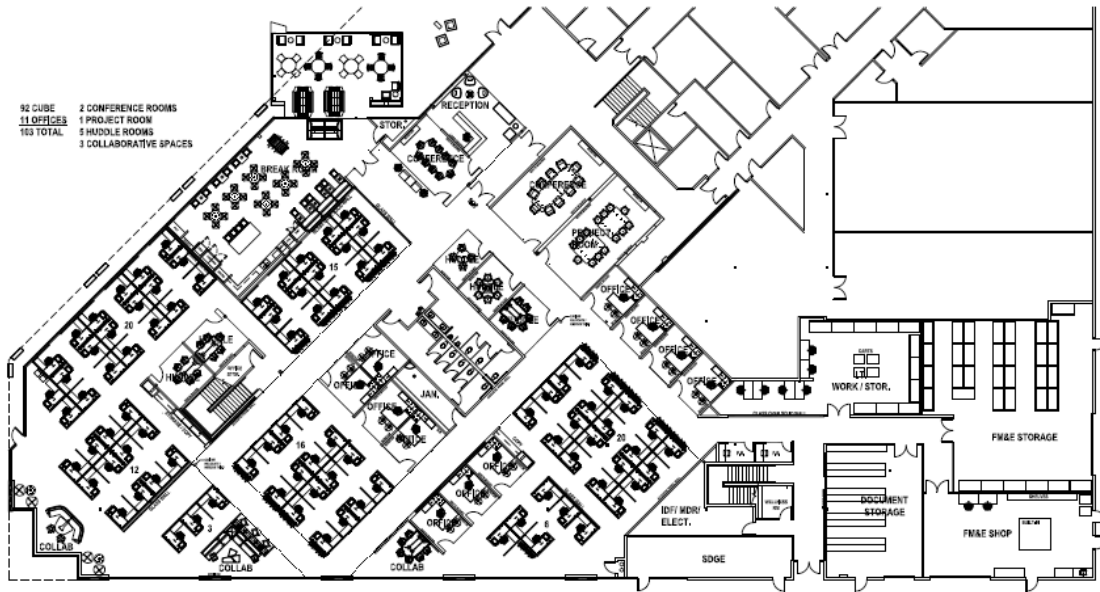
- NOTES**
1. ALL DEMOLITION SHALL BE IN ACCORDANCE WITH THE CITY OF SAN DIEGO'S DEMOLITION ORDINANCE.
  2. ALL DEMOLITION SHALL BE IN ACCORDANCE WITH THE CALIFORNIA DEMOLITION ACT.
  3. ALL DEMOLITION SHALL BE IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.
  4. ALL DEMOLITION SHALL BE IN ACCORDANCE WITH THE CALIFORNIA AIR RESOURCES ACT.
  5. ALL DEMOLITION SHALL BE IN ACCORDANCE WITH THE CALIFORNIA WATER RESOURCES ACT.
  6. ALL DEMOLITION SHALL BE IN ACCORDANCE WITH THE CALIFORNIA FIRE SAFETY ACT.
  7. ALL DEMOLITION SHALL BE IN ACCORDANCE WITH THE CALIFORNIA LABOR RELATIONS ACT.
  8. ALL DEMOLITION SHALL BE IN ACCORDANCE WITH THE CALIFORNIA EMPLOYMENT RELATIONS ACT.
  9. ALL DEMOLITION SHALL BE IN ACCORDANCE WITH THE CALIFORNIA CONSUMER PROTECTION ACT.
  10. ALL DEMOLITION SHALL BE IN ACCORDANCE WITH THE CALIFORNIA UNEMPLOYMENT INSURANCE ACT.
  11. ALL DEMOLITION SHALL BE IN ACCORDANCE WITH THE CALIFORNIA SOCIAL SECURITY ACT.
  12. ALL DEMOLITION SHALL BE IN ACCORDANCE WITH THE CALIFORNIA MEDICAL CARE ACT.
  13. ALL DEMOLITION SHALL BE IN ACCORDANCE WITH THE CALIFORNIA HEALTH CARE ACT.
  14. ALL DEMOLITION SHALL BE IN ACCORDANCE WITH THE CALIFORNIA EDUCATION ACT.
  15. ALL DEMOLITION SHALL BE IN ACCORDANCE WITH THE CALIFORNIA LABOR MARKET ACT.
  16. ALL DEMOLITION SHALL BE IN ACCORDANCE WITH THE CALIFORNIA ECONOMIC DEVELOPMENT ACT.
  17. ALL DEMOLITION SHALL BE IN ACCORDANCE WITH THE CALIFORNIA INFRASTRUCTURE ACT.
  18. ALL DEMOLITION SHALL BE IN ACCORDANCE WITH THE CALIFORNIA TRANSPORTATION ACT.
  19. ALL DEMOLITION SHALL BE IN ACCORDANCE WITH THE CALIFORNIA ENERGY ACT.
  20. ALL DEMOLITION SHALL BE IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL PROTECTION ACT.

<b>A0.8</b> <small>DATE: 11/11/2011</small> <small>BY: [Signature]</small>	<b>2ND FLOOR - DEMOLITION FLOOR PLAN</b> <small>NO. 1</small> <small>DATE: 11/11/2011</small> <small>BY: [Signature]</small>	<b>PACIFIC CENTER REMODEL</b> 10455 PACIFIC CENTER COURT SAN DIEGO, CA 92121	[Empty Box]	[Empty Box]	<b>WARE MALCOMB</b> LEADING DESIGN FOR COMMERCIAL AND RESIDENTIAL
	[Empty Box]	[Empty Box]	[Empty Box]	[Empty Box]	[Empty Box]



SCHEDULE 2

Preliminary Space Plan



## EXHIBIT C

### Rules and Regulations

1. No sign, placard, picture, advertisement, name or notice shall be installed, inscribed, exhibited, painted, affixed or displayed on the Premises or on any part of the outside or inside of the Building without the prior written consent of Landlord. Tenant shall be allowed to install signs on the interior of the Premises. Landlord shall adopt and furnish to Tenant reasonable general guidelines for the display of signs in the Building. Tenant shall comply with such guidelines, but may request the consent of Landlord to modifications to such guidelines or to exceptions thereto, which consent shall not be unreasonably withheld or delayed. All approved signs or lettering on doors shall be inscribed, painted, affixed or otherwise displayed at the expense of Tenant by a person approved by Landlord, which approval shall not be unreasonably withheld or delayed. Landlord shall have the right, without liability, to remove, at Tenant's expense and without notice, any sign installed or displayed in violation of this rule.

2. Unless Tenant has obtained Landlord's prior written consent, Tenant shall not use the name of the Building in connection with or in promoting or advertising the business of Tenant except as part of Tenant's address. Landlord shall have the right to prohibit any advertising by Tenant which, in Landlord's opinion, tends to impair the reputation of the Building, and upon written notice from Landlord, Tenant shall refrain from or discontinue such advertising.

3. No curtains, blinds, shades, screens or hanging plants or other similar objects attached to or used in connection with any window or door of the Premises shall be permitted except for Building standard vertical or horizontal blinds furnished by Landlord. No awning shall be permitted on any part of the Premises. The sashes, sash doors, windows, glass lights and any lights or skylights that reflect or admit light into the halls or other places of the Building shall not be obstructed. Neither the interior nor exterior of any windows shall be coated or otherwise sunscreened without Landlord's prior written consent. Tenant shall not place anything against or near glass partitions or doors or windows which may appear unsightly from outside the Premises. Further, Tenant shall not be permitted to place anything on the Building's balconies.

4. No furniture shall be placed in front of the Building or in any lobby or corridor without the prior written consent of Landlord. Landlord shall have the right to remove all of such unpermitted furniture, without notice to Tenant, and at Tenant's expense.

5. All electric ceiling fixtures hung in offices or spaces along the perimeter of the Building must be fluorescent, of a quality, type, design and bulb color reasonably approved by Landlord.

6. Tenant shall not enter the mechanical rooms, air handler rooms, electrical closets, janitorial closets (provided, Tenant's janitorial vendor may freely access janitorial closets) without the prior written consent of Landlord.

7. Landlord shall have the exclusive right to regulate the common areas of the Building. The halls, passages, exits, entrances, elevators and stairways of the Building are not for the general public, and Landlord shall in all cases retain the right to control and prevent access thereto by all persons whose presence, in the judgment of Landlord, would be prejudicial to the safety, character, reputation and interests of the Building and its tenants, provided that nothing herein contained shall be construed to prevent such access to persons with whom Tenant normally deals in the ordinary course of its business, unless such persons are engaged in illegal activities.

8. Any damage caused by Tenant, its employees or agents to the public portions of the Building or to any portions used in common with other tenants or occupants shall be repaired at the sole cost and expense of Tenant, except to the extent such damage is covered by the proceeds of insurance purchased by Landlord as part of Operating Expenses.

9. Tenant shall not purchase or otherwise obtain for use in the Premises, water, ice, food, towel, barbering, bootblacking services or other like services, except from persons authorized in writing by Landlord to provide the foregoing, and at hours and under regulations fixed by Landlord, with the exception of food and drink purchased for immediate consumption by Tenant's employees and visitors. Notwithstanding the above, Tenant shall have the right without prior written authorization to contract with "Sparkletts" or "Arrowhead" or similar providers for the delivery of ice, water or coffee for use in the Premises.

10. Landlord will furnish to Tenant, free of charge, two keys to each door lock in the Premises and additional keys for each such lock at a reasonable charge, and in the event the Building or Premises is or later becomes equipped with an electronic access control device, Landlord will furnish Tenant with identification keys or cards, each for the sum of Ten Dollars (\$10.00). Each of such sums shall be a deposit against the return of such an identification key or card. Landlord may charge a reasonable amount for additional keys or cards. Tenant shall not make or have additional keys made, and Tenant shall not install a new or additional lock or bolt on any door or window of the Premises, nor make any changes to existing locks or the mechanisms thereof, without the prior written consent of Landlord, and Tenant shall furnish Landlord with a key for any such new, additional or altered lock. Tenant must, upon the termination of its tenancy, give Landlord the combination to all combination locks on safes, safe cabinets and vaults remaining on the Premises, and deliver to Landlord all identification keys or cards, if any, keys of stores, offices, and toilet rooms, which keys or cards were either furnished to, or otherwise Procured by Tenant. In the event of the loss of any card or key so furnished, Tenant shall pay to Landlord the cost of replacing the same or of changing the lock or locks opened by such lost key or card if Landlord deems it necessary to make such change.

11. No deliveries shall be made which impede or interfere with other tenants or the operation of the Building. Tenant's initial move-in, and subsequent deliveries of bulky items, such as furniture and safes, shall be made during such hours and in such manner as may be prescribed by Landlord from time to time. Landlord reserves the right to inspect all safes, freight or other bulky articles to be brought into the Building and to exclude from the Building any bulky articles which violate any of these Rules and Regulations or provisions of the Lease. No safes or other objects which exceed the weight, size or other limits on the freight elevators of the Building shall be brought into or installed on the Premises. The Building's freight elevators and loading platform shall be available for use by Tenant, subject to prior reservation and such reasonable scheduling as Landlord in its discretion shall deem appropriate. Prior to delivery of any heavy object to the Building, Tenant shall notify Landlord of such object's specifications and contemplated location in order that Landlord may take action to prevent structural load damage to the Building. Landlord shall have the right to prescribe the weight and size of all equipment, materials, furniture or other property brought into the Building. Heavy objects shall, if considered necessary by Landlord, stand on such platforms (to be provided at Tenant's expense) as determined by Landlord to be necessary to properly distribute the weight of such objects, but in no event shall Tenant place a load upon any floor of the Premises which exceeds the load per square foot which such floor was designed to carry and which is allowed by law. Landlord shall be responsible for all structural engineering required to determine structural load, the actual cost of which engineering Tenant shall reimburse to Landlord promptly after Landlord's invoice therefor. Landlord reserves the right to prohibit or impose other conditions upon the installation in the Premises of heavy objects which might overload the floors of the Building. Landlord shall have the right to approve (but such approval shall not be unreasonably withheld or delayed) the movers or moving company employed by Tenant and Tenant shall cause such movers to use only the loading facilities and elevators designated by Landlord. If Tenant's movers damage any of the elevators or any other part of the Building, Tenant shall pay to Landlord, upon demand, the amount required to repair such damage. Landlord shall have the right to require, and may supply, an elevator operator for the moving of bulky items by Tenant. Tenant shall pay to Landlord, upon demand, Landlord's costs for such elevator operator.

