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

FORM 10-Q

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

For the quarterly period ended August 31, 2022

OR

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

For the transition period from _____ to _____

Commission File Number: 001-39348

ACCOLADE, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or Other Jurisdiction of
Incorporation or Organization)

01-0969591
(I.R.S. Employer
Identification No.)

1201 Third Avenue, Suite 1700
Seattle, WA 98101
(Address of principal executive offices
including zip code)

Registrant's telephone number, including area code: (206) 926-8100
Securities registered pursuant to Section 12(b) of the Act:

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

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes 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, smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

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

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

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

As of September 30, 2022, 71,938,910 shares of the registrant's common stock were outstanding.

ACCOLADE, INC.

INDEX

	<u>PAGE</u> <u>NUMBER</u>
Special Note Regarding Forward Looking Information and Risk Factor Summary	2
<u>PART I FINANCIAL INFORMATION</u>	
Item 1. Financial Statements (Unaudited)	
Condensed Consolidated Balance Sheets as of August 31, 2022 and February 28, 2022	4
Condensed Consolidated Statements of Operations for the three and six months ended August 31, 2022 and 2021	5
Condensed Consolidated Statements of Stockholders' Equity (Deficit) for the three and six months ended August 31, 2022 and 2021	6
Condensed Consolidated Statements of Cash Flows for the six months ended August 31, 2022 and 2021	7
Notes to Condensed Consolidated Financial Statements	8
Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations	33
Item 3. Quantitative and Qualitative Disclosures About Market Risk	47
Item 4. Controls and Procedures	47
<u>PART II OTHER INFORMATION</u>	
Item 1. Legal Proceedings	49
Item 1A. Risk Factors	49
Item 2. Unregistered Sales of Equity Securities and Use of Proceeds	86
Item 3. Defaults Upon Senior Securities	87
Item 4. Mine Safety Disclosures	87
Item 5. Other Information	87
Item 6. Exhibits	88

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS AND RISK FACTOR SUMMARY

This Quarterly Report on Form 10-Q contains forward-looking statements about us and our industry that involve substantial risks and uncertainties. All statements other than statements of historical facts contained in this Quarterly Report on Form 10-Q are forward-looking statements. In some cases, you can identify forward-looking statements because they contain words such as "anticipate," "believe," "contemplate," "continue," "could," "estimate," "expect," "intend," "may," "plan," "potential," "predict," "project," "should," "target," "will," or "would" or the negative of these words or other similar terms or expressions. Forward-looking statements include information related to our financial performance and possible or assumed future results of operations and expenses, our outlook, business strategies and plans, business environment, market size, product capabilities, timing of new product releases, the impact of our focus areas and key initiatives, and potential future growth. Forward-looking statements include all statements that are not historical facts.

You should not rely on forward-looking statements as predictions of future events. We have based the forward-looking statements contained in this Quarterly Report on Form 10-Q primarily on our current expectations and projections about future events and trends that we believe may affect our business, financial condition, and operating results. The outcome of the events described in these forward-looking statements is subject to risks, uncertainties, and other factors described in the section titled "Risk Factors" and elsewhere in this Quarterly Report on Form 10-Q. Moreover, we operate in a very competitive and rapidly changing environment. New risks and uncertainties emerge from time to time, and it is not possible for us to predict all risks and uncertainties that could have an impact on the forward-looking statements contained in this Quarterly Report on Form 10-Q. The results, events, and circumstances reflected in the forward-looking statements may not be achieved or occur, and actual results, events, or circumstances could differ materially from those described in the forward-looking statements.

In addition, statements that "we believe" and similar statements reflect our beliefs and opinions on the relevant subject. These statements are based on information available to us as of the date of this Quarterly Report on Form 10-Q. While we believe that such information provides a reasonable basis for these statements, that information may be limited or incomplete. Our statements should not be read to indicate that we have conducted an exhaustive inquiry into, or review of, all relevant information. These statements are inherently uncertain, and investors are cautioned not to unduly rely on these statements.

The forward-looking statements made in this Quarterly Report on Form 10-Q relate only to events as of the date on which the statements are made. We undertake no obligation to update any forward-looking statements made in this Quarterly Report on Form 10-Q to reflect events or circumstances after the date of this Quarterly Report on Form 10-Q or to reflect new information or the occurrence of unanticipated events, except as required by law. We may not actually achieve the plans, intentions, or expectations disclosed in our forward-looking statements, and you should not place undue reliance on our forward-looking statements. Our forward-looking statements do not reflect the potential impact of any future acquisitions, mergers, dispositions, joint ventures, or investments we may make.

RISK FACTOR SUMMARY

Investing in our securities involves a high degree of risk. Below is a summary of material factors that make an investment in our securities speculative or risky. Importantly, this summary does not address all of the risks that we face. Additional discussion of the risks summarized in this risk factor summary, as well as other risks that we face, can be found under the heading "Item 1A—Risk Factors," below.

- We have a history of net losses, we anticipate increasing expenses in the future, and we may not be able to achieve or maintain profitability.
- We derive a significant portion of our revenue from our largest customers. The loss of any of these customers, or renegotiation of any of our contracts with these customers, could negatively impact our results.

[Table of Contents](#)

- We have a limited operating history with some of our current offerings, in particular those which we have acquired, which makes it difficult to evaluate our current and future business prospects and increases the risk of your investment.
- Our business, results of operations, and financial condition may fluctuate on a quarterly and annual basis, which may result in a decline in our stock price if such fluctuations result in a failure to meet any projections that we may provide or the expectations of securities analysts or investors.
- Our sales cycle can be long and unpredictable and requires considerable time and expense. As a result, our sales, revenue, and cash flows are difficult to predict and may vary substantially from period to period, which may cause our results of operations to fluctuate significantly.
- Certain of our operating results and financial metrics may be difficult to predict as a result of seasonality and due to the fact that a portion of our revenue is subject to the achievement of performance metrics and healthcare cost savings.
- If we fail to effectively manage our growth and organizational change, our mission-driven culture could be impacted, and our business could be harmed.
- If we are unable to attract, integrate, and retain additional qualified personnel, especially for Accolade Health Assistants, clinical, including primary care physicians and medical specialists, and various product and technology roles, our business could be adversely affected.
- We may acquire other companies or technologies, which could divert our management's attention, result in dilution to our stockholders, and otherwise disrupt our operations, and we may have difficulty integrating any such acquisitions successfully or realizing the anticipated benefits therefrom, any of which could have an adverse effect on our business, financial condition, and results of operations.
- We may face intense competition, which could limit our ability to maintain or expand market share within our industry, and if we do not maintain or expand our market share our business and operating results will be harmed.
- The evolving effects of the Coronavirus Disease 2019 (COVID-19) pandemic and associated global economic instability may have further adverse effects on our operations and negatively impact our business, financial condition, and results of operations.
- If we fail to comply with healthcare laws and regulations, we could face substantial penalties and our business could be harmed.

PART I
FINANCIAL INFORMATION

Item 1. Financial Statements

ACCOLADE, INC. AND SUBSIDIARIES
Condensed Consolidated Balance Sheets (unaudited)
(In thousands, except share and per share data)

	August 31, 2022	February 28, 2022
Assets		
Current assets:		
Cash and cash equivalents	\$ 330,633	\$ 365,853
Accounts receivable, net	23,489	21,116
Unbilled revenue	7,119	9,685
Current portion of deferred contract acquisition costs	3,445	3,015
Prepaid and other current assets	10,101	9,468
Total current assets	374,787	409,137
Property and equipment, net	12,306	11,797
Operating lease right-of-use assets	32,300	33,126
Goodwill	278,191	577,896
Intangible assets, net	223,946	244,690
Deferred contract acquisition costs	8,792	7,205
Other assets	1,362	1,678
Total assets	\$ 931,684	\$ 1,285,529
Liabilities and stockholders' equity		
Current liabilities:		
Accounts payable	\$ 11,094	\$ 7,837
Accrued expenses and other current liabilities	9,931	11,000
Accrued compensation	30,940	39,189
Due to customers	8,519	16,263
Current portion of deferred revenue	45,005	30,875
Current portion of operating lease liabilities	7,173	6,589
Total current liabilities	112,662	111,753
Loans payable, net of unamortized issuance costs	281,500	280,666
Operating lease liabilities	30,721	32,486
Other noncurrent liabilities	203	4,562
Deferred revenue	284	268
Total liabilities	425,370	429,735
Commitments and Contingencies (note 12)		
Stockholders' equity		
Common stock par value \$0.0001; 500,000,000 shares authorized; 71,538,377 and 67,098,477 shares issued and outstanding at August 31, 2022 and February 28, 2022, respectively	7	7
Additional paid-in capital	1,390,296	1,350,431
Accumulated deficit	(883,989)	(494,644)
Total stockholders' equity	506,314	855,794
Total liabilities and stockholders' equity	\$ 931,684	\$ 1,285,529

See accompanying notes to condensed consolidated financial statements.

ACCOLADE, INC. AND SUBSIDIARIES
Condensed Consolidated Statements of Operations (unaudited)
(In thousands, except share and per share data)

	<u>Three months ended August 31,</u>		<u>Six months ended August 31,</u>	
	<u>2022</u>	<u>2021</u>	<u>2022</u>	<u>2021</u>
Revenue	\$ 87,643	\$ 73,288	\$ 173,171	\$ 132,815
Cost of revenue, excluding depreciation and amortization	49,830	44,334	97,445	80,270
Operating expenses:				
Product and technology	26,194	22,512	53,011	38,451
Sales and marketing	24,936	24,009	50,550	38,518
General and administrative	21,020	26,170	41,258	48,172
Depreciation and amortization	11,571	11,021	23,147	19,717
Goodwill impairment	—	—	299,705	—
Change in fair value of contingent consideration	—	19,686	—	30,146
Total operating expenses	83,721	103,398	467,671	175,004
Loss from operations	(45,908)	(74,444)	(391,945)	(122,459)
Interest expense, net	(236)	(776)	(870)	(1,394)
Other income (expense)	(130)	11	(180)	(44)
Loss before income taxes	(46,274)	(75,209)	(392,995)	(123,897)
Income tax benefit (expense)	(249)	12,845	3,650	12,826
Net loss	<u>\$ (46,523)</u>	<u>\$ (62,364)</u>	<u>\$ (389,345)</u>	<u>\$ (111,071)</u>
Net loss per share, basic and diluted	<u>\$ (0.66)</u>	<u>\$ (0.97)</u>	<u>\$ (5.54)</u>	<u>\$ (1.81)</u>
Weighted-average common shares outstanding, basic and diluted	<u>70,475,778</u>	<u>64,404,223</u>	<u>70,251,890</u>	<u>61,332,729</u>

See accompanying notes to condensed consolidated financial statements.

ACCOLADE, INC. AND SUBSIDIARIES
 Condensed Consolidated Statements of Stockholders' Equity (Deficit) (unaudited)
 (In thousands, except shares)

	Stockholders' Equity (Deficit)				
	Common stock		Additional paid-in capital	Accumulated deficit	Total
	Shares	Amount			
Balance, February 28, 2021	55,699,052	6	762,362	(371,520)	390,848
Issuance of common stock in connection with acquisition	2,822,242	—	116,187	—	116,187
Issuance of replacement awards in connection with acquisition	—	—	1,520	—	1,520
Exercise of stock options and vesting of restricted stock units	236,982	—	2,141	—	2,141
Purchase of capped calls	—	—	(34,503)	—	(34,503)
Issuance of common stock in connection with the employee stock purchase plan	50,516	—	1,948	—	1,948
Stock-based compensation expense	—	—	7,675	—	7,675
Net loss	—	—	—	(48,707)	(48,707)
Balance, May 31, 2021	58,808,792	\$ 6	\$ 857,330	\$ (420,227)	\$ 437,109
Issuance of common stock in connection with acquisition	7,144,393	1	330,337	—	330,338
Issuance of replacement awards in connection with acquisition	—	—	5,209	—	5,209
Exercise of stock options and vesting of restricted stock units	394,815	—	3,491	—	3,491
Stock-based compensation expense	—	—	19,775	—	19,775
Net loss	—	—	—	(62,364)	(62,364)
Balance, August 31, 2021	66,348,000	\$ 7	\$ 1,216,142	\$ (482,591)	\$ 733,558

	Stockholders' Equity (Deficit)				
	Common stock		Additional paid-in capital	Accumulated deficit	Total
	Shares	Amount			
Balance, February 28, 2022	67,098,477	7	1,350,431	(494,644)	855,794
Settlement of acquisition-related contingent consideration	1,939,853	—	—	—	—
Exercise of stock options and vesting of restricted stock units	228,701	—	358	—	358
Issuance of common stock in connection with the employee stock purchase plan	343,310	—	1,788	—	1,788
Stock-based compensation expense	—	—	19,389	—	19,389
Net loss	—	—	—	(342,822)	(342,822)
Balance, May 31, 2022	69,610,341	\$ 7	\$ 1,371,966	\$ (837,466)	\$ 534,507
Settlement of acquisition-related contingent consideration	1,327,408	—	—	—	—
Exercise of stock options and vesting of restricted stock units	600,628	—	816	—	816
Stock-based compensation expense	—	—	17,514	—	17,514
Net loss	—	—	—	(46,523)	(46,523)
Balance, August 31, 2022	71,538,377	\$ 7	\$ 1,390,296	\$ (883,989)	\$ 506,314

See accompanying notes to condensed consolidated financial statements

ACCOLADE, INC. AND SUBSIDIARIES
Condensed Consolidated Statements of Cash Flows (unaudited)
(In thousands)

	Six months ended August 31,	
	2022	2021
Cash flows from operating activities:		
Net loss	\$ (389,345)	\$ (111,071)
Adjustments to reconcile net loss to net cash used in		
Operating activities:		
Goodwill impairment	299,705	—
Depreciation and amortization expense	23,147	19,717
Amortization of deferred contract acquisition costs	1,713	1,246
Change in fair value of contingent consideration	—	30,146
Deferred income taxes	(3,859)	(12,865)
Noncash interest expense	838	823
Stock-based compensation expense	36,903	27,450
Changes in operating assets and liabilities, net of effect of acquisitions:		
Accounts receivable and unbilled revenue	193	1,440
Accounts payable and accrued expenses	3,623	(267)
Deferred contract acquisition costs	(3,730)	(2,349)
Deferred revenue and due to customers	6,403	16,735
Accrued compensation	(8,249)	(5,782)
Other liabilities	(474)	(75)
Other assets	(322)	(3,792)
Net cash used in operating activities	<u>(33,454)</u>	<u>(38,644)</u>
Cash flows from investing activities:		
Purchase of marketable securities	—	(99,998)
Sale of marketable securities	—	99,998
Capitalized software development costs	(1,499)	(356)
Purchases of property and equipment	(1,405)	(1,573)
Cash paid for acquisition, net of cash acquired	—	(261,873)
Net cash used in investing activities	<u>(2,904)</u>	<u>(263,802)</u>
Cash flows from financing activities:		
Proceeds from stock option exercises	1,178	5,654
Payments of equity issuance costs	—	(60)
Payment of debt issuance costs	—	(8,368)
Payment for purchase of capped calls	—	(34,443)
Proceeds from employee stock purchase plan	1,788	2,282
Proceeds from borrowings on debt	—	287,500
Payment of contingent consideration for acquisition	(1,828)	—
Net cash provided by financing activities	<u>1,138</u>	<u>252,565</u>
Net decrease in cash and cash equivalents	<u>(35,220)</u>	<u>(49,881)</u>
Cash and cash equivalents, beginning of period	365,853	433,884
Cash and cash equivalents, end of period	<u>\$ 330,633</u>	<u>\$ 384,003</u>
Supplemental cash flow information:		
Interest paid	\$ 820	\$ 102
Fixed assets included in accounts payable	\$ 429	\$ 166
Other receivable related to stock option exercises	\$ 4	\$ 75
Income taxes paid	\$ 22	\$ 60
Common stock issued in connection with acquisitions	\$ —	\$ 446,525
Replacement awards issued in connection with acquisitions	\$ —	\$ 6,729

See accompanying notes to condensed consolidated financial statements.

Accolade, Inc. and Subsidiaries
Notes to Condensed Consolidated Financial Statements (unaudited)
(in thousands except share and per share data)

(1) Background

Accolade, Inc. (Accolade or together with its subsidiaries, the Company) provides personalized, technology-enabled solutions that help people better understand, navigate, and utilize the healthcare system and their workplace benefits. The Company's customers are primarily employers that contract with Accolade to provide their employees and their employees' families (the members) a single place to turn for their health, healthcare, and benefits needs. The Company also offers expert medical opinion services to employer customers and virtual primary care and mental health support, both directly to consumers and to employer customers. These services are designed to drive better healthcare outcomes and increased satisfaction for the participants while lowering costs for the payor. The Company provides its services to customers throughout the United States. Accolade is co-headquartered in Seattle, Washington and Plymouth Meeting, Pennsylvania.

(2) Basis of Presentation and Summary of Significant Accounting Policies

The Company's significant accounting policies are disclosed in the audited financial statements for the year ended February 28, 2022 appearing in the Company's Annual Report on Form 10-K and filed with the Securities and Exchange Commission (the SEC) on May 2, 2022.

(a) Basis of Presentation and Principles of Consolidation

Accolade's consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America (U.S. GAAP) and include the Company's accounts and those of the Company's wholly owned subsidiaries. All significant intercompany balances and transactions have been eliminated in consolidation.

Through the acquisition of PlushCare, Inc. (PlushCare), the Company has various administrative service agreements (ASA) with professional medical corporations established in California, Illinois, Wyoming, and New Jersey (PC). The PCs employ or contract with medical providers who provide services via the Company's technology platform. The ASAs are evergreen and are terminable by the parties for breach or bankruptcy. Through the ASAs, the Company provides non-clinical administrative services to the PCs and manages the economic activities that most significantly affect PCs. The PCs retain control over the provision of medical services and the PC's clinical personnel.

The PCs are variable interest entities (VIE) to the Company. Under Accounting Standards Codification Subtopic 810 – *Consolidation*, the Company is considered the PC's primary beneficiary because the Company has the power to direct the activities that most significantly impact the VIE's economic performance and absorbs the residual benefits and losses from the VIE's operations. Consequently, the Company consolidates the operations of the PCs. PC assets were \$33,138 as of August 31, 2022. These assets consisted primarily of receivables from PlushCare, Inc. of \$16,891 and cash of \$13,766, which may only be used to settle the obligations of the PCs. PC liabilities were \$20,510 as of August 31, 2022 and consisted primarily of amounts due to Accolade, Inc. of \$16,051.

The PCs and the Company are independent entities, and as such creditors of the PCs do not have recourse against the Company in the event of default by the PCs. Additionally, the PCs' non-cash assets are available to the Company to satisfy obligations or for other corporate purposes.

(b) Unaudited Interim Financial Statements

The accompanying consolidated financial statements and the related footnote disclosures are unaudited. The unaudited consolidated interim financial statements have been prepared on the same basis as the annual audited consolidated financial statements and, in the opinion of management, reflect all adjustments, which include only normal recurring adjustments, necessary for the fair statement of the Company's interim consolidated financial position as of

Accolade, Inc. and Subsidiaries
Notes to Condensed Consolidated Financial Statements (unaudited)
(in thousands except share and per share data) (continued)

August 31, 2022, the results of its operations for the three and six months ended August 31, 2022 and 2021, and its cash flows for the six months ended August 31, 2022 and 2021. The results for the three and six months ended August 31, 2022 are not necessarily indicative of results to be expected for the year ending February 28, 2023, any other interim periods, or any future year or period. The Company's management believes that the disclosures are adequate to make the information presented not misleading when read in conjunction with the audited consolidated financial statements and accompanying notes for the year ended February 28, 2022.

(c) Capitalized Internal-Use Software Costs

Costs related to software acquired, developed, or modified solely to meet the Company's internal requirements, including tools that enable the Company's employees to interact with members and their providers, with no substantive plans to market such software at the time of development, are capitalized. Costs incurred during the preliminary planning and evaluation stage of the project and during the post-implementation operational stage are expensed as incurred. Costs related to minor upgrades, minor enhancements, and maintenance activities are expensed as incurred. Costs incurred during the application development stage of the project are capitalized. Internal-use software is included in property and equipment and is amortized on a straight-line basis over 3 years.

For the three months ended August 31, 2022 and 2021, the Company capitalized \$733 and \$356, respectively, for internal-use software. For the six months ended August 31, 2022 and 2021, the Company capitalized \$1,499 and \$356, respectively, for internal-use software. Amortization expense related to capitalized internal-use software during the three months ended August 31, 2022 and 2021 was \$289 and \$592, respectively. Amortization expense related to capitalized internal-use software during the six months ended August 31, 2022 and 2021 was \$579 and \$1,806, respectively.

(d) Impairment of Long-Lived Assets

The Company reviews long-lived assets, such as property and equipment and finite-lived intangibles, for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to estimated undiscounted future cash flows expected to be generated by the asset. If the carrying amount of an asset exceeds its estimated undiscounted future cash flows, then an impairment charge is recognized for the amount by which the carrying value of the asset exceeds the fair value of the asset. There were no long-lived asset impairment charges recorded during the three and six months ended August 31, 2022 and 2021.

(e) Intangible Assets

The Company has acquired intangible assets in the form of developed technology, customer relationships, trade names, supplier-based network, and non-compete agreements through various acquisitions. Intangible assets are recorded at fair value on the date of acquisition and are subject to amortization over the estimated useful lives of each asset. Estimates of fair value and useful lives are based on historical factors, current circumstances, and the experience and judgment of management. Estimates and assumptions used to value intangible assets are evaluated by management on an ongoing basis.

(f) Goodwill

Goodwill is the excess of the cost of an acquired entity over the net amounts assigned to tangible and intangible assets acquired and liabilities assumed. Goodwill is not amortized, but is subject to an annual impairment test. The Company has a single reporting unit and all goodwill relates to that reporting unit.

The Company performs an impairment analysis of goodwill on an annual basis in the fourth quarter of each fiscal year or more frequently if changes in circumstances or the occurrence of events suggest that an impairment exists.

Accolade, Inc. and Subsidiaries
Notes to Condensed Consolidated Financial Statements (unaudited)
(in thousands except share and per share data) (continued)

If the fair value of the reporting unit is less than its carrying value, an impairment loss is recorded. A goodwill impairment loss was recorded during the first quarter of fiscal 2023. See Note 5 for further information.

(g) Revenue and Deferred Revenue

Revenue Recognition

The Company generates revenue by providing customers access to its advocacy, expert medical opinion, and virtual primary care and mental health support services, as well as through utilization of its expert medical opinion and virtual primary care and mental health support services that were acquired through the acquisitions of Innovation Specialists LLC d/b/a 2nd.MD (2nd.MD) and PlushCare. Contracts with customers that include expert medical opinion or virtual primary care and mental health support services may contain either an access fee, a utilization-based fee, or both.

In accordance with Accounting Standards Codification (ASC) 606, *Revenue from Contracts with Customers*, the Company recognizes revenue when control of the promised services is transferred to its customers, in an amount that reflects the consideration to which it expects to be entitled in exchange for those services. Accordingly, the Company determines revenue recognition through the following steps:

- identification of the contract, or contracts with a customer;
- identification of the performance obligations in the contract;
- determination of the transaction price;
- allocation of the transaction price to the performance obligations in the contracts; and
- recognition of revenue when, or as, the Company satisfies a performance obligation.

At contract inception, the Company assesses the type of services being provided and assesses the performance obligations in the contract. The transaction price is allocated to the separate performance obligations on a relative standalone selling price basis. The Company determines the standalone selling prices based on overall pricing objectives, taking into consideration market conditions and other factors, using an expected cost plus margin approach. The Company considered the variable consideration allocation exception in ASC 606 for its advocacy contracts and concluded that such exception for allocating variable consideration to distinct performance obligations or distinct time periods within a series was not met primarily due to variability in its per-member-per-month (PMPM) pricing.

The majority of fees earned by the Company are considered to be variable consideration due to both the uncertainty regarding the total number of members, consultations or visits for which the Company will invoice the customer, as well as the variable PMPM fees that are dependent upon the achievement of performance metrics and/or healthcare cost savings. Performance metrics are measured monthly, quarterly, or annually, and with respect to the achievement of healthcare cost savings targets, annually (typically measured on a calendar year basis). Accordingly, at contract inception and on an ongoing basis, as part of the Company's estimate of the transaction price, the Company determines whether any such fees should be constrained, and the Company includes the estimated consideration for those fees to the extent that it is probable that a significant reversal of cumulative revenue recognized will not occur (and is therefore considered to be unconstrained). Consideration related to the Company's achievement of healthcare cost savings is typically constrained until the end of the applicable calendar year due to uncertainty related to factors outside of the Company's control. Consideration related to other performance metrics is typically not constrained based on the Company's prior success of achieving such metrics. On an ongoing basis, the Company reassesses its estimates for variable consideration, which can change based upon its assessment of the achievement of performance metrics and healthcare cost savings, as well as the number of members, consultations, or visits.

Accolade, Inc. and Subsidiaries
Notes to Condensed Consolidated Financial Statements (unaudited)
(in thousands except share and per share data) (continued)

Access Fees

The Company generates revenue primarily from contracts with customers to access the Company's advocacy, expert medical opinion, and virtual primary care and mental health support services. The Company prices access fees primarily using a recurring PMPM fee, typically with a portion of the fee calculated as the product of a fixed rate times the number of members (fixed PMPM fee), plus a variable PMPM fee calculated as the product of a variable rate times the number of members (variable PMPM fee). The fees associated with the variable PMPM fee can be earned through the achievement of performance metrics and/or the realization of healthcare cost savings resulting from use of the Company's services. Collectively, the fixed PMPM fee and variable PMPM fee are referred to as the total PMPM fee. The Company's PMPM pricing varies by contract. In certain contracts, the maximum total PMPM fee varies during the contract term (total PMPM rate increases or decreases annually), while in other contracts, the total PMPM maximum fee is consistent over the term, yet the fixed and variable portions vary. For example, in certain contracts the fixed PMPM fee increases on an annual basis while the variable PMPM fee decreases on an annual basis, resulting in the same total PMPM fee throughout the term of the contract. The PMPM fees for expert medical opinion and virtual primary care and mental health support services may be tiered based upon the customer's utilization.

Access to the Company's services represent a single stand-ready performance obligation. The Company's contracts include stand-ready services to provide eligible participants with access to the Company's services and to perform an unspecified quantity of interactions with members during the contract period. Accordingly, the Company's services are generally viewed as stand-ready performance obligations comprised of a series of distinct daily services that are substantially the same and have the same pattern of transfer. For advocacy services, the Company satisfies these performance obligations over time and recognizes revenue related to its services as the services are provided using a measure of progress based upon the actual number of members eligible for the service during the respective period as a percentage of the estimated members expected to be eligible for the service over the term of the contract. The Company believes a measure of progress based on the number of members is the most appropriate measurement of control of the services being transferred to the customer as the amount of internal resources necessary to stand-ready is directly correlated to the number of members who can use the services.

For the majority of expert medical opinion services, the Company satisfies these performance obligations over time and recognizes revenue in the amount of consideration for which it has the right to invoice using the as-invoiced practical expedient. Access fees also include access to the Company's virtual primary care and mental health support services sold directly to consumers on a monthly or yearly fixed fee subscription basis. For these services, the Company satisfies these stand-ready performance obligations over time and recognizes revenue ratably over the subscription period.

Utilization-based fees

The Company also generates revenue when members utilize the expert medical opinion and virtual primary care and mental health support services that are billed based on utilization. Many, but not all, contracts with customers contain utilization-based fees. For any utilization-based fees, the Company satisfies these performance obligations over time and recognizes revenue in the amount of consideration for which it has the right to invoice using the as-invoiced practical expedient for any consultations or visits sold to enterprise customers as well as any non-insured consultations or visits related to virtual primary care and mental health support services sold directly to consumers. For any consultations or visits that are paid through insurance claims, the Company recognizes revenue as the consultations and visits occur in an amount that reflects the consideration that is expected based upon then-current prices and historical experience from insurance payors.

Deferred Revenue

The Company typically invoices its customers in advance of the services performed on a monthly or quarterly basis, and the amount invoiced typically represents the maximum total PMPM fee for the estimated number of eligible members over the applicable invoice period. The total PMPM fee covers the stand-ready services in the Company's typical

Accolade, Inc. and Subsidiaries
Notes to Condensed Consolidated Financial Statements (unaudited)
(in thousands except share and per share data) (continued)

contracts (i.e., the performance obligations are not separately priced or invoiced). The maximum total PMPM fee that is invoiced includes both the fixed PMPM fee and the variable PMPM fee related to the performance metrics and/or the realization of healthcare cost savings that can be achieved during the period. These fees are classified as deferred revenue on the Company's consolidated balance sheet until such time that revenue can be recognized. In the event the Company fails to satisfy any of the performance metrics and/or realization of healthcare cost savings that are billed in advance, the Company will refund the applicable portion of the fee or offset the amount against a future invoice. These amounts are included in due to customers on the Company's consolidated balance sheet. The Company's accounts receivable represent rights to consideration that are unconditional.

(h) Concentration of Credit Risk

Financial instruments that potentially subject the Company to credit risk consist principally of cash, cash equivalents, and marketable securities. The Company maintains its cash primarily with domestic financial institutions of high credit quality, which may exceed federal deposit insurance corporation limits. The Company invests its cash equivalents in highly rated money market funds. Marketable securities are comprised of United States treasury bills with original maturities greater than 90 days. The Company has not experienced any losses in such accounts. The Company believes it is not exposed to any significant credit risk on cash, cash equivalents, and marketable securities and performs periodic evaluations of the credit standing of such institutions.

Significant customers are those which represent 10% or more of the Company's revenue during the periods. For each significant customer, revenue as a percentage of total revenue was as follows:

	<u>For the three months ended August 31,</u>		<u>For the six months ended August 31,</u>	
	2022	2021	2022	2021
Customer 1	* %	9.7 %	* %	10.7 %

*For the three and six months ended August 31, 2022, no customer represented 10% or more of the Company's revenue.

(i) Marketable Securities

The Company classifies its marketable securities as available-for-sale, which include U.S. treasury bills with original maturities of greater than three months. These securities are carried at fair market value.

(j) Leases

In February 2016, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update (ASU) 2016-02, *Leases* (Topic 842). The new guidance requires lessees to recognize lease liabilities and corresponding right-of-use assets for all leases with terms of more than 12 months.

The Company adopted Topic 842 on February 28, 2022, with an effective date of adoption of March 1, 2021, using the modified retrospective approach. Topic 842 requires the Company to recognize a lease liability, which represents the discounted obligation to make future minimum lease payments, and a corresponding right-of-use (ROU) asset on its consolidated balance sheet for most leases and disclose key information about leasing arrangements. The Company elected to utilize the package of practical expedients available under Topic 842, which allowed it to not reassess: (i) whether any expired or existing contracts contain leases, (ii) the lease classification for any expired or existing leases, and (iii) the initial direct costs for existing leases. As a result of the adoption, the Company recorded operating lease right-of-use assets and operating lease liabilities of \$34,739 and \$38,740, respectively, on the consolidated balance sheet as of March 1, 2021.

Accolade, Inc. and Subsidiaries
Notes to Condensed Consolidated Financial Statements (unaudited)
(in thousands except share and per share data) (continued)

Whenever the Company enters into a new arrangement, it determines, at the inception date, whether the arrangement is or contains a lease. This determination generally depends on whether the arrangement conveys to the Company the right to control the use of an explicitly or implicitly identified asset for a period of time in exchange for consideration. Control of an underlying asset is conveyed to the Company if the Company obtains the right to direct the use of, and obtain substantially all the economic benefits from, the use of the underlying asset.

If a lease exists, the Company then determines the separate lease and non-lease components of the arrangement. Each right to use an underlying asset conveyed by a lease arrangement should generally be considered a separate lease component if it both: (i) can benefit the Company without depending on other resources not readily available to the Company and (ii) does not significantly affect, and is not significantly affected by, other rights of use conveyed by the lease. Aspects of a lease arrangement that transfer other goods or services to the Company but do not meet the definition of lease components are considered non-lease components. The consideration owed by the Company pursuant to a lease arrangement is generally allocated to each lease and non-lease component for accounting purposes. However, the Company has elected, for all of its leases, to not separate lease and non-lease components.

For each lease, the Company then determines the lease term, the present value of lease payments, and the classification of the lease as either an operating or finance lease. The lease term is the period of the lease not cancellable by the Company, together with periods covered by: (i) renewal options the Company is reasonably certain to exercise, (ii) termination options the Company is reasonably certain not to exercise, and (iii) renewal or termination options that are controlled by the lessor.

The present value of lease payments is calculated based on:

- (1) Lease payments – Lease payments included in the measurement of the lease asset or liability comprise the following: fixed payments (including in-substance fixed payments), and the exercise price of a lessee option to purchase the underlying asset if the lessee is reasonably certain to exercise.
- (2) Discount rate – the discount rate is determined based on information available to the Company upon the commencement of the lease. Lessees are required to use the rate implicit in the lease whenever such rate is readily available; however, as the implicit rate in the Company's leases is generally not readily determinable, the Company generally uses the incremental borrowing rate it would have to pay to borrow an amount equal to the lease payments, on a collateralized basis, over a timeframe similar to the lease term.

In making the determination of whether a lease is an operating lease or a finance lease, the Company considers the lease term in relation to the economic life of the leased asset, the present value of lease payments in relation to the fair value of the leased asset and certain other factors, including the lessee's and lessor's rights, obligations, and economic incentives over the term of the lease.

The Company does not recognize leases with an initial term of 12 months or less on its consolidated balance sheets and will recognize these payments in the consolidated statements of operations on a straight-line basis over the lease term. Certain leases contain variable payments which are based on usage or operating costs, such as utilities and maintenance. These payments are not included in the measurement of the lease liability or corresponding right-of-use asset due to the uncertainty of the payment amount and are recorded as lease expense in the period incurred.

Prior to the adoption of Topic 842, the Company accounted for leases under FASB ASC Topic 840, *Leases* (Topic 840).

(k) Recently Issued Accounting Standards

In June 2022, the FASB issued ASU 2022-03, *Fair Value Measurement (Topic 820): Fair Value Measurement of Equity Securities Subject to Contractual Sale Restrictions*. This ASU clarifies the guidance when measuring the fair

Accolade, Inc. and Subsidiaries
Notes to Condensed Consolidated Financial Statements (unaudited)
(in thousands except share and per share data) (continued)

value of an equity security subject to contractual sale restrictions that prohibit the sale of an equity security and requires certain disclosures for equity securities subject to contractual sale restrictions that are measured at fair value in accordance with Topic 820. This guidance is effective for annual reporting periods, including interim periods, beginning after December 15, 2023, with early adoption permitted. The provisions of ASU 2022-03 are to be applied prospectively with any adjustments made to earnings on the date of adoption. The Company is currently evaluating the impact, if any, of this guidance on its financial statements.

(3) Revenue

The following table presents the Company's revenues disaggregated by revenue source:

	Three Months Ended August 31, 2022	2021	Six Months Ended August 31, 2022	2021
Access fees	\$ 67,878	\$ 60,700	\$ 136,003	\$ 116,905
Utilization-based fees	19,765	12,588	37,168	15,910
Total	<u>\$ 87,643</u>	<u>\$ 73,288</u>	<u>\$ 173,171</u>	<u>\$ 132,815</u>

As of August 31, 2022, \$245,661 of revenue is expected to be recognized from remaining performance obligations and is expected to be recognized as follows:

Fiscal year ending February 28(29),	
Remainder of 2023	\$ 94,756
2024	94,071
2025	49,164
2026	7,670
Total	<u>\$ 245,661</u>

The expected revenue includes variable fee estimates for the non-cancellable term of the Company's contracts. The expected revenue does not include amounts of variable consideration that are constrained.

Significant changes to the contract liability balances during the six months ended August 31, 2022 and 2021 were the result of revenue recognized as well as net cash received and liabilities assumed associated with the acquisitions of 2nd.MD and PlushCare (during the six months ended August 31, 2021). Significant changes in the deferred revenue balances during the six months ended August 31, 2022 and 2021 were the result of recognized revenue of \$29,550 and \$23,746, respectively, that were previously included in deferred revenue. In addition, significant changes to the contract asset balances during the three and six months ended August 31, 2022 and 2021 were the result of revenue recognized as well as transfers to accounts receivable. Contract assets relating to unbilled revenue are transferred to accounts receivable when the right to consideration becomes unconditional.

Revenue related to performance obligations satisfied in prior periods that was recognized during the three months ended August 31, 2022 and 2021 was \$794 and \$1,348, respectively. Revenue related to performance obligations satisfied in prior periods that was recognized during the six months ended August 31, 2022 and 2021 was \$2,623 and \$2,758, respectively. These amounts relate to the ratable recognition through the minimum contract term of performance obligations satisfied in prior periods related to the Company's achievement of healthcare cost savings.

Cost to obtain and fulfill a contract

The Company capitalizes sales commissions paid to internal sales personnel that are both incremental to the acquisition of customer contracts and recoverable. These costs are recorded as deferred contract acquisition costs in the accompanying consolidated balance sheets. The Company capitalized commission costs of \$2,662 and \$1,606 for the three months ended August 31, 2022 and 2021, respectively. The Company capitalized commission costs of \$3,500 and

Accolade, Inc. and Subsidiaries
Notes to Condensed Consolidated Financial Statements (unaudited)
(in thousands except share and per share data) (continued)

\$2,033 for the six months ended August 31, 2022 and 2021, respectively. The Company defers costs based on its sales compensation plans only if the commissions are incremental and would not have occurred absent the customer contract. Payments to direct sales personnel are typically made upon signature of the contract. The Company does not pay commissions on contract renewals.

Deferred commissions are paid over the first year of a contract and are amortized ratably over an estimated period of benefit of five years, which is the estimated customer life. The Company determined the period of amortization for deferred commissions by taking into consideration current customer contract terms, historical customer retention, and other factors. Amortization is included in sales and marketing expenses in the accompanying consolidated statements of operations and totaled \$672 and \$466 for the three months ended August 31, 2022 and 2021, respectively, and \$1,264 and \$904 for the six months ended August 31, 2022 and 2021, respectively. The Company periodically reviews deferred contract acquisition costs to determine whether events or changes in circumstances have occurred that could impact the estimated period of benefit. There were no impairment losses recorded during the periods presented.

For certain customer contracts, the Company may incur direct and incremental costs related to customer set-up and implementation. The Company recorded deferred implementation costs of \$144 and \$234 for the three months ended August 31, 2022 and 2021, respectively, and \$230 and \$315 for the six months ended August 31, 2022 and 2021, respectively. These implementation costs are deferred and amortized over the expected useful life of the Company's customers, which is five years. Amortization is included in cost of revenues in the Company's consolidated statements of operations and totaled \$223 and \$179 for the three months ended August 31, 2022 and 2021, respectively, and \$448 and \$343 for the six months ended August 31, 2022 and 2021, respectively.

(4) Acquisitions

Acquisition of 2nd.MD

On March 3, 2021, the Company acquired all the outstanding equity interests of 2nd.MD. Based in Houston, Texas, 2nd.MD is a leading expert medical opinion and medical decision support company. The results of operations and financial position of 2nd.MD are included in the Company's consolidated financial statements from the date of acquisition.

The consideration paid was comprised of cash, common stock, and contingent consideration as follows:

Consideration	
Cash consideration, net of cash acquired	\$ 226,135
Fair value of common stock issued	116,187
Fair value of replacement awards	1,520
Fair value of contingent consideration	76,248
Total consideration	<u>\$ 420,090</u>

The aggregate purchase consideration of \$420,090 was provided through cash of \$226,135 (net of \$205 cash acquired) and the issuance of up to 4,384,882 shares of the Company's common stock, of which 2,822,242 were issued upon closing of the acquisition, of which 2,495,441 were fully vested at the time of issuance with the remaining 326,801 vesting over future service periods. The cash consideration in the above table includes the repayment of 2nd.MD debt of \$13,026. The contingent consideration represented potential obligations for the Company to issue up to 2,170,972 additional shares of its common stock to the selling shareholders of 2nd.MD and is comprised of two earnout scenarios associated with (1) a contract renewal and (2) the achievement of certain future revenue milestones. As a result of the contract renewal and achievement of certain revenue milestones, the Company will issue a total of 1,977,343 shares of its common stock, of which 1,939,853 shares of common stock were issued in May 2022. The estimated fair value of the replacement awards issued in the above table is comprised of 120,760 restricted stock units issued to 2nd.MD employees with an estimated fair value of \$5,434 of which \$1,520 was attributable to pre-acquisition services. The remaining

Accolade, Inc. and Subsidiaries
Notes to Condensed Consolidated Financial Statements (unaudited)
(in thousands except share and per share data) (continued)

estimated value of \$3,914 associated with the replacement awards is attributable to post-acquisition services and is being expensed over the requisite service periods of the awards.

Several key 2nd.MD employees entered into agreements with the Company whereby their pro rata portion of shares issued at closing and upon achievement of the contingent consideration milestones are also subject to continuous employment with the Company and vest annually over a period of two years following the acquisition date. Upon voluntary termination of employment, any unvested shares will be forfeited. Due to the risk of forfeiture upon termination of employment, the aggregate 326,801 shares issued at closing and the aggregate shares eligible to be issued upon achievement of the contingent consideration milestones of 281,531 shares were excluded from the purchase price and contingent consideration. These shares are accounted for as stock-based compensation expense in the post business combination periods.

The estimated fair value of the contingent consideration associated with future revenue milestones was determined using a Monte Carlo simulation. The Monte Carlo simulation performs numerous simulations utilizing certain assumptions such as (i) projected eligible revenues, (ii) expected term, (iii) risk-free rate, (iv) risk-adjusted discount rate, (v) share volatility and (vi) operational leverage ratio between revenues and earnings before interest, taxes, depreciation and amortization (EBITDA). The fair value measurements for contingent consideration are based on significant inputs not observable in the market and thus represents a Level 3 measurement within the fair value hierarchy. Changes in the assumptions used could materially change the estimated fair value of the contingent consideration. The estimated fair value of the contingent consideration was \$37,767 as of January 31, 2022, at which time the contingency was resolved. The estimated fair value of contingent consideration decreased from the acquisition date to January 31, 2022 primarily due to a decrease in the Company's stock price. The Company recorded the change in fair value of its contingent consideration liability in the consolidated statements of operations until January 31, 2022. Upon resolution of the contingency and determination of the number of common stock shares to be issued, the Company reclassified the value of the contingent consideration from a liability into stockholders' equity in the consolidated balance sheet.

The Company accounted for the acquisition of 2nd.MD under the U.S. GAAP business combinations guidance. This accounting requires that assets acquired and liabilities assumed be recognized at their fair values as of the acquisition date. The allocation of the purchase price to the assets acquired and liabilities assumed was subject to further adjustment within the measurement period (up to one year from the acquisition date). Measurement period adjustments since initial preliminary estimates reported in the first quarter of fiscal 2022 were primarily related to an updated working capital calculation. The cumulative effect of all measurement period adjustments resulted in a decrease to recognized goodwill of \$1,878. As of February 28, 2022, the purchase price allocation was considered complete.

Accolade, Inc. and Subsidiaries
Notes to Condensed Consolidated Financial Statements (unaudited)
(in thousands except share and per share data) (continued)

The following table summarizes the estimated fair values of the assets acquired and liabilities assumed at the date of acquisition.

Assets acquired:	
Accounts receivable	\$ 5,550
Unbilled revenue	226
Current portion of deferred contract acquisition costs	176
Prepaid and other current assets	1,052
Property and equipment	4,344
Deferred contract acquisition costs	564
Goodwill	208,286
Intangible assets ⁽¹⁾	
Customer relationships	120,000
Technology	58,000
Supplier-based network	25,000
Trade name	3,400
Non-compete agreement	3,100
Total assets acquired	<u>\$ 429,698</u>
Liabilities assumed:	
Accounts payable	\$ 1,195
Accrued expenses	585
Accrued compensation	3,817
Deferred rent and other current liabilities	904
Due to customers	294
Current portion of deferred revenue	625
Deferred rent and other noncurrent liabilities	2,188
Total liabilities assumed	<u>\$ 9,608</u>
Net assets acquired	<u>\$ 420,090</u>

(1) The weighted-average useful life of intangible assets acquired is approximately 14 years.

The purchase price was allocated to the tangible and identifiable intangible assets acquired and liabilities assumed based on their estimated fair values at the acquisition date. The identifiable intangible assets included technology, customer relationships, trade name, supplier based network, and non-compete agreements and are being amortized on a straight-line basis ranging from 3 years to 20 years. Customer relationships and trade names were valued using a multiple period excess earnings method (MPEEM) and the relief from royalty method (RFR), respectively. The supplier-based network and non-compete agreement intangible assets were valued using the “With and Without Method.” These valuation methods are specific forms of the Income Approach, which is a valuation technique that derives value by estimating the fair value of after-tax cash flows attributable to the acquired intangibles. The valuation methods require several judgments and assumptions to determine the fair value of intangible assets, including growth rates, discount rates, customer attrition rates, expected levels of cash flows, and tax rate. Key assumptions used included revenue projections for fiscal 2022 through 2032, an attrition rate of 8.0%, a tax rate of 24%, a discount rate of 13%, a royalty rate of 1.5% and probability of competition of 33%.

The technology intangible asset was valued using the estimated replacement cost method. This method requires several judgments and assumptions to determine the fair value, including expected profits and opportunity cost. Goodwill is attributable to the workforce of 2nd.MD as well as expected future growth into new and existing markets and is deductible for income tax purposes.

Accolade, Inc. and Subsidiaries
Notes to Condensed Consolidated Financial Statements (unaudited)
(in thousands except share and per share data) (continued)

Acquisition of PlushCare

On June 9, 2021, the Company acquired all the outstanding equity interests of PlushCare. Based in San Francisco, California, PlushCare is a provider of various technology and administrative services to the medical practice PCs, which in turn provide virtual primary care and mental health support to patients. The results of operations and financial position of PlushCare are included in the Company's consolidated financial statements from the date of acquisition.

The consideration paid was comprised of cash, common stock, and contingent consideration as follows:

Consideration	
Fair value of common stock issued	\$ 330,338
Fair value of contingent consideration	44,618
Cash consideration, net of cash acquired	33,860
Fair value of replacement awards	5,209
Total consideration	<u>\$ 414,025</u>

The aggregate purchase consideration of \$414,025 was provided through cash of \$33,860 (net of \$17,837 cash acquired and \$1,463 of debt repaid) and the issuance of 7,144,393 shares of the Company's common stock, of which 854,717 are subject to future vesting and excluded from consideration paid. The contingent consideration represented a potential obligation for the Company to issue up to an additional 1,429,556 shares of its common stock and up to approximately \$2,000 in cash upon the achievement of defined revenue milestones following the closing, of which \$1,828 was paid during the three months ended August 31, 2022. Up to 102,111 shares of this contingent consideration will be withheld from being issued to the selling shareholders of PlushCare until the resolution of a pending litigation matter. The contingency was resolved at December 31, 2021, and as a result the Company issued 1,327,408 shares of its common stock during the three months ended August 31, 2022, excluding the 102,111 shares that are withheld pending the resolution of the litigation matter.

The estimated fair value of the replacement awards issued in the above table is comprised of 325,992 options to purchase Accolade common stock issued to PlushCare employees as of the acquisition date with an estimated fair value of \$16,663, of which \$5,209 was attributable to pre-acquisition services. The remaining estimated value of \$11,454 associated with the replacement awards is attributable to post-acquisition services and is being expensed over the requisite service periods of the awards.

Certain key PlushCare employees entered into agreements with the Company whereby a portion of their shares issued at closing are subject to continuous employment with the Company and vest annually over a three-year period following the acquisition date. Upon voluntary termination of employment, any unvested shares will be forfeited. Due to the risk of forfeiture upon termination of employment, the 806,161 shares subject to forfeiture have been excluded from the purchase price and are accounted for as stock-based compensation expense in the post-business combination periods. Also, one PlushCare employee received 48,556 shares of unvested common stock. These shares vest on a pro rata basis monthly through May 2023.

The estimated fair value of the contingent consideration associated with future revenue milestones was determined using a Monte Carlo simulation. The Monte Carlo simulation performs numerous simulations utilizing certain assumptions such as (i) projected eligible revenues, (ii) expected term, (iii) risk-free rate, (iv) risk-adjusted discount rate, (v) share volatility, and (vi) operational leverage ratio between revenues and earnings before interest, taxes, depreciation, and amortization (EBITDA). The fair value measurements for contingent consideration are based on significant inputs not observable in the market and thus represent a Level 3 measurement within the fair value hierarchy. The estimated fair value of the contingent consideration was \$37,683 as of December 31, 2021, at which time the contingent consideration was resolved. The estimated fair value of contingent consideration decreased since the acquisition date primarily due to a decrease in the Company's stock price. The Company recorded the change in fair value of its contingent consideration liability in the consolidated statements of operations through December 31, 2021.

Accolade, Inc. and Subsidiaries
Notes to Condensed Consolidated Financial Statements (unaudited)
(in thousands except share and per share data) (continued)

Upon resolution of the contingency and determination of the number of common stock shares to be issued, the Company reclassified the value of the contingent consideration from a liability into stockholders' equity as of February 28, 2022 in the consolidated balance sheet.

The Company accounted for the acquisition of PlushCare under the U.S. GAAP business combinations guidance. This accounting requires that assets acquired and liabilities assumed be recognized at their fair values as of the acquisition date. The allocation of the purchase price to the assets acquired and liabilities assumed was subject to further adjustment within the measurement period (up to one year from the acquisition date).

During the three months ended November 30, 2021, the Company included a correction to the fair value of contingent consideration from the preliminary value recorded in the second fiscal quarter of 2022 in the amount of \$3,292. This correction resulted in an increase to recognized goodwill of \$5,799 and would have resulted in less change in fair value of contingent consideration expense and net loss on the statement of operations of \$3,292 during the three months ended August 31, 2021. The Company has concluded that this error was not material to the financial statements taken as a whole and has not revised the statement of operations for the three months ended August 31, 2021 presented in these financial statements.

Measurement period adjustments since initial preliminary estimates reported in the second quarter of fiscal 2022 were primarily related to updated assessments of acquired deferred tax liability and accounts receivable. The cumulative effect of all measurement period adjustments resulted in a decrease to recognized goodwill of \$1,685. As of May 31, 2022, the purchase price allocation was considered complete.

Accolade, Inc. and Subsidiaries
Notes to Condensed Consolidated Financial Statements (unaudited)
(in thousands except share and per share data) (continued)

The following table summarizes the estimated fair values of the assets acquired and liabilities assumed at the date of acquisition.

Assets acquired:	
Accounts receivable	\$ 1,359
Prepaid and other current assets	573
Property and equipment	298
Other noncurrent assets	932
Goodwill	365,597
Intangible assets ⁽¹⁾	
Customer relationships	4,050
Technology	40,650
Trade name	10,300
Non-compete agreements	6,200
Total assets acquired	<u>\$ 429,959</u>
Liabilities assumed:	
Accounts payable	\$ 1,532
Accrued expenses	193
Accrued compensation	2,117
Current portion of deferred revenue	1,212
Deferred tax liability	9,992
Other liabilities	888
Total liabilities assumed	<u>\$ 15,934</u>
Net assets acquired	<u>\$ 414,025</u>

(1) The weighted-average useful life of intangible assets acquired is approximately 5 years.

The purchase price was allocated to the tangible and identifiable intangible assets acquired and liabilities assumed based on their estimated fair values at the acquisition date. The identifiable intangible assets included customer relationships, technology, trade name, and non-compete agreements and are being amortized on a straight-line basis ranging from 2 years to 10 years. The valuation methods require several judgments and assumptions to determine the fair value of intangible assets, including growth rates, discount rates, customer attrition rates, expected levels of cash flows, and tax rate. Key assumptions used included revenue projections for fiscal years 2022 through 2035, an attrition rate of 25% and 50%, a tax rate of 25%, a discount rate of 12.5%, a royalty rate of 3% and probabilities of competition between 70% and 90%.

The technology intangible asset was valued using the estimated replacement cost method. This method requires several judgments and assumptions to determine the fair value, including expected profits and opportunity cost. Goodwill is attributable to the workforce of PlushCare as well as expected future growth into new and existing markets and is not deductible for income tax purposes.

Unaudited Pro Forma Financial Information

The following table reflects the pro forma operating results for the Company which gives effect to the acquisitions of 2nd.MD and PlushCare as if they had occurred on March 1, 2020. The pro forma results are based on assumptions that the Company believes are reasonable under the circumstances. The pro forma results are not necessarily indicative of future results. The pro forma financial information includes the historical results of the

Accolade, Inc. and Subsidiaries
Notes to Condensed Consolidated Financial Statements (unaudited)
(in thousands except share and per share data) (continued)

Company, 2nd.MD, and PlushCare adjusted for certain items, which are described below, and does not include the effects of any synergies or cost reduction initiatives related to the acquisitions of 2nd.MD or PlushCare.

	Unaudited Pro Forma	
	Three months ended August 31, 2021	Six months ended August 31, 2021
Revenue	\$ 74,629	\$ 147,161
Net loss	\$ (62,491)	\$ (125,590)

Pro forma net loss for the three and six months ended August 31, 2021 reflect adjustments primarily related to interest expense, the amortization of intangible assets and stock-based compensation expense. The unaudited pro forma financial information is not necessarily indicative of what the Company's consolidated results actually would have been if the acquisition had been completed at the beginning of the respective periods.

Acquisition of HealthReveal

On September 30, 2021, the Company acquired substantially all the assets of HealthReveal, Inc. (HealthReveal). HealthReveal is a clinical artificial intelligence company focused on ensuring patients receive optimal, personalized chronic care to preempt adverse outcomes. Under the terms of the agreement, the Company issued 252,808 shares of common stock as consideration at closing. The Company will issue up to 28,089 additional shares of common stock that are subject to an indemnity holdback, and these shares will be released 18 months following the closing.

The Company accounted for this transaction as an asset acquisition based on an evaluation of the U.S. GAAP guidance for business combinations. The Company concluded that the developed technology acquired from HealthReveal comprised substantially all of the fair value of the gross assets acquired and that the assets acquired did not meet the definition of a business under the guidance for business combinations. The developed technology intangible asset was recorded at \$9,976 on the acquisition date and is being amortized on a straight-line basis over 3 years.

Acquisition and Integration-Related Costs

Acquisition and integration-related costs include banking, legal, accounting, and consulting fees. For the three and six months ended August 31, 2021, the Company incurred \$4,517 and \$12,897, respectively, in acquisition and integration-related costs that were expensed immediately and recorded in general and administrative expenses in the Company's consolidated statements of operations.

(5) Goodwill and Intangible Assets

The following table presents changes in the carrying amount of goodwill for the six months ended August 31, 2022:

Balance, February 28, 2022	\$ 577,896
Impairment	(299,705)
Balance, August 31, 2022	<u>\$ 278,191</u>

Annually, and upon the identification of a triggering event, management is required to perform an evaluation of the recoverability of goodwill. Triggering events potentially warranting an interim goodwill impairment test include, among other factors, declines in historical or projected revenue, operating income or cash flows, and sustained declines in the Company's stock price or market capitalization, considered both in absolute terms and relative to peers.

Accolade, Inc. and Subsidiaries
Notes to Condensed Consolidated Financial Statements (unaudited)
(in thousands except share and per share data) (continued)

As a result of sustained decreases in the Company's stock price and market capitalization, the Company conducted an impairment test of its goodwill and intangible assets as of May 31, 2022. As a result of this testing, the Company recorded a non-cash goodwill impairment charge of \$299,705 (equivalent to \$4.27 per basic and diluted share for the six months ended August 31, 2022) during the first quarter of fiscal 2023. No impairments to goodwill were recorded during the three months ended August 31, 2022 and no impairments were recorded to intangible assets during the six months ended August 31, 2022.

The Company's May 31, 2022 goodwill impairment test reflected an allocation of 70% and 30% between income and market-based approaches, respectively. The Company believes the 70% weighting to the income-based approach is appropriate as it more directly reflects its future growth and profitability expectations. Significant inputs into the valuation models included the discount rate, revenue market multiples, and estimated future cash flows. Management used a discount rate of 11% and guideline peer group and public transaction revenue multiples between 1.1x and 1.8x current and forward-looking revenues in the goodwill impairment test. Subsequent to the impairment, there was no excess of reporting unit fair value over carrying value.

While management cannot predict if or when additional future goodwill impairments may occur, additional goodwill impairments could have material adverse effects on the Company's operating income, net assets, and/or the Company's cost of, or access to, capital.

Intangible assets consist of the following as of August 31, 2022:

	<u>As of August 31, 2022</u>				
	<u>Useful Life</u>	<u>Gross Value</u>	<u>Accumulated Amortization</u>	<u>Net Carrying Value</u>	<u>Weighted Average Remaining Useful Life</u>
Customer relationships	2 to 20 years	\$ 124,050	\$ (11,406)	\$ 112,644	18.2
Technology	2 to 5 years	111,526	(33,501)	78,025	3.5
Supplier-based network	5 years	25,000	(7,500)	17,500	3.5
Trade name	10 years	13,700	(1,798)	11,902	8.7
Non-compete agreement	2 to 3 years	9,300	(5,425)	3,875	1.1
		\$ 283,576	\$ (59,630)	\$ 223,946	

Amortization expense for intangible assets was \$10,372 and \$9,533 during the three months ended August 31, 2022 and 2021, respectively, and \$20,744 and \$16,138 during the six months ended August 31, 2022 and 2021, respectively.

(6) Leases

The Company adopted Topic 842 on February 28, 2022, with an effective date of adoption of March 1, 2021, using the modified retrospective approach. The Company has operating leases for offices and certain equipment under non-cancelable leases in the United States and Czech Republic. These leases have remaining terms of up to 8 years. The Company had no finance leases during the six months ended August 31, 2022 and 2021.

Accolade, Inc. and Subsidiaries
Notes to Condensed Consolidated Financial Statements (unaudited)
(in thousands except share and per share data) (continued)

The components of operating lease cost recorded in the consolidated statements of operations were as follows:

	Three Months Ended August 31,		Six Months Ended August 31,	
	2022	2021	2022	2021
Operating lease cost	\$ 1,889	\$ 1,809	\$ 3,838	\$ 3,569
Variable lease cost	537	437	967	781
Total lease cost	<u>\$ 2,426</u>	<u>\$ 2,246</u>	<u>\$ 4,805</u>	<u>\$ 4,350</u>

The following tables set forth the cash flows, weighted-average remaining term, and weighted-average discount rate for the Company's leases:

Cash Flow Information	Six Months Ended August 31,	
	2022	2021
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows from operating leases	\$ 4,166	\$ 4,133
Right-of-use assets obtained in exchange for lease obligations		
Operating leases	\$ 2,155	\$ 3,356

Supplemental Information	August 31, 2022
Weighted-average remaining lease term (years)	5.7
Weighted-average discount rate	4.9 %

As of August 31, 2022, the future minimum lease payments under non-cancelable operating leases were as follows:

Year Ending February 28(29),	
Remainder of 2023	\$ 4,462
2024	8,857
2025	7,278
2026	7,245
2027	6,429
Thereafter	9,408
Total lease payments	43,679
Less: Imputed interest	(5,785)
Total lease liabilities	<u>\$ 37,894</u>

Accolade, Inc. and Subsidiaries
Notes to Condensed Consolidated Financial Statements (unaudited)
(in thousands except share and per share data) (continued)

(7) Fair Value Measurements

The following table sets forth the fair value of the Company's financial assets and liabilities within the fair value hierarchy:

	August 31, 2022			Fair Value
	Level 1	Level 2	Level 3	
Assets				
Cash equivalents:				
Money market funds	\$ 148,800	\$ —	\$ —	\$ 148,800

	February 28, 2022			Fair Value
	Level 1	Level 2	Level 3	
Assets				
Cash equivalents:				
Money market funds	\$ 131,527	\$ —	\$ —	\$ 131,527
United States treasury bills	\$ 99,999	\$ —	\$ —	\$ 99,999

The estimated fair value of the convertible senior notes (Note 8) was \$206,943 as of August 31, 2022, based on quoted market prices of the Company's instrument in markets that are not active and are classified as Level 2 within the fair value hierarchy. Considerable judgment is necessary to interpret the market data and develop an estimate of the fair value. Accordingly, the estimate is not necessarily indicative of the amount at which this instrument could be purchased, sold, or settled.

(8) Debt

(a) Convertible Senior Notes and Capped Call Options

Convertible Senior Notes

The Notes consisted of the following:

	August 31, 2022	February 28, 2022
Principal	\$ 287,500	\$ 287,500
Unamortized issuance costs	(6,000)	(6,834)
Net carrying amount	<u>\$ 281,500</u>	<u>\$ 280,666</u>

In March 2021, the Company completed a private convertible note offering, pursuant to an Indenture dated as of March 29, 2021 between the Company and U.S. Bank National Association, as trustee (the Indenture), and issued \$287,500 of 0.50% Convertible Senior Notes due 2026 (the Notes) that mature in April 2026, unless earlier converted, redeemed or repurchased. The Notes bear interest at a rate of 0.50% per annum, payable semiannually in arrears on April 1 and October 1 of each year, beginning on October 1, 2021 and are convertible into cash, shares of the Company's common stock or a combination of cash and shares of common stock, at the Company's election. The Company incurred costs of \$8,428 in connection with the Notes and the capped calls, of which \$8,368 was allocated to the Notes and recorded as a debt discount and \$60 was allocated to the capped call and recorded directly to additional paid-in capital. Net proceeds from the issuance of Notes were \$279,132, and the Company used \$34,443 of the net proceeds to pay the costs of the capped call transactions described below. For the three months ended August 31, 2022 and 2021, the Company recorded interest expense of \$779 and \$773, respectively, of which \$417 and \$415, respectively, was associated with the amortization of the debt discount. For the six months ended August 31, 2022 and 2021, the Company recorded interest expense of \$1,558 and \$1,326, respectively, of which \$834 and \$717, respectively, was associated with the amortization of the debt discount.

Accolade, Inc. and Subsidiaries
Notes to Condensed Consolidated Financial Statements (unaudited)
(in thousands except share and per share data) (continued)

Pursuant to the terms of the Notes, a holder may convert all or any portion of its Notes at its option at any time prior to October 1, 2025 and only under the following circumstances: (1) during any fiscal quarter commencing after the fiscal quarter ending on August 31, 2021, if the last reported sale price of the Company's common stock for at least 20 trading days during a period of 30 consecutive trading days ending on, and including, the last trading day of the immediately preceding fiscal quarter is greater than or equal to 130% of the conversion price on each applicable trading day; (2) during the five business day period after any ten consecutive trading day period (the "measurement period") in which the trading price (as defined in the Indenture) per \$1 principal amount of Notes for each trading day of the measurement period was less than 98% of the product of the last reported sale price of the Company's common stock and the conversion rate on each such trading day; (3) if the Company calls such Notes for redemption, at any time prior to the close of business on the scheduled trading day immediately preceding the redemption date, but only with respect to the Notes called (or deemed called) for redemption; or (4) upon the occurrence of specified corporate events. On or after October 1, 2025 until the close of business on the second scheduled trading day immediately preceding the maturity date, holders may convert all or any portion of their Notes at any time, regardless of the foregoing circumstances.

The initial conversion rate is 19.8088 shares of the Company's common stock per \$1 principal amount of Notes (equivalent to an initial conversion price of approximately \$50.48 per share of the Company's common stock). The conversion rate is subject to adjustment in some events but will not be adjusted for any accrued and unpaid interest. In addition, following certain corporate events that occur prior to the maturity date, or if the Company delivers a notice of redemption, the Company will, in certain circumstances, increase the conversion rate for a holder who elects to convert its Notes in connection with such a corporate event or convert its Notes called (or deemed called) for redemption in connection with such notice of redemption, as the case may be.

The Company may not redeem the Notes prior to April 6, 2024. On or after April 6, 2024, the Company may redeem for cash all or any portion of the Notes (subject to the partial redemption limitation set forth in the Indenture), at its option, if the last reported sale price of the Company's common stock has been at least 130% of the conversion price then in effect for at least 20 trading days, including the trading day immediately preceding the date on which the Company provides notice of redemption, during any 30 consecutive trading day period ending on, and including, the trading day immediately preceding the date on which the Company provides notice of redemption at a redemption price equal to 100% of the principal amount of the Notes to be redeemed, plus accrued and unpaid interest to, but excluding, the redemption date. No sinking fund is provided for the Notes.

Upon a fundamental change (as defined in the Indenture), holders may, subject to certain exceptions, require the Company to purchase their Notes in whole or in part for cash at a price equal to the principal amount of the Notes to be purchased, plus accrued and unpaid interest, if any, to, but excluding, the fundamental change repurchase date (as defined in the Indenture). In addition, upon a Make-Whole Fundamental Change (as defined in the Indenture), the Company will, under certain circumstances, increase the applicable conversion rate for a holder that elects to convert its Notes in connection with such Make-Whole Fundamental Change.

Under the Indenture, the Notes may be accelerated upon the occurrence of certain customary events of default. If certain bankruptcy and insolvency-related events of default with respect to the Company occur, the principal of, and accrued and unpaid interest on, all of the then outstanding Notes shall automatically become due and payable. The Indenture provides that the sole remedy for an event of default relating to certain failures by the Company to comply with reporting covenants, including timely filings, consists exclusively of the right to receive additional interest on the Notes.

As of August 31, 2022, none of the conditions of the Notes to early convert have been met. The Notes are the Company's senior, unsecured obligations that rank senior in right of payment to the Company's future indebtedness that is expressly subordinated to the Notes, rank equally in right of payment with the Company's future senior unsecured indebtedness that is not so subordinated, effectively subordinated to the Company's existing and future secured indebtedness, to the extent of the value of the collateral securing such indebtedness, and structurally subordinated to all existing and future indebtedness and other liabilities (including trade payables and preferred equity (to the extent the

Accolade, Inc. and Subsidiaries
Notes to Condensed Consolidated Financial Statements (unaudited)
(in thousands except share and per share data) (continued)

Company is not a holder thereof)) of the Company's subsidiaries. The Notes contain both affirmative and negative covenants. As of August 31, 2022, the Company was in compliance with all covenants in the Notes.

The Company concluded the Notes are accounted for as debt, with no bifurcation of the embedded conversion feature. Transaction costs were recorded as a direct deduction from the related debt liability in the consolidated balance sheet and are amortized to interest expense using the effective interest method over the term of the Notes. The effective interest rate for the Notes is 1.1%.

Capped Call

Concurrent with the pricing of the Notes, the Company entered into privately negotiated capped call transactions with two of the initial purchasers and/or their respective affiliates and another financial institution (the Option Counterparties). The capped call transactions are expected to offset the potential dilution to Accolade's common stock as a result of any conversion of Notes, with such offset subject to a cap initially equal to \$76.20 (which represented a premium of 100% over the last reported sale price of the Company's common stock on March 24, 2021). The capped call transactions are separate transactions, entered into by the Company with the Option Counterparties, and are not part of the terms of the Notes.

As the capped call options are both legally detachable and separately exercisable from the Notes, the Company accounts for the capped call options separately from the Notes. The capped call options are indexed to the Company's own common stock and classified in stockholders' equity. As such, the premiums paid for the capped call options were included as a net reduction to additional paid-in capital in the consolidated balance sheet

(b) Revolving Credit Facility

During July 2019, the Company entered into a revolving credit facility (the 2019 Revolver) with a syndicate of two banks. Under the 2019 Revolver, the Company has the capacity to borrow up to \$80,000 on a revolving facility. Availability of borrowings on the 2019 Revolver is calculated as a multiple of the Company's eligible monthly recurring revenues (as defined in the 2019 Revolver). As of August 31, 2022, the Company had outstanding letters of credit to serve as office landlord security deposits in the amount of \$1,425. These letters of credit are secured through the revolving credit facility, thus reducing the maximum capacity of the revolving credit facility to \$78,575 as of August 31, 2022. No amounts are outstanding as of August 31, 2022.

The 2019 Revolver term ends on July 19, 2024. The interest rate on the outstanding borrowings are at the Bloomberg Short-Term Bank Yield Index (BSBY) rate plus 350 basis points or Base Rate (as defined) plus 250 basis points, with the BSBY rate and Base Rate subject to minimum levels. Interest payments are to be made in installments of one, two, or three months as chosen by the Company.

The Company incurred lender and third-party fees when entering into the 2019 Revolver, all of which were deferred at the onset of the facility and have been fully amortized. During the three months ended August 31, 2022 and 2021, the Company recorded interest expense of \$158 and \$74, respectively, related to the revolving credit facility. During the six months ended August 31, 2022 and 2021, the Company recorded interest expense of \$210 and \$195, respectively, related to the revolving credit facility.

On August 21, 2020, the Company entered into an amendment to the 2019 Revolver which revised the terms of the revenue covenant and imposed minimum LIBOR and Base Rate levels. On September 11, 2020, the Company entered into a second amendment to the 2019 Revolver which modified the allocation requirements of the Company's cash to be held at each of the two lenders participating in the 2019 Revolver. On November 6, 2020, the Company entered into a third amendment to the 2019 Revolver which increased the capacity from a maximum of \$50,000 to a maximum of \$80,000, based on the achievement of certain growth metrics as defined in the amendment. On March 2, 2021, the Company entered into a fourth amendment to the 2019 Revolver in association with the acquisition of 2nd.MD to be

Accolade, Inc. and Subsidiaries
Notes to Condensed Consolidated Financial Statements (unaudited)
(in thousands except share and per share data) (continued)

completed and amended certain revenue covenants. On March 23, 2021, the Company entered into a fifth amendment to the 2019 Revolver in association with the issuance of the Convertible Senior Notes. On May 26, 2021, the Company entered into a sixth amendment to the 2019 Revolver in association with the acquisition of PlushCare which modified certain reporting covenants. On July 19, 2022, the Company entered into a seventh amendment to the 2019 Revolver which extended the term until July 19, 2024, documented the transition from the LIBOR interest rate index to the BSBY rate, and established new minimum covenant revenue targets. The term will automatically be extended to July 19, 2025 if the Company has at least \$200,000 in consolidated net cash as of May 31, 2024.

The 2019 Revolver is collateralized by substantially all of the assets of the Company.

(9) Stock-based Compensation

In July 2020, the Company adopted the 2020 Equity Incentive Plan (the Incentive Plan), which authorized the Company to grant up to 4,300,000 shares of common stock to eligible employees, directors, and consultants to the Company in the form of stock options, restricted stock units, and other various equity awards, including any shares subject to stock options or other awards granted under the Company's prior stock option plan that expire or terminate for any reason (other than being exercised in full) or are cancelled in accordance with the terms of the prior stock option plan. The Incentive Plan also includes an annual evergreen increase, and the amount, terms of grants, and exercisability provisions are determined by the board of directors. The term of an award may be up to 10 years and options generally vest over four years, with one quarter of an award vesting one year after grant and the remainder vesting on a monthly basis over three years. As of August 31, 2022, there was a total of 9,211,901 shares of common stock authorized for issuance under the Incentive Plan, of which 1,299,667 were available for future grants.

The following table summarizes the amount of stock-based compensation included in the consolidated statements of operations:

	<u>Three months ended August 31,</u>		<u>Six months ended August 31,</u>	
	2022	2021	2022	2021
Cost of revenue, excluding depreciation and amortization	\$ 1,270	\$ 1,054	\$ 2,398	\$ 1,382
Product and technology	5,625	6,366	13,115	8,188
Sales and marketing	4,270	4,054	8,259	5,427
General and administrative	6,349	8,301	13,131	12,453
Total stock-based compensation	<u>\$ 17,514</u>	<u>\$ 19,775</u>	<u>\$ 36,903</u>	<u>\$ 27,450</u>

(a) Stock Options

The following is a summary of stock option activity under the Incentive Plan:

	<u>Stock Options</u>	<u>Weighted average exercise price</u>	<u>Weighted remaining contractual life in years</u>	<u>Aggregate intrinsic value</u>
Balance, February 28, 2022	8,045,792	\$ 11.24		
Granted	884,951	7.96		
Exercised	(210,675)	5.34		
Forfeited	(348,166)	19.30		
Balance, August 31, 2022	<u>8,371,902</u>	\$ 10.71	5.8 years	\$ 25,644

For the three months ended August 31, 2022 and 2021, the Company recognized \$2,531 and \$2,799 in compensation expense related to stock options, respectively. For the six months ended August 31, 2022 and 2021, the

Accolade, Inc. and Subsidiaries
Notes to Condensed Consolidated Financial Statements (unaudited)
(in thousands except share and per share data) (continued)

Company recognized \$5,223 and \$4,913 in compensation expense related to stock options, respectively. As of August 31, 2022, approximately \$20,725 of unrecognized compensation expense related to our stock options is expected to be recognized over a weighted average period of 2.0 years. The aggregate intrinsic value of stock options exercised was \$796 and \$14,424 for the three months ended August 31, 2022 and 2021, respectively, and \$1,145 and \$23,198 for the six months ended August 31, 2022 and 2021, respectively.

(b) PlushCare Stock Options

In connection with the acquisition of PlushCare, the Company assumed all stock options that were awarded under the PlushCare Plan and that were outstanding as of the closing of the acquisition. These options were converted into options to purchase the Company's common stock at a ratio determined in the purchase agreement. The Company has no intent to grant any further options under the PlushCare Plan beyond the options granted and outstanding as of the Company's acquisition of PlushCare. The following is a summary of stock option activity under the PlushCare Plan:

	<u>Stock Options</u>	<u>Weighted average exercise price</u>	<u>Weighted remaining contractual life in years</u>	<u>Aggregate intrinsic value</u>
Balance, February 28, 2022	267,721			
Exercised	(46,949)	\$ 1.07		
Forfeited	(2,402)	\$ 2.79		
Balance, August 31, 2022	<u>218,370</u>	\$ 1.76	7.3 years	\$ 1,838

There were 48,556 stock options outstanding as of the acquisition date that were exercised prior to being vested. These options are excluded from the table above and vest on a pro rata basis monthly through May 2023. A total of 12,618 options vested during the six months ended August 31, 2022. For the three months ended August 31, 2022 and 2021, the Company recognized \$1,212 and \$1,244, respectively, in compensation expense related to PlushCare stock options. For the six months ended August 31, 2022 and 2021, the Company recognized \$2,456 and \$1,455, respectively, in compensation expense related to PlushCare stock options. As of August 31, 2022, approximately \$4,615 of unrecognized compensation expense related to PlushCare stock options is expected to be recognized over a weighted average period of 1.6 years. The aggregate intrinsic value of stock options exercised was \$222 and \$675 for the three months ended August 31, 2022 and 2021, respectively, and \$483 and \$675 for the six months ended August 31, 2022 and 2021, respectively.