12. The persons employed to move equipment, machines and similar items (other than those items described in Rule 12 above) in or out of the Building must be approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed. Landlord will not be responsible for loss of, or damage to, any such equipment or other items caused by the moving thereof, and all damage done to the Building by moving or maintaining such equipment or other items shall be repaired at the expense of Tenant.

13. Business machines and mechanical equipment belonging to Tenant, which cause noise or vibration that may be transmitted to the structure of the Building or to any space therein to such a degree as to be objectionable to Landlord or to any tenants in the Building, shall be placed and maintained by Tenant, at Tenant's expense, on vibration eliminators or other devices sufficient to eliminate noise or vibration.

14. No explosives or firearms shall be brought into the Premises or other portion of the Building without the prior written consent of Landlord. Neither Tenant nor its servants, employees, agents, visitors or licensees shall at any time bring, use or keep in the Premises or in any other portion of the Building any kerosene, gasoline or inflammable or combustible fluid or material other than limited quantities thereof reasonably necessary for the operation or maintenance of office equipment or Tenant's vehicles in the on-site parking facility. Tenant shall not do or permit anything to be done in the Premises, or bring or keep anything therein, which shall in any way violate or conflict with the regulations of the fire department, with any insurance policy on the Premises or the Building, or with any laws, rules, regulations or ordinances established by any governmental authority. Tenant shall not permit the smoking or carrying of lighted cigars or cigarettes in areas reasonably designated by Landlord or designated by applicable governmental agencies as non-smoking areas.

15. Except as Landlord may otherwise agree, Tenant shall not install any air conditioning or heating units or similar apparatus, nor use any method of heating or air conditioning other than that supplied by Landlord. Tenant shall (i) not waste electricity, water, air conditioning or other utilities supplied by Landlord, (ii) cooperate fully with Landlord to assure the most efficient operation of the Building's heating and air conditioning systems and (iii) use its best efforts to comply with any governmental energy-saving laws, rules or regulations.

16. At the end of each day, Tenant shall close and lock the doors, and shut off all water faucets, apparatus and other utilities located in the Premises so as to prevent waste or damage, and for any default or carelessness in this regard, Tenant shall be liable for all injuries and damage resulting therefrom. On multiple-tenancy floors, Tenant shall keep the doors to the Building corridors closed at all times and permit them to be opened only for purposes of ingress and egress. Tenant assumes any and all responsibility for protecting its Premises from theft, robbery, pilferage and vandalism.

17. Tenant and Tenant's employees and invitees shall have access to the Building twenty-four (24) hours per day seven (7) days per week. Notwithstanding the foregoing, Landlord reserves the right to exclude from the Building on Sundays and legal holidays, holidays on which the New York Stock Exchange is closed, and on Mondays through Fridays other than between the hours of 8:00 A.M. and 6:00 P.M., and other than between 9:00 A.M. and 1:00 P.M. on Saturdays or other than between such other hours as may be established from time to time by Landlord, any person unless that person is either known to the person or employee in charge of the Building and/or has a valid pass or is otherwise properly identified. Tenant shall be responsible for all persons for whom it requests passes and shall be liable to Landlord for all acts of such persons. Landlord shall not be liable for damages caused by reason of any error with regard to the admission to or exclusion from the Building of any person. Landlord reserves the right to prevent access to the Building in case of invasion, mob, riot, public excitement, act of God or other commotion by closing and locking the doors or by other appropriate action. Landlord may exclude or expel from the Building any person who, in Landlord's judgment, is intoxicated or under the influence of liquor or drugs or is in violation of any of these Rules and Regulations (as amended and supplemented from time to time). If Tenant uses the Premises after regular business hours or on nonbusiness days, Tenant shall lock any entrance doors to the Premises used by Tenant immediately after using such doors.

18. The toilet rooms, toilets, urinals, wash bowls and other similar 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 therein. The expense of any breakage, stoppage or damage resulting from the violation of this rule shall be borne by the Tenant who, or whose employees, agents, visitors, licensees or invitees shall have caused the breakage, stoppage or damage.

19. Tenant shall not sell, or permit the sale of, newspapers, magazines, periodicals, theater tickets or any other goods or merchandise to the general public in or from the Premises without Landlord's prior written consent, nor shall Tenant carry on, or permit or allow any employee or other

person to carry on, the business of stenography, typewriting or any similar business in or from the Premises for the service or accommodation of tenants or occupants of any other portion of the Building, nor shall the Premises be used by Tenant for manufacturing of any kind, or any business or activity other than that set forth in the Lease.

20. Tenant shall not commit any act or permit anything in or about the Building which is likely to subject Landlord to liability or responsibility for injury to any person or damage to any property.

21. Tenant shall store all its trash and garbage within the Premises. No material shall be placed in trash boxes or receptacles if such material is of such a nature that it may not be disposed of in the ordinary and customary manner of removing and disposing of trash and garbage in the City in which the Building is located without being in violation of any law or ordinance governing such disposal. All garbage and refuse disposal shall be made only through entry ways and elevators provided for such purposes and at such times as Landlord shall designate.

22. Tenant shall not mark, paint, drill into, cut, string wires, except for telephone, computer and LAN cables, within or in any way deface any part of the Premises or any other portion of the Building, without the express prior written consent of Landlord, and as Landlord may direct. Any damage to the walls or floors of the Premises caused by the removal of any wall decorations or installations of floor coverings by Tenant shall be repaired by Tenant at Tenant's sole cost and expense. Without limiting any of the provisions of the Lease, Tenant shall refer all representatives of contractors, installation technicians, janitorial workers and other mechanics, artisans and laborers rendering any service in connection with the repair, maintenance or improvement of the Premises to Landlord for Landlord's supervision, approval and control before any of such persons commence performing any of the foregoing services. This paragraph shall apply to all Work performed in the Premises or any other portion of the Building, including, without limitation, the installation of telephones, telegraph equipment, electrical devices and attachments, and installations of any nature affecting the floors, walls, woodwork, trim, windows, ceilings, equipment or any other portion of the Building. The means by which telephone, telegraph and similar wires are to be introduced to the Premises and the location of telephones, call boxes and other office equipment affixed to the Premises shall be subject to the express prior written consent of Landlord, except for decorative items which do not otherwise require the consent of Landlord under this Lease.

23. Tenant shall not lay linoleum or similar floor coverings so that the same shall come into direct contact with the floor of the Premises and, if linoleum or other similar floor covering is to be used, an interlining of builder's deadening felt shall be first affixed to the floor, by a paste or other material soluble in water. The use of cement or other similar adhesive material is expressly prohibited. Tenant shall not, without the prior written consent of Landlord, alter or repair the ceiling, remove any ceiling tiles or remove or replace any lamps or ceiling fixtures on the Premises. Landlord shall replace, and Tenant shall pay for the replacement of, any broken ceiling tiles, or lamps, light bulbs or ceiling fixtures which are damaged by Tenant.

24. Except to the extent expressly permitted pursuant to Article 38 of the Lease, Tenant shall not install any radio or television antenna, loudspeaker or other device on the roof or exterior walls of the Building nor shall Tenant install or maintain in the Premises any device or equipment which might interfere with the normal reception in the Building of radio or television transmissions.

25. No vending or coin-operated machines shall be placed by Tenant within the Premises without Landlord's prior written consent, which shall not be unreasonably withheld or delayed.

26. The Premises shall not be used for the storage of merchandise held for sale to the general public, or for lodging, nor shall the Premises be used for any improper, immoral, illegal or objectionable purpose. Tenant shall not occupy or permit any portion of the Premises to be occupied for the manufacture or direct sale of liquor, narcotics or tobacco in any form, or as a medical office, barber shop, manicure shop, music or dance studio, travel agency or employment agency.

27. No cooking or food preparation shall be done or permitted by Tenant on the Premises, except Tenant's employees may use Underwriters' Laboratory-approved equipment for brewing coffee,

tea, hot chocolate and similar beverages and for warming food, provided that such equipment and use thereof is in accordance with all applicable laws, codes, ordinances, rules and regulations. All such equipment and photocopy machines shall be turned off after regular business hours.

28. Tenant shall not engage or pay any employees on the Premises except those actually working for Tenant on the Premises nor advertise for laborers giving the address of the Premises.

29. Tenant shall not bring or keep within the Premises or Building any animals or birds. Bicycles, motorcycles and other vehicles shall be kept only in the parking facility or facilities designated by Landlord.

30. Tenant shall comply with all safety, fire protection and evacuation procedures and regulations established by Landlord or any governmental agency.

31. Tenant shall not, without the prior written consent of Landlord, request the maintenance personnel of the Building to perform any tasks outside of their regular duties (unless under special instructions from Landlord to do so) for Tenant in or near the Premises or the Building.

32. Tenant shall not use in any area of the Building any hand truck or similar equipment unless it is equipped with rubber tires and side guards.

33. Tenant shall not make, or permit to be made, any unseemly or disturbing noises by the use of any musical instrument, radio, phonograph, nor shall Tenant otherwise disturb or interfere with occupants of the Building or neighboring buildings or premises. Neither Tenant nor its servants, employees, agents, visitors or licensees shall throw anything out of doors, windows or skylights or down public corridors.

34. Except as otherwise set forth in this Lease, Tenant shall not conduct or permit to be conducted any sale by auction in, upon or from the Premises, whether voluntary, involuntary or pursuant to any assignment for the payment of creditors or pursuant to any bankruptcy or other insolvency proceedings.

35. If any governmental license or permit shall be required for the proper and lawful conduct of any business or other activity carried on by Tenant in the premises, or if Tenant's failure to secure such license or permit would adversely affect Landlord, Tenant shall duly procure and thereafter maintain such license or permit.

36. Any consent, approval, request, agreement or other communication required or permitted to be given under these Rules and Regulations shall be given in accordance with the provisions for notices under the Lease.

37. These Rules and Regulations are in addition to, and shall not be construed to modify or amend, in whole or in part, the terms, covenants, agreements or conditions of the Lease.

38. Landlord may waive any one or more of these rules for the benefit of any tenant, but no such waiver by Landlord shall be construed as a waiver of such rule in favor of any other tenant, nor prevent Landlord from thereafter enforcing any such rule against any or all of the tenants of the Building.

39. Landlord reserves the right at any time to change or rescind any one or more of these Rules and Regulations, or to make such other and further reasonable Rules and Regulations as Landlord may from time to time deem necessary for the management, safety, care and cleanliness of the Premises, and Building, as well as for the convenience of other occupants and tenants therein. Tenant shall be deemed to have read these Rules and Regulations and to have agreed to abide by them as a condition of its occupancy of the Premises.

40. Tenant shall be responsible for the observance of all of these Rules and Regulations (as amended and supplemented from time to time) by Tenant's employees, agents, clients, customers, invitees

and guests. Landlord shall not be liable to Tenant for the nonobservance or violation by any tenant or occupant of the Building, or any other person of any of these Rules and Regulations.

1131701.06/SF  
372493-00050/1-31-20/pwn/pwn

C-6

EXHIBIT D

Tenant's Building Signage

[to be attached]

1131701.06/SF  
372493-00050/1-31-20/pwn/pwn

D-1

## EXHIBIT E

### Appraisal Procedure

Within fifteen (15) calendar days after the expiration of the thirty (30)-calendar day period set forth in section 35.4 of the Lease for the mutual agreement of Landlord and Tenant as to the fair market monthly rental, each party hereto, at its cost, shall engage a real estate broker to act on its behalf in determining the fair market monthly rental. The brokers each shall have at least ten (10) years' experience with leases in buildings comparable to the Building in the Sorrento Mesa submarket of San Diego, California area, and shall submit to Landlord and Tenant in advance for Landlord's and Tenant's reasonable approval the appraisal methods to be used. If a party does not appoint a broker within such fifteen (15)-calendar day period but a broker is appointed by the other respective party, the single broker appointed shall be the sole broker and shall set the fair market monthly rental. If the two brokers are appointed by the parties as stated in this paragraph, such brokers shall meet promptly and attempt to set the fair market monthly rental. If such brokers are unable to agree within thirty (30) calendar days after appointment of the second broker, the brokers shall elect a third broker meeting the qualifications stated in this paragraph within ten (10) calendar days after the last date the two brokers are given to set the fair market monthly rental. Each of the parties hereto shall bear one-half (1/2) the cost of appointing the third broker and of the third broker's fee. The third broker shall be a person who has not previously acted in any capacity for either party.

The third broker shall conduct his own investigation of the fair market monthly rent, and shall be instructed not to advise either party of his determination of the fair market monthly rent except as follows: When the third broker has made his determination, he shall so advise Landlord and Tenant and shall establish a date, at least five (5) calendar days after the giving of notice by the third broker to Landlord and Tenant, on which he shall disclose his determination of the fair market monthly rent. Such meeting shall take place in the third broker's office unless otherwise agreed by the parties. After having initialed a paper on which his determination of fair market monthly rent is set forth, the third broker shall place his determination of the fair market monthly rent in a sealed envelope. Landlord's broker and Tenant's broker shall each set forth their determination of fair market monthly rent on a paper, initial the same and place them in sealed envelopes. Each of the three envelopes shall be marked with the name of the party whose determination is inside the envelope.

In the presence of the third broker, the determination of the fair market monthly rent by Landlord's broker and Tenant's broker shall be opened and examined. If the higher of the two determinations is one hundred five percent (105%) or less of the amount set forth in the lower determination, the average of the two (2) determinations shall be the fair market monthly rent, the envelope containing the determination of the fair market monthly rent by the third broker shall be destroyed and the third broker shall be instructed not to disclose his determination. If either party's envelope is blank, or does not set forth a determination of fair market monthly rent, the determination of the other party shall prevail and be treated as the fair market monthly rent. If the higher of the (2) two determinations is more than one hundred five percent (105%) of the amount of the lower determination, the envelope containing the third broker's determination shall be opened. If the value determined by the third broker is the average of the values proposed by Landlord's broker and Tenant's broker, the third broker's determination of fair market monthly rent shall be the fair market monthly rent. If such is not the case, fair market monthly rent shall be the rent proposed by whichever of Landlord's broker or Tenant's broker is closest to the determination of fair market monthly rent by the third broker.

EXHIBIT F

Dish / Antenna

[to be attached]

EXHIBIT G

Maintenance and Repair Responsibility Matrix

<b>Equipment/Service Area</b>	<b>Landlord</b>	<b>Tenant</b>
Main Electrical Service	X	
Tenant Specific Electrical distribution		X
Tenant Specific Electrical Generation Equipment		X
Tenant Specific HVAC Equipment		X
Common Area HVAC Equipment	X	
Landscaping	X	
Common Area Janitorial	X	
Tenant Space Janitorial		X
Parking and Refuse Area Janitorial	X	
Main Water Service	X	
Tenant Specific Water Distribution		X
Tenant Space Architectural Finishes		X
Common Area Architectural Finishes	X	
Elevator	X	
Common Stairwell	X	
Tenant Stairwell		X
Common restrooms	X	
Tenant Restrooms		X
Main Building sewer	X	
Tenant specific sewer		X
Roof	X	
Glazing	X	
Exterior doors and seals tenant space		X
Exterior doors and seals common area	X	
Parking Lot maintenance	X	
Data service and infrastructure		X
Tenant specific access control		X
Common area access control	X	
Tenant specific CCTV		X
Common area CCTV	X	
Exterior building and lot lighting	X	
Tenant Specific Fire Detection System		X
Common area Fire Detection System	X	
Tenant Specific Fire Suppression System		X
Common area Fire Suppression System	X	

## FIRST AMENDMENT TO LEASE

THIS FIRST AMENDMENT TO LEASE ("**Amendment**") is dated as of November 17, 2020 (the "**Effective Date**"), by and among GC PACIFIC CENTER COURT OWNER, LLC, a Delaware limited liability company ("**Landlord**"), and DEXCOM, INC., a Delaware corporation ("**Tenant**").

## RECITALS

A. Tenant and Landlord are parties to that certain lease dated as of January 31, 2020 (the "**Lease**"), pursuant to which Tenant leases from Landlord certain premises consisting of approximately 49,152 rentable square feet of space (the "**Premises**") in that certain building located at 10455 Pacific Center Court, San Diego, California (the "**Building**").

B. Landlord and Tenant desire to amend the Lease to (i) expand the Premises into space consisting of approximately 43,325 rentable square feet and comprising the remainder of the Building (the "**Expansion Premises**"), (ii) extend the Lease Term, (iii) provide Tenant with a Right of First Offer to Purchase, and make certain other modifications, all as more particularly set forth herein.

NOW, THEREFORE, in consideration of the foregoing, the parties hereto agree as follows:

1. Recitals; Defined Terms. Landlord and Tenant hereby acknowledge and agree that all of the foregoing Recitals are true and correct and are fully incorporated herein. Except for those terms expressly defined in this Amendment, all initially capitalized terms will have the meanings ascribed to them in the Lease.

2. Extension of Term. Subject to satisfaction of the Amendment Contingency (as defined below), the Lease Term is extended for an additional twelve (12) months, and in connection with such extension of the Lease Term, the Expiration Date of the Lease is hereby modified to be August 31, 2028, instead of August 31, 2027. Notwithstanding the forgoing extension of the Lease Term, Tenant hereby retains the option to renew the Lease pursuant to the terms and conditions set forth in Article 35 of the Lease, as modified by Section 16 of this Amendment, below. All of the terms, covenants and conditions of the Lease shall be applicable through the Expiration Date, as extended, except as modified herein.

3. Expansion of Premises.

(a) Effective upon the date that Landlord delivers the Expansion Premises to Tenant in the Delivery Condition (as defined below) (the "**Expansion Premises Commencement Date**"), and continuing to the Expiration Date, the Expansion Premises shall be added to the Premises covered by the Lease. Commencing on the Expansion Premises Commencement Date, all references in the Lease and in this Amendment to the "Premises" shall be deemed to consist of the entirety of the Building. Landlord represents and warrants that the Expansion Premises has measured in accordance with BOMA standard, and Landlord and Tenant hereby stipulate for all purposes of the Lease that the Expansion Premises contains 43,325 rentable square feet, and, once the Expansion Premises Commencement Date shall have occurred and continuing until the New Termination Date, the Premises shall be deemed to consist of the entirety of the Building, and shall contain a total of 92,477 rentable square feet. Consistent with Section 31.11 of the Lease, any remeasurement shall not under any circumstances entitle Tenant to a refund or credit for any sums paid under this Lease, nor shall such remeasurement under any circumstances obligate Tenant to pay any additional sums under this Lease as a result of any adjustment in the measurement of the Premises or Building.

(b) In connection with the expansion of the Premises and Tenant becoming the sole tenant in the Building, effective as of the Expansion Premises Commencement Date, Section 1.1 of the Lease is hereby deleted in its entirety and replaced with the following:

1.1 Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, subject to the terms, covenants and conditions set forth in this Lease, the space

(the "Premises") substantially shown outlined on the floor plan attached hereto as Exhibit A and described in the Basic Lease Information, which Premises are located in the building (the "Building") described in the Basic Lease Information. As used in this Lease, the term "Building" shall include the parcel or parcels of land on which the Building is located and all appurtenances thereto. During the Lease Term, as the sole tenant in the Building, Tenant shall have the exclusive right to use only for their intended purposes of lobbies, entrances, stairs, elevators and other portions of the Building. Landlord acknowledges and agrees that Landlord shall not have any right to change the size, location, configuration, character or use of any portion of the Premises, the Building or the land on which the Building is located. Except in the event Tenant provides its express written consent, which may be granted, conditioned or withheld in Tenant's sole discretion, Landlord agrees that Landlord will not construct additional improvements or facilities within the Premises, the Building or the land on which the Building is located, nor close any such areas. Tenant shall have the exclusive use of all windows and outside decks or terraces and walls of the Premises and any space in the Premises used for shafts, stacks, pipes, conduits, ducts, electric or other utilities, sinks or other Building facilities, existing Building risers, raceways, shafts and conduit, and the Building's MPOE (main point of entry), including, but not limited to, for the installation and operation of Tenant's telecommunications systems, including voice, video, data, internet, and any other services provided over wire, fiber optic, microwave, wireless, and any other transmission systems.

4. Amendment Contingency.

(a) Notwithstanding anything to the contrary herein, the parties hereto acknowledge and agree that the Expansion Premises is presently leased by Trex Enterprises Corporation ("**Existing Tenant**") pursuant to a lease between Landlord and Existing Tenant (the "**Existing Tenant Lease**"), and Landlord hereby notifies Tenant that Landlord and Existing Tenant are in the process of negotiating a binding early termination of the Existing Tenant Lease (the "**Early Termination Agreement**") to enable Landlord to deliver to Tenant possession of the Expansion Premises in the Delivery Condition no later than Friday, January 1, 2021 (the "**Delivery Deadline**"). The Early Termination Agreement will evidence Existing Tenant's obligation to surrender possession of the Expansion Premises by such date that Landlord may thereafter deliver to Tenant possession of the Expansion Premises in the Delivery Condition no later than the Delivery Deadline.

(b) Landlord shall have until 5:00 pm Pacific Time on the date that is fourteen (14) days after the mutual execution of this Amendment (the "**Landlord Termination Deadline**") to deliver to Tenant a copy of the fully-executed Early Termination Agreement (the "**Amendment Contingency**"). In the event Landlord fails to deliver the fully-executed Early Termination Agreement to Tenant on or before the Landlord Termination Deadline, then the Amendment Contingency shall be deemed to have not been satisfied, and Landlord shall have the option to terminate the entirety of this Amendment (a "**Landlord Termination**") at any time during the period commencing one (1) day after the Landlord Termination Deadline and ending at 5:00 pm Pacific time on the date that is five (5) business days after the Landlord Termination Deadline. Landlord may exercise its option to terminate this Amendment by delivering written notice of the Landlord Termination to Tenant. In the event Landlord so elects to terminate this Amendment due to the failure of the Amendment Contingency, following the Landlord Termination the Lease shall be deemed unmodified by this Amendment, and the Lease shall remain in full force and effect as if this Amendment was not entered into. In the event Landlord declines to terminate this Amendment due to the failure of the Amendment Contingency, then this Amendment shall remain in full force and effect.

(c) In the event Landlord declines to terminate this Amendment pursuant to the Landlord Termination, and thereafter Landlord fails to deliver to Tenant possession of the Expansion Premises in the Delivery Condition on or prior to the Delivery Deadline, then Landlord shall provide to Tenant a credit against Base Rent for the Expansion Premises (the "**Rent Credit**") equal to one (1) day of Base Rent for the Expansion Premises for each day (if any) that passes from the Delivery Deadline until the earlier to occur of (i) February 28, 2021 (the "**Tenant Termination Deadline**") or (ii) the actual date that Landlord delivers to Tenant possession of the Expansion Premises in the Delivery Condition (such

number of days referred to herein as the "**Delay Period**"). In addition, notwithstanding the length of the Delay Period, in no event shall the Expiration Date of the Lease (as modified by this Amendment) be adjusted or extended due to such delays. In the event Landlord fails to deliver to Tenant possession of the Expansion Premises in the Delivery Condition on or prior to the Tenant Termination Deadline, then in addition to receiving the Rent Credit, Tenant shall also have the option to terminate all provisions of this Amendment other than Landlord's obligation to provide the Rent Credit (the "**Tenant Termination**"). Tenant may elect to exercise the Tenant Termination at any time during the period commencing one (1) day after the Tenant Termination Deadline and ending at 5:00 pm Pacific time on the date that is five (5) business days after the Tenant Termination Deadline. Tenant may exercise the Tenant Termination by delivering written notice of the same to Landlord. In the event Tenant so elects to terminate this Amendment pursuant to the Tenant Termination, all provisions of this Amendment other than Landlord's obligation to provide the Rent Credit shall be rendered of no force nor effect on the Lease, and other than Landlord's obligation to provide the Rent Credit to Tenant, the Lease shall be deemed unmodified by this Amendment. Upon Landlord's crediting to Tenant the amount of the Rent Credit, the entirety of this Amendment shall be deemed terminated, and the Lease shall remain in full force and effect as if this Amendment was not entered into.