(c) Restricted Stock Units

Time-based restricted stock units are generally subject to a four-year vesting period, with one quarter of an award vesting one year after the vesting commencement date and the remainder vesting ratably on a monthly basis over the subsequent three years. The following is a summary of activity for the six months ended August 31, 2022:

	<u>Restricted Stock Units</u>
Balance, February 28, 2022	2,226,057
Granted	4,070,835
Vested	(571,705)
Forfeited	(429,940)
Balance, August 31, 2022	<u>5,295,247</u>

For the three months ended August 31, 2022 and 2021, the Company recognized \$8,491 and \$8,305, respectively, in restricted stock unit compensation expense. For the six months ended August 31, 2022 and 2021, the Company recognized \$15,306 and \$9,935, respectively, in restricted stock unit compensation expense with \$81,304 remaining total

Accolade, Inc. and Subsidiaries
Notes to Condensed Consolidated Financial Statements (unaudited)
(in thousands except share and per share data) (continued)

unrecognized compensation costs related to these awards as of August 31, 2022. The total unrecognized costs are expected to be recognized over a weighted-average term of 2.7 years. The weighted average grant date fair value of restricted stock units granted during the six months ended August 31, 2022 was \$8.59.

In connection with the PlushCare acquisition, the agreement provides for the issuance of time-based restricted stock units for 64,694 shares of common stock to existing PlushCare shareholders upon the achievement of the contingent consideration revenue milestones. During the three months ended August 31, 2022, 57,124 of these restricted stock units were issued. These restricted stock units are included in the table above.

During the three and six months ended August 31, 2022, the Company recorded \$1,230 and \$2,542 in stock-based compensation expense related to the approved issuance of restricted stock units in lieu of cash for a portion of the Company's 2023 bonus plan payout.

(d) Employee Stock Purchase Plan

In July 2020, the Board of Directors adopted the Company's 2020 Employee Stock Purchase Plan (the ESPP), which became effective immediately prior to the effectiveness of the registration statement for the Company's initial public offering (IPO). The total shares of common stock initially reserved under the ESPP was limited to 1,100,000 shares. On March 1, 2022, there was an automatic annual increase, which increased the total available common shares to 2,327,976.

Under the ESPP, eligible employees can purchase the Company's common stock through accumulated payroll deductions at such times as are established by the compensation committee. Eligible employees may purchase the Company's common stock at 85% of the lower of the fair market value of the Company's common stock on the first day of the offering period or on the last day of the offering period. Eligible employees may contribute up to 15% of their eligible compensation. Under the ESPP, a participant may not accrue rights to purchase more than \$25,000 worth of the Company's common stock for each calendar year in which such right is outstanding.

Employees who elect to participate in the ESPP commence payroll withholdings that accumulate through the end of the respective period. In accordance with the guidance in ASC 718-50 – *Compensation – Stock Compensation*, the ability to purchase shares of the Company's common stock for 85% of the lower of the price on the first day of the offering period or the last day of the offering period (i.e. the purchase date) represents an option and, therefore, the ESPP is a compensatory plan under this guidance. Accordingly, share-based compensation expense is determined based on the option's grant-date fair value as estimated by applying the Black Scholes option-pricing model and is recognized over the withholding period. The Company recognized share-based compensation expense of \$274 and \$466 during the three months ended August 31, 2022 and 2021, respectively, related to the ESPP and \$685 and \$857 during the six months ended August 31, 2022 and 2021, respectively.

During the six months ended August 31, 2022 and 2021, employees who elected to participate in the ESPP purchased a total of 343,310 and 50,516 shares of common stock, respectively, resulting in cash proceeds to the Company of \$1,788 and \$1,948, respectively. ESPP employee payroll contributions accrued as of August 31, 2022 and February 28, 2022 totaled \$747 and \$1,511, respectively, and are included within accrued compensation in the consolidated balance sheet. Cash withheld via employee payroll deductions is presented in financing activities as proceeds from stock purchases under employee stock purchase plan on the consolidated statement of cash flows.

(e) Other

In connection with the acquisition of 2nd.MD (Note 4), several 2nd.MD individuals entered into agreements with the Company whereby these individuals are eligible to receive an aggregate of 608,332 shares that required continued employment with the Company. These shares are excluded from the above restricted stock units table. Included in the 608,332 shares are 281,531 shares that were also contingent upon the achievement of the contingent consideration milestones. These shares are considered compensatory in the post business combination periods due to the additional

Accolade, Inc. and Subsidiaries
Notes to Condensed Consolidated Financial Statements (unaudited)
(in thousands except share and per share data) (continued)

service requirement for these individuals. These shares vested 50% on the first anniversary of the acquisition date and will vest 50% on the second anniversary of acquisition date. As a result of the achievement of certain revenue milestones (the contingent consideration milestones), a total of 256,418 of the eligible 281,531 shares will be issued to such shareholders, subject to the service requirements. As of August 31, 2022, there were 241,614 unvested shares outstanding with a grant date fair value of \$46.56 per share, with vesting subject to future service periods. The Company recognized stock-based compensation expense of \$219 and \$3,540 during the three months ended August 31, 2022 and 2021, respectively, and \$3,577 and \$7,081 during the six months ended August 31, 2022 and 2021. The stock-based compensation expense for the six months ended August 31, 2022 includes \$3,139 of accelerated expense related to certain separation and transition agreements entered into during fiscal 2022. The unamortized compensation expense of \$438 will be recognized over a weighted average remaining period of 0.5 years.

In connection with the acquisition of PlushCare (Note 4), certain PlushCare individuals entered into agreements with the Company whereby these individuals are eligible to receive an aggregate of 806,161 shares that require continued employment with the Company. These shares are excluded from the above restricted stock units table. These shares are considered compensatory in the post business combination periods due to the additional service requirement for these individuals. One third of these shares vested on the first anniversary of the acquisition date, one third will vest on the second anniversary of acquisition date, and one third will vest on the third anniversary of the acquisition date. As of August 31, 2022, there were 537,401 unvested shares outstanding with a grant date fair value of \$52.52 per share. The Company recognized stock-based compensation expense of \$3,557 and \$7,114 during the three and six months ended August 31, 2022, respectively. The Company recognized stock-based compensation expense of \$3,209 during the three and six months ended August 31, 2021. The unamortized compensation expense of \$25,017 will be recognized over a weighted average remaining period of 2.0 years.

(10) Income Taxes

The provision (benefit) for income taxes consists of provisions for federal, state and foreign income taxes for separate U.S. tax filers and for entities in separate tax jurisdictions. As a result of the Company's history of net operating losses (NOL), the Company has historically provided for a full valuation allowance against its U.S. deferred tax assets that are not more-likely-than-not to be realized. For the three months ended August 31, 2022 and 2021, the Company recorded income tax provision (benefit) of \$249 and \$(12,845), respectively, which resulted in effective tax rates of (0.5)% and 17.1%, respectively. For the six months ended August 31, 2022 and 2021, the Company recorded income tax provision (benefit) of \$(3,650) and \$(12,826), respectively, which resulted in effective tax rates of 0.9% and 10.4%, respectively. The tax benefit for the six months ended August 31, 2022 is primarily related to the reversal of the deferred tax liability associated with the basis difference in goodwill from the 2nd.MD acquisition. The goodwill impairment recorded in the first quarter of fiscal 2023 required the Company to reverse that deferred tax liability during the six months ended August 31, 2022. The tax benefit for the three and six months ended August 31, 2021 is related to the partial release of the U.S. valuation allowance due to the acquired intangibles of PlushCare. The decrease in the valuation allowance was due to the acquisition of PlushCare's stock, whereby the acquired intangible assets had no tax basis. This required the Company to record a deferred tax liability which served as a source of taxable income to realize the existing deferred tax assets of the Company.

Accolade, Inc. and Subsidiaries
Notes to Condensed Consolidated Financial Statements (unaudited)
(in thousands except share and per share data) (continued)

(11) Net Loss Per Share Attributable to Common Stockholders

The following table sets forth the computation of basic and diluted net loss per share attributable to Accolade's common stockholders:

	Three months ended August 31,		Six months ended August 31,	
	2022	2021	2022	2021
Net loss	\$ (46,523)	\$ (62,364)	\$ (389,345)	\$ (111,071)
Weighted-average common shares used in computing net loss per share	70,475,778	64,404,223	70,251,890	61,332,729
Net loss per share attributable to common stockholders, basic and diluted	<u>\$ (0.66)</u>	<u>\$ (0.97)</u>	<u>\$ (5.54)</u>	<u>\$ (1.81)</u>

Contingently issuable securities are excluded from diluted net loss per share attributable to common stockholders until the contingency has been resolved. In the periods in which the Company has reported a net loss, the potentially dilutive securities are antidilutive. The following potential outstanding shares of common stock were excluded from the computation of diluted net loss per share attributable to common stockholders for the periods presented because including them would have been antidilutive:

	Six months ended August 31,	
	2022	2021
Stock options	8,590,272	8,685,132
Unvested restricted stock units	5,295,247	1,722,302
Shares issued to 2nd.MD employees and subject to vesting	274,224	608,332
Contingent shares in connection with 2nd.MD acquisition	—	1,889,441
Shares issued to PlushCare employees and subject to vesting	537,401	850,511
Contingent shares in connection with PlushCare acquisition	102,111	1,494,210
Indemnity shares held in escrow in connection with PlushCare acquisition	27,342	27,382
Shares to be issued to HealthReveal shareholders upon expiration of indemnification	28,089	—
Convertible Senior Notes	5,700,297	5,700,297
Total	<u>20,554,983</u>	<u>20,977,607</u>

(12) Commitments and Contingencies

(a) Legal Proceedings

The Company is involved in various claims, inquiries and legal actions arising in the ordinary course of business. In the opinion of management, the ultimate disposition of these matters is not expected to have a material adverse effect on the Company's financial position or liquidity. As of August 31, 2022, the Company had accruals of \$888 related to legal matters.

On May 8, 2021, a purported class action complaint (*Robbins v. PlushCare, Inc. et al.*) was filed in the United States District Court for the Northern District of California against the Company's wholly owned subsidiary, PlushCare, Inc. The complaint, as amended, alleges that certain of PlushCare's subscription payment practices violate California and other state automatic renewal laws and the Federal Electronic Funds Transfer Act, among other claims, arising from allegations that PlushCare failed to provide adequate disclosures to members. The lawsuit seeks restitution of subscription fees, statutory damages for each violation, subject to trebling, reasonable attorneys' fees, and injunctive relief. Under the terms of the agreement to purchase PlushCare, the selling shareholders will indemnify Accolade for losses related to this

Accolade, Inc. and Subsidiaries
Notes to Condensed Consolidated Financial Statements (unaudited)
(in thousands except share and per share data) (continued)

matter, subject to a cap. As a loss is probable and can be reasonably estimated, the Company has recorded a contingent liability and corresponding indemnification asset at August 31, 2022.

(b) Employment Agreements

Certain officers of the Company have employment agreements providing for severance, continuation of benefits, and other specified rights in the event of termination without cause, including in the event of a change of control of the Company, as defined in the agreements.

(c) Purchase Obligations

The Company has minimum required purchase commitments of \$40,323 pursuant to an agreement primarily related to cloud computing services. Portions of the total purchase commitment are required to be met prior to September 30 in each of the fiscal years 2023 through 2027. As of August 31, 2022, the Company has remaining future purchase commitments under this agreement of \$35,440.

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

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our unaudited condensed consolidated financial statements and related notes appearing elsewhere in this Quarterly Report on Form 10-Q and our audited consolidated financial statements and the related notes and the discussion under the heading "Management's Discussion and Analysis of Financial Condition and Results of Operations" for the fiscal year ended February 28, 2022 included in the Annual Report on Form 10-K. Our fiscal year ends on the last day of February, and our fiscal quarters end on May 31, August 31, November 30, and the last day of February.

This discussion, particularly information with respect to our future results of operations or financial condition, business strategy and plans and objectives of management for future operations, includes forward-looking statements that involve risks and uncertainties as described under the heading "Special Note Regarding Forward-Looking Statements" in this Quarterly Report on Form 10-Q. You should review the disclosure under the heading "Risk Factors" in this Quarterly Report on Form 10-Q for a discussion of important factors that could cause our actual results to differ materially from those anticipated in these forward-looking statements.

Overview

We provide personalized, technology-enabled solutions that help people better understand, navigate, and utilize the healthcare system and their workplace benefits. Our customers are primarily employers that deploy Accolade solutions in order to provide employees and their families (our "members") a single place to turn for their health, healthcare, and benefits needs. We also offer expert medical opinion services to employer customers and virtual primary care and mental health support, both directly to consumers and to employer customers. Our innovative platform combines open, cloud-based intelligent technology with multimodal support from a team of empathetic and knowledgeable Accolade Health Assistants and clinicians, including registered nurses, physician medical directors, pharmacists, behavioral health specialists, women's health specialists, case management specialists, expert medical opinion providers, and virtual primary care physicians. We leverage our integrated capabilities, connectivity with providers and the broader healthcare ecosystem, and longitudinal data to engage across the entire member population, rather than focusing solely on high-cost claimants or those with chronic conditions. Our goal is to build trusted relationships with our members that ultimately position us to deliver personalized recommendations and interventions. We believe that our platform dramatically improves the member experience, encourages better health outcomes, and lowers costs for both our members and our customers.

Accolade Total Health and Benefits has historically been our most comprehensive offering and most closely aligns to our "Premier" solution on which the company was founded and from which the majority of our revenues are derived today. Our technology platform enabled us to unbundle aspects of this comprehensive offering to create two additional standalone offerings: Accolade Total Benefits (focused on member benefits engagement) and Accolade Total Care (focused on guiding members to high-quality, cost-effective providers). Following our acquisition of 2nd.MD in March 2021, we began offering customers expert medical consultation (primarily for high-complexity, high-cost conditions) as a standalone service as well as a capability that can be incorporated into other core offerings. Following our acquisition of PlushCare in June 2021, we began offering virtual primary care and mental health services directly to consumers and commercial customers. We have further leveraged our technology platform to develop add-on offerings and to integrate acquired solutions that target specific challenges faced by our customers.

In September 2021, we announced new solutions and new naming for the solutions described above. The new solutions – Accolade One and Accolade Care – combine the capabilities of Accolade's historical navigation and advocacy solutions with our acquired primary care, mental health, and expert medical opinion services, augmented by artificial intelligence, machine learning, and data-driven recommendations. The new solutions are in their early stages of implementation. Additionally, we announced new solution bundles incorporating all of our existing solutions to reflect the evolution and maturation of our offering portfolio. With these changes, our current offerings include:

- Accolade Expert MD – Expert medical consultations that connect patients to highly qualified condition-specific specialists for both adult and pediatric care

- Accolade Care – Integrated primary care and mental health support
- Core and Plus – A benefits navigation and care solution designed to work with our customers’ existing benefits ecosystem, incorporating elements of all Accolade solutions including Advocacy, Accolade Expert MD, Accolade Care, and the Accolade partner ecosystem. Different offering configurations may also include member services, provider services, and an expanded set of clinical programs that address case and disease management to maximize member engagement and return on investment.
- Accolade One – A value-based option that includes all of the Accolade solutions and the Accolade partner ecosystem with a pricing structure that includes a higher portion of revenues associated with outcomes-based measures

We were founded in 2007 and launched our initial offering in 2009. We have seen significant growth in recent years since the changes to our executive management team in 2015 and the subsequent investments we have made in product, technology, sales, and distribution. As of February 28, 2022, we had over 600 employer customers comprising more than 10 million members. Our customers represent a diversified set of industries, including media, technology, financial services, transportation, energy, and retail. Additionally, as of February 28, 2022, we had more than 100,000 consumers subscribed to virtual primary care services through our PlushCare solution.

For the three months ended August 31, 2022, our total revenue was \$87.6 million, representing 20% year-over-year growth compared to total revenue of \$73.3 million for the three months ended August 31, 2021. For the six months ended August 31, 2022, our total revenue was \$173.2 million, representing 30% year-over-year growth compared to total revenue of \$132.8 million for the six months ended August 31, 2021. For the three months ended August 31, 2022 and 2021, our net loss was \$46.5 million and \$62.4 million, respectively. For the six months ended August 31, 2022 and 2021, our net loss was \$389.3 million and \$111.1 million, respectively. Net loss for the six months ended August 31, 2022 included a goodwill impairment charge of \$299.7 million.

Our Business Model

We provide our solutions primarily to employers that deploy Accolade offerings to our members and to consumers who directly purchase our PlushCare virtual primary care services. We earn revenue from providing personalized health guidance solutions, expert medical opinion services, virtual primary care services, and mental health support to the members of our employer customers' health plans and to members of fully insured plans offered via health insurance companies. Our advocacy solutions are priced based on a recurring per-member-per-month (PMPM) fee, typically consisting of both a base fee and a performance-based fee component. As a result, generally, a portion of our potential revenue is variable, subject to our achievement of performance metrics and the realization of savings in healthcare spend by our customers resulting from the utilization of our solutions. We typically achieve a substantial portion of the contractual performance metrics and realization in savings of healthcare spend. We also provide expert medical opinion services, which are typically charged on a PMPM or case rate basis, and virtual primary care and mental health support, which are typically priced on a fee per visit basis for consumers and a visit fee basis or PMPM plus visit fee basis for employer customers.

The primary cost of delivering our service includes the personnel costs of Accolade Health Assistants and clinicians, including registered nurses, physician medical directors, pharmacists, behavioral health specialists, women's health specialists, case management specialists, expert medical opinion providers and virtual primary care physicians, as well as software and tools for telephony, workforce management, business analytics, allocated overhead costs, and other expenses related to delivery and implementation of our solutions. As we support more customers with an increasing number of members over time, we expect that our support costs per member will decline due to economies of scale and improved operational efficiencies driven by continued enhancements of our technology platform and capabilities. We have experienced and expect to continue to achieve operational efficiencies realized from continued enhancements of our technology platform and capabilities.

We employ a multipronged go-to-market strategy to increase adoption of our solutions to new and existing customers. We principally sell our solutions through our direct salesforce which is stratified by account size (i.e., strategic

(more than 35,000 employees), enterprise (5,000 to 35,000 employees), and mid-market (500 to 5,000 employees)), region, and existing versus prospective customer. Our sales team possesses deep domain expertise in health benefits management and brings substantial experience selling to key decision makers within our current and prospective customer organizations (human resource officers, CFOs, benefits executives, consultants, and brokers). We believe the effectiveness of our sales organization is evidenced by growing adoption of our platform by large strategic customers, recent traction with enterprise and mid-market customers and demonstrated demand for add-on offerings from existing customers.

We have chosen to invest significantly in growing our customer base, and plan to continue both adding new customers and expanding our relationships with existing customers, which we believe will allow us to increase margins over time. When a customer renews their contract or purchases additional solutions or enhancements, the value realized from that customer increases because we generally do not incur significant incremental acquisition or implementation costs for the renewal or expansion. We believe that as our customer base grows and a higher percentage of our revenue is attributable to renewals and upsells or cross-sells to existing customers, relative to acquisition of new customers, associated sales and marketing expenses and other upfront costs will decrease as a percentage of revenue.

In addition, we have strategically curated our offering portfolio to ensure we have a compelling value proposition at an appropriate price point that resonates with each identified customer segment. Based on our experience, the opportunity to cross-sell is meaningfully enhanced once a customer has been on-boarded onto our platform and has benefited from a measurable and compelling return on their investment. Our customer success team provides strategic insights, point solution recommendations, and day-to-day account support to our customers. They are focused on existing customer retention, cross-sell, and upsell.

We maintain relationships with a range of third parties, including brokers, agents, benefits consultants, carriers, third-party administrators, trusted suppliers, and co-marketing and co-selling partners. These third parties provide an important source of referrals for our sales organization. We also selectively form strategic alliances to further drive customer acquisition and adoption of our solutions. We believe the breadth of our go-to-market and distribution strategy enables us to reach customers of nearly every size and across markets.

We have demonstrated a consistent track record of product and technology innovation over time as evidenced by continuous improvement of our platform and new offerings. This innovation is driven by feedback we receive from our customers, industry experts, and the market generally. Our technology platform has enabled us to unbundle aspects of our core navigation capability to create various offerings for our customers, while integrating capabilities from our recent acquisitions to deliver our Personalized Healthcare solution that combines our core navigation with expert medical consultations and virtual primary care and mental health support. Our investments in product and technology have been focused on increasing the value we provide via our personalized member health guidance solutions and expanding the market segments we can serve with a portfolio of offerings and associated price points.

COVID-19 Update

COVID-19 has created uncertainty for Accolade's employees, members, and customers. We consider the impact of the pandemic on our business by evaluating the health of our operations, any changes to our revenue outlook, and the degree to which perceptions of and interest in Accolade solutions have evolved during this unprecedented time. We measure our performance through several key metrics, including but not limited to customer satisfaction, member engagement, and health assistant availability. As gauged by these core performance metrics, service levels have been high, and member engagement and satisfaction have remained strong. To ensure we could address our members' many COVID-19-related concerns, our operations and clinical leaders trained our frontline teams on evidence-based guidelines and continue to equip them with relevant resources to help them ably serve under these exceptional circumstances.

While the COVID-19 pandemic has not had a material adverse impact on our financial condition and results of operations to date, the future impact of the ongoing 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, impact on our marketing efforts, and any decreases of workforce or benefits spending by our customers, all of which are uncertain and cannot be predicted. We have a diverse set of customers across a variety of industries. We may experience increased member attrition to the extent our existing customers reduce their respective workforces in

response to changes in economic conditions. Any layoffs or reductions in employee headcounts by our employer customers would result in a reduction in our base and variable PMPM fees. When customer headcount reductions occur, we may not experience the impact of changes to our customers' headcounts immediately because employees that are on furlough or are receiving continued health coverage pursuant to COBRA may still have access to our services during such periods and would be included in our member count.

We believe our value proposition now resonates with an even broader audience of employers as they turn their focus to safely reopening their workplaces and managing the ongoing health and well-being of employees and their families. To directly address the former, we developed Accolade COVID Response Care, a solution that allows employers of all sizes to leverage Accolade's platform to support employee education, testing, care plans, contact tracing, and return-to-work clearance. On the latter, we believe that the current disruptions to traditional care consumption have reinforced the need for navigation services, and that projected increases in healthcare costs (due to some combination of COVID-19-related testing and care, complications stemming from neglected non-COVID conditions, pent-up demand for elective services, and strain on individuals' mental health) prompt the need for solutions such as ours that bend the cost curve, and improve health outcomes, by driving good utilization up and wasteful utilization down.

Factors Affecting Our Performance

The following factors have been important to our business and we expect them to impact our business, results of operations, and financial condition in future periods:

Growth and Retention of Our Customer Base

We believe there is a substantial opportunity to further grow our customer base in our large and under-penetrated market through our sales and marketing strategy. Across our existing customer base and as we acquire new customers, we intend to expand and deepen these relationships. As we build trust through our proven model, we seek to cross-sell our Accolade ExpertMD and Accolade Care solutions as well as Accolade partner ecosystem programs. We plan to continue to invest in sales and marketing in order to grow our customer base and increase sales to existing customers. Any investments we make in our sales and marketing organization will occur in advance of experiencing any benefits from such investments, so it may be difficult for us to determine if we are efficiently allocating our resources in these areas.

Adoption of Current and Future Solutions

We are constantly innovating to enhance our model and develop new offerings. Our ability to act as a trusted advisor to our members and customers positions us to identify new opportunities for additional offerings that can meet their existing and emerging needs. Our open technology platform also allows us to efficiently add and integrate new offerings and applications on top of our existing technology stack that target specific challenges faced by our customers. Our open technology platform is instrumental for integration of the capabilities acquired through our acquisitions of 2nd.MD and PlushCare. We believe that as we expand our customer base and enter into new markets, we will be adept at identifying and deploying innovative new solutions whether developed internally or through acquisitions. In September 2021, we announced two new solutions – Accolade One and Accolade Care – that combine some or all of the elements of Accolade's historical solutions and the acquired capabilities from 2nd.MD and PlushCare. The new solutions are in their early stages of implementation, with initial customer launches in January 2022.

Achievement of Performance-Based Revenue

In most of our contracts, a portion of our potential fee is variable, subject to our achievement of performance metrics and the realization of savings in healthcare spend by our customers resulting from the utilization of our solutions, and thus we might record higher revenue in some quarters compared to others. Examples of performance metrics included in our customer contracts are achievement of specified member engagement levels, member satisfaction levels, and various operational metrics. Although we have earned over 90% of the aggregate maximum potential revenue under our contracts (measured on the corresponding calendar year basis) in fiscal years 2022 and 2021, our revenue and financial results in the future may vary as a result of our ability to earn this performance-based revenue. In addition, because our customers

typically pay both the base PMPM fees and variable PMPM fees in advance on a periodic basis, any required refund as a result of our failure to earn the performance-based revenue could have a negative impact on cash flows.

Investments in Technology

Significant investments in our technology platform have enhanced our capabilities with respect to how we engage with our members and deliver our solutions and care interventions. By leveraging our technology in areas such as machine learning, predictive analytics, and multimodal communication, we believe we can generate more efficiencies in our operating model while simultaneously improving our ability to deliver better health outcomes and lower costs for both our members and our customers. We will continue to invest in our technology platform to empower our Accolade Health Assistants, our clinicians, and our members to further improve and optimize efficiencies in our operating model. However, our investments in our technology platform may be more expensive or take longer to develop than we expect and may not result in operational efficiencies.

Basis of Presentation and Components of Revenue and Expenses

We operate our business through a single reportable segment. We operate on a fiscal year ending at the end of February of each year, and our fiscal quarters end on May 31, August 31, November 30, and the last day of February.

Revenue

We earn revenue from providing personalized health guidance solutions (advocacy), expert medical opinion services, virtual primary care services, and mental health support services to the members of our employer customers' health plans and to members of fully insured plans offered via health insurance companies. We also earn revenue from providing virtual primary care services and mental health support services directly to consumers. Our advocacy solutions are priced based on a recurring PMPM fee and frequently include both a base PMPM fee based on eligible members and a performance-based component. As a result, a portion of our potential fee is typically variable, subject to our achievement of performance metrics, the realization of savings in healthcare spend by our customers resulting from the utilization of our solutions, and the number of eligible members during the respective period. Our expert medical opinion services are typically charged on a PMPM or case rate basis, and our virtual primary care and mental health support services are typically priced on a fee per visit basis for consumers and a visit fee basis or PMPM plus visit fee basis for employer customers.

Cost of Revenue, Excluding Depreciation and Amortization

Our cost of revenue, excluding depreciation and amortization, consists primarily of personnel costs including salaries, wages, bonuses, stock-based compensation expense and benefits, as well as software and tools for telephony, workforce management, business analytics, allocated overhead costs, and other expenses related to delivery and implementation of our personalized technology-enabled solutions, expert medical opinion services, virtual primary care services, and mental health support.

Operating Expenses

Product and technology. Product and technology expenses include costs to build new offerings, add new features to our existing solutions, and to manage, operate, and ensure the reliability and scalability of our existing technology platform. Product and technology expenses consist of personnel expenses, including salaries, bonuses, stock-based compensation expense, and benefits for employees and contractors for our engineering, product, and design teams, and allocated overhead costs, as well as costs of software and tools for business analytics, data management, and IT applications that are not directly associated with delivery of our solutions to customers. We expect product and technology expenses to increase in absolute dollars but decrease as a percentage of revenue over time.

Sales and marketing. Sales and marketing expenses consist of personnel expenses, including sales commissions for our direct sales force and our market and business development workforce, as well as digital marketing costs, promotional costs, customer conferences, public relations, other marketing events, and allocated overhead costs. Personnel

expenses include salaries, bonuses, stock-based compensation expense, and benefits for employees and contractors. We expect sales and marketing expense to increase in absolute dollars but remain stable as a percentage of revenue over time.

General and administrative. General and administrative expenses consist of personnel expenses and related expenses for our executive, finance and accounting, human resources, legal, and corporate organizations. Personnel expenses include salaries, bonuses, stock-based compensation expense, and benefits for employees and contractors. In addition, general and administrative expenses include external legal, accounting, and other professional fees, as well as tools for financial and human capital management, and allocated overhead costs. We expect general and administrative expenses to increase in absolute dollars as we incur costs associated with being a public company, but decrease as a percentage of revenue over time.

Depreciation and amortization. Depreciation and amortization expenses are primarily attributable to our capital investments and consist of fixed asset depreciation, amortization of intangibles considered to have definite lives, and amortization of capitalized internal-use software costs.

Goodwill impairment. Goodwill impairment expense represents impairment charges incurred as a result of goodwill impairment testing.

Results of Operations

The following table presents a summary of our consolidated statements of operations for the periods indicated:

	For the three months ended		For the six months ended	
	August 31,		August 31,	
	2022	2021	2022	2021
	(in thousands)		(in thousands)	
Revenue	\$ 87,643	\$ 73,288	\$ 173,171	\$ 132,815
Cost of revenue, excluding depreciation and amortization ⁽¹⁾	49,830	44,334	97,445	80,270
Operating expenses:				
Product and technology ⁽¹⁾	26,194	22,512	53,011	38,451
Sales and marketing ⁽¹⁾	24,936	24,009	50,550	38,518
General and administrative ⁽¹⁾	21,020	26,170	41,258	48,172
Depreciation and amortization	11,571	11,021	23,147	19,717
Goodwill impairment	—	—	299,705	—
Change in fair value of contingent consideration	—	19,686	—	30,146
Total operating expenses	83,721	103,398	467,671	175,004
Loss from operations	(45,908)	(74,444)	(391,945)	(122,459)
Interest expense, net	(236)	(776)	(870)	(1,394)
Other income (expense)	(130)	11	(180)	(44)
Loss before income taxes	(46,274)	(75,209)	(392,995)	(123,897)
Income tax benefit (expense)	(249)	12,845	3,650	12,826
Net loss	\$ (46,523)	\$ (62,364)	\$ (389,345)	\$ (111,071)

⁽¹⁾ The stock-based compensation expense included above was as follows:

	For the three months ended		For the six months ended	
	August 31,		August 31,	
	2022	2021	2022	2021
	(in thousands)		(in thousands)	
Cost of revenue	\$ 1,270	\$ 1,054	\$ 2,398	\$ 1,382
Product and technology	5,625	6,366	13,115	8,188
Sales and marketing	4,270	4,054	8,259	5,427
General and administrative	6,349	8,301	13,131	12,453
Total stock-based compensation	\$ 17,514	\$ 19,775	\$ 36,903	\$ 27,450

The following table sets forth our consolidated statements of operation data expressed as a percentage of revenue:

	For the three months ended		For the six months ended	
	August 31,		August 31,	
	2022	2021	2022	2021
Revenue	100 %	100 %	100 %	100 %
Cost of revenue, excluding depreciation and amortization	57 %	60 %	56 %	60 %
Operating expenses:				
Product and technology	30 %	31 %	31 %	29 %
Sales and marketing	28 %	33 %	29 %	29 %
General and administrative	24 %	36 %	24 %	36 %
Depreciation and amortization	13 %	15 %	13 %	15 %
Goodwill impairment	— %	— %	173 %	— %
Change in fair value of contingent consideration	— %	27 %	— %	23 %
Total operating expenses	96 %	141 %	270 %	132 %
Loss from operations	(52)%	(102)%	(226)%	(92)%
Interest expense, net	(0)%	(1)%	(1)%	(1)%
Other expense	(0)%	0 %	(0)%	(0)%
Loss before income taxes	(53)%	(103)%	(227)%	(93)%
Income tax benefit (expense)	(0)%	18 %	2 %	10 %
Net loss	(53)%	(85)%	(225)%	(84)%

Comparison of Three and Six Months Ended August 31, 2022 and 2021

Revenue

	For the three months ended		Changes	
	August 31,		Amount	%
	2022	2021	(in thousands, except percentages)	
Revenue	\$ 87,643	\$ 73,288	\$ 14,355	20 %

Revenue increased \$14.4 million, or 20%, to \$87.6 million for the three months ended August 31, 2022, as compared to \$73.3 million for the three months ended August 31, 2021. The increase was attributable to revenues derived from growth in the number of customers served during such period and the PlushCare acquisition, as compared to the prior year's corresponding period.

	For the six months ended		Changes	
	August 31,		Amount	%
	2022	2021	(in thousands, except percentages)	
Revenue	\$ 173,171	\$ 132,815	\$ 40,356	30 %

Revenue increased \$40.4 million, or 30%, to \$173.2 million for the six months ended August 31, 2022, as compared to \$132.8 million for the six months ended August 31, 2021. The increase was attributable primarily to revenues derived from the PlushCare acquisition and growth in the number of customers served during such period, as compared to the prior year's corresponding period.

Cost of revenue, excluding depreciation and amortization

	For the three months ended			
	August 31,		Changes	
	2022	2021	Amount	%
Cost of revenue, excluding depreciation and amortization	\$ 49,830	\$ 44,334	\$ 5,496	12 %

(in thousands, except percentages)

Cost of revenue, excluding depreciation and amortization increased \$5.5 million, or 12%, to \$49.8 million for the three months ended August 31, 2022, as compared to \$44.3 million for three months ended August 31, 2021. The increase was attributable primarily to an increase in contract labor and benefits expense, as compared to the second quarter of fiscal 2022.

	For the six months ended			
	August 31,		Changes	
	2022	2021	Amount	%
Cost of revenue, excluding depreciation and amortization	\$ 97,445	\$ 80,270	\$ 17,175	21 %

(in thousands, except percentages)

Cost of revenue, excluding depreciation and amortization, increased \$17.2 million, or 21%, to \$97.4 million for the six months ended August 31, 2022, as compared to \$80.3 million for the six months ended August 31, 2021. The increase was attributable primarily to cost of revenue incurred by PlushCare as well as an increase in personnel and related costs to serve the customer base which grew in the first half of fiscal 2023, as compared to the first half of fiscal 2022.

Operating expenses

	For the three months ended			
	August 31,		Changes	
	2022	2021	Amount	%
Operating expenses:				
Product and technology	\$ 26,194	\$ 22,512	\$ 3,682	16 %
Sales and marketing	24,936	24,009	927	4 %
General and administrative	21,020	26,170	(5,150)	(20)%
Depreciation and amortization	11,571	11,021	550	5 %
Change in fair value of contingent consideration	—	19,686	(19,686)	N/A
Total operating expenses	<u>\$ 83,721</u>	<u>\$ 103,398</u>	<u>\$ (19,677)</u>	<u>(19)%</u>

(in thousands, except percentages)

Product and technology. Product and technology expense increased \$3.7 million, or 16%, to \$26.2 million for the three months ended August 31, 2022, as compared to \$22.5 million for the three months ended August 31, 2021. The increase was primarily driven by increases in personnel and software costs, along with costs associated with a reduction in force in the second quarter of fiscal 2023.

Sales and marketing. Sales and marketing expense increased \$0.9 million, or 4%, to \$24.9 million for the three months ended August 31, 2022, as compared to \$24.0 million for the three months ended August 31, 2021. The increase was primarily driven by increases in personnel costs, along with costs associated with a reduction in force in the second quarter of fiscal 2023.

General and administrative. General and administrative expense decreased \$5.2 million, or 20%, to \$21.0 million for the three months ended August 31, 2022, as compared to \$26.2 million for the three months ended August 31, 2021. The decrease was primarily due to acquisition and integration-related costs as well as hiring costs incurred during

the second quarter of fiscal 2022 that were not incurred in the second quarter of fiscal 2023, partially offset by increases in personnel costs and costs associated with a reduction in force in the second quarter of fiscal 2023.

Depreciation and amortization. Depreciation and amortization expense increased \$0.6 million, or 5%, to \$11.6 million for the three months ended August 31, 2022, as compared to \$11.0 million for the three months ended August 31, 2021. The composition of depreciable and amortizable assets has not changed significantly since the second quarter of fiscal 2022.

Change in fair value of contingent consideration. This operating expense represents the change in the fair value of the contingent consideration liabilities associated with the 2nd.MD and PlushCare acquisitions. The contingent consideration was reclassified to equity in the fourth quarter of fiscal 2022.

	For the six months ended		Changes	
	August 31,		Amount	%
	2022	2021		
	(in thousands, except percentages)			
Operating expenses:				
Product and technology	\$ 53,011	\$ 38,451	\$ 14,560	38 %
Sales and marketing	50,550	38,518	12,032	31 %
General and administrative	41,258	48,172	(6,914)	(14)%
Depreciation and amortization	23,147	19,717	3,430	17 %
Goodwill impairment	299,705	—	299,705	N/A
Change in fair value of contingent consideration	—	30,146	(30,146)	N/A
Total operating expenses	<u>\$ 467,671</u>	<u>\$ 175,004</u>	<u>\$ 292,667</u>	<u>167 %</u>

Product and technology. Product and technology expense increased \$14.6 million, or 38%, to \$53.0 million for the six months ended August 31, 2022, as compared to \$38.5 million for the six months ended August 31, 2021. The increase was primarily driven by increases in personnel added via the PlushCare acquisition, the addition of product and engineering personnel to support the development of new and existing offerings in connection with the expansion of our business, software costs, increased stock-based compensation expense, and costs associated with a reduction in force in the second quarter of fiscal 2023.

Sales and marketing. Sales and marketing expense increased \$12.0 million, or 31%, to \$50.6 million for the six months ended August 31, 2022, as compared to \$38.5 million for the six months ended August 31, 2021. The increase was primarily driven by increases in personnel added via the PlushCare acquisition, digital marketing costs associated with customer acquisition spend related to PlushCare, along with increased stock-based compensation expense.

General and administrative. General and administrative expense decreased \$6.9 million, or 14%, to \$41.3 million for the six months ended August 31, 2022, as compared to \$48.2 million for the six months ended August 31, 2021. The decrease was primarily due to acquisition and integration-related costs incurred during the first half of fiscal 2022 that were not incurred in the first half of fiscal 2023, partially offset by the addition of general and administrative costs from the PlushCare business and increased personnel costs.

Depreciation and amortization. Depreciation and amortization expense increased \$3.4 million, or 17%, to \$23.1 million for the six months ended August 31, 2022, as compared to \$19.7 million for the six months ended August 31, 2021. The increase was primarily due to amortization of PlushCare intangible assets acquired during the second quarter of fiscal 2022.

Goodwill impairment. This operating expense represents the impairment charge taken as a result of the goodwill impairment test performed during the first quarter of fiscal 2023.

Change in fair value of contingent consideration. This operating expense represents the change in the fair value of the contingent consideration liabilities associated with the 2nd.MD and PlushCare acquisitions. The contingent consideration was reclassified to equity in the fourth quarter of fiscal 2022.

Interest expense, net

	For the three months ended		Changes	
	August 31,		Amount	%
	2022	2021		
	(in thousands, except percentages)			
Interest expense, net	\$ 236	\$ 776	\$ (540)	(70)%

Interest expense, net decreased \$0.5 million, or 70%, to \$0.2 million for the three months ended August 31, 2022, as compared to \$0.8 million for the three months ended August 31, 2021. The decrease was primarily due to interest income generated from our cash and cash equivalents during the three months ended August 31, 2022.

	For the six months ended		Changes	
	August 31,		Amount	%
	2022	2021		
	(in thousands, except percentages)			
Interest expense, net	\$ 870	\$ 1,394	\$ (524)	(38)%

Interest expense, net decreased \$0.5 million, or 38%, to \$0.9 million for the six months ended August 31, 2022, as compared to \$1.4 million for the six months ended August 31, 2021. The decrease was primarily due to interest expense associated with the convertible notes issued during the first quarter of fiscal 2022 and additional interest income generated from our cash and cash equivalents during the six months ended August 31, 2022.

Certain Non-GAAP Financial Measures

We use the following non-GAAP financial measures to help us evaluate trends, establish budgets, measure the effectiveness and efficiency of our operations, and determine employee incentives.

	For the three months ended		For the six months ended	
	August 31,		August 31,	
	2022	2021	2022	2021
	(in thousands, except percentages)		(in thousands, except percentages)	
Adjusted Gross Profit	\$ 39,197	\$ 30,008	\$ 78,238	\$ 53,927
Adjusted Gross Margin	44.7 %	40.9 %	45.2 %	40.6 %
Adjusted EBITDA	\$ (13,748)	\$ (19,445)	\$ (29,115)	\$ (32,249)

Adjusted Gross Profit and Adjusted Gross Margin

Adjusted Gross Profit is a non-GAAP financial measure that we define as revenue less cost of revenue, excluding depreciation and amortization, and excluding stock-based compensation and severance costs. We define Adjusted Gross Margin as our Adjusted Gross Profit divided by our revenue. We expect Adjusted Gross Margin to continue to improve over time to the extent that we are able to gain efficiencies through technology and successfully cross-sell and upsell our current and future offerings. However, our ability to improve Adjusted Gross Margin over time is not guaranteed and will be impacted by the factors affecting our performance discussed above and the risks outlined in the section titled "Risk Factors." We believe Adjusted Gross Profit and Adjusted Gross Margin are useful to investors, as they eliminate the impact of certain non-cash expenses and allow a direct comparison of these measures between periods without the impact of non-cash expenses and certain other nonrecurring operating expenses.

Adjusted EBITDA

Adjusted EBITDA is a non-GAAP financial measure that we define as net income (loss) adjusted to exclude interest expense (net), income tax expense (benefit), depreciation and amortization, stock-based compensation, acquisition and integration-related costs, goodwill impairment, change in fair value of contingent consideration, and severance costs. We consider severance costs to include severance payments related to the realignment of our resources. We believe Adjusted EBITDA provides investors with useful information on period-to-period performance as evaluated by management and comparison with our past financial performance. We believe Adjusted EBITDA is useful in evaluating our operating performance compared to that of other companies in our industry, as this measure generally eliminates the effects of certain items that may vary from company to company for reasons unrelated to overall operating performance.

Adjusted Gross Profit, Adjusted Gross Margin and Adjusted EBITDA have certain limitations, including that they exclude the impact of certain non-cash charges, such as depreciation and amortization, whereas underlying assets may need to be replaced and result in cash capital expenditures, and stock-based compensation expense, which is a recurring charge. These non-GAAP financial measures may also not be comparable to similarly titled measures of other companies because they may not calculate such measures in the same manner, limiting their usefulness as comparative measures. In evaluating these non-GAAP financial measures, you should be aware that in the future we expect to incur expenses similar to the adjustments in this presentation. Our presentation of non-GAAP financial measures should not be construed as an inference that our future results will be unaffected by these expenses or any unusual or nonrecurring items. When evaluating our performance, you should consider these non-GAAP financial measures alongside other financial performance measures, including the most directly comparable GAAP measures set forth in the reconciliation tables below and our other GAAP results. The following table presents, for the periods indicated, the calculation of our Adjusted Gross Profit and Adjusted Gross Margin:

	For the three months ended August 31,		For the six months ended August 31,	
	2022 (in thousands, except percentages)	2021 (in thousands, except percentages)	2022 (in thousands, except percentages)	2021 (in thousands, except percentages)
Revenue	\$ 87,643	\$ 73,288	\$ 173,171	\$ 132,815
Less:				
Cost of revenue, excluding depreciation and amortization	(49,830)	(44,334)	(97,445)	(80,270)
Gross profit, excluding depreciation and amortization	37,813	28,954	75,726	52,545
Add:				
Stock-based compensation, cost of revenue	1,270	1,054	2,398	1,382
Severance costs, cost of revenue	114	—	114	—
Adjusted Gross Profit	\$ 39,197	\$ 30,008	\$ 78,238	\$ 53,927
Gross margin, excluding depreciation and amortization	43.1 %	39.5 %	43.7 %	39.6 %
Adjusted Gross Margin	44.7 %	40.9 %	45.2 %	40.6 %

Gross margin, excluding depreciation and amortization, for the three months ended August 31, 2022 and 2021, increased to 43.1% from 39.5%, respectively, and Adjusted Gross Margin for the three months ended August 31, 2022 and 2021 increased to 44.7% from 40.9%, respectively. Gross margin, excluding depreciation and amortization, for the six months ended August 31, 2022 and 2021, increased to 43.7% from 39.6%, respectively, and Adjusted Gross Margin for the six months ended August 31, 2022 and 2021, increased to 45.2% from 40.6%, respectively. The increase in gross margin and Adjusted Gross Margin for the comparable three and six-month period is driven primarily by higher margins in our virtual primary care offerings that were acquired during the second quarter of fiscal 2022 compared with the Company's other offerings.

[Table of Contents](#)

The following table presents, for the periods indicated, a reconciliation of our Adjusted EBITDA to our net income (loss):

	For the three months ended		For the six months ended	
	August 31,		August 31,	
	2022	2021	2022	2021
	(in thousands)		(in thousands)	
Net loss	\$ (46,523)	\$ (62,364)	\$ (389,345)	\$ (111,071)
Adjusted for:				
Interest expense, net	236	776	870	1,394
Income tax (benefit) expense	249	(12,845)	(3,650)	(12,826)
Depreciation and amortization	11,571	11,021	23,147	19,717
Stock-based compensation	17,514	19,775	36,903	27,450
Acquisition and integration-related costs	—	4,517	—	12,897
Goodwill impairment	—	—	299,705	—
Change in fair value of contingent consideration	—	19,686	—	30,146
Severance costs	3,075	—	3,075	—
Other expense (income)	130	(11)	180	44
Adjusted EBITDA	<u>\$ (13,748)</u>	<u>\$ (19,445)</u>	<u>\$ (29,115)</u>	<u>\$ (32,249)</u>

Liquidity and Capital Resources

We had cash and cash equivalents of \$330.6 million as of August 31, 2022. Our cash equivalents are comprised of money market accounts held at banks.

Our Debt Arrangements

As of August 31, 2022, we had \$287.5 million in outstanding debt related to the Convertible Senior Notes issued in March 2021. We currently also have a revolving credit facility (2019 Revolver), which we entered into in July 2019.

On March 29, 2021, we issued an aggregate of \$287.5 million principal amount of 0.50% Convertible Senior Notes due 2026 (the Notes), including the exercise in full by the initial purchasers of their option to purchase up to an additional \$37.5 million aggregate principal amount of the Notes, pursuant to an Indenture dated as of March 29, 2021 (the Indenture), between us and U.S. Bank National Association, as trustee. The Notes will bear interest at a rate of 0.50% per annum, payable semiannually in arrears on April 1 and October 1 of each year, beginning on October 1, 2021. The Notes will mature on April 1, 2026, unless earlier converted, redeemed or repurchased. The Notes are convertible into cash, shares of our common stock or a combination of cash and shares of our common stock, at our election.

The 2019 Revolver provides for a senior secured revolving line of credit in the amount of up to \$80.0 million, with borrowing availability subject to certain monthly recurring revenue calculations. The interest rate on any outstanding borrowings are at the Bloomberg Short-Term Bank Yield Index rate (BSBY) plus 350 basis points or Base Rate (as defined) plus 250 basis points, with the BSBY rate and Base Rate subject to minimum levels., subject to certain floors, and interest payments are to be made in installments of one, two, or three months as chosen by us. We also have outstanding letters of credit to serve as office landlord security deposits in the amount of \$1.4 million. These letters of credit are secured through the revolving credit facility, thus reducing the capacity of the revolving credit facility to \$78.6 million. The 2019 Revolver expires in July 2024.

The 2019 Revolver contains a liquidity covenant calculated based on cash on hand plus available borrowings under the 2019 Revolver, a revenue covenant and certain reporting covenants. On August 21, 2020, we entered into an amendment to the 2019 Revolver which revised the terms of the revenue covenant and imposed minimum LIBOR and Base Rate levels. On September 11, 2020, we entered into another amendment to the 2019 Revolver which modified the allocation requirements of our cash to be held at each of the two lenders participating in the 2019 Revolver. On November 6, 2020, we entered into another amendment to the 2019 Revolver which increased the capacity from \$50.0 million to

\$80.0 million. On March 2, 2021, we entered into another amendment to the 2019 Revolver in association with the acquisition of 2nd.MD and amended certain revenue covenants. On March 23, 2021, we entered into another amendment to the 2019 Revolver in association with the convertible senior notes offering. On May 26, 2021, we entered into another amendment to the 2019 Revolver in association with the acquisition of PlushCare which modified certain reporting covenants. On July 19, 2022, the Company entered into another amendment to the 2019 Revolver which extended the term until July 19, 2024, documented the transition from the LIBOR interest rate index to the BSBY rate, and established new minimum covenant revenue targets. The term will automatically be extended to July 19, 2025 if the Company has at least \$200,000 in consolidated net cash as of May 31, 2024.

We were in compliance with all such applicable covenants as of August 31, 2022, and believe we are in compliance as of the date of this Quarterly Report on Form 10-Q. We do not expect to need to draw on the 2019 Revolver, but our access to draw on the 2019 Revolver could be limited in the future if we do not have enough monthly recurring revenues to cover the borrowing availability calculations.

Cash Flows

The following table summarizes our cash flows for the periods indicated:

	For the six months ended	
	August 31,	
	2022	2021
	(in thousands)	
Net cash used in operating activities	\$ (33,454)	\$ (38,644)
Net cash used in investing activities	(2,904)	(263,802)
Net cash provided by financing activities	1,138	252,565

Operating Activities. Net cash used in operating activities decreased by \$5.2 million to \$33.5 million during the six months ended August 31, 2022 from \$38.6 million during the six months ended August 31, 2021, primarily due to changes in deferred revenue and due to customers.

Investing Activities. Net cash used in investing activities decreased by \$260.9 million to \$2.9 million during the six months ended August 31, 2022, from \$263.8 million during the six months ended August 31, 2021, primarily due to cash paid for the acquisitions of 2nd.MD and PlushCare, totaling \$261.9 million, during the six months ended August 31, 2021.

Financing Activities. Net cash provided by financing activities decreased by \$251.4 million to \$1.1 million during the six months ended August 31, 2022 from \$252.6 million during the six months ended August 31, 2021, primarily due to the proceeds from the issuance of the Convertible Senior Notes of \$287.5 million and payment for purchase of capped calls associated with the Convertible Senior Notes of \$(34.4) million during the six months ended August 31, 2021.

Material Cash Requirements

As of August 31, 2022, our material cash requirements from known contractual and other obligations, which we expect to fund through available cash, future cash generated from operations, and our existing financing arrangements, are as follows:

- *Principal and interest obligations on convertible debt* – As discussed in detail above, the \$287.5 million principal amount of the Notes matures on April 1, 2026. See *Our Debt Arrangements* above and Note 8 to our consolidated financial statements for more details.
- *Operating leases* – We have entered into operating leases, primarily for office space. Liabilities associated with these leases totaled \$37.9 million as of August 31, 2022.

- *Other purchase obligations* – We have entered into certain arrangements that include obligations to make significant future purchases. The majority of these purchases are not expected to be made over the next 12 months. See Note 12 to our consolidated financial statements for more details.

Off-Balance Sheet Arrangements

We did not have any relationships with unconsolidated entities or financial partnerships, such as entities often referred to as structured finance or special purpose entities, which would have been established for the purpose of facilitating off-balance sheet arrangements or other purposes. We did not have any other off-balance sheet arrangements, except to the extent reflected under “— Material Cash Requirements” above and in our consolidated financial statements included elsewhere in this Quarterly Report on Form 10-Q.

Critical Accounting Policies and Estimates

Our condensed consolidated financial statements are prepared in accordance with U.S. GAAP. The preparation of these condensed consolidated financial statements requires us to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenue, and expenses, as well as related disclosures. We evaluate our estimates and assumptions on an ongoing basis. Our estimates are based on historical experience and various other assumptions that we believe to be reasonable under the circumstances. Our actual results could differ from these estimates.

There have been no significant changes in our critical accounting policies and estimates during the six months ended August 31, 2022, as compared to the critical accounting policies and estimates described in our Annual Report on Form 10-K for the year ended February 28, 2022 filed with the SEC. We incurred a goodwill impairment charge during the six months ended August 31, 2022, which is detailed below.

Accounting for Goodwill and Other Intangible Assets

Goodwill. Goodwill represents the excess of the cost of an acquired business over the fair value of the identifiable tangible and intangible assets acquired and liabilities assumed in a business combination. For the purposes of impairment testing, we have determined that we have one reporting unit. We perform a qualitative assessment to determine whether it is more likely than not that the fair value of a reporting unit is less than its carrying amount. If that is the case, we perform a quantitative impairment test. We test our goodwill for impairment on an annual basis in the fourth quarter of each fiscal year, or more frequently whenever an event or change in circumstances indicates that the asset may be impaired. In performing our evaluation, we assess qualitative factors such as overall financial performance of our reporting unit, anticipated changes in industry and market structure, and the competitive and regulatory environment.

As a result of sustained decreases in our stock price and market capitalization, we conducted an impairment test of our goodwill as of May 31, 2022 in connection with the preparation of the condensed consolidated financial statements included in the first quarter Quarterly Report on Form 10-Q. As a result of this testing, we recorded a \$299.7 million non-cash goodwill impairment charge (equivalent to \$4.27 per basic and diluted share for the six months ended August 31, 2022) during the first quarter of fiscal 2023. Our May 31, 2022 goodwill impairment test reflected an allocation of 70% and 30% between the income and market-based approaches, respectively. We believe the 70% weighting to the income-based approach is appropriate as it more directly reflects our future growth and profitability expectations. Significant inputs into the valuation models included the discount rate, revenue market multiples, and estimated future cash flows. We used a discount rate of 11% and guideline peer group and public transaction revenue multiples between 1.1x and 1.8x current and forward-looking revenues in the goodwill impairment test. Subsequent to the impairment, there was no excess of reporting unit fair value over carrying value.

While we cannot predict if or when additional future goodwill impairments may occur, additional goodwill impairments could have material adverse effects on our operating income, net assets, and/or our cost of, or access to, capital.

Realizability of Long-Lived Assets. We assess the realizability of our long-lived assets and related intangible assets, other than goodwill, upon the occurrence of events or changes in circumstances indicating that the carrying values of such assets may not be recoverable. We consider the following factors important in determining when to perform an impairment review: significant under-performance of a business or product line relative to budget; shifts in business strategies which affect the continued uses of the assets; significant negative industry or economic trends; and the results of past impairment reviews. When such events or changes in circumstances occur, we assess recoverability of these assets.

We assess recoverability of these assets by comparing the carrying amounts to the future undiscounted cash flows the assets are expected to generate. If impairment indicators were present based on our undiscounted cash flow models, which include assumptions regarding projected cash flows, we would perform a discounted cash flow analysis to assess impairments on long-lived assets. Variances in these assumptions could have a significant impact on our conclusions as to whether an asset is impaired or the amount of any impairment charge. Impairment charges, if any, result in situations where any fair values of these assets are less than their carrying values. As a result of sustained decreases in our stock price and market capitalization, we conducted an impairment test of our intangible assets as of May 31, 2022. No impairments were recorded to intangible assets as a result of this testing.

In addition to our recoverability assessments, we routinely review the remaining estimated useful lives of our long-lived assets. Any reduction in the useful life assumption will result in increased depreciation and amortization expense in the quarter when such determinations are made, as well as in subsequent quarters.

We will continue to evaluate the values of our long-lived assets in accordance with applicable accounting rules. As changes in business conditions and our assumptions occur, we may be required to record impairment charges.

Recently Issued and Adopted Accounting Pronouncements

For more information on recently issued accounting pronouncements, see Note 2 in the accompanying Notes to our condensed consolidated financial statements included elsewhere in this Quarterly Report on Form 10-Q.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

Interest Rate Risk

We had cash and cash equivalents of \$330.6 million as of August 31, 2022 and \$365.9 million as of February 28, 2022. Our cash equivalents are comprised primarily of money market accounts held at banks and United States treasury bills with original maturities of less than 90 days. Due to the short-term nature of these instruments, we believe that we do not have any material exposure to changes in the fair value of our investment portfolio as a result of changes in interest rates. Declines in interest rates, however, would reduce future interest income.

Foreign Currency Exchange Risk

We have in the past and may in the future be exposed to foreign currency exchange risks in the ordinary course of our business, but that exposure is not currently material to our business or results of operations.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

We maintain “disclosure controls and procedures,” as defined in Rules 13a-15(e) and Rule 15d-15(e) under the Exchange Act that are designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the

Exchange Act is accumulated and communicated to our management, including our principal executive and principal financial officers, as appropriate to allow timely decisions regarding required disclosure.

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures as of August 31, 2022. Based on the evaluation of our disclosure controls and procedures as of August 31, 2022, our Chief Executive Officer and Chief Financial Officer concluded that as of such date, our disclosure controls and procedures were effective at the reasonable assurance level.

Changes in Internal Control Over Financial Reporting

There was no change in our internal control over financial reporting identified in connection with the evaluation required by Rules 13a-15(d) and 15d-15(d) of the Exchange Act that occurred during the period covered by this Quarterly Report on Form 10-Q that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Inherent Limitations on Effectiveness of Controls

Our management, including our Chief Executive Officer and Chief Financial Officer, believes that our disclosure controls and procedures and internal control over financial reporting are designed to provide reasonable assurance of achieving their objectives and are effective at the reasonable assurance level. However, our management does not expect that our disclosure controls and procedures or our internal control over financial reporting will prevent all errors and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, have been detected. These inherent limitations include the realities that judgments in decision making can be faulty, and that breakdowns can occur because of a simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people or by management override of the controls. The design of any system of controls also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions; over time, controls may become inadequate because of changes in conditions, or the degree of compliance with policies or procedures may deteriorate. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

PART II

OTHER INFORMATION

Item 1. Legal Proceedings

We are from time to time subject to, and are presently involved in, litigation and other legal proceedings that arise in the ordinary course of business. Descriptions of certain legal proceedings to which we are a party are contained in Note 12, “Commitments and Contingencies,” to our condensed consolidated financial statements included in this Form 10-Q.

Item 1A. Risk Factors

You should consider carefully the risks and uncertainties described below, together with all of the other information in this Quarterly Report on Form 10-Q, including the section titled "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our consolidated financial statements and related notes. Our business, results of operations, financial condition, and prospects could also be harmed by risks and uncertainties that are not presently known to us or that we currently believe are not material. If any of the risks actually occur, our business, results of operations, financial condition, and prospects could be materially and adversely affected. Unless otherwise indicated, references in these risk factors to our business being harmed will include harm to our business, reputation, brand, financial condition, results of operations, and prospects. In such event, the market price of our common stock could decline.

Risks Related to Our Business and Industry

We have a history of net losses, we anticipate increasing expenses in the future, and we may not be able to achieve or maintain profitability.

We have incurred net losses in most periods since our inception and continue to have an accumulated deficit. We expect our costs will increase substantially in the foreseeable future and our losses will continue as we expect to invest significant additional funds towards growing our business and as we continue to invest in increasing our customer base, expanding our operations, hiring additional employees, and developing future offerings. These efforts may prove more expensive than we currently anticipate, and we may not succeed in increasing our revenue sufficiently to offset these higher expenses. We are unable to accurately predict when, or if, we will be able to achieve profitability. Even if we achieve profitability in the future, we may not be able to sustain profitability in subsequent periods. To date, we have financed our operations principally from the sale of our equity, revenue from sales of our offerings, and the incurrence of indebtedness. Our cash flow from operations was negative for the six months ended August 31, 2022 and each of the last three fiscal years, and we may not generate positive cash flow from operations in any given period. If we are not able to achieve or maintain positive cash flow in the long term, we may require additional financing, which may not be available on favorable terms or at all and/or which may be dilutive to our stockholders. If we are unable to successfully address these risks and challenges as we encounter them, our business may be harmed. Our failure to achieve or maintain profitability or positive cash flow could negatively impact the value of our common stock.

We derive a significant portion of our revenue from our largest customers. The loss of any of these customers, or renegotiation of any of our contracts with these customers, could negatively impact our results.

While no customer represented 10% or more of our revenue for the three and six months ended August 31, 2022, historically we have relied on a limited number of customers for a significant portion of our revenue. The loss of any of our largest customers or the renegotiation of any of our largest customer contracts has in the past, and could in the future, adversely affect our results of operations. For example, in April 2022, Comcast Cable notified us that it would be exercising its right to terminate our contract “for convenience” effective at the end of the current calendar year ending December 31, 2022, subject to a right to elect to receive transition services for a period post-termination. Comcast accounted for less than 10%, 16%, and 24% of our revenue for the fiscal years ended February 28(29), 2022, 2021, and 2020, respectively. The loss of another significant customer, if we are not able to replace such revenue from other existing or new customers, could harm our business and our financial results. Although we typically enter into

three-year contracts with our customers, certain of these contracts, including existing contracts with some of our largest customers, are terminable for convenience by our customers after an initial period and a notice period has passed. In the ordinary course of business, including in connection with renewals or extensions of these agreements, we engage in active discussions and renegotiations with our customers in respect of the solutions we provide and the terms of our customer agreements, including our fees. In addition, as our customers' businesses respond to market dynamics and financial pressures, and as our customers make decisions with respect to the health and other benefits they provide to their employees, our customers may seek to renegotiate or terminate their agreements with us, or may stage competitive request for proposal processes, any of which could result in the loss or reduced profitability of such customers' agreements with us. Macroeconomic factors including the COVID-19 pandemic, rising inflation, and geopolitical risk may affect our customers' desire to renew their contracts, or if they undergo layoffs or reductions in force then our membership numbers would decrease, which would reduce our revenues. For example, during the initial year of the pandemic, customers in the airline industry had significant headcount reductions, which resulted in a reduction of revenues associated with these customers. We may not experience the impact of changes to our customers' headcount immediately because employees that are on furlough or are receiving continuing health coverage pursuant to the Consolidated Omnibus Budget Reconciliation Act (COBRA) may still have access to our services during such period and be included in our member count, although our member counts will be reduced upon completion of these members' COBRA access, and there can be no guarantee that all such members will elect COBRA in lieu of alternative healthcare options. In addition, there is substantial uncertainty about further disruption due to macroeconomic factors including the COVID-19 pandemic, rising inflation, and geopolitical risk. Any of these factors could result in reductions to the fees and changes to the scope of offerings contemplated by our original customer contracts and consequently could negatively impact our business. Because we rely on a limited number of customers for a significant portion of our revenue, delayed payments by a few of our largest customers could result in a reduction in, and greater volatility of, our free cash flow and available cash. We also depend on the creditworthiness of these customers. If the financial condition of one or more of our largest customers declines, our credit risk could increase. Should one or more of our largest customers declare bankruptcy, it could adversely affect the collectability of our accounts receivable and affect our bad debt reserves, net income, free cash flow, and available cash.

We have a limited operating history with our current offerings, which makes it difficult to evaluate our current and future business prospects and increases the risk of your investment.

While we served our first customer in 2009, we have significantly altered our offerings and executive management team since 2015. Our limited operating history with respect to our current offerings and current executive management team makes it difficult to effectively assess or forecast our future prospects. For example, with the acquisitions of 2nd.MD and PlushCare, and any new integrated offerings Accolade may offer in connection therewith, our sales efforts with respect to these offerings may not be as successful as our sales of Accolade Total Health and Benefits – our historical primary offering. You should consider our business and prospects in light of the risks and difficulties we encounter or may encounter. These risks and difficulties include our ability to cost-effectively acquire new customers, retain existing customers and expand the scope of solutions we sell to new and existing customers. Furthermore, in pursuit of our growth strategy, we may enter into new partnerships to further penetrate our targeted markets and adoption of our solutions, but it is uncertain whether these efforts will be successful. If we fail to address the risks and difficulties that we face, including those associated with the challenges listed above, our business may be harmed.

Our business, results of operations, and financial condition may fluctuate on a quarterly and annual basis, which may result in a decline in our stock price if such fluctuations result in a failure to meet any projections that we may provide or the expectations of securities analysts or investors.

Our operating results have in the past and could in the future vary significantly from quarter-to-quarter and year-to-year and may fail to match our past performance, our projections or the expectations of securities analysts because of a variety of factors, many of which are outside of our control and, as a result, should not be relied upon as an indicator of future performance. As a result, we may not be able to accurately forecast our operating results and growth rate. Any of

[Table of Contents](#)

these events could cause the market price of our common stock to fluctuate. Factors that may contribute to the variability of our operating results include:

- our ability to attract new customers and engage new members, and retain and engage with existing customers and members;
- achievement of performance metrics and the realization of savings in healthcare spend by our customers resulting from the utilization of our solutions;
- the upfront costs in our customer, member and trusted supplier relationships;
- the enrollment cycles and employee benefit practices of our customers;
- the financial condition of our current and potential customers;
- changes in our sales and implementation cycles;
- introductions and expansions of our offerings, or challenges with their introduction;
- changes in our pricing or fee structures or those of our competitors;
- the timing and success of new offering introductions by us or our competitors or any other change in the competitive landscape of our industry, including consolidation among our competitors;
- increases in operating expenses that we may incur to grow and expand our operations and to remain competitive;
- our ability to successfully expand our business;
- breaches of information security or privacy;
- changes in stock-based compensation expenses;
- the amount and timing of operating costs and capital expenditures related to the expansion of our business;
- adverse litigation judgments, settlements, or other litigation-related costs;
- changes in the structure of healthcare provider and payment systems;
- changes in the legislative or regulatory environment, including with respect to healthcare, privacy, or data protection, or enforcement by government regulators, including fines, orders, or consent decrees;
- the cost and potential outcomes of ongoing or future regulatory investigations or examinations, or of future litigation;
- changes in our effective tax rate;
- our ability to make accurate accounting estimates and appropriately recognize revenue for our existing and future offerings;
- changes in accounting standards, policies, guidance, interpretations, or principles;

- instability in the financial markets;
- general economic conditions, both domestic and international;
- volatility in the global financial markets;
- political, economic, and social instability, including terrorist activities, the ongoing conflict between Ukraine and Russia, and outbreaks of public health threats, such as coronavirus, influenza, or other highly communicable diseases or viruses, and any disruption these events may cause to the global economy; and
- changes in business or macroeconomic conditions.

The impact of one or more of the foregoing and other factors may cause our operating results to vary significantly. As such, we believe that quarter-to-quarter and year-to-year comparisons of our operating results may not be meaningful and should not be relied upon as an indication of future performance.

Our sales cycle can be long and unpredictable and requires considerable time and expense. As a result, our sales, revenue, and cash flows are difficult to predict and may vary substantially from period to period, which may cause our results of operations to fluctuate significantly.

The timing of our sales, revenue, and cash flows is difficult to predict because of the length and unpredictability of our sales cycle. The sales cycle for our solutions from initial contact to launch varies widely by potential customer. Some of our potential customers, especially in the case of our prospective strategic and enterprise customers, undertake a significant and prolonged evaluation process, including to determine whether our solutions meet the specific needs of their group health plan, employee benefits programs, corporate budgets, and other goals, which frequently involves evaluation of not only our solutions but also an evaluation of other available solutions. Such evaluations have in the past resulted in extended sales cycles that, due to changes in corporate objectives, leadership involved in the selection process, and other factors, may result in delayed or suspended decision-making in awarding the sale. In addition, our sales cycle may become more lengthy and difficult as a result of macroeconomic factors including the COVID-19 pandemic, rising inflation, and geopolitical risk. During the sales cycle, we expend significant time and money on sales and marketing activities, which lowers our operating margins, particularly if no sale occurs. For example, there may be unexpected delays in a potential customer's internal procurement processes, which involve intensive financial, operational, and security reviews, and for which our solutions represent a significant purchase. In addition, the significance and timing of our offering enhancements, and the introduction of new products by our competitors, may also affect our potential customers' purchases. For all of these reasons, it is difficult to predict whether a sale will be completed, the particular period in which a sale will be completed, or the period in which revenue from a sale will be recognized.

Certain of our operating results and financial metrics may be difficult to predict as a result of seasonality.

We believe there are significant seasonal factors that may cause us to record higher revenue in some quarters compared with others. We believe this variability is largely due to our focus on the healthcare industry. For example, with respect to our customers, in particular our Accolade Total Health and Benefits customers with contract years commencing at the beginning of a calendar year, we record a disproportionate amount of revenue from such customers during the fourth quarter of our fiscal year relative to the first three quarters of our fiscal year. This timing is caused, in part, by the measurement, achievement, and associated revenue recognition of performance metrics and healthcare costs savings components of certain of our customer contracts during the fourth quarter of each fiscal year. While we believe we have visibility into the seasonality of our business, our rapid growth rate over the last several years may have made seasonal fluctuations more difficult to detect. If our rate of growth slows over time, seasonal or cyclical variations in our operations may become more pronounced, and our business may be harmed.

The recognition of a portion of our revenue is subject to the achievement of performance metrics and healthcare cost savings and may not be representative of revenue for future periods.

We price the majority of our services based upon a per-member-per-month (PMPM) fee times the number of eligible members, typically with a portion of the PMPM fee fixed (base PMPM fee) and the remainder of the fee variable (variable PMPM fee). Revenue from variable PMPM fees can be earned through either, or a combination of, the achievement of certain performance metrics or the realization of healthcare savings resulting from the utilization of our services. Although we have typically achieved these performance metrics and realization in savings of healthcare spend, resulting in our earning over 90% of the aggregate maximum potential revenue under our customer contracts (measured on the corresponding calendar year basis in fiscal years 2022, 2021, and 2020), our revenue and financial results in the future may be variable based on whether we earn this performance-based revenue. For example, lower healthcare utilization could result in lower engagement with Accolade services than expected and put our ability to meet certain performance metrics at risk. In addition, since our customers typically pay the full PMPM fee in advance on a periodic basis, any required refund as a result of our failure to earn the performance-based revenue could have a negative impact on cash flows. Under U.S. generally accepted accounting principles (GAAP), we recognize revenue when control of the promised services is transferred to our customers in an amount that reflects the consideration to which we expect to be entitled in exchange for those services. The majority of the fees we earn are considered to be variable consideration under GAAP. We typically invoice our customers on a periodic basis for the base PMPM fees and variable PMPM fees in advance of performing the services, and these advances are classified as deferred revenue on our consolidated balance sheet until such time that the associated revenue can be recognized. Due to the need for us to satisfy performance metrics and healthcare savings requirements, deferred revenue at any particular date may not be representative of actual revenue for any current or future period.

If we fail to effectively manage our growth and organizational change, our mission-driven culture could be impacted, and our business could be harmed.

We have experienced, and may continue to experience, growth and organizational change, which has placed, and may continue to place, significant demands on our management, operational, and financial resources. For example, our headcount was approximately 2,350 as of February 28, 2022. Most of our employees have been with us for fewer than three years as a result of our rapid growth. We believe that our mission-driven culture has been an important contributor to our success, which we believe fosters empathy, innovation, teamwork, and passion for providing high levels of customer satisfaction and member engagement. If we fail to successfully integrate, develop, and motivate new employees, it could harm our mission-driven culture. In addition, as we grow and develop the infrastructure of a public company, we may find it difficult to maintain the important aspects of our mission-driven culture, which could limit our ability to innovate and operate effectively. Any failure to preserve our culture could also negatively affect our ability to retain and recruit personnel, maintain our performance, or execute on our business strategy.

To manage our current and anticipated future growth and organizational change effectively, we must also continue to maintain, and may need to enhance, our information technology infrastructure and financial and accounting systems and controls, as well as manage expanded operations in geographically distributed locations, which will place additional demands on our resources and operations. Failure to manage our growth and organizational change effectively could lead us to over-invest or under-invest in technology and operations; result in weaknesses in our infrastructure, systems, or controls; give rise to operational mistakes, losses, or loss of productivity or business opportunities; reduce customer or member satisfaction; limit our ability to respond to competitive pressures; and result in loss of team members and reduced productivity of remaining team members. Our growth and organization change could require significant capital expenditures and may divert financial resources and management attention from other projects, such as the development of new or enhanced solutions or the acquisition of suitable businesses or technologies. If our management is unable to effectively manage our growth and organizational change, our expenses may increase more than expected, our revenue could decline or may grow more slowly than expected, and we may be unable to implement our business strategy.

If we are unable to attract, integrate, and retain additional qualified personnel, especially for Accolade Health Assistants, clinical, including primary care physicians and medical specialists, and various product and technology roles, our business could be adversely affected.

Our future success depends in part on our ability to identify, attract, integrate, and retain empathetic and knowledgeable Accolade Health Assistants and clinicians, as well as highly qualified and motivated product developers and engineers, who embody our mission-driven culture. We seek to employ Accolade Health Assistants and clinicians who demonstrate empathy and problem-solving skills and hire from diverse professional backgrounds, including social work, teaching, customer care, and benefits. 2nd.MD's service relies on the attraction of and engagement with medical specialists to support its business operations, and PlushCare, via the associated medical practices, seeks to engage high quality primary care physicians. We have from time to time in the past experienced, and may in the future experience, difficulty in hiring and retaining employees with appropriate qualifications. Qualified individuals in the regions where we have offices are in high demand, and we may incur significant costs to attract them. For example, the market for software engineers in the Seattle area is particularly competitive. In addition, with a current shortage of certain qualified nurses in many areas of the United States, competition for the hiring of these professionals remains intense. Similarly, with the expansion of adoption of telehealth generally, and specifically virtual primary care, competition remains intense for qualified primary care physicians. We compete for qualified individuals with numerous other companies, many of whom have greater financial and other resources than we do. In addition, in the future, we may experiment with different staffing and scheduling models to help attract and retain qualified personnel, including hiring individuals that work remotely, incorporating more flexible work schedules, or deploying a temporary workforce. If we fail to effectively manage our hiring needs or successfully integrate new hires, our employee morale and retention could suffer. Any of these events could also adversely affect our customer and member satisfaction and harm our business.

Attracting, integrating, and retaining personnel will require us to invest in and commit significant financial, operational, and management resources to grow and change in these areas without undermining the mission-driven culture that has been critical to our growth so far. For example, newly hired Accolade Health Assistants and clinicians require significant training and, in many cases, take significant time before they achieve full productivity. We train Accolade Health Assistants and clinicians in our proprietary engagement approach and integrated technology platform to provide data-informed, personalized health and benefit support to members in friendly, straightforward terms. This new hire training process lasts approximately one month, including classroom sessions and supervised live call training. If we do not achieve the benefits anticipated from these investments, or if the realization of these benefits is delayed, our results of operations may be adversely affected and our reputation could suffer.

We may also incur significant costs to attract and retain qualified personnel, including significant expenditures related to salaries and benefits and compensation expenses related to equity awards, and we may lose new employees to our competitors or other companies before we realize the benefit of our investment in recruiting and training them. Additionally, we have granted certain, but not all of, our employees equity-based awards under our equity incentive plans and expect to continue this practice. However, if we do not grant equity awards, or if we reduce the value of the equity awards we grant, we may not be able to attract and retain key personnel. Volatility in the price of our common stock underlying equity awards may adversely affect our ability to attract or retain key personnel. If we grant more equity awards to attract and retain key personnel, the expenses associated with such additional equity awards could affect our results of operations.

Further, as of February 28, 2022, approximately 50% of our U.S. based labor force were hourly employees, including Accolade Health Assistants and certain clinicians, who are paid wage rates that currently are above the applicable U.S. federal and state minimum wage requirements. These employees are classified as non-exempt, overtime eligible under U.S. federal and state law. If we fail to effectively manage these hourly employees, then we may face claims alleging violations of wage and hour employment laws, including claims of back wages, unpaid overtime pay, and missed meal and rest periods. Any such employee litigation could be attempted on a class or representative basis. Such litigation can be expensive and time-consuming regardless of whether the claims against us are valid or whether we are ultimately determined to be liable and could divert management's attention from our business. We also could be adversely affected by negative publicity, litigation costs resulting from the defense of these claims, and the diversion of time and resources from our operations. Although we have historically maintained a good relationship with our employees, our employees

could unionize or any of our employees could engage in a strike, work stoppage, or other slowdown that would adversely affect our operations and could result in higher labor costs, which would harm our business.