(d) For the purpose of this Amendment, the "**Delivery Condition**" shall mean that the Expansion Premises shall be broom clean, with all of personal property, furniture, fixtures and equipment removed from the Expansion Premises prior to delivery of possession to Tenant.

5. **Base Rent.** Prior to the Expansion Premises Commencement Date, Tenant shall continue to pay Base Rent for the Premises in accordance with the terms of the Lease, as set forth below. Tenant shall commence payment of Base Rent for the Expansion Premises effective as of the date (the "**Expansion Premises Rent Commencement Date**") that is six (6) months following the Expansion Premises Commencement Date. Effective as of the dates set forth below, Tenant shall pay monthly Base Rent for the Premises (including the Expansion Premises) in the amounts indicated:

Period	Monthly Base Rent
September 1, 2020 – day immediately prior to Expansion Premises Rent Commencement Date	\$103,219.20
Expansion Premises Rent Commencement Date – August 31, 2021	\$194,201.70
September 1, 2021 – August 31, 2022	\$200,027.75
September 1, 2022 – August 31, 2023	\$206,028.58
September 1, 2023 – August 31, 2024	\$212,209.44
September 1, 2024 – August 31, 2025	\$218,575.72
September 1, 2025 – August 31, 2026	\$225,133.00
September 1, 2026 – August 31, 2027	\$231,886.99
September 1, 2027 – August 31, 2028	\$238,843.60

6. **Operating Expenses and Property Taxes.**

(a) Prior to the Expansion Premises Commencement Date, Tenant shall continue paying Tenant's Percentage Share of Operating Expenses and Property Taxes for the Premises in accordance with Article 3 of the Lease. Effective as of the Expansion Premises Commencement Date, Tenant's Percentage Share shall be 100%, and the definition of Operating Expenses set forth in Section 4.1(a) of the Lease shall be modified as set forth below; provided, however, during the period commencing as of the Expansion Premises Commencement Date and ending on the earlier to occur of (i) the day immediately prior to the Expansion Premises Rent Commencement Date or (ii) the date Tenant first commences business operations in any portion of the Expansion Premises, Tenant shall not be required to pay for any Operating Expenses or Property Taxes with respect to the Expansion Premises

other than costs for utilities consumed and janitorial services (which shall be contracted for directly by Tenant).

(b) Effective as of the earlier to occur of (i) the Expansion Premises Rent Commencement Date, or (ii) the day Tenant first commences business operations in any portion of the Expansion Premises, and continuing throughout the Lease Term (as extended hereby), (A) Tenant shall be required to pay 100% of all Operating Expenses, Taxes and utilities serving the Premises, and (B) the definition of Operating Expenses set forth in Section 4.1(a) of the Lease is hereby deleted in its entirety and replaced with the following:

"Operating Expenses" shall mean all costs and expenses paid or incurred by Landlord in connection with the ownership, management, operation, replacement, maintenance or repair of the Building or providing services required of Landlord in accordance with this Lease, limited to the following: (i) premiums and other charges incurred by Landlord with respect to fire, other casualty, rent and liability insurance, any other insurance as is deemed necessary or advisable in the reasonable judgment of Landlord, or any insurance required by the holder of any mortgage or deed of trust encumbering the Building; (ii) costs of repairing an insured casualty to the extent of the deductible amount under the applicable insurance policy; (iii) reasonable costs arising from maintenance, repair and replacement of components of the Building in accordance with Section 10.2; (iv) property management fee equal to two percent (2.0%) of the Base Rent payable by Tenant; (v) [intentionally omitted]; (vi) all reasonable costs and expenses resulting from work, labor, supplies, materials or services similar or in addition to, or in lieu of, any of the foregoing, or resulting from compliance with any laws, ordinances, rules, regulations or orders, or to comply with any amendment or other change to the enactment or interpretation of any applicable laws from its enactment or interpretation; (vii) all costs and expenses of contesting by appropriate legal proceedings any matter concerning managing, operating, maintaining or repairing the Building or the amount or validity of any Property Taxes; and (viii) the cost, reasonably amortized as determined by Landlord, together with interest at the rate of ten percent (10%) per annum, or such higher annual rate as Landlord may actually have to pay, on the unamortized balance, of all capital improvements made to the Building or capital assets acquired by Landlord that are (A) required to comply with any conservation program or required by any law, ordinance, rule, regulation or order that are first enacted, or first interpreted to apply to the Building, after the date of this Lease or (B) performed primarily to reduce current or future operating costs, to upgrade Building security, to otherwise improve the operating efficiency of the Building, or for the protection of the health and safety of the occupants of the Building.

Operating Expenses shall not include (1) Property Taxes, (2) depreciation on the Building, (3) subject to the provisions of item (ii) above, repairs and other work occasioned by fire, windstorm or other casualty, to the extent Landlord is reimbursed by insurance proceeds, and other work paid from insurance or condemnation proceeds; (4) all direct costs of refinancing, selling or exchanging the Building, including broker commissions, attorney's fees and closing costs, (5) advertising and promotional expenditures, (6) costs, penalties or fines arising from Landlord's violation of any applicable governmental rule or authority, except to the extent such costs reflect costs that would have been incurred by Landlord absent such violation, (7) penalties or other costs incurred due to a violation by Landlord, as determined by written admission, stipulation, final judgment or arbitration award, of any of the terms and conditions of this Lease or any other lease relating to the Building, except to the extent such costs reflect costs that would have been incurred by Landlord absent such violation, (8) accountants' and attorneys' fees and expenses incurred in connection with lease negotiations or lease disputes with current or prospective Building tenants or in connection with the defense of Landlord's title to the Building, and (9) Landlord's general corporate office overhead and administrative expenses (which shall not be deemed to include a management fee).

7. Refurbishment Allowance; Premises As-Is.

(a) Commencing as of the Expansion Premises Commencement Date, Tenant shall have the right to perform (i) alterations and improvements to the Premises as set forth on the attached Exhibit A (the "**Expansion Premises Improvements**"), and (ii) the Base Building Improvements (as defined below. The Expansion Premises Improvements and the Base Building Improvements are collectively referred to herein as the "**Refurbishment Improvements**". The Refurbishment Improvements shall be performed subject to the terms and conditions of this Section 7. Notwithstanding the foregoing, Tenant and its contractors shall not have the right to perform the Refurbishment Improvements unless and until Tenant has complied with all of the terms and conditions of Article 8 of the Lease, including, without limitation, approval by Landlord of the final plans for the Refurbishment Improvements and the contractors to be retained by Tenant to perform such Refurbishment Improvements. Tenant shall be responsible for all elements of the design of Tenant's plans (including, without limitation, compliance with applicable codes, Legal Requirements, ordinances, rules and regulations), and Landlord's approval of Tenant's plans shall in no event relieve Tenant of the responsibility for such design. Landlord's approval of final plans for the Refurbishment Improvements (the "**Final Plans**") and the contractors to perform the Refurbishment Improvements shall not be unreasonably withheld, conditioned or delayed. The cost estimate, as approved by Landlord and Tenant, for the Refurbishment Improvements as set forth in the Final Plans, is referred to herein as the "**Final Estimate**".

(b) The "**Base Building Improvements**" shall mean (i) bringing to compliance with the applicable building code in effect on the original installation date of the applicable system, the base building fire protection alarm system, communication system, fire sprinkler system, life support systems and security systems; (ii) demolition of the existing office improvements within the first floor and second floor of the Expansion Premises; (iii) demolition of the first floor and second floor restrooms in the Expansion Premises, and provide fixtures and finishes to match the same in the first floor and second floor restrooms in the Existing Premises; (iv) replace carpet in both stairwells and paint walls, cover the light wells between the ground floor and second floor; (v) replace all roll-up doors and exterior man doors serving the Expansion Premises; (vi) repair and/or replace HVAC equipment serving the Expansion Premises, as needed, based on the condition and age of units and associated equipment, among other criteria.

(c) Landlord agrees to contribute the sum of Three Million Three Hundred Ninety-One Thousand One Hundred Twenty-Five and No/100 Dollars (\$3,391,125.00) (the "**Refurbishment Allowance**"), which is comprised of (i) Two Million Eight Hundred Sixteen Thousand One Hundred Twenty-Five and No/100 (\$2,816,125.00) based on Sixty-Five and No/100 Dollars (\$65.00) per rentable square foot for the Expansion Premises for the Expansion Premises Improvements, plus (ii) Five Hundred Seventy-Five Thousand and No/100 Dollars (\$575,000.00) for the Base Building Improvements. Notwithstanding the forgoing, Landlord and Tenant acknowledge and agree that the Refurbishment Allowance may be applied toward the cost of performing any portion of the combined scope of work for the Expansion Premises Improvements and the Base Building Improvements (collectively, the "**Refurbishment Improvements**"). The Refurbishment Allowance may only be used for the cost of preparing the design and construction documents and mechanical and electrical plans for the Refurbishment Improvements, for payment of plan check, permit and license fees relating to construction of the Refurbishment Improvements, for hard costs in connection with the Refurbishment Improvements and any other costs associated with the Refurbishment Improvements, including a third-party project management fee, or may also be used toward payment of Base Rent. The Refurbishment Allowance shall be paid to Tenant in one (1) disbursement within thirty (30) days after completion of the Refurbishment Improvements and Landlord's receipt of the following documentation: (i) general contractor and architect's completion affidavits, (ii) full and final waivers of lien, (iii) receipted bills covering all labor and materials expended and used, (iv) as-built plans of the Refurbishment Improvements, and (v) the certification of Tenant and its architect that the Refurbishment Improvements have been installed in a good and workmanlike manner in accordance with the approved plans, and in accordance with all applicable codes, laws, ordinances, rules and regulations. Notwithstanding anything herein to the contrary, Landlord shall not be obligated to disburse any portion of the Refurbishment Allowance during the continuance of an uncured default under the Lease, and Landlord's obligation to disburse shall only resume when and if such default is cured. Any portion of the Refurbishment Allowance that remains unused after the date that is twelve (12) months following the Expansion Premises Commencement Date, shall accrue to the sole benefit of Landlord, it being agreed that Tenant shall not be entitled to any credit,

offset, abatement or payment with respect thereto. In the event the cost of the Refurbishment Improvements exceeds the Refurbishment Allowance, Tenant shall pay all such excess costs after the full amount of the Refurbishment Allowance has been disbursed hereunder directly to Tenant's contractor or subcontractor or suppliers involved and shall furnish to Landlord copies of receipted invoices therefor and such waivers of lien rights as Landlord may reasonably require. In addition to the Refurbishment Allowance, Landlord shall also provide an allowance to Tenant for the initial test fit of the Expansion Premises in an amount equal to Six Thousand Five Hundred and No/100 Dollars (\$6,500.00). In no event shall the Refurbishment Allowance be used for the purchase of equipment, furniture or other items of personal property of Tenant. Landlord shall receive a one-time construction management fee in connection with the Refurbishment Improvements in an amount equal to Fifteen Thousand Dollars (\$15,000.00), which may be retained out of the Refurbishment Allowance by Landlord.

(d) Subject to Landlord causing the Expansion Premises to be in the Delivery Condition prior to delivery of possession of same to Tenant, Tenant shall accept the Expansion Premises in its as-is condition as of the Expansion Premises Commencement Date and, except as set forth in this Section 6, Landlord shall have no obligation to make or pay for any alterations, additions, improvement or renovations in or to the Premises (including the Expansion Premises) to prepare the same for Tenant's occupancy.

8. Landlord's Work and Tenant Improvement Allowance Under Original Lease. Landlord and Tenant acknowledge and agree that Landlord and Tenant previously agreed that Tenant would perform the carpet and paint installation that was included in the Landlord's Work set forth in Schedule 1 to Exhibit B to the Lease, and in connection therewith, the Tenant Improvement Allowance set forth in section 5(a) of Exhibit B to the Lease would be increased to Three Million Two Hundred Seven Thousand Three Hundred Seventy and No/100 Dollars (\$3,207,380.00). In connection with the foregoing, the Landlord's Work set forth in Schedule 1 to Exhibit B to the Lease is hereby modified to remove all references to installation of carpet and paint, as such work shall instead be performed by Tenant, and the Tenant Improvement Allowance set forth in section 5(a) of Exhibit B to the Lease is hereby increased from Three Million One Hundred Ninety-Four Thousand Eight Hundred Eighty and No/100 Dollars (\$3,194,880.00) to Three Million Two Hundred Seven Thousand Three Hundred Seventy and No/100 Dollars (\$3,207,380.00), and shall be payable to Tenant in accordance with the terms, conditions and provisions of Exhibit B to the Lease.

9. Right of First Offer to Purchase. Tenant shall have a one-time right of first offer (the "**Right of First Offer to Purchase**"), during the Lease Term, including the Extension Term, to purchase the Building (the "**Purchase Space**") pursuant to the following terms and conditions:

(a) Provided that Tenant is not then in default of the terms of the Lease, as amended, at the time of Tenant's exercise of the Right of First Offer to Purchase under this Section 8, if, at any time during the Lease Term, Landlord elects to sell the Purchase Space (i) to a party other than a "Landlord Affiliate" or a "Foreclosure Owner" as those terms are defined below, and (ii) on a single asset basis and not as part of a "Group Sale," as that term is defined below, Landlord shall provide written notice to Tenant of the terms and conditions upon which Landlord would be willing to sell the Purchase Space (the "**Landlord's Notice**"). Landlord's Notice shall set forth the material economic terms and conditions (including, without limitation, a statement regarding whether the Purchase Space will be sold free and clear of all deeds of trust, mortgages, or other similar instruments affecting the Purchase Space) under which Landlord is willing to sell the Purchase Space to Tenant (the "**Material Terms**"), but shall not constitute an agreement between the parties or an offer to sell such Purchase Space. Landlord agrees to bargain in good faith on any terms not stated in Landlord's Notice.

(b) Tenant shall have ten (10) Business Days after receipt of Landlord's Notice (the "**Tenant Response Period**") to notify Landlord in writing whether or not Tenant desires to purchase the Purchase Space on the terms stated in Landlord's Notice (the "**Tenant's Notice**"). If Tenant delivers the Tenant's Notice within the Tenant Response Period, Landlord and Tenant shall promptly enter into a purchase and sale agreement for the Purchase Space on the Material Terms stated in Landlord's Notice (the "**Purchase Agreement**"). Tenant's Right of First Offer to Purchase is personal to Original Tenant and any Affiliate, and shall terminate upon Tenant's failure to timely exercise its Right of First Offer to Purchase within the Tenant Response Period. Accordingly, if Original Tenant shall assign the Lease prior

to its exercise of Tenant's Right of First Offer to Purchase (other than to an Affiliate), Tenant's Right of First Offer to Purchase shall thereupon be deemed terminated and Tenant shall have no rights pursuant to this Section 8, and any purported exercise of Tenant's Right of First Offer to Purchase after the date of such assignment shall be deemed void and of no force or effect.

(c) In the event that (i) Tenant either (A) elects not to purchase the Purchase Space on the Material Terms stated in Landlord's Notice or (B) fails to deliver Tenant's Notice to Landlord prior to the expiration of the Tenant Response Period, or (ii) Tenant delivers a Tenant's Notice to Landlord within the Tenant Response Period but Landlord and Tenant fail to execute the Purchase Agreement within fifteen (15) Business Days after the date of Landlord's receipt of Tenant's Notice, then (i) Tenant shall be deemed to have waived its Right of First Offer to Purchase the Purchase Space, (ii) Tenant's Right of First Offer to Purchase shall be deemed null and void, and (iii) Landlord shall have the right to sell the Purchase Space to any third party without having any obligation to deliver a Landlord's Notice to Tenant.

(d) In no event shall Landlord be required to provide Tenant with any of the following items: (1) appraisal and valuation reports and information, (2) any documents, materials or information which are subject to attorney/client, work product or similar privilege or which constitute attorney communications with respect to the Purchase Space, (3) any confidential or proprietary information and communications, (4) any documents pertaining to the marketing of the Purchase Space for sale to prospective purchasers, (5) any internal memoranda, reports or assessments of Landlord or Landlord's affiliates to the extent relating to Landlord's valuation of the Purchase Space or interpretation of any agreements, contracts or third party reports pertaining to the Purchase Space, or (6) any materials projecting or relating to the future performance of the Purchase Space. Tenant hereby acknowledges that Landlord will not make any warranty or representation, express or implied, regarding the truth or accuracy of any of the documents, materials or information provided to or made available to Tenant or the source thereof and Landlord shall have no liability as a result of providing or making available to Tenant such documents, materials or information or as a result of Tenant's reliance thereon. During the Offer Period, Tenant and its agents, contractors, subcontractors, consultants, employees, engineers, legal counsel and other authorized representatives of Tenant who shall inspect, investigate, test or evaluate the Purchase Space on behalf of Tenant (collectively, "**Licensee Parties**") shall have reasonable access to the Purchase Space at agreed upon times during normal business hours for agreed upon purposes on at least one (1) business day's prior notice to Landlord. Such notice shall describe the scope of the studies Tenant intends to conduct during Tenant's access to the Purchase Space. Landlord shall have the right to have a representative present during any visits to or inspections of the Purchase Space or interviews with any tenants of the Purchase Space. If Tenant desires to conduct any physically intrusive studies such as, but not limited to, sampling of soils or the like ("**Inspection**"), Tenant will identify in writing the procedures Tenant desires to perform and shall request Landlord's express written consent thereto, which consent may be withheld in Landlord's sole discretion. The Inspection will be at Tenant's sole cost and expense and will be conducted in a manner and by Licensee Parties reasonably acceptable to Landlord. Should Tenant choose to conduct such an investigation at the Purchase Space, then Tenant shall promptly cause to be removed any mechanics' liens that may be recorded against the Purchase Space on account of the performance of work or activities by or for Tenant, at Tenant's sole cost and expense. Tenant and any Licensee Parties will: (i) maintain commercial general liability (occurrence) insurance on terms reasonably satisfactory to Landlord covering any occurrence arising in connection with the presence of Tenant or the Licensee Parties on the Purchase Space, and deliver to Landlord a certificate of insurance, which names Landlord as an additional insured thereunder, verifying such coverage prior to entry upon the Purchase Space; (ii) promptly pay when due the costs of all entry and inspections and examinations done with regard to the Purchase Space; and (iii) restore the Purchase Space to the condition in which the same was found before any such entry, inspection or examination was undertaken. Tenant shall, at Landlord's request, provide Landlord with copies of all studies, tests, reports and other documents or materials relating to the Purchase Space that are prepared, conducted or made by, for or on behalf of Tenant, each of which shall be addressed to Tenant and to Landlord so that Landlord will be entitled to rely thereon as if it were the client of the party preparing such document. Tenant shall maintain as confidential the terms of the proposed sale transaction and any and all information obtained by Tenant about the Landlord or about the Purchase Space, the other leases at the Purchase Space, this Agreement or the proposed sale transaction, and shall not disclose such information to any third party. Except as may be required by law, Tenant will not divulge any such information to other persons or entities including,

without limitation, appraisers, real estate brokers, or competitors of Landlord. Notwithstanding the foregoing, Tenant shall have the right to disclose information with respect to the Purchase Space to its officers, directors, employees, attorneys, accountants, environmental auditors, engineers, and potential lenders and other consultants to the extent necessary for Tenant to evaluate its acquisition of the Purchase Space provided that all such persons are told that such information is confidential and agree (in writing for any third party engineers, environmental auditors or other consultants) to keep such information confidential. The provisions of this paragraph shall survive any termination of the Lease.

(e) Tenant shall indemnify and defend Landlord against and hold Landlord harmless from all claims, demands, liabilities, losses, damages, costs and expenses, including reasonable attorneys' fees and disbursements, arising from any entry on the Purchase Space by Tenant or any of the Licensee Parties. The foregoing covenant shall survive any termination of the Lease.

(f) For purposes of this Section 8, the following definitions shall have the meanings as follows:

(i) "**Foreclosure Owner**" shall be an entity or person which becomes the owner of the Purchase Space through a foreclosure by trustee's power of sale, judicially or otherwise, or as a purchaser at a foreclosure sale, or a mortgagee of the Purchase Space (or an entity which is controlled by, controls or is under common control with such mortgagee) that acquires title by deed in lieu or transfer of equity in lieu of foreclosure or any UCC foreclosure action.

(ii) "**Group Sale**" shall mean a sale or other transfer of the Purchase Space as a direct or indirect interest in the entity that is Landlord together with one or more other commercial office properties or buildings owned by Landlord and/or any Landlord Affiliate to a single purchaser.

(iii) "**Landlord Affiliate**" shall mean an entity which is controlled by, controls or is under common control with the originally named Landlord under this Amendment or by Graymark Capital.

(iv) "**Sale**", "**Sell**" or "**Selling**" shall mean to convey fee ownership of the Purchase Space or enter into a ground lease of the entire Purchase Space for a period in excess of thirty-five (35) years.

10. Parking.

(a) Notwithstanding anything to the contrary in the Lease, including without limitation the provisions set forth in the Basic Lease Information, effective as of the Expansion Premises Commencement Date Tenant shall have the right to use all parking spaces located at the Building, at no additional cost or expense throughout the Lease Term (as extended hereby).

(b) In connection with the expansion of the Premises and Tenant becoming the sole tenant in the Building, effective as of the Expansion Premises Commencement Date, Section 1.4 of the Lease is hereby deleted in its entirety and replaced with the following:

1.4 Notwithstanding Section 1.1 of this Lease relating to use of the land on which the Building is located for parking, Tenant shall have the right to use all parking spaces located at the Building at no additional cost or expense throughout the Lease Term, and all such parking shall be for the exclusive use of Tenant. Tenant shall use such parking spaces solely for parking automobiles of Tenant's officers and employees. Tenant shall comply with all Rules and Regulations and all laws now or hereafter in effect relating to the use of parking spaces. Without limiting the foregoing, in no event shall this Lease be void or voidable, nor shall Landlord be liable to Tenant for any loss or damage, nor shall there be any abatement of rent hereunder, by reason of any reduction in Tenant's parking rights hereunder by reason of strikes, lock-outs, labor disputes, shortages of material or labor, fire, flood or other casualty, acts of God or any other cause beyond the control of Landlord.

11. Services. Effective as of the Expansion Premises Commencement Date, Article 7 of the Lease is hereby deleted in its entirety and replaced with the provisions set forth on Exhibit B attached hereto.

12. Maintenance and Repairs. Effective as of the Expansion Premises Commencement Date, Article 10 of the Lease is hereby deleted in its entirety and replaced with the provisions set forth on Exhibit C attached hereto. Accordingly, Exhibit G to the Lease is hereby deleted in its entirety effective as of the Expansion Premises Commencement Date.