We may face intense competition, which could limit our ability to maintain or expand market share within our industry, and if we do not maintain or expand our market share our business and operating results will be harmed.

The market for our offerings is underpenetrated, competitive, and characterized by rapidly evolving technology standards, customer and member needs, and the frequent introduction of new products and services. Our competitors range from smaller niche companies to large, well-financed health plans. As costs fall and technology improves, increased market saturation may change the competitive landscape in favor of competitors with greater scale than we currently possess. We compete on the basis of several factors, including level of member engagement, ability to influence members to improve health and financial incomes, customer and member satisfaction, and price. Some of our competitors have greater name recognition, longer operating histories, and significantly greater resources than we do. As a result, our competitors may be able to respond more quickly and effectively than we can to new or changing opportunities, technologies, standards, or customer requirements.

In addition to new niche vendors, who offer stand-alone products and services, we also face competition from health plans, which may have existing systems in place at customers in our target market. These competitors may now, or in the future, offer or promise products or services similar to ours, and which offer ease of integration with existing systems and which leverage existing customer and vendor relationships.

In addition, current and potential competitors have established, and may in the future establish, cooperative relationships with vendors of complementary products, our trusted suppliers, or other third parties, technologies, or services to increase the availability of their products to the marketplace. For example, our current competitors may persuade our trusted suppliers to terminate their relationship with us and engage exclusively with our competitors. Accordingly, new competitors or alliances may emerge that have greater market share, larger customer bases, more widely adopted proprietary technologies, greater marketing expertise, greater financial resources, and larger sales forces than we have, which could put us at a competitive disadvantage. Further, in light of these advantages, even if our offerings are more effective than the product or service offerings of our competitors, current or potential customers might accept competitive products and services in lieu of purchasing our solutions.

Our partners, including our trusted suppliers, could become our competitors by offering similar services. Some of our partners may begin to offer services in the same or similar manner as we do. For example, a trusted supplier may expand their business model from a point solution into an engagement model similar to ours. Although there are many potential opportunities for, and applications of, these services, our partners may seek opportunities or target new customers in areas that may overlap with those that we have chosen to pursue. In such cases, we may potentially compete against our partners. Competition from our partners may adversely affect our business and results from operations. In addition, some of the terms of our partner relationships may include exclusivity or other restrictive clauses. Any agreements with partners that include exclusivity or other restrictive provisions may limit our ability to partner with or provide services to potential customers or other third parties, which could harm our business.

We also compete on the basis of price. We may be subject to pricing pressures as a result of, among other things, competition within the industry, practices of managed care organizations, government action, and financial stress experienced by our customers. Many customers stage regular request for proposal processes as a matter of procurement policy, which enables competitors to bid aggressively to try to capture such customers' business, and such competitors may submit bids incorporating pricing or other terms that we are unable or unwilling to match. If our pricing experiences significant downward pressure, our business will be less profitable, and our results of operations will be adversely affected. We cannot be certain that we will be able to retain our current customers or expand our customer base in this competitive environment. If we do not retain current customers or expand our customer base, or if we have to renegotiate existing contracts, our business will be harmed.

Moreover, we expect that competition will continue to increase as a result of consolidation in both the healthcare information technology and healthcare industries. If one or more of our competitors or potential competitors were to merge or partner with another of our competitors or one of our trusted suppliers, the change in the competitive landscape could

also adversely affect our ability to compete effectively and could harm our business. In addition, as the healthcare industry consolidates, competition to provide services to this segment will become more intense. These healthcare industry participants may try to use their market power to negotiate price reductions for our existing and future offerings. If we reduce our prices because of consolidation in the healthcare industry, our revenue would decrease, which could harm our business.

The growth of our business relies, in part, on the growth and success of our customers and the number of members with access to our offerings, which are difficult to predict and are affected by factors outside of our control.

We enter into agreements with our customers under which our fees are generally dependent upon the number of their employees enrolled in in-scope health plans and those employees' enrolled dependents each month. If the number of members covered by one or more of our customers' health and other benefits programs were to decline, such decrease would lead to a decrease in our revenue. Any reductions in headcount for our customers may result in a decrease in our revenue. Some of our fees are also subject to credits if certain performance criteria are not met, which in some cases depend on the behavior of our members, such as their continued engagement with our existing and future offerings, and other factors outside of our control. The recognition of a portion of our revenue is subject to achievement of performance metrics and healthcare cost savings and may not be representative of revenue for future periods. In addition, some of our customers' members may request to opt out of our service, which could cause our customers to only pay for those members that have not opted out, and as a result, may result in utilization-based pricing, which could lead to a decrease in revenue from that customer and harm our business.

We may be unable to successfully execute on our growth initiatives, business strategies, or operating plans.

We are continually executing on growth initiatives, strategies, and operating plans designed to enhance our business and extend our existing and future offerings to address evolving needs. For example, we developed add-on offerings that target specific challenges faced by our customers, including Accolade COVID Response Care, Accolade Boost, the Trusted Supplier Program, and Mental Health Integrated Care. The anticipated benefits from these efforts are based on several assumptions that may prove to be inaccurate. Moreover, we may not be able to successfully complete these growth initiatives, strategies, and operating plans and realize all of the benefits, including growth targets and cost savings, that we expect to achieve, or it may be more costly to do so than we anticipate. A variety of risks could cause us not to realize some or all of the expected benefits. These risks include, among others, delays in the anticipated timing of activities related to such growth initiatives, strategies, and operating plans, increased difficulty and cost in implementing these efforts, including difficulties in complying with new regulatory requirements, the incurrence of other unexpected costs associated with operating our business, and lack of acceptance by our customers. Moreover, our continued implementation of these programs may disrupt our operations and performance. As a result, we cannot assure you that we will realize these benefits. If, for any reason, the benefits we realize are less than our estimates or the implementation of these growth initiatives, strategies, and operating plans adversely affect our operations or cost more or take longer to effectuate than we expect, or if our assumptions prove inaccurate, our business may be harmed.

We may acquire other companies or technologies, which could divert our management's attention, result in dilution to our stockholders, and otherwise disrupt our operations, and we may have difficulty integrating any such acquisitions successfully or realizing the anticipated benefits therefrom, any of which could have an adverse effect on our business, financial condition, and results of operations.

We may seek to acquire or invest in businesses, applications, services, or technologies that we believe could complement or expand our existing and future offerings, enhance our technical capabilities, or otherwise offer growth opportunities. The pursuit of potential acquisitions may divert the attention of management and cause us to incur various expenses in identifying, investigating, and pursuing suitable acquisitions, whether or not they are consummated. In addition, we have limited experience in acquiring other businesses and may have difficulty integrating acquired businesses. For example, in March 2021 we acquired 2nd.MD, in June 2021 we acquired PlushCare, and in September 2021 we acquired substantially all the assets of HealthReveal which we are in the process of integrating with our offerings. If we acquire additional businesses, we may not be able to integrate the acquired operations and technologies successfully, or effectively manage the combined business following the acquisition. Integration may prove to be difficult due to the necessity of integrating personnel with disparate business backgrounds and accustomed to different corporate cultures.

We also may not achieve the anticipated benefits from any acquired business due to a number of factors, including:

- inability to integrate or benefit from acquired technologies or services in a profitable manner;
- unanticipated costs or liabilities, including legal liabilities, associated with the acquisition;
- difficulties and additional expenses associated with supporting legacy products and hosting infrastructure of the acquired business;
- difficulty converting the customers of the acquired business into our current and future offerings and contract terms, including disparities in the revenue model of the acquired company;
- diversion of management's attention or resources from other business concerns;
- adverse effects on our existing business relationships with customers, members, or strategic partners as a result of the acquisition;
- the potential loss of key employees; and
- use of substantial portions of our available cash to consummate the acquisition.

We may issue equity securities or incur indebtedness to pay for any such acquisition or investment, which could adversely affect our business, results of operations, or financial condition. Any such issuances of additional capital stock may cause stockholders to experience significant dilution of their ownership interests and the per share value of our common stock to decline. In addition, a significant portion of the purchase price of any companies we acquire may be allocated to acquired goodwill and other intangible assets, which must be assessed for impairment annually and upon the identification of a triggering event, such as sustained declines in our stock price or market capitalization. For example, in the first quarter of fiscal 2023, the Company recorded a material impairment charge against goodwill. In the future, if our acquisitions do not yield expected returns, we may be required to take further charges to our results of operations based on this impairment assessment process, which could adversely affect our results of operations.

If we do not continue to innovate and provide offerings that are useful to customers and members that achieve and maintain market acceptance, we may not remain competitive, and our revenue and results of operations could suffer.

Our success depends on our ability to keep pace with technological developments, satisfy increasingly sophisticated customer and member requirements, and achieve and maintain market acceptance on our existing and future offerings in the rapidly evolving market for healthcare and benefits in the United States. In addition, market acceptance and adoption of our existing and future offerings depends on the acceptance by employers, payors, health plans, and government entities as to the distinct features, cost savings, and other perceived benefits of our existing and future offerings as compared to competitive solutions. Our competitors are constantly developing products and services that may become more efficient or appealing to our customers or members. As a result, we must continue to invest significant resources in research and development in order to enhance our existing offerings and introduce new offerings that customers and members will want, while offering our existing and future offerings at competitive prices. If we are unable to predict customer and member preferences or industry changes, or if we are unable to modify our existing and future offerings on a timely or cost-effective basis, we may lose customers. If we are not successful in demonstrating to existing and potential customers the benefits of our existing and future offerings, or if we are not able to achieve the support of employers, healthcare providers, and insurance carriers for our existing and future offerings, our revenue may decline or we may fail to increase our revenue in line with our forecasts. Our results of operations also would suffer if our innovations are not responsive to the needs of our customers and members, are not timed to match the corresponding market opportunity, or are not effectively brought to market, including as the result of delayed releases or releases that are ineffective or have errors or defects.

The growth of our business and future success relies in part on our partnerships and other relationships with third parties and our business could be harmed if we fail to maintain or expand these relationships.

We selectively form partnerships and engage with a range of third parties, including brokers, agents, benefits consultants, carriers, third-party administrators, trusted suppliers, and co-marketing and co-selling partners to grow our customer base and adoption of our offerings. We may fail to retain and expand these partnerships and other third-party relationships for various reasons, and any such failure could harm our relationship with our customers, our reputation and brand, our prospects, and our business.

In order to grow our business, we anticipate that we will continue to depend on our relationships with our partners. As we seek to form additional partnerships and other third-party relationships, it is uncertain whether these efforts will be successful, or that these relationships will result in increased customer or member use of our solutions or increased revenue. In the event that we are unable to effectively utilize, maintain, and expand these partnerships and other third-party relationships, our revenue growth could slow. Additionally, our partnerships and other third-party relationships may demand, or demand greater, referral fees or commissions.

If the estimates and assumptions we use to determine the size of our total addressable market are inaccurate, our future growth rate may be impacted and our business would be harmed.

Market estimates and growth forecasts are subject to significant uncertainty and are based on assumptions and estimates that may prove to be inaccurate. Even if the market in which we compete meets our size estimates and forecasted growth, our business could fail to grow at similar rates, if at all. Our market opportunity is based on the assumption that our existing and future offerings will be more attractive to our customers and potential customers than competing solutions. If these assumptions prove inaccurate, our business, financial condition, and results of operations could be adversely affected.

We depend on our senior management team, and the loss of one or more of these employees, or an inability to attract and retain qualified key personnel, could adversely affect our business.

Our success depends, in part, on the skills, working relationships and continued services of Rajeev Singh (Chief Executive Officer), other senior management team members and other key personnel. We do not currently maintain key-person insurance on the lives of any of our key personnel. From time to time, there may be changes in our senior management team resulting from the hiring or departure of executives, which could disrupt our business. The replacement of one or more of our executive officers or other key employees would likely involve significant time and costs and may significantly delay or prevent the achievement of our business objectives.

While we have entered into offer letters or employment agreements with certain of our executive officers, all of our employees are “at-will” employees, and their employment can be terminated by us or them at any time, for any reason and without notice, subject, in certain cases, to severance payment rights. In order to retain valuable employees, in addition to salary and cash incentives, we may provide equity awards that vest over time or based on performance. The value to employees of equity awards that vest over time or based on performance will be significantly affected by movements in our stock price that are beyond our control and may at any time be insufficient to counteract offers from other organizations. The departure of key personnel could adversely affect the conduct of our business. In such event, we would be required to hire other personnel to manage and operate our business, and there can be no assurance that we would be able to employ a suitable replacement for the departing individual, or that a replacement could be hired on terms that are favorable to us. In addition, volatility or lack of performance in our stock price may affect our ability to attract and retain replacements should key personnel depart. If we are not able to retain any of our key personnel, our business could be harmed.

If we are not able to maintain and enhance our reputation and brand recognition, our business and results of operations will be harmed.

We believe that maintaining and enhancing our reputation and brand recognition is critical to our relationships with our existing customers and partners, including our trusted suppliers, and to our ability to attract new customers and

partners. The promotion of our brand may require us to make substantial investments and we anticipate that, as our market becomes increasingly competitive, these marketing initiatives may become increasingly difficult and expensive. Brand promotion and marketing activities may not be successful or yield increased revenue, and to the extent that these activities yield increased revenue, the increased revenue may not offset the expenses we incur and our results of operations could be harmed. In addition, any factor that diminishes our reputation or that of our management, including failing to meet the expectations of customers, members, and partners, and failure to maintain high-quality support, could harm our reputation and brand and make it substantially more difficult for us to attract new customers and trusted suppliers or form new partnerships. Additionally, the performance of third parties with whom we have a relationship, including our trusted suppliers, may also affect our brand and reputation, particularly if our customers and members do not have a positive experience with our trusted suppliers or other third parties. In addition, our sales process is highly dependent on the reputation of our offerings and business and on positive recommendations from our existing customers. If we do not successfully maintain and enhance our reputation and brand recognition, our business may not grow and we could lose our relationships with existing and prospective customers, which would harm our business.

Any failure to offer high-quality customer and member support services could adversely affect our relationships with our customers and partners and our operating results.

Our customers and members depend on our support to assist members with their healthcare and other benefits needs. We may be unable to accurately predict our members' demand for services or respond quickly enough to accommodate short-term increases in customer or member demand for services. Increased customer or member demand for services, without a corresponding increase in productivity or revenue, could increase costs and adversely affect our operating results. Any failure to maintain high-quality support, or a market perception that we do not maintain high-quality support, could adversely affect our reputation, our ability to sell our solutions to existing and prospective customers, our relationships with third parties and our ability to form new partnerships, and our business and operating results.

If our existing customers do not continue to renew their contracts with us, renew at lower fee levels, decline to purchase additional offerings from us, or terminate their contracts for convenience, our business could be harmed.

We expect to derive a significant portion of our revenue from the renewal of existing customers' contracts and sales of additional solutions to existing customers. As part of our growth strategy, for instance, we have recently focused on expanding our solutions among current customers. For example, with the acquisitions of 2nd.MD and PlushCare, we introduced our expert medical opinion and virtual primary care offerings to our customers. In 2020, as the pandemic proliferated, we launched Accolade COVID Response Care, a service that helps employers manage their return to work programs. We also launched Mental Health Integrated Care, which expands our members' access to mental health coaching, virtual therapy, and virtual psychiatry and deeply integrates these services with the physical health support provided by the Accolade care team. Achieving a high customer retention rate and selling additional applications and solutions are critical to our future business, revenue growth, and results of operations. Factors that may affect our retention rate and our ability to sell additional applications and solutions include the following:

- the price, performance, and functionality of our existing and future offerings;
- the availability, price, performance, and functionality of competing solutions;
- our ability to develop and sell complementary applications and solutions;
- changes in healthcare laws, regulations, or trends; and
- the business environment of our customers.

We typically enter into contracts with our customers with a stated initial term of three years and various termination rights, which if invoked may cause such contracts to be terminated before the term expires. For example, after a specified period, certain of these contracts are terminable for convenience by our customers after a notice period has passed, including existing contracts with some of our largest customers. In connection with the COVID-19 pandemic,

macroeconomic factors may affect our customers' desire to renew their contracts, or even if they do renew, if they undergo layoffs or reductions in force, then our membership numbers would decrease which would reduce our revenues. If any of our contracts with our customers is terminated, we may not be able to recover all fees due under the terminated contract, which may adversely affect our operating results. Should any of our customers terminate their relationship with us after implementation of our solutions has begun, we not only would lose our time, effort, and resources invested in that implementation, but also we would have lost the opportunity to leverage those resources to build a relationship with other customers over that same period of time. Our customers may negotiate terms less advantageous to us upon renewal, which may reduce our revenue from these customers and may decrease our annual revenue. Mergers and acquisitions involving our customers have in the past and may in the future lead to non-renewal or termination of our contracts with those customers or by the acquiring or combining companies. If our customers fail to renew their contracts, renew their contracts upon less favorable terms or at lower fee levels, or fail to purchase new solutions from us, our revenue may decline or our future revenue growth may be constrained.

The healthcare industry is rapidly evolving and the market for technology-enabled solutions that empower healthcare consumers is relatively immature and unproven. If we are not successful in promoting the benefits of our existing and future offerings, our growth may be limited.

The market for our solutions is subject to rapid and significant changes. The market for technology-enabled solutions that empower healthcare consumers is characterized by rapid technological change, new product and service introductions, increasing consumer financial responsibility, consumerism and engagement, and the entrance of non-traditional competitors. In addition, there may be a limited-time opportunity to achieve and maintain a significant share of this market due in part to the rapidly evolving nature of the healthcare and technology industries and the substantial resources available to our existing and potential competitors. The market for technology-enabled solutions that empower healthcare consumers is relatively new and unproven, and it is uncertain whether this market will achieve and sustain high levels of demand and market adoption. In order to remain competitive, we are continually involved in a number of projects to compete with new market entrants by developing new offerings, growing our customer base, and expanding into adjacent markets. For example, with the acquisitions of 2nd.MD and PlushCare, we introduced our expert medical opinion, virtual primary care, and mental health support offerings to our customers, including integrated offerings with our core navigation services referred to as Accolade One (an offering combining navigation, expert medical opinion services, and virtual primary care and mental health support), and Accolade Care (an offering combining our virtual primary care and mental health support with elements of our navigation capabilities). Further, the Accolade Boost solution and our Trusted Supplier Program are examples of add-on offerings we have deployed to complement our traditional offerings and generate additional value to our customers. These projects carry risks, such as cost overruns, delays in delivery, performance problems, and lack of acceptance by our customers. If we cannot adapt to rapidly evolving industry standards, technology, and increasingly sophisticated customers and their employees, our existing technology could become undesirable, obsolete, or harm our reputation.

We must continue to invest significant resources in our personnel and technology in a timely and cost-effective manner in order to enhance our existing offerings and introduce new offerings that existing customers and potential new customers will want. If our new or modified offerings are not responsive to the preferences of customers and their employees, emerging industry standards, or regulatory changes, are not appropriately timed with market opportunity, or are not effectively brought to market, we may lose existing customers or be unable to obtain new customers, and our results of operations may suffer.

Our success also depends to a substantial extent on the ability of our existing and future offerings to increase member engagement and our ability to demonstrate the value of our existing and future offerings to customers. If our existing customers do not recognize or acknowledge the benefits of our existing and future offerings or our offerings do not increase member engagement, then the market for our solutions might not develop at all, or it might develop more slowly than we expect, either of which could adversely affect our operating results. In addition, we have limited insight into trends that might develop and affect our business, which could lead to errors in our predicting and reacting to relevant business, legal, and regulatory trends and healthcare reform. If any of these events occur, it could harm our business.

Our marketing efforts for the direct-to-consumer virtual primary care portion of our business may not be successful or may become more expensive, either of which could increase our costs and adversely affect our business, financial condition, results of operations and cash flows.

With the acquisition of PlushCare, direct-to-consumer virtual primary care and mental health support represents a material portion of our overall business. We spend significant resources marketing this service. We rely on relationships for our direct-to-consumer virtual business with a wide variety of third parties, including Internet search providers such as Google, social networking platforms such as Facebook, Internet advertising networks, co-registration partners, retailers, distributors, television advertising agencies and direct marketers, to source new members and to promote or distribute our services and products. In addition, in connection with the launch of new services or products for our direct-to-consumer virtual primary care and mental health support business, we may spend a significant amount of resources on marketing. If our marketing activities are inefficient or unsuccessful, if important third-party relationships or marketing strategies, such as Internet search engine marketing and search engine optimization, become more expensive or unavailable, or are suspended, modified or terminated, for any reason, if there is an increase in the proportion of consumers visiting our websites or purchasing our services by way of marketing channels with higher marketing costs as compared to channels that have lower or no associated marketing costs or if our marketing efforts do not result in our services being prominently ranked in Internet search listings, our business, financial condition, results of operations and cash flows could be materially and adversely impacted.

We have been and may in the future become subject to litigation, which could harm our business.

Our business entails the risk of liability claims against us, and we have been and may in the future become subject to litigation. Claims against us may be asserted by or on behalf of a variety of parties, including our customers, our members, vendors of our customers, government agencies, our current or former employees, or our stockholders. Litigation may result related to employer practices and healthcare in connection with the COVID-19 pandemic, including as to one or more of our service offerings. The expansion of Accolade's services to include expert consultations and primary care services, via the acquisition of 2nd.MD and PlushCare, also may increase our risk of litigation related to such services. Some of these claims may result in significant defense costs and potentially significant judgments against us, some of which are not, or cannot be, covered by adequate insurance. Although we carry professional liability insurance in amounts that we believe are appropriate in light of the risks attendant to our business, successful claims could result in substantial damage awards that exceed the limits of our insurance coverage. In addition, any determination that certain non-medical services are acting in the capacity of a healthcare provider, or exercising undue influence or control over a healthcare provider, may subject us to claims not covered by our professional liability insurance coverage, or could result in significant sanctions against us and our clinicians, additional compliance requirements, expense, and liability to us. If our medical care services are found to cause harm to an individual or otherwise constitute malpractice, we may be subject to claims exceeding our coverage limits and cause reputational harm. If we make errors in the billing and the coding for such services, we may be subject to claims exceeding our coverage limits and cause reputational harm. In addition, professional liability insurance is expensive and insurance premiums may increase significantly in the future, particularly as we expand our solutions. As a result, adequate professional liability insurance may not be available to us or to our partners in the future at acceptable costs or at all. We generally intend to defend ourselves vigorously; however, we cannot be certain of the ultimate outcomes of any claims that may arise in the future. Resolution of some of these types of matters against us may result in our having to pay significant fines, judgments, or settlements, which, if uninsured, or if the fines, judgments, and settlements exceed insured levels, could adversely impact our earnings and cash flows, thereby harming our business and per share trading price of our common stock. For example, fines or assessments could be levied against us under domestic or foreign data privacy laws (such as the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act (collectively, HIPAA), the General Data Protection Regulation (GDPR), or the California Consumer Privacy Act of 2018 (CCPA)) or under authority of privacy enforcing governmental entities (such as the Federal Trade Commission (FTC), or the U.S. Department of Health and Human Services (HHS)) or as a result of private actions, such as class actions based on data breaches or based on private rights of action (such as that contained in the CCPA). Certain litigation or the resolution of certain litigation may affect the availability or cost of some of our insurance coverage, which could adversely impact our results of operations and cash flows, expose us to increased risks that would be uninsured and adversely impact our ability to attract directors and officers. In addition, such litigation could result in increased scrutiny by government authorities having authority over our business, such as the FTC, the HHS, Office for Civil Rights (OCR), and state attorneys general.

If our information technology systems or data, or those of third parties upon which we rely, are or were compromised, we could experience adverse consequences resulting from such compromise, including but not limited to regulatory investigations or actions; litigation; fines and penalties; disruptions of our business operations; reputational harm; loss of revenue or profits; loss of customers or sales; and other adverse consequences.

In the ordinary course of our business, we may collect, store, use, disclose, or otherwise process proprietary, confidential, and sensitive information, including personal data (such as health-related data), intellectual property, and trade secrets. We manage and maintain our technology platform and data utilizing a combination of on-site systems, mobile applications, managed data center systems, and cloud-based computing center systems. We are highly dependent on information technology networks, mobile applications, and systems, including the Internet, to securely process, transmit, and store this critical information. We utilize third-party service providers, including business associates as defined under HIPAA, for important aspects of the collection, storage, and transmission of customer and member information, and other confidential and sensitive information, and therefore rely on third parties to manage functions that have material cybersecurity risks. Our technology platform also utilizes artificial intelligence and machine learning technology to provide services, and despite our defense in depth security, this technology may be susceptible to cybersecurity threats, as PHI, PII, and other confidential and sensitive information may be integrated into the platform. Because of the sensitivity of the PHI, other PII, and other confidential information we and our service providers collect, store, transmit, and otherwise process, the security of our technology platform and other aspects of our solutions, including those provided or facilitated by our third-party service providers, are important to our operations and business strategy. While we use various information security techniques and tools to secure our platforms, and require our third party service providers to adhere to substantially similar standards, our ability to monitor these third parties' cybersecurity practices is limited, and these third parties may not have adequate information security measures in place.

Cyberattacks, malicious internet-based activity, and online and offline fraud are prevalent and continue to increase. These threats are becoming increasingly difficult to detect. These threats come from a variety of sources, including traditional computer "hackers," threat actors, personnel (such as through theft or misuse), sophisticated nation states, and nation-state-supported actors. Some actors now engage and are expected to continue to engage in cyberattacks, including without limitation nation-state actors for geopolitical reasons and in conjunction with military conflicts and defense activities. We and the third parties upon which we rely may be subject to a variety of evolving threats, including but not limited to social-engineering attacks (including through phishing attacks), malicious code (such as computer viruses and worms), malware (including as a result of advanced persistent threat intrusions), denial-of-service attacks (such as credential stuffing), employee or contractor misconduct or error, ransomware attacks, supply-chain attacks, software bugs, system disruptions, shutdowns, or unauthorized disclosure or modifications of confidential information, server malfunctions, software or hardware failures, loss of data or other information technology assets, adware, telecommunications failures, and other similar threats.

Ransomware attacks, including by organized criminal threat actors, nation-states, and nation-state-supported actors, are becoming increasingly prevalent and severe and can lead to significant interruptions in our operations, loss of data and income, reputational harm, and diversion of funds. Extortion payments may alleviate the negative impact of a ransomware attack, but we may be unwilling or unable to make such payments due to, for example, applicable laws or regulations prohibiting such payments. Similarly, supply-chain attacks have increased in frequency and severity, and we cannot guarantee that third parties and infrastructure in our supply chain or our third-party partners' supply chains have not been compromised or that they do not contain exploitable defects or bugs that could result in a breach of or disruption to our information technology systems (including our services) or the third-party information technology systems that support us and our services. Our hybrid workforce poses increased risks to our information technology systems and data, as many of our employees work from home, at least part of the time, utilizing network connections outside our premises. Future or past business transactions (such as acquisitions or integrations) could expose us to additional cybersecurity risks and vulnerabilities, as our systems could be negatively affected by vulnerabilities present in acquired or integrated entities' systems and technologies.

Any of the previously identified or similar threats could cause a security incident or other interruption. A security incident or other interruption could result in unauthorized, unlawful, or accidental acquisition, modification, destruction, loss, alteration, encryption, disclosure of, or access to data. A security incident or other interruption could disrupt our ability (and that of third parties upon whom we rely) to provide our services.

We may expend significant resources or modify our business activities in an effort to protect against security incidents. Certain data privacy and security obligations may require us to implement and maintain specific security measures, industry standards or reasonable security measures to protect our information technology systems and data. We take certain administrative, physical, and technological safeguards to address these risks, such as by requiring outsourcing subcontractors and partners, including trusted suppliers, who handle customer and member information for us to enter into agreements that contractually obligate those subcontractors and partners to comply with applicable privacy laws, such as HIPAA, and otherwise use reasonable efforts to safeguard PHI, other PII, and other sensitive information. For those subcontractors and partners who handle PHI on our behalf, we enter into business associate agreements as required by HIPAA. Measures taken to protect our systems, those of our subcontractors and partners, or the PHI, other PII, or other sensitive information we, our subcontractors, or our partners process or maintain, may not adequately protect us from the risks associated with the collection, storage, and transmission of such information.

Although we have implemented security measures designed to protect against security incidents and help protect confidential and other sensitive information (including PHI and PII), there can be no assurance that these measures will be effective. We may be unable to detect vulnerabilities in our information technology systems because such threats and techniques change frequently, are often sophisticated in nature, and may not be detected until after a security incident has occurred. In addition, security incidents and other inappropriate access to, or acquisition or processing of, information can be difficult to detect or may occur outside of our network (such as in our supply chain or at our customers or trusted suppliers), and any delay in identifying or responding to such incidents or in providing any notification of such incidents may lead to increased harm. Any such breach or interruption of our systems, or the systems of any of our third-party information technology partners, could compromise our networks or data security processes and sensitive information could be inaccessible or could be accessed by unauthorized parties, publicly disclosed, lost, or stolen. Any such interruption in access, improper access, disclosure, or other loss of information could result in legal claims or proceedings, liability under laws and regulations that protect the privacy of member information or other personal data. Despite our efforts to identify and address vulnerabilities, if any, in our information technology systems (including our products), our efforts may not be successful. Further, we may experience delays in developing and deploying remedial measures designed to address any such identified vulnerabilities.

Applicable data privacy and security obligations may require us to notify relevant stakeholders of security incidents. Such disclosures are costly, and the disclosures or the failure to comply with such requirements could lead to adverse consequences. If we (or a third party upon whom we rely) experience a security incident or are perceived to have experienced a security incident, we may experience adverse consequences. These consequences may include: government enforcement actions (for example, investigations, fines, penalties, audits, and inspections); additional reporting requirements and/or oversight; restrictions on processing data (including personal data); litigation (including class claims); indemnification obligations; negative publicity; harm to our reputation; monetary fund diversions; interruptions in our operations (including availability of data); financial loss; and other similar harms. Security incidents and attendant consequences may cause customers to stop using our services, deter new customers from using our services, and negatively impact our ability to grow and operate our business.

Our contracts may not contain limitations of liability, and even where they do, there can be no assurance that limitations of liability in our contracts are sufficient to protect us from liabilities, damages, or claims related to our data privacy and security obligations. Although we maintain insurance covering certain security and privacy damages and claim expenses, we may not carry insurance or maintain coverage sufficient to compensate for all liability and, in any event, insurance coverage would not address the reputational damage that could result from a security incident. We cannot be sure that such coverage will continue to be available on commercially reasonable terms or at all, or that such coverage will pay future claims. Additionally, our contracts may not contain limitations of liability, and even where they do, there can be no assurance that limitations of liability in our contracts are sufficient to protect us from liabilities, damages, or claims related to our data privacy and security obligations.

If we fail to provide accurate and timely information, or if our personnel, including Accolade Health Assistants and clinicians, our content, or any other element of our existing and future offerings is associated with faulty administrative or clinical decisions or treatment, we could have liability to customers or members, which could adversely affect our results of operations.

Our Accolade Health Assistants and clinicians, our member web portal, and our mobile application all use our technology platform to support our members in making healthcare and benefits-related decisions. In addition, our Accolade Health Assistants and clinicians use our technology platform to help guide interactions with members. Our technology platform applies artificial intelligence and machine learning tactics to generate predictive insights about our members, which are then translated into recommended interventions for our Accolade Health Assistants and clinicians and used to enhance our member self-service capabilities. Our services, including personalized recommendations and interventions, center around engagement with our members to provide members with better understanding of their benefits, assist with access to care, and provide options for choosing quality providers and care. For example, our Accolade Health Assistants can leverage our technology platform to provide quotes to a member about that member's healthcare benefits, including in-network services, balance billing, or claims quotes. If we fail to provide accurate and timely information regarding these benefits or if the data generated by our technology platform (including the artificial intelligence and machine learning components) are inaccurate, fail, or are subject to security incidents, this could lead to claims against us that could result in substantial costs to us or cause demand for our solutions to decline. If our Accolade Health Assistants, clinicians, or technology platform guide people to care settings and providers resulting in faulty clinical decisions or treatment, then our customers or our members could assert claims against us that could result in substantial costs to us, harm our reputation in the industry, and cause demand for our existing and future offerings to decline. For example, our nurses have access to extensive intelligence on provider quality and cost, which allows them to present various options to members when they are selecting a primary care physician or specialist. If the member relies on this provider recommendation, and that provider subsequently makes faulty clinical decisions or treatment recommendations, we could be subject to claims by such member. In addition, if our Accolade Health Assistants or clinicians make recommendations outside of our standard protocol that result in faulty clinical decisions or treatments, then our customers or our members could assert claims against us.

In May 2020, we announced Accolade COVID Response Care to provide a comprehensive solution for current and ongoing needs of our customers as they reopen and rebuild their businesses. We may be subject to increased liability exposure from our customers or their members as we assist our customers in managing our customers' return to workplace programs, including programs related to diagnostic and antibody testing. Accordingly, there is the potential for increased liability exposure to Accolade, including as related to an employer's decision not to permit an employee to return to the workplace based on our service or if one of our customers has an outbreak of COVID-19 despite using our solution to plan their reopening.

The assertion of such claims and ensuing litigation, regardless of its outcome, could result in substantial cost to us, divert management's attention from operations, damage our reputation, and decrease market acceptance of our existing and future offerings. We maintain general liability and professional liability insurance coverage, but this coverage may not continue to be available on acceptable terms, may not be available in sufficient amounts to cover one or more large claims against us, or may not provide coverage if our Accolade Health Assistants or clinicians were to engage in the unlicensed practice of medicine. In addition, the insurer might disclaim coverage as to any future claim. One or more large claims could exceed our available insurance coverage. Adequate professional liability insurance may not be available to our clinicians or to us in the future at acceptable costs or at all. Any claims made against us that are not fully covered by insurance could be costly to defend against, result in substantial damage awards against us, and divert the attention of our management and our providers from our operations, which may harm our business. In addition, any claims may adversely affect our business or reputation.

Our technology platform may contain errors or failures that are not detected until after the software is introduced or updates and new versions are released. From time to time, we have discovered defects or errors in our software, and such defects or errors can be expected to appear in the future. Defects and errors that are not timely detected and remedied could expose us to risk of liability to customers and members and cause delays in introduction of new solutions, result in increased costs and diversion of development resources, require design modifications, or decrease market acceptance or customer satisfaction with our solutions. If any of these risks occur, they could harm our business.

In March 2021, we acquired 2nd.MD, which provides a service that allows members to access board-certified national specialists across the country for second opinion consultations in a real-time video call or by phone in order to provide the member with a rapid second opinion on their medical condition enabling the member to better understand a diagnosis and treatment options to help them make more informed decisions on their healthcare regarding significant and high-cost care decisions. While we believe that these specialists do not create a physician-patient relationship with the member and are not practicing medicine in these engagements, if the information provided is not accurate or timely, we could incur liability, which could adversely affect our operations.

In June 2021, we acquired PlushCare, which acts as a managed service provider to several medical practices, including PlushCare of California, that provide virtual primary care and mental health support to individuals. The physicians employed by or contracted with PlushCare of California or other PlushCare associated medical practices could misdiagnose or treat a patient, and/or the services and technology provided by PlushCare to the medical practices could malfunction, which could cause us to incur liability, which could adversely affect our operations.

We rely on Internet infrastructure, bandwidth providers, data center providers, other third parties, and our own systems for providing solutions to our customers, and any failure or interruption in the services provided by these third parties or our own systems could expose us to litigation and negatively impact our relationships with customers, adversely affecting our brand and our business.

Our ability to deliver our solutions is dependent on the development and maintenance of the infrastructure of the Internet and other telecommunications services by third parties. We currently host our technology platform, serve our customers and members, and support our operations primarily using third-party data centers and telecommunications solutions, including cloud infrastructure services such as Amazon Web Services (AWS) and Google Cloud. We also use a third-party call center for off-hours clinical support. We do not have control over the operations of the facilities of our data and call center providers, AWS, or Google Cloud. These facilities are vulnerable to damage or interruption from earthquakes, hurricanes, floods, fires, cyber security attacks, terrorist attacks, power losses, telecommunications failures, and similar events. The occurrence of a natural disaster or an act of terrorism, a decision to close the facilities without adequate notice, or other unanticipated problems could result in lengthy interruptions in our solution. The facilities also could be subject to break-ins, computer viruses, sabotage, intentional acts of vandalism, and other misconduct. Any errors, failures, interruptions, or delays experienced in connection with these third-party technologies and information services or our own systems could negatively impact our relationships with customers and adversely affect our business and could expose us to third-party liabilities.

For some of these services, we may not maintain redundant systems or facilities. Our technology platform's continuing and uninterrupted performance is critical to our success. Members may become dissatisfied by any system failure that interrupts our ability to provide our solutions to them. We may not be able to easily switch our AWS and Google Cloud operations to another cloud service provider if there are disruptions or interference with our use of AWS or Google Cloud. Sustained or repeated system failures would reduce the attractiveness of our technology platform to customers and members and result in contract terminations, thereby reducing revenue. Moreover, negative publicity arising from these types of disruptions could damage our reputation and may adversely impact use of our existing and future offerings. We may not carry sufficient business interruption insurance to compensate us for losses that may occur as a result of any events that cause interruptions in our service. Neither our third-party data and call center providers nor AWS or Google Cloud have an obligation to renew their agreements with us on commercially reasonable terms, or at all. If we are unable to renew our agreements with these providers on commercially reasonable terms, if our agreements with our providers are prematurely terminated, or if in the future we add additional data or call center providers or cloud service providers, we may experience costs or downtime in connection with the transfer to, or the addition of, new providers. If these providers were to increase the cost of their services, we may have to increase the price of our existing and future offerings, and our business may be harmed.

The evolving effects of the COVID-19 pandemic and associated global economic instability may have adverse effects on our operations and negatively impact our business, financial condition, and results of operations.

Our business, financial condition, and results of operations could be materially and adversely affected by the effects of a widespread outbreak of a contagious disease, including the COVID-19 pandemic. The COVID-19 pandemic

continues to affect various industries, the financial markets globally, which may lead to a further economic downturn and increased market volatility, as well as renewed orders to shelter in place, travel restrictions, and mandated business closures. It has also disrupted the normal operations of many businesses, including ours, and has continued for significantly longer than originally expected, resulting in greater potential impacts on the economy and our business. We have taken measures in response to the COVID-19 pandemic, including permitting employees to work from home, at least in part. If there are resurgences of the COVID-19 pandemic, including, for example, due to existing or new variants, we may experience increased demand on our Accolade Health Assistants and clinical specialists if our members are impacted by a contagious disease in large numbers. This increased demand could result in our failing to meet certain performance metrics set forth in contracts with our customers. Collectively or alone, these conditions could cause (1) increased absenteeism among our workforce (including resulting from sick time or increased use of Family Medical Leave Act and other leave) that could negatively affect our ability to provide our service despite our deployment of business continuity and disaster recovery plans enabling our workforce to work fully remotely from our offices, and/or (2) our customers or prospective customers decreasing headcount, benefits, or budgets, which could decrease corporate spending on our products and services, resulting in delayed sales cycles, a decrease in new customer acquisition, and/or loss of customers. Any layoffs or reductions in employee headcounts by our employer customers would result in a reduction in our base and variable PMPM fees. If our existing customers do not continue to renew their contracts with us, renew at lower fee levels, decline to purchase additional offerings from us, or terminate their contracts for convenience, our business could be harmed. While these risks may be offset by the value that Accolade can provide to customers and members during a health crisis, the impact on our business is still highly uncertain.

In addition, as we and other businesses consider the return of certain of our employees to our offices, the continued impact of the pandemic may increase employee concern about returning to work, which could lead to increased employee churn, dissatisfaction with our workplace, and potential litigation related to return to office mandates.

The effects of the COVID-19 pandemic continue to rapidly evolve. These effects have increased market volatility and could result in a significant long-term disruption of global financial markets, reducing our ability to access capital, which could in the future negatively affect our liquidity. In addition, economic instability resulting from the effects of the COVID-19 pandemic could materially affect our business and the value of our common stock.

Risks Related to Governmental Regulation

Changes in the health insurance market, ERISA laws, state insurance laws, or other laws could harm our business.

The market for private health insurance in the United States is evolving and, as our customers are primarily employers that deploy our offerings to employees and their families, our future financial performance will depend in part on the growth in this market. Changes and developments in the health insurance system in the United States could reduce demand for our existing and future offerings and harm our business. For example, there has been an ongoing national debate relating to the healthcare reimbursement system in the United States. Some elected officials have introduced proposals that would create a new single payor national health insurance program for all United States residents; others have proposed more incremental approaches, such as creating a new public health insurance plan option as a supplement to private sources of coverage. In the event that laws, regulations or rules that eliminate or reduce private sources of health insurance or require such benefits to be taxable are adopted, the subsequent impact on the workplace benefits provided by our customers may in turn have an adverse effect on our business and results of operations.

In addition, changes in laws or regulations regarding the Employee Retirement Income Security Act of 1974 (ERISA), changes in state insurance laws, or other changes in laws could materially impact the self-insured employer healthcare and benefits markets, or the markets in which our other existing or potential customers procure and provide benefits.

If we fail to comply with healthcare laws and regulations, we could face substantial penalties and our business could be harmed.

Our existing and future offerings, as well as our business activities, including our relationships with our commercial partners and customers, are or may be in the future subject to a complex set of regulations and rigorous enforcement, including by the HHS, Office of the Inspector General and Office of Civil Rights, U.S. Food and Drug Administration (FDA), U.S. Department of Justice, and numerous other federal and state governmental authorities. There is also rapidly changing COVID-19 guidance from the Centers for Disease Control and Prevention (CDC), state health organizations, the U.S. Equal Employment Opportunity Commission, the Department of Labor, the Occupational Safety and Health Administration, and others, especially as it relates to our new offering, Accolade COVID Response Care. In addition, our employees, consultants, and commercial partners may engage in misconduct or other improper activities, including non-compliance with regulatory standards and requirements. Certain aspects of our business model may also trigger scrutiny under healthcare and related laws. Federal and state healthcare and related laws and regulations that may now or in the future affect our ability to conduct business include:

- laws that regulate how businesses operate online, including measures relating to privacy and data security and how such information is communicated to customers (a) under the FTC's unfair and deceptive trade practice authority from the FTC Act and (b) from state attorneys general under state consumer protection laws and data privacy laws;
- federal and state laws governing (i) the corporate practice of medicine and other healthcare professions and related fee-splitting laws, including the provision of management or administrative services in connection with practice of medicine and other health care professions, employment of professionals by non-professionals; (ii) professional licensing and standards of professional conduct; (iii) the provision of telemedicine, telehealth or other health care services, including medical record retention requirements; and (iv) the billing, submission, or collection of claims or payments for healthcare services;
- the federal Anti-Kickback Statute, which prohibits, among other things, any person from knowingly and willfully offering, soliciting, receiving or providing remuneration, directly or indirectly, in exchange for or to induce either the referral of an individual for, or the purchase, order or recommendation of, any good or service for which payment may be made under federal healthcare programs, such as the Centers for Medicare and Medicaid Services (CMS) programs, including Medicare and Medicaid;
- the federal civil false claims laws, including the federal False Claims Act, and federal Civil Monetary Penalties Law, which prohibit, among other things, individuals or entities from knowingly presenting, or causing to be presented, false claims, or knowingly using false statements, to obtain payment from the federal government;
- federal criminal laws that prohibit executing a scheme to defraud any healthcare benefit program or making false statements relating to healthcare matters;
- the federal Physician Payments Sunshine Act, or Open Payments, created under the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act (collectively, the Affordable Care Act), and its implementing regulations, which requires certain manufacturers of drugs, medical devices, biologicals and medical supplies for which payment is available under Medicare, Medicaid, or the Children's Health Insurance Program to report annually to CMS information related to payments or other transfers of value made to physicians (defined to include doctors, dentists, optometrists, podiatrists and chiropractors), certain other healthcare professionals (e.g. physician assistants and nurse practitioners), and teaching hospitals, as well as ownership and investment interests held by physicians and their immediate family members; and
- state law equivalents of each of the above federal laws, such as anti-kickback and false claims laws which may apply to items or services reimbursed by any third-party payor, including commercial insurers.

In addition, we are subject to laws that regulate how businesses operate online, including measures relating to privacy and data security and how such information is communicated to customers (a) under the FTC's unfair and deceptive trade practices authority from the FTC Act and (b) from state attorneys general under state consumer protection laws and data privacy laws.

The Affordable Care Act, among other things, amended the intent requirement of the federal Anti-Kickback Statute and criminal healthcare fraud statutes. A person or entity no longer needs to have actual knowledge of this statute or specific intent to violate it. In addition, the Affordable Care Act provides that the government may assert that a claim including items or services resulting from a violation of the federal Anti-Kickback Statute constitutes a false or fraudulent claim for purposes of the federal False Claims Act.

Because of the breadth of these laws and the narrowness of available statutory and regulatory exemptions, it is possible that some of our activities could be subject to challenge under one or more of such laws. For example, there is a risk that regulatory authorities in some states may find that certain of our contractual relationships with healthcare providers are in violation of state anti-kickback, corporate practice of health care professions, or fee-splitting laws. Any action brought against us for violations of these laws or regulations, even if successfully defended, could cause us to incur significant legal expenses and divert our management's attention from the operation of our business. We may be subject to private "qui tam" actions brought by individual whistleblowers on behalf of the federal or state governments, with potential liability under the federal False Claims Act including mandatory treble damages and significant per-claim penalties.

Although we have adopted policies and procedures designed to comply with these laws and regulations and conduct internal reviews of our compliance with these laws, our compliance is also subject to governmental review. The growth of our business and sales organization may increase the potential of violating these laws or our internal policies and procedures. The risk of our being found in violation of these or other laws and regulations is further increased by the fact that many have not been fully interpreted by the regulatory authorities or the courts, and their provisions are open to a variety of interpretations. Any action brought against us for violation of these or other laws or regulations, even if we successfully defend against it, could cause us to incur significant legal expenses and divert our management's attention from the operation of our business. If our operations are found to be in violation of any of the federal, state and foreign laws described above or any other current or future fraud and abuse or other healthcare laws and regulations that apply to us, we may be subject to penalties, including significant criminal, civil and administrative penalties, damages and fines, disgorgement, additional reporting requirements and oversight if we become subject to a corporate integrity agreement or similar agreement to resolve allegations of noncompliance with these laws, imprisonment for individuals and exclusion from participation in government programs, such as Medicare and Medicaid, as well as contractual damages and reputational harm. We could also be required to curtail or cease our operations. Any of the foregoing consequences could seriously harm our business and our financial results.

In our virtual care business, we are dependent on our relationships with affiliated professional entities, which we do not own, to provide physician services, and our business would be adversely affected if those relationships were disrupted or if our arrangements with our providers or our members are found to violate state laws prohibiting the corporate practice of medicine or fee splitting.

The laws of many states, including states in which our members are located, prohibit us from exercising control over the medical judgments or decisions of physicians and from engaging in certain financial arrangements, such as splitting professional fees with physicians. These laws and their interpretations vary from state to state and are enforced by state courts and regulatory authorities, each with broad discretion, and are subject to change and to evolving interpretations by state boards of medicine and state attorneys general, among others. We enter into agreements with professional associations, PlushCare of California, Inc. (a California professional corporation) and others, which enter into contracts with our providers pursuant to which they render professional medical services. In addition, we enter into contracts with our members to deliver professional services in exchange for fees. These contracts include management services agreements with our affiliated physician organizations pursuant to which the physician organizations reserve exclusive control and responsibility for all aspects of the practice of medicine and the delivery of medical services. Although we seek to substantially comply with applicable state prohibitions on the corporate practice of medicine and fee splitting, changes in, or subsequent interpretations of, the corporate practice of medicine laws could circumscribe our

business operations, and state officials who administer these laws or other third parties may successfully challenge our existing organization and contractual arrangements. If such a claim were successful, we could be subject to civil and criminal penalties and could be required to restructure or terminate the applicable contractual arrangements. A determination that these arrangements violate state statutes, or our inability to successfully restructure our relationships with our providers to comply with these statutes, could eliminate our ability to acquire members located in certain states from the market for our services, which would have a materially adverse effect on our business, financial condition and results of operations. State corporate practice of medicine doctrines also often impose penalties on physician themselves for aiding the corporate practice of medicine, which could discourage physicians from participating in our network of providers.

We do not own PlushCare of California, Inc. (a California professional corporation) or other medical groups with which we contract. These medical groups are 100% physician owned and independent. The professional corporations with which we contract are owned by Dr. James Wantuck, one of our providers, and the professional corporations are owned by physicians licensed in their respective states. While we expect that these relationships will continue, we cannot guarantee that they will. A material change in our relationship with the medical groups that support our virtual care services, whether resulting from a dispute among the entities, a change in government regulation, or the loss of these affiliations, could impair our ability to provide services to our members and could have a material adverse effect on our business, financial condition and results of operations. In addition, the arrangement in which we have entered to comply with state corporate practice of medicine doctrines could subject us to additional scrutiny by federal and state regulatory bodies regarding federal and state fraud and abuse laws. Any scrutiny, investigation, or litigation with regard to such arrangements with the medical groups could have a material adverse effect on our business, financial condition and results of operations.

We are subject to stringent and evolving U.S. and foreign laws, regulations, rules, contractual obligations, policies and other obligations related to data privacy and security. Our actual or perceived failure to comply with such obligations could lead to regulatory investigations or actions; litigation; fines and penalties; disruptions of our business operations; reputational harm; loss of revenue or profits; loss of customers or sales; and other adverse business consequences.

In the ordinary course of business, we process personal data and other sensitive information, including proprietary and confidential business information, trade secrets, intellectual property, sensitive third-party information, primary member demographic information (e.g. name, address, date of birth, etc.), benefit plan eligibility information, and health information (including medical claims and other health records). Our data processing activities subject us to numerous data privacy and security obligations, such as various laws, regulations, guidance, industry standards, external and internal privacy and security policies, contracts, and other obligations that govern the processing of personal data by us and on our behalf.

In the United States, state, federal, and local governments have enacted numerous data privacy and security laws, including data breach notification laws, personal data privacy laws, and consumer protection laws. These laws and regulations include HIPAA, which establishes a set of national privacy and security standards for the protection of PHI by health plans, healthcare clearinghouses and certain healthcare providers, referred to as covered entities, and individuals and entities that perform services for them which involve the use, or disclosure of, individually identifiable health information, known as business associates and their subcontractors. As a healthcare technology company, we are considered a business associate under HIPAA, and with the acquisition of PlushCare, our associated medical practices are considered HIPAA covered entities. As such, we execute business associate agreements with our customers, subcontractors, and trusted suppliers. HIPAA requires covered entities and business associates, such as us, and their covered subcontractors to develop and maintain policies and procedures with respect to PHI that is used or disclosed, including the adoption of administrative, physical and technical safeguards to protect such information.

Some of our business activities require that we or our partners obtain permissions consistent with HIPAA to provide certain marketing and data aggregation services as well as those activities that require the creation and use of de-identified information. Similarly, our new offering, Accolade COVID Response Care requires us to obtain express authorizations from members, which may result in an increased risk of compliance with such authorizations. We may also require large sets of de-identified information to enable us to continue to develop and enhance our data and analytics

platform. If we or our partners are unable to secure these rights, or if there is a future change in law, we may face limitations on the use of PHI and our ability to provide marketing services and use de-identified information, which could harm our business or subject us to potential government actions or penalties. Also, there are ongoing public policy discussions regarding whether the standards for de-identified, anonymous or pseudonomized health information are sufficient, and the risk of re-identification sufficiently small, to adequately protect patient privacy. These discussions may lead to further restrictions on the use of such information or create additional regulatory burdens. There can be no assurance that these initiatives or future initiatives will not adversely affect our ability to access and use data or to develop or market current or future services.

Additionally, through our third-party telehealth partners, we provide COVID-19 testing services to consumers on behalf of certain of our employer customers. Such testing services and the related contract tracing activities related to such testing may be subject to the aforementioned laws, including HIPAA.

In addition, we could be subject to periodic audits for compliance with the HIPAA Privacy and Security Standards by HHS and our customers. HIPAA also implemented the use of standard transaction code sets and standard identifiers that covered entities must use when submitting or receiving certain electronic healthcare transactions, including activities associated with the billing and collection of healthcare claims. HIPAA imposes mandatory penalties for certain violations and a single breach incident can result in violations of multiple standards. HIPAA also authorizes state attorneys general to file suit on behalf of their residents. Courts may award damages, costs and attorneys' fees related to violations of HIPAA in such cases. While HIPAA does not create a private right of action allowing individuals to sue us in civil court for violations of HIPAA, its standards have been used as the basis for duty of care in state civil suits such as those for negligence or recklessness in the misuse or breach of PHI.

In addition to HIPAA, the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN-SPAM) and the Telephone Consumer Protection Act (TCPA) imposes specific requirements on communications with customers. For example, the TCPA imposes various consumer consent requirements and other restrictions on certain telemarketing activity and other communications with consumers by phone, fax, or text message. TCPA violations can result in significant financial penalties, including penalties or criminal fines imposed by the Federal Communications Commission or fines up to \$1,500 per violation imposed through private litigation or by state authorities. Furthermore, the California Consumer Privacy Act of 2018 (CCPA) imposes obligations on businesses to which it applies. These obligations include, but are not limited to, providing specific disclosures in privacy notices and affording California residents certain rights related to their personal data. The CCPA allows for statutory fines for noncompliance (up to \$7,500 per violation). In addition, it is anticipated that the California Privacy Rights Act of 2020 (CPRA), effective January 1, 2023, will expand the CCPA. For example, the CPRA establishes a new California Privacy Protection Agency to implement and enforce the CPRA, which could increase the risk of an enforcement action. Other states have enacted data privacy laws. For example, Virginia passed the Consumer Data Protection Act, Colorado passed the Colorado Privacy Act, and Utah passed the Consumer Privacy Act, all of which become effective in 2023. Additionally, several states and localities have enacted measures related to the use of artificial intelligence and machine learning in products and services. In addition, data privacy and security laws have been proposed at the federal, state, and local levels in recent years, which could further complicate compliance efforts.

Outside the United States, an increasing number of laws, regulations, and industry standards apply to data privacy and security. For example, the European Union's General Data Protection Regulation (EU GDPR) and, the United Kingdom's GDPR (UK GDPR) impose strict requirements for processing the personal data of individuals. For example, under the EU GDPR, government regulators may impose temporary or definitive bans on data processing, as well as fines of up to 20 million euros or 4% of annual global revenue, whichever is greater. Further, individuals may initiate litigation related to our processing of their personal data. Furthermore, in Europe, there is a proposed regulation related to artificial intelligence (AI) that, if adopted, could impose onerous obligations related to the use of AI-related systems. We may have to change our business practices to comply with such obligations. In addition to data privacy and security laws, we may be contractually subject to data privacy and security obligations, including industry standards adopted by industry groups and may become subject to new data privacy and security obligations in the future. For example, certain privacy laws, such as the GDPR and the CCPA, require our customers to impose specific contractual restrictions on their service providers.

These laws and regulations may also require additional compliance obligations relating to the transfer of data between Accolade and its subsidiaries. For example, absent appropriate safeguards or other circumstances, the EU GDPR generally restricts the transfer of personal data to countries outside of the European Economic Area (EEA), such as the United States, which the European Commission does not consider to provide an adequate level of data privacy and security. The European Commission released a set of “Standard Contractual Clauses” (SCCs) that are designed to be a valid mechanism by which entities can transfer personal data out of the EEA to jurisdictions that the European Commission has not found to provide an adequate level of protection. Currently, these SCCs are a valid mechanism to transfer personal data outside of the EEA but there exists some uncertainty regarding whether the SCCs will remain a valid mechanism. Additionally, the SCCs impose additional compliance burdens, such as conducting transfer impact assessments to determine whether additional security measures are necessary to protect the at-issue personal data. In addition, Switzerland and the UK similarly restrict personal data transfers outside of those jurisdictions to countries such as the United States that do not provide an adequate level of personal data protection, and certain countries outside Europe (e.g. China) have also passed or are considering laws requiring local data residency or otherwise impeding the transfer of personal data across borders, any of which could increase the cost and complexity of doing business.

If we cannot implement a valid compliance mechanism for cross-border data transfers, we may face increased exposure to regulatory actions, substantial fines, and injunctions against processing or transferring personal data from Europe or other foreign jurisdictions. Inability to transfer personal data from the European Union, Switzerland or United Kingdom to the United States or elsewhere, may restrict our activities in those jurisdictions and limit our ability to provide our products and services in those jurisdictions. Our response to these requirements globally may not meet the expectations of individual customers, affected data subjects, or other stakeholders, which could reduce the demand for our services. Some customers or other service providers may respond to these evolving laws and regulations by asking us to make certain privacy or data-related contractual commitments that we are unable or unwilling to make. This could lead to the loss of current or prospective customers or other business relationships.

This complex, dynamic legal landscape regarding data privacy and security creates significant compliance issues for us and our customers and potentially exposes us to additional expense, adverse publicity and liability. Additionally, these obligations may be subject to differing applications and interpretations, which may be inconsistent or in conflict among jurisdictions. Preparing for and complying with these obligations requires us to devote significant resources (including, without limitation, financial and time-related resources). These obligations may necessitate changes to our information technologies, systems, and practices and to those of any third parties that process personal data on our behalf. In addition, these obligations may require us to change our business model.

Although we endeavor to comply with all applicable data privacy and security obligations, we may at times fail (or be perceived to have failed) to do so. Moreover, despite our efforts, our personnel or third parties upon whom we rely may fail to comply with such obligations, which could negatively impact our business operations and compliance posture. For example, any failure by a third-party processor to comply with applicable law, regulations, or contractual obligations could result in adverse effects, including inability to operate our business and proceedings against us by governmental entities or others. If we fail, or are perceived to have failed, to address or comply with data privacy and security obligations, we could face significant consequences. These consequences may include, but are not limited to, government enforcement actions (e.g., investigations, fines, penalties, audits, inspections, and similar); litigation (including class-related claims); additional reporting requirements and/or oversight; bans on processing personal data; orders to destroy or not use personal data; and imprisonment of company officials.

We also publish statements to our customers and members that describe how we handle and protect PHI (for example, through our privacy policies connected with our website, mobile applications and other digital tools). If federal or state regulatory authorities, such as the FTC or state attorneys general, or private litigants consider any portion of these statements to be untrue, we may be subject to claims of deceptive practices, which could lead to significant liabilities and consequences, including costs of responding to investigations, defending against litigation, settling claims, and complying with regulatory or court orders.

Any of the foregoing consequences could have a material adverse effect on our reputation, business and our financial condition, including but not limited to: interruptions or stoppages in our business operations; interruptions or stoppages of data collection needed to train our algorithms; inability to process personal data or to operate in certain

jurisdictions; limited ability to develop or commercialize our products; expenditure of time and resources to defend any claim or inquiry; adverse publicity; or revision or restructuring of our operations. Furthermore, the costs of compliance with, and other burdens imposed by, the laws, regulations and policies that are applicable to the businesses of our customers may limit the use and adoption of, and reduce the overall demand for, our existing and future offerings. Any of the foregoing consequences could harm our business.

Our employment and use of nurses, physician medical directors and our other clinicians and our engagement of physicians may subject us to licensing and other regulatory risks.

Our employment and use of nurses, physician medical directors, and our other clinicians and our engagement of physicians may subject us to state and other licensing and regulatory risks. In addition, our subcontracts with clinicians to provide telehealth services related to COVID-19 testing may also subject us to certain licensing and regulatory risks. For example, there may be restrictions on the ability of our employed and contracted clinicians to provide services to our members residing in states outside of the state or states in which such clinicians are licensed or registered. The services provided by our clinicians may be subject to review by state or other regulatory bodies. In addition, any activities conducted by our clinicians that are in violation of practice rules could subject us to fines or other penalties. While we do not believe that we provide medical care or establish patient relationships with our members, our clinicians could be found to be in violation of applicable laws. Further, in March 2021, we acquired 2nd.MD, which provides a service that allows members to access board-certified national specialists across the country for second opinion consultations in a real-time video call or by phone. This provides the member with a rapid second opinion on their medical condition, enabling the member to better understand a diagnosis and treatment options, which helps them make more informed decisions on their healthcare regarding significant and high-cost care decisions. While we believe that these experts do not create a physician-patient relationship with the member and are not practicing medicine, state medical boards may disagree with our position, which could result in significant liability and may require the restructuring of such operations. As a result of our acquisition of PlushCare, in June 2021, our associated medical practices employ and engage clinicians as permitted under state law, and maintain physician-patient relationships with members. Further, if one of our clinicians is found to be acting outside the scope of their professional license or otherwise violated the applicable state's practice laws, such activity could result in disciplinary action against the clinician by the applicable licensing agency. The definition of what constitutes the practice of medicine, nursing or other health professions varies by state.

In addition, there is a risk that we may be found in violation of the prohibition of the corporate practice of a health profession under certain state laws, which may result in the imposition of civil or criminal penalties. Certain states prevent corporations from being licensed as practitioners and prohibit physicians from practicing medicine in partnership with non-physicians, such as business corporations. Activities other than those directly related to the delivery of healthcare may be considered an element of the practice of medicine in certain states. These laws, which vary by state, may also prevent the sharing of professional services income with non-professional or business interests. Any determination that we are acting in the capacity as a healthcare provider, exercising undue influence or control over a healthcare provider or impermissibly sharing fees with a healthcare provider, may result in significant sanctions against us and our clinicians, including civil and criminal penalties and fines, additional compliance requirements, expense, and liability to us, and require us to change or terminate some portions of our contractual arrangements or business.

Evolving government regulations may require increased costs or adversely affect our results of operations.

In a regulatory climate that is uncertain, our operations may be subject to direct and indirect adoption, expansion, or reinterpretation of various laws and regulations. Compliance with these future laws and regulations may require us to change our practices at an undeterminable and possibly significant initial monetary and annual expense. These additional monetary expenditures may increase future overhead, which could harm our business. For example, since the Affordable Care Act was enacted, there have been executive, judicial and Congressional challenges to certain aspects of the law. For example, President Trump signed several Executive Orders and other directives designed to delay the implementation of certain provisions of the Affordable Care Act or otherwise circumvent some of the requirements for health insurance mandated by the Affordable Care Act. Concurrently, prior sessions of Congress considered legislation to repeal or repeal and replace all or part of the Affordable Care Act. While Congress has not passed comprehensive repeal legislation, several bills affecting the implementation of certain taxes under the Affordable Care Act have been signed into law. The Tax Cuts and Jobs Act of 2017 (Tax Act), included a provision which repealed, effective January 1, 2019, the tax-based shared

responsibility payment imposed by the Affordable Care Act on certain individuals who fail to maintain qualifying health coverage for all or part of a year that is commonly referred to as the “individual mandate.”

The Bipartisan Budget Act of 2018, among other things, amended the Affordable Care Act, effective January 1, 2019, to close the coverage gap in most Medicare drug plans, commonly referred to as the “donut hole.” In addition, the 2020 federal spending package permanently eliminated, effective January 1, 2020, the “Cadillac” tax on high-cost employer-sponsored health coverage and medical device tax that were mandated by the Affordable Care Act and, effective January 1, 2021, also eliminated the health insurer tax. On June 17, 2021, the U.S. Supreme Court dismissed a challenge on procedural grounds that argued the Affordable Care Act is unconstitutional in its entirety because the “individual mandate” was repealed by Congress. Thus, the Affordable Care Act will remain in effect in its current form. Further, prior to the U.S. Supreme Court ruling, on January 28, 2021, President Biden issued an executive order that initiated a special enrollment period for purposes of obtaining health insurance coverage through the Affordable Care Act marketplace, which began on February 15, 2021 and remained open through August 15, 2021. The executive order also instructed certain governmental agencies to review and reconsider their existing policies and rules that limit access to healthcare, including among others, reexamining Medicaid demonstration projects and waiver programs that include work requirements, and policies that create unnecessary barriers to obtaining access to health insurance coverage through Medicaid or the Affordable Care Act. It is possible that the Affordable Care Act will be subject to judicial or Congressional challenges in the future. It is unclear how any such challenges and the healthcare reform measures of the Biden administration will impact the Affordable Care Act. We continue to evaluate the potential impact of such healthcare reform measures on our business.

There could be laws and regulations applicable to our business that we have not identified or that, if changed, may be costly to us, and we cannot predict all the ways in which implementation of such laws and regulations may affect us. In the states in which we operate, we believe we are in compliance with all applicable material regulations, but, due to the uncertain regulatory environment, certain states may determine that we are in violation of their laws and regulations. In the event that we must remedy such violations, we may be required to modify our existing and future offerings and solutions in such states in a manner that undermines our existing and future offerings' attractiveness to partners, customers or members, we may become subject to fines or other penalties or, if we determine that the requirements to operate in compliance in such states are overly burdensome, we may elect to terminate our operations in such states. In each case, our revenue may decline and our business, financial condition, and results of operations could be adversely affected.

Additionally, the introduction of new solutions may require us to comply with additional, yet undetermined, laws and regulations. Compliance may require obtaining appropriate state medical board licenses or certificates, increasing our security measures and expending additional resources to monitor developments in applicable rules and ensure compliance. The failure to adequately comply with these future laws and regulations may delay or possibly prevent our existing and future offerings from being offered to partners, customers and members, which could significantly harm our business. Further, we expect that additional healthcare reform measures will be adopted in the future, which could impact our business. For example, it is possible that additional governmental action is taken in response to the COVID-19 pandemic. In addition, Congress is considering additional health reform measures.

Individuals may claim our outbound engagement techniques, including outbound telephone calls and digital outreach, are not compliant with HIPAA or federal marketing laws.

Several federal laws are designed to protect consumers from various types and modes of marketing. HIPAA prohibits certain types of marketing to individuals using PHI, except for certain treatment and healthcare operations, including communications made to describe a health-related product or service (or payment for such product or service) that is provided by, or included in, a plan of benefits. Our solutions may be subject to review by OCR and deemed in violation of HIPAA, which could subject us to significant fines or other penalties. In addition, the Telephone Consumer Protection Act (TCPA), is a federal statute that protects consumers from unwanted telephone calls and faxes. Since its inception, the TCPA's purview has extended to text messages sent to consumers. We may communicate with and perform outreach to members through multiple modes of communication, including phone, email, and secure messaging. We must ensure that our solutions that leverage telephone and secure messaging comply with TCPA regulations and agency guidance. While we strive to adhere to strict policies and procedures, the Federal Communications Commission (FCC), as the agency that implements and enforces the TCPA, may disagree with our interpretation of the TCPA and subject us to

penalties and other consequences for noncompliance. Determination by a court or regulatory agency that our solutions violate the TCPA could subject us to civil penalties, could invalidate all or portions of some of our customer contracts, could require us to change or terminate some portions of our offerings, could require us to refund portions of our fees, and could have an adverse effect on our business. Even an unsuccessful challenge by consumers or regulatory authorities of our activities could result in adverse publicity and could require a costly response from us. Other laws focus on unsolicited email, such as the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, (CAN-SPAM Act), which establishes requirements for the transmission of commercial email messages and specifies penalties for unsolicited commercial email messages that follow a recipient's opt-out request or deceive the receiving consumer.

In addition, some of our marketing activities require that we obtain permissions consistent with HIPAA and applicable state health information privacy laws. If we are unable to secure such permissions, or if there is a future change in law, we may face limitations on the use of such information, which may harm our business.

Our direct-to-consumer virtual care business leverages revenue from member subscriptions, which, if we do not comply with various state and federal laws relating to the collection of auto-renewing subscription fees, could result in significant liability or reputational harm and, in turn, a material adverse effect on our member base and revenue.

Various state and federal laws require disclosures to be made to consumers prior to collecting periodic subscription fees that will automatically renew without further action by the consumer. One such example is the California Automatic Renewal Law (California ARL) pursuant to which PlushCare, Inc. and PlushCare of California were recently sued by a purported class (*Robbins v. PlushCare, Inc. et al.*) in the United States District Court for the Northern District of California alleging, *inter alia*, that PlushCare violated the California ARL by failing to provide adequate disclosures to members. The lawsuit seeks restitution of subscription fees, statutory damages for each violation, subject to trebling, reasonable attorneys' fees, and injunctive relief. We will vigorously defend the lawsuit and any potential loss is currently deemed to be immaterial.

With the acquisition of PlushCare, direct-to-consumer virtual care represents a material portion of our overall business. If we are required to change our automatically renewing subscription fee practices, our business, financial condition, results of operations and cash flows could be materially and adversely impacted.

The FDA may in the future determine that our technology solutions are subject to the Federal Food, Drug, and Cosmetic Act, and we may face additional costs and risks as a result.

There is a risk that our existing and future offerings, including the operational/technical component of our business model, such as our decision support software incorporating machine learning, meet the definition of a medical device under the Federal Food, Drug, and Cosmetic Act (FDCA). Medical devices are subject to extensive regulation by the FDA under the FDCA. Under the FDCA, medical devices include any instrument, apparatus, machine, contrivance, or other similar or related articles that is intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease. FDA regulations govern among other things, product development, testing, manufacture, packaging, labeling, storage, clearance or approval, advertising and promotion, sales and distribution, and import and export.

Failure to appropriately seek FDA approval or noncompliance with applicable FDA requirements can result in, among other things, public warning letters, fines, injunctions, civil penalties, recall or seizure of products, total or partial suspension of production, failure of the FDA to grant marketing approvals, withdrawal of marketing approvals, a recommendation by the FDA to disallow us from entering into government contracts, and criminal prosecutions. The FDA also has the authority to request repair, replace, or refund of the cost of any device.

Taxing authorities may successfully assert that we should have collected or in the future should collect sales and use, value-added, or similar taxes, and we could be subject to liability with respect to past or future sales, which could adversely affect our results of operations.

We do not collect sales and use, value-added, and similar taxes in all jurisdictions in which we have sales, based on our understanding that such taxes are not applicable. Sales and use, value-added, and similar tax laws and rates vary

greatly by jurisdiction. Certain jurisdictions in which we do not collect such taxes may assert that such taxes are applicable, or jurisdictions in which we collect sales tax may assert that we have under-collected sales tax, either of which could result in tax assessments, penalties, and interest, and we may be required to collect such taxes in the future. Although our customer contracts typically provide that our customers must pay all applicable sales and similar taxes, our customers may be reluctant to pay back-taxes and associated interest and penalties, or we may determine that it would not be commercially feasible to seek reimbursement from such customers, in which event any such tax assessments, penalties, and interest, or future requirements may adversely affect our results of operations.

Our ability to use our net operating loss carryforwards and certain other tax attributes may be limited.

As of February 28, 2022, we had U.S. federal net operating loss carryforwards (NOLs) of \$422.5 million and state NOLs of \$373.0 million. Under the Tax Act, as modified by the CARES Act, unused NOLs for the tax year ended February 28, 2018 and prior tax years will carry forward to offset future taxable income, if any, until such unused losses expire. Unused losses generated in tax years beginning after December 31, 2017, which would be our tax year ended February 28, 2018 and thereafter, pursuant to the Tax Act, will not expire and may be carried forward indefinitely but will only be deductible in the case of NOLs arising in taxable years ending after 2020 to the extent of 80% of current year taxable income in any given year. It is uncertain if and to what extent various states will conform to the Tax Act, as modified by the CARES Act. As a result, if we earn net taxable income in future years, our NOLs arising in tax years ended February 28, 2018 and earlier may expire prior to being used, and our NOLs generated in later tax years will be subject to a percentage limitation. Under Sections 382 and 383 of the Code, if a corporation undergoes an “ownership change,” the corporation’s ability to use its pre-change NOLs and other tax attributes and to offset its post-change income and taxes may be limited. In general, an “ownership change” occurs if there is a cumulative change in our ownership by “5% stockholders” that exceed 50 percentage points over a rolling three-year period. Our existing NOLs may be subject to limitations arising from previous ownership changes, and if we undergo an ownership change in connection with or after our initial public offering or as a result of future events, our ability to utilize NOLs could be further limited by Section 382 of the Code. Future changes in our stock ownership, some of which are outside of our control, could result in an ownership change under Section 382 of the Code. The existing NOLs of one of our subsidiaries may be subject to limitations arising from ownership changes prior to, or in connection with, their acquisition by us. Furthermore, our ability to utilize NOLs of companies that we may acquire in the future may be subject to limitations. There is also a risk that due to regulatory changes, such as suspensions on the use of NOLs or other unforeseen reasons, our existing NOLs could expire or otherwise be unavailable to reduce future income tax liabilities, including for state tax purposes. For these reasons, we may not be able to utilize some portion of our NOLs, none of which are currently reflected on our balance sheet, even if we attain profitability.

Risks Related to our Intellectual Property

Failure to protect or enforce our intellectual property rights could harm our business and results of operations.

Our intellectual property includes our processes, methodologies, algorithms, applications, technology platform, software code, website content, user interfaces, graphics, registered and unregistered copyrights, trademarks, trade dress, databases, domain names, and patents and patent applications. We believe that our intellectual property is an essential asset of our business. If we do not adequately protect our intellectual property, our brand and reputation could be harmed and competitors may be able to use our technologies and erode or negate any competitive advantage we may have, which could harm our business, negatively affect our position in the marketplace, limit our ability to commercialize our technology, and delay or render impossible our achievement of profitability. A failure to protect our intellectual property in a cost-effective and meaningful manner could have a material adverse effect on our ability to compete. We regard the protection of our trade secrets, copyrights, trademarks, trade dress, databases, domain names, and patents as critical to our success.

We strive to protect our intellectual property rights by relying on federal, state, and common law rights and other rights provided under foreign laws. These laws are subject to change at any time and could further restrict our ability to protect or enforce our intellectual property rights. In addition, the existing laws of certain foreign countries in which we operate may not protect our intellectual property rights to the same extent as do the laws of the United States.

We generally enter into confidentiality and invention assignment agreements with our employees and contractors, and confidentiality agreements with other parties, with whom we conduct business in order to limit access to, and disclosure and use of, our proprietary information. However, we may not be successful in executing these agreements with every party who has access to our confidential information or contributes to the development of our intellectual property.

The agreements that we execute may be breached, and we may not have adequate remedies for any such breach. These contractual arrangements and the other steps we have taken to protect our intellectual property may not prevent the misappropriation of our intellectual property or deter independent development of similar intellectual property by others.

Obtaining and maintaining effective intellectual property rights is expensive, including the costs of monitoring unauthorized use of our intellectual property and defending our rights. We make business decisions about when to seek patent protection for a particular technology and when to rely upon trade secret protection, and the approach we select may ultimately prove to be inadequate. We strive to protect certain of our intellectual property rights through filing applications for trademarks, patents, and domain names in a number of jurisdictions, a process that is expensive and may not be successful in all jurisdictions. However, there is no assurance that any resulting patents or other intellectual property rights will adequately protect our intellectual property, or provide us with any competitive advantages. Moreover, we cannot guarantee that any of our pending patent or trademark applications will issue or be approved. Even where we have intellectual property rights, they may later be found to be unenforceable or have a limited scope of enforceability. In addition, we may not seek to pursue such protection in every jurisdiction. The United States Patent and Trademark Office also requires compliance with a number of procedural, documentary, fee payment, and other similar provisions during the patent application process and after a patent has issued. Noncompliance with such requirements and processes may result in abandonment or lapse of the patent or patent application, resulting in partial or complete loss of patent rights in the relevant jurisdiction. In such an event, our competitors might be able to develop and commercialize substantially similar and competing applications, which would harm our business.