13. Compliance With Legal Requirements. Article 14 of the Lease is hereby deleted in its entirety and replaced with the following: "Tenant shall, at its sole cost and expense, promptly comply with all laws, ordinances, rules, directives, guidelines, regulations, orders and other requirements of any governmental entity, agency or public authority now in force or which may hereafter be in force, with the requirements of any board of fire underwriters or other similar body now or hereafter constituted, and with any direction or certificate of occupancy issued pursuant to any law by any governmental agency or officer, insofar as any thereof relate to or affect the condition, use or occupancy of the Premises, including any requirements to cease or reduce Tenant's business operations in or Tenant's use of the Premises, or the operation, use or maintenance of any equipment, fixtures or improvements in the Premises (collectively, "**Legal Requirements**"), excluding requirements of structural changes not related to or affected by Tenant's acts or use of the Premises or by Alterations made by or for Tenant.

14. Remedies Upon Default. Notwithstanding anything to the contrary in the Lease, Landlord shall have the right to exercise all of its remedies pursuant to Article 19 of the Lease during any eviction moratorium, to the extent allowed by applicable Legal Requirements.

15. Condemnation. Notwithstanding anything to the contrary in Article 21 of the Lease, and to the extent allowed by applicable Legal Requirements, none of the following events shall (a) constitute a taking or condemnation, either permanent or temporary, or (b) entitle Tenant to any compensation from Landlord or any abatement of Rent or any other remedy under the Lease: (i) a governmental action that requires Tenant's business or the Building to close during the Lease Term (as extended hereby), and (ii) a governmental action taken for the purpose of protecting public safety (e.g., to protect against acts of war, the spread of communicable diseases, or an infestation).

16. Building Signage. Effective as of the Expansion Premises Commencement Date, Article 28 of the Lease is hereby deleted in its entirety and replaced with the following:

28.1 Tenant may, at Tenant's expense, install Building standard suite signage identifying Tenant's business at the entrance to the Premises, provided that the design, size, color and location of the sign is in compliance with applicable Legal Requirements and has been approved by Landlord (which approval shall not be unreasonably withheld, conditioned or delayed). Tenant shall be entitled, at no cost to Tenant, to have the name of Tenant's company listed on the Building directory situated in the lobby of the Building. If, after Tenant's name is initially listed on the directories, Tenant requests a change in Tenant's name as printed thereon, Tenant shall reimburse Landlord for Landlord's cost of reprinting Tenant's name for the directories.

28.2 Tenant, at Tenant's sole cost and expense (including, without limitation, costs and expenses to construct any such signage to the extent the same does not exist as of the date of this Lease), and subject to Tenant's compliance with applicable Legal Requirements (including signage ordinances), shall be entitled to signage on the exterior of the Building and to the extent desired by Tenant on the land on which the Building is located, in the maximum size and number of locations as permitted by the City and Legal Requirements ("Tenant's Signage"). Tenant shall be responsible for obtaining any governmental permits or approvals required for Tenant's Signage, all at Tenant's sole cost and expense; provided, however, that Landlord, at no cost to Landlord, shall reasonably cooperate with Tenant as reasonably required for obtaining any governmental permits or approvals required for Tenant's Signage. Tenant's repair, maintenance, construction and/or improvement of Tenant's Signage shall be at its sole cost and expense and shall

comply with all applicable Legal Requirements, the requirements applicable to construction of Alterations pursuant to Article 8 of this Lease, and such other reasonable rules, procedures and requirements as Landlord shall impose with respect to such work, including insurance coverage in connection therewith. Any cost or reimbursement obligations of Tenant under this section 28.2, including with respect to the installation, maintenance or removal of Tenant's Signage, shall survive the expiration or earlier termination of this Lease.

28.3 Tenant's rights to maintain Tenant's Signage shall terminate upon the earlier to occur of: (a) the expiration or earlier termination of the Lease or Tenant's right to possession of the Premises; (b) Tenant assigns the Lease other than to an Affiliate; or (c) Landlord elects to terminate this Lease as a result of an uncured Event of Default under this Lease. The rights provided for in Article 28 shall be personal to the original tenant hereunder (i.e., Dexcom, Inc.) ("Original Tenant") and any Affiliate of Original Tenant, and shall not be transferable to any other party unless otherwise agreed to by Landlord in writing. Upon the termination of Tenant's signage rights under this Article 28, Tenant shall remove any of Tenant's Signage at Tenant's sole cost and expense, and repair and restore to good condition the areas of the Building on which the signage was located or that were otherwise affected by such signage or the removal thereof (including, without limitation, patching any holes or other penetrations caused by such signage and otherwise restoring the Building to the condition existing prior to the initial installation of such signage), or at Landlord's election, Landlord may perform any such removal and/or repair and restoration and Tenant shall pay Landlord the reasonable cost thereof within thirty (30) days after Landlord's written demand.

17. Option to Renew. Tenant shall continue to have the option to renew the Lease Term pursuant to Article 35 of the Lease, provided that (i) Tenant shall now have the option to renew the Lease Term for a total of two (2) additional terms of five (5) years each, and (ii) the renewal options shall be applicable to the Premises as expanded by the Expansion Premises. All of the terms and provisions of Article 35 of the Lease shall continue to be applicable to such renewal options.

18. Rooftop Use. Effective as of the Expansion Premises Commencement Date, Article 38 of the Lease is hereby deleted in its entirety and replaced with the following:

38.1 Tenant shall have the right, at no additional cost, to utilize the roof of the Building for the purpose of installing (in accordance with the terms and conditions of Article 8 of this Lease), operating and maintaining the rooftop dishes/antennas or any other legally permissible items (collectively the "Dish/Antenna"). The portion of the roof so utilized by Tenant at any time during the Lease term is referred to herein as the "Roof Space". Tenant shall have the right to utilize the entire roof of the Building as the Roof Space. Tenant's right to install the Dish/Antenna shall be subject to the reasonable approval rights of Landlord and Landlord's architect and/or engineer with respect to the plans and specifications of the Dish/Antenna, the manner in which the Dish/Antenna is attached to the roof of the Building and the manner in which any cables are run to and from the Dish/Antenna; provided, Landlord shall not withhold its approval if the proposed installation is in compliance with Legal Requirements. Tenant shall be solely responsible for obtaining all necessary governmental and regulatory approvals and for the cost of installing, operating, maintaining and removing the Dish/Antenna. Tenant shall notify Landlord upon completion of the installation of the Dish/Antenna. If Landlord reasonably determines that the Dish/Antenna equipment does not comply with the approved plans and specifications, that the Building has been damaged during installation of the Dish/Antenna or that the installation was defective, Landlord shall notify Tenant of any noncompliance or detected problems and Tenant immediately shall cure the defects. If the Tenant fails to immediately cure the defects, Tenant shall pay to Landlord upon demand the cost, as reasonably determined by Landlord, of correcting any defects and repairing any damage to the Building caused by such installation. If at any time Landlord, in its sole discretion, deems it necessary, Tenant shall provide and install, at

Tenant's sole cost and expense, appropriate aesthetic screening, reasonably satisfactory to Landlord, for the Dish/Antenna (the "Aesthetic Screening").

38.2 Landlord agrees that Tenant shall have access to the roof of the Building and the Roof Space during the Lease Term. Tenant further agrees to exercise control over the people requiring access to the roof of the Building and the Roof Space in order to keep to a minimum the number of people having access to the roof of the Building and the Roof Space and the frequency of their visits. It is further understood and agreed that the installation, maintenance, operation and removal of the Dish/Antenna, the appurtenances and the Aesthetic Screening, if any, is not permitted to damage the Building or the roof thereof. Tenant agrees to be responsible for any damage caused to the roof or any other part of the Building, which may be caused by Tenant or any of its agents or representatives.

38.3 Tenant shall, at its sole cost and expense, and at its sole risk, install, operate and maintain the Dish/Antenna in a good and workmanlike manner, and in compliance with all Building, electric, communication, and safety codes, ordinances, standards, regulations and requirements, now in effect or hereafter promulgated, of the Federal Government, including, without limitation, the Federal Communications Commission (the "FCC"), the Federal Aviation Administration ("FAA") or any successor agency of either the FCC or FAA having jurisdiction over radio or telecommunications, and of the state, city and county in which the Building is located. Under this Lease, Landlord and its agents assume no responsibility for the licensing, operation and/or maintenance of Tenant's equipment. Tenant has the responsibility of carrying out the terms of its FCC license in all respects. The Dish/Antenna shall be connected to Landlord's power supply in strict compliance with all applicable Building, electrical, fire and safety codes. Neither Landlord nor its agents shall be liable to Tenant for any stoppages or shortages of electrical power furnished to the Dish/Antenna or the Roof Space because of any act, omission or requirement of the public utility serving the Building, or the act or omission of any other tenant, invitee or licensee or their respective agents, employees or contractors, or for any other cause beyond the reasonable control of Landlord, and Tenant shall not be entitled to any rental abatement for any such stoppage or shortage of electrical power. Neither Landlord nor its agents shall have any responsibility or liability for the conduct or safety of any of Tenant's representatives, repair, maintenance and engineering personnel while in or on any part of the Building or the Roof Space.

38.4 The Dish/Antenna, the appurtenances and the Aesthetic Screening, if any, shall remain the personal property of Tenant, and shall be removed by Tenant at its own expense at the expiration or earlier termination of the Lease or Tenant's right to possession hereunder. Tenant shall repair any damage caused by such removal, including the patching of any holes to match, as closely as possible, the color surrounding the area where the equipment and appurtenances were attached. Tenant agrees to maintain all of the Tenant's equipment placed on or about the roof or in any other part of the Building in proper operating condition and maintain same in satisfactory condition as to appearance and safety in Landlord's reasonable discretion. Such maintenance and operation shall be performed in a manner to avoid any interference with any other tenants or Landlord. Tenant agrees that at all times during the Lease Term, it will keep the roof of the Building and the Roof Space free of all trash or waste materials produced by Tenant or Tenant's agents, employees or contractors.

38.5 In light of the specialized nature of the Dish/Antenna, Tenant shall be permitted to utilize the services of its choice for installation, operation, removal and repair of the Dish/Antenna, the appurtenances and the Aesthetic Screening, if any, subject to the reasonable approval of Landlord. Notwithstanding the foregoing, Tenant must provide Landlord with prior written notice of any such installation, removal or repair and coordinate such work with Landlord in order to avoid voiding or otherwise adversely affecting any warranties granted to Landlord with respect to the roof. If necessary,

Tenant, at its sole cost and expense, shall retain any contractor having a then existing warranty in effect on the roof to perform such work (to the extent that it involves the roof), or, at Tenant's option, to perform such work in conjunction with Tenant's contractor. In the event Landlord contemplates roof repairs that could affect Tenant's Dish/Antenna, or which may result in an Interruption of the Tenant's telecommunication service, Landlord shall formally notify Tenant at least thirty (30) days in advance (except in cases of an emergency) prior to the commencement of such contemplated work in order to allow Tenant to make other arrangements for such service.

38.6 Tenant specifically acknowledges and agrees that the terms and conditions of Articles 8 and 13 of this Lease shall apply with full force and effect to the Roof Space and any other portions of the roof accessed or utilized by Tenant, its representatives, agents, employees or contractors.

19. **CASp Disclosure.** Section 1.5 of the Lease is hereby supplemented with the following: As required by Section 1938(a) of the California Civil Code, Landlord discloses to Tenant that the Expansion Premises have not undergone inspection by a Certified Access Specialist ("CASp"). As required by Section 1938(e) of the California Civil Code, Landlord also states that:

"A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises."