We believe it is important to maintain, protect and enhance our brands. Accordingly, we pursue the registration of domain names and our trademarks and service marks in the United States. Third parties may challenge our use of our trademarks, oppose our trademark applications, or otherwise impede our efforts to protect our intellectual property in certain jurisdictions. In the event that we are unable to register our trademarks in certain jurisdictions, we could be forced to rebrand our solutions, which would result in loss of brand recognition and could require us to devote resources to advertising and marketing new brands. Our competitors and others could also attempt to capitalize on our brand recognition by using domain names or business names similar to ours. Domain names similar to ours have been registered in the United States and elsewhere. We may be unable to prevent third parties from acquiring or using domain names and other trademarks that infringe on, are similar to, or otherwise decrease the value of, our brands, trademarks, or service marks. We also may incur significant costs in enforcing our trademarks against those who attempt to imitate our brand and other valuable trademarks and service marks.

In order to protect our intellectual property rights, we may be required to spend significant resources to monitor and protect these rights. We may not be able to detect infringement or unauthorized use of our intellectual property rights, and defending or enforcing our intellectual property rights, even if successfully detected, prosecuted, enjoined, or remedied, could result in the expenditure of significant financial and managerial resources. Litigation has in the past and may be necessary in the future to enforce our intellectual property rights, protect our proprietary rights, or determine the validity and scope of proprietary rights claimed by others. Any litigation of this nature, regardless of outcome or merit, could result in substantial costs and diversion of management and technical resources, any of which could harm our business. Furthermore, our efforts to enforce our intellectual property rights may be met with defenses, counterclaims, countersuits, and adversarial proceedings such as oppositions, inter partes review, post-grant review, re-examination, or other post-issuance proceedings, that attack the validity and enforceability of our intellectual property rights. An adverse determination of any litigation proceedings could put our patents at risk of being invalidated or interpreted narrowly and could put our related pending patent applications at risk of not issuing. Further, because of the substantial amount of discovery required in connection with intellectual property litigation, there is a risk that some of our confidential or sensitive information could be compromised by disclosure in the event of litigation. In addition, during the course of litigation there could be public announcements of the results of hearings, motions, or other interim proceedings or developments. If securities analysts or investors perceive these results to be negative, it could have a substantial adverse

effect on the price of our common stock. If we fail to maintain, protect, and enhance our intellectual property rights, our business may be harmed and the market price of our common stock could decline.

Our competitors also may independently develop similar technology that does not infringe on or misappropriate our intellectual property rights. The laws of some foreign countries may not be as protective of intellectual property rights as those in the United States, and mechanisms for enforcement of intellectual property rights may be inadequate. Effective patent, trademark, copyright, and trade secret protection may not be available to us in every country in which our solutions or technology are developed. Further, legal standards relating to the validity, enforceability, and scope of protection of intellectual property rights are uncertain. The laws in the United States and elsewhere change rapidly, and any future changes could adversely affect us and our intellectual property. Our failure to meaningfully protect our intellectual property could result in competitors offering solutions that incorporate our most technologically advanced features, which could seriously reduce demand for existing and future offerings.

Third parties may initiate legal proceedings alleging that we are infringing or otherwise violating their intellectual property rights, the outcome of which would be uncertain and could harm our business.

Our success depends in part on our ability to develop and commercialize our offerings and use our proprietary technology without infringing the intellectual property or proprietary rights of third parties. Intellectual property disputes can be costly to defend and may cause our business, operating results, and financial condition to suffer. As the market for healthcare in the United States expands and more patents are issued, the risk increases that there may be patents issued to third parties that relate to our offerings and technology of which we are not aware or that we must challenge to continue our operations as currently contemplated. Whether merited or not, we may face allegations that we, our partners, our licensees, or parties indemnified by us have infringed or otherwise violated the patents, trademarks, copyrights, or other intellectual property rights of third parties. Such claims may be made by competitors seeking to obtain a competitive advantage or by other parties.

Additionally, in recent years, individuals and groups have begun purchasing intellectual property assets for the purpose of making claims of infringement and attempting to extract settlements from companies like ours. We may also face allegations that our employees have misappropriated the intellectual property or proprietary rights of their former employers or other third parties. We have in the past initiated, and it may in the future be necessary for us to initiate, litigation to defend ourselves in order to determine the scope, enforceability, and validity of third-party intellectual property or proprietary rights, or to establish our respective rights. Regardless of whether claims that we are infringing patents or other intellectual property rights have merit, such claims can be time-consuming, divert management's attention and financial resources, and can be costly to evaluate and defend. Results of any such litigation are difficult to predict and may require us to stop commercializing or using our solutions or technology, obtain licenses, modify our solutions and technology while we develop non-infringing substitutes, or incur substantial damages, settlement costs, or face a temporary or permanent injunction prohibiting us from marketing or providing the affected solutions. If we require a third-party license, it may not be available on reasonable terms or at all, and we may have to pay substantial royalties, upfront fees, or grant cross-licenses to intellectual property rights for our solutions. We may also have to redesign our solutions so that they do not infringe third-party intellectual property rights, which may not be possible or may require substantial monetary expenditures and time, during which our technology and solutions may not be available for commercialization or use. Even if we have an agreement to indemnify us against such costs, the indemnifying party may be unable to uphold its contractual obligations. If we cannot or do not obtain a third-party license to the infringed technology, license the technology on reasonable terms, or obtain similar technology from another source, our revenue and earnings could be adversely impacted.

From time to time, we have been and may be subject to legal proceedings and claims in the ordinary course of business with respect to intellectual property. Some third parties may be able to sustain the costs of complex litigation more effectively than we can because they have substantially greater resources. Even if resolved in our favor, litigation or other legal proceedings relating to intellectual property claims may cause us to incur significant expenses and could distract our technical and management personnel from their normal responsibilities. In addition, there could be public announcements of the results of hearings, motions, or other interim proceedings or developments, and if securities analysts or investors perceive these results to be negative, it could have a material adverse effect on the price of our common stock. Moreover, any uncertainties resulting from the initiation and continuation of any legal proceedings could have a material

adverse effect on our ability to raise the funds necessary to continue our operations. Assertions by third parties that we violate their intellectual property rights could therefore harm our business.

Our use of open source software could adversely affect our ability to offer our solutions and subject us to possible litigation.

We use open source software in connection with our existing and future offerings. Some of these licenses contain requirements that we make available source code for modifications or derivative works we create based upon the open source software, and that we license such modifications or derivative works under the terms of a particular open source license or other license granting third-parties certain rights of further use. By the terms of certain open source licenses, we could be required to release the source code of our proprietary software and to make our proprietary software available under open source licenses, if we combine and/or distribute our proprietary software with open source software in certain manners. Although we monitor our use of open source software, we cannot be sure that all open source software is reviewed prior to use in our proprietary software, that our programmers have not incorporated open source software into our proprietary software, or that they will not do so in the future. Additionally, the terms of many open source licenses to which we are subject have not been interpreted by U.S. or foreign courts.

There is a risk that open source software licenses could be construed in a manner that imposes unanticipated conditions or restrictions on our ability to provide our existing and future offerings to our customers and members. In addition, the terms of open source software licenses may require us to provide software that we develop using such open source software, to others, including our competitors, on unfavorable license terms. As a result of our current or future use of open source software, we may face claims or litigation, be required to release our proprietary source code, pay damages for breach of contract, re-engineer our technology, discontinue sales in the event re-engineering cannot be accomplished on a timely basis, or take other remedial action that may divert resources away from our development efforts, any of which could harm our business.

Any restrictions on our ability to obtain or use data could harm our business.

Our business depends in part on data provided to us by, among other sources, health plans, benefits administrators, data warehouses, electronic data interchange (EDI) transaction data providers, and our trusted suppliers. Any errors or defects in any third-party data or other technology could result in errors in our existing and future offerings that could harm our business and damage our reputation and cause losses in revenue, and we could be required to spend significant amounts of additional resources to fix any problems. In addition, certain of our offerings, including Accolade Total Care and Accolade Total Health and Benefits, depend on maintaining our data and analytics technology platform, which is populated with data provided by third parties. While our existing agreements with these data providers have multiple-year terms, these providers could become our competitors in the future. Any loss of the right to use of data provided by any health plan providers, benefits administrators, or other entities that provide us data, could result in delays in producing or delivering our solutions until equivalent data, other technology, or intellectual property is identified and integrated, which delays could harm our business. In this situation we would be required to either redesign our solutions to function with technology, data, or intellectual property available from other parties or to develop these components ourselves, which would result in increased costs. Furthermore, we might be forced to limit the features available in our existing or future offerings. If we fail to maintain or renegotiate any of these technology or intellectual property licenses, we could face significant delays and diversion of resources in attempting to develop similar or replacement offerings or to license and integrate a functional equivalent of the technology or intellectual property. The occurrence of any of these events may harm our business.

In addition, some of our business activities require that we obtain permissions consistent with HIPAA to provide certain marketing and data aggregation solutions as well as those activities that require the creation and use of de-identified information. We also require large sets of de-identified information to enable us to continue to develop and enhance our data and analytics platform. If we are unable to secure these rights, or if there is a future change in law, we may face limitations on the use of PHI and our ability to use de-identified information that could harm our business. There is also a risk that we may fail to properly de-identify PHI and/or PII under applicable state laws, some of which impose different standards for de-identification than those imposed by HIPAA.

Risks Related to Ownership of Our Common Stock

We have in the past experienced a material weakness in our internal controls over financial reporting, and if we experience additional material weaknesses in the future or if we otherwise fail to maintain an effective system of disclosure controls and internal control over financial reporting, our ability to produce timely and accurate financial statements or comply with applicable regulations could be impaired.

We are subject to the reporting requirements of the Securities Exchange Act of 1934, as amended (the Exchange Act), the Sarbanes-Oxley Act, and the rules and regulations of the applicable listing standards of the Nasdaq Stock Market (Nasdaq). The Sarbanes-Oxley Act requires, among other things, that we maintain effective disclosure controls and procedures and internal control over financial reporting. We have developed and refined our disclosure controls and other procedures that are designed to ensure that information required to be disclosed by us in the reports that we file with the SEC is recorded, processed, summarized, and reported within the time periods specified in SEC rules and forms and that information required to be disclosed in reports under the Exchange Act is accumulated and communicated to our principal executive and financial officers. If any of our controls and systems do not perform as expected, we may experience additional material weaknesses in our controls. Our current controls and any new controls that we develop may become inadequate because of changes in conditions in our business. Further, additional material weaknesses in our disclosure controls and internal control over financial reporting may be discovered in the future.

Any failure to develop or maintain effective controls or any difficulties encountered in their implementation or improvement could harm our results of operations or cause us to fail to meet our reporting obligations and may result in a restatement of our financial statements for prior periods. Any failure to implement and maintain effective internal control over financial reporting also could adversely affect the results of periodic management evaluations and annual independent registered public accounting firm attestation reports regarding the effectiveness of our internal control over financial reporting that we will eventually be required to include in our periodic reports that will be filed with the SEC. Ineffective disclosure controls and procedures and further ineffective internal control over financial reporting could also cause investors to lose confidence in our reported financial and other information, which would likely have a negative effect on the trading price of our common stock. In addition, if we are unable to continue to meet these requirements, we may not be able to remain listed on Nasdaq. We are required to comply with the SEC rules that implement Section 404 of the Sarbanes-Oxley Act and are required to make a formal assessment of the effectiveness of our internal control over financial reporting for that purpose. We are required to provide an annual management report on the effectiveness of our internal control over financial reporting, and our independent registered public accounting firm is also required to formally attest to the effectiveness of our internal control over financial reporting. Our independent registered public accounting firm may issue reports that are adverse in the event it is not satisfied with the level at which our internal control over financial reporting is documented, designed, or operating, or if it is not satisfied with our remediation of any identified material weaknesses. Any failure to maintain effective disclosure controls and internal control over financial reporting could have an adverse effect on our business and results of operations and could cause a decline in the price of our common stock.

Sales of substantial amounts of our common stock in the public markets, or the perception that such sales could occur, could reduce the price that our common stock might otherwise attain.

Sales of a substantial number of shares of our common stock in the public market, or the perception that such sales could occur, could adversely affect the market price of our common stock and may make it more difficult for you to sell your common stock at a time and price that you deem appropriate.

Moreover, we have in the past and may in the future grant rights to some of our stockholders that require us to register the resale of our common stock or other securities on behalf of these stockholders and/or facilitate public offerings of our securities held by these stockholders, including in connection with potential future acquisition or capital-raising transactions. Stockholders owning an aggregate of up to approximately 5.4 million shares are entitled, under our registration rights agreement, to require us to register shares owned by them for public sale in the United States.

Sales of our shares as restrictions end or pursuant to registration rights may make it more difficult for us to sell equity securities in the future at a time and at a price that we deem appropriate. These sales also could cause the trading price of our common stock to fall and make it more difficult for you to sell shares of our common stock.

In order to support the growth of our business, we may need to incur additional indebtedness under our current credit facility or seek capital through new equity or debt financings, which sources of additional capital may not be available to us on acceptable terms or at all.

Our operations have consumed substantial amounts of cash since inception, and we intend to continue to make significant investments to support our business growth, respond to business challenges or opportunities, develop new applications and solutions, enhance our existing solutions, enhance our operating infrastructure, and potentially acquire complementary businesses and technologies. Our future capital requirements may be significantly different from our current estimates and will depend on many factors, including the need to:

- finance unanticipated working capital requirements;
- develop or enhance our technological infrastructure and our existing solutions;
- fund strategic relationships, including joint ventures and co-investments;
- fund additional implementation engagements;
- respond to competitive pressures; and
- acquire complementary businesses, technologies, products, or services.

Accordingly, we may need to engage in equity or debt financings to secure additional funds. Additional financing may not be available on terms favorable to us, or at all. If we raise additional funds through further issuances of equity or convertible debt securities, our existing stockholders could suffer significant dilution, and any new equity securities we issue could have rights, preferences, and privileges superior to those of holders of our common stock. Any debt financing secured by us in the future could involve additional 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, during times of economic instability, it has been difficult for many companies to obtain financing in the public markets or to obtain debt financing, and we may not be able to obtain additional financing on commercially reasonable terms, if at all. If we are unable to obtain adequate financing or financing on terms satisfactory to us, it could harm our business.

If securities or industry analysts publish reports that are interpreted negatively by the investment community or publish negative or inaccurate research reports about our business, our share price and trading volume could decline.

The trading market for our common stock depends, to some extent, on the research and reports that securities or industry analysts publish about us or our business. We do not have any control over these analysts or the information contained in their reports. Securities and industry analysts may cease to publish research on our business or publish negative coverage. If one or more analysts commence coverage of us and publish research reports that are interpreted negatively by the investment community, or have a negative tone regarding our business, financial condition, operating performance, industry, or end-markets, or downgrade our common stock, our share price could decline. In addition, if a significant number of these analysts ceases coverage of our company or fails to regularly publish reports about us, we could lose visibility in the financial markets, which could cause our share price or trading volume to decline.

We do not currently intend to pay dividends on our common stock and, consequently, your ability to achieve a return on your investment will depend on appreciation in the price of our common stock.

We have never declared or paid any cash dividends on our common stock and do not currently intend to do so for the foreseeable future. We currently intend to invest our future earnings, if any, to fund our growth. In addition, the terms of our credit agreement with Comerica Bank and the related collateral documents contain, and any future indebtedness would likely contain, prohibitions on our paying any cash dividends without the consent of the lenders. Therefore, you are

not likely to receive any dividends on your common stock for the foreseeable future and the success of an investment in shares of our common stock will depend upon any future appreciation in its value. There is no guarantee that shares of our common stock will appreciate in value or even maintain the price at which our stockholders have purchased their shares.

Anti-takeover provisions in our charter documents and under Delaware law could make an acquisition of us more difficult, limit attempts by our stockholders to replace or remove our current management, and may limit the market price of our common stock.

Provisions in our amended and restated certificate of incorporation and amended and restated bylaws may have the effect of rendering more difficult, delaying, or preventing a change of control or changes in our management. Among other things, our amended and restated certificate of incorporation and amended and restated bylaws include provisions:

- creating a classified board of directors whose members serve staggered three-year terms;
- authorizing "blank check" preferred stock, which could be issued by our board of directors without stockholder approval and may contain voting, liquidation, dividend, and other rights superior to our common stock;
- limiting the liability of, and providing indemnification to, our directors and officers;
- specifying that special meetings of our stockholders can be called only by our board of directors, the Chair of our board of directors, or our Chief Executive Officer;
- requiring advance notice of stockholder proposals for business to be conducted at meetings of our stockholders and for nominations of candidates for election to our board of directors;
- prohibiting cumulative voting in the election of directors;
- providing that our directors may be removed only for cause and by a two-thirds majority vote of the stockholders;
- providing that vacancies on our board of directors may be filled only by a majority of directors then in office, even though less than a quorum; and
- requiring the approval of our board of directors or the holders of at least 66% of our outstanding shares of capital stock to amend our amended and restated bylaws and certain provisions of our amended and restated certificate of incorporation.

These provisions may frustrate or prevent any attempts by our stockholders to replace or remove our current management by making it more difficult for stockholders to replace members of our board of directors, which is responsible for appointing the members of our management. In addition, institutional stockholder representative groups, stockholder activists, and others may disagree with our corporate governance provisions or other practices, including anti-takeover provisions, such as those listed above. We generally will consider recommendations of institutional stockholder representative groups, but we will make decisions based on what our board and management believe to be in the best long-term interests of our company and stockholders; however, these groups could make recommendations to our stockholders against our practices or our board members if they disagree with our positions.

Finally, because we are incorporated in Delaware, we are governed by the provisions of Section 203 of the Delaware General Corporation Law, which generally prohibits a Delaware corporation from engaging in any of a broad range of business combinations with any "interested" stockholder for a period of three years following the date on which the stockholder became an "interested" stockholder.

Any of the foregoing provisions could limit the price that investors might be willing to pay in the future for shares of our common stock, and they could deter potential acquirers of our company, thereby reducing the likelihood that you would receive a premium for your shares of our common stock in an acquisition.

Our amended and restated certificate of incorporation provides that the Court of Chancery of the State of Delaware and, to the extent enforceable, the federal district courts of the United States of America, will be the exclusive forum for substantially all disputes between us and our stockholders, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers, or employees.

Our amended and restated certificate of incorporation provides that the Court of Chancery of the State of Delaware and, to the extent enforceable, the federal district courts of the United States of America, will be the exclusive forum for the following types of actions or proceedings under Delaware statutory or common law:

- any derivative action or proceeding brought on our behalf;
- any action asserting a claim of breach of a fiduciary duty or other wrongdoing by any of our directors, officers, employees or agents to us or our stockholders;
- any action asserting a claim against us arising pursuant to any provision of the Delaware General Corporation Law or our certificate of incorporation or bylaws;
- any action to interpret, apply, enforce or determine the validity of our certificate of incorporation or bylaws;
- any action or proceeding as to which the Delaware General Corporation Law confers jurisdiction to the Court of Chancery of the State of Delaware; or
- any action asserting a claim governed by the internal affairs doctrine.

This provision would not apply to suits brought to enforce a duty or liability created by the Securities Act or the Exchange Act or any claim for which the U.S. federal courts have exclusive jurisdiction. Our amended and restated certificate of incorporation will provide that the federal district courts of the United States of America will be the exclusive forum for resolving any complaint asserting a cause of action arising under the Securities Act.

These 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 our directors, officers, or other employees, which may discourage lawsuits against us and our directors, officers, and other employees. If any other court of competent jurisdiction were to find either exclusive-forum provision in our amended and restated certificate of incorporation to be inapplicable or unenforceable, we may incur additional costs associated with resolving the dispute in other jurisdictions, which could seriously harm our business. For example, the Court of Chancery of the State of Delaware determined that a provision stating that U.S. federal district courts are the exclusive forum for resolving any complaint asserting a cause of action arising under the Securities Act is not enforceable. However, this decision was recently reviewed and ultimately overturned by the Delaware Supreme Court in March 2020.

Our issuance of additional capital stock in connection with financings, acquisitions, investments, our stock incentive plans, or otherwise will dilute all other stockholders.

We expect to issue additional capital stock in the future that will result in dilution to all other stockholders. We expect to grant equity awards to employees, directors, and consultants under our stock incentive plans. We also may raise capital through equity financings in the future. As part of our business strategy, we may acquire or make investments in complementary companies, products, or technologies and issue equity securities to pay for any such acquisition or investment. Any such issuances of additional capital stock may cause stockholders to experience significant dilution of their ownership interests and the per share value of our common stock to decline.

Risks Related to Our Debt

Our credit agreement contains certain restrictions that may limit our ability to operate our business.

The terms of our existing credit agreement with Comerica Bank and the related collateral documents contain, and any future indebtedness would likely contain, a number of restrictive covenants that impose significant operating and financial restrictions on us, including restrictions on our ability, and the ability of our subsidiaries, to take actions that may be in our best interests, including, among others, disposing of assets, entering into change of control transactions, mergers or acquisitions, incurring additional indebtedness, granting liens on our assets, declaring and paying dividends, and agreeing to do any of the foregoing. These agreements require us to satisfy a specified minimum liquidity level at all times and to achieve certain minimum covenant revenue, as defined, on a trailing six-month basis. Our ability to meet financial covenants can be affected by events beyond our control, including as a result of economic downturns, and we may not be able to continue to meet these covenants. A breach of any of these covenants or the occurrence of other events (including a material adverse effect) specified in these agreements and/or the related collateral documents would result in an event of default under such agreements. Upon the occurrence of an event of default, Comerica Bank as administrative agent for the revolving lenders could elect to declare all amounts outstanding, if any, under the credit agreement to be immediately due and payable and terminate all commitments to extend further credit. If we were unable to repay those amounts, Comerica Bank as administrative agent for the revolving lenders could proceed against the collateral granted to them to secure such indebtedness. We have pledged substantially all of our assets as collateral under the loan documents. If Comerica Bank as administrative agent for the revolving lenders accelerates the repayment of borrowings, if any, we may not have sufficient funds to repay our existing debt.

We have a significant amount of debt and may incur additional debt in the future. We may not have sufficient cash flow from our business to pay our substantial debt when due.

Our ability to pay our debt when due or to refinance our indebtedness, including the 0.50% Convertible Senior Notes due 2026 we issued in March 2021 (the Notes), depends on our future performance, which is subject to economic, financial, competitive, and other factors beyond our control. Our business may not generate cash flow from operations in the future sufficient to service our debt and make necessary capital expenditures. In most instances it is at our discretion to settle the Notes for cash or the distribution of common stock; however, any required repurchase of the Notes for cash as a result of a fundamental change would lower our current cash on hand such that we would not have those funds available for us in our business. If we are unable to generate such cash flow, we may be required to adopt one or more alternatives, such as selling assets, restructuring debt or obtaining additional equity capital on terms that may be onerous or highly dilutive. Our ability to refinance our indebtedness will depend on the capital markets and our financial condition at such time. We may not be able to engage in any of these activities or engage in these activities on desirable terms, which could result in a default on our debt obligations.

We and our subsidiaries may incur substantial additional debt in the future, subject to the restrictions contained in our future debt instruments, some of which may be secured debt. We are not restricted under the terms of the indenture governing the Notes from incurring additional debt, securing existing or future debt, recapitalizing our debt or taking a number of other actions that could have the effect of diminishing our ability to make payments on the Notes when due. Furthermore, the indenture prohibits us from engaging in certain mergers or acquisitions unless, among other things, the surviving entity assumes our obligations under the Notes and the indenture. These and other provisions in the indenture could deter or prevent a third party from acquiring us even when the acquisition may be favorable to holders of the Notes.

Transactions relating to our Notes may affect the value of our common stock.

The conversion of some or all of the Notes would dilute the ownership interests of existing stockholders to the extent we satisfy our conversion obligation by delivering shares of our common stock upon any conversion of such Notes. Our Notes may become in the future convertible at the option of their holders under certain circumstances. If holders of our Notes elect to convert their notes, we may settle our conversion obligation by delivering to them a significant number of shares of our common stock, which would cause dilution to our existing stockholders. 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 the price of our common stock.

In addition, in connection with the issuance of the Notes, we entered into capped call transactions with certain financial institutions (Option Counterparties). The capped call transactions are expected generally to reduce the potential dilution to our common stock upon any conversion or settlement of the Notes and/or offset any cash payments we are required to make in excess of the principal amount of converted Notes, as the case may be, with such reduction and/or offset subject to a cap. From time to time, the Option Counterparties or their respective affiliates may modify their hedge positions by entering into or unwinding various derivative transactions with respect to our common stock and/or purchasing or selling our common stock or other securities of ours in secondary market transactions prior to the maturity of the Notes. This activity could cause a decrease in the market price of our common stock.

General Risk Factors

Changes in tax laws or regulations that are applied adversely to us or our customers may have a material adverse effect on our business, cash flow, financial condition, or results of operations.

New income, sales, use, or other tax laws, statutes, rules, regulations, or ordinances could be enacted at any time, which could adversely affect our business operations and financial performance. Further, existing tax laws, statutes, rules, regulations, or ordinances could be interpreted, changed, modified, or applied adversely to us. For example, the Tax Act enacted many significant changes to the U.S. tax laws. Future guidance from the Internal Revenue Service and other tax authorities with respect to the Tax Act may affect us, and certain aspects of the Tax Act could be repealed or modified in future legislation. In addition, in response to the COVID-19 pandemic, the CARES Act was signed into law in March 2020, and subsequently in December 2020, the Continued Assistance for Unemployed Workers Act of 2020 (CARES Act II) was signed into law, extending certain provisions of the CARES Act and making other changes to the Tax Act. The CARES Act and CARES Act II modify certain of the changes made by the Tax Act. Changes in corporate tax rates, the realization of net deferred tax assets relating to our U.S. operations, and the deductibility of expenses under the Tax Act, as amended by the CARES Act and CARES Act II, or future tax reform legislation could have a material impact on the value of our deferred tax assets, could result in significant one-time charges in the current or future taxable years, and could increase our future U.S. tax expense. The foregoing items, as well as any other future changes in tax laws, could have a material adverse effect on our business, cash flow, financial condition, or results of operations. In addition, it is uncertain if and to what extent various states will conform to the Tax Act, as amended by the CARES Act and CARES Act II, or any newly enacted federal tax legislation.

Natural or man-made disasters, events outside our reasonable control, and other similar events may significantly disrupt our operations and negatively impact our business, financial condition, and results of operations.

Our offices, third-party data and call centers, or cloud infrastructure services may be harmed or rendered inoperable by natural or man-made disasters, including earthquakes, power outages, fires, floods, nuclear disasters, acts of terrorism or other criminal activities, or other events or business continuity problems outside our reasonable control such as a general and widespread failure of the Internet or telecommunications or outbreaks of public health threats, such as the novel coronavirus, which may render it difficult or impossible for us to operate our business for some period of time. Any disruptions in our operations related to the repair or replacement of our offices, third-party data and call centers, or cloud infrastructure services could negatively impact our business and results of operations and harm our reputation. Insurance may not be sufficient to compensate for losses that may occur. Any such losses or damages could harm our business.

We have incurred and will incur increased costs and demands upon management as a result of complying with the laws and regulations affecting public companies, which could adversely affect our business, results of operations, and financial condition.

As a public company, we are subject to the reporting requirements of the Securities Exchange Act of 1934, as amended (the Exchange Act), the listing standards of the Nasdaq Stock Market (Nasdaq) and other applicable securities rules and regulations. We expect that the requirements of these rules and regulations will continue to increase our legal, accounting, and financial compliance costs, make some activities more difficult, time-consuming and costly, and place

significant strain on our personnel, systems and resources. For example, the Exchange Act requires, among other things, that we file annual, quarterly, and current reports with respect to our business and results of operations. As a result of the complexity involved in complying with the rules and regulations applicable to public companies, our management's attention may be diverted from other business concerns, which could harm our business, results of operations, and financial condition. Although we have already hired additional employees and engaged outside consultants to assist us in complying with these requirements, we will need to hire more employees in the future or may need to engage additional outside consultants, which will increase our operating expenses. In addition, changing laws, regulations, and standards relating to corporate governance and public disclosure are creating uncertainty for public companies, increasing legal and financial compliance costs, and making some activities more time-consuming. 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. These factors could result in continuing uncertainty regarding compliance matters and higher costs necessitated by ongoing revisions to disclosure and governance practices. We intend to invest substantial 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 business operations 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 harmed. As a result of disclosure of information in our public company filings, our business and financial condition will become more visible, which may result in pricing pressure from customers or an increased risk of threatened or actual litigation, including by competitors and other third parties. If such claims are successful, our business and results of operations could be harmed, and even if the claims do not result in litigation or are resolved in our favor, these claims, and the time and resources necessary to resolve them, could divert the resources of our management and harm our business, results of operations, and financial condition.

The trading price of our common stock could be volatile, and you could lose all or part of your investment.

Our stock price has been volatile, and it is likely that the trading price of our common stock may fluctuate substantially, depending on a number of factors, including those described in this "Risk Factors" section, many of which are beyond our control and may not be related to our operating performance. These fluctuations could cause you to lose all or part of your investment in our common stock. Factors that could cause fluctuations in the trading price of our common stock include the following:

- price and volume fluctuations in the overall stock market from time to time;
- volatility in the market prices and trading volumes of healthcare technology company stocks;
- changes in operating performance and stock market valuations of other healthcare technology companies generally, or those in our industry in particular;
- sales of shares of our common stock by us or our stockholders;
- failure of securities analysts to initiate or maintain coverage of us, changes in financial estimates by securities analysts who follow our company, or our failure to meet these estimates or the expectations of investors;
- the financial projections we may provide to the public, any changes in those projections, or our failure to meet those projections;
- new product announcements by us or our competitors;
- the public's reaction to our press releases, other public announcements, and filings with the SEC;
- changes in how customers perceive the benefits of our solutions, and future offerings;

[Table of Contents](#)

- changes in the structure of healthcare provider and payment systems;
- rumors and market speculation involving us, our customers, our competitors, or other companies in our industry;
- actual or anticipated changes in our results of operations or fluctuations in our results of operations;
- actual, rumored, or anticipated developments in our business, our competitors' businesses, or the competitive landscape generally;
- litigation involving us, our industry or both, or investigations by regulators into our operations or those of our competitors;
- developments or disputes concerning our intellectual property or other proprietary rights;
- any significant data breach involving our technology platform or data stored by us or on our behalf;
- announced or completed acquisitions of businesses, commercial relationships, strategic partnerships, products, services, significant contracts or customers, or technologies by us or our competitors;
- new laws or regulations or new interpretations of existing laws or regulations applicable to our business;
- changes in accounting standards, policies, guidelines, interpretations, or principles;
- “flash crashes,” “freeze flashes,” or other glitches that disrupt trading on the securities exchange on which we are listed;
- any significant change in our management; and
- general economic, social, or political conditions and slow or negative growth of our markets.

Accordingly, we cannot assure you of the liquidity of an active trading market, your ability to sell your shares of our common stock when desired, or the prices that you may obtain for your shares of our common stock. An inactive market may also impair our ability to raise capital to continue to fund operations by selling shares of our common stock and may impair our ability to acquire or make investments in complementary companies, products, or technologies by using shares of our common stock as consideration.

In addition, if the market for healthcare technology stocks or the stock market in general experiences a loss of investor confidence, the trading price of our common stock could decline for reasons unrelated to our business, financial condition, or results of operations. The trading price of our common stock might also decline in reaction to events that affect other companies in our industry even if these events do not directly affect us. In the past, following periods of volatility in the trading price of a company's securities, securities class action litigation has often been brought against that company. If our stock price is volatile, we may become the target of securities litigation. Securities litigation could result in substantial costs and divert our management's attention and resources from our business. This could harm our business.

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

(a) Unregistered Sales of Equity Securities

Not applicable.

(b) Use of Proceeds

On July 7, 2020, we closed on our IPO in which we issued and sold 11,526,134 shares (inclusive of the underwriters' over-allotment option to purchase 1,503,408 shares) of common stock at a price of \$22.00 per share pursuant to a Registration Statement on Form S-1, as amended (File No. 333-236786). The aggregate net proceeds to us from the offering were \$231.2 million, after deducting underwriting discounts and commissions of \$17.8 million and net offering expenses of approximately \$4.6 million. There has been no material change in the planned use of proceeds from our IPO from those disclosed in the Final Prospectus for our IPO dated as of July 1, 2020 and filed with the SEC pursuant to Rule 424(b)(4) on July 2, 2020.

Item 3. Defaults Upon Senior Securities

None.

Item 4. Mine Safety Disclosures

Not applicable.

Item 5. Other Information

None.

Item 6. Exhibits

See Exhibit Index for documents filed or furnished herewith and incorporated herein by reference.

Exhibit Number	Description	Incorporated by Reference				Filed Herewith
		Form	File No.	Exhibit	Filing Date	
2.1†	Agreement and Plan of Merger, dated January 14, 2021, by and among Registrant, Maestro Merger Sub, LLC, Innovation Specialists LLC d/b/a 2nd.MD, and Shareholder Representative Services LLC, as Member Representative	8-K	001-39348	2.1	March 4, 2021	
2.2†	Agreement and Plan of Merger, dated April 22, 2021, by and among Registrant, Panda Merger Sub, Inc., PlushCare, Inc., and Fortis Advisors LLC, as stockholder representative, as amended	8-K	001-39348	2.1	June 10, 2021	
3.1	Amended and Restated Certificate of Incorporation of Accolade, Inc.	8-K	001-39348	3.1	July 10, 2020	
3.2	Amended and Restated Bylaws of Accolade, Inc.	S-1/A	333-236786	3.4	February 28, 2020	
4.1	Form of common stock certificate of the Registrant	S-1	333-236786	4.1	February 28, 2020	
4.2	Fifth Amended and Restated Registration Rights Agreement by and between the Registrant and Certain of Its Stockholders, dated October 2, 2019	S-1	333-236786	4.2	February 28, 2020	
4.3	Indenture, dated as of March 29, 2021, by and between Registrant and U.S. Bank National Association, as Trustee	8-K	001-39348	4.1	March 29, 2021	
4.4	Form of Global Note, representing Registrant's 0.50% Convertible Senior Notes due 2026 (included as Exhibit A to the Indenture filed as Exhibit 4.2)	8-K	001-39348	4.2	March 29, 2021	
10.1	Seventh Amendment to Credit Agreement dated July 19, 2022 by and among the Registrant, Comerica Bank and Western Alliance Bank					X
31.1	Certification of Principal Executive Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.					X

[Table of Contents](#)

31.2	Certification of Principal Financial Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.	X
32.1*	Certification of Principal Executive Officer and Principal Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.	X
101	Inline Interactive Data Files	X
104	Cover Page Interactive Data File (formatted as inline XBRL and contained in Exhibit 101).	X

† We have omitted schedules and similar attachments to the subject agreement pursuant to Item 601 of Regulation S-K. We will furnish a copy of any omitted schedule or similar attachment to the Securities and Exchange Commission upon request.

*This certification is deemed not filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to the liability of that section, nor shall it be deemed incorporated by reference into any filing under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, whether made before or after the date of the Form 10-Q, irrespective of any general incorporation language contained in such filing.

SIGNATURES

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

ACCOLADE, INC. (Registrant)

Date: October 6, 2022

By: /s/ Rajeve Singh
Rajeve Singh
Chief Executive Officer and Chairman of the Board
(Principal Executive Officer)

Date: October 6, 2022

By: /s/ Stephen Barnes
Stephen Barnes
Chief Financial Officer
(Principal Financial and Accounting Officer)

SEVENTH AMENDMENT TO CREDIT AGREEMENT

This **Seventh Amendment to Credit Agreement** (this “Amendment”) is made as of July 19, 2022, by and among Accolade, Inc. (“Borrower”), each of the Guarantors party hereto, the financial institutions signatory hereto (the “Lenders”) and Comerica Bank, as agent for the Lenders (in such capacity, “Agent”).

RECITALS

A. Borrower, Agent and Lenders entered into that certain Credit Agreement, dated as of July 19, 2019 (as amended or otherwise modified from time to time, the “Credit Agreement” and the Credit Agreement as in effect prior to the Seventh Amendment Effective Date (as defined below), the “Existing Credit Agreement”).

B. The Agent and the Lenders have agreed to make certain amendments to the Credit Agreement, all as set forth in this Amendment and subject to the terms hereof.

NOW, THEREFORE, in consideration of the mutual agreements herein contained and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, Borrower, Agent and the Lenders agree as follows:

1. **SUBJECT TO THE SATISFACTION OF THE CONDITIONS PRECEDENT SET FORTH IN SECTION 3 BELOW:**
 - (a) the Credit Agreement is hereby amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the bold, double-underlined text (indicated textually in the same manner as the following example: **double-underlined text**) as set forth in the pages of the Credit Agreement attached hereto as Amended Credit Agreement Exhibit (the “Amended Credit Agreement”);
 - (b) Annex I to the Existing Credit Agreement is amended and restated in its entirety by Annex I attached hereto;
 - (c) Exhibit A to the Existing Credit Agreement is amended and restated in its entirety by Exhibit A attached hereto; and
 - (d) Exhibits L-1, L-2, L-3 and L-4 are amended by replacing the reference to “Section 13.13(a)” in each Exhibit with “Section 11.10(g)”.
 2. **ON THE SEVENTH AMENDMENT EFFECTIVE DATE, ALL OUTSTANDING EURODOLLAR-BASED ADVANCES (AS DEFINED IN THE EXISTING CREDIT AGREEMENT) WILL BE REPLACED BY BSBY RATE ADVANCES. IN CONNECTION THEREWITH, EACH AFFECTED LENDER WAIVES ALL RELATED BREAKAGE AND SIMILAR FEES OTHERWISE DUE UNDER THE EXISTING CREDIT AGREEMENT AND APPROVES ANY STUB INTEREST PERIOD SELECTED BY THE BORROWERS IN ACCORDANCE THEREWITH.**
 3. **THIS AMENDMENT SHALL BECOME EFFECTIVE (ACCORDING TO THE TERMS HEREOF) ON THE DATE (THE “SEVENTH AMENDMENT EFFECTIVE DATE”) THAT THE FOLLOWING CONDITIONS HAVE BEEN FULLY SATISFIED BY BORROWER:**
-

- (A) AGENT SHALL HAVE RECEIVED THIS AMENDMENT, DULY EXECUTED AND DELIVERED BY BORROWER, AGENT, THE LENDERS, AND THE GUARANTORS; AND
- (B) BORROWER SHALL HAVE PAID TO AGENT AND THE LENDERS ALL FEES AND OTHER AMOUNTS, IF ANY, THAT ARE DUE AND OWING TO AGENT AND THE LENDERS AS OF THE DATE OF THIS AMENDMENT (INCLUDING, WITHOUT LIMITATION, LEGAL FEES, AND THE FEE SET FORTH IN SECTION 4 BELOW).
4. IN CONSIDERATION OF THIS AMENDMENT, BORROWER SHALL PAY TO AGENT, FOR THE RATABLE DISTRIBUTION TO THE LENDERS BASED ON THEIR REVOLVING CREDIT PERCENTAGES, AN AGGREGATE UPFRONT FEE OF \$75,000, WHICH FEE SHALL BE EARNED, DUE AND PAYABLE ON THE SEVENTH AMENDMENT EFFECTIVE DATE.
5. BORROWER HEREBY CERTIFIES TO THE AGENT AND THE LENDERS AS OF THE SEVENTH AMENDMENT EFFECTIVE DATE THAT (A) EXECUTION AND DELIVERY OF THIS AMENDMENT AND THE PERFORMANCE BY EACH OF THE CREDIT PARTIES OF ITS OBLIGATIONS UNDER THE CREDIT AGREEMENT AS AMENDED HEREBY (HEREIN, AS SO AMENDED, THE "AMENDED CREDIT AGREEMENT") ARE WITHIN SUCH UNDERSIGNED'S POWERS, HAVE BEEN DULY AUTHORIZED, ARE NOT IN CONTRAVENTION OF LAW OR THE TERMS OF ITS ARTICLES OF INCORPORATION OR BYLAWS OR OTHER ORGANIC DOCUMENTS OF THE PARTIES THERETO, AS APPLICABLE, AND EXCEPT AS HAVE BEEN PREVIOUSLY OBTAINED DO NOT REQUIRE THE CONSENT OR APPROVAL, MATERIAL TO THE AMENDMENTS CONTEMPLATED IN THIS AMENDMENT, OF ANY GOVERNMENTAL BODY, AGENCY OR AUTHORITY, AND THE AMENDED CREDIT AGREEMENT WILL CONSTITUTE THE VALID AND BINDING OBLIGATIONS OF SUCH UNDERSIGNED PARTIES ENFORCEABLE IN ACCORDANCE WITH ITS TERMS, EXCEPT AS ENFORCEMENT THEREOF MAY BE LIMITED BY APPLICABLE BANKRUPTCY, REORGANIZATION, INSOLVENCY, MORATORIUM OR SIMILAR LAWS AFFECTING THE ENFORCEMENT OF CREDITORS' RIGHTS GENERALLY AND BY GENERAL PRINCIPLES OF EQUITY (WHETHER ENFORCEMENT IS SOUGHT IN A PROCEEDING IN EQUITY OR AT LAW), (B) THE REPRESENTATIONS AND WARRANTIES SET FORTH IN ARTICLE 6 OF THE AMENDED CREDIT AGREEMENT ARE TRUE AND CORRECT IN ALL MATERIAL RESPECTS ON AND AS OF THE SEVENTH AMENDMENT EFFECTIVE DATE (EXCEPT TO THE EXTENT SUCH REPRESENTATIONS SPECIFICALLY RELATE TO AN EARLIER DATE, IN WHICH CASE SUCH REPRESENTATIONS AND WARRANTIES ARE TRUE AND CORRECT IN ALL MATERIAL RESPECTS AS OF SUCH EARLIER DATE), (C) THERE HAVE BEEN NO CHANGES TO ANY CREDIT PARTY'S CONSTITUTIONAL DOCUMENTS SINCE AUGUST 21, 2020, AND (D) ON AND AS OF THE SEVENTH AMENDMENT EFFECTIVE DATE, AFTER GIVING EFFECT TO THIS AMENDMENT, NO DEFAULT OR EVENT OF DEFAULT SHALL HAVE OCCURRED AND BE CONTINUING.
6. EXCEPT AS SPECIFICALLY SET FORTH ABOVE, THIS AMENDMENT SHALL NOT BE DEEMED TO AMEND OR ALTER IN ANY RESPECT THE TERMS AND CONDITIONS OF THE CREDIT AGREEMENT (INCLUDING WITHOUT LIMITATION ALL CONDITIONS AND REQUIREMENTS FOR ADVANCES AND ANY FINANCIAL
-

COVENANTS), ANY OF THE NOTES ISSUED THEREUNDER OR ANY OF THE OTHER LOAN DOCUMENTS. NOR SHALL THIS AMENDMENT CONSTITUTE A WAIVER OR RELEASE BY THE AGENT OR THE LENDERS OF ANY RIGHT, REMEDY, DEFAULT OR EVENT OF DEFAULT UNDER OR A CONSENT TO ANY TRANSACTION NOT MEETING THE TERMS AND CONDITIONS OF THE CREDIT AGREEMENT, ANY OF THE NOTES ISSUED THEREUNDER OR ANY OF THE OTHER LOAN DOCUMENTS. FURTHERMORE, THIS AMENDMENT SHALL NOT AFFECT IN ANY MANNER WHATSOEVER ANY RIGHTS OR REMEDIES OF THE LENDERS WITH RESPECT TO ANY OTHER NON-COMPLIANCE BY BORROWER WITH THE CREDIT AGREEMENT OR THE OTHER LOAN DOCUMENTS, WHETHER IN THE NATURE OF A DEFAULT OR EVENT OF DEFAULT, AND WHETHER NOW IN EXISTENCE OR SUBSEQUENTLY ARISING, AND SHALL NOT APPLY TO ANY OTHER TRANSACTION.

7. EACH OF THE GUARANTORS PARTY HERETO IS PARTY TO THAT CERTAIN GUARANTY, DATED AS OF SEPTEMBER 17, 2019 (THE "GUARANTY") AND HEREBY RATIFIES AND CONFIRMS ITS OBLIGATIONS UNDER THE AMENDED CREDIT AGREEMENT AND THE APPLICABLE GUARANTY, AND AGREES THAT THE GUARANTY REMAINS IN FULL FORCE AND EFFECT AFTER GIVING EFFECT TO THE EFFECTIVENESS OF THIS AMENDMENT, SUBJECT TO NO SETOFF, DEFENSE OR COUNTERCLAIM. EACH OF THE GUARANTORS CONFIRM THAT THIS REAFFIRMATION IS NOT REQUIRED BY THE TERMS OF THE GUARANTY AND NEED NOT BE OBTAINED IN CONNECTION WITH ANY PRIOR OR FUTURE AMENDMENTS OR EXTENSIONS OF ADDITIONAL CREDIT TO BORROWER.
 8. BORROWER AND EACH OTHER CREDIT PARTY HEREBY ACKNOWLEDGES AND AGREES THAT THIS AMENDMENT AND THE AMENDMENTS CONTAINED HEREIN DO NOT CONSTITUTE ANY COURSE OF DEALING OR OTHER BASIS FOR ALTERING ANY OBLIGATION OF BORROWER, ANY OTHER CREDIT PARTY, OR ANY OTHER PARTY OR ANY RIGHT, PRIVILEGE OR REMEDY OF THE LENDERS UNDER THE CREDIT AGREEMENT, ANY OTHER LOAN DOCUMENT, ANY OTHER AGREEMENT OR DOCUMENT, OR ANY CONTRACT OR INSTRUMENT.
 9. EXCEPT AS SPECIFICALLY DEFINED TO THE CONTRARY HEREIN, CAPITALIZED TERMS USED IN THIS AMENDMENT SHALL HAVE THE MEANINGS SET FORTH IN THE CREDIT AGREEMENT.
 10. THIS AMENDMENT IS A LOAN DOCUMENT.
 11. THIS AMENDMENT MAY BE EXECUTED IN COUNTERPARTS IN ACCORDANCE WITH SECTION 13.9 OF THE CREDIT AGREEMENT.
 12. AS FURTHER CONSIDERATION FOR THE AGREEMENTS AND UNDERSTANDINGS HEREIN, EACH OF THE CREDIT PARTIES HEREBY RELEASES AGENT, EACH LENDER, AND EACH OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, ATTORNEYS, AFFILIATES, SUBSIDIARIES, SUCCESSORS AND ASSIGNS FROM ANY LIABILITY, CLAIM, RIGHT OR CAUSE OF ACTION WHICH NOW EXISTS, OR HEREAFTER ARISES, WHETHER KNOWN OR UNKNOWN, ARISING FROM OR IN ANY WAY RELATED TO FACTS IN EXISTENCE AS OF THE DATE HEREOF. BY WAY OF EXAMPLE AND NOT LIMITATION, THE FOREGOING INCLUDES ANY CLAIMS IN ANY WAY RELATED TO ACTIONS TAKEN OR OMITTED TO BE TAKEN BY AGENT OR ANY LENDER UNDER THE LOAN DOCUMENTS, THE BUSINESS RELATIONSHIP WITH AGENT AND/OR ANY LENDER
-

AND ALL OTHER OBLIGATIONS OF ANY NATURE OR UNDERSTANDINGS (ACTUAL OR ALLEGED), ANY BANKING RELATIONSHIPS THAT ANY CREDIT PARTY HAS OR MAY HAVE HAD WITH AGENT OR ANY LENDER AT ANY TIME AND FOR ANY REASON.

It is understood by each of the Credit Parties and it is each Credit Party's intention that the release set forth in the preceding paragraph (the "Release Paragraph") shall be effective as a full and final accord and satisfactory release of each and every matter specifically referred to in the Release Paragraph. In furtherance of this intention, each Credit Party acknowledges that it is familiar with, and upon advice of counsel, does hereby waive, any and all rights they may have or acquired under California Civil Code Section 1542, which reads 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."

13. **THIS AMENDMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA.**

[Remainder of Page Intentionally Left Blank]

WITNESS the due execution hereof as of the day and year first above written.

COMERICA BANK, as Administrative Agent and a Lender

By: /s/ Wyatt Giddings _____

Name: Wyatt Giddings

Its: Vice President

WESTERN ALLIANCE BANK, as Lender

By: /s/ Brian McCabe

Name: Brian McCabe

Its: Senior Director



ACCOLADE, INC., as Borrower

By: /s/ Stephen H. Barnes _____

Name: Stephen H. Barnes _____

Its: Chief Financial Officer _____

MD INSIDER, INC., as Guarantor

By: /s/ Stephen H. Barnes _____

Name: Stephen H. Barnes _____

Its: President, Secretary & Treasurer _____

ACCOLADE 2NDMD LLC, as Guarantor

By: /s/ Stephen H. Barnes _____

Name: Stephen H. Barnes _____

Its: Treasurer _____

1ST.MD, LLC, as Guarantor

By: /s/ Stephen H. Barnes _____

Name: Stephen H. Barnes _____

Its: Treasurer _____

PLUSHCARE, INC., as Guarantor

By: /s/ Stephen H. Barnes _____

Name: Stephen H. Barnes _____

Its: Treasurer _____

Annex I
Applicable Margin Grid
Revolving Credit Facility
(basis points per annum)

Basis for Pricing	
Revolving Credit (BSBY Rate)	350 bps
Revolving Credit (Base Rate)	250 bps
Revolving Credit Facility Fee	25 bps
Letter of Credit Fees (exclusive of facing fees)	350 bps

EXHIBIT A

FORM OF REQUEST FOR REVOLVING CREDIT ADVANCE

No. _____

Dated: _____, 20__

TO: Comerica Bank ("Agent")

RE: Credit Agreement made as of July 19, 2019 (as amended, restated or otherwise modified from time to time, the "Credit Agreement"), by and among the financial institutions from time to time signatory thereto (individually a "Lender," and any and all such financial institutions collectively the "Lenders"), Comerica Bank, as Administrative Agent for the Lenders (in such capacity, the "Agent"), and Accolade, Inc. ("Borrower").

Pursuant to the terms and conditions of the Credit Agreement, Borrower hereby requests an Advance from Lenders, as described herein:

(A) Date of Advance: _____

(B) (check if applicable)

This Advance is or includes a whole or partial refunding/conversion of:

Advance No(s). _____

(C) Type of Advance (check only one):

- Base Rate Advance
- BSBY Rate Advance

(D) Amount of Advance:

\$ _____

(E) Interest Period (applicable to BSBY Rate Advances)

_____ months

(F) Disbursement Instructions

Comerica Bank Account No. _____

Borrower certifies to the matters specified in Section 2.3(f) of the Credit Agreement.

Capitalized terms used herein, except as defined to the contrary, have the meanings given them in the Credit Agreement.



ACCOLADE, INC.

By: _____

Name: _____

Its: _____

Agent Approval: _____



AMENDED CREDIT AGREEMENT EXHIBIT

See attachment.

4883-0369-8472_14883-0369-8472_6

~~COMPOSITE COPY~~[†]AMENDED CREDIT AGREEMENT EXHIBIT

to Seventh Amendment to Credit Agreement ~~dated as of July 18, 2019 (16053608_18)~~

~~**First Amendment** dated as of August 21, 2020 (16873953_6)
Second Amendment dated as of September 11, 2020 (16917169_3)
Third Amendment dated as of November 6, 2020 (17006066_4)
Fourth Amendment dated as of March 2, 2021 (4866-3376-6670_14)
Fifth Amendment dated as of March 23, 2021 (4873-1094-8366_7)
Sixth Amendment dated as of May 26, 2022 (4880-5351-8862_6)~~

ACCOLADE, INC.

CREDIT AGREEMENT
DATED AS OF JULY 18, 2019

COMERICA BANK
AS ADMINISTRATIVE AGENT,

AND

COMERICA BANK AND WESTERN ALLIANCE BANK
AS JOINT LEAD ARRANGERS
AND JOINT BOOKRUNNERS

~~† Prepared for convenient reference only. Original document remains controlling.~~

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[4883-0369-8472_6](#)

TABLE OF CONTENTS

	<u>Page</u>
1. DEFINITIONS.	1
1.1 Certain Defined Terms	1
1.2 Other Interpretive Provisions	32
1.3 Eurodollar-based Advances; LIBOR Notification <u>Rates</u>	32
2. REVOLVING CREDIT.	33
2.1 Commitment	33
2.2 Accrual of Interest and Maturity; Evidence of Indebtedness.	33
2.3 Requests for and Refundings and Conversions of Advances	34 <u>33</u>
2.4 Disbursement of Advances.	35
2.5 Swing Line.	36
2.6 Interest Payments; Default Interest.	40
2.7 Optional Prepayments.	41
2.8 Base Rate Advance in Absence of Election or Upon Default	42 <u>41</u>
2.9 Revolving Credit Facility Fee	42 <u>41</u>
2.10 Mandatory Repayment of Revolving Credit Advances. Optional Reduction or Termination of Revolving Credit Aggregate	42
2.11 Commitment	43
2.12 Optional Increase in Revolving Credit.	44 <u>43</u>
2.13 Use of Proceeds of Advances	46
3. LETTERS OF CREDIT.	46
3.1 Letters of Credit	46
3.2 Conditions to Issuance	46
3.3 Notice	48 <u>47</u>
3.4 Letter of Credit Fees; Increased Costs.	48 <u>47</u>
3.5 Other Fees Participation Interests in and Drawings and Demands for Payment Under	49 <u>48</u>
3.6 Letters of Credit.	49 <u>48</u>
3.7 Obligations Irrevocable	51 <u>50</u>
3.8 Risk Under Letters of Credit.	52 <u>51</u>
3.9 Indemnification	52
3.10 Right of Reimbursement	53
4. [RESERVED].	53
5. CONDITIONS.	53
5.1 Conditions of Initial Advances	54 <u>53</u>
5.2 Continuing Conditions	56
5.3 Post-Closing Conditions	56
6. REPRESENTATIONS AND WARRANTIES.	57<u>56</u>
6.1 Corporate Authority	57 <u>56</u>
6.2 Due Authorization	57

6.3	Good Title; Leases; Assets; No Liens.	57
6.4	Taxes	58 <u>57</u>
6.5	No Defaults	58 <u>57</u>
6.6	Enforceability of Agreement and Loan Documents	58
6.7	Compliance with Laws	58
6.8	Non-contravention	59 <u>58</u>
6.9	Litigation	59 <u>58</u>
6.10	Consents, Approvals and Filings, Etc	59 <u>58</u>
6.11	Agreements Affecting Financial Condition	59
6.12	No Investment Company or Margin Stock	59
6.13	ERISA Compliance	59
6.14	Conditions Affecting Business or Properties	60
6.15	Environmental and Safety Matters	61 <u>60</u>
6.16	Subsidiaries	61 <u>60</u>
6.17	Management Agreements	61 <u>60</u>
6.18	Material Contracts	61 <u>60</u>
6.19	Franchises, Patents, Copyrights, Tradenames, etc	61 <u>60</u>
6.20	Capital Structure	61
6.21	Accuracy of Information; Beneficial Ownership.	61
6.22	Solvency	62 <u>61</u>
6.23	Employee Matters	62
6.24	No Misrepresentation	62
6.25	Corporate Documents and Corporate Existence	63 <u>62</u>
6.26	Anti-Money Laundering/Anti-Terrorism	63 <u>62</u>
6.27	EEA Financial Institution	63 <u>62</u>
7.	AFFIRMATIVE COVENANTS.	63 <u>62</u>
7.1	Financial Statements	63 <u>62</u>
7.2	Certificates; Other Information	64 <u>63</u>
7.3	Payment of Obligations	65 <u>64</u>
7.4	Conduct of Business and Maintenance of Existence; Compliance with Laws.	65 <u>64</u>
7.5	Maintenance of Property; Insurance	66 <u>65</u>
7.6	Inspection of Property; Books and Records, Discussions	66 <u>65</u>
7.7	Notices	67 <u>66</u>
7.8	Hazardous Material Laws.	68 <u>67</u>
7.9	Financial Covenants.	68 <u>67</u>
7.10	Governmental and Other Approvals	69 <u>68</u>
7.11	Compliance with ERISA	69 <u>68</u>
7.12	Defense of Collateral	70 <u>68</u>
7.13	Future Subsidiaries; Additional Collateral.	70 <u>68</u>
7.14	Accounts	71 <u>70</u>
7.15	Use of Proceeds	72 <u>70</u>
7.16	[Reserved]	72 <u>71</u>
7.17	Further Assurances and Information-	72 <u>71</u>
7.18	Anti-Terrorism Laws	72 <u>71</u>

8.	NEGATIVE COVENANTS.	<u>73</u> <u>71</u>
8.1	Limitation on Debt	<u>73</u> <u>72</u>
8.2	Limitation on Liens	<u>74</u> <u>73</u>
8.3	Acquisitions	<u>75</u> <u>74</u>
8.4	Limitation on Mergers, Dissolution or Sale of Assets	<u>75</u> <u>74</u>
8.5	Restricted Payments	<u>76</u> <u>75</u>
8.6	[Reserved]	<u>77</u> <u>76</u>
8.7	Limitation on Investments, Loans and Advances	<u>77</u> <u>76</u>
8.8	Transactions with Affiliates	<u>78</u> <u>77</u>
8.9	Sale-Leaseback Transactions	<u>78</u> <u>77</u>
8.10	Limitations on Other Restrictions	<u>78</u> <u>77</u>
8.11	Prepayment of Debt	<u>79</u> <u>77</u>
8.12	Amendment of Subordinated Debt Documents	<u>79</u> <u>78</u>
8.13	Modification of Certain Agreements	<u>79</u> <u>78</u>
8.14	Management Fees	<u>79</u> <u>78</u>
8.15	Fiscal Year	<u>80</u> <u>78</u>
9.	DEFAULTS.	<u>80</u> <u>78</u>
9.1	Events of Default	<u>80</u> <u>78</u>
9.2	Exercise of Remedies	<u>82</u> <u>80</u>
9.3	Rights Cumulative	<u>82</u> <u>81</u>
9.4	Waiver by the Borrower of Certain Laws	<u>82</u> <u>81</u>
9.5	Waiver of Defaults	<u>82</u> <u>81</u>
9.6	Set Off	<u>82</u> <u>81</u>
9.7	[Reserved]	<u>83</u> <u>81</u>
10.	PAYMENTS, RECOVERIES AND COLLECTIONS.	<u>83</u> <u>82</u>
10.1	Payment Procedure.	<u>83</u> <u>82</u>
10.2	Application of Proceeds of Collateral	<u>84</u> <u>82</u>
10.3	Pro-rata Recovery	<u>84</u> <u>83</u>
	Treatment of a Defaulting Lender; Reallocation of Defaulting Lender's	
10.4	Fronting Exposure.	<u>84</u> <u>83</u>
<u>10.5</u>	<u>Erroneous Payments.</u>	<u>85</u>
11.	YIELD PROTECTION; INCREASED COSTS; MARGIN ADJUSTMENTS; TAXES	<u>86</u>
	<u>Unavailability; successor rate determinationS</u>	<u>85</u>
11.1	Reimbursement of Prepayment Costs	<u>86</u> <u>85</u>
11.2	Eurodollar Lending Office	<u>87</u>
	<u>Inability to Determine Interest Rate</u>	<u>86</u>
11.3	Circumstances Affecting LIBOR Rate Availability	<u>87</u>
	<u>BSBY Unavailability</u>	<u>86</u>
11.4	Laws Affecting LIBOR Rate Availability	<u>87</u>
	<u>Illegality</u>	<u>88</u>

11.5	Increased Cost of Advances Carried at the LIBOR Rate <u>Costs</u>	87 <u>89</u>
11.6	Capital Adequacy and Other Increased Costs <u>Requirements</u>	88 <u>89</u>
11.7	Right of Lenders to Fund through Branches and Affiliates <u>Certificates for Reimbursement</u>	88 <u>89</u>
11.8	[Reserved].	89
11.9	Delay in Requests	<u>89</u> <u>90</u>
11.10	Taxes:	<u>89</u>
	11.11 Effect of Benchmark Transition Event.	90
12.	AGENT.	<u>97</u> <u>93</u>
12.1	Appointment of the Agent	<u>97</u> <u>93</u>
12.2	Deposit Account with the Agent or any Lender	<u>97</u> <u>93</u>
12.3	Scope of the Agent's Duties	<u>97</u> <u>93</u>
12.4	Successor Agent	<u>98</u> <u>94</u>
12.5	Credit Decisions	<u>98</u> <u>94</u>
12.6	Authority of the Agent to Enforce This Agreement	<u>99</u> <u>94</u>
12.7	Indemnification of the Agent	<u>99</u> <u>95</u>
12.8	Knowledge of Default	<u>99</u> <u>95</u>
12.9	The Agent's Authorization; Action by Lenders	<u>100</u> <u>95</u>
12.10	Enforcement Actions by the Agent	<u>100</u> <u>96</u>
12.11	Collateral Matters.	<u>100</u> <u>96</u>
12.12	The Agents in their Individual Capacities	<u>101</u> <u>96</u>
12.13	The Agent's Fees	<u>101</u> <u>96</u>
12.14	Documentation Agent or other Titles	<u>101</u> <u>97</u>
12.15	Subordination Agreements	<u>101</u> <u>97</u>
12.16	Indebtedness in respect of Lender Products and Hedging Agreements	<u>101</u> <u>97</u>
12.17	No Reliance on the Agent's Customer Identification Program.	<u>101</u> <u>97</u>
12.18	Flood Laws	<u>102</u> <u>98</u>
12.19	Lenders' ERISA Representations.	<u>102</u> <u>98</u>
13.	MISCELLANEOUS.	<u>102</u> <u>98</u>
13.1	Accounting Principles; Divisions	<u>102</u> <u>98</u>
13.2	Consent to Jurisdiction	<u>103</u> <u>99</u>
13.3	Governing Law	<u>103</u> <u>99</u>
13.4	Interest	<u>103</u> <u>99</u>
13.5	Closing Costs and Other Costs; Indemnification.	<u>103</u> <u>99</u>
13.6	Notices.	<u>104</u> <u>100</u>
13.7	Further Action	<u>105</u> <u>101</u>
13.8	Successors and Assigns; Participations; Assignments.	<u>105</u> <u>101</u>
13.9	Counterparts	<u>108</u> <u>104</u>
13.10	Amendment and Waiver.	<u>108</u> <u>104</u>
13.11	Confidentiality	<u>111</u> <u>107</u>
13.12	<u>Mitigation of Obligations</u> ; Substitution or Removal of Lenders.	<u>112</u> <u>107</u>

13.13 Withholding Taxes	113
<u>[Reserved]</u>	<u>109</u>
13.14 WAIVER OF JURY TRIAL/ JUDICIAL REFERENCE	115 <u>109</u>
13.15 USA Patriot Act Notice	117 <u>111</u>
13.16 Complete Agreement; Conflicts	117 <u>111</u>
13.17 Severability	117 <u>111</u>
13.18 Table of Contents and Headings; Section References	117 <u>111</u>
13.19 Construction of Certain Provisions	117 <u>111</u>
13.20 Independence of Covenants	117 <u>111</u>
13.21 Electronic Transmissions.	117 <u>111</u>
13.22 Advertisements	118 <u>112</u>
13.23 Reliance on and Survival of Provisions	118 <u>112</u>
13.24 [Reserved].	118 <u>112</u>
13.25 Acknowledgment and Consent to Bail-In of EEA Financial Institutions	118 <u>112</u>

EXHIBITS

- A - FORM OF REQUEST FOR REVOLVING CREDIT ADVANCE
- B - FORM OF REVOLVING CREDIT NOTE
- C - FORM OF SWING LINE NOTE
- D - FORM OF REQUEST FOR SWING LINE ADVANCE
- E - FORM OF NOTICE OF LETTERS OF CREDIT
- F - FORM OF NEW LENDER ADDENDUM
- G - FORM OF SECURITY AGREEMENT
- H - FORM OF BORROWING BASE CERTIFICATE
- I - FORM OF ASSIGNMENT AGREEMENT
- J - FORM OF COVENANT COMPLIANCE REPORT
- K - FORM OF SWING LINE PARTICIPATION CERTIFICATE
- L - FORM OF U.S. TAX COMPLIANCE CERTIFICATE

ANNEXES

- I Applicable Margin Grid
- II Percentages and Allocations
- III Notices

SCHEDULES

- 1.1 Compliance Information
- 5.2(c) Jurisdictions
- 6.3(b) Owned and Leased Property
- 6.4 Taxes
- 6.7 Compliance with Laws
- 6.9 Litigation
- 6.10 Consents, Approvals, Filings
- 6.15 Environmental and Safety Matters
- 6.16 Subsidiaries
- 6.17 Management Agreements
- 6.18 Material Contracts
- 6.19 Trade Names
- 6.20 Capital Structure
- 6.23 Employee Matters
- 8.1 Existing Debt
- 8.2 Existing Liens
- 8.7 Existing Investments
- 8.8 Transactions with Affiliates

CREDIT AGREEMENT

This Credit Agreement (“Agreement”) is made as of the 18th day of July, 2019, by and among the financial institutions from time to time signatory hereto (individually a “Lender,” and any and all such financial institutions collectively the “Lenders”), Comerica Bank, as Administrative Agent for the Lenders (in such capacity, the “Agent”), Comerica Bank and Western Alliance Bank as Joint Lead Arrangers and Joint Bookrunners, and Accolade, Inc., a Delaware corporation (“Borrower”).

RECITALS

A. The Borrower has requested that the Lenders extend to it credit and letters of credit on the terms and conditions set forth herein.

B. The Lenders are prepared to extend such credit as aforesaid, but only on the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the covenants contained herein, the Borrower, the Lenders, and the Agent agree as follows:

1. DEFINITIONS.

1.1 Certain Defined Terms

. For the purposes of this Agreement the following terms will have the following meanings:

“Accolade Technologies s.r.o.” shall mean Accolade Technologies s.r.o., a company organized under the laws of the Czech Republic and a wholly-owned Subsidiary of Borrower.

“Account(s)” shall mean any account or account receivable as defined under the UCC, including without limitation, with respect to any Person, any right of such Person to payment for goods sold or leased or for services rendered.

“Account Control Agreement(s)” shall mean those certain account control agreements, or similar agreements that are delivered pursuant to Section 7.14 of this Agreement or otherwise, as the same may be amended, restated, supplemented or otherwise modified from time to time.

“Account Debtor” shall mean the party who is obligated on or under any Account.

“Advance(s)” shall mean, as the context may indicate, a borrowing requested by Borrower, and made by the Revolving Credit Lenders under Section 2.1 hereof, or the Swing Line Lender under Section 2.5 hereof, including without limitation any readvance, refunding or conversion of such borrowing pursuant to Section 2.3 or 2.5 hereof, and any advance deemed to have been made in respect of a Letter of Credit under Section 3.6(c) hereof, and shall include, as applicable, a ~~Eurodollar-based~~ BSBY Rate Advance, a Base Rate Advance and a Quoted Rate Advance.

“Advisor” shall mean Accretive, LLC.

“Affected Lender” is defined in Section 13.12 hereof.

“Affected Tenor” is defined in Section 11.2 hereof.

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“Affiliate” shall mean, with respect to any Person, any other Person directly or indirectly controlling (including but not limited to all directors and officers of such Person), controlled by, or under direct or indirect common control with such Person. A Person shall be deemed to control another Person for the purposes of this definition if such Person possesses, directly or indirectly, the power (i) to vote 10% or more of the Equity Interests having ordinary voting power for the election of directors or managers of such other Person or (ii) to direct or cause the direction of the management and policies of such other Person, whether through the ownership of voting securities, by contract or otherwise.

“Agent” is defined in the preamble, and include any successor agents appointed in accordance with Section 12.4 hereof.

“Agent’s ~~Correspondent Office~~” shall mean ~~for Eurodollar-based Advances, the Agent’s Grand Cayman Branch (or for the address, and as appropriate, account, as set forth on Annex III, or such other address or account of said branch office, at~~ the Agent’s main office in Detroit, Michigan, United States) may from time to time notify the Borrower and the Lenders.

“Annual Recurring Revenue Run Rate” shall mean the product of Eligible Monthly Recurring Revenue multiplied by twelve (12).

“Annual Revenue Growth” shall mean the number, expressed as a percentage, derived by: (i) dividing (a) the annual revenue of Borrower and its Domestic Subsidiaries (determined in accordance with GAAP) for the Fiscal Year most recently ended on or prior to the date of determination, by (b) the annual revenue of Borrower and its Domestic Subsidiaries (determined in accordance with GAAP) for the Fiscal Year immediately preceding such Fiscal Year referenced in clause (a), and (ii) subtracting one from the quotient calculated in clause (i).

“Anti-Terrorism Laws” shall mean any laws relating to terrorism, trade sanctions programs and embargoes, import/export licensing, money laundering, corruption or bribery, and any regulation, order, or directive promulgated, issued or enforced pursuant to such laws, all as amended, supplemented or replaced from time to time.

“Applicable Fee Percentage” shall mean, as of any date of determination thereof, the applicable percentage used to calculate certain of the fees due and payable hereunder, determined by reference to the appropriate columns in the Pricing Matrix attached to this Agreement as Annex I.

“Applicable Floor” shall mean (a) as such term is used in the definitions of “BSBY Rate” and “Successor Rate” (as defined in Section 11.3), one-half percent (0.50%) per annum, and (b) as such term is used in the definition of “Base Rate”, one and one-half percent (1.50%) per annum

“Applicable Interest Rate” shall mean, (i) with respect to each Revolving Credit Advance, the ~~Eurodollar-based~~ BSBY Rate or the Base Rate plus, in each case, the Applicable Margin, and (ii) with respect to each Swing Line Advance, the Base Rate or, if made available to the Borrower by the Swing Line Lender at its option, the Quoted Rate, plus, in each case, the Applicable Margin, in each case as selected by the Borrower from time to time subject to the terms and conditions of this Agreement.

~~“Applicable Floor” shall mean (a) as such term is used in the definitions of “LIBOR Rate” and “Benchmark Replacement” (as defined in Section 11.11), one-half percent (0.50%) per annum and (b) as such term is used in the definition of “Base Rate”, one and one-half percent (1.50%) per annum.~~

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“Applicable Margin” shall mean, as of any date of determination thereof, the applicable interest rate margin, determined by reference to the appropriate columns in the Pricing Matrix attached to this Agreement as Annex I.

~~“Applicable Reference Date” shall mean (i) for all purposes other than clause (c) of the definition of “Base Rate,” the date that is two (2) Business Days prior to the first day of the applicable Eurodollar Interest Period, and (ii) solely for purposes of clause (c) of the definition of “Base Rate,” any date of determination (or, if such date is not a Business Day, the preceding Business Day).~~

“Asset Sale” shall mean the sale, transfer or other disposition by any Credit Party of any asset (other than the sale or transfer of less than one hundred percent (100%) of the stock or other ownership interests of any Subsidiary) to any Person (other than to Borrower or a Guarantor).

“Assignment Agreement” shall mean an Assignment Agreement substantially in the form of Exhibit I hereto.

“Authorized Signer” shall mean each person who has been authorized by Borrower to execute and deliver any requests for Advances hereunder pursuant to a written authorization delivered to the Agent and whose signature card or incumbency certificate has been received by the Agent.

“Available Tenor” shall mean, as of any date of determination and with respect to the BSBY Rate or any Successor Rate, as applicable, (x) if such rate is a term rate, any tenor for such rate (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement, and (y) under all other circumstances, any payment period for interest calculated with reference to such rate (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such rate, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such rate that is then-removed from the definition of “Interest Period” pursuant to Section 11.3(c).

“Bail-In Action” shall mean the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

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

“Bankruptcy Code” shall mean Title 11 of the United States Code and the rules promulgated thereunder.

“Base Rate” shall mean for any day, that per annum rate of interest which is equal to ~~the sum of the Applicable Margin plus~~ the greatest of (a) the Prime Rate for such day, (b) the Federal Funds Effective Rate in effect on such day, plus one percent (1.0%) per annum, (c) the ~~LIBOR~~BSBY Screen Rate ~~(using the applicable 30-day or for a one-month rate) for tenor in effect on~~ such day, plus one percent (1.0%) per annum, and (d) the Applicable Floor; ~~provided, however, for purposes of determining the Base Rate during any period that the LIBOR Rate is unavailable as determined under Sections 11.3 or 11.4 hereof or during a Benchmark Unavailability Period under Section 11.11 hereof, the Base Rate shall be determined without reference to clause (c) above.~~ Any change in the Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate, or ~~such LIBOR~~the BSBY Rate shall be effective from and including the effective

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date of such change in the Prime Rate, the Federal Funds Effective Rate, or the ~~LIBOR~~BSBY Rate, respectively.

“Base Rate Advance” shall mean an Advance which bears interest at the Base Rate.

“Benchmark” shall mean shall mean, initially, the BSBY Screen Rate; provided, that, if the BSBY Screen Rate or any successor thereof is subsequently replaced by a Successor Rate in accordance with 11.3, then “Benchmark” shall mean the applicable Successor Rate then in effect.

“Beneficial Ownership Certification” shall mean a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

“Beneficial Ownership Regulation” shall mean 31 C.F.R. § 1010.230, as amended from time to time.

“Borrower” is defined in the preamble to this Agreement.

“Borrowing Base” shall mean, as of any date of determination thereof, an amount equal to Eligible Monthly Recurring Revenue multiplied by (a) 6.00 from the Effective Date through and including December 31, 2019, (b) 5.75 from January 1, 2020 through and including March 31, 2020, (c) 5.50 from April 1, 2020 through and including June 30, 2020, (d) 5.25 from July 1, 2020 through and including September 30, 2020, (e) 5.00 from October 1, 2020 through and including December 31, 2020, (f) 4.75 from January 1, 2021 through and including March 31, 2021, (g) 4.50 from April 1, 2021 through and including June 30, 2021, (h) 4.25 from July 1, 2021 through and including September 30, 2021, and (i) 4.00 on October 1, 2021, and at all times thereafter; provided that the Borrowing Base shall be determined on the basis of the most current Borrowing Base Certificate required or permitted to be submitted hereunder.

“Borrowing Base Certificate” shall mean a borrowing base certificate, in substantially the form of Exhibit H attached hereto, executed by a Responsible Officer of the Borrower.

“BSBY” shall mean the Bloomberg Short-Term Bank Yield Index rate.

“BSBY Administrator” shall mean Bloomberg Index Services Limited (or any successor administrator of BSBY).

“BSBY Rate” shall mean, with respect to any BSBY Rate Advance for any applicable Interest Period, the rate per annum equal to the BSBY Screen Rate at or about 7:00 a.m. (Detroit, Michigan time) (or as soon thereafter as practical) as determined for such Interest Period, two (2) Business Days prior to the beginning of such Interest Period with a term equivalent to such Interest Period for such BSBY Rate Advance; provided, that, except for a determination by Agent pursuant to Section 11.2 or Section 11.3 herein, if such rate is not published for any Business Day, then the “BSBY Rate” will be the BSBY Screen Rate for the first Business Day immediately prior thereto on which such rate is published, rounded upwards, if necessary, to the next five decimal places and adjusted for any reserves that Agent is required to maintain with respect to the relevant Advances, all as determined by Agent from time to time in its reasonable discretion; provided, further, that if the BSBY Rate would otherwise be less than the Applicable Floor, then the BSBY Rate shall be deemed to be the Applicable Floor.

“BSBY Rate Advance” shall mean any Advance which bears interest at the BSBY Rate or, if applicable, the Successor Rate.

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“BSBY Screen Rate” means BSBY, as administered by the BSBY Administrator and published on the applicable Reuters screen page (or such other commercially available source providing such rate as may be designated by Agent from time to time).

“Business Day” shall mean any day other than a Saturday or a Sunday on which commercial banks are open for domestic and international business (including dealings in foreign exchange) in Detroit, Michigan and New York, New York, ~~and in the case of a Business Day which relates to a Eurodollar-based Advance, on which dealings are carried on in the London interbank eurodollar market.~~

“Capital Expenditures” shall mean, for any period, with respect to any Person (without duplication), the aggregate of all expenditures incurred by such Person and its Subsidiaries during such period for the acquisition or leasing (pursuant to a Capitalized Lease) of fixed or capital assets or additions to equipment, plant and property that should be capitalized under GAAP on a consolidated balance sheet of such Person and its Subsidiaries. For the avoidance of doubt, this definition is subject to the terms of Section 13.1 hereof.

“Capitalized Lease” shall mean, as applied to any Person, any lease of any property (whether real, personal or mixed) with respect to which the discounted present value of the rental obligations of such Person as lessee thereunder, in conformity with GAAP, is required to be capitalized on the balance sheet of that Person. For the avoidance of doubt, this definition is subject to the terms of Section 13.1 hereof.

“CFC” shall mean a “controlled foreign corporation” as defined in Section 957 of the Code.

“Change in Law” shall mean the occurrence, after the Effective Date, of any of the following: (i) the adoption or introduction of, or any change in any applicable law, treaty, rule or regulation (whether domestic or foreign) now or hereafter in effect and whether or not applicable to any Lender or Agent on such date, or (ii) any change in interpretation, administration or implementation of any such law, treaty, rule or regulation by any Governmental Authority, or (iii) the issuance, making or implementation by any Governmental Authority of any interpretation, administration, request, regulation, guideline, or directive (whether or not having the force of law), including any risk-based capital guidelines. For purposes of this definition, (x) a change in law, treaty, rule, regulation, interpretation, administration or implementation shall include, without limitation, any change made or which becomes effective on the basis of a law, treaty, rule, regulation, interpretation administration or implementation then in force, the effective date of which change is delayed by the terms of such law, treaty, rule, regulation, interpretation, administration or implementation, (y) the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203, H.R. 4173) and all requests, rules, regulations, guidelines, interpretations or directives promulgated thereunder or issued in connection therewith shall be deemed to be a “Change in Law”, regardless of the date enacted, adopted, issued or promulgated, and (z) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States regulatory authorities, in each case pursuant to Basel III, shall each be deemed to be a “Change in Law”, regardless of the date enacted, adopted, issued or implemented.

“Change of Control” shall mean any transaction or series of related transactions in which (a) any “person” or “group” (within the meaning of Section 13(d) and 14(d)(2) of the Securities Exchange Act of 1934) becomes the “beneficial owner” (as defined in Rule 13d-3 under the Securities Exchange Act of 1934), directly or indirectly, of more than 35% of the shares of all classes of Equity Interests then outstanding of Borrower ordinarily entitled to vote in the election of directors, empowering such “person” or “group” to elect a majority of the Board of Directors of Borrower, who did not have such power before such transaction or (b) Borrower ceases to own and control, free and clear of any Liens (other than Liens permitted by Section 8.2 hereof), directly or indirectly, all of the Equity Interests in each of its Subsidiaries,

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or failing to have the power to direct or cause the direction of the management and policies of each such Subsidiary.

“Code” shall mean the Internal Revenue Code of 1986 of the United States of America, as amended from time to time, and the regulations promulgated thereunder.

“Collateral” shall mean all property or rights in which a security interest, mortgage, lien or other encumbrance for the benefit of the Lenders is or has been granted or arises or has arisen, under or in connection with this Agreement, the other Loan Documents, or otherwise to secure the Indebtedness, provided that in no event will Collateral include voting Equity Interests in any Foreign Subsidiary that is wholly owned by Borrower or a Domestic Subsidiary representing in excess of 65% of the total combined voting power of all classes of voting Equity Interests in such Foreign Subsidiary and in no event will Collateral include Equity Interests in any other Foreign Subsidiary.

“Collateral Access Agreement” shall mean an agreement in form and substance reasonably satisfactory to the Agent, pursuant to which a mortgagee or lessor of real property on which Collateral is stored or otherwise located, or a warehouseman, processor or other bailee of inventory or other property owned by any Credit Party, that acknowledges the Liens under the Collateral Documents and subordinates or waives any Liens held by such Person on such property and, includes such other agreements with respect to the Collateral as the Agent may require in its sole discretion, as the same may be amended, restated or otherwise modified from time to time.

“Collateral Documents” shall mean the Security Agreement, the Pledge Agreements, the Mortgages, the Leasehold Mortgages, the Consent and Acknowledgments, the Account Control Agreements, the Collateral Access Agreements, and all other security documents (and any joinders thereto) executed by any Credit Party in favor of the Agent on or after the Effective Date, in connection with any of the foregoing collateral documents, in each case, as such collateral documents may be amended or otherwise modified from time to time.

“Comerica Bank” shall mean Comerica Bank, its successors or assigns.

“Commitments” shall mean the Revolving Credit Aggregate Commitment.

“Concurrent Equity Proceeds” shall mean, with respect to any Investment or Permitted Acquisition, payment of or in respect of Debt or other transaction, net cash proceeds received by Borrower from any equity issuance by Borrower or any receipt by Borrower of any capital contribution, in each case so long as such issuance or capital contribution is consummated, and such proceeds are received, substantially concurrently with (and in any event not more than 90 days prior to) the making of such Investment or Permitted Acquisition or other transaction for the purpose thereof.

“Conforming Changes” means, with respect to either the use or administration of the BSBY Rate or the use, administration, adoption or implementation of any Successor Rate, any technical, administrative or operational changes (including changes to the definition of “Base Rate,” the definition of “Business Day,” the definition of “U.S. Government Securities Business Day,” the definition of “Interest Period,” or any similar or analogous definition (or the addition of a concept of “interest period”), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of Section 11.2 or Section 11.3 and other technical, administrative or operational matters) that the Agent decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Agent in a manner substantially consistent with market practice (or, if the

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Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

“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.

“Consent and Acknowledgment” shall mean an agreement in form and substance reasonably satisfactory to the Agent, pursuant to which a lessor of real property which is encumbered by a Leasehold Mortgage acknowledges and consents to the granting of a mortgage on the tenant’s leasehold interest in the real property, and subordinates or waives any Liens held by such lessor on the tenant’s leasehold interest and personal property, and includes such other agreements with respect to the Collateral as the Agent may require in its sole discretion, as the same may be amended, restated, supplemented or otherwise modified from time to time.

“Consolidated” (or “consolidated”) or “Consolidating” (or “consolidating”) shall mean, when used with reference to any financial term in this Agreement, the aggregate for two or more Persons of the amounts signified by such term for all such Persons determined on a consolidated (or consolidating) basis in accordance with GAAP, applied on a consistent basis. Unless otherwise specified herein, “Consolidated” and “Consolidating” shall refer to the Borrower and its respective Subsidiaries, determined on a Consolidated or Consolidating basis.

“Consolidated Net Cash” means (a) the aggregate amount of cash on the balance sheet of Borrower and its consolidated Domestic Subsidiaries minus (b) an amount equal to (i) the aggregate principal amount of Revolving Credit Advances outstanding at such time plus (ii) accrued interest and fees thereon.

“Contractual Obligation” shall mean, as to any Person, any provision of any security issued by such Person or of any material agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

“Covenant Compliance Report” shall mean the report to be furnished by the Borrower to the Agent pursuant to Section 7.2(a) hereof, substantially in the form attached hereto as Exhibit J and certified by a Responsible Officer of the Borrower, in which report the Borrower shall set forth the information specified therein.

“Covenant Revenue” shall mean, the sum, without duplication, of the revenue of the Borrower and its Domestic Subsidiaries, calculated on a Consolidated basis in accordance with GAAP for the six (6) month period most recently ended on or prior to such date of determination.

“Covered Entity” shall mean (a) each Credit Party, any other Persons that guaranty the Indebtedness and/or pledge collateral to secure the Indebtedness, (b) each Person that, directly or indirectly, is in control of a Person described in clause (a) above, and (c) all brokers or other agents of any Credit Party acting in any capacity in connection with this Agreement. For purposes of this definition, control of a Person shall mean the direct or indirect (x) ownership of, or power to vote, 25% or more of the issued and outstanding equity interests having ordinary voting power for the election of directors of such Person or other Persons performing similar functions for such Person, or (y) power to direct or cause the direction of the management and policies of such Person whether by ownership of equity interests, contract or otherwise.

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“Credit Parties” shall mean the Borrower and the Guarantors, and “Credit Party” shall mean any one of them, as the context indicates or otherwise requires.

“Daily Simple SOFR” means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Agent in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining “Daily Simple SOFR” for syndicated business loans; provided that if the Agent decides that any such convention is not administratively feasible for the Agent, then the Agent may establish another convention in its reasonable discretion.

“Debt” shall mean as to any Person, without duplication (a) all Funded Debt of a Person, (b) all Guarantee Obligations of such Person, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property or assets purchased by such Person, (d) all indebtedness of such Person arising in connection with any Hedging Transaction entered into by such Person, (e) all recourse Debt of any partnership of which such Person is the general partner, and (f) any Off Balance Sheet Liabilities.

“Debtor Relief Laws” shall mean the Bankruptcy Code, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect.

“Default” shall mean any event that with the giving of notice or the passage of time, or both, would constitute an Event of Default under this Agreement.

“Default Rate” shall mean (before as well as after judgment) (a) when used with respect to any Indebtedness other than Letter of Credit Fees, an interest rate per annum equal to the sum of (i) the Base Rate plus (ii) the Applicable Margin, if any, applicable to Base Rate Advances plus (iii) 2.0% per annum; provided, however, that with respect to any BSBY Rate Advance (and subject to Sections 2.8), the Default Rate shall be an interest rate per annum equal to the interest rate (including any Applicable Margin) otherwise applicable to such Advance plus 2.0% per annum, and (b) when used with respect to Letter of Credit Fees, a rate per annum equal to the Applicable Fee Percentage plus 2.0% per annum; in each case, to the fullest extent permitted by applicable law.

“Defaulting Lender” shall mean any Lender that (a) has failed to (i) fund all or any portion of its Advances within two (2) Business Days of the date such Advances were required to be funded hereunder unless such Lender notifies the Agent and the Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Agent, any Issuing Lender, any Swing Line Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swing Line Advances) within two (2) Business Days of the date when due, (b) has notified the Borrower, the Agent or any Issuing Lender or Swing Line Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement is based on such Lender’s good faith determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) has not been satisfied), (c) has failed, within three Business Days after written request by the Agent or the Borrower, to confirm in writing to the Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any

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Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity, or (iii) become the subject of a Bail-In Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority, so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender upon delivery of written notice of such determination to the Borrower, each Issuing Lender, each Swing Line Lender and each Lender.

“Distribution” is defined in Section 8.5 hereof.

“Dividing Person” is defined in the definition of “Division”.

“Division” shall mean 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” shall mean 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.

“Dollars” and the sign “\$” shall mean lawful money of the United States of America.

“Domestic Subsidiary” shall mean any Subsidiary of Borrower incorporated or organized under the laws of the United States of America, or any state or other political subdivision thereof or which is considered to be a “disregarded entity” for United States federal income tax purposes, in each case provided such Subsidiary is directly and wholly owned by such Borrower or a Domestic Subsidiary of such Borrower, and provided such Subsidiary is not a FSHCO, and “Domestic Subsidiaries” shall mean any or all of them.

“EEA Financial Institution” shall mean (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” shall mean any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

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“EEA Resolution Authority” shall mean any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“Effective Date” shall mean the date on which all the conditions precedent set forth in Sections 5.1 and 5.2 have been satisfied.

“Electronic Transmission” shall mean each document, instruction, authorization, file, information and any other communication transmitted, posted or otherwise made or communicated by e-mail or E-Fax, or otherwise to or from an E-System or other equivalent service.

“Eligible Assignee” shall mean (a) a Lender; (b) an Affiliate of a Lender; (c) any Person (other than a natural person) that is or will be engaged in the business of making, purchasing, holding or otherwise investing in commercial loans or similar extensions of credit in the ordinary course of its business, provided that such Person is administered or managed by a Lender, an Affiliate of a Lender or an entity or Affiliate of an entity that administers or manages a Lender; or (d) any other Person (other than a natural person) approved by the (i) the Agent (and in the case of an assignment of a commitment under the Revolving Credit, the Issuing Lender and Swing Line Lender), and (ii) unless an Event of Default has occurred and is continuing, the Borrower (each such approval not to be unreasonably withheld or delayed), provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Agent within ten (10) Business Days after having received notice thereof; provided further that (x) notwithstanding the foregoing, “Eligible Assignee” shall not include the Borrower, or any of the Borrower’s Affiliates or Subsidiaries; and (y) no assignment shall be made to a Defaulting Lender (or any Person who would be a Defaulting Lender if such Person was a Lender hereunder) without the consent of the Agent, and in the case of an assignment of a commitment under the Revolving Credit, the Issuing Lender and the Swing Line Lender.

“Eligible Foreign Contracts” shall mean Eligible Recurring Revenue Contracts with respect to which the customer does not have its principal place of business in the United States and is not located in a Sanctioned Country and that are (a) supported by one or more letters of credit in an amount and of a tenor, and issued, advised and/or confirmed by an financial institution acceptable to Agent, (b) insured by the Export Import Bank of the United States or such other credit insurance acceptable to Agent naming Agent as the beneficiary, (c) generated by a customer with its principal place of business in Canada, provided that the Agent has perfected its security interest in the appropriate Canadian province, (d) generated by a customer with publicly traded debt rated investment grade by Moody’s Investor Service or Standard & Poor’s Financial Services, or (e) approved by Agent on a case by case basis in its sole discretion. All Eligible Foreign Contracts shall be calculated in U.S. Dollars.

“Eligible Monthly Recurring Revenue” shall mean Recurring Revenue generated by Eligible Recurring Revenue Contracts, as determined on a PMPM basis or recurring flat fee basis. Unless otherwise agreed to by Agent, Eligible Monthly Recurring Revenue shall not include:

- (a) Recurring Revenue from contracts with a customer who has elected to cancel or failed to renew, or has provided written notice of its intention to cancel or not renew; provided that if a customer subsequently provides written notice to Borrower (or other applicable Credit Party) that it agrees to renew its contract, Recurring Revenue from such contract shall be considered an Eligible Monthly Recurring Revenue if it otherwise qualifies as such;
- (b) Recurring Revenue received due to one-time, non-recurring transactions, installation and/or set up fees or from any other one-time non-contractually accruing sources;

- (c) Recurring Revenue from contracts for base fees where the customer has allowed any account receivable for base fees to age more than ninety (90) days past the invoice date; provided that, (i) with respect to such contracts with [***], such 90-day aging period shall be [***] days until the earlier to occur of (x) [***] failure to pay the Borrower by [***] all amounts due under invoices outstanding as of such date and (y) [***] and (ii) with respect to such contracts with [***], such 90-day aging period shall not apply until the earlier to occur of (x) [***] failure to pay the Borrower by [***] all amounts due under invoices outstanding as of such date and (y) [***];
- (d) Recurring Revenue from Eligible Recurring Revenue Contracts with (i) [***] or [***] (including any of their respective Subsidiaries or Affiliates) to the extent (and only in such amount) that the Recurring Revenue generated from such customer's Eligible Recurring Revenue Contracts exceeds [***] percent ([***]%) of the Recurring Revenue from all Eligible Recurring Revenue Contracts, (ii) [***] (including its Subsidiaries and Affiliates) to the extent (and only in such amount) that the Recurring Revenue generated from such customer's Eligible Recurring Revenue Contracts exceeds [***] percent ([***]%) of the Recurring Revenue from all Eligible Recurring Revenue Contracts, or (iii) any other customer (including its Subsidiaries and Affiliates) to the extent (and only in such amount) that the Recurring Revenue generated from such customer's Eligible Recurring Revenue Contract including its Subsidiaries and Affiliates, exceeds [***] percent ([***]%) of the Recurring Revenue from all Eligible Recurring Revenue Contracts, except in each case, as approved in writing by the Agent and Majority Lenders;
- (e) Recurring Revenue from contracts with respect to which the customer does not have its principal place of business in the United States, except for Eligible Foreign Contracts;
- (f) Recurring Revenue from contracts with respect to which goods are placed on consignment, guaranteed sale, sale or return, sale on approval, bill and hold, demo or promotional, or other terms by reason of which the payment by the customer may be conditional;
- (g) Recurring Revenue from contracts with respect to which the customer is an individual, officer, employee, agent or Affiliate of Borrower (other than customers who are minority investors or warrant holders in Borrower);
- (h) Recurring Revenue from contracts with respect to which the customer (i) disputes liability or makes any claim with respect thereto as to which Agent believes, in its reasonable discretion, provides a basis for dispute (but only to the extent of the amount subject to such dispute or claim), or (ii) is subject to any Insolvency Proceeding, or becomes insolvent, or goes out of business;
- (i) Recurring Revenue from contracts the collection of which Agent reasonably determines after inquiry and consultation with Borrower to be doubtful;
- (j) Recurring Revenue from contracts with payment terms greater than ninety (90) days;
- (k) Recurring Revenue from contracts with respect to which Borrower (or other applicable Credit Party) is liable to the customer for goods sold or services rendered by the customer to Borrower (or other applicable Credit Party), but only in an amount equal to such liabilities owed by Borrower to such customer; provided that, for the avoidance of doubt, such liabilities shall not

include any premiums, claims and administrative service fees owed by Borrower to Blue Cross Blue Shield for its employee health plan;

(l) Recurring Revenue associated with billings greater than one (1) year;

~~(m) Recurring Revenue from Eligible Recurring Revenue Contracts to which Innovation Specialists is a party until both (i) the requirements set forth in Section 7.13 have been satisfied with respect to Innovation Specialists and (ii) the earliest to occur of (x) receipt by Agent of all required reporting set forth in Section 7.1 and 7.2 with respect to the fiscal quarter ending June 30, 2021 and (y) completion by Agent of a collateral audit of the Accounts and Inventory of the Credit Parties (including Innovation Specialists) completed by an appraiser selected by the Agent and consented to by the Borrower (such consent not to be unreasonably withheld), with all reasonable costs and expenses of such audits to be reimbursed by the Credit Parties; and~~

~~(n) Recurring Revenue from Eligible Recurring Revenue Contracts to which PlushCare is a party until both (i) the requirements set forth in Section 7.13 have been satisfied with respect to PlushCare and (ii) the earlier to occur of (x) receipt by Agent of all required reporting set forth in Section 7.1 and 7.2 with respect to the fiscal quarter ending November 30, 2021 and (y) completion by Agent of a collateral audit of the Accounts and Inventory of the Credit Parties (including PlushCare) completed by an appraiser selected by the Agent and consented to by the Borrower (such consent not to be unreasonably withheld), with all reasonable costs and expenses of such audits to be reimbursed by the Credit Parties.~~

“Eligible Recurring Revenue Contracts” shall mean contracts (i) for which any Credit Party has, as of the last day of the month preceding the date of Borrower’s Request for Advance, issued at least one invoice to such customers, and (ii) which yield Recurring Revenue that meet all of Borrower’s representations and warranties described in Section 6.3, provided that Agent may change the standards of eligibility based on the results of a collateral audit or based on events, conditions, contingencies, or risks which, as reasonably determined by Agent may reasonably be expected to adversely affect the Collateral; provided that contracts not received in the ordinary course of business shall not constitute Eligible Recurring Revenue Contracts (unless the same are expressly approved as such in writing by the Agent and the Majority Lenders).

“Equity Interest” shall mean (i) in the case of any corporation, all capital stock and any securities exchangeable for or convertible into capital stock, (ii) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents of corporate stock (however designated) in or to such association or entity, (iii) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited) and (iv) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distribution of assets of, the issuing Person, and including, in all of the foregoing cases described in clauses (i), (ii), (iii) or (iv), any warrants, rights or other options to purchase or otherwise acquire any of the interests described in any of the foregoing cases; provided that, Permitted Convertible Indebtedness shall not constitute Equity Interests; it being agreed that any common stock or other equity securities into which Permitted Convertible Indebtedness is converted into or exchanged for shall constitute Equity Interests.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974.

“ERISA Affiliate” shall mean any trade or business (whether or not incorporated) under common control with the Borrower within the meaning of Section 414(b) or (c) of the Internal Revenue Code (and

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Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code or Section 302 of ERISA).

“ERISA Event” shall mean (a) a Reportable Event with respect to a Pension Plan; (b) the failure by the Borrower or any ERISA Affiliate to meet all applicable requirements under the Pension Funding Rules or the filing of an application for the waiver of the minimum funding standards under the Pension Funding Rules; (c) the incurrence by the Borrower or any ERISA Affiliate of any liability pursuant to Section 4063 or 4064 of ERISA or a cessation of operations with respect to a Pension Plan within the meaning of Section 4062(e) of ERISA; (d) a complete or partial withdrawal by the Borrower or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization or insolvent (within the meaning of Title IV of ERISA); (e) the filing of a notice of intent to terminate a Pension Plan under, or the treatment of a Pension Plan amendment as a termination under, Section 4041 of ERISA; (f) the institution by the PBGC of proceedings to terminate a Pension Plan; (g) any event or condition that constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (h) the determination that any Pension Plan is in at-risk status (within the meaning of Section 430 of the Code or Section 303 of ERISA) or that a Multiemployer Plan is in endangered or critical status (within the meaning of Section 432 of the Code or Section 305 of ERISA); (i) the imposition or incurrence of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Borrower or any ERISA Affiliate; (j) the engagement by the Borrower or any ERISA Affiliate in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA; (k) the imposition of a lien upon the Borrower pursuant to Section 430(k) of the Code or Section 303(k) of ERISA; or (l) the making of an amendment to a Pension Plan that could result in the posting of bond or security under Section 436(f)(1) of the Code.

“Erroneous Payments” is defined in Section 10.5 hereof.

“Escalate” shall mean Escalate Capital Partners SBIC III, L.P.

“Escalate Subordination Agreement” shall mean the subordination agreement by Escalate in favor of the Agent (and acknowledged by the Borrower) in form and substance satisfactory to the Agent, as the same may be amended, restated, supplemented or otherwise modified from time to time.

“Escalate Subordinated Debt” shall mean the secured indebtedness of the Borrower to Escalate under the Escalate Subordinated Debt Documents.

“Escalate Subordinated Debt Documents” shall mean and include that certain subordinated note issued by the Borrower to Escalate on July 18, 2019 and the separate loan and security agreement dated January 30, 2017 related thereto, as amended, restated, supplemented or otherwise modified from time to time in compliance with the terms of this Agreement, together with any and all other documents, instruments and certificates executed and delivered pursuant thereto, as the same may be amended, restated, supplemented or otherwise modified from time to time in compliance with the terms of this Agreement.

“E-System” shall mean any electronic system and any other Internet or extranet-based site, whether such electronic system is owned, operated, hosted or utilized by the Agent, any of its Affiliates or any other Person, providing for access to data protected by passcodes or other security system.

“EU Bail-In Legislation Schedule” shall mean the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

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~~“Eurodollar-based Advance” shall mean any Advance which bears interest at the Eurodollar-based Rate.~~

~~“Eurodollar-based Rate” shall mean a per annum interest rate which is equal to the sum of the Applicable Margin, plus the quotient of:~~

~~(a) the LIBOR Rate, divided by~~

~~(b) a percentage equal to 100% minus the maximum rate on such date at which the Agent is required to maintain reserves on ‘Eurocurrency Liabilities’ as defined in and pursuant to Regulation D of the Board of Governors of the Federal Reserve System or, if such regulation or definition is modified, and as long as the Agent is required to maintain reserves against a category of liabilities which includes eurocurrency deposits or includes a category of assets which includes eurocurrency loans, the rate at which such reserves are required to be maintained on such category;~~

~~such sum to be rounded upward, if necessary, in the discretion of the Agent, to the seventh decimal place.~~

~~“Eurodollar-Interest Period” shall mean, for any Eurodollar-based Advance, an Interest Period of one, two or three months (or any shorter or longer periods agreed to in advance by the Borrower, the Agent and the Lenders) as selected by the Borrower, for such Eurodollar-based Advance pursuant to Section 2.3 hereof.~~

~~“Eurodollar Lending Office” shall mean, (a) with respect to the Agent, the Agent’s office located at its Grand Caymans Branch or such other branch of the Agent, domestic or foreign, as it may hereafter designate as its Eurodollar Lending Office by written notice to the Borrower and the Lenders and (b) as to each of the Lenders, its office, branch or affiliate located at its address set forth on the signature pages hereof (or identified thereon as its Eurodollar Lending Office), or at such other office, branch or affiliate of such Lender as it may hereafter designate as its Eurodollar Lending Office by written notice to the Borrower and the Agent.~~

~~“Event of Default” shall mean each of the Events of Default specified in Section 9.1 hereof.~~

~~“Excluded Accounts” shall mean (a) any payroll accounts or benefit accounts held solely for the benefit of Borrower’s employees, (b) any petty cash and other bank accounts, amounts on deposit in which do not exceed Fifty Thousand Dollars (\$50,000) in the aggregate for a period of five consecutive Business Days, (c) accounts for Borrower or Accolade Technologies s.r.o. maintained at Citibank in aggregate account balances not to exceed \$1,500,000 at any time, (d) so long as the Credit Parties maintain at least \$40,000,000 of their aggregate month-end deposit account and securities account balances, measured as of the last day of each month, with Agent (or Comerica Securities, Inc.), and at least \$40,000,000 of their aggregate month-end deposit account and securities account balances, measured as of the last day of each month, with Western Alliance Bank, any other deposit accounts and securities accounts; provided, that, if such aggregate balances maintained with Agent (or Comerica Securities, Inc.) or Western Alliance Bank are less than such \$40,000,000 minimum aggregate balance requirement at the end of any month, then the Credit Parties shall transfer funds to the appropriate accounts to restore such \$40,000,000 minimum aggregate balance requirement (subject to the requirements set forth in Section 7.14), within 5 Business Days of the end of such month, and (e) the JPM Escrow Account.~~

~~“Excluded Swap Obligation” shall mean any obligation of any Credit Party to any Lender with respect to a “swap,” as defined in Section 1a(47) of the Commodity Exchange Act (“CEA”), if and to the extent that such Credit Party’s guaranteeing of, or granting of a security interest or lien to secure, such swap~~

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obligation, is or becomes illegal under the CEA, 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 Credit Party's failure for any reason to constitute an "eligible contract participant," as defined in Section 1a(18) of the CEA and the regulations thereunder, at the time such guarantee or such security interest grant becomes effective with respect to such swap obligation. If any such swap obligation arises under a master agreement governing more than one swap, the foregoing exclusion shall apply only to those swap obligations that are attributable to swaps in respect of which such Credit Party's guaranteeing of, or granting of a security interest or lien to secure, such swaps is or becomes illegal.

"Excluded Taxes" shall mean 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, withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a ~~Loan~~Loan Advance or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the ~~Loan~~Loan Advance or Commitment (other than pursuant to an assignment request by the Borrower under Section 13.12(a**b**)) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 11.10, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient's failure to comply with Section ~~13.13~~11.10 and (d) any withholding Taxes imposed under FATCA.

"FATCA" shall mean 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, any agreements 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.

"Federal Funds Effective Rate" shall mean, for any day, a fluctuating interest rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by the Agent from three Federal funds brokers of recognized standing selected by the Agent, all as conclusively determined by the Agent, such sum to be rounded upward, if necessary, in the discretion of the Agent, to the nearest whole multiple of 1/100th of 1%; provided that, if the Federal Funds Effective Rate as so determined would be less than 0%, such rate shall be deemed to be 0% for purposes of this Agreement.

"Fee Letter" shall mean the fee letter by and between Borrower and Comerica Bank dated as of April 25, 2019 relating to the Indebtedness hereunder, as amended, restated, replaced or otherwise modified from time to time.

"Fees" shall mean the Revolving Credit Facility Fee, the Letter of Credit Fees and the other fees and charges (including any agency fees) payable by the Borrower to the Lenders, the Issuing Lender or the Agent hereunder or under the Fee Letter.

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“Fiscal Year” shall mean the twelve-month period ending on each February 28th (or 29th, as applicable).

“Flood Hazard Zone” shall mean an area designated by the Federal Emergency Management Agency as having special flood or mudslide hazards.

“Flood Laws” shall mean collectively, (i) the National Flood Insurance Reform Act of 1994 (which comprehensively revised the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973) as now or hereafter in effect or any successor statute thereto, (ii) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto and (iii) the Biggert-Waters Flood Insurance Reform Act of 2012 as now or hereafter in effect or any successor statute thereto.

“Foreign Lender” shall mean (a) if Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if 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.

“Foreign Plan” shall mean any employee pension benefit plan, program, policy, arrangement or agreement maintained or contributed to by any Credit Party with respect to employees employed outside the United States (other than any governmental arrangement).

“Foreign Subsidiary” shall mean any Subsidiary, other than a Domestic Subsidiary, and “Foreign Subsidiaries” shall mean any or all of them.

“Fronting Exposure” shall mean, at any time there is a Defaulting Lender, (a) with respect to the Issuing Lender, such Defaulting Lender’s Percentage of the outstanding Letter of Credit Obligations with respect to Letters of Credit issued by such Issuing Lender, and (b) with respect to the Swing Line Lender, such Defaulting Lender’s Percentage of outstanding Swing Line Advances made by the Swing Line Lender.

“FSHCO” shall mean a Subsidiary that owns (directly or indirectly) no material assets other than Equity Interests (or Equity Interests and debt interests) of one or more CFCs.

“Funded Debt” of any Person shall mean, without duplication, (a) all indebtedness of such Person for borrowed money or for the deferred purchase price of property or services as of such date (other than operating leases and trade liabilities incurred in the ordinary course of business and payable in accordance with customary practices) or which is evidenced by a note, bond, debenture or similar instrument, (b) the principal component of all obligations of such Person under Capitalized Leases, (c) all reimbursement obligations (actual, contingent or otherwise) of such Person in respect of letters of credit, bankers acceptances or similar obligations issued or created for the account of such Person, (d) all liabilities of the type described in (a), (b) and (c) above that are secured by any Liens on any property owned by such Person as of such date even though such Person has not assumed or otherwise become liable for the payment thereof, the amount of which is determined in accordance with GAAP; provided however that so long as such Person is not personally liable for any such liability, the amount of such liability shall be deemed to be the lesser of the fair market value at such date of the property subject to the Lien securing such liability and the amount of the liability secured, and (e) all Guarantee Obligations in respect of any liability which constitutes Funded Debt; provided, however that Funded Debt shall not include any indebtedness under any Hedging Transaction prior to the occurrence of a termination event with respect thereto.

“GAAP” shall mean, as of any applicable date of determination, generally accepted accounting principles in the United States of America, as applicable on such date, consistently applied, as in effect on the Effective Date.

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“Governmental Authority” shall mean the government of the United States of America or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including without limitation any supranational bodies such as the European Union or the European Central Bank) and any group or body charged with setting financial accounting or regulatory capital rules or standards (including, without limitation, the Financial Accounting Standards Board, the Bank for International Settlements or the Basel Committee on Banking Supervision or any successor or similar authority to any of the foregoing).

“Governmental Obligations” shall mean noncallable direct general obligations of the United States of America or obligations the payment of principal of and interest on which is unconditionally guaranteed by the United States of America.

“Guarantee Obligation” shall mean as to any Person (the “guaranteeing person”) any obligation of the guaranteeing Person in respect of any obligation of another Person (the “primary obligor”) (including, without limitation, any bank under any letter of credit), the creation of which was induced by a reimbursement agreement, guaranty agreement, keepwell agreement, purchase agreement, counterindemnity or similar obligation issued by the guaranteeing person, in either case guaranteeing or in effect guaranteeing any Debt, leases, dividends or other obligations (the “primary obligations”) of the primary obligor in any manner, whether directly or indirectly, including, without limitation, any obligation of the guaranteeing person, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (1) for the purchase or payment of any such primary obligation or (2) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the owner of any such primary obligation against loss in respect thereof; provided, however, that the term Guarantee Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Guarantee Obligation of any guaranteeing person shall be deemed to be the lower of (a) an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee Obligation is made and (b) the maximum amount for which such guaranteeing person may be liable pursuant to the terms of the instrument embodying such Guarantee Obligation, unless such primary obligation and the maximum amount for which such guaranteeing person may be liable are not stated or determinable, in which case the amount of such Guarantee Obligation shall be such guaranteeing person’s maximum reasonably anticipated liability in respect thereof as determined by the applicable Person in good faith.

“Guarantor(s)” shall mean each Subsidiary of the Borrower (other than a Foreign Subsidiary) which has executed and delivered to the Agent a Guaranty (or a joinder to a Guaranty), and a Security Agreement (or a joinder to the Security Agreement).

“Guaranty” shall mean, collectively, the guaranty agreements executed and delivered from time to time after the Effective Date (whether by execution of joinder agreements or otherwise) pursuant to Section 7.13 hereof or otherwise, as amended, restated, supplemented or otherwise modified from time to time.

“Hazardous Material” shall mean any hazardous or toxic waste, substance or material defined or regulated as such in or for purposes of the Hazardous Material Laws.

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“Hazardous Material Law(s)” shall mean all laws, codes, ordinances, rules, regulations and other governmental restrictions and requirements issued by any federal, state, local or other governmental or quasi-Governmental Authority or body (or any agency, instrumentality or political subdivision thereof) pertaining to any substance or material which is regulated for reasons of health, safety or the environment and which is present or alleged to be present on or about or used in any facilities owned, leased or operated by any Credit Party, or any portion thereof including, without limitation, those relating to soil, surface, subsurface ground water conditions and the condition of the indoor and outdoor ambient air; any so-called “superfund” or “superlien” law; and any other United States federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any Hazardous Material, as now or at any time during the term of the Agreement in effect.

“Hedging Agreement” shall mean any agreement relating to a Hedging Transaction entered into between the Borrower and any Lender or an Affiliate of a Lender.

“Hedging Transaction” shall mean each interest rate swap transaction, basis swap transaction, forward rate transaction, equity transaction, equity index transaction, foreign exchange transaction, cap transaction, floor transaction (including any option with respect to any of these transactions and any combination of any of the foregoing); provided that the following shall not constitute “Hedging Transactions”: (a) any 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 and its Subsidiaries, (b) any stock option or warrant agreement for the purchase of Equity Interests of the Borrower, and (c) Permitted Equity Derivative Transactions.

“Hereof”, “hereto”, “hereunder” and similar terms shall refer to this Agreement and not to any particular paragraph or provision of this Agreement.

“Indebtedness” shall mean all indebtedness and liabilities (including without limitation principal, interest (including without limitation interest accruing at the then applicable rate provided in this Agreement or any other applicable Loan Document after an applicable maturity date and interest accruing at the then applicable rate provided in this Agreement or any other applicable Loan Document after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to the Credit Parties whether or not a claim for post-filing or post-petition interest is allowed in such proceeding), fees, expenses and other charges) arising under this Agreement or any of the other Loan Documents, whether direct or indirect, absolute or contingent, of any Credit Party to any of the Lenders or Affiliates thereof or to the Agent, in any manner and at any time, whether arising under this Agreement, the Guaranty or any of the other Loan Documents (including without limitation, payment obligations under Hedging Transactions evidenced by Hedging Agreements), due or hereafter to become due, now owing or that may hereafter be incurred by any Credit Party to any of the Lenders or Affiliates thereof or to the Agent, and which shall be deemed to include protective advances made by the Agent with respect to the Collateral under or pursuant to the terms of any Loan Document and any liabilities of any Credit Party to the Agent or any Lender arising in connection with any Lender Products, in each case whether or not reduced to judgment, with interest according to the rates and terms specified, and any and all consolidations, amendments, renewals, replacements, substitutions or extensions of any of the foregoing; provided, however that for purposes of calculating the Indebtedness outstanding under this Agreement or any of the other Loan Documents, the direct and indirect and absolute and contingent obligations of the Credit Parties (whether direct or contingent) shall be determined without duplication. Notwithstanding the foregoing, the term “Indebtedness” shall not be deemed to include any Excluded Swap Obligation.

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“Indemnified Taxes” shall mean (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Credit Party under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

“Innovation Specialists” shall mean Accolade 2ndMD LLC (f/k/a/ Innovation Specialists LLC), a Texas limited liability company (~~“Innovation Specialists”~~).

“Innovation Specialists Acquisition” shall mean the acquisition by Borrower of 100% of the Equity Interests of Innovation Specialists pursuant to that certain Agreement and Plan of Merger, dated as of January 14, 2021, by and among the Borrower, Maestro Merger Sub, LLC (“Maestro Merger Sub”), a Texas limited liability company and wholly owned subsidiary of Borrower, Innovation Specialists LLC, and Shareholder Representative Services LLC, a Colorado limited liability company, whereby Maestro Merger Sub will merge with and into Innovation Specialists, Merger Sub shall cease to exist, and Innovation Specialists shall continue as the surviving company and a wholly owned subsidiary of Borrower.

“Insolvency Proceeding” shall mean any proceeding commenced by or against any Person or entity under any provision of the United States Bankruptcy Code, as amended, or under any other bankruptcy or insolvency law, including assignments for the benefits of creditors, formal or informal moratoria, compositions, extension generally with its creditors, or proceedings seeking reorganization, arrangement, or other relief.

“Intercompany Note” shall mean any promissory note issued or to be issued by any Credit Party to evidence an intercompany loan in form and substance satisfactory to the Agent.

~~“Interest Period” shall mean (a) with respect to a Eurodollar-based Advance, a Eurodollar-Interest Period, commencing on the day a Eurodollar-based~~ Payment Date” shall mean (a) with respect to any Base Rate Advance, the first day of each March, June, September and December, and the Revolving Credit Maturity Date, (b) with respect to any BSBY Rate Advance, the last day of each Interest Period therefor and the Revolving Credit Maturity Date and, in the case of any Interest Period of more than three months’ duration (if applicable), each day prior to the last day of such Interest Period that occurs at three month intervals after the first day of such Interest Period, and the Revolving Credit Maturity Date, and (c) with respect to any Quoted Rate Advance, the last day of each Interest Period therefor and the Revolving Credit Maturity Date, and, in the case of any Interest Period of more than three months’ duration (if applicable), each day prior to the last day of such Interest Period that occurs at three month intervals after the first day of such Interest Period, and the Revolving Credit Maturity Date.

~~“Interest Period” shall mean (a) with respect to a BSBY Rate Advance is made, or on the effective date of an election of the Eurodollar-based Rate made under Section 2.3 or 4.4 hereof, an interest period of one or three months (or, with the consent of all affected Lenders, any shorter or longer periods (in each case subject to availability thereof) as selected by the Borrower in any request for, conversion to, or continuation of, such BSBY Rate Advance~~ and (b) with respect to a Swing Line Advance carried at the Quoted Rate, an interest period of 30 days (or any lesser number of days agreed to in advance by the Borrower, the Agent and the Swing Line Lender); provided, however, in each case, that (i) any Interest Period which would otherwise end on a day which is not a Business Day shall end on the next succeeding Business Day, except that as to an Interest Period in respect of a ~~Eurodollar-based~~ BSBY Rate Advance, if the next succeeding Business Day falls in another calendar month, such Interest Period shall end on the next preceding Business Day, (ii) when an Interest Period in respect of a ~~Eurodollar-based~~ BSBY Rate Advance begins on the last Business Day of a calendar month (or on a day which has no numerically

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corresponding day in the calendar month during which such Interest Period is to end), it shall end on the last Business Day of ~~such~~the calendar month during which such Interest Period ends, ~~and~~ (iii) no Interest Period in respect of any Advance shall extend beyond the Revolving Credit Maturity Date and (iv) no tenor that has been removed from this definition pursuant to Section 11.3(c) shall be available for election in any Request for Advance.

“Inventory” shall mean any inventory as defined under the UCC.

“Investment” shall mean, when used with respect to any Person, (a) any loan, investment or advance made by such Person to any other Person (including, without limitation, any Guarantee Obligation) in respect of any Equity Interest, Debt, obligation or liability of such other Person and (b) any other investment made by such Person (however acquired) in Equity Interests in any other Person, including, without limitation, any investment made in exchange for the issuance of Equity Interest of such Person and any investment made as a capital contribution to such other Person.

“IRS” shall mean the United States Internal Revenue Service.

“Issuing Lender” shall mean Comerica Bank in its capacity as issuer of one or more Letters of Credit hereunder, or another Lender designated as its successor by the Borrower and the Revolving Credit Lenders.

“Issuing Office” shall mean such office as Issuing Lender shall designate as its Issuing Office.

“JPM Loan” means the Debt (in the form of a PPP Loan) evidenced by that certain Note in the original principal amount of \$2,460,684, plus any accrued or applicable interest, dated as of April 15, 2020, made by Innovation Specialists in favor of JPMorgan Chase Bank, N.A., as amended, restated, supplemented or otherwise modified from time to time.

“JPM Escrow Account” means the account held at JPMorgan Chase Bank, N.A. holding funds in escrow in respect of the JPM Loan.

“Leasehold Mortgages” shall mean the leasehold mortgages and any other documents related thereto or required thereby executed and delivered by any Credit Party after the Effective Date by any Credit Party pursuant to Section 7.13 hereof or otherwise, and “Leasehold Mortgage” shall mean any such document, as each such document may be amended, restated, supplemented or otherwise modified from time to time.

“Lender Products” shall mean any one or more of the following types of services or facilities extended to the Credit Parties by any Lender: (i) credit cards, (ii) credit card processing services, (iii) debit cards, (iv) purchase cards, (v) Automated Clearing House (ACH) transactions, (vi) cash management, including controlled disbursement services, and (vii) establishing and maintaining deposit accounts.

“Lenders” is defined in the preamble, and shall include the Revolving Credit Lenders, the Swing Line Lender and any assignee which becomes a Lender pursuant to Section 13.8 hereof.

“Letter of Credit Agreement” shall mean, collectively, the letter of credit application and related documentation executed and/or delivered by the Borrower in respect of each Letter of Credit, in each case satisfactory to the Issuing Lender, as amended, restated, supplemented or otherwise modified from time to time.

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“Letter of Credit Documents” shall have the meaning ascribed to such term in Section 3.7(a) hereof.

“Letter of Credit Fees” shall mean the fees payable in connection with Letters of Credit pursuant to Section 3.4(a) and (b) hereof.

“Letter of Credit Maximum Amount” shall mean Five Million Dollars (\$5,000,000.00).

“Letter of Credit Obligations” shall mean at any date of determination, the sum of (a) the aggregate undrawn amount of all Letters of Credit then outstanding, and (b) the aggregate amount of Reimbursement Obligations which remain unpaid as of such date.

“Letter of Credit Payment” shall mean any amount paid or required to be paid by the Issuing Lender in its capacity hereunder as issuer of a Letter of Credit as a result of a draft or other demand for payment under any Letter of Credit.

“Letter(s) of Credit” shall mean any standby letters of credit issued by Issuing Lender at the request of or for the account of the Borrower pursuant to Article 3 hereof.

~~“LIBOR Rate” shall mean the per annum rate of interest determined on the basis of the rate for deposits in United States Dollars for a period equal to the relevant Eurodollar-Interest Period, commencing on the first day of such Eurodollar-Interest Period, appearing on Page BBAM of the Bloomberg Financial Markets Information Service at or about 11:00 a.m. (London, England time) (or soon thereafter as practical) on the Applicable Reference Date. In the event that such rate does not appear on Page BBAM of the Bloomberg Financial Markets Information Service (or otherwise on such Service), the “LIBOR Rate” shall be determined by reference to such other publicly available service for displaying LIBOR rates as may be agreed upon by the Agent and the Borrower, or, in the absence of such agreement, the “LIBOR Rate” shall, instead, be the per annum rate equal to the average (rounded upward, if necessary, to the nearest one-sixteenth of one percent (1/16%)) of the rate at which the Agent is offered dollar deposits at or about 11:00 a.m. (Detroit, Michigan time) (or soon thereafter as practical) on the Applicable Reference Date in the interbank LIBOR market in an amount comparable to the principal amount of the relevant Eurodollar-based Advance which is to bear interest at such Eurodollar-based Rate and for a period equal to the relevant Eurodollar-Interest Period. Notwithstanding the foregoing, in no event shall the LIBOR Rate be less than the Applicable Floor.~~

“Lien” shall mean any security interest in or lien on or against any property arising from any pledge, assignment, hypothecation, mortgage, security interest, deposit arrangement, trust receipt, conditional sale or title retaining contract, sale and leaseback transaction, Capitalized Lease, consignment or bailment for security, or any other type of lien, charge, encumbrance, title exception, preferential or priority arrangement affecting property (including with respect to stock, any stockholder agreements, voting rights agreements, buy-back agreements and all similar arrangements), whether based on common law or statute.

“Liquidity” shall mean, as of any date of determination, the sum of (a) unrestricted cash and Permitted Investments held in a deposit account or securities accounts ~~at Comerica Bank, Comerica Securities, or Western Alliance Bank, each~~ that is subject to an Account Control Agreement satisfactory to Agent, and not subject to any Liens other than in favor of Agent, plus (b) Unused Revolving Credit Availability plus (c) “borrowing availability” under and as defined in the Escalate Subordinated Debt Documents.

“Loan Documents” shall mean, collectively, this Agreement, the Notes (if issued), the Letter of Credit Agreements, the Letters of Credit, the Guaranty, the Subordination Agreements, the Collateral

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Documents, each Hedging Agreement, and any other documents, certificates or agreements that are executed and required to be delivered pursuant to any of the foregoing documents, as such documents may be amended, restated, supplemented or otherwise modified from time to time.

“Majority Lenders” shall mean at any time, Lenders holding more than 50.0% of the sum of the Revolving Credit Aggregate Commitment (or, if the Revolving Credit Aggregate Commitment has been terminated (whether by maturity, acceleration or otherwise), the aggregate principal amount outstanding under the Revolving Credit); provided that, for purposes of determining Majority Lenders hereunder, the Letter of Credit Obligations and principal amount outstanding under the Swing Line shall be allocated among the Revolving Credit Lenders based on their respective Revolving Credit Percentages; provided further that (i) so long as there are fewer than three Lenders, considering any Lender and its Affiliates as a single Lender, “Majority Lenders” shall mean all Lenders, and (ii) so long as there are exactly three Lenders, considering any Lender and its Affiliates as a single Lender, “Majority Lenders” must include at least two Lenders. The Commitments of, and portion of the Indebtedness attributable to, any Defaulting Lender shall be excluded for purposes of making a determination of “Majority Lenders”; provided that the amount of any participation in any Swing Line Advance and any Letter of Credit Obligations that a Defaulting Lender has failed to fund that have not been reallocated to and funded by another Lender shall be deemed to be held by the Lender that is the Swing Line Lender or Issuing Lender, as the case may be, in making a determination under this definition.

“Management Fees” shall mean the fees payable to Advisor pursuant to the Management Agreement.

“Management Agreement” shall mean that certain Second Amended and Restated Management Fee Agreement dated as of July 19, 2019, executed by Advisor and the Borrower, as the same may be amended, restated, amended and restated, modified and/or otherwise supplemented from time to time.

“Management Fee Subordination Agreement” shall mean the Subordination Agreement of even date herewith executed by Advisor and acknowledged by the Borrower, as the same may be amended, restated, amended and restated, modified and/or otherwise supplemented from time to time.

“Material Adverse Effect” shall mean a material adverse effect on (a) the condition (financial or otherwise), business, performance, operations, properties or prospects of the Credit Parties taken as a whole, (b) the ability of any Credit Party to perform its obligations under this Agreement, the Notes (if issued) or any other Loan Document to which it is a party, or (c) the validity or enforceability of this Agreement, any of the Notes (if issued) or any of the other Loan Documents or the rights or remedies of the Agent or the Lenders hereunder or thereunder.

“Material Contract” shall mean (i) each agreement or contract to which any Credit Party is a party or in respect of which any Credit Party has any liability, that by its terms (without reference to any indemnity or reimbursement provision therein) provides for aggregate future guaranteed payments in respect of any such individual agreement or contract of at least \$6,000,000 per year, and (ii) any other agreement or contract the loss of which would be reasonably likely to result in a Material Adverse Effect; provided that Material Contracts shall not be deemed to include any Pension Plans, collective bargaining agreements, or casualty or liability or other insurance policies maintained in the ordinary course of business.

“MDInsider Acquisition” shall mean the acquisition by the Borrower, directly or indirectly, of all or substantially all of the assets or Equity Interests of MDInsider, Inc., a Delaware corporation.

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“MIRE Event” shall mean, if there are any Mortgaged Properties at such time, any increase, extension or renewal of any of the Commitments or Advances (excluding (i) any continuation or conversion of Advances, (ii) the making of any Advance or (iii) the issuance, renewal or extension of Letters of Credit).

“Mortgages” shall mean the mortgages, deeds of trust and any other similar documents related thereto or required thereby executed and delivered after the Effective Date by a Credit Party pursuant to Section 7.13 hereof or otherwise, and “Mortgage” shall mean any such document, as such documents may be amended, restated, supplemented or otherwise modified from time to time.

“Mortgaged Property” shall mean the real properties from time to time subject to a Mortgage.

“Multiemployer Plan” shall mean any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which the Borrower or any ERISA Affiliate makes or is obligated to make contributions, during the preceding five plan years has made or been obligated to make contributions, or has any liability.

“Multiple Employer Plan” shall mean a Plan with respect to which the Borrower or any ERISA Affiliate is a contributing sponsor, and that has two or more contributing sponsors at least two of whom are not under common control, as such a plan is described in Section 4064 of ERISA.

“New Lender Addendum” shall mean an addendum substantially in the form of Exhibit F attached hereto, to be executed and delivered by any Lender becoming a party to this Agreement pursuant to Section 2.12 hereof.

“Non-Defaulting Lender” shall mean any Lender that is not, as of the date of relevance, a Defaulting Lender.

“Notes” shall mean the Revolving Credit Notes and the Swing Line Note.

“OFAC” is defined in Section 3.16(a).

“Off Balance Sheet Liability(ies)” of a Person shall mean (i) any repurchase obligation or liability of such Person with respect to accounts or notes receivables sold by such Person, (ii) any liability under any sale and leaseback transaction which is not a Capitalized Lease, (iii) any liability under any so-called “synthetic lease” transaction entered into by such Person, or (iv) any obligation arising with respect to any other transaction which is the functional equivalent of Debt or any of the liabilities set forth in subsections (i)-(iii) of this definition, but which does not constitute a liability on the balance sheets of such Person.

“Operational Performance Guarantees” shall mean monthly and quarterly fees paid to Borrower under customer subscription contracts which are contingent on Borrower achieving specific operational performance metrics under each such contract including, without limitation, net promoter scores, call center answer times, and percentage of population engaged.

“Other Connection Taxes” shall mean, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

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“Other Taxes” shall mean 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 13.12(b)).

“Paid in Full” or “Payment in Full” shall mean (i) the indefeasible payment in full in cash of all outstanding Advances and Reimbursement Obligations, together with accrued and unpaid interest thereon, (ii) the termination, expiration, or cancellation and return of all outstanding Letters of Credit (or alternatively, with respect to each such Letter of Credit, the furnishing to the Agent of a cash deposit, or at the discretion of the Agent a back up standby letter of credit satisfactory to the Agent and the Issuing Lender, in an amount equal to 105% of the Letter of Credit Obligations as of the date of such payment), (iii) the indefeasible payment in full in cash of the accrued and unpaid fees, (iv) the indefeasible payment in full in cash of all reimbursable expenses and other Indebtedness (other than contingent obligations or expense reimbursement obligations to the extent no claim giving rise thereto has been asserted and other obligations expressly stated to survive such payment and termination of this Agreement), together with accrued and unpaid interest thereon, (v) the termination of all Commitments, and (vi) the termination of the Hedging Agreements and Lender Products or entering into other arrangements reasonably satisfactory to the Lenders or their affiliates that are counterparties thereto.

“Participant Register” is defined in Section 13.8(f).

“PBGC” shall mean the Pension Benefit Guaranty Corporation.

“Pension Act” shall mean the Pension Protection Act of 2006.

“Pension Funding Rules” shall mean the rules of the Code and ERISA regarding minimum funding standards and minimum required contributions (including any installment payment thereof) to Pension Plans and Multiemployer Plans and set forth in, with respect to plan years ending prior to the effective date of the Pension Act, Section 412 of the Code and Section 302 of ERISA, each as in effect prior to the Pension Act and, thereafter, Sections 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

“Pension Plan” shall mean any employee pension benefit plan (including a Multiple Employer Plan, but excluding a Multiemployer Plan) that is maintained or is contributed to by the Borrower or any ERISA Affiliate and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code.

“Percentage” shall mean, as applicable, the Revolving Credit Percentage, or the Weighted Percentage.

“Periodic Term SOFR Determination Day” shall have the meaning specified in the definition of “Term SOFR”

“Permitted Acquisition” (x) the MDInsider Acquisition, provided that the aggregate cash consideration payable upon the consummation of the MDInsider Acquisition shall not exceed \$1,000,000, (y) the Innovation Specialists Acquisition, (z) the PlushCare Acquisition pursuant to the PlushCare Acquisition Agreement, and (aa) any acquisition by Borrower or any Guarantor of all or substantially all of the assets of another Person, or of a division or line of business of another Person, or any Equity Interests of another Person, (i) which is consented to in writing by the Agent and the Majority Lenders, (ii) which is

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funded with Concurrent Equity Proceeds or Borrower's or any Guarantor's Equity Interests, and (iii) which satisfies and/or is conducted in accordance with the following requirements:

(a) Such acquisition is of a business or Person engaged in a line of business which is compatible with, or complementary to, the business of such Borrower or such Guarantor;

(b) If such acquisition is structured as an acquisition of the Equity Interests of any Person, then the Person so acquired shall (X) become a wholly-owned direct Domestic Subsidiary of Borrower or of a Guarantor and the Borrower or the applicable Guarantor shall cause such acquired Person to comply with Section 7.13 hereof or (Y) provided that the Credit Parties continue to comply with Section 7.4(a) hereof, be merged with and into Borrower or such Guarantor (and, in the case of Borrower, with Borrower being the surviving entity);

(c) If such acquisition is structured as the acquisition of assets, such assets shall be acquired directly by the Borrower, or a Guarantor (subject to compliance with Section 7.4(a) hereof);

(d) The Borrower shall have delivered to the Agent not less than ten (10) (or such shorter period of time agreed to by the Agent) nor more than ninety (90) days prior to the date of such acquisition, notice of such acquisition together with Pro Forma Projected Financial Information, copies of all material documents relating to such acquisition (including the acquisition agreement and any related document), and historical financial information (including income statements, balance sheets and cash flows) covering at least three (3) complete Fiscal Years of the acquisition target, if available, prior to the effective date of the acquisition or the entire credit history of the acquisition target, whichever period is shorter, in each case in form and substance reasonably satisfactory to the Agent;

(e) Both immediately before and after the consummation of such acquisition and after giving effect to the Pro Forma Projected Financial Information, the Borrower shall be in compliance with Section 7.9 hereof and no Default or Event of Default shall have occurred and be continuing;

(f) The board of directors (or other Person(s) exercising similar functions) of the seller of the assets or issuer of the Equity Interests being acquired shall not have disapproved such transaction or recommended that such transaction be disapproved;

(g) All governmental, quasi-governmental, agency, regulatory or similar licenses, authorizations, exemptions, qualifications, consents and approvals necessary under any laws applicable to such Borrower or such Guarantor making the acquisition, or the acquisition target (if applicable) for or in connection with the proposed acquisition and all necessary non-governmental and other third-party approvals which, in each case, are material to such acquisition shall have been obtained, and all necessary or appropriate declarations, registrations or other filings with any court, governmental or regulatory authority, securities exchange or any other Person, which in each case, are material to the consummation of such acquisition or to the acquisition target, if applicable, have been made, and evidence thereof reasonably satisfactory in form and substance to the Agent shall have been delivered, or caused to have been delivered, by such Borrower to the Agent; and

(h) There shall be no actions, suits or proceedings pending or, to the knowledge of any Credit Party threatened against or affecting the acquisition target in any court or before or by any governmental department, agency or instrumentality, which could reasonably be expected to be decided adversely to the acquisition target and which, if decided adversely, could reasonably be expected to have a material adverse effect on the business, operations, properties or financial condition of the acquisition target and its subsidiaries (taken as a whole) or would materially adversely affect the ability of the acquisition target to

enter into or perform its obligations in connection with the proposed acquisition, nor shall there be any actions, suits, or proceedings pending, or to the knowledge of any Credit Party threatened against the Credit Party that is making the acquisition which would materially adversely affect the ability of such Credit Party to enter into or perform its obligations in connection with the proposed acquisition.

“Permitted Convertible Indebtedness” shall mean unsecured Indebtedness of the Borrower that (a) as of the date of issuance thereof contains terms, conditions, covenants, conversion or exchange rights, redemption rights and offer to repurchase rights, in each case, as are typical and customary for notes of such type (as determined by the Borrower in good faith), and (b) is convertible or exchangeable into shares of common stock of the Borrower (or other securities of a successor Person following merger event, reclassification or other change of the common stock of the Borrower), cash or a combination thereof (such amount of cash determined by reference to the price of the Borrower’s common stock or such other securities or property), and cash in lieu of fractional shares of common stock of the Borrower; provided that (i) such Permitted Convertible Indebtedness shall have a stated final maturity date that is no earlier than the date 180 days after the Revolving Credit Maturity Date (the “Earliest Date”), (ii) such Indebtedness shall not be required to be repaid, prepaid, redeemed, repurchased or defeased, whether on one or more fixed dates, upon the occurrence of one or more events or at the option of any holder thereof (except, in each case, upon any conversion of such Indebtedness (whether into cash, shares of common stock in the Borrower or any combination thereof), the occurrence of an event of default or a “fundamental change” or following the Borrower’s election to redeem such notes) prior to the Earliest Date, and (iii) no Subsidiary that is not a Credit Party shall have Guarantee Obligations with respect to obligations of the Borrower thereunder.

“Permitted Equity Derivative Transaction” shall mean any forward purchase, accelerated share repurchase, call option, warrant or other derivative transaction relating to Borrower’s common stock (or other securities or property following a merger event, reclassification or other change of the common stock of Borrower) purchased or sold by Borrower in connection with the issuance of any Permitted Convertible Indebtedness and settled in common stock of Borrower (or such other securities or property), cash or a combination thereof, as the same may be amended, restated, supplemented or otherwise modified from time to time; provided that (a) the aggregate net purchase price for such Permitted Equity Derivative Transactions does not exceed the net cash proceeds received by Borrower from the sale of the Permitted Convertible Indebtedness in connection with which such Permitted Equity Derivative Transactions were entered into, and (b) the other terms, conditions and covenants of each such transaction shall be such as are customary for transactions of such type (as determined by Borrower in good faith).

“Permitted Investments” shall mean with respect to any Person:

(a) Governmental Obligations;

(b) Obligations of a state or commonwealth of the United States or the obligations of the District of Columbia or any possession of the United States, or any political subdivision of any of the foregoing, which are described in Section 103(a) of the Code and are graded in any of the highest three (3) major grades as determined by at least one Rating Agency; or secured, as to payments of principal and interest, by a letter of credit provided by a financial institution or insurance provided by a bond insurance company which in each case is itself or its debt is rated in one of the highest three (3) major grades as determined by at least one Rating Agency;

(c) Banker’s acceptances, commercial accounts, demand deposit accounts, money market accounts, money market mutual funds, certificates of deposit, other time deposits or depository receipts issued by or maintained with any Lender or any Affiliate thereof, or any bank, trust company, savings and

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loan association, savings bank or other financial institution whose deposits are insured by the Federal Deposit Insurance Corporation or whose reported capital and surplus equal at least \$250,000,000, provided that such minimum capital and surplus requirement shall not apply to demand deposit accounts maintained by any Credit Party in the ordinary course of business;

(d) Commercial paper rated at the time of purchase within the two highest classifications established by not less than two Rating Agencies, and which matures within 270 days after the date of issue;

(e) Secured repurchase agreements against obligations itemized in clause (a) above, and executed by a bank or trust company or by members of the association of primary dealers or other recognized dealers in United States government securities, the market value of which must be maintained at levels at least equal to the amounts advanced; and

(f) Any fund or other pooling arrangement which exclusively purchases and holds the investments itemized in (a) through (e) above.

“Permitted Liens” shall mean with respect to any Person:

(a) Liens for (i) taxes or governmental assessments or charges or (ii) customs duties in connection with the importation of goods to the extent such Liens attach to the imported goods that are the subject of the duties, in each case (x) to the extent not yet due, (y) as to which the period of grace, if any, related thereto has not expired or (z) which are being contested in good faith by appropriate proceedings, provided that in the case of any such contest, any proceedings for the enforcement of such liens have been suspended and adequate reserves with respect thereto are maintained on the books of such Person in conformity with GAAP;

(b) carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s, processor’s, landlord’s liens or other like liens arising in the ordinary course of business which secure obligations that are not overdue for a period of more than 60 days or which are being contested in good faith by appropriate proceedings, provided that in the case of any such contest, (x) any proceedings commenced for the enforcement of such Liens have been suspended and (y) appropriate reserves with respect thereto are maintained on the books of such Person in conformity with GAAP;

(c) (i) Liens incurred in the ordinary course of business to secure the performance of statutory obligations arising in connection with progress payments or advance payments due under contracts with the United States government or any agency thereof entered into in the ordinary course of business and (ii) Liens incurred or deposits made in the ordinary course of business to secure the performance of statutory obligations (not otherwise permitted under subsection (g) of this definition), bids, leases, fee and expense arrangements with trustees and fiscal agents, trade contracts, surety and appeal bonds, performance bonds and other similar obligations (exclusive of obligations incurred in connection with the borrowing of money, any lease-purchase arrangements or the payment of the deferred purchase price of property), provided, that in each case full provision for the payment of all such obligations has been made on the books of such Person as may be required by GAAP;

(d) any attachment or judgment lien that remains unpaid, unvacated, unbonded or unstayed by appeal or otherwise for a period ending on the earlier of (i) thirty (30) consecutive days from the date of its attachment or entry (as applicable) or (ii) the commencement of enforcement steps with respect thereto, other than the filing of notice thereof in the public record;

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(e) minor survey exceptions or minor encumbrances, easements or reservations, or rights of others for rights-of-way, utilities and other similar purposes, or zoning or other restrictions as to the use of real properties, or any interest of any lessor or sublessor under any lease permitted hereunder which, in each case, does not materially interfere with the business of such Person;

(f) Liens arising in connection with worker's compensation, unemployment insurance, old age pensions and social security benefits and similar statutory obligations (excluding Liens arising under ERISA), provided that no enforcement proceedings in respect of such Liens are pending and provisions have been made for the payment of such liens on the books of such Person as may be required by GAAP; and

(g) continuations of Liens that are permitted under subsections (a)-(g) hereof, provided such continuations do not violate the specific time periods set forth in subsections (b) and (d) and provided further that such Liens do not extend to any additional property or assets of any Credit Party or secure any additional obligations of any Credit Party.

Regardless of the language set forth in this definition, no Lien over the Equity Interests of any Credit Party granted to any Person other than to the Agent for the benefit of the Lenders shall be deemed a "Permitted Lien" under the terms of this Agreement.

"Person" shall mean a natural person, corporation, limited liability company, partnership, limited liability partnership, trust, incorporated or unincorporated organization, joint venture, joint stock company, firm or association or a government or any agency or political subdivision thereof or other entity of any kind.

"Pledge Agreement(s)" shall mean any pledge agreement executed and delivered from time to time after the Effective Date by any Credit Party pursuant to Section 7.13 hereof or otherwise, and any agreements, instruments or documents related thereto, in each case in form and substance satisfactory to the Agent amended, restated, supplemented or otherwise modified from time to time.

"PlushCare" shall mean PlushCare, Inc., a Delaware corporation.

"PlushCare Acquisition" shall mean the acquisition by Borrower of 100% of the Equity Interests of PlushCare pursuant to that certain Agreement and Plan of Merger, dated as of April 23, 2021, by and among the Borrower, Panda Merger Sub, Inc., a Delaware corporation and wholly owned subsidiary of Borrower ("Merger Sub"), and Fortis Advisors LLC, a Delaware limited liability company, whereby Merger Sub will merge with and into PlushCare, Merger Sub shall cease to exist, and PlushCare shall continue as the surviving company and a wholly owned subsidiary of Borrower.

"PlushCare Acquisition Agreement" shall mean that certain Agreement and Plan of Merger, dated as of April 23, 2021, by and among the Borrower, Merger Sub, Inc. and Fortis Advisors LLC, a Delaware limited liability company.

"PMPM" shall mean the dollar amount paid to Borrower expressed as a monthly rate for each Person for whom the Borrower is responsible for providing services.

"PMPM Performance Cap" shall mean an amount equal to (a) from the Effective Date until satisfaction of the field audit requirement under Section 5.3(a) hereof, 10% of the Borrowing Base (calculated including the effect of any Operational Performance Guarantees, and (b) at all times thereafter, 20% of the Borrowing Base (calculated including the effect of any Operational Performance Guarantees),

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as each may be reasonably adjusted by the Majority Lenders based on future inspections, appraisals and audits conducted pursuant to Section 7.6 hereof.

“PPP Loan” means an unsecured loan that is guaranteed by the United States Small Business Administration pursuant to the U.S. Small Business Administration, Coronavirus Aid, Relief, and Economic Security Act Paycheck Protection Program.

“Prime Rate” shall mean the per annum rate of interest announced by the Agent, at its main office from time to time as its “prime rate” (it being acknowledged that such announced rate may not necessarily be the lowest rate charged by the Agent to any of its customers), which Prime Rate shall change simultaneously with any change in such announced rate.

“Pro Forma Balance Sheet” shall mean the pro forma consolidated balance sheet of the Borrower which has been certified by a Responsible Officer of the Borrower that it fairly presents in all material respects the pro forma adjustments reflecting the transactions (including payment of all fees and expenses in connection therewith) contemplated by this Agreement and the other Loan Documents.

“Pro Forma Projected Financial Information” shall mean, as to any proposed acquisition, a statement executed by the Borrower (supported by reasonable detail) setting forth the total consideration to be paid or incurred in connection with the proposed acquisition, and pro forma combined projected financial information for the Credit Parties and the acquisition target (if applicable), consisting of projected balance sheets as of the proposed effective date of the acquisition and as of the end of at least the next succeeding three (3) Fiscal Years following the acquisition and projected statements of income and cash flows for each of those years, including sufficient detail to permit calculation of the ratios described in Section 7.9 hereof, as projected as of the effective date of the acquisition and as of the ends of those Fiscal Years and accompanied by (i) a statement setting forth a calculation of the ratio so described, (ii) a statement in reasonable detail specifying all material assumptions underlying the projections and (iii) such other information as the Agent or the Lenders shall reasonably request.

“PTE” shall mean a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

“Purchasing Lender” is defined in Section 13.12.

“Quoted Rate” shall mean the rate of interest per annum offered by the Swing Line Lender in its sole discretion with respect to a Swing Line Advance and accepted by the Borrower.

“Quoted Rate Advance” shall mean any Swing Line Advance which bears interest at the Quoted Rate.

“Rating Agency” shall mean Moody’s ~~Investor Services~~ [Investors Service](#), Inc., Standard and Poor’s Ratings Services, their respective successors or any other nationally recognized statistical rating organization which is acceptable to the Agent.

“Recipient” shall mean (a) the Agent, (b) any Lender, and (c) any Issuing Lender.

“Recurring Revenue” shall mean, as of any relevant measurement date, the sum, without duplication, of (a) monthly minimum recurring gross fee revenue of Borrower and its Domestic Subsidiaries (determined on a PMPM basis or recurring flat fee basis) from customer subscription contracts, (but excluding any Operational Performance Guarantees), plus (b) 90% of the potential fees from Operational

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Performance Guarantees; provided that, the amount calculated in this clause (b) shall not exceed the PMPM Performance Cap.

“Register” is defined in Section 13.8(h) hereof.

“Reimbursement Obligation(s)” shall mean the aggregate amount of all unreimbursed drawings under all Letters of Credit (excluding for the avoidance of doubt, reimbursement obligations that are deemed satisfied pursuant to a deemed disbursement under Section 3.6(c)).

“Related Parties” shall mean with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person’s Affiliates.

“Relevant Governmental Body” means the Federal Reserve Board or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board or the Federal Reserve Bank of New York, or any successor thereto.

“Replacement Date” is defined in Section 11.3 hereof.

“Reportable Event” shall mean any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30-day notice period has been waived.

“Request for Advance” shall mean a Request for Revolving Credit Advance or a Request for Swing Line Advance, as the context may indicate or otherwise require.

“Request for Revolving Credit Advance” shall mean a request for a Revolving Credit Advance issued by Borrower under Section 2.3 of this Agreement in the form attached hereto as Exhibit A.

“Request for Swing Line Advance” shall mean a request for a Swing Line Advance issued by Borrower under Section 2.5(b) of this Agreement in the form attached hereto as Exhibit D.

“Requirement of Law” shall mean as to any Person, the certificate of incorporation and bylaws, the partnership agreement or other organizational or governing documents of such Person and any law, treaty, rule or regulation or determination of an arbitration or a court or other Governmental Authority, 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.

“Responsible Officer” shall mean, with respect to any Person, the chief executive officer, chief financial officer, treasurer, president or controller of such Person, or with respect to compliance with financial covenants, the chief financial officer or the treasurer of such Person, or any other officer of such Person having substantially the same authority and responsibility.

“Revolving Credit” shall mean the revolving credit loans to be advanced to the Borrower by the applicable Revolving Credit Lenders pursuant to Article 2 hereof, in an aggregate amount (subject to the terms hereof), not to exceed, at any one time outstanding, the Revolving Credit Aggregate Commitment.

“Revolving Credit Advance” shall mean a borrowing requested by Borrower and made by the Revolving Credit Lenders under Section 2.1 of this Agreement, including without limitation any readvance, refunding or conversion of such borrowing pursuant to Section 2.3 hereof and any deemed disbursement of

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an Advance in respect of a Letter of Credit under Section 3.6(c) hereof, and may include, subject to the terms hereof, ~~Eurodollar-based~~ BSBY Rate Advances and Base Rate Advances.

“Revolving Credit Aggregate Commitment” shall mean Eighty Million Dollars (\$80,000,000.00), subject to increases pursuant to Section 2.12 hereof up to the Revolving Credit Optional Increase Amount, and subject to reduction or termination under Section 2.11 or 9.2 hereof.

“Revolving Credit Commitment Amount” shall mean with respect to any Revolving Credit Lender, (i) if the Revolving Credit Aggregate Commitment has not been terminated, the amount specified opposite such Revolving Credit Lender’s name in the column entitled “Revolving Credit Commitment Amount” on Annex II, as adjusted from time to time in accordance with the terms hereof; and (ii) if the Revolving Credit Aggregate Commitment has been terminated (whether by maturity, acceleration or otherwise), the amount equal to its Percentage of the aggregate principal amount outstanding under the Revolving Credit (including the outstanding Letter of Credit Obligations and any outstanding Swing Line Advances).

“Revolving Credit Facility Fee” shall mean the fee payable to the Agent for distribution to the Revolving Credit Lenders in accordance with Section 2.9 hereof.

“Revolving Credit Lenders” shall mean the financial institutions from time to time parties hereto as lenders of the Revolving Credit.

“Revolving Credit Maturity Date” shall mean the earlier to occur of (i) July 19, ~~2021~~2024, and (ii) the date on which the Revolving Credit Aggregate Commitment shall terminate in accordance with the provisions of this Agreement; provided, however, (a) if the ~~annual revenue of Borrower and its Domestic Subsidiaries (other than Innovation Specialists) based~~ Consolidated Net Cash as of May 31, 2024 is at least \$200,000,000 as evidenced on the financial statements delivered pursuant to Section 7.1(ab) for the ~~Fiscal Year~~ fiscal quarter ending ~~February 28, 2021, is greater than or equal to \$160,000,000.~~ May 31, 2024 and (b) no Default or Event of Default shall have occurred and be continuing, then the Revolving Credit Maturity Date shall automatically, with no further action required by the parties hereto, be extended to July 19, ~~2022~~2025.

“Revolving Credit Notes” shall mean the revolving credit notes described in Section 2.2 hereof, made by the Borrower to each of the Revolving Credit Lenders in the form attached hereto as Exhibit B, as such notes may be amended or supplemented from time to time, and any other notes issued in substitution, replacement or renewal thereof from time to time.

“Revolving Credit Optional Increase Amount” shall mean an amount equal to \$0.

“Revolving Credit Percentage” shall mean, with respect to any Revolving Credit Lender, the percentage specified opposite such Revolving Credit Lender’s name in the column entitled “Revolving Credit Percentage” on Annex II, as adjusted from time to time in accordance with the terms hereof.

“Sanctioned Country” shall mean a country subject to a Sanctions program maintained under any Anti-Terrorism Law.

“Sanctioned Person” shall mean any individual person, group, regime, entity or thing listed or otherwise recognized as a specially designated, prohibited, sanctioned or debarred person, group, regime, entity or thing, or subject to any limitations or prohibitions (including but not limited to the blocking of property or rejection of transactions), under any Anti-Terrorism Law.

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“Sanction(s)” shall mean any sanction administered or enforced by the United States Government (including, without limitation, OFAC), the United Nations Security Council, the European Union, Her Majesty’s Treasury or other relevant sanctions authority.

“Security Agreement” shall mean, collectively, the security agreement(s) executed and delivered by the Borrower and the Guarantors on the Effective Date pursuant to Section 5.1 hereof, and any such agreements executed and delivered after the Effective Date (whether by execution of a joinder agreement to any existing security agreement or otherwise) pursuant to Section 7.13 hereof or otherwise, in the form of the Security Agreement attached hereto as Exhibit G, as amended, restated, supplemented or otherwise modified from time to time.

“SOFR” shall mean a rate per annum equal to the secured overnight financing rate as administered by the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“SOFR Adjustment” shall mean (a) with respect to Daily Simple SOFR, 0.11448% (11.448 basis points) per annum; and (b) with respect to Term SOFR, 0.11448% (11.448 basis points) per annum for an Interest Period of one-month’s duration, 0.26161% (26.161 basis points) per annum for an Interest Period of three-month’s duration and for any other Interest Period, such other adjustment as established by Agent from time to time in accordance with current market standards.