As permitted by the quoted language above, it is agreed that: (a) any CASp inspection for the Expansion Premises requested by Tenant shall be requested by Tenant within ten (10) days after the date on which this Amendment has been executed by Landlord and Tenant, (b) the contract under which the inspection is to be performed shall not limit the CASp's liability if the CASp fails to perform the inspection in accordance with the standard of care applicable to experts performing such inspections, Landlord shall be an intended third party beneficiary of such contract and the contract shall otherwise comply with the provisions of the Lease applicable to Tenant contracts for construction; (c) the CASp inspection of the Expansion Premises shall be conducted (i) at Tenant's sole cost and expense, (ii) by a CASp approved in advance by Landlord, (iii) after normal business hours, (iv) in a manner reasonably satisfactory to Landlord, and (v) shall be addressed to, and, upon completion, promptly delivered to, Landlord and Tenant; (d) the information in the inspection shall not be disclosed by Tenant to anyone other than contractors, subcontractors, and consultants of Tenant who have a need to know the information therein and who agree in writing not to further disclose such information; and (e) to the extent that such CASp inspection identifies any necessary repairs to correct violations of construction-related accessibility standards within the Expansion Premises, the provisions of Article 14 of the Lease shall govern Tenant's responsibility to make such repairs to the Expansion Premises.

20. **Release.** As a material inducement to Landlord to enter into this Amendment, Tenant hereby releases Landlord from, and hereby waives, any and all losses, costs, damages, expenses, liabilities, claims and causes of action (collectively, the "**Released Claims**") arising prior to the Effective Date from or related to Tenant's inability or limitation to conduct operations from the Premises as a result of any "shelter in place" orders or similar governmental directives, including, without limitation, any claims for, and/or rights of, termination of the Lease and/or abatement, offset and/or deferral of Rent under the Lease, at law and/or in equity related to the inability of Tenant to conduct operations from the Premises as a result of any "shelter in place" orders or similar governmental directives related thereto. With respect to the Released Claims, Tenant acknowledges that Tenant has either been advised by legal counsel or has made itself familiar with the provisions of California Civil Code section 1542, which provides as follows: **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**

**CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.** Tenant, being aware of the foregoing code section, hereby expressly waives any rights Tenant may have thereunder, as well as under any other statutes or common-law principles of similar effect, pertaining to the Released Claims.

21. Brokers. Landlord and Tenant each represents and warrants to the other that, other than Cushman & Wakefield, representing Landlord, and Kidder Mathews, representing Tenant, Landlord and Tenant, respectively, have not authorized or employed, or acted by implication to authorize or to employ, any real estate broker or salesman to act for Landlord or Tenant, respectively, in connection with this Amendment. Landlord and Tenant shall each indemnify, defend and hold the other harmless from and against any and all claims as a result of a breach by the indemnifying party of the foregoing representation (including reasonable attorneys' fees, court costs and any commissions, if ultimately owed).

22. Miscellaneous. Except as provided above, the Lease is unmodified hereby and remains in full force and effect. Submission of this instrument for examination and signature by Tenant does not constitute an offer to amend the Lease, or a reservation of or option to amend the Lease, and is not effective as an amendment or otherwise until execution and delivery by both Landlord and Tenant. The parties may execute several copies of this Amendment. All copies of this Amendment bearing signatures of the parties shall constitute one and the same Amendment, binding upon all parties. The parties may execute this Amendment using electronic signature (e.g., DocuSign) and may exchange counterpart signatures by facsimile or electronic transmission and the same shall constitute delivery of this Amendment with respect to the delivering party. If a variation or discrepancy among counterparts occurs, the copy of this Amendment in Landlord's possession shall control.

*[signature page to follow]*

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date and year first above written.

**TENANT:**

DEXCOM, INC.,  
a Delaware corporation

By: /s/ Jereme Sylvain  
Name: Jereme Sylvain  
Title: VP, Finance

**LANDLORD:**

GC PACIFIC CENTER COURT OWNER LLC,  
a Delaware limited liability company

By: /s/ Brian Hecktman  
Name: Brian Hecktman  
Title: Authorized Signatory

/-11-17-20//

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## **EXHIBIT A**

### **Scope of Refurbishment Improvements**

- Full demolition and removal of all interior finishes.
- Refresh both restroom blocks to same level of finishes in current suite.
- First and second floor to be fit out to mixed use of office and production space similar to and at the same level of finishes of existing suite.

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EXHIBIT A

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## EXHIBIT B

### Services Provision

#### ARTICLE 7 Services

7.1 On or before the Expansion Premises Commencement Date, Tenant will cause each utility provider to set up an account for the Premises in Tenant's name and to bill Tenant directly for all utilities supplied to the Premises from the Expansion Premises Commencement Date throughout the Term. Landlord and Tenant will coordinate the timing for establishing service under such new accounts to avoid any interruption in services. Tenant will pay when due for electrical service, water, sewer service, natural gas, telecommunications services, garbage removal, and all other utility services supplied to or consumed in, at, or from the Premises and all related access charges and connection fees.

7.2 In the event of an interruption in, or failure or inability to provide any service or utility for the Premises for any reason, such interruption, failure or inability shall not constitute an eviction of Tenant, constructive or otherwise, or impose upon Landlord any liability whatsoever, including, but not limited to, liability for consequential damages or loss of business by Tenant. Tenant hereby waives the provisions of California Civil Code Section 1932(1) or any other applicable existing or future laws permitting the termination of this Lease due to such interruption, failure or inability. Notwithstanding the foregoing, if any interruption in, or failure or inability to provide any of the services or utilities described in Section 7.2 is (i) within Landlord's reasonable control and continues for three (3) or more consecutive Business Days after Tenant's written notice thereof to Landlord, or (ii) outside of Landlord's reasonable control and continues for thirty (30) or more consecutive days after Tenant's written notice thereof to Landlord, and Tenant is unable to use and does not use a material portion of the Premises for Tenant's business purposes as a result thereof, then Tenant shall be entitled to an abatement of Base Rent and Additional Rent, which abatement shall commence as of the first day after the expiration of such three (3) Business Day or thirty (30) day period, as the case may be, and shall be based on the extent of Tenant's inability to use the Premises for Tenant's business, and in the case of an interruption, failure or inability described in clause (ii) above, such abatement shall be applicable only to the extent and for so long as Landlord is reimbursed for the so abated rent pursuant to Landlord's rental loss insurance. The abatement provisions set forth above shall be inapplicable to any interruption in, or failure or inability to provide any of the services or utilities described in Section 7.2 that is caused by (x) damage by fire or other casualty or a taking (it being acknowledged that such situations shall be governed by Articles 11 and 21, respectively), or (y) the negligence or willful misconduct of Tenant or any agents, employees, contractors, licensees, subtenants, customers, guests or invitees of Tenant (collectively with Tenant, "Tenant Parties").

7.3 In the event any governmental authority having jurisdiction over the Building promulgates or revises any applicable laws or building, fire or other code or imposes mandatory or voluntary controls or guidelines on Landlord or the Building relating to the use or conservation of energy or utilities or the reduction of automobile or other emissions (collectively "Controls") or in the event Landlord is required by Legal Requirements to make alterations to the Building in order to comply with such mandatory Controls, Landlord shall provide written notice to Tenant advising Tenant of the mandatory Controls, and Landlord's proposed commercially reasonable alterations to the Building intended to comply with such mandatory Controls. Tenant and Landlord shall thereafter cooperate to agree upon the scope of work for such alterations and the schedule for performing same, which shall be coordinated to not unreasonably interfere with Tenant's access to and use of the Premises or Tenant's business operations conducted therein. So long as Landlord complies with the foregoing terms and conditions, the making of such commercially reasonable alterations to comply with such mandatory Controls shall not constitute an eviction of Tenant, constructive or otherwise, or impose upon Landlord any liability whatsoever, including, but not limited to, liability for consequential damages or loss of business by Tenant.

7.4 Landlord makes no representation to Tenant regarding the adequacy or fitness of the heating, air conditioning or ventilation equipment in the Building to maintain temperatures that may be required for, or because of, any computer or communications rooms, machine rooms, conference rooms

EXHIBIT A

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or other areas of high concentration of personnel or electrical usage, or any other uses other than or in excess of the fractional horsepower normally required for office equipment, and Landlord shall have no liability for loss or damage suffered by Tenant or others in connection therewith.

7.5 Tenant acknowledges that Landlord may, from time to time, be required to disclose certain information concerning the Building's energy use pursuant to California law (any such current or future law or regulation regarding disclosure of energy efficiency data with respect to the Building shall be referred to herein as the "Energy Disclosure Regulations"). Tenant shall reasonably cooperate with Landlord with respect to any disclosure and/or reporting requirements pursuant to any Energy Disclosure Regulations. Without limiting the generality of the foregoing, Tenant shall, within fifteen (15) Business Days following request from Landlord, disclose to Landlord all information reasonably requested by Landlord in connection with the Energy Disclosure Regulations, including, but not limited to, the amount of power or other utilities consumed within the Premises for which the meters for such utilities are in Tenant's name, the number of employees working within the Premises, the operating hours for Tenant's business in the Premises, and the type and number of equipment operated by Tenant in the Premises. Tenant acknowledges that this information shall be provided on a non-confidential basis and may be provided by Landlord to the applicable utility providers, the California Energy Commission (and other governmental entities having jurisdiction with respect to the Energy Disclosure Regulations), and any third parties to whom Landlord is required to make the disclosures pursuant to the Energy Disclosure Regulations. Tenant agrees that none of the Landlord Parties (as defined below) shall be liable for any loss, cost, damage, expense or liability related to Landlord's disclosure of such information provided by Tenant. In addition, Tenant represents to Landlord that any and all information provided by Tenant to Landlord pursuant to this paragraph shall be, to the best of Tenant's knowledge, true and correct in all material respects.

EXHIBIT A

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## EXHIBIT C

### Maintenance and Repairs Provision

#### ARTICLE 10

#### Maintenance and Repairs

7.1 Tenant shall, at all times during the Lease Term and at Tenant's sole cost and expense, maintain, repair and replace all parts of the Premises (excluding only the entire structural envelope of the Building, the foundation, the roof, the exterior face of exterior walls, all windows and glazing, main sewer line, and the load-bearing portions of load-bearing walls, parking area and sidewalks), including, without limitation, all Building systems, all of Tenant's signs, doors, truck doors, and other penetrations in the outer walls of the Premises, all loading docks and lifts that serve the Premises, floor coverings, ceilings, elevators, all HVAC equipment and systems and all other mechanical, electrical, plumbing, lighting, life-safety, and utility systems, equipment, conduits, pipes, ducts, and lines, and all fixtures and appliances in good order and operating condition, ordinary wear and tear and damage thereto by fire or other casualty excepted. Tenant will also repair, or reimburse Landlord for, any blockage of or damage to the sewer lines and sewer system at the Building that results from anything that enters the sewer lines from the Premises; provided, Landlord shall otherwise be responsible for the sewer lines. Tenant will provide and pay for all garbage removal from the Premises, as well as janitorial services for the Building. Tenant will perform all repairs and replacements with first-class materials and with first-class workmanship. Tenant will, at Tenant's sole cost, maintain throughout the Lease Term a regularly scheduled preventative maintenance and service contract or contracts with a contractor or contractors specializing and experienced in the maintenance of HVAC equipment, for the maintenance of the HVAC systems. The maintenance and service contract shall include all services suggested by the equipment manufacturer (including requiring that the filters be changed at least every 60 days) and shall become effective (and Tenant shall deliver a copy to Landlord) within thirty (30) days after the Expansion Premises Commencement Date. Tenant shall at all times maintain the HVAC systems in compliance with all applicable federal, state and local laws. If a leak occurs in any portion of the HVAC systems, Tenant shall promptly repair such leak in compliance with all applicable federal, state and local laws and complete such repairs within any deadline imposed by such federal, state or local laws. Tenant shall indemnify and defend Landlord against and hold Landlord harmless from all claims, demands, liabilities, damages, losses, costs and expenses, including reasonable attorneys' fees and disbursements, arising from or related to any failure by Tenant to maintain the HVAC systems in compliance with all applicable federal, state and local laws or any failure by Tenant to repair any leak in any portion of the HVAC systems in compliance with all applicable federal, state and local laws. If Tenant replaces any part or component of the HVAC systems and receives a warranty from the manufacturer or a guaranty by the installer, Tenant shall furnish a duplicate original of each such warranty and guaranty to Landlord. Tenant shall, at the end of the term of this Lease, surrender to Landlord the Premises with the HVAC systems in good condition and working order. Notwithstanding the provisions of this section 10.1 to the contrary, Landlord may at any time, upon thirty (30) days' notice to Tenant, assume maintenance of the HVAC systems, in which case Tenant will reimburse Landlord for the cost incurred by Landlord in maintaining, repairing and replacing such HVAC systems within thirty (30) days following demand from Landlord; provided, however, that any capital repairs or replacements of the HVAC systems shall be reasonably amortized as determined by Landlord and consistent with prudent real property management practices for comparable buildings in the San Diego area, together with interest at the rate of ten percent (10%) per annum. Tenant hereby waives all rights under California Civil Code section 1941 and all rights to make repairs at the expense of Landlord or in lieu thereof to vacate the Premises as provided by California Civil Code section 1942 or any other law, statute or ordinance now or hereafter in effect. Landlord has no obligation and has made no promise to alter, remodel, improve, repair, maintain, decorate or paint the Premises or the Building or any part thereof or any equipment, fixtures or improvements therein.