“Subordinated Debt” shall mean the Escalate Subordinated Debt and any other Funded Debt of any Credit Party and other obligations under the Subordinated Debt Documents and any other Funded Debt of any Credit Party which has been subordinated in right of payment and priority to the Indebtedness, all on terms and conditions satisfactory to the Agent.

“Subordinated Debt Documents” shall mean and include (a) the Escalate Subordinated Debt Documents and (b) any other documents evidencing any Subordinated Debt, in each case, as the same may be amended, modified, supplemented or otherwise modified from time to time in compliance with the terms of this Agreement.

“Subordination Agreements” shall mean, collectively, the Escalate Subordination Agreement, the Management Fee Subordination Agreement, and any other subordination agreements entered into by any Person from time to time in favor of the Agent in connection with any Subordinated Debt, the terms of which are acceptable to the Agent, in each case as the same may be amended, restated, supplemented or otherwise modified from time to time, and “Subordination Agreement” shall mean any one of them.

“Subsidiary(ies)” shall mean any other corporation, association, joint stock company, business trust, limited liability company, partnership or any other business entity of which more than fifty percent (50%) of the outstanding voting stock, share capital, membership, partnership or other interests, as the case may be, is owned either directly or indirectly by any Person or one or more of its Subsidiaries, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by any Person and/or its Subsidiaries. Unless otherwise specified to the contrary herein or the context otherwise requires, Subsidiary(ies) shall refer to the Subsidiary(ies) of the Borrower.

“Successor Rate” is defined in Section 11.3 hereof.

“Sweep Agreement” shall mean any agreement relating to the “Sweep to Loan” automated system of the Agent or any other cash management arrangement which the Borrower and the Agent have executed for the purposes of effecting the borrowing and repayment of Swing Line Advances.

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“Swing Line” shall mean the revolving credit loans to be advanced to the Borrower by the Swing Line Lender pursuant to Section 2.5 hereof, in an aggregate amount (subject to the terms hereof), not to exceed, at any one time outstanding, the Swing Line Maximum Amount.

“Swing Line Advance” shall mean a borrowing requested by the Borrower and made by Swing Line Lender pursuant to Section 2.5 hereof and may include, subject to the terms hereof, Quoted Rate Advances and Base Rate Advances.

“Swing Line Lender” shall mean Comerica Bank in its capacity as lender of the Swing Line under Section 2.5 of this Agreement, or its successor as subsequently designated hereunder.

“Swing Line Maximum Amount” shall mean Two Million Dollars (\$2,000,000.00).

“Swing Line Note” shall mean the swing line note which may be issued by the Borrower to Swing Line Lender pursuant to Section 2.5(b)(ii) hereof in the form attached hereto as Exhibit C, as such note may be amended or supplemented from time to time, and any note or notes issued in substitution, replacement or renewal thereof from time to time.

“Swing Line Participation Certificate” shall mean the Swing Line Participation Certificate delivered by the Agent to each Revolving Credit Lender pursuant to Section 2.5(e)(ii) hereof in the form attached hereto as Exhibit K.

“Taxes” shall mean all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Term SOFR” shall mean, for any applicable interest period, the Term SOFR Reference Rate for such interest period on the day (such day, the “Periodic Term SOFR Determination Day”) that is two (2) U.S. Government Securities Business Days prior to the first day of such interest period for such Advance, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (Detroit time) on any Periodic Term SOFR Determination Day, the Term SOFR Reference Rate for such interest period has not been published by the Term SOFR Administrator, then “Term SOFR” will be the Term SOFR Reference Rate for such interest period (for such Advance) as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day on which such rate is published by the Term SOFR Administrator so long as the first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such periodic Term SOFR Determination Day.

“Term SOFR Administrator” shall mean the CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Agent in its reasonable discretion).

“Term SOFR Reference Rate” shall mean the forward-looking term rate based on SOFR.

“Uniform Commercial Code” or “UCC” shall mean the Uniform Commercial Code as in effect in any applicable state; provided that, unless specified otherwise or the context otherwise requires, such terms shall refer to the Uniform Commercial Code as in effect in the State of California.

“Unused Revolving Credit Availability” shall mean, on any date of determination, the amount equal to the lesser of (i) the Revolving Credit Aggregate Commitment, or (ii) the then applicable Borrowing Base,

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minus (x) the aggregate outstanding principal amount of all Advances (including Swing Line Advances) and (y) the Letter of Credit Obligations.

“U.S. Borrower” is any Borrower that is a U.S. Person.

“U.S. Government Securities Business Day” shall mean any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

“U.S. Person” shall mean any Person that is a “United States Person” as defined in Section 7701(a) (30) of the Code.

“U.S. Tax Compliance Certificate” is defined in Section ~~13.13~~11.10.

“USA Patriot Act” is defined in Section 6.7.

“Weighted Percentage” shall mean with respect to any Lender, its weighted percentage calculated by dividing (i) the sum of its Revolving Credit Commitment Amount, by (ii) the sum of the Revolving Credit Aggregate Commitment (or, if the Revolving Credit Aggregate Commitment has been terminated (whether by maturity, acceleration or otherwise), the aggregate principal amount outstanding under the Revolving Credit, including any outstanding Letter of Credit Obligations and outstanding Swing Line Advances). Annex II reflects each Lender’s Weighted Percentage and may be revised by the Agent from time to time to reflect changes in the Weighted Percentages of the Lenders.

“Withholding Agent” shall mean any Credit Party and the Agent.

“Write-Down and Conversion Powers” shall mean, 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 writedown and conversion powers are described in the EU Bail-In Legislation Schedule.

1.2 Other Interpretive Provisions

. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document or unless the context requires otherwise, (a) the definitions of terms herein shall apply equally to the singular and plural forms of the terms defined, (b) any pronoun shall include the corresponding masculine, feminine and neuter forms, (c) the words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation”, (d) the word “will” shall be construed to have the same meaning and effect as the word “shall”, (e) any definition of or reference to any agreement, instrument or other document (including Loan Documents) shall be construed as referring to such agreement, instrument or other document as amended, supplemented or otherwise modified from time to time (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (f) any reference herein to any Person shall be construed to include such Person’s successors and assigns (subject to any restrictions on assignment set forth herein or in any other Loan Document), (g) the words “herein”, “hereof”, “hereto”, “hereunder” and similar terms shall refer to this Agreement or any other Loan Document and not to any particular section or provision of this Agreement or such other Loan Document, (h) all references to “articles”, “sections,” “clauses,” “exhibits” and “schedules” in this Agreement or any other Loan Document shall be to articles, sections, clauses, exhibits and schedules, respectively, of this Agreement or such other Loan Agreement, (i) any reference to

any law or applicable law shall include any Requirement of Law, and any reference to any law or regulation shall refer to such law or regulation as amended, modified or supplemented from time to time, (j) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights, and (k) in the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including;” the words “to” and “until” each mean “to but excluding;” and the word “through” means “to and including”.

1.3 ~~Eurodollar-based Advances; LIBOR Notification~~Rates

~~The interest rate on Eurodollar-based Advances is determined by reference to the LIBOR Rate, which is derived from the London interbank offered rate. The London interbank offered rate is intended to represent the rate at which contributing banks may obtain short-term borrowings from each other in the London interbank market. In July 2017, the U.K. Financial Conduct Authority announced that, after the end of 2021, it would no longer persuade or compel contributing banks to make rate submissions to the ICE Benchmark Administration (together with any successor to the ICE Benchmark Administrator, the “IBA”) for purposes of the IBA setting the London interbank offered rate. As a result, it is possible that commencing in 2022, the London interbank offered rate may no longer be available or may no longer be deemed an appropriate reference rate upon which to determine the interest rate on Eurodollar-based Advances. In light of this eventuality, public and private sector industry initiatives are currently underway to identify new or alternative reference rates to be used in place of the London interbank offered rate. Upon the occurrence of a Benchmark Transition Event, a Term SOFR Transition Event or an Early Opt-in Election, Sections 11.11(a) and 11.11(b) provide the mechanism for determining an alternative rate of interest. The Agent will promptly notify the Borrower, pursuant to Section 11.11(d), of any change to the reference rate upon which the interest rate on Eurodollar-based Advances is based. However, the Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, (a) the continuation of, administration of, submission of, calculation of or any other matter related to the London interbank offered rate or other Base Rate, the BSBY Rate, or any component definition thereof or any rates referred to in the definition of “LIBOR Rate” 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 Sections 11.11(a) or 11.11(b), whether upon the occurrence of a Benchmark Transition Event, a Term SOFR Transition Event or an Early Opt-in Election, and (ii) the implementation of any Benchmark Replacement Conforming Changes pursuant to Section 11.11(e)) thereof, or any Successor Rate, including without limitation, whether the composition or characteristics of any such alternative, successor or replacement reference rate Successor Rate will be similar to, or produce the same value or economic equivalence of, ~~the LIBOR Rate~~ or have the same volume or liquidity as ~~did~~, the London interbank offered rate Base Rate, the BSBY Rate, or any other Successor Rate, prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. The Agent, the Lenders, and their respective affiliates or other related entities may engage in transactions that affect the calculation of the Base Rate, the BSBY Rate, any Successor Rate or any relevant adjustments thereto, in each case, in a manner adverse to the Borrower. The Agent may select information sources or services in its reasonable discretion to ascertain the Base Rate, the BSBY Rate or any Successor Rate, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, 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.~~

2. REVOLVING CREDIT.

2.1 Commitment

. Subject to the terms and conditions of this Agreement (including without limitation Section 2.3 hereof), each Revolving Credit Lender severally and for itself alone agrees to make Advances of the Revolving Credit in Dollars to the Borrower from time to time on any Business Day during the period from the Effective Date hereof until (but excluding) the Revolving Credit Maturity Date in an aggregate amount not to exceed at any one time outstanding such Lender's Revolving Credit Percentage multiplied by the Revolving Credit Aggregate Commitment. Subject to the terms and conditions set forth herein, advances, repayments and readvances may be made under the Revolving Credit.

2.2 Accrual of Interest and Maturity; Evidence of Indebtedness.

(a) The Borrower hereby unconditionally promises to pay to the Agent for the account of each Revolving Credit Lender the then unpaid principal amount of each Revolving Credit Advance (plus all accrued and unpaid interest) of such Revolving Credit Lender to the Borrower on the Revolving Credit Maturity Date and on such other dates and in such other amounts as may be required from time to time pursuant to this Agreement. Subject to the terms and conditions hereof, each Revolving Credit Advance shall, from time to time from and after the date of such Advance (until paid), bear interest at its Applicable Interest Rate.

(b) Each Revolving Credit Lender shall maintain in accordance with its usual practice an account or accounts evidencing indebtedness of the Borrower to the appropriate lending office of such Revolving Credit Lender resulting from each Revolving Credit Advance made by such lending office of such Revolving Credit Lender from time to time, including the amounts of principal and interest payable thereon and paid to such Revolving Credit Lender from time to time under this Agreement.

(c) The Agent shall maintain the Register pursuant to Section 13.8(h), and a subaccount therein for each Revolving Credit Lender, in which Register and subaccounts (taken together) shall be recorded (i) the amount of each Revolving Credit Advance made hereunder, the type thereof and each ~~Eurodollar-~~Interest Period applicable to any ~~Eurodollar-based~~BSBY Rate Advance, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Revolving Credit Lender hereunder in respect of the Revolving Credit Advances and (iii) both the amount of any sum received by the Agent hereunder from the Borrower in respect of the Revolving Credit Advances and each Revolving Credit Lender's share thereof.

(d) The entries made in the Register maintained pursuant to clause (c) of this Section 2.2 and Section 13.8(h) shall, absent manifest error, to the extent permitted by applicable law, be prima facie evidence of the existence and amounts of the obligations of the Borrower therein recorded; provided, however, that the failure of any Revolving Credit Lender or the Agent to maintain the Register or any account, as applicable, or any error therein, shall not in any manner affect the obligation of the Borrower to repay the Revolving Credit Advances (and all other amounts owing with respect thereto) made to the Borrower by the Revolving Credit Lenders in accordance with the terms of this Agreement.

(e) The Borrower agrees that, upon written request to the Agent by any Revolving Credit Lender, the Borrower will execute and deliver, to such Revolving Credit Lender, at the Borrower's own expense, a Revolving Credit Note evidencing the outstanding Revolving Credit Advances owing to such Revolving Credit Lender.

2.3 Requests for and Refundings and Conversions of Advances

The Borrower may request an Advance of the Revolving Credit, a refund of any Revolving Credit Advance in the same type of Advance or to convert any Revolving Credit Advance to any other type of Revolving Credit Advance only by delivery to the Agent of a Request for Revolving Credit Advance executed by an Authorized Signer for the Borrower, subject to the following:

(a) each such Request for Revolving Credit Advance shall set forth the information required on the Request for Revolving Credit Advance, including without limitation:

(i) the proposed date of such Revolving Credit Advance (or the refunding or conversion of an outstanding Revolving Credit Advance), which must be a Business Day;

(ii) whether such Advance is a new Revolving Credit Advance or a refunding or conversion of an outstanding Revolving Credit Advance; and

(iii) whether such Revolving Credit Advance is to be a Base Rate Advance or a ~~Eurodollar-based~~ BSBY Rate Advance, and, except in the case of a Base Rate Advance, the first ~~Eurodollar-Interest Period~~ applicable thereto, provided, however, that the initial Revolving Credit Advance made under this Agreement shall be a Base Rate Advance, which may then be converted into a ~~Eurodollar-based~~ BSBY Rate Advance in compliance with this Agreement.

(b) each such Request for Revolving Credit Advance shall be delivered to the Agent and the Lenders by 12:00 p.m. (Detroit time) three (3) Business Days prior to the proposed date of the Revolving Credit Advance, except in the case of a Base Rate Advance, for which the Request for Revolving Credit Advance must be delivered to the Agent and the Lenders by 12:00 p.m. (Detroit time) on the proposed date for such Revolving Credit Advance;

(c) on the proposed date of such Revolving Credit Advance, the sum of (x) the aggregate principal amount of all Revolving Credit Advances and Swing Line Advances outstanding on such date (including, without duplication, the Advances that are deemed to be disbursed by the Agent under Section 3.6(c) hereof in respect of the Borrower's Reimbursement Obligations hereunder), plus (y) the Letter of Credit Obligations as of such date, in each case after giving effect to all outstanding requests for Revolving Credit Advances and Swing Line Advances and for the issuance of any Letters of Credit, shall not exceed the lesser of (i) the Revolving Credit Aggregate Commitment and (ii) the then applicable Borrowing Base;

(d) in the case of a Base Rate Advance, the principal amount of the initial funding of such Advance, as opposed to any refunding or conversion thereof, shall be at least \$250,000 or the remainder available under the Revolving Credit Aggregate Commitment if less than \$250,000;

(e) in the case of a ~~Eurodollar-based~~ BSBY Rate Advance, the principal amount of such Advance, plus the amount of any other outstanding Revolving Credit Advance to be then combined therewith having the same ~~Eurodollar-Interest Period~~, if any, shall be at least \$350,000 (or a larger integral multiple of \$50,000) or the remainder available under the Revolving Credit Aggregate Commitment if less than \$350,000, and at any one time there shall not be in effect more than six (6) different ~~Eurodollar-Interest Periods~~;

(f) a Request for Revolving Credit Advance, once delivered to the Agent and the Lenders, shall not be revocable by the Borrower and shall constitute a certification by the Borrower as of the date thereof that:

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(i) all conditions to the making of Revolving Credit Advances set forth in this Agreement have been satisfied (including, without limitation, the delivery of the Borrowing Base Certificate as required in accordance with Section 7.2(b) hereof), and shall remain satisfied to the date of such Revolving Credit Advance (both before and immediately after giving effect to such Revolving Credit Advance);

(ii) there is no Default or Event of Default in existence, and none will exist upon the making of such Revolving Credit Advance (both before and immediately after giving effect to such Revolving Credit Advance); and

(iii) the representations and warranties of the Credit Parties contained in this Agreement and the other Loan Documents are true and correct in all material respects and shall be true and correct in all material respects as of the date of the making of such Revolving Credit Advance (both before and immediately after giving effect to such Revolving Credit Advance), other than any representation or warranty that expressly speaks only as of a different date;

The Agent, acting on behalf of the Revolving Credit Lenders, may also, at its option, lend under this Section 2.3 upon the telephone or email request of an Authorized Signer of the Borrower to make such requests and, in the event the Agent, acting on behalf of the Revolving Credit Lenders, makes any such Advance upon a telephone or email request, an Authorized Signer shall fax or deliver by electronic file to the Agent, on the same day as such telephone or email request, an executed Request for Revolving Credit Advance. The Borrower hereby authorizes the Agent to disburse Advances under this Section 2.3 pursuant to the telephone or email instructions of any person purporting to be an Authorized Signer. Notwithstanding the foregoing, the Borrower acknowledges that the Borrower shall bear all risk of loss resulting from disbursements made upon any telephone or email request. Each telephone or email request for an Advance from an Authorized Signer for the Borrower shall constitute a certification of the matters set forth in the Request for Revolving Credit Advance form as of the date of such requested Advance.

2.4 Disbursement of Advances.

(a) Upon receiving any Request for Revolving Credit Advance from Borrower under Section 2.3 hereof, the Agent shall promptly notify each Revolving Credit Lender by wire, telex or telephone (confirmed by wire, telecopy or telex) of the amount of such Advance being requested and the date such Revolving Credit Advance is to be made by each Revolving Credit Lender in an amount equal to its Revolving Credit Percentage of such Advance. Unless such Revolving Credit Lender's commitment to make Revolving Credit Advances hereunder shall have been suspended or terminated in accordance with this Agreement, each such Revolving Credit Lender shall make available the amount of its Revolving Credit Percentage of each Revolving Credit Advance in immediately available funds to the Agent, ~~as follows:~~

~~(i) for Base Rate Advances, at the office of the Agent located at 411 West Lafayette, 7th Floor, MC 3289, Detroit, Michigan 48226, 's Office not later than 1:00 p.m. (Detroit time) on the proposed date of such Advance; and~~

~~(ii) for Eurodollar-based Advances, at the Agent's Correspondent for the account of the Eurodollar Lending Office of the Agent, not later than 12:00 p.m. (the time of the Agent's Correspondent) on the date of such Advance.~~

(b) Subject to submission of an executed Request for Revolving Credit Advance by Borrower without exceptions noted in the compliance certification therein, the Agent shall make available to the

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Borrower the aggregate of the amounts so received by it from the Revolving Credit Lenders in like funds and currencies:

~~(i) for Base Rate Advances, not later than 4:00 p.m. (Detroit time) on the date of such Revolving Credit Advance;~~ by credit to an account of the Borrower maintained with the Agent ~~or, if approved in advance by the Agent in its sole discretion, to such other account or third party as Borrower may request in writing;~~ and

~~(ii) for Eurodollar-based Advances, not later than 4:00 p.m. (the time of the Agent's Correspondent) on the date of such Revolving Credit Advance, by credit to an account of the Borrower maintained with the Agent's Correspondent~~ or, if approved in advance by the Agent in its sole discretion, to such other account or third party as Borrower may request in writing.

(c) The Agent shall deliver the documents and papers received by it for the account of each Revolving Credit Lender to such Revolving Credit Lender. Unless the Agent shall have been notified by any Revolving Credit Lender prior to the date of any proposed Revolving Credit Advance that such Revolving Credit Lender does not intend to make available to the Agent such Revolving Credit Lender's Percentage of such Advance, the Agent may assume that such Revolving Credit Lender has made such amount available to the Agent on such date, as aforesaid. The Agent may, but shall not be obligated to, make available to the Borrower the amount of such payment in reliance on such assumption. If such amount is not in fact made available to the Agent by such Revolving Credit Lender, as aforesaid, the Agent shall be entitled to recover such amount on demand from such Revolving Credit Lender. If such Revolving Credit Lender does not pay such amount forthwith upon the Agent's demand therefor and the Agent has in fact made a corresponding amount available to the Borrower, the Agent shall promptly notify the Borrower and the Borrower shall pay such amount to the Agent, if such notice is delivered to the Borrower prior to 1:00 p.m. (Detroit time) on a Business Day, on the day such notice is received, and otherwise on the next Business Day, and such amount paid by the Borrower shall be applied as a prepayment of the Revolving Credit (without any corresponding reduction in the Revolving Credit Aggregate Commitment), reimbursing the Agent for having funded said amounts on behalf of such Revolving Credit Lender. The Borrower shall retain its claim against such Revolving Credit Lender with respect to the amounts repaid by them to the Agent and, if such Revolving Credit Lender subsequently makes such amounts available to the Agent, the Agent shall promptly make such amounts available to the Borrower as a Revolving Credit Advance. The Agent shall also be entitled to recover from such Revolving Credit Lender or the Borrower, as the case may be, but without duplication, interest on such amount in respect of each day from the date such amount was made available by the Agent to the Borrower, to the date such amount is recovered by the Agent, at a rate per annum equal to:

(i) in the case of such Revolving Credit Lender, for the first two (2) Business Days such amount remains unpaid, the Federal Funds Effective Rate, and thereafter, at the rate of interest then applicable to such Revolving Credit Advances (plus any administrative, processing or similar fees assessed by Agent in connection with the foregoing); and

(ii) in the case of the Borrower, the rate of interest then applicable to such Advance of the Revolving Credit.

Until such Revolving Credit Lender has paid the Agent such amount, such Revolving Credit Lender shall have no interest in or rights with respect to such Advance for any purpose whatsoever. The obligation of any Revolving Credit Lender to make any Revolving Credit Advance hereunder shall not be affected by the failure of any other Revolving Credit Lender to make any Advance hereunder, and no Revolving Credit Lender shall have any liability to the Borrower or any of its Subsidiaries, the Agent, any other Revolving

Credit Lender, or any other party for another Revolving Credit Lender's failure to make any loan or Advance hereunder.

2.5 Swing Line.

(a) Swing Line Advances. The Swing Line Lender may, on the terms and subject to the conditions hereinafter set forth (including without limitation Section 2.5(c) hereof), but shall not be required to, make one or more Advances ~~(each such advance being a "Swing Line Advance")~~ to the Borrower from time to time on any Business Day during the period from the Effective Date hereof until (but excluding) the Revolving Credit Maturity Date in an aggregate amount not to exceed at any one time outstanding the Swing Line Maximum Amount. Subject to the terms set forth herein, advances, repayments and readvances may be made under the Swing Line.

(b) Accrual of Interest and Maturity; Evidence of Indebtedness.

(i) Swing Line Lender shall maintain in accordance with its usual practice an account or accounts evidencing indebtedness of the Borrower to Swing Line Lender resulting from each Swing Line Advance from time to time, including the amount and date of each Swing Line Advance, its Applicable Interest Rate, its Interest Period, if any, and the amount and date of any repayment made on any Swing Line Advance from time to time. The entries made in such account or accounts of Swing Line Lender shall be prima facie evidence, absent manifest error, of the existence and amounts of the obligations of the Borrower therein recorded; provided, however, that the failure of Swing Line Lender to maintain such account, as applicable, or any error therein, shall not in any manner affect the obligation of the Borrower to repay the Swing Line Advances (and all other amounts owing with respect thereto) in accordance with the terms of this Agreement.

(ii) The Borrower agrees that, upon the written request of Swing Line Lender, the Borrower will execute and deliver to Swing Line Lender a Swing Line Note.

(iii) The Borrower unconditionally promises to pay to the Swing Line Lender the then unpaid principal amount of such Swing Line Advance (plus all accrued and unpaid interest) on the Revolving Credit Maturity Date and on such other dates and in such other amounts as may be required from time to time pursuant to this Agreement. Subject to the terms and conditions hereof, each Swing Line Advance shall, from time to time after the date of such Advance (until paid), bear interest at its Applicable Interest Rate.

(c) Requests for Swing Line Advances. Borrower may request a Swing Line Advance by the delivery to Swing Line Lender of a Request for Swing Line Advance executed by an Authorized Signer for Borrower, subject to the following:

(i) each such Request for Swing Line Advance shall set forth the information required on the Request for Advance, including without limitation, (A) the proposed date of such Swing Line Advance, which must be a Business Day, (B) whether such Swing Line Advance is to be a Base Rate Advance or a Quoted Rate Advance, and (C) in the case of a Quoted Rate Advance, the duration of the Interest Period applicable thereto;

(ii) on the proposed date of such Swing Line Advance, after giving effect to all outstanding requests for Swing Line Advances made by the Borrower as of the date of determination, the aggregate principal amount of all Swing Line Advances outstanding on such date shall not exceed the Swing Line Maximum Amount;

(iii) on the proposed date of such Swing Line Advance, after giving effect to all outstanding requests for Revolving Credit Advances and Swing Line Advances and Letters of Credit requested by the Borrower on such date of determination (including, without duplication, Advances that are deemed disbursed pursuant to Section 3.6(c) hereof in respect of the Borrower's Reimbursement Obligations hereunder), the sum of (x) the aggregate principal amount of all Revolving Credit Advances and the Swing Line Advances outstanding on such date plus (y) the Letter of Credit Obligations on such date shall not exceed the lesser of (A) the Revolving Credit Aggregate Commitment and (B) the then applicable Borrowing Base;

(iv) (A) in the case of a Swing Line Advance that is a Base Rate Advance, the principal amount of the initial funding of such Advance, as opposed to any refunding or conversion thereof, shall be at least Two Hundred Fifty Thousand Dollars (\$250,000) or such lesser amount as may be agreed to by the Swing Line Lender, and (B) in the case of a Swing Line Advance that is a Quoted Rate Advance, the principal amount of such Advance, plus any other outstanding Swing Line Advances to be then combined therewith having the same Interest Period, if any, shall be at least Two Hundred Fifty Thousand Dollars (\$250,000) or such lesser amount as may be agreed to by the Swing Line Lender, and at any time there shall not be in effect more than six (6) Interest Rates and Interest Periods;

(v) each such Request for Swing Line Advance shall be delivered to the Swing Line Lender by 3:00 p.m. (Detroit time) on the proposed date of the Swing Line Advance;

(vi) each Request for Swing Line Advance, once delivered to Swing Line Lender, shall not be revocable by the Borrower, and shall constitute and include a certification by the Borrower as of the date thereof that:

(A) all conditions to the making of Swing Line Advances set forth in this Agreement shall have been satisfied (including, without limitation, the delivery of the Borrowing Base Certificate as required in accordance with Section 7.2(b) hereof) and shall remain satisfied to the date of such Swing Line Advance (both before and immediately after giving effect to such Swing Line Advance);

(B) there is no Default or Event of Default in existence, and none will exist upon the making of such Swing Line Advance (both before and immediately after giving effect to such Swing Line Advance); and

(C) the representations and warranties of the Credit Parties contained in this Agreement and the other Loan Documents are true and correct in all material respects and shall be true and correct in all material respect as of the date of the making of such Swing Line Advance (both before and immediately after giving effect to such Swing Line Advance), other than any representation or warranty that expressly speaks only as of a different date;

(vii) At the option of the Agent, subject to revocation by the Agent at any time and from time to time and so long as the Agent is the Swing Line Lender, the Borrower may utilize the Agent's "Sweep to Loan" automated system for obtaining Swing Line Advances and making periodic repayments. At any time during which the "Sweep to Loan" system is in effect, Swing Line Advances shall be advanced to fund borrowing needs pursuant to the terms of the Sweep Agreement. Each time a Swing Line Advance is made using the "Sweep to Loan" system, the Borrower shall be deemed to have certified to the Agent and the Lenders each of the matters set

forth in clause (vi) of this Section 2.5(c). Principal and interest on Swing Line Advances requested, or deemed requested, pursuant to this Section shall be paid pursuant to the terms and conditions of the Sweep Agreement without any deduction, setoff or counterclaim whatsoever. Unless sooner paid pursuant to the provisions hereof or the provisions of the Sweep Agreement, the principal amount of the Swing Line Loans shall be paid in full, together with accrued interest thereon, on the Revolving Credit Maturity Date. The Agent may suspend or revoke the Borrower's privilege to use the "Sweep to Loan" system at any time and from time to time for any reason and, immediately upon any such revocation, the "Sweep to Loan" system shall no longer be available to the Borrower for the funding of Swing Line Advances hereunder (or otherwise), and the regular procedures set forth in this Section 2.5 for the making of Swing Line Advances shall be deemed immediately to apply. The Agent may, at its option, also elect to make Swing Line Advances upon the Borrower's telephone requests on the basis set forth in the last paragraph of Section 2.3, provided that the Borrower complies with the provisions set forth in this Section 2.5.

(d) Disbursement of Swing Line Advances. Upon receiving any executed Request for Swing Line Advance from the Borrower and the satisfaction of the conditions set forth in Section 2.5(c) hereof, Swing Line Lender shall, at its option, make available to the Borrower the amount so requested in Dollars not later than 4:00 p.m. (Detroit time) on the date of such Advance, by credit to an account of the Borrower maintained with the Agent or, if approved in advance by the Agent in its sole discretion, to such other account or third party as Borrower may request in writing. Swing Line Lender shall promptly notify the Agent of any Swing Line Advance by telephone, telex or telecopier.

(e) Refunding of or Participation Interest in Swing Line Advances.

(i) The Agent, at any time in its sole and absolute discretion, may, in each case on behalf of the Borrower (which hereby irrevocably direct the Agent to act on their behalf) request each of the Revolving Credit Lenders (including the Swing Line Lender in its capacity as a Revolving Credit Lender) to make an Advance of the Revolving Credit to the Borrower, in an amount equal to such Revolving Credit Lender's Revolving Credit Percentage of the aggregate principal amount of the Swing Line Advances outstanding on the date such notice is given (the "Refunded Swing Line Advances"); provided however that the Swing Line Advances carried at the Quoted Rate which are refunded with Revolving Credit Advances at the request of the Swing Line Lender at a time when no Default or Event of Default has occurred and is continuing shall not be subject to Section 11.1 and no losses, costs or expenses may be assessed by the Swing Line Lender against the Borrower or the Revolving Credit Lenders as a consequence of such refunding. The applicable Revolving Credit Advances used to refund any Swing Line Advances shall be Base Rate Advances. In connection with the making of any such Refunded Swing Line Advances or the purchase of a participation interest in Swing Line Advances under Section 2.5(e)(ii) hereof, the Swing Line Lender shall retain its claim against the Borrower for any unpaid interest or fees in respect thereof accrued to the date of such refunding. Unless any of the events described in Section 9.1(i) hereof shall have occurred (in which event the procedures of Section 2.5(e)(ii) shall apply) and regardless of whether the conditions precedent set forth in this Agreement to the making of a Revolving Credit Advance are then satisfied (but subject to Section 2.5(e)(iii)), each Revolving Credit Lender shall make the proceeds of its Revolving Credit Advance available to the Agent for the benefit of the Swing Line Lender at the office of the Agent specified in Section 2.4(a) hereof prior to 11:00 a.m. Detroit time on the Business Day next succeeding the date such notice is given, in immediately available funds. The proceeds of such Revolving Credit Advances shall be immediately applied to repay the Refunded Swing Line Advances, subject to Section 11.1 hereof.

(ii) If, prior to the making of an Advance of the Revolving Credit pursuant to Section 2.5(e)(i) hereof, one of the events described in Section 9.1(i) hereof shall have occurred, each Revolving Credit Lender will, on the date such Advance of the Revolving Credit was to have been made, purchase from the Swing Line Lender an undivided participating interest in each Swing Line Advance that was to have been refunded in an amount equal to its Revolving Credit Percentage of such Swing Line Advance. Each Revolving Credit Lender within the time periods specified in Section 2.5(e)(i) hereof, as applicable, shall immediately transfer to the Agent, for the benefit of the Swing Line Lender, in immediately available funds, an amount equal to its Revolving Credit Percentage of the aggregate principal amount of all Swing Line Advances outstanding as of such date. Upon receipt thereof, the Agent will deliver to such Revolving Credit Lender a Swing Line Participation Certificate evidencing such participation.

(iii) Each Revolving Credit Lender's obligation to make Revolving Credit Advances to refund Swing Line Advances, and to purchase participation interests, in accordance with Section 2.5(e)(i) and (ii), respectively, shall be absolute and unconditional and shall not be affected by any circumstance, including, without limitation, (A) any set-off, counterclaim, recoupment, defense or other right which such Revolving Credit Lender may have against Swing Line Lender, the Borrower or any other Person for any reason whatsoever; (B) the occurrence or continuance of any Default or Event of Default; (C) any adverse change in the condition (financial or otherwise) of Borrower or any other Person; (D) any breach of this Agreement or any other Loan Document by Borrower or any other Person; (E) any inability of Borrower to satisfy the conditions precedent to borrowing set forth in this Agreement on the date upon which such Revolving Credit Advance is to be made or such participating interest is to be purchased; (F) the termination of the Revolving Credit Aggregate Commitment hereunder; or (G) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing. If any Revolving Credit Lender does not make available to the Agent the amount required pursuant to Section 2.5(e)(i) or (ii) hereof, as the case may be, the Agent on behalf of the Swing Line Lender, shall be entitled to recover such amount on demand from such Revolving Credit Lender, together with interest thereon for each day from the date of non-payment until such amount is paid in full (x) for the first two (2) Business Days such amount remains unpaid, at the Federal Funds Effective Rate and (y) thereafter, at the rate of interest then applicable to such Swing Line Advances. The obligation of any Revolving Credit Lender to make available its pro rata portion of the amounts required pursuant to Section 2.5(e)(i) or (ii) hereof shall not be affected by the failure of any other Revolving Credit Lender to make such amounts available, and no Revolving Credit Lender shall have any liability to any Credit Party, the Agent, the Swing Line Lender, or any other Revolving Credit Lender or any other party for another Revolving Credit Lender's failure to make available the amounts required under Section 2.5(e)(i) or (ii) hereof.

(iv) Notwithstanding the foregoing, no Revolving Credit Lender shall be required to make any Revolving Credit Advance to refund a Swing Line Advance or to purchase a participation in a Swing Line Advance if at least two (2) Business Days prior to the making of such Swing Line Advance by the Swing Line Lender, the officers of the Swing Line Lender immediately responsible for matters concerning this Agreement shall have received written notice from the Agent or any Lender that Swing Line Advances should be suspended based on the occurrence and continuance of a Default or Event of Default and stating that such notice is a "notice of default"; provided, however that the obligation of the Revolving Credit Lenders to make or refund such Swing Line Advance or purchase a participation in such Swing Line Advance shall be reinstated upon the date on which such Default or Event of Default has been waived by the requisite Lenders.

2.6 Interest Payments; Default Interest.

(a) Subject to clause (d) of this Section 2.6, (i) all Base Rate Advances of the Revolving Credit and Swing Line shall bear interest at a per annum interest rate equal to the Base Rate plus the Applicable Margin, (ii) all BSBY Rate Advances of the Revolving Credit shall bear interest for each Interest Period at a per annum interest rate equal to the BSBY Rate for such Interest Period plus the Applicable Margin and (iii) all Quoted Rate Advances of the Swing Line shall bear interest at a per annum interest rate equal to the Quoted Rate plus the Applicable Margin, if any.

(b) Accrued interest on each Revolving Credit Advance and Swing Line Advance shall be payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein; provided that (i) interest accrued pursuant to clause (d) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of any Revolving Credit Advance or Swing Line Advance (other than a prepayment of a Base Rate Advance prior to the Revolving Credit Maturity Date), 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 BSBY Rate Advance prior to the end of the Interest Period therefor, accrued interest on such Advance shall be payable on the effective date of such conversion.

~~(c) (a) Interest on the unpaid balance of all Base Rate Advances of the Revolving Credit and the Swing Line from time to time outstanding shall accrue from the date of such Advance to the date repaid, at a per annum interest rate equal to the Base Rate, and shall be payable in immediately available funds quarterly in arrears commencing on September 1, 2019, and on the first day of each December, March, June, and September thereafter. Whenever any payment under this Section 2.6(a) shall become due on a day which is not a Business Day, the date for payment thereof shall be extended to the next Business Day. Interest accruing at the Base Rate shall be computed on the basis of a 360 day year and assessed for the actual number of days elapsed, and in such computation effect shall be given to any change in the interest rate resulting from a change in the Base Rate on the date of such change in the Base Rate.~~

~~(b) Interest on each Eurodollar-based Advance of the Revolving Credit shall accrue at its Eurodollar-based Rate and shall be payable in immediately available funds on the last day of the Eurodollar-Interest Period applicable thereto (and, if any Eurodollar-Interest Period shall exceed three months, then on the last Business Day of the third month of such Eurodollar-Interest Period, and at three month intervals thereafter); Interest accruing at the Eurodollar-based BSBY Rate shall be computed on the basis of a 360 day year and assessed for the actual number of days elapsed from the first day of the Eurodollar-Interest Period applicable thereto to but not including the last day thereof.~~

~~(e) Interest on each Quoted Rate Advance of the Swing Line shall accrue at its Quoted Rate and shall be payable in immediately available funds on the last day of the Interest Period applicable thereto. Interest accruing at the Quoted Rate shall be computed on the basis of a 360-day year and assessed for the actual number of days elapsed from the first day of the Interest Period applicable thereto to, but not including, the last day thereof.~~

~~(d) Notwithstanding anything to the contrary in the preceding sections, all accrued and unpaid interest on any Revolving Credit Advance refunded or converted pursuant to Section 2.3 hereof and any Swing Line Advance refunded pursuant to Section 2.5(e) hereof, shall be due and payable in full on the date such Advance is refunded or converted.~~

(d) ~~(e)~~ In the case of any Event of Default under Section 9.1(i), immediately upon the occurrence thereof, and in the case of any other Event of Default, immediately upon receipt by the Agent

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of notice from the Majority Lenders, interest shall be payable on demand on all Revolving Credit Advances and Swing Line Advances from time to time outstanding at a per annum rate equal to the ~~Applicable Interest Rate in respect of each such Advance plus, in the case of Eurodollar-based Advances and Quoted Rate Advances, two percent (2%) for the remainder of the then existing Interest Period, if any, and at all other such times, and for all Base Rate Advances from time to time outstanding, at a per annum rate equal to the Base Rate plus two percent (2%)~~applicable Default Rate.

2.7 Optional Prepayments.

(a) (i) The Borrower may prepay all or part of the outstanding principal of any Base Rate Advance(s) of the Revolving Credit at any time, provided that, unless the "Sweep to Loan" system shall be in effect in respect of the Revolving Credit, after giving effect to any partial prepayment, the aggregate balance of Base Rate Advance(s) of the Revolving Credit remaining outstanding shall be at least One Hundred Thousand Dollars (\$100,000), and (ii) subject to Section 2.10(c) hereof, the Borrower may prepay all or part of the outstanding principal of any ~~Eurodollar-based~~BSBY Rate Advance of the Revolving Credit at any time (subject to not less than three (3) Business Days' notice to the Agent) provided that, after giving effect to any partial prepayment, the unpaid portion of such Advance which is to be refunded or converted under Section 2.3 hereof shall be at least One Hundred Thousand Dollars (\$100,000)

(b) (i) The Borrower may prepay all or part of the outstanding principal of any Swing Line Advance carried at the Base Rate at any time, provided that after giving effect to any partial prepayment, the aggregate balance of such Base Rate Advances remaining outstanding shall be at least One Hundred Thousand Dollars (\$100,000) and (ii) subject to Section 2.10(c) hereof, the Borrower may prepay all or part of the outstanding principal of any Swing Line Advance carried at the Quoted Rate at any time (subject to not less than one (1) day's notice to the Swing Line Lender) provided that after giving effect to any partial prepayment, the aggregate balance of Swing Line Advances remaining outstanding shall be at least One Hundred Thousand Dollars (\$100,000).

(c) Any prepayment of a Base Rate Advance made in accordance with this Section shall be without premium or penalty and any prepayment of any other type of Advance shall be subject to the provisions of Section 11.1 hereof, but otherwise without premium or penalty.

2.8 Base Rate Advance in Absence of Election or Upon Default

. If, (a) as to any outstanding ~~Eurodollar-based~~BSBY Rate Advance of the Revolving Credit or any outstanding Quoted Rate Advance of the Swing Line, the Agent has not received payment of all outstanding principal and accrued interest on the last day of the Interest Period applicable thereto, or does not receive a timely Request for Advance meeting the requirements of Section 2.3 or 2.5 hereof with respect to the refunding or conversion of such Advance, or (b) if on the last day of the applicable Interest Period a Default or an Event of Default shall have occurred and be continuing, then, on the last day of the applicable Interest Period the principal amount of any ~~Eurodollar-based~~BSBY Rate Advance or Quoted Rate Advance, as the case may be, which has not been prepaid shall, absent a contrary election of the Majority ~~Revolving Credit~~ Lenders, be converted automatically to a Base Rate Advance and the Agent shall thereafter promptly notify the Borrower of said action. All accrued and unpaid interest on any Advance converted to a Base Rate Advance under this Section 2.8 shall be due and payable in full on the date such Advance is converted.

2.9 Revolving Credit Facility Fee

. From the Effective Date to the Revolving Credit Maturity Date, the Borrower shall pay to the Agent for distribution to the Revolving Credit Lenders pro-rata in accordance with their respective

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Revolving Credit Percentages, a Revolving Credit Facility Fee quarterly in arrears commencing September 1 2019, and on the first day of each December, March, June, and September thereafter (in respect of the prior three months or any portion thereof). The Revolving Credit Facility Fee payable to each Revolving Credit Lender shall be determined by multiplying the Applicable Fee Percentage times the Revolving Credit Aggregate Commitment then in effect (whether used or unused). The Revolving Credit Facility Fee shall be computed on the basis of a year of three hundred sixty (360) days and assessed for the actual number of days elapsed. Whenever any payment of the Revolving Credit Facility Fee shall be due on a day which is not a Business Day, the date for payment thereof shall be extended to the next Business Day. Upon receipt of such payment, the Agent shall make prompt payment to each Revolving Credit Lender of its share of the Revolving Credit Facility Fee based upon its respective Revolving Credit Percentage. It is expressly understood that the Revolving Credit Facility Fees described in this Section are not refundable.

2.10 Mandatory Repayment of Revolving Credit Advances.

(a) If at any time and for any reason the aggregate outstanding principal amount of Revolving Credit Advances plus Swing Line Advances, plus the outstanding Letter of Credit Obligations, shall exceed the lesser of (i) the Revolving Credit Aggregate Commitment and (ii) the then applicable Borrowing Base, the Borrower shall immediately reduce any pending request for a Revolving Credit Advance on such day by the amount of such excess and, to the extent any excess remains thereafter, repay any Revolving Credit Advances and Swing Line Advances in an amount equal to the lesser of the outstanding amount of such Advances and the amount of such remaining excess, with such amounts to be applied between the Revolving Credit Advances and Swing Line Advances as determined by the Agent and then, to the extent that any excess remains after payment in full of all Revolving Credit Advances and Swing Line Advances, to provide cash collateral in support of any Letter of Credit Obligations in an amount equal to the lesser of (x) 105% of the amount of such Letter of Credit Obligations and (y) the amount of such remaining excess, with such cash collateral to be provided on terms satisfactory to the Agent. the Borrower acknowledges that, in connection with any repayment required hereunder, it shall also be responsible for the reimbursement of any prepayment or other costs required under Section 11.1 hereof. Any payments made pursuant to this Section shall be applied first to outstanding Base Rate Advances under the Revolving Credit, next to Swing Line Advances carried at the Base Rate and then to ~~Eurodollar-based~~BSBY Rate Advances of the Revolving Credit, and then to Swing Line Advances carried at the Quoted Rate.

(b) If at any time any contract between Borrower and [***] or any of its Subsidiaries or Affiliates shall cease to be an Eligible Recurring Revenue Contract as a result of the circumstances described in clause (a) of the definition of "Eligible Recurring Revenue Contracts" (but without giving effect the proviso thereto), the Borrower shall, immediately after its knowledge thereof, repay outstanding Advances in an amount equal to the portion of such Advances that were attributable to the Eligible Monthly Recurring Revenue from such contracts at the time any outstanding Advance was made. Any payments made pursuant to this Section shall be applied first to outstanding Base Rate Advances under the Revolving Credit, next to Swing Line Advances carried at the Base Rate and then to ~~Eurodollar-based~~BSBY Rate Advances of the Revolving Credit, and then to Swing Line Advances carried at the Quoted Rate.

(c) To the extent that, on the date any mandatory repayment of the Revolving Credit Advances under this Section 2.10 or payment pursuant to the terms of any of the Loan Documents is due, the Indebtedness under the Revolving Credit or any other Indebtedness to be prepaid is being carried, in whole or in part, at the ~~Eurodollar-based~~BSBY Rate and no Default or Event of Default has occurred and is continuing, the Borrower may deposit the amount of such mandatory prepayment in a cash collateral account to be held by the Agent, for and on behalf of the Revolving Credit Lenders, on such terms and conditions as are reasonably acceptable to the Agent and upon such deposit the obligation of the Borrower to make such mandatory prepayment shall be deemed satisfied. Subject to the terms and conditions of said

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cash collateral account, sums on deposit in said cash collateral account shall be applied (until exhausted) to reduce the principal balance of the Revolving Credit on the last day of each Eurodollar-Interest Period attributable to the Eurodollar-based BSBY Rate Advances of such Revolving Credit Advance, thereby avoiding breakage-costs and expenses under Section 11.1 hereof; provided, however, that if a Default or Event of Default shall have occurred at any time while sums are on deposit in the cash collateral account, the Agent may, in its sole discretion, elect to apply such sums to reduce the principal balance of such Eurodollar-based BSBY Rate Advances prior to the last day of the applicable Eurodollar-Interest Period, and the Borrower will be obligated to pay any resulting breakage-costs and expenses under Section 11.1.

2.11 Optional Reduction or Termination of Revolving Credit Aggregate Commitment

The Borrower may, upon at least five (5) Business Days' prior written notice to the Agent, permanently reduce the Revolving Credit Aggregate Commitment in whole at any time, or in part from time to time, without premium or penalty, provided that: (i) each partial reduction of the Revolving Credit Aggregate Commitment shall be in an aggregate amount equal to Five Million Dollars (\$5,000,000) or a larger integral multiple of One Hundred Thousand Dollars (\$100,000); (ii) each reduction shall be accompanied by the payment of the Revolving Credit Facility Fee, if any, accrued and unpaid to the date of such reduction; (iii) the Borrower shall prepay in accordance with the terms hereof the amount, if any, by which the aggregate unpaid principal amount of Revolving Credit Advances and Swing Line Advances (including, without duplication, any deemed Advances made under Section 3.6 hereof) outstanding hereunder, plus the Letter of Credit Obligations, exceeds the amount of the then applicable Revolving Credit Aggregate Commitment as so reduced, together with interest thereon to the date of prepayment; (iv) no reduction shall reduce the Revolving Credit Aggregate Commitment to an amount which is less than the aggregate undrawn amount of any Letters of Credit outstanding at such time; and (v) no such reduction shall reduce the Swing Line Maximum Amount unless the Borrower so elects, provided that the Swing Line Maximum Amount shall at no time be greater than the Revolving Credit Aggregate Commitment; provided, however that if the termination or reduction of the Revolving Credit Aggregate Commitment requires the prepayment of a Eurodollar-based BSBY Rate Advance or a Quoted Rate Advance and such termination or reduction is made on a day other than the last Business Day of the then current Interest Period applicable to such Eurodollar-based BSBY Rate Advance or such Quoted Rate Advance, then, pursuant to Section 11.1, the Borrower shall compensate the Revolving Credit Lenders and/or the Swing Line Lender for any losses or, so long as no Default or Event of Default has occurred and is continuing, the Borrower may deposit the amount of such prepayment in a collateral account as provided in Section 2.10(c). Reductions of the Revolving Credit Aggregate Commitment and any accompanying prepayments of Advances of the Revolving Credit shall be distributed by the Agent to each Revolving Credit Lender in accordance with such Revolving Credit Lender's Revolving Credit Percentage thereof, and will not be available for reinstatement by or readvance to the Borrower, and any accompanying prepayments of Advances of the Swing Line shall be distributed by the Agent to the Swing Line Lender and will not be available for reinstatement by or readvance to the Borrower. Any reductions of the Revolving Credit Aggregate Commitment hereunder shall reduce each Revolving Credit Lender's portion thereof proportionately (based on the applicable Percentages), and shall be permanent and irrevocable. Any payments made pursuant to this Section shall be applied first to outstanding Base Rate Advances under the Revolving Credit, next to Swing Line Advances carried at the Base Rate and then to Eurodollar-based BSBY Rate Advances of the Revolving Credit, and then to Swing Line Advances carried at the Quoted Rate.

2.12 Optional Increase in Revolving Credit.

Borrower may request that the Revolving Credit Aggregate Commitment be increased in an aggregate amount (for all such requests under this Section 2.12) not to exceed the Revolving Credit Optional

Increase Amount, subject, in each case, to Section 11.1 hereof and to the satisfaction concurrently with or prior to the date of each such request of the following conditions:

- (a) no Default or Event of Default shall have occurred and be continuing;
- (b) the Annual Recurring Revenue Run Rate (calculated as of the month end immediately preceding the date of the request) shall be at least \$145,000,000;
- (c) Borrower shall have delivered to the Agent a written request for such increase, specifying the amount of the requested increase (each such request, a "Request for Revolving Credit Increase"); provided, however, that in the event Borrower previously delivered a Request for Revolving Credit Increase pursuant to this Section 2.12, Borrower may not deliver a subsequent Request for Revolving Credit Increase until all the conditions to effectiveness of such first Request for Revolving Credit Increase have been fully satisfied (or such Request for Revolving Credit Increase has been withdrawn); and provided further that Borrower may make no more than three (3) Requests for Revolving Credit Increase and no Request for Increase may be made after December 31, 2021;
- (d) within three (3) Business Days after the Agent's receipt of the Request for Revolving Credit Increase, the Agent shall inform each Revolving Credit Lender of the requested increase in the Revolving Credit Aggregate Commitment, offer each Revolving Credit Lender the opportunity to increase its Revolving Credit Commitment Amount in an amount equal to its applicable Revolving Credit Percentage of the requested increase in the Revolving Credit Aggregate Commitment, and request each such Revolving Credit Lender to notify the Agent in writing whether such Revolving Credit Lender desires to increase its applicable commitment by the requested amount. Each Revolving Credit Lender approving an increase in its applicable commitment by the requested amount shall deliver its written consent thereto within such time period determined by Borrower in consultation with Agent (which shall in no event be sooner than ten (10) Business Days of the Agent's informing such Revolving Credit Lender of the Request for Revolving Credit Increase); if the Agent shall not have received a written consent from a Revolving Credit Lender within such time period, such Revolving Credit Lender shall be deemed to have elected not to increase its applicable Revolving Credit Commitment Amount. If any one or more Revolving Credit Lenders shall elect not to increase its Revolving Credit Commitment Amount, then the Agent may offer the remaining increase amount to each other Revolving Credit Lender hereunder on a non-pro rata basis, or to (A) any other Lender hereunder, or (B) any other Person meeting the requirements of Section 13.8 hereof (including, for the purposes of this Section 2.12, any existing Revolving Credit Lender which agrees to increase its Revolving Credit Commitment Amount hereunder, the "New Revolving Credit Lender(s)"), to increase their respective applicable Revolving Credit Commitment Amount (or to provide a commitment). Notwithstanding anything to the contrary in the foregoing, Western Alliance Bank hereby agrees to increase its Revolving Credit Aggregate Commitment by up to \$15,000,000 in the aggregate as a result of any Request for Revolving Credit Increase that results in an increase in the Revolving Credit Aggregate Commitments of all Revolving Credit Lenders by the full Revolving Credit Optional Increase Amount; provided that such advance commitment shall in no way affect the opportunity for any other Revolving Credit Lender to increase its commitment based on its Revolving Credit Percentage as set forth above; provided further that if any Requests for Revolving Credit Increase does not result in an increase in the Revolving Credit Aggregate Commitments of all Revolving Credit Lenders by the full Revolving Credit Optional Increase Amount, then any increase of Western Alliance Bank's Revolving Credit Aggregate Commitment shall be subject to Western Alliance Bank's prior approval;
- (e) the New Revolving Credit Lenders shall have become a party to this Agreement by executing and delivering a New Lender Addendum for a minimum amount for each such New Revolving Credit Lender that was not an existing Revolving Credit Lender of \$5,000,000 and an aggregate amount

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for all such New Revolving Credit Lenders of that portion of the Revolving Credit Optional Increase Amount, taking into account the amount of any prior increase in the Revolving Credit Aggregate Commitment (pursuant to this Section 2.12) covered by the applicable Request; provided, however, that each New Revolving Credit Lender shall remit to the Agent funds in an amount equal to its Percentage (after giving effect to this Section 2.12) of all Advances of the Revolving Credit then outstanding, such sums to be reallocated among and paid to the existing Revolving Credit Lenders based upon the new Percentages as determined below;

(f) no New Revolving Credit Lender shall receive compensation (whether in the form of a fee, original issue discount or interest rate pricing) for its commitment under the Revolving Credit, except as set forth in this Agreement;

(g) Borrower shall have paid to the Agent for distribution to the existing Revolving Credit Lenders, as applicable, all interest, fees (including the Revolving Credit Facility Fee, which shall not be duplicative) and other amounts, if any, accrued to the effective date of such increase and any ~~breakage fees~~ costs or expenses attributable to the reduction (prior to the last day of the applicable Interest Period) of any outstanding ~~Eurocurrency-based~~ BSBY Rate Advances, calculated on the basis set forth in Section 11.1 hereof as though Borrower had prepaid such Advances;

(h) if requested, Borrower shall have executed and delivered to the Agent new Revolving Credit Notes payable to each of the New Revolving Credit Lenders in the face amount of each such New Revolving Credit Lender's Percentage of the Revolving Credit Aggregate Commitment (after giving effect to this Section 2.12) and, if applicable, renewal and replacement Revolving Credit Notes payable to each of the existing Revolving Credit Lenders in the face amount of each such Revolving Credit Lender's Revolving Credit Percentage of the Revolving Credit Aggregate Commitment (after giving effect to this Section 2.12), dated as of the effective date of such increase (with appropriate insertions relevant to such Notes and acceptable to the applicable Revolving Credit Lenders, including the New Revolving Credit Lenders);

(i) prior to the date the increased commitment becomes available, the Borrower shall have delivered to the Agent, in each case dated as of the date of the applicable increase:

- (1) a pro forma Covenant Compliance Report demonstrating that, upon giving effect to the applicable increase, all financial covenants set forth in Section 7.9 would be satisfied on a pro forma basis on such date and for the most recent determination period for which the Borrower has delivered or is required to have delivered financial statements pursuant to Section 7.1(a) or (b); and
- (2) a certificate signed by a Responsible Officer of Borrower (A) certifying and attaching the resolutions adopted by Borrower approving or consenting to such increase, and (B) certifying that, before and after giving effect to such increase, (1) the representations and warranties contained in this Agreement and the other Loan Documents are true and correct in all material respects on and as of the date such increase becomes available, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct in

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all material respects as of such earlier date, and (2) no Default or Event of Default shall have occurred and be continuing; and

(j) such amendments, acknowledgments, consents, documents, instruments, any registrations, if any, shall have been executed and delivered and/or obtained by Borrower as required by the Agent, in its reasonable discretion;

(k) prior to the date the Revolving Credit Increase becomes available, each Lender, if applicable, shall have completed its flood insurance due diligence and flood insurance compliance as required as a result of such increase; and

(l) no Revolving Credit Increase shall be permitted under this Section 2.12 if such increase would result in a violation of any Subordinated Debt Documents or Subordination Agreements, unless the Agent has received satisfactory evidence prior to giving effect to such increase that the holders of any such Subordinated Debt shall have consented to such increase on terms satisfactory to Agent.

2.13 Use of Proceeds of Advances

. Advances of the Revolving Credit shall be used to finance working capital and for all other lawful corporate purposes.

3. **LETTERS OF CREDIT.**

3.1 Letters of Credit

. Subject to the terms and conditions of this Agreement, Issuing Lender may, but shall not be required to, through the Issuing Office, at any time and from time to time from and after the date hereof until thirty (30) days prior to the Revolving Credit Maturity Date, upon the written request of the Borrower accompanied by a duly executed Letter of Credit Agreement and such other documentation related to the requested Letter of Credit as the Issuing Lender may require, issue Letters of Credit in Dollars for the account of the Borrower, in an aggregate amount for all Letters of Credit issued hereunder at any one time outstanding not to exceed the Letter of Credit Maximum Amount. Each Letter of Credit shall be in a minimum face amount of One Hundred Thousand Dollars (\$100,000) (or such lesser amount as may be agreed to by Issuing Lender) and each Letter of Credit (including any renewal thereof) shall expire not later than the first to occur of (i) twelve (12) months after the date of issuance thereof and (ii) ten (10) Business Days prior to the Revolving Credit Maturity Date in effect on the date of issuance thereof. The submission of all applications in respect of and the issuance of each Letter of Credit hereunder shall be subject in all respects to such industry rules and governing law as are acceptable to the Issuing Lender. In the event of any conflict between this Agreement and any Letter of Credit Document other than any Letter of Credit, this Agreement shall control.

3.2 Conditions to Issuance

. No Letter of Credit shall be issued (including the renewal or extension of any Letter of Credit previously issued) at the request and for the account of the Borrower unless, as of the date of issuance (or renewal or extension) of such Letter of Credit:

(a) (i) after giving effect to the Letter of Credit requested, the Letter of Credit Obligations do not exceed the Letter of Credit Maximum Amount; and (ii) after giving effect to the Letter of Credit

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requested, the Letter of Credit Obligations on such date plus the aggregate amount of all Revolving Credit Advances and Swing Line Advances (including all Advances deemed disbursed by the Agent under Section 3.6(c) hereof in respect of the Borrower's Reimbursement Obligations) hereunder requested or outstanding on such date do not exceed the lesser of (A) the Revolving Credit Aggregate Commitment and (B) the then applicable Borrowing Base;

(b) the representations and warranties of the Credit Parties contained in this Agreement and the other Loan Documents are true and correct in all material respects and shall be true and correct in all material respects as of date of the issuance of such Letter of Credit (both before and immediately after the issuance of such Letter of Credit), other than any representation or warranty that expressly speaks only as of a different date;

(c) there is no Default or Event of Default in existence, and none will exist upon the issuance of such Letter of Credit;

(d) the Borrower shall have delivered to Issuing Lender at its Issuing Office, not less than three (3) Business Days prior to the requested date for issuance (or such shorter time as the Issuing Lender, in its sole discretion, may permit), the Letter of Credit Agreement related thereto, together with such other documents and materials as may be required pursuant to the terms thereof, and the terms of the proposed Letter of Credit shall be reasonably satisfactory to Issuing Lender;

(e) no order, judgment or decree of any court, arbitrator or Governmental Authority shall purport by its terms to enjoin or restrain Issuing Lender from issuing the Letter of Credit requested, or any Revolving Credit Lender from taking an assignment of its Revolving Credit Percentage thereof pursuant to Section 3.6 hereof, and no law, rule, regulation, request or directive (whether or not having the force of law) shall prohibit the Issuing Lender from issuing, or any Revolving Credit Lender from taking an assignment of its Revolving Credit Percentage of, the Letter of Credit requested or letters of credit generally;

(f) there shall have been (i) no introduction of or change in the interpretation of any law or regulation, (ii) no declaration of a general banking moratorium by banking authorities in the United States, California, or the respective jurisdictions in which the Revolving Credit Lenders, the Borrower and the beneficiary of the requested Letter of Credit are located, and (iii) no establishment of any new restrictions by any central bank or other governmental agency or authority on transactions involving letters of credit or on banks generally that, in any case described in this clause (e), would make it unlawful or unduly burdensome for the Issuing Lender to issue or any Revolving Credit Lender to take an assignment of its Revolving Credit Percentage of the requested Letter of Credit or letters of credit generally;

(g) if any Revolving Credit Lender is a Defaulting Lender, the Issuing Lender has entered into arrangements satisfactory to it to eliminate the Fronting Exposure with respect to the participation in the Letter of Credit Obligations by such Defaulting Lender, including creation of a cash collateral account on terms satisfactory to the Agent or delivery of other security to assure payment of such Defaulting Lender's Percentage of all outstanding Letter of Credit Obligations; and

(h) Issuing Lender shall have received the issuance fees required in connection with the issuance of such Letter of Credit pursuant to Section 3.4 hereof.

Each Letter of Credit Agreement submitted to Issuing Lender pursuant hereto shall constitute the certification by the Borrower of the matters set forth in Sections 5.2 hereof. The Agent shall be entitled to rely on such certification without any duty of inquiry.

3.3 Notice

The Issuing Lender shall deliver to the Agent, concurrently with or promptly following its issuance of any Letter of Credit, a true and complete copy of each Letter of Credit. Promptly upon its receipt thereof, the Agent shall give notice, substantially in the form attached as Exhibit E, to each Revolving Credit Lender of the issuance of each Letter of Credit, specifying the amount thereof and the amount of such Revolving Credit Lender's Percentage thereof.

3.4 Letter of Credit Fees; Increased Costs.

(a) The Borrower shall pay letter of credit fees as follows:

(i) A per annum letter of credit fee with respect to the undrawn amount of each Letter of Credit issued pursuant hereto (based on the amount of each Letter of Credit) in the amount of the Applicable Fee Percentage (determined with reference to Annex I to this Agreement) shall be paid to the Agent for distribution to the Revolving Credit Lenders in accordance with their Revolving Credit Percentages.

(ii) A letter of credit facing fee on the face amount of each Letter of Credit shall be paid to the Agent for distribution to the Issuing Lender for its own account, in accordance with the terms of the applicable Fee Letter.

(b) All payments by the Borrower to the Agent for distribution to the Issuing Lender or the Revolving Credit Lenders under this Section 3.4 shall be made in Dollars in immediately available funds at the Issuing Office or such other office of the Agent as may be designated from time to time by written notice to the Borrower by the Agent. The fees described in clauses (a)(i) and (ii) above (i) shall be nonrefundable under all circumstances, (ii) in the case of fees due under clause (a)(i) above, shall be payable quarterly in advance on the first day of each calendar quarter, and (iii) in the case of fees due under clause (a)(ii) above, shall be payable upon the issuance of such Letter of Credit and quarterly in advance thereafter. The fees due under clause (a)(i) above shall be determined by multiplying the Applicable Fee Percentage times the undrawn amount of the face amount of each such Letter of Credit on the date of determination, and shall be calculated on the basis of a 360 day year and assessed for the actual number of days from the date of the issuance thereof to the stated expiration thereof. The parties hereto acknowledge that, unless the Issuing Lender otherwise agrees, any material amendment and any extension to a Letter of Credit issued hereunder shall be treated as a new Letter of Credit for the purposes of the letter of credit facing fee.

(c) If any Change in Law shall either (i) impose, modify or cause to be deemed applicable any reserve, special deposit, limitation or similar requirement against letters of credit issued or participated in by, or assets held by, or deposits in or for the account of, Issuing Lender or any Revolving Credit Lender or (ii) impose on Issuing Lender or any Revolving Credit Lender any other condition regarding this Agreement, the Letters of Credit or any participations in such Letters of Credit, and the result of any event referred to in clause (i) or (ii) above shall be to increase the cost or expense (other than Taxes) to Issuing Lender or such Revolving Credit Lender of issuing or maintaining or participating in any of the Letters of Credit (which increase in cost or expense shall be determined by the Issuing Lender's or such Revolving Credit Lender's reasonable allocation of the aggregate of such cost increases and expenses resulting from such events), then, upon demand by the Issuing Lender or such Revolving Credit Lender, as the case may be, the Borrower shall, within thirty (30) days following demand for payment, pay to Issuing Lender or such Revolving Credit Lender, as the case may be, from time to time as specified by the Issuing Lender or such Revolving Credit Lender, additional amounts which shall be sufficient to compensate the Issuing Lender or such Revolving Credit Lender for such increased cost and expense (together with interest on each

such amount from ten days after the date such payment is due until payment in full thereof at the Base Rate), provided that if the Issuing Lender or such Revolving Credit Lender could take any reasonable action, without cost or administrative or other burden or restriction to such Lender, to mitigate or eliminate such cost or expense, it agrees to do so within a reasonable time after becoming aware of the foregoing matters. Each demand for payment under this Section 3.4(c) shall be accompanied by a certificate of Issuing Lender or the applicable Revolving Credit Lender setting forth the amount of such increased cost or expense incurred by the Issuing Lender or such Revolving Credit Lender, as the case may be, as a result of any event mentioned in clause (i) or (ii) above, and in reasonable detail, the methodology for calculating and the calculation of such amount, which certificate shall be prepared in good faith and shall be conclusive evidence, absent manifest error, as to the amount thereof.

3.5 Other Fees

. In connection with the Letters of Credit, and in addition to the Letter of Credit Fees, the Borrower shall pay, for the sole account of the Issuing Lender, standard documentation, administration, payment and cancellation charges assessed by Issuing Lender or the Issuing Office, at the times, in the amounts and on the terms set forth or to be set forth from time to time in the standard fee schedule of the Issuing Office in effect from time to time.

3.6 Participation Interests in and Drawings and Demands for Payment Under Letters of Credit.

(a) Upon issuance by the Issuing Lender of each Letter of Credit hereunder (and on the Effective Date with respect to each existing Letter of Credit), each Revolving Credit Lender shall automatically acquire a pro rata participation interest in such Letter of Credit and each related Letter of Credit Payment based on its respective Revolving Credit Percentage.

(b) If the Issuing Lender shall honor a draft or other demand for payment presented or made under any Letter of Credit, the Borrower agrees to pay to the Issuing Lender an amount equal to the amount paid by the Issuing Lender in respect of such draft or other demand under such Letter of Credit and all reasonable expenses paid or incurred by the Agent relative thereto not later than 1:00 p.m. (Detroit time), in Dollars, on (i) the Business Day that the Borrower received notice of such presentment and honor, if such notice is received prior to 11:00 a.m. (Detroit time) or (ii) the Business Day immediately following the day that the Borrower received such notice, if such notice is received after 11:00 a.m. (Detroit time).

(c) If the Issuing Lender shall honor a draft or other demand for payment presented or made under any Letter of Credit, but the Borrower does not reimburse the Issuing Lender as required under clause (b) above and the Revolving Credit Aggregate Commitment has not been terminated (whether by maturity, acceleration or otherwise), the Borrower shall be deemed to have immediately requested that the Revolving Credit Lenders make a Base Rate Advance of the Revolving Credit (which Advance may be subsequently converted at any time into a ~~Eurodollar-based~~ BSBY Rate Advance pursuant to Section 2.3 hereof) in the principal amount equal to the amount paid by the Issuing Lender in respect of such draft or other demand under such Letter of Credit and all reasonable expenses paid or incurred by the Agent relative thereto. The Agent will promptly notify the Revolving Credit Lenders of such deemed request, and each such Lender shall make available to the Agent an amount equal to its pro rata share (based on its Revolving Credit Percentage) of the amount of such Advance.

(d) If the Issuing Lender shall honor a draft or other demand for payment presented or made under any Letter of Credit, but the Borrower does not reimburse the Issuing Lender as required under clause (b) above, and (i) the Revolving Credit Aggregate Commitment has been terminated (whether by maturity, acceleration or otherwise), or (ii) any reimbursement received by the Issuing Lender from the Borrower is

or must be returned or rescinded upon or during any bankruptcy or reorganization of any Credit Party or otherwise, then the Agent shall notify each Revolving Credit Lender, and each Revolving Credit Lender will be obligated to pay the Agent for the account of the Issuing Lender its pro rata share (based on its Revolving Credit Percentage) of the amount paid by the Issuing Lender in respect of such draft or other demand under such Letter of Credit and all reasonable expenses paid or incurred by the Agent relative thereto (but no such payment shall diminish the obligations of the Borrower hereunder). Upon receipt thereof, the Agent will deliver to such Revolving Credit Lender a participation certificate evidencing its participation interest in respect of such payment and expenses. To the extent that a Revolving Credit Lender fails to make such amount available to the Agent by 11:00 am Detroit time on the Business Day next succeeding the date such notice is given, such Revolving Credit Lender shall pay interest on such amount in respect of each day from the date such amount was required to be paid, to the date paid to the Agent, at the rate applicable under Section 2.4(c)(i) in respect of Revolving Credit Advances. The failure of any Revolving Credit Lender to make its pro rata portion of any such amount available under to the Agent shall not relieve any other Revolving Credit Lender of its obligation to make available its pro rata portion of such amount, but no Revolving Credit Lender shall be responsible for failure of any other Revolving Credit Lender to make such pro rata portion available to the Agent.

(e) In the case of any Advance made under this Section 3.6, each such Advance shall be disbursed notwithstanding any failure to satisfy any conditions for disbursement of any Advance set forth in Article 2 hereof or Article 5 hereof, and, to the extent of the Advance so disbursed, the Reimbursement Obligation of the Borrower to the Agent under this Section 3.6 shall be deemed satisfied (unless, in each case, taking into account any such deemed Advances, the aggregate outstanding principal amount of Advances of the Revolving Credit and the Swing Line, plus the Letter of Credit Obligations (other than the Reimbursement Obligations to be reimbursed by this Advance) on such date exceed the lesser of the Borrowing Base or the then applicable Revolving Credit Aggregate Commitment).

(f) If the Issuing Lender shall honor a draft or other demand for payment presented or made under any Letter of Credit, the Issuing Lender shall provide notice thereof to the Borrower on the date such draft or demand is honored, and to each Revolving Credit Lender on such date unless the Borrower shall have satisfied its reimbursement obligations by payment to the Agent (for the benefit of the Issuing Lender) as required under this Section 3.6. The Issuing Lender shall further use reasonable efforts to provide notice to the Borrower prior to honoring any such draft or other demand for payment, but such notice, or the failure to provide such notice, shall not affect the rights or obligations of the Issuing Lender with respect to any Letter of Credit or the rights and obligations of the parties hereto, including without limitation the obligations of the Borrower under this Section 3.6.

(g) Notwithstanding the foregoing however no Revolving Credit Lender shall be deemed to have acquired a participation in a Letter of Credit if the officers of the Issuing Lender immediately responsible for matters concerning this Agreement shall have received written notice from the Agent or any Lender at least two (2) Business Days prior to the date of the issuance or extension of such Letter of Credit or, with respect to any Letter of Credit subject to automatic extension, at least five (5) Business Days prior to the date that the beneficiary under such Letter of Credit must be notified that such Letter of Credit will not be renewed, that the issuance or extension of Letters of Credit should be suspended based on the occurrence and continuance of a Default or Event of Default and stating that such notice is a “notice of default”; provided, however that the Revolving Credit Lenders shall be deemed to have acquired such a participation upon the date on which such Default or Event of Default has been waived by the requisite Revolving Credit Lenders, as applicable.

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(h) Nothing in this Agreement shall be construed to require or authorize any Revolving Credit Lender to issue any Letter of Credit, it being recognized that the Issuing Lender shall be the sole issuer of Letters of Credit under this Agreement.

(i) In the event that any Revolving Credit Lender becomes a Defaulting Lender, the Issuing Lender may, at its option, require that the Borrower enter into arrangements satisfactory to Issuing Lender to eliminate the Fronting Exposure with respect to the participation in the Letter of Credit Obligations by such Defaulting Lender, including creation of a cash collateral account on terms satisfactory to the Agent or delivery of other security to assure payment of such Defaulting Lender's Percentage of all outstanding Letter of Credit Obligations.

3.7 Obligations Irrevocable

. The obligations of the Borrower to make payments to the Agent for the account of Issuing Lender or the Revolving Credit Lenders with respect to Letter of Credit Obligations under Section 3.6 hereof, shall be unconditional and irrevocable and not subject to any qualification or exception whatsoever, including, without limitation:

(a) Any lack of validity or enforceability of any Letter of Credit, any Letter of Credit Agreement, any other documentation relating to any Letter of Credit, this Agreement or any of the other Loan Documents (the "Letter of Credit Documents");

(b) Any amendment, modification, waiver, consent, or any substitution, exchange or release of or failure to perfect any interest in collateral or security, with respect to or under any Letter of Credit Document;

(c) The existence of any claim, setoff, defense or other right which the Borrower may have at any time against any beneficiary or any transferee of any Letter of Credit (or any persons or entities for whom any such beneficiary or any such transferee may be acting), the Agent, the Issuing Lender or any Revolving Credit Lender or any other Person, whether in connection with this Agreement, any of the Letter of Credit Documents, the transactions contemplated herein or therein or any unrelated transactions;

(d) Any draft or other statement or document presented under any Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect;

(e) Payment by the Issuing Lender to the beneficiary under any Letter of Credit against presentation of documents which do not comply with the terms of such Letter of Credit, including failure of any documents to bear any reference or adequate reference to such Letter of Credit;

(f) Any failure, omission, delay or lack on the part of the Agent, Issuing Lender or any Revolving Credit Lender or any party to any of the Letter of Credit Documents or any other Loan Document to enforce, assert or exercise any right, power or remedy conferred upon the Agent, Issuing Lender, any Revolving Credit Lender or any such party under this Agreement, any of the other Loan Documents or any of the Letter of Credit Documents, or any other acts or omissions on the part of the Agent, Issuing Lender, any Revolving Credit Lender or any such party; or

(g) Any other event or circumstance that would, in the absence of this Section 3.7, result in the release or discharge by operation of law or otherwise of the Borrower from the performance or observance of any obligation, covenant or agreement contained in Section 3.6 hereof.

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No setoff, counterclaim, reduction or diminution of any obligation or any defense of any kind or nature which the Borrower has or may have against the beneficiary of any Letter of Credit shall be available hereunder to the Borrower against the Agent, Issuing Lender or any Revolving Credit Lender. With respect to any Letter of Credit, nothing contained in this Section 3.7 shall be deemed to prevent the Borrower, after satisfaction in full of the absolute and unconditional obligations of the Borrower hereunder with respect to such Letter of Credit, from asserting in a separate action any claim, defense, set off or other right which they (or any of them) may have against the Agent, Issuing Lender or any Revolving Credit Lender in connection with such Letter of Credit.

3.8 Risk Under Letters of Credit.

(a) In the administration and handling of Letters of Credit and any security therefor, or any documents or instruments given in connection therewith, Issuing Lender shall have the sole right to take or refrain from taking any and all actions under or upon the Letters of Credit.

(b) Subject to other terms and conditions of this Agreement, Issuing Lender shall issue the Letters of Credit and shall hold the documents related thereto in its own name and shall make all collections thereunder and otherwise administer the Letters of Credit in accordance with Issuing Lender's regularly established practices and procedures and will have no further obligation with respect thereto. In the administration of Letters of Credit, Issuing Lender shall not be liable for any action taken or omitted on the advice of counsel, accountants, appraisers or other experts selected by Issuing Lender with due care and Issuing Lender may rely upon any notice, communication, certificate or other statement from the Borrower, beneficiaries of Letters of Credit, or any other Person which Issuing Lender believes to be authentic. Issuing Lender will, upon request, furnish the Revolving Credit Lenders with copies of Letter of Credit Documents related thereto.