7.2 Landlord shall maintain (i) the entire structural envelope of the Building, (ii) foundation, (iii) roof, (iv) exterior face of exterior walls, (v) all windows and glazing, (vi) main sewer line, (vii) the

EXHIBIT A

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load-bearing portions of load-bearing walls of the Building, (viii) parking area and sidewalks, (ix) landscaping, and (x) all back flow preventers (BFPs) and post indicating valves (PIVs) for the main fire service, main domestic water, and main landscape irrigation, all in reasonably good order and condition. In connection with such maintenance obligations, Landlord shall cause the following to be performed:

- (a) exterior walls of the Building to be painted no less than is reasonably required to maintain such walls in good condition;
- (b) replacement of the roof, glazing joints and concrete tilt up panel joints, as needed;
- (c) maintain the parking surfaces and lighting, asphalt slurry and stripe, and grind, re-lay, slurry stripe as often as is reasonably required in order to maintain the same in good condition; and
- (d) repair sidewalks damaged or heaved by tree roots, weather, etc., as needed.

Notwithstanding the foregoing, any damage in or to any such areas or elements caused by Tenant or any agent, employee, contractor, licensee or invitee of Tenant shall be repaired by Landlord at Tenant's expense and Tenant shall reimburse Landlord therefor on demand, as additional rent. Landlord shall not be liable for any criminal acts of others or for any direct, consequential or other loss or damage related to any malfunction, circumvention or other failure of any access control service, device or personnel.

## TENANT ESTOPPEL CERTIFICATE

The undersigned, Dexcom, Inc., a Delaware corporation ("**Tenant**"), hereby certifies to NR THE CANYONS LLC, a Delaware limited liability company, and its affiliates, successors and assigns ("**Buyer**") and any lenders and their successors and assigns that provide Buyer financing in connection with the Property (as defined below) as follows, with respect to that certain lease between Tenant and GC Pacific Center Court Owner, LLC, a Delaware limited liability company ("**Landlord**"), dated January 31, 2020, as amended by First Amendment to Lease dated November 17, 2020 between Tenant and Landlord (as amended, the "**Lease**") of a portion of that certain real property located at 10455 Pacific Center Court, San Diego, California (the "**Property**"):

1. **Schedule 1** is a complete and correct list of the Lease and all amendments or modifications thereto and the Lease and has not been amended, supplemented or changed, except pursuant to the First Amendment to Lease listed in **Schedule 1** (the "**First Amendment**"). There are no other agreements, written or oral, affecting or relating to Tenant's lease of the leased premises described in the Lease (the "**Premises**") or any other portion of the Property.
2. The Lease is in full force and effect. Tenant has accepted possession of the Premises and all conditions to be satisfied by Landlord under the Lease as of the date hereof have been satisfied, and all work to be performed by Landlord for Tenant under the Lease as of the date hereof has been performed and has been accepted by Tenant, and all tenant improvement allowances have been paid to Tenant with respect to the Lease except for (i) the \$3,207,380.00 "**Tenant Improvement Allowance**" as defined in Section 5(a) of Exhibit B to the Lease, and modified by Section 8 of the First Amendment, (ii) the \$516,000 "**HVAC Allowance**" for the HVAC Work (as defined in the Lease) performed by Tenant concurrently with the Tenant's Work, as described in Section 5(e) of Exhibit B to the Lease, and (iii) the \$3,391,125.00 "**Refurbishment Allowance**" defined in Section 7(c) of the First Amendment. The Tenant Improvement Allowance and the HVAC Allowance have been requested by Tenant, but not yet disbursed by Landlord. The Refurbishment Allowance will be requested once the Refurbishment Improvements (as defined in the First Amendment) have been performed. Tenant has no disputes or claims outstanding against the Landlord, and there are no offsets due, nor payment currently due to Tenant under the Lease other than the previously requested Tenant Improvement Allowance and the HVAC Allowance.
3. All base rent and additional rent under the Lease has been paid through May, 2021.
4. Base rent is currently payable in the amount of \$103,219.20 per month.
5. Tenant is currently paying estimated payments of additional rent of \$16,627.38 on account of real estate taxes, insurance, and common area maintenance expenses. Tenant pays its full proportionate share of real estate taxes, insurance, and common area maintenance expenses.
6. Lease commencement date is September 1, 2020. Lease expiration date is August 31, 2028. The Expansion Premises Commencement Date (as such term is defined in Section 3(a) of the First Amendment) is January 1, 2021, and the Expansion Premises Rent Commencement Date (as such term is defined in Section 5 of the First Amendment) is July 1, 2021.
7. Tenant has no option to extend, expand or terminate the Lease, except as follows: two (2) additional option terms of five (5) years each, and the continuous and ongoing Right of First Offer to expand into any other space in the Building pursuant to Article 36 of the Lease.
8. Tenant's one-time right of first offer to purchase the Property set forth in Section 9 of the First Amendment described on **Schedule 1** has terminated and is no longer in effect. Tenant has no options to purchase or rights of first refusal to purchase or right of first offer to purchase the Property.
9. Landlord holds a security deposit in the amount of NONE.
10. Tenant has not prepaid any rent.

11. Tenant has not entered into any sublease, assignment or any other agreement transferring any of its interest in the Lease or the Premises, except as follows: NONE.

**J.P.Morgan**

12. Neither Tenant nor, to Tenant's actual knowledge, Landlord is currently in default under the Lease and, to Tenant's actual knowledge, there is no occurrence which with the passage of time or giving of notice would result in a default by Landlord or Tenant under the Lease, except as follows: NONE.

The undersigned has executed this certificate with the knowledge and agreement that the undersigned will be bound by the statements contained herein and that they may be relied upon by Buyer, any mortgagee of the Property, and their respective successors and assigns. This certificate may be executed by electronic imaging, which shall be deemed an original signature for all purposes.

DEXCOM, INC.,  
a Delaware corporation

By: /s/ Jereme Sylvain  
Name: Jereme Sylvain  
Title: EVP, Chief Financial Officer

Date: May 17, 2021

Schedule 1

Lease dated January 31, 2020 between GC Pacific Center Court Owner LLC, a Delaware limited liability company, and Dexcom, Inc., a Delaware corporation

First Amendment to Lease dated November 17, 2020 between GC Pacific Center Court Owner LLC, a Delaware limited liability company, and Dexcom, Inc., a Delaware corporation

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**Tenant's Acceptance of Possession**

Premises Address: Expansion Premises per First Amendment dated November 10, 2020 10455 Pacific Center Court  
San Diego, CA 92126

Landlord: GC Pacific Center Court Owner, LLC

Tenant: DexCom, Inc.

As a representative of the above referenced tenant, I have physically inspected the suite noted above and its improvements with Dee Ordonez, Property Manager, as authorized agent for the Landlord. I accept the suite as of January 4, 2021 and as to compliance with the requirements indicated in our Lease, also including the verified information below:

Expansion Premises:

Lease Commencement Date: January 1, 2021

Expansion Premises:

Lease Rent Commencement Date: July 1, 2021 Date Keys Delivered to

Tenant: January 4, 2021

**THE FOREGOING IS ACKNOWLEDGED AND ACCEPTED: TENANT: DEXCOM, INC.**

By: /s/ Jereme Sylvain

Name: Jereme Sylvain

Title: EVP, Chief Financial Officer

## DEXCOM, INC.

**SUBSIDIARY****(Name under which subsidiary does business)****JURISDICTION OF INCORPORATION**

SweetSpot Diabetes Care, Inc.	Delaware
TypeZero Technologies, Inc.	Delaware
DexCapital, LLC	Delaware
The Glucose Program, LLC	Delaware
Nintamed Handels GmbH	Austria
DexCom Canada, Co.	Canada
DexCom (Canada) Inc.	Canada
DexCom Deutschland GmbH	Germany
DexCom Lithuania UAB	Lithuania
DexCom (Malaysia) Sdn Bhd.	Malaysia
DexCom Philippines, Inc.	Philippines
DexCom Asia Pacific Operations PTE Ltd.	Singapore
DexCom Kommanditbolag	Sweden
DexCom Suisse GmbH	Switzerland
DexCom (UK) Ltd.	United Kingdom
DexCom (UK) Intermediate Holdings Ltd.	United Kingdom
DexCom Operating Ltd.	United Kingdom
DexCom International Ltd.	United Kingdom
DexCom (UK) Distribution Ltd.	United Kingdom

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the incorporation by reference in the following Registration Statements:

- Registration Statement (Form S-3 Nos. 333-206619, 333-211101, 333-228495, and 333-261265) of DexCom, Inc.,
- Registration Statement (Form S-8 No. 333-204699) pertaining to the 2015 Equity Incentive Plan and the 2015 Employee Stock Purchase Plan of DexCom, Inc., and
- Registration Statement (Form S-8 Nos. 333-218562 and 333-234682) pertaining to the Amended and Restated 2015 Equity Incentive Plan of DexCom, Inc.;

of our reports dated February 14, 2022, with respect to the consolidated financial statements and schedule of DexCom, Inc., and the effectiveness of internal control over financial reporting of DexCom, Inc., included in this Annual Report (Form 10-K) of DexCom, Inc. for the year ended December 31, 2021.

/s/ Ernst & Young LLP

San Diego, California  
February 14, 2022

**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 annual report on Form 10-K 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.

February 14, 2022

By: /s/ KEVIN R. SAYER  
Kevin R. Sayer  
Chairman of the Board of Directors, President and  
Chief Executive Officer  
(Principal Executive Officer)

**CERTIFICATION OF CHIEF FINANCIAL OFFICER  
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Jereme M. Sylvain, certify that:

1. I have reviewed this annual report on Form 10-K 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.

February 14, 2022

By: /s/ JEREME M. SYLVAIN  
Jereme M. Sylvain  
Executive Vice President and Chief Financial Officer  
(Principal Financial and Accounting Officer)

CERTIFICATION OF CHIEF EXECUTIVE OFFICER  
PURSUANT TO  
18 U.S.C. SECTION 1350

The undersigned, Kevin R. Sayer, President and Chief Executive Officer of DexCom, Inc. (the “Company”), pursuant to 18 U.S.C. §1350, hereby certifies that:

(i) the annual Report on Form 10-K for the period ended December 31, 2021 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: February 14, 2022

/s/ KEVIN R. SAYER

Kevin R. Sayer  
Chairman of the Board of Directors, President and  
Chief Executive Officer  
(Principal Executive Officer)

CERTIFICATION OF CHIEF FINANCIAL OFFICER  
PURSUANT TO  
18 U.S.C. SECTION 1350

The undersigned, Jereme M. Sylvain, Executive Vice President and Chief Financial Officer of DexCom, Inc. (the “Company”), pursuant to 18 U.S.C. §1350, hereby certifies that:

(i) the annual Report on Form 10-K for the period ended December 31, 2021 of the Company (the “Report”) fully complies with the requirements of Section 13(a) or 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: February 14, 2022

/s/ JEREME M. SYLVAIN

Jereme M. Sylvain

Executive Vice President and Chief Financial Officer

(Principal Financial and Accounting Officer)