(c) In connection with the issuance and administration of Letters of Credit and the assignments hereunder, Issuing Lender makes no representation and shall have no responsibility with respect to (i) the obligations of the Borrower or the validity, sufficiency or enforceability of any document or instrument given in connection therewith, or the taking of any action with respect to same, (ii) the financial condition of, any representations made by, or any act or omission of the Borrower or any other Person, or (iii) any failure or delay in exercising any rights or powers possessed by Issuing Lender in its capacity as issuer of Letters of Credit in the absence of its gross negligence or willful misconduct. Each of the Revolving Credit Lenders expressly acknowledges that it has made and will continue to make its own evaluations of the Borrower's creditworthiness without reliance on any representation of Issuing Lender or Issuing Lender's officers, agents and employees.

(d) If at any time Issuing Lender shall recover any part of any unreimbursed amount for any draw or other demand for payment under a Letter of Credit, or any interest thereon, the Agent or Issuing Lender, as the case may be, shall receive same for the pro rata benefit of the Revolving Credit Lenders in accordance with their respective Percentages and shall promptly deliver to each Revolving Credit Lender its share thereof, less such Revolving Credit Lender's pro rata share of the costs of such recovery, including court costs and attorney's fees. If at any time any Revolving Credit Lender shall receive from any source whatsoever any payment on any such unreimbursed amount or interest thereon in excess of such Revolving Credit Lender's Percentage of such payment, such Revolving Credit Lender will promptly pay over such excess to the Agent, for redistribution in accordance with this Agreement.

3.9 Indemnification

The Borrower hereby indemnifies and agrees to hold harmless the Revolving Credit Lenders, the Issuing Lender and the Agent and their respective Affiliates, and the respective officers, directors, employees and agents of such Persons (each an "L/C Indemnified Person"), from and against any and all claims, damages, losses, liabilities, costs or expenses of any kind or nature whatsoever (other than Taxes) which the Revolving Credit Lenders, the Issuing Lender or the Agent or any such Person may incur or which may be claimed against any of them by reason of or in connection with any Letter of Credit (collectively, the "L/C Indemnified Amounts"), and none of the Issuing Lender, any Revolving Credit Lender or the Agent or any of their respective officers, directors, employees or agents shall be liable or responsible for:

(a) the use which may be made of any Letter of Credit or for any acts or omissions of any beneficiary in connection therewith;

(b) the validity, sufficiency or genuineness of documents or of any endorsement thereon, even if such documents should in fact prove to be in any or all respects invalid, insufficient, fraudulent or forged;

(c) payment by the Issuing Lender to the beneficiary under any Letter of Credit against presentation of documents which do not strictly comply with the terms of any Letter of Credit (unless such payment resulted from the gross negligence or willful misconduct of the Issuing Lender), including failure of any documents to bear any reference or adequate reference to such Letter of Credit;

(d) any error, omission, interruption or delay in transmission, dispatch or delivery of any message or advice, however transmitted, in connection with any Letter of Credit; or

(e) any other event or circumstance whatsoever arising in connection with any Letter of Credit.

It is understood that in making any payment under a Letter of Credit the Issuing Lender will rely on documents presented to it under such Letter of Credit as to any and all matters set forth therein without further investigation and regardless of any notice or information to the contrary.

With respect to clauses (a) through (e) hereof, (i) no Borrower shall be required to indemnify any L/C Indemnified Person for any L/C Indemnified Amounts to the extent such amounts result from the gross negligence or willful misconduct of such L/C Indemnified Person or any officer, director, employee or agent of such L/C Indemnified Person and (ii) the Agent and the Issuing Lender shall be liable to the Borrower to the extent, but only to the extent, of any direct, as opposed to consequential or incidental, damages suffered by Borrower which were caused by the gross negligence or willful misconduct of the Issuing Lender or any officer, director, employee or agent of the Issuing Lender or by the Issuing Lender's wrongful dishonor of any Letter of Credit after the presentation to it by the beneficiary thereunder of a draft or other demand for payment and other documentation strictly complying with the terms and conditions of such Letter of Credit.

3.10 Right of Reimbursement

Each Revolving Credit Lender agrees to reimburse the Issuing Lender on demand, pro rata in accordance with its respective Revolving Credit Percentage, for (i) the reasonable out-of-pocket costs and expenses of the Issuing Lender to be reimbursed by the Borrower pursuant to any Letter of Credit Agreement or any Letter of Credit, to the extent not reimbursed by the Borrower or any other Credit Party and (ii) any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, fees,

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reasonable out-of-pocket expenses or disbursements of any kind and nature whatsoever which may be imposed on, incurred by or asserted against Issuing Lender in any way relating to or arising out of this Agreement (including Section 3.6(c) hereof), any Letter of Credit, any documentation or any transaction relating thereto, or any Letter of Credit Agreement, to the extent not reimbursed by the Borrower, except to the extent that such liabilities, losses, costs or expenses were incurred by Issuing Lender as a result of Issuing Lender's gross negligence or willful misconduct or by the Issuing Lender's wrongful dishonor of any Letter of Credit after the presentation to it by the beneficiary thereunder of a draft or other demand for payment and other documentation strictly complying with the terms and conditions of such Letter of Credit.

4. [RESERVED].

5. CONDITIONS.

The obligations of the Lenders to make Advances or loans pursuant to this Agreement and the obligation of the Issuing Lender to issue Letters of Credit are subject to the following conditions:

5.1 Conditions of Initial Advances

The obligations of the Lenders to make initial Advances or loans pursuant to this Agreement and the obligation of the Issuing Lender to issue initial Letters of Credit, in each case, on the Effective Date only, are subject to the following conditions:

(a) Notes, this Agreement and the other Loan Documents. The Borrower shall have executed and delivered to the Agent for the account of each Lender requesting Notes, the Swing Line Note and the Revolving Credit Notes; the Borrower shall have executed and delivered this Agreement; and each Credit Party shall have executed and delivered the other Loan Documents to which such Credit Party is required to be a party (including all schedules and other documents to be delivered pursuant hereto); and such Notes (if any), this Agreement and the other Loan Documents shall be in full force and effect.

(b) Corporate Authority. The Agent shall have received, with a counterpart thereof for each Lender, from each Credit Party, a certificate of its Secretary or Assistant Secretary or other authorized officer dated as of the Effective Date as to:

(i) corporate resolutions (or the equivalent) of each Credit Party authorizing the transactions contemplated by this Agreement and the other Loan Documents approval of this Agreement and the other Loan Documents, in each case to which such Credit Party is party, and authorizing the execution and delivery of this Agreement and the other Loan Documents, and in the case of the Borrower, authorizing the execution and delivery of requests for Advances and the issuance of Letters of Credit hereunder,

(ii) the incumbency and signature of the officers or other authorized persons of such Credit Party executing any Loan Document and in the case of the Borrower, the officers who are authorized to execute any Requests for Advance, or requests for the issuance of Letters of Credit,

(iii) a certificate of good standing or continued existence (or the equivalent thereof) from the state of its incorporation or formation, and

(iv) copies of such Credit Party's articles of incorporation and bylaws or other constitutional documents, as in effect on the Effective Date.

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(c) Collateral Documents, Guaranties and other Loan Documents. The Agent shall have received the following documents, each in form and substance satisfactory to the Agent and fully executed by each party thereto:

(i) The following Collateral Documents, each in form and substance acceptable to the Agent and fully executed by each party thereto and dated as of the Effective Date:

(A) the Security Agreement, executed and delivered by the Credit Parties.

(ii) (A) Certified copies of uniform commercial code requests for information, or a similar search report certified by a party acceptable to the Agent, dated a date reasonably prior to the Effective Date, listing all effective financing statements in the jurisdiction noted on Schedule 5.1(c) which name any Credit Party (under their present names or under any previous names used within five (5) years prior to the date hereof) as debtors, together with (x) copies of such financing statements, and (y) authorized Uniform Commercial Code (Form UCC-3) Termination Statements, if any, necessary to release all Liens and other rights of any Person in any Collateral described in the Collateral Documents previously granted by any Person (other than Liens permitted by Section 8.2 of this Agreement) and (B) intellectual property search reports results from the United States Patent and Trademark Office and the United States Copyright Office for the Credit Parties dated a date reasonably prior to the Effective Date.

(iii) Any documents (including, without limitation, financing statements, amendments to financing statements and assignments of financing statements, stock powers executed in blank and any endorsements) requested by the Agent and reasonably required to be provided in connection with the Collateral Documents to create, in favor of the Agent (for and on behalf of the Lenders), a first priority perfected security interest in the Collateral thereunder shall have been filed, registered or recorded, or shall have been delivered to the Agent in proper form for filing, registration or recordation.

(d) Insurance. The Agent shall have received evidence reasonably satisfactory to it that the Credit Parties have obtained the insurance policies required by Section 7.5 hereof and that such insurance policies are in full force and effect.

(e) Compliance with Certain Documents and Agreements. Each Credit Party shall have each performed and complied in all material respects with all agreements and conditions contained in this Agreement and the other Loan Documents, to the extent required to be performed or complied with by such Credit Party. No Person (other than the Agent, Lenders and Issuing Lender) party to this Agreement or any other Loan Document shall be in material default in the performance or compliance with any of the terms or provisions of this Agreement or the other Loan Documents or shall be in material default in the performance or compliance with any of the material terms or material provisions of, in each case to which such Person is a party.

(f) Opinions of Counsel. The Credit Parties shall furnish the Agent prior to the initial Advance under this Agreement, with signed copies for each Lender, opinions of counsel to the Credit Parties, including opinions of local counsel to the extent deemed necessary by the Agent, in each case dated the Effective Date and covering such matters as reasonably required by and otherwise reasonably satisfactory in form and substance to the Agent and each of the Lenders.

(g) Payment of Fees. The Borrower shall have paid to Comerica Bank any fees due under the terms of the Fee Letter, along with any other fees, costs or expenses due and outstanding to the Agent or

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the Lenders as of the Effective Date (including reasonable fees, disbursements and other charges of counsel to the Agent).

(h) Pro Forma Balance Sheet and Financial Statements. The Borrower shall have delivered to the Lenders and the Agent, in form and substance satisfactory to the Agent: (a) the Pro Forma Balance Sheet, (b) quarterly financial statements prepared by the Borrower for February 28, 2019 and (c) annual projections of the Borrower through the fiscal year ending February 28, 2020, in form reasonably acceptable to the Agent, it being understood and agreed that Borrower will furnish updated projections for such period to Agent after the Effective Date reflecting the adoption of ASC 606.

(i) Management Agreement and Management Fee Subordination Agreement. The Agent shall have received (i) a copy of the Management Agreement and (ii) fully executed Management Fee Subordination Agreement in form and substance acceptable to the Agent.

(j) Governmental and Other Approvals. The Agent shall have received copies of all authorizations, consents, approvals, licenses, qualifications or formal exemptions, filings, declarations and registrations with, any court, governmental agency or regulatory authority or any securities exchange or any other person or party (whether or not governmental) received by any Credit Party in connection with the transactions contemplated by the Loan Documents to occur on the Effective Date.

(k) Closing Certificate. The Agent shall have received, with a signed counterpart for each Lender, a certificate of a Responsible Officer of the Borrower dated the Effective Date (or, if different, the date of the initial Advance hereunder), stating that to the best of his or her respective knowledge after due inquiry, (a) the conditions set forth in this Section 5 have been satisfied to the extent required to be satisfied by any Credit Party; (b) the representations and warranties made by the Credit Parties in this Agreement or any of the other Loan Documents, as applicable, are true and correct in all material respects; (c) no Default or Event of Default shall have occurred and be continuing; (d) since December 31, 2018, nothing shall have occurred which has had, or could reasonably be expected to have, a material adverse change on the business, results of operations, conditions, property or prospects (financial or otherwise) of the Borrower or any other Credit Party; and (e) there shall have been no material adverse change to the Pro Forma Balance Sheet.

(l) Escalate Subordinated Debt Documents. On or before the Effective Date, the Agent shall have received (i) evidence satisfactory to it that Borrower shall have received not less than \$22,000,000 from Escalate, (ii) copies of fully executed Escalate Subordinated Debt Documents, and (iii) a fully executed Escalate Subordination Agreement, all in form and substances acceptable to the Agent.

(m) Customer Identification Forms. The Agent shall have received (i) the completed Beneficial Ownership Certification from the Borrower and each Guarantor and (ii) all other documentation and other information required by bank regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including USA PATRIOT Act, and a properly completed and signed IRS Form W-8 or W-9, as applicable, for the Borrower, each Guarantor and any other Person who provides guaranty or collateral support for all or any of the Indebtedness.

(n) Representations and Warranties. The representations and warranties made by the Credit Parties in this Agreement or any of the other Loan Documents, as applicable, shall be true and correct in all material respects.

(o) No Default or Event of Default shall have occurred and be continuing.

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(p) Since December 31, 2018, nothing shall have occurred which has had, or could reasonably be expected to have, a material adverse change on the business, results of operations, conditions, property or prospects (financial or otherwise) of the Borrower or any other Credit Party.

5.2 Continuing Conditions

. The obligations of each Lender to make Advances (including the initial Advance) or to provide other credit accommodations and the obligation of the Issuing Lender to issue any Letters of Credit shall be subject to the continuing conditions that:

(a) No Default or Event of Default shall exist as of the date of the Advance or the request for the Letter of Credit, as the case may be; and

(b) Each of the representations and warranties contained in this Agreement and in each of the other Loan Documents shall be true and correct in all material respects as of the date of the Advance or Letter of Credit (as the case may be) as if made on and as of such date (other than any representation or warranty that expressly speaks only as of a different date).

5.3 Post-Closing Conditions

. The Borrower agrees as follows with respect to the period following the Effective Date:

(a) Within ninety (90) days after the Effective Date (as may be extended by the Agent in its reasonable discretion), the Agent and the Lenders shall have received the commercially reasonable assistance of the Borrower in completing, in form and content satisfactory to the Agent, an audit of all accounts receivable and inventory of the Borrower and its respective Subsidiaries;

(b) Within ninety (90) days after the Effective Date (as may be extended by the Agent in its reasonable discretion), Borrower shall, with the commercially reasonable assistance of the Agent, deliver an Account Control Agreement with respect to any deposit or securities accounts maintained with Agent, any Lender, or any other third-party financial institution as of the Effective Date (but excluding any Excluded Accounts); and

(c) Within ninety (90) days after the Effective Date (as may be extended by the Agent in its reasonable discretion), for each real property location (including each warehouse or other storage location) leased by any Credit Party as a lessee (such locations being disclosed and identified as such on Schedule 6.3(b) hereto), such Credit Party shall, with the commercially reasonable assistance of the Agent, (i) deliver a true, complete and accurate copy of the fully executed applicable lease bailment or warehouse agreement, as the case may be; and (ii) use commercially reasonable efforts to deliver a Collateral Access Agreement with respect to each location.

6. REPRESENTATIONS AND WARRANTIES.

The Borrower represents and warrants to the Agent, the Lenders, the Swing Line Lender and the Issuing Lender as follows:

6.1 Corporate Authority

. Each Credit Party is a corporation (or other business entity) duly organized and existing in good standing under the laws of the state or jurisdiction of its incorporation or formation, as applicable, and each

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Credit Party is duly qualified and authorized to do business as a foreign corporation in each jurisdiction where the character of its assets or the nature of its activities makes such qualification and authorization necessary except where failure to be so qualified or be in good standing could not reasonably be expected to have a Material Adverse Effect. Each Credit Party has all requisite corporate, limited liability or partnership power and authority to own all its property (whether real, personal, tangible or intangible or of any kind whatsoever) and to carry on its business.

6.2 Due Authorization

. Execution, delivery and performance of this Agreement, and the other Loan Documents, to which each Credit Party is party, and the issuance of the Notes by the Borrower (if requested) are within such Person's corporate, limited liability or partnership power, have been duly authorized, are not in contravention of any material law applicable to such Credit Party or the terms of such Credit Party's organizational documents and, except as have been previously obtained or as referred to in Section 6.10, below, do not require the consent or approval of any governmental body, agency or authority or any other third party except to the extent that such consent or approval is not material to the transactions contemplated by the Loan Documents.

6.3 Good Title; Leases; Assets; No Liens.

(a) Each Credit Party, to the extent applicable, has good and valid title (or, in the case of real property, good and marketable title) to all assets owned by it, subject only to the Liens permitted under section 8.2 hereof, and each Credit Party has a valid leasehold or interest as a lessee or a licensee in all of its leased real property;

(b) Schedule 6.3(b) hereof identifies all of the real property owned or leased, as lessee thereunder, by the Credit Parties on the Effective Date, including all warehouse or bailee locations;

(c) The Eligible Recurring Revenue Contracts are bona fide, existing contracts. Each Credit Party has not received notice of any actual or imminent Insolvency Proceeding of any customer with respect to an Eligible Recurring Revenue Contract that is included in any Borrowing Base Certificate as an Eligible Recurring Revenue Contract. To the knowledge of the Borrower, no licenses or agreements giving rise to such Eligible Recurring Revenue Contracts is with any Sanctioned Country or with any Person organized under or doing business in a Sanctioned Country.

(d) The Credit Parties will collectively own or collectively have a valid leasehold interest in all assets that were owned or leased (as lessee) by the Credit Parties immediately prior to the Effective Date to the extent that such assets are necessary for the continued operation of the Credit Parties' businesses in substantially the manner as such businesses were operated immediately prior to the Effective Date;

(e) Each Credit Party owns or has a valid leasehold interest in all real property necessary for its continued operations and, to the best knowledge of the Borrower, no material condemnation, eminent domain or expropriation action has been commenced or threatened against any such owned or leased real property; and

(f) There are no Liens on and no financing statements on file with respect to any of the assets owned by the Credit Parties, except for the Liens permitted pursuant to Section 8.2 of this Agreement.

6.4 Taxes

. Except as set forth on Schedule 6.4 hereof, each Credit Party has filed all United States federal income and other material tax returns which are required to be filed by it or has obtained extensions for filing such tax returns and is not delinquent in filing such returns in accordance with such extensions and has paid all material taxes due by it, except to the extent such taxes are being contested in good faith by appropriate proceedings and with respect to which adequate provision has been made on the books of such Credit Party or if such taxes or assessments do not, individually or in the aggregate exceed \$100,000.00.

6.5 No Defaults

. No Credit Party is in default under or with respect to any agreement, instrument or undertaking to which is a party or by which it or any of its property is bound which would cause or would reasonably be expected to cause a Material Adverse Effect.

6.6 Enforceability of Agreement and Loan Documents

. This Agreement and each of the other Loan Documents to which any Credit Party is a party (including without limitation, each Request for Advance), have each been duly executed and delivered by its duly authorized officers and constitute the valid and binding obligations of such Credit Party, enforceable against such Credit Party in accordance with their respective terms, except as enforcement thereof may be limited by applicable bankruptcy, reorganization, insolvency, fraudulent conveyance, moratorium or similar laws affecting the enforcement of creditor's rights, generally and by general principles of equity (regardless of whether enforcement is considered in a proceeding in law or equity).

6.7 Compliance with Laws

. (a) Except as disclosed on Schedule 6.7, each Credit Party has complied with all applicable federal, state and local laws, ordinances, codes, rules, regulations and guidelines (including consent decrees and administrative orders) including but not limited to Hazardous Material Laws, and is in compliance with any Requirement of Law, except to the extent that failure to comply therewith could not reasonably be expected to have a Material Adverse Effect; and (b) neither the extension of credit made pursuant to this Agreement or the use of the proceeds thereof by the Credit Parties will violate the Trading with the Enemy Act, as amended, or any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto, or The United and Strengthening America by providing appropriate Tools Required to Intercept and Obstruct Terrorism ("USA Patriot Act") Act of 2001, Public Law 10756, October 26, 2001 or Executive Order 13224 of September 23, 2001 issued by the President of the United States (66 Fed. Reg. 49049 (2001)).

6.8 Non-contravention

. The execution, delivery and performance of this Agreement and the other Loan Documents (including each Request for Advance) to which each Credit Party is a party are not in contravention of the terms of any indenture, agreement or undertaking to which such Credit Party is a party or by which it or its properties are bound where such violation could reasonably be expected to have a Material Adverse Effect.

6.9 Litigation

. Except as set forth on Schedule 6.9 hereof, there is no suit, action, proceeding, including, without limitation, any bankruptcy proceeding or governmental investigation pending against or to the knowledge of the Borrower, threatened against any Credit Party (other than any suit, action or proceeding in which a Credit Party is the plaintiff and in which no counterclaim or cross-claim against such Credit Party has been filed), or any judgment, decree, injunction, rule, or order of any court, government, department, commission, agency, instrumentality or arbitrator outstanding against any Credit Party, nor is any Credit Party in violation of any applicable law, regulation, ordinance, order, injunction, decree or requirement of any governmental body or court which could in any of the foregoing events reasonably be expected to have a Material Adverse Effect.

6.10 Consents, Approvals and Filings, Etc

. Except as set forth on Schedule 6.10 hereof, no material authorization, consent, approval, license, qualification or formal exemption from, nor any filing, declaration or registration with, any court, governmental agency or regulatory authority or any securities exchange or any other Person (whether or not governmental) is required in connection with (a) the execution, delivery and performance: (i) by any Credit Party of this Agreement and any of the other Loan Documents to which such Credit Party is a party or (ii) by the Credit Parties of the grant of Liens granted, conveyed or otherwise established (or to be granted, conveyed or otherwise established) by or under this Agreement or the other Loan Documents, as applicable, and (b) otherwise necessary to the operation of its business, except in each case for (x) such matters which have been previously obtained, and (y) such filings to be made concurrently herewith or promptly following the Effective Date as are required by the Collateral Documents to perfect Liens in favor of the Agent. All such material authorizations, consents, approvals, licenses, qualifications, exemptions, filings, declarations and registrations which have previously been obtained or made, as the case may be, are in full force and effect and, to the best knowledge of the Borrower, are not the subject of any attack or threatened attack (in each case in any material respect) by appeal or direct proceeding or otherwise.

6.11 Agreements Affecting Financial Condition

. No Credit Party is party to any agreement or instrument or subject to any charter or other corporate restriction which could reasonably be expected to have a Material Adverse Effect.

6.12 No Investment Company or Margin Stock

. No Credit Party is an “investment company” within the meaning of the Investment Company Act of 1940, as amended. No Credit Party is engaged principally, or as one of its important activities, directly or indirectly, in the business of extending credit for the purpose of purchasing or carrying margin stock. None of the proceeds of any of the Advances will be used by any Credit Party to purchase or carry margin stock. Terms for which meanings are provided in Regulation U of the Board of Governors of the Federal Reserve System or any regulations substituted therefore, as from time to time in effect, are used in this paragraph with such meanings.

6.13 ERISA Compliance

(a) Except as could not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect, (i) each Plan is in compliance with the applicable provisions of ERISA, the Code and other federal or state laws and (ii) each Plan that is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination letter from the IRS to the effect that the form of such

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Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the IRS to be exempt from federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the IRS, and, to the knowledge of the Borrower, nothing has occurred that would prevent or cause the loss of such tax-qualified status.

(b) There are no pending or, to the knowledge of the Borrower, threatened or contemplated claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that, either individually or in the aggregate, has had or could reasonably be expected to have a Material Adverse Effect.

(c) No ERISA Event has occurred, and no Borrower nor any ERISA Affiliate is aware of any fact, event or circumstance that, either individually or in the aggregate, could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan that, either individually or in the aggregate, has had or could reasonably be expected to have a Material Adverse Effect.

(d) The present value of all accrued benefits under each Pension Plan (based on those assumptions used to fund such Pension Plan) did not, as of the last annual valuation date prior to the date on which this representation is made or deemed made, exceed the value of the assets of such Pension Plan allocable to such accrued benefits by a material amount. As of the most recent valuation date for each Multiemployer Plan, the potential liability of Borrower or any ERISA Affiliate for a complete withdrawal from such Multiemployer Plan (within the meaning of Section 4203 or Section 4205 of ERISA), when aggregated with such potential liability for a complete withdrawal from all Multiemployer Plans, is zero.

(e) To the extent applicable, each Foreign Plan has been maintained in compliance with its terms and with the requirements of any and all applicable Requirements of Law and has been maintained, where required, in good standing with applicable regulatory authorities, except to the extent that the failure so to comply could not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect. No Borrower nor any Subsidiary has incurred any material obligation in connection with the termination of or withdrawal from any Foreign Plan. The present value of the accrued benefit liabilities (whether or not vested) under each Foreign Plan that is funded, determined as of the end of the most recently ended fiscal year of the Borrower or Subsidiary, as applicable, on the basis of actuarial assumptions, each of which is reasonable, did not exceed the current value of the property of such Foreign Plan by a material amount, and for each Foreign Plan that is not funded, the obligations of such Foreign Plan are properly accrued.

(f) As of the date hereof and throughout the term of this Agreement, none of the Credit Parties is (1) an employee benefit plan subject to Title I of ERISA, (2) a plan or account subject to Section 4975 of the Code, (3) an entity deemed to hold "plan assets" of any such plans or accounts for purposes of ERISA or the Code, or (4) a "governmental plan" within the meaning of ERISA.

6.14 Conditions Affecting Business or Properties

. Neither the respective businesses nor the properties of any Credit Party is affected by any fire, explosion, accident, strike, lockout or other dispute, drought, storm, hail, earthquake, embargo, Act of God, or other casualty (except to the extent such event is covered by insurance sufficient to ensure that upon application of the proceeds thereof, no Material Adverse Effect could reasonably be expected to occur) which could reasonably be expected to have a Material Adverse Effect.

6.15 Environmental and Safety Matters

. Except as set forth in Schedules 6.9, 6.10 and 6.15:

(a) all facilities and property owned or leased by the Credit Parties are in compliance in all material respects with all applicable Hazardous Material Laws;

(b) to the best knowledge of the Borrower, there have been no unresolved and outstanding past, and there are no pending or threatened:

(i) claims, complaints, notices or requests for information received by any Credit Party with respect to any alleged material violation of any applicable Hazardous Material Law, or

(ii) written complaints, notices or inquiries to any Credit Party regarding potential liability of any Credit Parties under any Hazardous Material Law; and

(c) to the best knowledge of the Borrower, no conditions exist at, on or under any property now or previously owned or leased by any Credit Party which, with the passage of time, or the giving of notice or both, are reasonably likely to give rise to liability under any Hazardous Material Law or create a significant adverse effect on the value of the property.

6.16 Subsidiaries

. Except as disclosed on Schedule 6.16 hereto as of the Effective Date, and thereafter, except as disclosed to the Agent in writing from time to time, no Credit Party has any Subsidiaries.

6.17 Management Agreements

. Schedule 6.17 attached hereto is an accurate and complete list of all management agreements in effect on or as of the Effective Date to which any Credit Party is a party or is bound.

6.18 Material Contracts

. Schedule 6.18 attached hereto is an accurate and complete list of all Material Contracts in effect on or as of the Effective Date to which any Credit Party is a party or is bound.

6.19 Franchises, Patents, Copyrights, Tradenames, etc

. The Credit Parties possess all franchises, patents, copyrights, trademarks, trade names, licenses and permits, and rights in respect of the foregoing, necessary for the conduct of their business substantially as now conducted without known conflict with any rights of others. Schedule 6.19 contains a true and accurate list of all trade names and any and all other names used by any Credit Party during the five-year period ending as of the Effective Date.

6.20 Capital Structure

. Schedule 6.20 attached hereto sets forth all issued and outstanding Equity Interests of each Credit Party, including the number of authorized, issued and outstanding Equity Interests of each Credit Party, the par value of such Equity Interests and the holders of such Equity Interests, all on and as of the Effective Date. All issued and outstanding Equity Interests of each Credit Party are duly authorized and validly issued,

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fully paid, nonassessable, free and clear of all Liens (other than Liens permitted by Section 8.2 hereof) and such Equity Interests were issued in compliance with all applicable state, federal and foreign laws concerning the issuance of securities. Except as disclosed on Schedule 6.20, there are no preemptive or other outstanding rights, options, warrants, conversion rights or similar agreements or understandings for the purchase or acquisition from any Credit Party, of any Equity Interests of any Credit Party.

6.21 Accuracy of Information; Beneficial Ownership.

(a) The financial statements furnished to the Agent and the Lenders prior to the Effective Date fairly present in all material respects the financial condition of the Borrower and its respective Subsidiaries and the results of their operations for the periods covered thereby, and have been prepared in accordance with GAAP subject, in the case of interim financial statements, to year-end adjustments and the absence of footnotes. The projections, the Pro Forma Balance Sheet and the other pro forma financial information delivered to the Agent prior to the Effective Date are based upon good faith estimates and assumptions believed by management of the Borrower to be accurate and reasonable at the time made, it being recognized by the Lenders that such financial information as it relates to future events is not to be viewed as fact and that actual results during the period or periods covered by such financial information may materially differ from the projected results set forth therein.

(b) Since December 31, 2018, there has been no material adverse change in the business, operations, condition, property or prospects (financial or otherwise) of the Credit Parties, taken as a whole.

(c) To the best knowledge of the Credit Parties, as of the Effective Date, (i) the Credit Parties do not have any material contingent obligations not disclosed by or reserved against in the opening balance sheet to be delivered hereunder and (ii) there are no unrealized or anticipated losses from any present commitment of the Credit Parties which contingent obligations and losses in the aggregate could reasonably be expected to have a Material Adverse Effect.

(d) As of the Effective Date, to the best knowledge of the Borrower, the information included in the Beneficial Ownership Certification provided on or prior to the Effective Date to any Lender in connection with this Agreement is true and correct in all respects.

6.22 Solvency.

. After giving effect to the consummation of the transactions contemplated by this Agreement and other Loan Documents, the Borrower and its Subsidiaries, on a consolidated basis, will be solvent, able to pay their indebtedness as it matures and will have capital sufficient to carry on their businesses and all business in which they are about to engage. This Agreement is being executed and delivered by the Borrower to the Agent and the Lenders in good faith and in exchange for fair, equivalent consideration. The Credit Parties do not intend to nor does management of the Credit Parties believe the Credit Parties will incur debts beyond their ability to pay as they mature. The Credit Parties do not contemplate filing a petition in bankruptcy or for an arrangement or reorganization under the Bankruptcy Code or any similar law of any jurisdiction now or hereafter in effect relating to any Credit Party, nor does any Credit Party have any knowledge of any threatened bankruptcy or Insolvency Proceedings against a Credit Party.

6.23 Employee Matters

. There are no strikes, slowdowns, work stoppages, unfair labor practice complaints, grievances, arbitration proceedings or controversies pending or, to the best knowledge of the Borrower, threatened against any Credit Party by any employees of any Credit Party, except as could not reasonably be expected

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to have a Material Adverse Effect. Set forth on Schedule 6.23 are all union contracts or agreements to which any Credit Party is party as of the Effective Date and the related expiration dates of each such contract.

6.24 No Misrepresentation

. Neither this Agreement nor any other Loan Document, certificate, information or report furnished or to be furnished by or on behalf of a Credit Party to the Agent or any Lender in connection with any of the transactions contemplated hereby or thereby, contains a misstatement of material fact, or omits to state a material fact required to be stated in order to make the statements contained herein or therein, taken as a whole, not materially misleading in the light of the circumstances under which such statements were made.

There is no fact, other than information known to the public generally, known to any Credit Party after diligent inquiry, that could reasonably be expected to have a Material Adverse Effect that has not expressly been disclosed to the Agent in writing.

6.25 Corporate Documents and Corporate Existence

. As to each Credit Party, (a) it is an organization as described on Schedule 1.1 hereto and has provided the Agent and the Lenders with complete and correct copies of its articles of incorporation, by-laws and all other applicable charter and other organizational documents, and, if applicable, a good standing certificate and (b) its correct legal name, business address, type of organization and jurisdiction of organization, tax identification number and other relevant identification numbers are set forth on Schedule 1.1 hereto.

6.26 Anti-Money Laundering/Anti-Terrorism

. No Covered Entity (A) is a Sanctioned Person; or (B), either in its own right or through any third party, (1) has any of its assets in a Sanctioned Country or in the possession, custody or control of a Sanctioned Person; (2) does business in or with, or derives any of its income from investments in or transactions with, any Sanctioned Country or Sanctioned Person in violation of any Anti-Terrorism Law; or (3) engages in any dealings or transactions prohibited by, any Anti-Terrorism Laws.

6.27 EEA Financial Institution

. No Credit Party is an EEA Financial Institution.

7. **AFFIRMATIVE COVENANTS.**

The Borrower covenants and agrees that, until the Payment in Full of all of the Indebtedness, it will, and, as applicable, it will cause each of its Subsidiaries to:

7.1 Financial Statements

. Furnish to the Agent, in form and detail satisfactory to the Agent, with sufficient copies for each Lender, the following documents:

(a) as soon as available, but in any event within ~~one-hundred-eighty~~ninety (~~180~~90) days after the end of each Fiscal Year, a copy of the audited Consolidated and unaudited Consolidating financial statements of the Borrower and its Consolidated Subsidiaries as at the end of such Fiscal Year and the related audited Consolidated and unaudited Consolidating statements of income, stockholders equity, and cash flows of the Borrower and its Consolidated Subsidiaries for such Fiscal Year or partial Fiscal Year

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and accompanying footnotes, setting forth in each case in comparative form the figures for the previous Fiscal Year, certified as being fairly stated in all material respects by an independent, nationally recognized certified public accounting firm reasonably satisfactory to the Agent and the Majority Lenders; provided that the accountants used by the Borrower immediately prior to the Effective Date shall be reasonably satisfactory to the Agent and the Majority Lenders;

(b) ~~as soon as available, but in any event within forty-five (45) days after the end of each fiscal quarter of the Credit Parties (provided, however, that for the last quarter of each Fiscal Year, which, for such quarter, shall be a Borrower-prepared draft subject to standard audit adjustments and shall be delivered within seventy-five (75) days after each Fiscal Year-end), the Borrower prepared unaudited Consolidated balance sheets of the Borrower and its Consolidated Subsidiaries as of the end of such quarter and the related unaudited statements of income, stockholders equity and cash flows of the Borrower and its Consolidated Subsidiaries (it being understood that Borrower shall provide reasonably sufficient detail with respect to all cash held in its deposit and securities accounts) for the portion of the Fiscal Year through the end of such quarter, setting forth in each case in comparative form the figures for the corresponding periods in the previous Fiscal Year, and certified by a Responsible Officer of the Borrower as being fairly stated in all material respects~~ [\[Reserved\]](#); and

(c) [\[Reserved\]](#)

(d) promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials publicly filed by the Borrower or any of its Subsidiaries with ~~the shall mean~~ the Securities and Exchange Commission (or any Governmental Authority succeeding to any or all of its functions) or with any other securities exchange, or otherwise distributed to its shareholders generally; and

all such financial statements to be complete and correct in all material respects and to be prepared in reasonable detail and in accordance with GAAP throughout the periods reflected therein and with prior periods (except as approved by a Responsible Officer and disclosed therein), provided however that the financial statements delivered pursuant to clauses (b) and (c) hereof will not be required to include footnotes and will be subject to change from audit and year-end adjustments.

7.2 Certificates; Other Information

. Furnish to the Agent, in form and detail acceptable to the Agent, with sufficient copies for each Lender, the following documents:

(a) Within (i) forty-five (45) days after and as of the most recent quarter end for the first three (3) fiscal quarters of each Fiscal Year; and ~~seventy-five~~ (ii) (A) ninety (7590) days after the last quarter of each Fiscal Year-end or (B) forty-five (45) days after the last quarter of each Fiscal Year-end if Liquidity is less than \$100,000,000 as of the last day of such fiscal quarter, commencing with the quarter ending May 31, 2021, a Covenant Compliance Report duly executed by a Responsible Officer of the Borrower;

(b) Within (i) forty-five (45) days after and as of the most recent quarter end for the first three (3) fiscal quarters of each Fiscal Year; and ~~seventy-five~~ (ii) (A) ninety (7590) days after the last quarter of each Fiscal Year-end or (B) forty-five (45) days after the last quarter of each Fiscal Year-end if Liquidity is less than \$100,000,000 as of the last day of such fiscal quarter, commencing with the quarter ending May 31, 2021, or more frequently as reasonably requested by the Agent or the Majority Lenders, (i) a Borrowing Base Certificate executed by a Responsible Officer of the Borrower, together with aged listings

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by invoice date of accounts receivable and accounts payable, and (ii) a Recurring Revenue report (by customer), in form and substance satisfactory to Agent and the Majority Lenders;

(c) Promptly upon receipt thereof, copies of all significant reports submitted by the Credit Parties' firm(s) of certified public accountants in connection with each annual, interim or special audit or review of any type of the financial statements or related internal control systems of the Credit Parties made by such accountants, including any comment letter submitted by such accountants to management in connection with their services;

(d) Any financial reports, statements, press releases, other material information or written notices delivered to the holders of the Subordinated Debt pursuant to any applicable Subordinated Debt Documents (to the extent not otherwise required hereunder), as and when delivered to such Persons;

(e) Within thirty (30) days after the end of each Fiscal Year, projections for the Credit Parties for the next succeeding Fiscal Year, on a quarterly basis and for the following Fiscal Year on an annual basis, including a balance sheet, as at the end of each relevant period and for the period commencing at the beginning of the Fiscal Year and ending on the last day of such relevant period, such projections certified by a Responsible Officer of the Borrower as being based on reasonable estimates and assumptions taking into account all facts and information known (or reasonably available to any Credit Party) by a Responsible Officer of the Borrower;

(f) Within (i) forty-five (45) days after and as of the most recent quarter end for the first three (3) fiscal quarters of each Fiscal Year; and ~~seventy-five~~ (ii) (A) ninety (7590) days after the last quarter of each Fiscal Year-end or (B) forty-five (45) days after the last quarter of each Fiscal Year-end if Liquidity is less than \$100,000,000 as of the last day of such fiscal quarter, or more frequently as requested by the Agent or the Majority Lenders the quarterly aging of the accounts receivable and accounts payable of the Credit Parties;

(g) Within (i) forty-five (45) days after and as of the end of each fiscal quarter for the first three (3) fiscal quarters of each Fiscal Year; and ~~seventy-five~~ (ii) (A) ninety (7590) days after the last quarter of each Fiscal Year-end or (B) forty-five (45) days after the last quarter of each Fiscal Year-end if Liquidity is less than \$100,000,000 as of the last day of such fiscal quarter, a report signed by a Responsible Officer of Borrower, in form reasonably acceptable to Agent, listing any applications or registrations that Borrower has made or filed in respect of any patents, copyrights or trademarks and the status of any outstanding applications or registrations as well as any material change in Borrower's intellectual property Collateral;

(h) Any additional information as required by any Loan Document, and such additional schedules, certificates and reports respecting all or any of the Collateral, the items or amounts received by the Credit Parties in full or partial payment thereof, and any goods (the sale or lease of which shall have given rise to any of the Collateral) possession of which has been obtained by the Credit Parties, all to such extent as the Agent may reasonably request from time to time, any such schedule, certificate or report to be certified as true and correct in all material respects by a Responsible Officer of the applicable Credit Party and shall be in such form and detail as the Agent may reasonably specify;

(i) Promptly, following any request therefor, information and documentation reasonably requested by the Agent or any Lender for purposes of compliance with applicable "know your customer" anti-money laundering rules and regulations, including under the USA PATRIOT Act and any the Beneficial Ownership Regulation; and

(j) Such additional financial and/or other information as the Agent or any Lender may from time to time reasonably request, promptly following such request.

7.3 Payment of Obligations

. Unless the failure to so pay, discharge or otherwise satisfy could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, pay, discharge or otherwise satisfy, at or before maturity or before they become delinquent, as the case may be, all of its material obligations of whatever nature, including without limitation all assessments, governmental charges, claims for labor, supplies, rent or other obligations, except where the amount or validity thereof is currently being appropriately contested in good faith and reserves in conformity with GAAP with respect thereto have been provided on the books of the Credit Parties.

7.4 Conduct of Business and Maintenance of Existence; Compliance with Laws.

(a) Other than business or operational changes that could not reasonably be expected to have a Material Adverse Effect, continue to engage in their respective business and operations substantially as conducted immediately prior to the Effective Date;

(b) Preserve, renew and keep in full force and effect its existence and maintain its qualifications to do business in each jurisdiction where such qualifications are necessary for its operations, except as otherwise permitted pursuant to Section 8.4;

(c) Take all action it deems necessary in its reasonable business judgment to maintain all rights, privileges, licenses and franchises necessary for the normal conduct of its business except where the failure to so maintain such rights, privileges or franchises could not, either singly or in the aggregate, reasonably be expected to have a Material Adverse Effect;

(d) Comply with all Contractual Obligations and Requirements of Law, except to the extent that failure to comply therewith could not, either singly or in the aggregate, reasonably be expected to have a Material Adverse Effect; and

(e) (i) Continue to be a Person whose property or interests in property is not blocked or subject to blocking pursuant to Section 1 of Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit or Support Terrorism (66 Fed. Reg. 49079 (2001)) (the "Order"), (ii) not engage in the transactions prohibited by Section 2 of that Order or become associated with Persons such that a violation of Section 2 of the Order would arise, and (iii) not become a Person on the list of Specially Designated National and Blocked Persons, or (iv) otherwise not become subject to the limitation of any OFAC regulation or executive order.

7.5 Maintenance of Property; Insurance

. (a) Keep all material property it deems, in its reasonable business judgment, useful and necessary in its business in working order (ordinary wear and tear excepted); (b) maintain insurance coverage with financially sound and reputable insurance companies on physical assets and against other business risks in such amounts and of such types as are customarily carried by companies similar in size and nature (including without limitation casualty and public liability and property damage insurance), and in the event of acquisition of additional property, real or personal, or of the incurrence of additional risks of any nature, increase such insurance coverage in such manner and to such extent as prudent business judgment and present practice or any applicable Requirements of Law would dictate and in the event of any Mortgage

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Property located in a Flood Hazard Zone, maintain at all times flood insurance on such property from such insurance providers, on such terms and in such amounts as required under the Flood Laws or as otherwise required by any Lender; (c) in the case of all insurance policies covering any Collateral, such insurance policies shall provide that the loss payable thereunder shall be payable to the applicable Credit Party, and to the Agent (as mortgagee, or, in the case of personal property interests, lender loss payee) as their respective interests may appear; and (d) in the case of all public liability insurance policies, such policies shall list the Agent as an additional insured, as the Agent may reasonably request; (e) if requested by the Agent, certificates evidencing such policies, including all endorsements thereto, to be deposited with the Agent, such certificates being in form and substance reasonably acceptable to the Agent; provided that if any Credit Party fails to insure or fails to pay the premiums on any required insurance (including, without limitation, flood insurance), Agent may (but is not obligated to), and, with respect to flood insurance only, any Lender may (but shall not be obligated to), following five (5) Business Days' notice to Agent, have the insurance issued or renewed (and pay the premiums on it for the account of the applicable Credit Party) in amounts and with companies and at premiums as Agent or such Lender deems appropriate or, with respect to flood insurance, as required by the Flood Laws. If Agent or any Lender elects to have insurance issued or renewed to insure the interests of the applicable Credit Party, Agent or such Lender shall have no obligation to also insure such Credit Party's interest or to notify such Credit Party of its actions. Any sums paid by Agent or any Lender for insurance as provided above shall be added to the Indebtedness.

7.6 Inspection of Property; Books and Records, Discussions

. Permit the Agent and each Lender, through their authorized attorneys, accountants and representatives (a) at all reasonable times during normal business hours, upon the request of the Agent or such Lender (or so long as no Event of Default has occurred and is continuing, five Business Days' prior written notice from the Agent or such Lender), to examine each Credit Party's books, accounts, records, ledgers and assets and properties; (b) from time to time, during normal business hours, upon the request of the Agent (or so long as no Event of Default has occurred and is continuing, five Business Days' prior written notice from the Agent), to conduct full or partial collateral audits of the Accounts and Inventory of the Credit Parties and appraisals of all or a portion of the fixed assets (including real property) of the Credit Parties, such audits and appraisals to be completed by an appraiser as may be selected by the Agent and consented to by the Borrower (such consent not to be unreasonably withheld), with all reasonable costs and expenses of such audits to be reimbursed by the Credit Parties, provided that so long as no Event of Default or Default exists, the Borrower shall not be required to reimburse the Agent for such audits or appraisals more frequently than ~~twice~~once each Fiscal Year; (c) during normal business hours and at their own risk, upon the request of the Agent or such Lender (or so long as no Event of Default has occurred and is continuing, five Business Days' prior written notice from the Agent or such Lender), to enter onto the real property owned or leased by any Credit Party to conduct inspections, investigations or other reviews of such real property; and (d) at reasonable times during normal business hours and at reasonable intervals, upon the request of the Agent or such Lender (or so long as no Event of Default has occurred and is continuing, five Business Days' prior written notice from the Agent or such Lender), to visit all of the Credit Parties' offices, discuss each Credit Party's respective financial matters with their respective officers, as applicable, and, by this provision, the Borrower authorizes, and will cause each of its respective Subsidiaries to authorize, its independent certified or chartered public accountants to discuss the finances and affairs of any Credit Party and examine any of such Credit Party's books, reports or records held by such accountants (provided that such Credit Party may, if it chooses, be present at or participate in any such discussions).

7.7 Notices

. Promptly give written notice to the Agent of:

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(a) the occurrence of any Default or Event of Default of which any Credit Party has knowledge;

(b) any (i) litigation or proceeding existing at any time between any Credit Party and any Governmental Authority or other third party, or any investigation of any Credit Party conducted by any Governmental Authority, which in any case if adversely determined would (x) have a Material Adverse Effect, or (y) result in the rendering of a judgment for the payment of money in excess of the sum of Two Hundred Fifty Thousand Dollars (\$250,000), or (ii) any material adverse change in the financial condition of any Credit Party since the date of the last audited financial statements delivered pursuant to Section 7.1(a) hereof;

(c) the occurrence of any event which any Credit Party believes could reasonably be expected to have a Material Adverse Effect, promptly after concluding that such event could reasonably be expected to have such a Material Adverse Effect;

(d) promptly after becoming aware thereof, the taking by the IRS or any foreign taxing jurisdiction of a written tax position (or any such tax position taken by any Credit Party in a filing with the IRS or any foreign taxing jurisdiction) which could reasonably be expected to have a Material Adverse Effect, setting forth the details of such position and the financial impact thereof;

(e) (i) all jurisdictions in which any Credit Party proposes to become qualified after the Effective Date to transact business, (ii) the acquisition or creation of any new Subsidiaries, (iii) any material change after the Effective Date in the authorized and issued Equity Interests of any Credit Party or any other material amendment to any Credit Party's charter, by-laws or other organizational documents, such notice, in each case, to identify the applicable jurisdictions, capital structures or amendments as applicable, provided that such notice shall be given not less than ten (10) Business Days after the effectiveness of such changes, acquisition or creation, as the case may be (or such longer period to which the Agent may consent);

(f) not less than five (5) Business Days (or such other shorter period to which the Agent may agree) prior to the proposed effective date thereof, any amendments, restatements or other modifications to the Escalate Subordinated Debt Documents contemplated by Section 17 of the Escalate Subordination Agreement;

(g) promptly notify the Agent of the occurrence of any ERISA Event that, either individually or together with any other ERISA Events, could reasonably be expected to have a Material Adverse Effect; and

(h) any default or event of default by any Person under any Subordinated Debt Document, concurrently with delivery or promptly after receipt (as the case may be) of any notice of default or event of default under the applicable document, as the case may be.

Each notice pursuant to this Section shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and, in the case of notices referred to in clauses (a), (b), (c), (d) and (g) hereof stating what action the applicable Credit Party has taken or proposes to take with respect thereto.

7.8 Hazardous Material Laws.

(a) Use and operate all of its facilities and properties in material compliance with all applicable Hazardous Material Laws, keep all material required permits, approvals, certificates, licenses and other

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authorizations required under such Hazardous Material Laws in effect and remain in compliance therewith, and handle all Hazardous Materials in material compliance with all applicable Hazardous Material Laws;

(b) (i) Promptly notify the Agent and provide copies upon receipt of all written claims, complaints, notices or inquiries received by any Credit Party relating to its facilities and properties or compliance with Hazardous Material Laws which, if adversely determined, could reasonably be expected to have a Material Adverse Effect and (ii) promptly cure and have dismissed with prejudice to the reasonable satisfaction of the Agent and the Majority Lenders any material actions and proceedings relating to compliance with Hazardous Material Laws to which any Credit Party is named a party, other than such actions or proceedings being contested in good faith and with the establishment of reasonable reserves;

(c) To the extent necessary to comply in all material respects with Hazardous Material Laws, remediate or monitor contamination arising from a release or disposal of Hazardous Material, which solely, or together with other releases or disposals of Hazardous Materials could reasonably be expected to have a Material Adverse Effect;

(d) Provide such information and certifications which the Agent or any Lender may reasonably request from time to time to evidence compliance with this Section 7.8.

7.9 Financial Covenants.

(a) Liquidity. Maintain, as of the last day of each calendar month, Liquidity of not less than (a) from the Effective Date until Agent's receipt of the financial statements for the Fiscal Year ending February 29, 2020, \$10,000,000, and (b) from and after Agent's receipt of the audited financial statements required under Section 7.1(a) for the Fiscal Year ending February 29, 2020, and upon Agent's receipt of the audited financial statements required under Section 7.1(a) for each Fiscal Year thereafter, (i) if Annual Revenue Growth is greater than 25%, \$10,000,000, (ii) if Annual Revenue Growth is greater than 10%, but less than 25%, \$15,000,000, and (iii) if Annual Revenue Growth is less than 10%, \$20,000,000, in each case tested as of the last day of each calendar month.

(b) Covenant Revenue.

~~(x) Prior to the consummation of the Innovation Specialists Acquisition, maintain Covenant Revenue of not less than the amounts set forth in the table below for each six-month measuring period ending on the applicable date set forth opposite such amounts:~~

Six Month Measuring Period Ending	Covenant Revenue
August 31, 2020	\$61,000,000
November 30, 2020	\$64,000,000
February 28, 2021	\$83,000,000
May 31, 2021	\$92,000,000
August 31, 2021	\$82,000,000
November 30, 2021	\$83,000,000
February 28, 2022, and the last day of each fiscal quarter of the Borrower thereafter	\$100,000,000

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(y) ~~After the consummation of the Innovation Specialists Acquisition, maintain~~Maintain Covenant Revenue of not less than the amounts set forth in the table below for each six-month measuring period ending on the applicable date set forth opposite such amounts:

Six Month Measuring Period Ending	Covenant Revenue
August 31, 2020 <u>2022</u>	\$61,000,000 <u>\$144,000,000</u>
November 30, 2020 <u>2022</u>	\$64,000,000 <u>\$145,000,000</u>
February 28, 2021 <u>2023</u>	\$83,000,000 <u>\$167,000,000</u>
May 31, 2021 <u>2023</u>	\$100,800,000 <u>\$174,000,000</u>
August 31, 2021 <u>2023</u>	\$100,160,000 <u>\$164,000,000</u>
November 30, 2021 <u>2023</u>	\$103,480,000 <u>\$169,000,000</u>
<u>February 29, 2024</u>	<u>\$206,000,000</u>
<u>May 31, 2024</u>	<u>\$220,000,000</u>
<u>August 31, 2024</u>	<u>\$220,000,000</u>
<u>November 30, 2024</u>	<u>\$220,000,000</u>
February 28, 2022, and the last day of each fiscal quarter of the Borrower thereafter <u>2025</u>	\$125,040,000 <u>\$220,000,000</u>
<u>May 31, 2025</u>	<u>\$220,000,000</u>

Notwithstanding the foregoing, if, as of the last day of any six month measuring period described ~~in clause (x) or (y)~~ above, Liquidity is at least \$100,000,000, the foregoing Covenant Revenue covenant shall not be tested for such six month measuring period.

7.10 Governmental and Other Approvals

. Apply for, obtain and/or maintain in effect, as applicable, all authorizations, consents, approvals, licenses, qualifications, exemptions, filings, declarations and registrations (whether with any court, governmental agency, regulatory authority, securities exchange or otherwise) which are necessary or reasonably requested by the Agent in connection with the execution, delivery and performance by any Credit Party of, as applicable, this Agreement, the other Loan Documents, the Subordinated Debt Documents, or any other documents or instruments to be executed and/or delivered by any Credit Party, as applicable in connection therewith or herewith, except where the failure to so apply for, obtain or maintain could not reasonably be expected to have a Material Adverse Effect.

7.11 Compliance with ERISA

. Comply in all material respects with all material requirements imposed by ERISA and the Code, including, but not limited to, the minimum funding requirements for any Pension Plan, except to the extent that any noncompliance could not reasonably be expected to have a Material Adverse Effect.

7.12 Defense of Collateral

. Defend the Collateral from any Liens other than Liens permitted by Section 8.2.

7.13 Future Subsidiaries; Additional Collateral.

(a) With respect to each Person which becomes a Domestic Subsidiary of Borrower subsequent to the Effective Date, whether by Permitted Acquisition, Division or otherwise, cause such new Domestic Subsidiary to execute and deliver to the Agent, for and on behalf of each of the Lenders (unless waived by the Agent and the Majority Lenders):

(i) within thirty (30) days after the date such Person becomes a Domestic Subsidiary (or such longer time period as the Agent and the Majority Lenders may determine), a Guaranty, or in the event that a Guaranty already exists, a joinder agreement to the Guaranty whereby such Domestic Subsidiary becomes obligated as a Guarantor under the Guaranty; and

(ii) within thirty (30) days after the date such Person becomes a Domestic Subsidiary (or such longer time period as the Agent and the Majority Lenders may determine), a joinder agreement to the Security Agreement whereby such Domestic Subsidiary grants a Lien over its assets (other than Equity Interests which should be governed by (b) of this Section 7.13) as set forth in the Security Agreement, and such Domestic Subsidiary shall take such additional actions as may be necessary to ensure a valid first priority perfected Lien over such assets of such Domestic Subsidiary, subject only to the other Liens permitted pursuant to Section 8.2 of this Agreement;

(iii) within the time period specified in and to the extent required under clause (c) of this Section 7.13, a Mortgage, Leasehold Mortgage, Collateral Access Agreements and/or other documents required to be delivered in connection therewith;

(b) With respect to the Equity Interests of each Person which becomes (whether by Permitted Acquisition, Division or otherwise) (i) a Domestic Subsidiary subsequent to the Effective Date, cause the Credit Party that holds such Equity Interests to execute and deliver such Pledge Agreements, and take such actions as may be necessary to ensure a valid first priority perfected Lien over one hundred percent (100%) of the Equity Interests of such Domestic Subsidiary held by a Credit Party, such Pledge Agreements to be executed and delivered (unless waived by the Agent and the Majority Lenders) within thirty (30) days after the date such Person becomes a Domestic Subsidiary (or such longer time period as the Agent and the Majority Lenders may determine); and (ii) a Foreign Subsidiary subsequent to the Effective Date, all of the Equity Interests of which are held directly by Borrower or one of its Domestic Subsidiaries, cause the Credit Party that holds such Equity Interests to execute and deliver such Pledge Agreements and take such actions as may be necessary to ensure a valid first priority perfected Lien of no more than sixty-five percent (65%) of the total combined voting power of all classes of voting Equity Interests of such Subsidiary and one-hundred percent (100%) of the non-voting Equity Interests, such Pledge Agreements to be executed and delivered (unless waived by the Agent and the Majority Lenders) within thirty (30) days after the date such Person becomes a Foreign Subsidiary (or such longer time period as the Agent and the Majority Lenders may determine); and

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(c) (i) With respect to the acquisition of a fee interest in real property by any Credit Party after the Effective Date (whether by Permitted Acquisition or otherwise), not later than thirty (30) days after the acquisition is consummated or the owner of such property becomes a Domestic Subsidiary (or such longer time period as the Agent and the Majority Lenders may determine), such Credit Party shall execute or cause to be executed (unless waived by the Agent and the Majority Lenders), a Mortgage (or an amendment to an existing mortgage, where appropriate) covering such real property, together with such additional real estate documentation, environmental reports, title policies and surveys as may be reasonably required by the Agent and all flood hazard determination certifications, acknowledgments and evidence of flood insurance and other flood-related documentation with respect to such real property as required by Flood Laws and as otherwise reasonably required by the Agent; and (ii) with respect to the acquisition of any leasehold interest in real property by any Credit Party after the Effective Date (whether by Permitted Acquisition or otherwise), not later than thirty (30) days after the acquisition is consummated or the owner of the applicable leasehold interest becomes a Domestic Subsidiary (or such longer time period as the Agent may determine), the applicable Credit Party shall deliver to the Agent a copy of the applicable lease agreement and shall execute or cause to be executed, at the Agent's option, unless otherwise waived by the Agent, (x) a Leasehold Mortgage covering the applicable leasehold interest, and a Consent and Acknowledgment, together with such additional real estate documentation as may be reasonably required by the Agent or (y) a Collateral Access Agreement in form and substance reasonably acceptable to the Agent together with such other documentation as may be reasonably required by the Agent; in each case in form reasonably satisfactory to the Agent, in its reasonable discretion, together with such supporting documentation, including without limitation corporate authority items, certificates and opinions of counsel, as reasonably required by the Agent. Upon the Agent's request, Credit Parties shall take, or cause to be taken, such additional steps as are necessary or advisable under applicable law to perfect and ensure the validity and priority of the Liens granted under this Section 7.13.

Notwithstanding the foregoing, (y) the Agent shall not enter into any Mortgage in respect of any real property acquired by a Credit Party after the Effective Date until sixty (60) days after the Agent or the Borrower has delivered to the Lenders (which may be delivered electronically) the following documents in respect of such real property: (i) sufficient information to allow each Lender to conduct flood insurance due diligence and flood insurance compliance with respect to such property (such information to include without limitation such property's street address that will be used in the Mortgage with respect to such property and in the mortgage title insurance policy and any other Loan Documents to be delivered in connection with such Mortgage), (ii) a completed flood hazard determination from a third party vendor; (iii) if any part of such property is located in a Flood Hazard Zone, a notification to the applicable Credit Parties of that fact and, if applicable, notification to the applicable Credit Parties that flood insurance coverage is not available and evidence of the receipt by the applicable Credit Parties of such notice; provided that (subject to clause (z) below) the Agent may enter into such Mortgage prior to the end of such sixty (60) day period if the Agent shall have received confirmation from each applicable Lender that such Lender has completed any necessary flood insurance due diligence to its reasonable satisfaction; provided that (subject to clause (z) below) the Agent may enter into such Mortgage prior to the end of such sixty (60) day period if the Agent shall have received confirmation from each applicable Lender that such Lender has completed any necessary flood insurance due diligence to its reasonable satisfaction, and (z) if any part of such property is located in a Flood Hazard Zone and flood insurance coverage is not available, no party shall enter into a Mortgage with respect to such property.

7.14 Accounts

. Other than Excluded Accounts, maintain all primary deposit accounts and securities accounts of any Credit Party with the Agent (or Comerica Securities, Inc.) and Western Alliance Bank; provided, that, (a) such Credit Party shall maintain approximately 50% of its aggregate month-end deposit account and

securities account balances, measured as of the last day of each month, with Agent (or Comerica Securities, Inc.), and approximately 50% of its aggregate month-end deposit account and securities account balances, measured as of the last day of each month, with Western Alliance Bank (provided, that, if such balances ever deviate from such approximate 50%/50% allocation split by more than 5%, then such Credit Party shall transfer funds to the appropriate accounts to restore the approximate 50%/50% allocation split, such that the deviation is less than 5%, within 5 Business Days of the occurrence thereof), and (b) with respect to any such accounts, such Credit Party (i) shall cause to be executed and delivered an Account Control Agreement in form and substance satisfactory to the Agent, and (ii) has taken all other steps necessary, or in the opinion of the Agent, desirable to ensure that the Agent has a perfected security interest in such account.

7.15 Use of Proceeds

. Use all Advances of the Revolving Credit as set forth in Section 2.13 hereof. The Borrower shall not use any portion of the proceeds of any such advances for the purpose of purchasing or carrying any "margin stock" (as defined in Regulation U of the Board of Governors of the Federal Reserve System) in any manner which violates the provisions of Regulation T, U or X of said Board of Governors or for any other purpose in violation of any applicable statute or regulation and not use the Advances to fund any operations in, finance any investments or activities in, or, make any payments to, a Sanctioned Country or Sanctioned Person in violation of any Anti-Terrorism Law.

7.16 [Reserved]

7.17 Further Assurances and Information-

(a) Take such actions as the Agent or Majority Lenders may from time to time reasonably request to establish and maintain first priority perfected security interests in and Liens on all of the Collateral, subject only to those Liens permitted under Section 8.2 hereof, including executing and delivering such additional pledges, assignments, mortgages, lien instruments or other security instruments covering any or all of the Credit Parties' assets as the Agent may reasonably require, such documentation to be in form and substance reasonably acceptable to the Agent, and prepared at the expense of the Borrower.

(b) Execute and deliver or cause to be executed and delivered to the Agent within a reasonable time following the Agent's or the Majority Lenders' request, and at the expense of the Borrower, such other documents or instruments as the Agent may reasonably require to effectuate more fully the purposes of this Agreement or the other Loan Documents.

(c) Provide the Agent and the Lenders with any other information required by Section 326 of the USA Patriot Act or necessary for the Agent and the Lenders to verify the identity of any Credit Party as required by Section 326 of the USA Patriot Act.

(d) With respect to all or any portion of a Mortgaged Property (a) at any time upon the Agent's or any Lender's request, provide the Agent and each Lender with sufficient information to allow the Agent and each Lender to conduct flood insurance due diligence and flood insurance compliance with respect to such property (such information to include without limitation such property's street address that is used in the Mortgage with respect to such property and in the mortgage title insurance policy and any other Loan Documents delivered in connection with such Mortgage), and (b) if any part of such Mortgaged Property is determined to be in a Flood Hazard Zone, deliver or cause to be delivered to Agent and the Lenders, within forty five (45) days after receipt by the applicable Credit Party of notice from the Agent or a Lender

that any part of such Mortgaged Property is located in a Flood Hazard Zone, evidence of flood insurance on such property from such insurance providers on such terms and in such amounts as required under the Flood Laws or as otherwise required by any Lender.

7.18 Anti-Terrorism Laws

. Not permit (i) any Covered Entity to become a Sanctioned Person, (ii) any Covered Entity, either in its own right or through any third party, to (A) have any of its assets in a Sanctioned Country or in the possession, custody or control of a Sanctioned Person in violation of any Anti-Terrorism Law; (B) do business in or with, or derive any of its income from investments in or transactions with, any Sanctioned Country or Sanctioned Person in violation of any Anti-Terrorism Law; (C) engage in any dealings or transactions prohibited by any Anti-Terrorism Law; or (D) use the Advances to fund any operations in, finance any investments or activities in, or, make any payments to, a Sanctioned Country or Sanctioned Person in violation of any Anti-Terrorism Law, (iii) the funds used to repay the Indebtedness will not be derived from any unlawful activity, and (iv) shall cause each Covered Entity to comply with all Anti-Terrorism Laws.

8. NEGATIVE COVENANTS.

The Borrower covenants and agrees that, until the Payment in Full of all of the Indebtedness, it will not, and, as applicable, it will not permit any of its Subsidiaries to:

8.1 Limitation on Debt

. Create, incur, assume or suffer to exist any Debt, except:

(a) Indebtedness of any Credit Party to the Agent or any Lender;

(b) any Debt existing on the Effective Date and set forth in Schedule 8.1 attached hereto and any renewals or refinancing of such Debt, provided that (i) the aggregate principal amount of such renewed or refinanced Debt shall not exceed the aggregate principal amount of the original Debt outstanding on the Effective Date (less any principal payments and the amount of any commitment reductions made thereon on or prior to such renewal or refinancing) without the prior written consent of Agent, (ii) the renewal or refinancing of such Debt shall be on substantially the same or better terms as in effect with respect to such Debt on the Effective Date, and shall otherwise be in compliance with this Agreement, and (iii) at the time of such renewal or refinancing no Default or Event of Default has occurred and is continuing or would result from the renewal or refinancing of such Debt;

(c) any Debt of Borrower or any of its Subsidiaries incurred to finance the acquisition of fixed or capital assets, whether pursuant to a loan or a Capitalized Lease provided that both at the time of and immediately after giving effect to the incurrence thereof (i) no Default or Event of Default shall have occurred and be continuing, and (ii) the aggregate amount of all such Debt at any one time outstanding (including, without limitation, any Debt of the type described in this clause (c) which is set forth on Schedule 8.1 hereof) shall not exceed \$2,000,000, and any renewals or refinancings of such Debt on terms substantially the same or better than those in effect at the time of the original incurrence of such Debt;

(d) Subordinated Debt;

(e) Debt under any Hedging Transactions, provided that such transaction is entered into for risk management purposes and not for speculative purposes;

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(f) Debt arising from judgments or decrees not deemed to be a Default or Event of Default under subsection (g) of Section 9.1;

(g) Debt owing to a Person that is a Credit Party, but only to the extent permitted under Section 8.7 hereof;

(h) Debt owing to trade creditors incurred in the ordinary course of business;

(i) Debt arising from the endorsement of instruments in the ordinary course of business;

(j) Performance bonds, surety bonds, and other indemnities or similar obligations issued in the ordinary course of business;

(k) Debt consisting of the financing of insurance premiums in the ordinary course of business.

(l) Debt in respect of netting services, overdraft protection, cash management obligations and similar arrangements entered into in the ordinary course of business;

(m) Debt that is otherwise permitted under Sections 8.7(d) and (e) hereof;

(n) Debt in respect of indemnification, purchase price adjustments, earnouts, deferred purchase price or other similar obligations incurred by the Borrower or any Credit Party in a Permitted Acquisition or similar investment or disposition under agreements which provide for indemnification, the adjustment of the purchase price or for similar adjustments; and

(o) additional unsecured Debt not otherwise described above, provided that both at the time of and immediately after giving effect to the incurrence thereof (i) no Default or Event of Default shall have occurred and be continuing or result therefrom and (ii) the aggregate amount of all such Debt shall not exceed \$1,000,000 at any one time outstanding.

(p) the JPM Loan.

(q) Permitted Convertible Indebtedness and any refinancings, refundings, renewals or extensions thereof so long as such Indebtedness continues to qualify as Permitted Convertible Indebtedness; and

(r) to the extent constituting Indebtedness, any Permitted Equity Derivative Transaction.

8.2 Limitation on Liens

. Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, except for:

(a) Permitted Liens;

(b) Liens securing Debt permitted by Section 8.1(c), provided that (i) such Liens are created upon fixed or capital assets acquired by the applicable Credit Party after the date of this Agreement (including without limitation by virtue of a loan or a Capitalized Lease), (ii) any such Lien is created solely for the purpose of securing indebtedness representing or incurred to finance the cost of the acquisition of the item of property subject thereto, (iii) the principal amount of the Debt secured by any such Lien shall at

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no time exceed 100% of the sum of the purchase price or cost of the applicable property, equipment or improvements and the related costs and charges imposed by the vendors thereof and (iv) the Lien does not cover any property other than the fixed or capital asset acquired; provided, however, that no such Lien shall be created over any owned real property of any Credit Party for which the Agent has received a Mortgage or for which such Credit Party is required to execute a Mortgage pursuant to the terms of this Agreement;

- (c) Liens created pursuant to the Loan Documents;
- (d) Liens securing the Escalate Subordinated Debt;
- (e) leases or subleases and license or sublicenses granted in the ordinary course of business;
- (f) Liens in favor of other financial institutions arising in connection with deposit accounts held at such institutions to secure standard fees for deposit services charged by such institutions, provided that Lender has a perfected security interest in the amounts held in such deposit accounts to the extent required by Section 7.14;
- (g) Liens securing Debt to the extent used to finance insurance premiums;
- (h) Liens consisting of rights of set-off or bankers' liens or amounts on deposit; and
- (i) other Liens, existing on the Effective Date, set forth on Schedule 8.2 and renewals, refinancings and extensions thereof on substantially the same or better terms as in effect on the Effective Date and otherwise in compliance with this Agreement.

Regardless of the provisions of this Section 8.2, no Lien over the Equity Interests of Borrower or any Subsidiary of Borrower (except for those Liens for the benefit of the Agent and the Lenders or the Liens granted under the Escalate Subordinated Debt Documents) shall be permitted under the terms of this Agreement.

- (j) Liens in favor of JPMorgan Chase Bank, N.A. with respect to the JPM Escrow Account.

8.3 Acquisitions

. Except for Permitted Acquisitions, purchase or otherwise acquire (including pursuant to any merger with or as a Division Successor pursuant to the Division of, any Person that was not a Credit Party prior to such merger or Division) or become obligated for the purchase of all or substantially all or any material portion of the assets or business interests or a division or other business unit of any Person, or any Equity Interest of any Person, or any business or going concern.

8.4 Limitation on Mergers, Dissolution or Sale of Assets

. Enter into any merger or consolidation, or consummate a Division as the Dividing Person, or convey, sell, lease, assign, transfer or otherwise dispose of any of its property, business or assets (including, without limitation, Equity Interests, receivables and leasehold interests), whether now owned or hereafter acquired or liquidate, wind up or dissolve, except:

- (a) Inventory leased or sold in the ordinary course of business;

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(b) obsolete, damaged, uneconomic or worn out machinery or equipment, or machinery or equipment no longer used or useful in the conduct of the applicable Credit Party's business;

(c) Permitted Acquisitions;

(d) mergers or consolidations of any Subsidiary of Borrower with or into Borrower or any Guarantor so long as Borrower or such Guarantor shall be the continuing or surviving entity; provided that at the time of each such merger or consolidation, both before and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing or result from such merger or consolidation;

(e) any Subsidiary of Borrower may liquidate or dissolve into Borrower or a Guarantor if the Borrower determines in good faith that such liquidation or dissolution is in the best interests of the Borrower, so long as no Default or Event of Default has occurred and is continuing or would result therefrom;

(f) sales or transfers, including without limitation upon voluntary liquidation from any Subsidiary to Borrower or a Guarantor, provided that the Borrower or applicable Guarantor takes such actions as the Agent may reasonably request to ensure the perfection and priority of the Liens in favor of the Lenders over such transferred assets;

(g) (i) Asset Sales (exclusive of asset sales permitted pursuant to all other subsections of this Section 8.4) in which the sales price is at least equal to the fair market value of the assets sold and the consideration received is cash or cash equivalents or Debt of any Credit Party being assumed by the purchaser, provided that the aggregate amount of such Asset Sales does not exceed \$1,500,000 in any Fiscal Year and no Default or Event of Default has occurred and is continuing at the time of each such sale (both before and after giving effect to such Asset Sale), and (ii) other Asset Sales approved by the Majority Lenders in their sole discretion;

(h) the sale or disposition of Permitted Investments and other cash equivalents in the ordinary course of business;

(i) any Credit Party (other than Borrower) that is a limited liability company may consummate a Division as the Dividing Person provided that, if the Credit Party is a Guarantor, then immediately upon the consummation of the Division, the assets of the applicable Dividing Person are held by Borrower or one or more Guarantors at such time; provided further that if the foregoing requirements are not satisfied, such Division shall be permitted if such Division, in the aggregate, would otherwise result in an Asset Sale permitted by clause (g) above;

(j) non-exclusive licenses for the use of the property of Borrower or its Subsidiaries in the ordinary course of business;

(k) (i) the lapse of registered patents, trademarks, copyrights and other intellectual property to the extent not economically desirable in the conduct of Borrower's business or (ii) the abandonment of patents, trademarks, copyrights or other intellectual property rights in the ordinary course of business so long as, in each case, such lapse or abandonment is not materially adverse to the interests of the Agent or the Lenders;

(l) dispositions of owned or leased vehicles in the ordinary course of business; and

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(m) sales or transfers of any of its Equity Interests pursuant to any follow-on public offering on the Nasdaq Global Select Market, as long as such sales or transfers do not result in a Change of Control.

(n) (i) the sale of any Permitted Convertible Indebtedness by the Borrower, (ii) the entry into any Permitted Equity Derivative Transaction by the Borrower in connection with the issuance of any Permitted Convertible Indebtedness, (iii) the settlement, unwinding or termination of any Permitted Equity Derivative Transaction, or (iv) the issuance of Equity Interests pursuant to the conversion or exchange of Permitted Convertible Indebtedness or the settlement, unwinding or termination of any Permitted Equity Derivative Transaction.

The Lenders hereby consent and agree to the release by the Agent of any and all Liens on the property sold or otherwise disposed of in compliance with this Section 8.4.

8.5 Restricted Payments

. Declare or make any distributions, dividend, payment or other distribution of assets, properties, cash, rights, obligations or securities (collectively, "Distributions") on account of any of its Equity Interests, as applicable, or purchase, redeem or otherwise acquire for value any of its Equity Interests, as applicable, or any warrants, rights or options to acquire any of its Equity Interests, now or hereafter outstanding (collectively, "Purchases"), except that:

(a) any Subsidiary may pay cash Distributions to Borrower;

(b) each Credit Party may declare and make Distributions payable in the Equity Interests of such Credit Party, provided that the issuance of such Equity Interests does not otherwise violate the terms of this Agreement and no Default or Event of Default has occurred and is continuing at the time of making such Distribution or would result from the making of such Distribution;

(c) each Credit Party may pay any Management Fees pursuant to the terms of the Management Agreement and in accordance with Section 8.14; and

(d) each Credit Party may repurchase the Equity Interests of former employees, directors, officers or consultants pursuant to stock repurchase agreements as long as such repurchases in any Fiscal Year do not exceed \$500,000.

(e) any payment (including payment of any premium) or delivery with respect to, or early unwind or settlement or termination of, any Permitted Equity Derivative Transaction.

8.6 [Reserved]

8.7 Limitation on Investments, Loans and Advances

. Make or allow to remain outstanding any Investment (whether such investment shall be of the character of investment in shares of stock, evidences of indebtedness or other securities or otherwise) in, or any loans or advances to, any Person other than:

(a) Permitted Investments;

(b) Investments existing on the Effective Date and listed on Schedule 8.7 hereof;

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(c) sales on open account in the ordinary course of business;

(d) Investments (i) of Subsidiaries in or to other Subsidiaries of Borrower that are Credit Parties, (ii) by Borrower in Accolade Technologies s.r.o. not to exceed \$7,500,000 in the aggregate in any Fiscal Year, and (iii) by Borrower in other Subsidiaries not to exceed \$500,000 in the aggregate in any Fiscal Year;

(e) intercompany loans or intercompany Investments made by any Credit Party to or in any Guarantor or Borrower; provided, that in each case, no Default or Event of Default shall have occurred and be continuing at the time of making such intercompany loan or intercompany Investment or result from such intercompany loan or intercompany Investment being made and that any intercompany loans shall be evidenced by and funded under an Intercompany Note pledged to the Agent under the appropriate Collateral Documents;

(f) Investments in respect of Hedging Transactions provided that such transaction is entered into for risk management purposes and not for speculative purposes;

(g) loans and advances to employees, officers and directors of any Credit Party for moving, entertainment, travel and other similar expenses in the ordinary course of business not to exceed \$150,000 in the aggregate at any time outstanding;

(h) Permitted Acquisitions;

(i) Investments constituting deposits made in connection with the purchase of goods or services in the ordinary course of business in an aggregate amount for such deposits not to exceed \$5,000,000 at any one time outstanding;

(j) Investments received in connection with the bankruptcy or reorganization of customers and suppliers and in the settlement of delinquent obligations of, and other disputes with, customers or suppliers in the ordinary course of business;

(k) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the ordinary course of business

(l) other Investments not described above provided that both at the time of and immediately after giving effect to any such Investment (i) no Default or Event of Default shall have occurred and be continuing or shall result from the making of such Investment and (ii) the aggregate amount of all such Investments shall not exceed \$1,000,000 at any time outstanding.

In valuing any Investments for the purpose of applying the limitations set forth in this Section 8.7 (except as otherwise expressly provided herein), such Investment shall be taken at the original cost thereof, without allowance for any subsequent write-offs or appreciation or depreciation, but less any amount repaid or recovered on account of capital or principal.

(m) Investments in Permitted Equity Derivative Transactions.

8.8 Transactions with Affiliates

. Except as set forth in Schedule 8.8, enter into any transaction, including, without limitation, any purchase, sale, lease or exchange of property or the rendering of any service, with any Affiliates of the

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Credit Parties except: (a) transactions with Affiliates that is the Borrower or Guarantors; (b) transactions otherwise permitted under this Agreement; (c) transactions in the ordinary course of a Credit Party's business and upon fair and reasonable terms no less favorable to such Credit Party than it would obtain in a comparable arms length transaction from unrelated third parties; (d) bona fide equity financings; or (e) the issuance of Equity Interests of the Borrower to any Person in connection with any Permitted Acquisition or other Investment permitted hereunder.

8.9 Sale-Leaseback Transactions

. Enter into any arrangement with any Person providing for the leasing by a Credit Party of real or personal property which has been or is to be sold or transferred by such Credit Party to such Person or to any other Person to whom funds have been or are to be advanced by such Person on the security of such property or rental obligations of such Credit Party, as the case may be, provided that if, at the time that a Credit Party acquires fixed or capital assets, such Credit Party intends to sell to and then lease such assets from another Person pursuant to a financing arrangement that would be permitted under Section 8.1(c), such transaction will not constitute a violation of this Section 8.9 so long as such transaction is consummated within sixty (60) days following the acquisition of such assets.

8.10 Limitations on Other Restrictions

. Except for this Agreement, any other Loan Document or the Escalate Subordinated Debt Documents, enter into any agreement, document or instrument which would (i) restrict the ability of any Subsidiary of Borrower to pay or make dividends or distributions in cash or kind to Borrower or any Guarantor, to make loans, advances or other payments of whatever nature to any Credit Party, or to make transfers or distributions of all or any part of its assets to any Credit Party; or (ii) restrict or prevent any Credit Party from granting the Agent, for the benefit of the Lenders, Liens upon, security interests in and pledges of their respective assets, except to the extent such restrictions exist in documents creating Liens permitted by Section 9.2(b) hereunder.

8.11 Prepayment of Debt

(a) Make any prepayment (whether optional or mandatory), repurchase, redemption, defeasance or any other payment in respect of any Subordinated Debt, provided, however, that the applicable Credit Party may make payments in respect of the Escalate Subordinated Debt, but only to the extent permitted under the Escalate Subordinated Debt Documents and the Escalate Subordination Agreement.

(b) So long as any Revolving Credit Advances are outstanding at such time, make any prepayment (whether optional or mandatory), repurchase, redemption, defeasance or payment of interest in cash on any Permitted Convertible Indebtedness in excess of \$20,000,000 in any Fiscal Year (excluding any cash in lieu of fractional shares and/or accrued and unpaid interest, if any, on such Permitted Convertible Indebtedness); provided, however, that (i) so long as the Liquidity of Borrower and its Subsidiaries is at least \$100,000,000 or more, Borrower and its Subsidiaries may make any such cash prepayment (whether optional or mandatory), repurchase, redemption, defeasance or payment of interest on any Permitted Convertible Indebtedness in an amount up to, and including, \$25,000,000 in any Fiscal Year; and (ii) Borrower and its Subsidiaries may make any such cash prepayment (whether optional or mandatory), repurchase, redemption or defeasance on any Permitted Convertible Indebtedness in an unlimited amount exclusively using proceeds of a substantially concurrent refinancing or replacement of such Permitted Convertible Indebtedness permitted pursuant to Section 8.1(q). For the avoidance of doubt,

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this Section 8.11(b) shall not apply to nor restrict any conversions of Permitted Convertible Indebtedness settled in whole or in part in cash pursuant to the terms of such Permitted Convertible Indebtedness.

8.12 Amendment of Subordinated Debt Documents

. Amend, modify or otherwise alter (or suffer to be amended, modified or altered) the Subordinated Debt Documents except as permitted in the applicable Subordinated Debt Documents and Subordination Agreements, or if no such restrictions exist in the applicable Subordinated Debt Documents or Subordination Agreements, without the prior written consent of the Agent and the Majority Lenders.

8.13 Modification of Certain Agreements

. Make, permit or consent to any amendment or other modification to the constitutional documents of any Credit Party or any Material Contract except to the extent that any such amendment or modification (i) does not violate the terms and conditions of this Agreement or any of the other Loan Documents, (ii) does not materially adversely affect the interest of the Lenders as creditors and/or secured parties under any Loan Document and (iii) could not reasonably be expected to have a Material Adverse Effect.

8.14 Management Fees

. Pay or otherwise advance, directly or indirectly, any management, consulting or other fees to an Affiliate, other than the payment of any Management Fees pursuant to the terms of the Management Agreement, in aggregate amount not to exceed 2% per annum of all equity capital invested by Accretive, LLC and its Affiliates (plus (i) reasonable out-of-pocket costs and expenses incurred and (ii) any accrued but unpaid Management Fees from a prior period) during any trailing four-quarter period, so long as such payments are not prohibited by the terms of the Management Fee Subordination Agreement.

8.15 Fiscal Year

. Permit the Fiscal Year of any Credit Party to end on a day other than February 28 or 29.

9. DEFAULTS.

9.1 Events of Default

. The occurrence of any of the following events shall constitute an Event of Default hereunder:

(a) non-payment when due of (i) the principal or interest on the Indebtedness under the Revolving Credit (including the Swing Line), or (ii) any Reimbursement Obligation, or (iii) any Fees;

(b) non-payment of any other amounts due and owing by Borrower under this Agreement or by any Credit Party under any of the other Loan Documents to which it is a party, other than as set forth in subsection (a) above, within three (3) Business Days after the same is due and payable;

(c) default in the observance or performance of any of the conditions, covenants or agreements of the Borrower set forth in Sections 7.1, 7.2, 7.4(a) and (e), 7.5, 7.6, 7.7, 7.9, 7.13, 7.14, 7.15, 7.16, 7.17 or Article 8 in its entirety, provided that an Event of Default arising from a breach of Sections 7.1 or 7.2 shall be deemed to have been cured upon delivery of the required item; and provided further that any Event of Default arising solely due to a breach of Section 7.7(a) shall be deemed cured upon the earlier of (x) the

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giving of the notice required by Section 7.7(a) and (y) the date upon which the Default or Event of Default giving rise to the notice obligation is cured or waived;

(d) default in the observance or performance of any of the other conditions, covenants or agreements set forth in this Agreement or any of the other Loan Documents by any Credit Party and continuance thereof for a period of thirty (30) consecutive days;

(e) any representation or warranty made by any Credit Party herein or in any certificate, instrument or other document submitted pursuant hereto proves untrue or misleading in any material adverse respect when made;

(f) (i) default by any Credit Party in the payment of any indebtedness for borrowed money, whether under a direct obligation or guaranty (other than Indebtedness hereunder) of any Credit Party in excess of Five Hundred Thousand Dollars (\$500,000) (or the equivalent thereof in any currency other than Dollars) individually or in the aggregate when due and continuance thereof beyond any applicable period of cure and or (ii) failure to comply with the terms of any other obligation of any Credit Party with respect to any indebtedness for borrowed money (other than Indebtedness hereunder) in excess of Five Hundred Thousand Dollars (\$500,000) (or the equivalent thereof in any currency other than Dollars) individually or in the aggregate, which continues beyond any applicable period of cure and which would permit the holder or holders thereto to accelerate such other indebtedness for borrowed money, or require the prepayment, repurchase, redemption or defeasance of such indebtedness;

(g) the rendering of any judgment(s) (not covered by adequate insurance from a solvent carrier which is defending such action without reservation of rights) for the payment of money in excess of the sum of Five Hundred Thousand Dollars (\$500,000) (or the equivalent thereof in any currency other than Dollars) individually or in the aggregate against any Credit Party, and such judgments shall remain unpaid, unvacated, unbonded or unstayed by appeal or otherwise for a period of thirty (30) consecutive days from the date of its entry;

(h) an ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan that has resulted or could reasonably be expected to result in liability of the Borrower under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount that could reasonably be expected to have a Material Adverse Effect;

(i) except as expressly permitted under this Agreement, any Credit Party shall be dissolved (other than a dissolution of a Subsidiary of Borrower which is not a Guarantor or Borrower) or liquidated (or any judgment, order or decree therefor shall be entered) except as otherwise permitted herein; or if a creditors' committee shall have been appointed for the business of any Credit Party; or if any Credit Party shall have made a general assignment for the benefit of creditors or shall have been adjudicated bankrupt and if not an adjudication based on a filing by a Credit Party, it shall not have been dismissed within sixty (60) days, or shall have filed a voluntary petition in bankruptcy or for reorganization or to effect a plan or arrangement with creditors or shall fail to pay its debts generally as such debts become due in the ordinary course of business (except as contested in good faith and for which adequate reserves are made in such party's financial statements); or shall file an answer to a creditor's petition or other petition filed against it, admitting the material allegations thereof for an adjudication in bankruptcy or for reorganization; or shall have applied for or permitted the appointment of a receiver or trustee or custodian for any of its property or assets; or such receiver, trustee or custodian shall have been appointed for any of its property or assets (otherwise than upon application or consent of a Credit Party) and shall not have been removed within sixty (60) days; or if an order shall be entered approving any petition for reorganization of any Credit Party and shall not have been reversed or dismissed within sixty (60) days;

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(j) a Change of Control;

(k) the validity, binding effect or enforceability of any subordination provisions relating to any Subordinated Debt shall be contested by any Person party thereto (other than any Lender, the Agent, Issuing Lender or Swing Line Lender), or such subordination provisions shall fail to be enforceable by the Agent and the Lenders in accordance with the terms thereof, or the Indebtedness shall for any reason not have the priority contemplated by this Agreement or such subordination provisions;

(l) any Loan Document shall at any time for any reason cease to be in full force and effect (other than in accordance with the terms thereof or the terms of any other Loan Document), as applicable, or the validity, binding effect or enforceability thereof shall be contested by any party thereto (other than any Lender, the Agent, Issuing Lender or Swing Line Lender), or any Person shall deny that it has any or further liability or obligation under any Loan Document, or any such Loan Document shall be terminated (other than in accordance with the terms thereof or the terms of any other Loan Document), invalidated, revoked or set aside or in any way cease to give or provide to the Lenders and the Agent the benefits purported to be created thereby, or any Loan Document purporting to grant a Lien to secure any Indebtedness shall, at any time after the delivery of such Loan Document, fail to create a valid and enforceable Lien on any Collateral purported to be covered thereby or such Lien shall fail to cease to be a perfected Lien with the priority required in the relevant Loan Document;

(m) [***], or any of its Subsidiaries or Affiliates, cancels or fails to renew, or provides Borrower with written notice of its intention to cancel or renew, any contract other than (i) a contract with an annual value of less than ten percent (10%) of Borrower's total annual revenue, or (ii) any contract entered into after the Effective Date for ancillary services provided by Borrower outside of core services; provided that if [***], or any of its Subsidiaries or Affiliates, has entered into and continues to actively engage in bona fide good faith negotiations to renew such contract, such failure shall not be considered an Event of Default hereunder for a period of sixty (60) days from the date such contract was cancelled, not renewed, or Borrower received notice of such cancellation or non-renewal;

(n) any default or event of default under the Escalate Subordinated Debt Documents; or

(o) if there occurs any circumstance or circumstances that could reasonably be expected to have a Material Adverse Effect.

9.2 Exercise of Remedies

. If an Event of Default has occurred and is continuing hereunder: (a) the Agent may, and shall, upon being directed to do so by the Majority Lenders, declare the Revolving Credit Aggregate Commitment terminated; (b) the Agent may, and shall, upon being directed to do so by the Majority Lenders, declare the entire unpaid principal Indebtedness, including the Notes, immediately due and payable, without presentment, notice or demand, all of which are hereby expressly waived by the Borrower; (c) upon the occurrence of any Event of Default specified in Section 9.1(i) and notwithstanding the lack of any declaration by the Agent under preceding clauses (a) or (b), the entire unpaid principal Indebtedness shall become automatically and immediately due and payable, and the Revolving Credit Aggregate Commitment shall be automatically and immediately terminated; (d) the Agent shall, upon being directed to do so by the Majority Lenders, demand immediate delivery of cash collateral, and the Borrower agrees to deliver such cash collateral upon demand, in an amount equal to 105% of the maximum amount that may be available to be drawn at any time prior to the stated expiry of all outstanding Letters of Credit, for deposit into an account controlled by the Agent; (e) the Agent may, and shall, upon being directed to do so by the Majority Lenders, notify the Borrower or any Credit Party that interest shall be payable on demand on all

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Indebtedness (other than Revolving Credit Advances and Swing Line Advances with respect to which Section 2.6 hereof shall govern) owing from time to time to the Agent or any Lender, at a per annum rate equal to the then applicable Base Rate plus two percent (2%); and (f) the Agent may, and shall, upon being directed to do so by the Majority Lenders or the Lenders, as applicable (subject to the terms hereof), exercise any remedy permitted by this Agreement, the other Loan Documents or law.

9.3 Rights Cumulative

. No delay or failure of the Agent and/or Lenders in exercising any right, power or privilege hereunder shall affect such right, power or privilege, nor shall any single or partial exercise thereof preclude any further exercise thereof, or the exercise of any other power, right or privilege. The rights of the Agent and Lenders under this Agreement are cumulative and not exclusive of any right or remedies which Lenders would otherwise have.

9.4 Waiver by the Borrower of Certain Laws

. To the extent permitted by applicable law, the Borrower hereby agrees to waive, and does hereby absolutely and irrevocably waive and relinquish the benefit and advantage of any valuation, stay, appraisal, extension or redemption laws now existing or which may hereafter exist, which, but for this provision, might be applicable to any sale made under the judgment, order or decree of any court, on any claim for interest on the Notes, or any security interest or mortgage contemplated by or granted under or in connection with this Agreement. These waivers have been voluntarily given, with full knowledge of the consequences thereof.

9.5 Waiver of Defaults

. No Event of Default shall be waived by the Lenders except in a writing signed by an officer of the Agent in accordance with Section 13.10 hereof. No single or partial exercise of any right, power or privilege hereunder, nor any delay in the exercise thereof, shall preclude other or further exercise of their rights by the Agent or the Lenders. No waiver of any Event of Default shall extend to any other or further Event of Default. No forbearance on the part of the Agent or the Lenders in enforcing any of their rights shall constitute a waiver of any of their rights. The Borrower expressly agrees that this Section may not be waived or modified by the Lenders or the Agent by course of performance, estoppel or otherwise.

9.6 Set Off

. Upon the occurrence and during the continuance of any Event of Default, each Lender may at any time and from time to time, without notice to the Borrower but subject to the provisions of Section 10.3 hereof (any requirement for such notice being expressly waived by the Borrower), setoff and apply against any and all of the obligations of the Borrower now or hereafter existing under this Agreement, whether owing to such Lender, any Affiliate of such Lender or any other Lender or the Agent, any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by such Lender to or for the credit or the account of the Borrower and any property of the Borrower from time to time in possession of such Lender, irrespective of whether or not such deposits held or indebtedness owing by such Lender may be contingent and unmatured and regardless of whether any Collateral then held by the Agent or any Lender is adequate to cover the Indebtedness. Promptly following any such setoff, such Lender shall give written notice to the Agent and the Borrower of the occurrence thereof; provided that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Agent for further application in accordance with the provisions of Section 10.4 and, pending such payment, shall be segregated by such Defaulting Lender

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from its other funds and deemed held for the benefit of the Agent, the Issuing Lender and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Agent a statement describing in reasonable detail the Indebtedness owing to such Defaulting Lender as to which it exercised such right of setoff. The Borrower hereby grants to the Lenders and the Agent a lien on and security interest in all such deposits, indebtedness and property as collateral security for the payment and performance of all of the obligations of the Borrower under this Agreement. The rights of each Lender under this Section 9.6 are in addition to the other rights and remedies (including, without limitation, other rights of setoff) which such Lender may have.

9.7 [Reserved]

10. PAYMENTS, RECOVERIES AND COLLECTIONS.

10.1 Payment Procedure.

(a) All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise provided herein, all payments ~~made by the Borrower~~ of principal, interest or fees hereunder shall be made by the Borrower to the Agent, for the account of the respective Lenders to which such payment is owed, without setoff or counterclaim on the date specified for payment under this Agreement and must be received by the Agent not later than 1:00 p.m. (Detroit time) (or such later time on such date as agreed to by Agent) on the date such payment is required or intended to be made in Dollars in immediately available funds to the Agent at the Agent's ~~office located at 411 West Lafayette, 7th Floor, MC 3289, Detroit, Michigan 48226-3289, for the ratable benefit of the Revolving Credit Lenders in the case of payments in respect of the Revolving Credit and any Letter of Credit Obligations~~ Office. Any payment received by the Agent after 1:00 p.m. (Detroit time) (or such later time on such date as agreed to by Agent) shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. ~~Upon receipt of each such payment, the Agent shall make prompt payment~~ The Agent will promptly distribute to each Lender its ratable share (or other applicable Lender, or, in respect of Eurodollar-based Advances, such Lender's Eurodollar Lending Office, share as provided herein) of such payment in like funds as received by wire transfer to such Lender's applicable lending office (or otherwise distribute such payment in like funds ~~and currencies, of all amounts~~ as received by it for to the account of such Lender Person or Persons entitled thereto as provided herein).

(b) Unless the Agent shall have been notified in writing by the Borrower at least two (2) Business Days prior to the date on which any payment to be made by the Borrower is due that the Borrower does not intend to remit such payment, the Agent may, in its sole discretion and without obligation to do so, assume that the Borrower has remitted such payment when so due and the Agent may, in reliance upon such assumption, make available to each Revolving Credit Lender on such payment date an amount equal to such Lender's share of such assumed payment. If the Borrower has not in fact remitted such payment to the Agent, each Lender shall forthwith on demand repay to the Agent the amount of such assumed payment made available or transferred to such Lender, together with the interest thereon, in respect of each day from and including the date such amount was made available by the Agent to such Lender to the date such amount is repaid to the Agent at a rate per annum equal to the Federal Funds Effective Rate for the first two (2) Business Days that such amount remains unpaid, and thereafter at a rate of interest then applicable to such Revolving Credit Advances.

(c) Subject to the definition of "Interest Period" in Section 1 of this Agreement, whenever any payment to be made hereunder shall otherwise be due on a day which is not a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in

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computing interest, if any, in connection with such payment; provided that, if such next succeeding Business Day would fall after any applicable Maturity Date, payment shall be made on the immediately preceding Business Day.

(d) The obligations of the Lenders hereunder to Advances, to fund participations in Letters of Credit and Swing Line Advances, as applicable, and to make payments pursuant to Section 13.5 or otherwise hereunder are several and not joint. The failure of any Lender to make any Advance or, as applicable, to fund any such participation or to make any such payment on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its applicable Advance to purchase its participations, as applicable, or to make any payment hereunder.

10.2 Application of Proceeds of Collateral

. Notwithstanding anything to the contrary in this Agreement, in the case of any Event of Default under Section 9.1(i), immediately following the occurrence thereof, and in the case of any other Event of Default: (a) upon the termination of the Revolving Credit Aggregate Commitment, (b) the acceleration of any Indebtedness arising under this Agreement, (c) at the Agent's option, or (d) upon the request of the Majority Lenders after the commencement of any remedies hereunder, the Agent shall apply the proceeds of any Collateral, together with any offsets, voluntary payments by any Credit Party or others and any other sums received or collected in respect of the Indebtedness first, to pay all incurred and unpaid fees and expenses of the Agent under the Loan Documents and any protective advances made by the Agent with respect to the Collateral under or pursuant to the terms of any Loan Document, next, to pay any fees and expenses owed to the Issuing Lender hereunder, next, to pay principal and interest due under the Revolving Credit (including the Swing Line and any Reimbursement Obligations) and to cash collateralize all outstanding Letters of Credit in an amount equal to 105% of the maximum amount that may be available to be drawn at any time prior to the stated expiry of all outstanding Letters of Credit, on a pro rata basis, next to pay any obligations owing by any Credit Party under any Hedging Agreements on a pro rata basis, next, to pay any other Indebtedness on a pro rata basis, and then, if there is any excess, to the Credit Parties, as the case may be.

10.3 Pro-rata Recovery

. If any Lender shall obtain any payment or other recovery (whether voluntary, involuntary, by application of setoff or otherwise) on account of principal of, or interest on, any of the Advances made by it, or the participations in Letter of Credit Obligations or Swing Line Advances held by it in excess of its pro rata share of payments then or thereafter obtained by all Lenders upon principal of and interest on all such Indebtedness, such Lender shall purchase from the other Lenders such participations in the Revolving Credit and/or the Letter of Credit Obligation held by them as shall be necessary to cause such purchasing Lender to share the excess payment or other recovery ratably in accordance with the applicable Percentages of the Lenders; provided, however, that if all or any portion of the excess payment or other recovery is thereafter recovered from such purchasing holder, the purchase shall be rescinded and the purchase price restored to the extent of such recovery, but without interest.

10.4 Treatment of a Defaulting Lender; Reallocation of Defaulting Lender's Fronting Exposure.

(a) The obligation of any Lender to make any Advance hereunder shall not be affected by the failure of any other Lender to make any Advance under this Agreement, and no Lender shall have any liability to the Borrower or any of its Subsidiaries, the Agent, any other Lender, or any other Person for another Lender's failure to make any loan or Advance hereunder.

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(b) If any Lender shall become a Defaulting Lender, then such Defaulting Lender's right to vote in respect of any amendment, consent or waiver of the terms of this Agreement or such other Loan Documents, or to direct or approve any action or inaction by the Agent shall be subject to the restrictions set forth in Section 13.10.

(c) Any payment of principal, interest, fees or other amounts received by the Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article 9 or otherwise) or received by the Agent from a Defaulting Lender pursuant to Section 9.6 shall be applied at such time or times as may be determined by the Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to any Issuing Lender or Swing Line Lender hereunder; third, to cash collateralize the Issuing Lenders' Fronting Exposure with respect to such Defaulting Lender in accordance with clause (g) below; fourth, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Advance in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Agent; fifth, if so determined by the Agent and the Borrower, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Advances under this Agreement and (y) cash collateralize the Issuing Lenders' future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with clause (g) below; sixth, to the payment of any amounts owing to the Lenders, the Issuing Lenders or Swing Line Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the Issuing Lenders or Swing Line Lenders against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; seventh, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and eighth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Advances or Letter of Credit Obligations in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Advances were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 5.2 were satisfied or waived, such payment shall be applied solely to pay the Advances of, and Letter of Credit Obligations to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Advances of, or Letter of Credit Obligations owed to, such Defaulting Lender until such time as all Advances and funded and unfunded participations in Letter of Credit Obligations and Swing Line Advances are held by the Lenders pro rata in accordance with their respective Revolving Credit Percentages without giving effect to Section clause (d) below. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post cash collateral pursuant to this clause (c) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(d) Each Defaulting Lender shall be entitled to receive a Revolving Credit Facility Fee for any period during which that Lender is a Defaulting Lender only to extent allocable to the sum of (1) the outstanding principal amount of the Revolving Credit Advances funded by it, and (2) its Revolving Credit Percentage of the stated amount of Letters of Credit for which it has provided cash collateral pursuant to clause (g) below.

(e) Each Defaulting Lender shall be entitled to receive the Letter of Credit Fees described in Section 3.4(a) for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Revolving Credit Percentage of the stated amount of Letters of Credit for which it has provided cash collateral in accordance with clause (g) below. With respect to any Revolving Credit Facility Fee or Letter

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of Credit Fee not required to be paid to any Defaulting Lender pursuant to clause (A) or (B) above, the Borrower shall (x) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in Letter of Credit Obligations or Swing Line Advances that has been reallocated to such Non-Defaulting Lender pursuant to clause f below, (y) pay to each Issuing Lender and Swing Line Lender, as applicable, the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such Issuing Lender's and Swing Line Lender's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(f) If any Lender shall become a Defaulting Lender, then, for so long as such Lender remains a Defaulting Lender, any Fronting Exposure shall be reallocated by the Agent at the request of the Swing Line Lender and/or the Issuing Lender among the Non-Defaulting Lenders in accordance with their respective Percentages of the Revolving Credit, but only to the extent that the sum of the aggregate principal amount of all Revolving Credit Advances made by each Non-Defaulting Lender, plus such Non-Defaulting Lender's Percentage of the aggregate outstanding principal amount of Swing Line Advances and Letter of Credit Obligations prior to giving effect to such reallocation plus such Non-Defaulting Lender's Percentage of the Fronting Exposure to be reallocated does not exceed such Non-Defaulting Lender's Percentage of the Revolving Credit Aggregate Commitment, and only so long as no Default or Event of Default has occurred and is continuing on the date of such reallocation.

(g) At any time that there shall exist a Defaulting Lender, within one (1) Business Day following the written request of the Agent, the Swing Line Lender or the Issuing Lender (with a copy to the Agent), the Borrower shall cash collateralize the Swing Line Lender's and Issuing Lender's Fronting Exposure, as applicable, with respect to such Defaulting Lender (determined after giving effect to any cash collateral provided by such Defaulting Lender) in an amount not less than an amount determined by the Agent, the Swing Line Lender and the Issuing Lender in their sole discretion, by depositing such amounts into an account controlled by the Agent.

10.5 Erroneous Payments.

(a) If the Agent notifies any Lender that it has determined (which determination shall be conclusive and binding, absent manifest error) that the Agent or any of its Affiliates has erroneously, mistakenly or inadvertently transmitted any funds to any Lender (whether or not such transmittal was known by such Lender) (any such funds, whether received as a payment, prepayment, or repayment of principal, interest, fees, distributions, or otherwise, individually and collectively, an "Erroneous Payment") and the Agent subsequently demands the return of such Erroneous Payment (or any portion thereof), then such Lender shall promptly, but in no event later than two (2) Business Days after such demand, return to the Agent the amount of any such Erroneous Payment (or portion thereof) as to which such demand was made by the Agent, in same day funds (in the currency so received), together with interest thereon in respect of each day from and including the date such amount was received by such Lender to the date such amount is repaid to the Agent in same day funds at the Federal Funds Effective Rate.

(b) The parties hereto agree that an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Indebtedness owed by ~~any~~the Borrower or any other Credit Party, except, in each case, to the extent such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Agent from the Borrower or any other Credit Party.

(c) To the extent permitted by applicable law, each Lender agrees not to assert any right or claim to any Erroneous Payment (or any portion thereof) and hereby waives any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Agent

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for the return of any Erroneous Payment (or any portion thereof) (including, without limitation, any defense based on “discharge for value” or any similar doctrine).

(d) This Section 10.5 shall survive the resignation or replacement of the Agent, any transfer of rights or obligations by, or the replacement of, a Lender, the termination of the Commitments and/or the repayment, satisfaction or discharge of all Indebtedness (or any portion thereof) under any Loan Document.

(e) For purposes of this Section 10.5, the term “Lender” includes each Issuing Lender.

11. YIELD PROTECTION; INCREASED COSTS; MARGIN ADJUSTMENTS; TAXES UNAVAILABILITY; SUCCESSOR RATE DETERMINATIONS

11.1 Reimbursement of Prepayment Costs

~~If (i) In the Borrower makes any event of (a) the payment of any principal with respect to of any Eurodollar-based Advance or Quoted other than a Base Rate Advance on any day other than on the last day of the Interest Period applicable thereto (whether voluntarily, pursuant to any mandatory provisions hereof, by acceleration, or otherwise); (ii) the Borrower converts or refunds (or attempts to convert or refund) including as a result of an Event of Default); (b) the conversion of any such Advance on any day other than a Base Rate Advance other than on the last day of the Interest Period applicable thereto (except including as described in Section 2.5a result of an Event of Default); (e); (iii) the Borrower fails failure to borrow, refund or convert, continue or prepay any Eurodollar-based Advance or Quoted other than a Base Rate Advance after on the date specified in any notice has been given by the Borrower to the Agent in accordance with the terms hereof requesting such Advance; delivered pursuant hereto, or (iv) or if Borrower fails to make any payment of principal in respect of a Eurodollar-based the assignment of any BSBY Rate Advance or Quoted Rate Advance when due other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 13.12) then, in any such event, the Borrower shall reimburse the Agent for itself and/or on behalf of any Lender, as the case may be, within ten (10) Business Days of written demand therefor compensate each Lender for any resulting funding or other loss, cost or expense incurred (excluding the loss of any Applicable Margin) by the Agent and Lenders, as the case may be, as a result thereof, including, without limitation, attributable to such event, including any such funding or other loss, cost or expense incurred in obtaining, liquidating, employing or redeploying deposits from third parties, whether or not arising from the liquidation or redeployment of funds. 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 Agent Borrower and Lenders, as the case may be, shall have funded or committed to fund such Advance be conclusive absent manifest error. The amount payable hereunder by the Borrower to the Agent for itself and/or on behalf of any Lender, as the case may be, shall be deemed to equal an amount equal to the excess, if any, of (a) the amount of interest which would have accrued on the amount so prepaid, or not so borrowed, refunded or converted, for the period from the date of such prepayment or of such failure to borrow, refund or convert, through the last day of the relevant Interest Period, at the applicable rate of interest for said Advance(s) provided under this Agreement, over (b) the amount of interest (as reasonably determined by the Agent and Lenders, as the case may be) which would have accrued to the Agent and Lenders, as the case may be, on such amount by placing such amount on deposit for a comparable period with leading banks in the interbank eurocurrency market. Calculation of any amounts payable to any Lender under this paragraph shall be made as though such Lender shall have actually funded or committed to fund the relevant Advance through the purchase of an underlying deposit in an amount equal to the amount of such Advance and having a maturity comparable to the relevant Interest Period; provided, however, that any Lender may fund any Eurodollar-based Advance or Quoted Rate Advance, as the case may be, in any manner it deems fit and the foregoing assumptions shall be utilized only for the purpose of the calculation of amounts payable under this paragraph. Upon the written request~~

~~of the Borrower, the Agent and Lenders shall deliver to the Borrower a certificate setting forth the basis for determining such losses, costs and expenses, which certificate shall be conclusively presumed correct, absent manifest error.~~

~~11.2 Eurodollar Lending Office~~

~~For any Eurodollar-based Advance, if the Agent or a Lender, as applicable, shall designate a Eurodollar Lending Office which maintains books separate from those of the rest of the Agent or such Lender, the Agent or such Lender, as the case may be, shall have the option of maintaining and carrying the relevant Advance on the books of such Eurodollar Lending Office. shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.~~

11.2 Inability to Determine Interest Rate

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Subject to Section 11.3, below, if, on or prior to the first day of any Interest Period or other applicable tenor for any Advance, the Agent shall determine (which determination shall be conclusive and binding absent manifest error) or, in the case of clause (b) below, the Majority Lenders shall determine (which determinations shall be conclusive and binding absent manifest error) and notify Agent, that

(a) the Benchmark (or any component thereof) cannot be determined pursuant to the definition thereof, or

(b) the Benchmark for such Interest Period or other applicable tenor (collectively, the “Affected Tenor”) ~~does not adequately and fairly reflect the cost to~~ such Lenders of funding or maintaining such Advance, or

(c) the making or funding of any Advance that accrues interest at or by reference to the Benchmark has become impracticable or not administratively feasible,

then the Agent will promptly so notify the Borrower and each Lender. Upon notice thereof by the Agent to the Borrower, (i) any obligation of the Lenders to make Advances that accrue interest at or by reference to such Benchmark, and any right of the Borrower to continue Advances that accrue interest at or by reference to such Benchmark, or to convert Base Rate Advances to Advances that accrue interest at or by reference to such Benchmark, shall be suspended (in each case, to the extent of the affected Advances or Affected Tenors) until the Agent (with respect to clause (b) of this Section 11.2, at the instruction of the Majority Lenders) revokes such notice, (ii) ~~the Borrower may revoke any pending request for a borrowing of, conversion to or continuation of any Advances that accrue interest at or by reference to such Benchmark (to the extent of the affected Advances or Affected Tenors) or, failing that, the Borrower will be deemed to have converted any such request into a request for a borrowing of or conversion to Base Rate Advances in the amount specified therein and (iii) any outstanding affected Advances will be deemed to have been converted into Base Rate Advances at the end of the applicable Interest Period or other applicable tenor.~~ Upon any such conversion, the Borrower shall also pay accrued interest on the amount so converted, together with any additional amounts required pursuant to Section 11.1. Subject to Section 11.3, if the Agent determines (which determination shall be conclusive and binding absent manifest error) that the Benchmark cannot be determined pursuant to the definition thereof on any given day, the interest rate on Base Rate Advances shall be determined by the Agent without reference to clause (c) of the definition of “Base Rate” until the Agent revokes such determination.

11.3 ~~Circumstances Affecting LIBOR Rate Availability~~ BSBY Unavailability

~~If for any reason (a) the Agent or the Majority Lenders (after consultation with~~
~~;~~ Successor Rate Determination

~~=~~

(a) Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, but without limiting Section 11.2 above, if:

(i) adequate and reasonable means do not exist for ascertaining all Available Tenors of the BSBY Rate (or any component thereof, and including, without limitation, because the BSBY Screen Rate is not available or published on a current basis), and such circumstances are unlikely to be temporary, as determined by the Agent) ~~shall determine~~ (which determination shall be conclusive and binding absent manifest error) ~~that Dollar deposits are not being offered, or Majority Lenders pursuant to banks, in the London interbank eurodollar market for the applicable amount and Interest Period of any requested Eurodollar-based Advance (including any continuation of, or conversion into, a Eurodollar-based Advance), other than as a result of a Benchmark Transition Event, (b) case of the Majority Lenders, delivery of notice to the Agent or with a copy to the Borrower that Majority Lenders (after consultation with the Agent) shall determine~~ have so determined (which determination likewise shall be conclusive and binding absent manifest error) ~~that adequate and reasonable means do not exist for the ascertaining the LIBOR Rate for such Interest Period; or~~

(ii) the BSBY Administrator or a Governmental Authority having or purporting to have jurisdiction over the Agent or the BSBY Administrator with respect to its publication of BSBY, in each case acting in such Advance, other than as a result of a Benchmark Transition Event, or (c) the Majority Lenders shall determine (which determination shall be conclusive and binding absent manifest error) capacity, has made a public statement (A) identifying a specific date after which all Available Tenors of the BSBY Rate shall or will no longer be representative or made available, or used or permitted to be used for determining the interest rate of Dollar-denominated syndicated loans, or shall or will otherwise cease, provided that, at the time of such statement, there is no successor administrator that is satisfactory to the Agent, that will continue to provide such representative tenors of the BSBY Rate (or any component thereof) after the latest date on which all Available Tenors of the BSBY Rate (or any component thereof) are no longer representative or available permanently or indefinitely, or (B) that the LIBOR BSBY Rate does not adequately and fairly reflect the cost to the Lenders of making or maintaining such Advance during such Interest Period, then the Agent (and in the case of clause (c) above, upon notice from the Majority Lenders) will promptly give notice thereof to the Borrower and the Lenders. Thereafter, until the Agent notifies the Borrower that such circumstances no longer exist, (i) the obligation of Lenders to make Advances which bear interest at or by reference to the LIBOR Rate, and the right of the Borrower to convert an Advance to or refund an Advance as an Advance which bears interest at or by reference to the LIBOR Rate shall be suspended, and (ii) effective upon the last day of each Eurodollar-Interest Period related to any existing Eurodollar-based Advance, each such Eurodollar-based Advance shall automatically be converted into an Advance which bears interest at or by reference to the Base Rate (without regard to the satisfaction of any conditions to conversion contained elsewhere herein); (or any component thereof) fails to comply with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks; or

(iii) all Available Tenors of BSBY are not newly published (e.g., are carried over) by the BSBY Administrator for five (5) consecutive Business Days and such failure is not the result of a temporary moratorium, embargo, or disruption declared by the BSBY Administrator or by the regulatory supervisor for the BSBY Administrator;

then, on a date and time determined by the Agent (any such date, a "Replacement Date"), which date shall be at the end of an Interest Period or on the relevant Interest Payment Date, as applicable, for interest calculated and, solely with respect to clause (ii) above, no later than the latest date determined under clause (ii), the BSBY Rate will be replaced hereunder and under any Loan Document with the first available alternative set forth in the order below for any payment period for interest calculated that can be determined by the Agent, in each case, without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document (such rate, and any subsequent successor rate so determined, the "Successor Rate");

(x) Term SOFT, plus the SOFR Adjustment; and

(y) Daily Simple SOFR, plus the SOFR Adjustment.

In the event that the Successor Rate is Daily Simple SOFR (plus the SOFR Adjustment), all interest payments will be payable on a monthly basis.

(b) Notwithstanding anything to the contrary herein, (i) if the Agent determines that neither of the alternatives set forth in clauses (x) and (y) of Section 11.3(a) above is available on or prior to the Replacement Date or (ii) if events or circumstances comparable to those described in Section 11.3(a)(i) or Section 11.3(a)(ii) have occurred with respect to the Successor Rate then in effect, then in each case, the Agent and the Borrower may amend this Agreement solely for purpose of replacing the BSBY Rate or any then current Successor Rate in accordance with this Section 11.3 at the end of any Interest Period or other applicable tenor, relevant Interest Payment Date or payment period for interest calculated, as applicable, with another alternate benchmark rate giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated syndicated credit facilities for such alternative benchmark rate and, in each case, including any mathematical or other adjustments to such benchmark rate giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated syndicated credit facilities for such benchmark rate, which adjustment or method for calculating such adjustment shall be published on an information service as selected by the Agent from time to time in its reasonable discretion and may be periodically updated. For the avoidance of doubt, any such proposed rate and adjustments shall constitute a "Successor Rate". Any such amendment shall become effective at 5:00 p.m. on the fifth Business Day after the Agent shall have posted such proposed amendment to all Lenders and the Borrower unless, prior to such time, Lenders comprising the Majority Lenders have delivered to the Agent written notice that such Majority Lenders object to such amendment.

The Agent will promptly (in one or more notices) notify the Borrower and each Lender of the implementation of any Successor Rate. Any Successor Rate shall be applied in a manner consistent with market practice; provided that to the extent such market practice is not administratively feasible for the Agent, such Successor Rate shall be applied in a manner as otherwise reasonably determined by the Agent. In connection with the implementation of any Successor Rate, the Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement; provided that, with respect to any such amendment effected, the Agent shall post each such amendment implementing such Conforming Changes to the Borrower and the Lenders reasonably promptly after such amendment becomes effective.

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Notwithstanding anything else herein, if at any time any Successor Rate as so determined would otherwise be less than the Applicable Floor, the Successor Rate will be deemed to be the Applicable Floor for the purposes of this Agreement and the other Loan Documents.

(c) Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of this Section 11.3), (i) if the BSBY Rate or the then-current Successor Rate is a term rate (including Term SOFR) and either (A) any tenor for such benchmark rate is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Agent in its reasonable discretion, or (B) the administrator of such benchmark rate or the regulatory supervisor for the administrator of such benchmark rate has provided a public statement or publication of information announcing that any tenor for such benchmark rate is not or will not be representative or in compliance with or aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks, then the Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for any benchmark rate settings at or after such time to remove such unavailable, non-representative, non-compliant or non-aligned 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 rate (including any Successor Rate), or (B) is not, or is no longer, subject to an announcement that it is not or will not be representative or in compliance with or aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks for a Benchmark (including any Successor Rate), then the Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for all benchmark rate settings at or after such time to reinstate such previously removed tenor.

11.4 ~~Laws Affecting LIBOR Rate Availability~~Illegality

~~If, after the date of this Agreement, the adoption or introduction of, or any change in, any Lender determines (which determination shall be conclusive and binding absent manifest error) that any applicable law has made it unlawful, rule or regulation or in the interpretation or administration thereof by that any Governmental Authority charged with the interpretation or administration thereof, or compliance by any of the Lenders (or any of their respective Eurodollar Lending Offices) with any request or directive (whether or not having the force of law) of any such authority, shall make it unlawful or impossible~~has asserted that it is unlawful, it would create safety and soundness risks, or it would not be consistent with sound banking practices, for any of the Lenders (or any of their respective Eurodollar Lending Offices) to honor its obligations hereunder~~Lender or its applicable lending office to make or, maintain any Advance which bears interest at or~~or fund Advances whose interest is determined~~by reference to the LIBOR Rate, such Lender shall forthwith give~~BSBY Rate, or to determine or charge interest rates based upon the BSBY Rate, then, upon~~notice thereof by such Lender to the Borrower and to (through the Agent. Thereafter), (a) the obligations~~any obligation~~of the applicable Lenders to make BSBY Rate Advances which bear interest at or,~~and any right of the Borrower to continue BSBY Rate Advances or to convert Base Rate Advances to BSBY Rate Advances, shall be suspended, (b) the interest rate on Base Rate Advances shall, if necessary to avoid such illegality, be determined by the Agent without reference to clause (c) of the LIBOR definition of "Base Rate", in each case until such Lender notifies the Agent and the Borrower that the circumstances giving rise to such determination no longer exist and (c) the right of the Borrower to convert an Advanceinto or refund an Advance as an Advance which bears interest at or by reference to the LIBOR Rate shall be suspended and thereafter only the Base Rate shall be available, and (b) if any of the Lenders~~Borrower shall, if necessary to avoid such illegality, upon demand from any Lender (with a copy to the Agent), prepay or, if applicable, convert all BSBY Rate Advances to Base Rate Advances (subject to clause (b) of this Section 11.4) on the last day of the Interest Period therefor, if all affected Lenders may lawfully continue to maintain such BSBY Rate Advances to such day, or immediately, if any Lender may not lawfully continue to maintain an Advance which bears interest at or by reference to the LIBOR Rate~~such BSBY

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Rate Advances to such day. Upon any such prepayment or conversion, the applicable Advance Borrower shall immediately be converted to an Advance which bears also pay accrued interest at or by reference to on the Base Rate amount so converted, together with any additional amounts required pursuant to Section 11.1.

11.5 Increased Cost of Advances Carried at the LIBOR Rate Costs

. If any Change in Law shall:

(a) impose, modify or deem applicable any reserve (including pursuant to regulations issued from time to time by the Federal Reserve Board for determining the maximum reserve requirements (including any emergency, special, supplemental or other marginal reserve requirement), special deposit, compulsory loan, insurance charge or any similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender; or

(b) ~~(a)~~ subject any Lender Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; ~~or~~

~~(b) impose, modify or deem applicable any reserve (including, without limitation, any imposed by the Board of Governors of the Federal Reserve System), special deposit, liquidity, or similar requirement against assets of, deposits with or for the account of, or credit extended by, any of the Lenders (or any of their respective Eurodollar Lending Offices) or shall impose on any of the Lenders (or any of their respective Eurodollar Lending Offices) or the foreign exchange and interbank markets any other condition affecting any Advance~~

(c) impose on any Lender any other condition, cost or expense (other than Taxes) affecting this Agreement or Advances made by such Lender;

and the result of any of the foregoing ~~matters is~~ shall be to increase the ~~costs~~ cost to ~~any of the Lenders such Lender or such other Recipient of making, converting to, continuing or maintaining any Advance or~~ of maintaining its obligation to make any ~~part of the Indebtedness hereunder as an such~~ Advance ~~which bears interest at, or by reference to~~ increase the LIBOR Rate cost to such Lender, or to reduce the amount of any sum received or receivable by ~~any of the Lenders under this Agreement in respect of an Advance which bears such Lender or other Recipient hereunder (whether of principal, interest at or by reference to the LIBOR Rate, any other amount)~~ then, upon request of such Lender shall promptly notify the Agent, and the Agent shall promptly notify the Borrower of such fact and demand compensation therefor and, within ten (10) Business Days after such notice, the Borrower agrees to or other Recipient, the Borrower will pay to such Lender or ~~Lenders other Recipient, as the case may be,~~ such additional amount or amounts as will compensate such Lender or ~~Lenders for such increased cost or reduction, provided that each Lender agrees to take any reasonable action, to the extent such action could be taken without cost or administrative or other burden or restriction to such Lender, to mitigate or eliminate such cost or reduction, within a reasonable time after becoming aware of the foregoing matters. The Agent will promptly notify the Borrower of any event of which it has knowledge which will entitle Lenders to compensation pursuant to this Section, or which will cause the Borrower to incur additional liability under Section 11.1 hereof, provided that the Agent shall incur no liability whatsoever to the Lenders or the Borrower in the event it fails to do so. A certificate of the Agent (or such Lender, if applicable) setting forth other Recipient, as the basis case may be,~~ for determining such additional amount or amounts necessary to compensate such Lender or Lenders shall accompany such demand and shall be conclusively presumed to be correct absent manifest error costs incurred or reduction suffered.

11.6 Capital Adequacy and Other Increased Costs Requirements

. If any Lender determines that any Change in Law ~~affects or would affect the capital or liquidity requirements of a~~ affecting such Lender or ~~the Agent (or any corporation controlling~~ lending office of such Lender or ~~the Agent) and~~ such Lender ~~or the Agent, as the case may be, determines that the amount of required capital is increased by, or based upon the existence of such Lender's or the Agent's obligations or Advances hereunder, the effect of such Change in Law is to result in such an increase, and such increase's~~ holding company, if any, regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on such Lender's capital or on the ~~Agent's (or capital of such controlling corporation's) capital~~ Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such obligations Lender or ~~the Advances hereunder~~ made by such Lender to a level below that which such Lender or ~~the Agent (or such controlling corporation)~~ Lender's holding company could have achieved but for such ~~circumstances~~ Change in Law (taking into consideration ~~its~~ such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy ~~or and~~ liquidity) ~~by an amount deemed by such Lender or the Agent to be material, then the Agent or such Lender shall notify the Borrower, and thereafter the Borrower shall pay to such Lender or the Agent, as the case may be, within ten (10) Business Days of written demand therefor from, then from time to time the Borrower will pay to~~ such Lender ~~or the Agent,~~ such additional amount or amounts sufficient to ~~as will~~ compensate such Lender or ~~the Agent (or such controlling corporation)~~ Lender's holding company for any such reduction which such Lender or the Agent determines to be allocable to the existence of such Lender's or the Agent's obligations or Advances hereunder, including without limitation any obligations in respect of Letters of Credit. A statement setting forth the amount of such compensation, the methodology for the calculation and the calculation thereof which shall also be prepared in good faith and in reasonable detail by such Lender or the Agent, as the case may be, shall be submitted by such Lender or by the Agent to the Borrower, reasonably promptly after becoming aware of any event described in this Section 11.6(a) and shall be conclusively presumed to be correct, absent manifest errors suffered.

11.7 Right of Lenders to Fund through Branches and Affiliates Certificates for Reimbursement

~~Each Lender (including without limitation the Swing Line Lender) may, if it so elects, fulfill its commitment as to any Advance hereunder by designating a branch or Affiliate of such Lender to make such Advance; provided that (a) such Lender shall remain solely responsible for the performances of its obligations hereunder and (b) no such designation shall result in any material increased costs to the Borrower~~

A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in Section 11.5 or 11.6 of this Section and delivered to the Borrower, 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.

11.8 [Reserved].

11.9 Delay in Requests

. Failure or delay on the part of any Lender or the Issuing Lender to demand compensation pursuant to the foregoing provisions of ~~this Section 11.9~~ Sections 11.5, 11.6 or 3.4(c) shall not constitute a waiver of such Lender's or the Issuing Lender's right to demand such compensation, provided that the Borrower shall not be required to compensate a Lender or the Issuing Lender pursuant to ~~Sections 11.4, 11.5, 11.6 or 3.4(c)~~, for any increased costs incurred or reductions suffered more than 180 days prior to the date that such Lender or the Issuing Lender, as the case may be, notifies the Borrower of the Change in Law (provided that this

provision will not apply to any Change in Law of the type referred to in clauses (x), (y) or (z) of the definition thereof) giving rise to such increased costs or reductions and of such Lender's or the Issuing Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180 day period referred to above shall be extended to include the period of retroactive effect thereof).

11.10 Taxes.

(a) 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 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 Borrower shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) The Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Agent, timely reimburse it for the payment of, any Other Taxes.

(c) As soon as practicable after any payment of Taxes by the Borrower to a Governmental Authority pursuant to this Section 11.10, the Borrower shall deliver to the 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 Agent.

(d) 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 11.10, (including by payment of additional amounts pursuant to this Section 11.10), it shall pay to the indemnifying party an amount equal to such refund or indemnification (but only to the extent of additional amounts or indemnification paid under this Section 11.10 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 clause (d) (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 clause (d), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this clause (d) 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 or withheld and the additional amounts with respect to such Tax had never been paid.

This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(e) The Borrower shall indemnify each Recipient, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or

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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 Agent) or by the Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(f) Each Lender shall severally indemnify the Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent the Borrower has not already indemnified the 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 13.8 hereof 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 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 Agent shall be conclusive absent manifest ~~error~~error. Each Lender hereby authorizes the Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Agent to the Lender from any other source against any amount due to the Agent under this clause (f).

(g)

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Agent, at the time or times reasonably requested by the Borrower or the Agent, such properly completed and executed documentation reasonably requested by the Borrower or the 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 Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Agent as will enable the Borrower or the 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 clauses (A), (B) and (D) of Section 11.10(g)(ii)) 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. Borrower:

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the 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 Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the 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 Agent), whichever of the following is applicable

(i) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E 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 or IRS Form W-8BEN-E 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

(ii) executed copies of IRS Form W-8ECI;

(iii) 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 L-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 871(h)(3)(B) of the Code, or a “controlled foreign corporation” related to the Borrower as described in Section 881(c)(3)(C) of the Code (a “U.S. Tax Compliance Certificate”) and (y) executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E; or

(iv) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit L-2 or Exhibit L-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 L-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 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 Agent), executed copies 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 Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender or Agent under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender or Agent were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender or Agent shall deliver to the Borrower and the Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the 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 Agent as may be necessary for the Borrower and the Agent to comply

with their obligations under FATCA and to determine that such Lender or Agent has complied with such Lender's or Agent'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 Agent in writing of its legal inability to do so.

(h) ~~(g)~~ For purposes of this Section 11.10, the term “Lender” includes any Issuing Lender and the term “applicable law” includes FATCA.

(i) ~~(h)~~ Each party’s obligations under this Section 11.10 ~~and Section 13.13~~ shall survive the resignation or replacement of the Agent or any assignment of rights by, or the replacement of a Lender, the termination of Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

~~11.11 Effect of Benchmark Transition Event.~~

~~(a) Notwithstanding anything to the contrary herein or in any other Loan Document (and any Hedging Agreement shall be deemed not to be a “Loan Document” for purposes of this Section 11.11) if a Benchmark Transition Event or an Early Opt-in 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” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark (and each reference thereto) for all purposes hereunder and under any Loan Document and 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” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark (and each reference thereto) for all purposes hereunder and under any Loan Document and in respect of any Benchmark setting at or after 5:00 p.m. (Detroit, Michigan 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 Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Majority Lenders.~~

~~(b) Notwithstanding anything to the contrary herein or in any other Loan Document and subject to the proviso below in this clause (b), 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 such Benchmark (and each reference thereto) for all purposes hereunder or under any Loan Document and 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 (b) shall not be effective unless the Agent has delivered to the Lenders and the Borrower a Term SOFR Notice.~~

~~(c) In connection with the implementation of a Benchmark Replacement, the 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.~~

~~(d) The Agent will promptly notify the Borrower and the Lenders of (i) any occurrence of a Benchmark Transition Event, a Term SOFR Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date, (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 (e) below and (v) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 11.11, 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 11.11.~~

~~(e) 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 or the LIBOR 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 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 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 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 conversion to or continuation of any Eurodollar-based Advance to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for, or conversion to, a Base Rate Advance. 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 the Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of the Base Rate.~~

~~(h) As used in this Section 11.11:~~

~~"Available Tenor" means, as of any date of determination and with respect to the then-current Benchmark, as applicable, any tenor for such Benchmark or payment period for interest calculated with reference to such Benchmark, as applicable, that is or may be used for determining the length of an Interest Period 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 (e) of this Section 11.10.~~

~~“Benchmark” means, initially, the LIBOR Rate; provided that if a Benchmark Transition Event, a Term SOFR Transition Event or an Early Opt-in Election, as applicable; and its related Benchmark Replacement Date have occurred with respect to the LIBOR Rate or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to clause (a) or (b) of this Section 11.11~~

~~“Benchmark Replacement” means, for any Available Tenor, the first alternative set forth in the order below that can be determined by the Agent for the applicable Benchmark Replacement Date:~~

- ~~(1) the sum of: (a) Term SOFR and (b) the related Benchmark Replacement Adjustment;~~
- ~~(2) the sum of: (a) Daily Simple SOFR and (b) the related Benchmark Replacement Adjustment;~~
- ~~(3) the sum of: (a) the ~~alternate benchmark rate~~ that has been selected by the 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 U.S. dollar-denominated syndicated credit facilities at such time and (b) the related Benchmark Replacement Adjustment;~~

~~provided that, in the case of clause (1), 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 Agent in its reasonable discretion; 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 (x) Term SOFR and (y) the related Benchmark Replacement Adjustment, as set forth in clause (1) of this definition (subject to the immediately preceding proviso). Notwithstanding the foregoing, if the Benchmark Replacement as determined pursuant to clause (1), (2) or (3) above would be less than the Applicable Floor, the Benchmark Replacement will be deemed to be the Applicable 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:~~

- ~~(1) for purposes of clauses (1) and (2) of the definition of “Benchmark Replacement,” the ~~first alternative set forth in the order below that can be determined by the Agent.~~~~

- ~~(a) the spread adjustment, or method for calculating or determining such spread adjustment, (which may not be less than 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; provided, that if such Benchmark Replacement is set on a daily/overnight basis, then such spread adjustment or method for calculating or determining such spread adjustment shall be based upon a period that is approximately the same length (disregarding any business day adjustments) as the payment period for interest calculated with reference to such Benchmark Replacement, but in no event in excess of three months;~~
- ~~(b) the spread adjustment (which may not be less than 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; provided, that if such Benchmark Replacement is set on a daily/overnight basis, then such spread adjustment or method for calculating or determining such spread adjustment shall be based upon a period that is approximately the same length (disregarding any business day adjustments) as the payment period for interest calculated with reference to such Benchmark Replacement, but in no event in excess of three months; and~~
- ~~(2) for purposes of clause (3) of the definition of "Benchmark Replacement," the spread adjustment, or method for calculating or determining such spread adjustment, (which may not be less than zero) that has been selected by the 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 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 U.S. dollar-denominated syndicated credit facilities;~~

~~provided that, in the case of clause (1) 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 Agent in its reasonable discretion.~~

~~“Benchmark Replacement Conforming Changes” means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including, but not limited to, changes to the definition of “Applicable Reference Date”, the definition of “Base Rate”, the definition of “Business Day”, the definition of “Eurodollar-based Advance”, the definition of “Eurodollar-based Rate”, the definition of “Eurodollar-based Interest Period”, 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 Agent decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Agent in a manner substantially consistent with market practice (or, if the Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Agent determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).~~

~~“Benchmark Replacement Date” means the earliest to occur of the following events with respect to the then-current Benchmark:~~

- ~~(1) in the case of clause (1) or (2) 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);~~
- ~~(2) in the case of clause (3) of the definition of “Benchmark Transition Event,” the date of the public statement or publication of information referenced therein;~~
- ~~(3) 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; or~~
- ~~(4) in the case of an Early Opt-in Election, the sixth (6th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, so long as the Agent has not received, by 5:00 p.m. (Detroit, Michigan time) on the fifth (5th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, written notice of objection to such Early Opt-in Election from Lenders comprising the Majority 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 (1) or (2) 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 the occurrence of one or more of the~~

~~following events with respect to the then-current Benchmark:~~

- ~~(1) 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);~~
- ~~(2) 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 Board of Governors of the Federal Reserve System, the Federal Reserve Bank of New York, 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), 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~~
- ~~(3) 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 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). Further, the parties hereto acknowledge that, by virtue of the announcements on March 5, 2021 by the ICE Benchmark Administration and the U.K. Financial Conduct Authority, a Benchmark Transition Event has occurred with respect to the LIBOR Rate Benchmark for purposes of this definition and that no additional notice of such event shall be required hereunder.~~

~~“Benchmark Unavailability Period” means 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 the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with this Section 11.11 and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with this Section 11.11.~~

~~“Corresponding Tenor” means, with respect to any Available Tenor, 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.~~

~~“Daily Simple SOFR” means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Agent in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining “Daily Simple SOFR” for syndicated business loans; provided, that if the Agent decides that any such convention is not administratively feasible for the Agent, then the Agent may establish another convention in its reasonable discretion.~~

~~“Early Opt-in Election” means, if the then-current Benchmark is the LIBOR Rate, the occurrence of:~~

- ~~(1) a notification by the Agent to (or the request by the Borrower to the Agent to notify) each of the other parties hereto that at least five currently outstanding U.S. 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~~
- ~~(2) the joint election by the Agent and the Borrower to trigger a fallback from the LIBOR Rate and the provision by the Agent of written notice of such election to the Lenders.~~

~~“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.~~

~~“Reference Time” with respect to any setting of the then-current Benchmark means (1) if such Benchmark is the LIBOR Rate, at or about 11:00 a.m. (London, England time) (or soon thereafter as practical) on the Applicable Reference Date, and (2) if such Benchmark is not the LIBOR Rate, the time determined by the Agent in its reasonable discretion.~~

~~“Relevant Governmental Body” means the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or, in each case, any successor thereto.~~

~~“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 at approximately 8:00 a.m. (New York City time) on the immediately succeeding Business Day.~~

~~“SOFR Administrator” means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).~~

~~“SOFR Administrator’s Website” means the website of the Federal Reserve Bank of New York, 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.~~

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~~“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 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 Agent that (a) either (i) Term SOFR has been selected or recommended for use by the Relevant Governmental Body or (ii) at least five currently outstanding U.S. dollar-denominated syndicated credit facilities utilize a term SOFR-based rate as an available benchmark rate; (b) the administration of Term SOFR is feasible for the Agent, and (c) a Benchmark Transition Event or an Early Opt-in Election, as applicable, has previously occurred resulting in a Benchmark Replacement in accordance with Section 11.11 that is not Term SOFR.~~

~~“Unadjusted Benchmark Replacement” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.~~

12. AGENT.

12.1 Appointment of the Agent

. Each Lender and the holder of each Note (if issued) irrevocably appoints and authorizes the Agent to act on behalf of such Lender or holder under this Agreement and the other Loan Documents and to exercise such powers hereunder and thereunder as are specifically delegated to the Agent by the terms hereof and thereof, together with such powers as may be reasonably incidental thereto, including without limitation the power to execute or authorize the execution of financing or similar statements or notices, and other documents. In performing its functions and duties under this Agreement, the Agent shall act solely as agent of the Lenders and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for any Credit Party.

12.2 Deposit Account with the Agent or any Lender

. Borrower authorizes the Agent, in the Agent’s or sole discretion, upon notice to the Borrower to charge its general deposit account(s), if any, maintained with the Agent for the amount of any principal, interest, or other amounts or costs due under this Agreement when the same become due and payable under the terms of this Agreement or the Notes.

12.3 Scope of the Agent’s Duties

. The Agent shall have no duties or responsibilities except those expressly set forth herein, and shall not, by reason of this Agreement or otherwise, have a fiduciary relationship with any Lender (and no implied covenants or other obligations shall be read into this Agreement against the Agent). None of the Agent, its Affiliates nor any of their respective directors, officers, employees or agents shall be liable to any Lender for any action taken or omitted to be taken by it or them under this Agreement or any document executed pursuant hereto, or in connection herewith or therewith with the consent or at the request of the Majority Lenders (or all of the Lenders for those acts requiring consent of all of the Lenders) (except for its or their own willful misconduct or gross negligence), nor be responsible for or have any duties to ascertain, inquire into or verify (a) any recitals or warranties made by the Credit Parties or any Affiliate of the Credit

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Parties, or any officer thereof contained herein or therein, (b) the effectiveness, enforceability, validity or due execution of this Agreement or any document executed pursuant hereto or any security thereunder, (c) the performance by the Credit Parties of their respective obligations hereunder or thereunder, or (d) the satisfaction of any condition hereunder or thereunder, including without limitation in connection with the making of any Advance or the issuance of any Letter of Credit. The Agent and its Affiliates shall be entitled to rely upon any certificate, notice, document or other communication (including any cable, telegraph, telex, facsimile transmission or oral communication) believed by it to be genuine and correct and to have been sent or given by or on behalf of a proper person. The Agent may treat the payee of any Note as the holder thereof. The Agent may employ agents and may consult with legal counsel, independent public accountants and other experts selected by it and shall not be liable to the Lenders (except as to money or property received by them or their authorized agents), for the negligence or misconduct of any such agent selected by it with reasonable care or for any action taken or omitted to be taken by it in good faith in accordance with the advice of such counsel, accountants or experts.

12.4 Successor Agent

. The Agent may resign as such at any time upon at least thirty (30) days prior notice to the Borrower and each of the Lenders. If the Agent at any time shall resign or if the office of the Agent shall become vacant for any other reason, Majority Lenders shall, by written instrument, appoint successor agent(s) ("Successor Agent") satisfactory to such Majority Lenders and, so long as no Default or Event of Default has occurred and is continuing, to the Borrower (which approval shall not be unreasonably withheld or delayed); provided, however that any such successor Agent shall be a bank or a trust company or other financial institution which maintains an office in the United States, or a commercial bank organized under the laws of the United States or any state thereof, or any Affiliate of such bank or trust company or other financial institution which is engaged in the banking business, and shall have a combined capital and surplus of at least \$500,000,000. Such Successor Agent shall thereupon become the Agent hereunder, as applicable, and the Agent shall deliver or cause to be delivered to any successor agent such documents of transfer and assignment as such Successor Agent may reasonably request. If a Successor Agent is not so appointed or does not accept such appointment before the resigning Agent's resignation becomes effective, the resigning Agent may appoint a temporary successor to act until such appointment by the Majority Lenders and, if applicable, the Borrower, is made and accepted, or if no such temporary successor is appointed as provided above by the resigning the Agent, the Majority Lenders shall thereafter perform all of the duties of the resigning the Agent hereunder until such appointment by the Majority Lenders and, if applicable, the Borrower, is made and accepted. Such Successor Agent shall succeed to all of the rights and obligations of the resigning Agent as if originally named. The resigning Agent shall duly assign, transfer and deliver to such Successor Agent all moneys at the time held by the resigning Agent hereunder after deducting therefrom its expenses for which it is entitled to be reimbursed hereunder. Upon such succession of any such Successor Agent, the resigning Agent shall be discharged from its duties and obligations, in its capacity as the Agent hereunder, except for its gross negligence or willful misconduct arising prior to its resignation hereunder, and the provisions of this Article 12 shall continue in effect for the benefit of the resigning Agent in respect of any actions taken or omitted to be taken by it while it was acting as the Agent.

12.5 Credit Decisions

. Each Lender acknowledges that it has, independently of the Agent and each other Lender and based on the financial statements of the Borrower and such other documents, information and investigations as it has deemed appropriate, made its own credit decision to extend credit hereunder from time to time. Each Lender also acknowledges that it will, independently of the Agent and each other Lender and based on such other documents, information and investigations as it shall deem appropriate at any time, continue

to make its own credit decisions as to exercising or not exercising from time to time any rights and privileges available to it under this Agreement, any Loan Document or any other document executed pursuant hereto.

12.6 Authority of the Agent to Enforce This Agreement

. Each Lender, subject to the terms and conditions of this Agreement, grants the Agent full power and authority as attorney-in-fact to institute and maintain actions, suits or proceedings for the collection and enforcement of any Indebtedness outstanding under this Agreement or any other Loan Document and to file such proofs of debt or other documents as may be necessary to have the claims of the Lenders allowed in any proceeding relative to any Credit Party, or their respective creditors or affecting their respective properties, and to take such other actions which the Agent considers to be necessary or desirable for the protection, collection and enforcement of the Notes, this Agreement or the other Loan Documents.

12.7 Indemnification of the Agent

. The Lenders agree to indemnify the Agent and its Affiliates (to the extent not reimbursed by the Borrower, but without limiting any obligation of the Borrower to make such reimbursement), ratably according to their respective Weighted Percentages, from and against any and all claims, damages, losses, liabilities, costs or expenses of any kind or nature whatsoever (including, without limitation, reasonable fees and expenses of house and outside counsel) which may be imposed on, incurred by, or asserted against the Agent and its Affiliates in any way relating to or arising out of this Agreement, any of the other Loan Documents or the transactions contemplated hereby or any action taken or omitted by the Agent and its Affiliates under this Agreement or any of the Loan Documents; provided, however, that no Lender shall be liable for any portion of such claims, damages, losses, liabilities, costs or expenses resulting from the Agent's or its Affiliate's gross negligence or willful misconduct. Without limitation of the foregoing, each Lender agrees to reimburse the Agent and its Affiliates promptly upon demand for its ratable share of any reasonable out-of-pocket expenses (including, without limitation, reasonable fees and expenses of house and outside counsel) incurred by the Agent and its Affiliates in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement or any of the other Loan Documents, to the extent that the Agent and its Affiliates are not reimbursed for such expenses by the Borrower, but without limiting the obligation of the Borrower to make such reimbursement. Each Lender agrees to reimburse the Agent and its Affiliates promptly upon demand for its ratable share of any amounts owing to the Agent and its Affiliates by the Lenders pursuant to this Section, provided that, if the Agent or its Affiliates are subsequently reimbursed by the Borrower for such amounts, they shall refund to the Lenders on a pro rata basis the amount of any excess reimbursement. If the indemnity furnished to the Agent and its Affiliates under this Section shall become impaired as determined in the Agent's reasonable judgment or the Agent shall elect in its sole discretion to have such indemnity confirmed by the Lenders (as to specific matters or otherwise), the Agent shall give notice thereof to each Lender and, until such additional indemnity is provided or such existing indemnity is confirmed, the Agent may cease, or not commence, to take any action. Any amounts paid by the Lenders hereunder to the Agent or its Affiliates shall be deemed to constitute part of the Indebtedness hereunder.

12.8 Knowledge of Default

. It is expressly understood and agreed that the Agent shall be entitled to assume that no Default or Event of Default has occurred and is continuing, unless the officers of the Agent immediately responsible for matters concerning this Agreement shall have received a written notice from a Lender or Borrower specifying such Default or Event of Default and stating that such notice is a "notice of default". Upon receiving such a notice, the Agent shall promptly notify each Lender of such Default or Event of Default

and provide each Lender with a copy of such notice and shall endeavor to provide such notice to the Lenders within three (3) Business Days (but without any liability whatsoever in the event of its failure to do so). The Agent shall also furnish the Lenders, promptly upon receipt, with copies of all other notices or other information required to be provided by the Borrower hereunder.

12.9 The Agent's Authorization; Action by Lenders

. Except as otherwise expressly provided herein, whenever the Agent is authorized and empowered hereunder on behalf of the Lenders to give any approval or consent, or to make any request, or to take any other action on behalf of the Lenders (including without limitation the exercise of any right or remedy hereunder or under the other Loan Documents), the Agent shall be required to give such approval or consent, or to make such request or to take such other action only when so requested in writing by the Majority Lenders or the Lenders, as applicable hereunder. Action that may be taken by the Majority Lenders, any other specified Percentage of the Lenders or all of the Lenders, as the case may be (as provided for hereunder) may be taken (i) pursuant to a vote of the requisite percentages of the Lenders as required hereunder at a meeting (which may be held by telephone conference call), provided that the Agent exercises good faith, diligent efforts to give all of the Lenders reasonable advance notice of the meeting, or (ii) pursuant to the written consent of the requisite percentages of the Lenders as required hereunder, provided that all of the Lenders are given reasonable advance notice of the requests for such consent.

12.10 Enforcement Actions by the Agent

. Except as otherwise expressly provided under this Agreement or in any of the other Loan Documents and subject to the terms hereof, the Agent will take such action, assert such rights and pursue such remedies under this Agreement and the other Loan Documents as the Majority Lenders or all of the Lenders, as the case may be (as provided for hereunder), shall direct; provided, however, that the Agent shall not be required to act or omit to act if, in the reasonable judgment of the Agent, such action or omission may expose the Agent to personal liability for which the Agent has not been satisfactorily indemnified hereunder or is contrary to this Agreement, any of the Loan Documents or applicable law. Except as expressly provided above or elsewhere in this Agreement or the other Loan Documents, no Lender (other than the Agent, acting in its capacity as agent) shall be entitled to take any enforcement action of any kind under this Agreement or any of the other Loan Documents.

12.11 Collateral Matters.

(a) The Agent is authorized on behalf of all the Lenders, without the necessity of any notice to or further consent from the Lenders, from time to time to take any action with respect to any Collateral or the Collateral Documents which may be necessary to perfect and maintain a perfected security interest in and Liens upon the Collateral granted pursuant to the Loan Documents.

(b) The Lenders irrevocably authorize the Agent, in its reasonable discretion, to the full extent set forth in Section 13.10(d) hereof, (1) to release or terminate any Lien granted to or held by the Agent upon any Collateral (a) upon the Payment in Full of all Indebtedness; (b) constituting property (including, without limitation, Equity Interests in any Person) sold or to be sold or disposed of as part of or in connection with any disposition (whether by sale, by merger or by any other form of transaction and including the property of any Subsidiary that is disposed of as permitted hereby) permitted in accordance with the terms of this Agreement; (c) constituting property in which a Credit Party owned no interest at the time the Lien was granted or at any time thereafter; or (d) if approved, authorized or ratified in writing by the Majority Lenders, or all the Lenders, as the case may be, as provided in Section 13.10; (2) to subordinate the Lien granted to or held by the Agent on any Collateral to any other holder of a Lien on such Collateral

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which is permitted by Section 8.2(b) hereof; and (3) if all of the Equity Interests held by the Credit Parties in any Person are sold or otherwise transferred to any transferee other than Borrower or a Subsidiary of Borrower as part of or in connection with any disposition (whether by sale, by merger or by any other form of transaction) permitted in accordance with the terms of this Agreement, to release such Person from all of its obligations under the Loan Documents (including, without limitation, under any Guaranty). Upon request by the Agent at any time, the Lenders will confirm in writing the Agent's authority to release particular types or items of Collateral pursuant to this Section 12.11(b).

12.12 The Agents in their Individual Capacities

. Comerica Bank and its Affiliates, successors and assigns shall each have the same rights and powers hereunder as any other Lender and may exercise or refrain from exercising the same as though such Lender were not the Agent. Comerica Bank and its Affiliates may (without having to account therefor to any Lender) accept deposits from, lend money to, and generally engage in any kind of banking, trust, financial advisory or other business with the Credit Parties as if such Lender were not acting as the Agent hereunder, and may accept fees and other consideration therefor without having to account for the same to the Lenders.

12.13 The Agent's Fees

. Until the Payment in Full of all Indebtedness, the Borrower shall pay to the Agent, as applicable, any agency or other fee(s) set forth (or to be set forth from time to time) in the applicable Fee Letter on the terms set forth therein. The agency fees referred to in this Section 12.13 shall not be refundable under any circumstances.

12.14 Documentation Agent or other Titles

. Any Lender identified on the facing page or signature page of this Agreement or in any amendment hereto or as designated with consent of the Agent in any assignment agreement as Lead Arranger, Documentation Agent, Syndications Agent or any similar titles, shall not have any right, power, obligation, liability, responsibility or duty under this Agreement as a result of such title other than those applicable to all Lenders as such. Without limiting the foregoing, the Lenders so identified shall not have or be deemed to have any fiduciary relationship with any Lender as a result of such title. Each Lender acknowledges that it has not relied, and will not rely, on the Lender so identified in deciding to enter into this Agreement or in taking or not taking action hereunder.

12.15 Subordination Agreements

. Each Lender hereby irrevocably appoints, designates and authorizes Agent to enter into any subordination or intercreditor agreement pertaining to any Subordinated Debt, on its behalf and to take such action on its behalf under the provisions of any such agreement (subject to the last sentence of this Section 12.15). Each Lender further agrees to be bound by the terms and conditions of each subordination or intercreditor agreement pertaining to any Subordinated Debt. Each Lender hereby authorizes Agent to issue blockage notices in connection with any Subordinated Debt at the direction of Majority Lenders (it being agreed and understood that Agent will not act unilaterally to issue such blockage notices).

12.16 Indebtedness in respect of Lender Products and Hedging Agreements

. Except as otherwise expressly set forth herein, no Lender that obtains the benefits of the provisions of Section 10.2, any Guaranty or any Collateral by virtue of the provisions hereof or of any

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Guaranty or any Collateral Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) (or to notice of or to consent to any amendment, waiver or modification of the provisions hereof or of the Guaranty or any Collateral Document) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents.

Notwithstanding any other provision of this Article 12 to the contrary, the Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Indebtedness arising under Lender Products and Hedging Agreements unless the Agent has received written notice of such Indebtedness, together with such supporting documentation as the Agent may request, from the applicable Lender.

12.17 No Reliance on the Agent's Customer Identification Program.

(a) Each Lender acknowledges and agrees that neither such Lender, nor any of its Affiliates, participants or assignees, may rely on the Agent to carry out such Lender's, Affiliate's, participant's or assignee's customer identification program, or other obligations required or imposed under or pursuant to the USA Patriot Act or the regulations thereunder, including the regulations contained in 31 CFR 103.121 (as hereafter amended or replaced, the "CIP Regulations"), or any other Anti-Terrorism Law, including any programs involving any of the following items relating to or in connection with Borrower or any of its Subsidiaries, any of their respective Affiliates or agents, the Loan Documents or the transactions hereunder: (i) any identify verification procedures, (ii) any record keeping, (iii) any comparisons with government lists, (iv) any customer notices or (v) any other procedures required under the CIP Regulations or such other laws.

(b) Each Lender or assignee or participant of a Lender that is not organized under the laws of the United States or a state thereof (and is not excepted from the certification requirement contained in Section 313 of the USA Patriot Act and the applicable regulations because it is both (i) an affiliate of a depository institution or foreign bank that maintains a physical presence in the United States or foreign country, and (ii) subject to supervision by a banking authority regulating such affiliated depository institution or foreign bank) shall deliver to the Agent the certification, or, if applicable, recertification, certifying that such Lender is not a "shell" and certifying to other matters as required by Section 313 of the USA Patriot Act and the applicable regulations: (x) within 10 days after the Effective Date, and (y) at such other times as are required under the USA Patriot Act.

12.18 Flood Laws

. Comerica Bank has adopted internal policies and procedures that address requirements placed on federally regulated lenders under the Flood Laws. Comerica Bank, 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, Comerica Bank reminds each Lender and each 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.

12.19 Lenders' ~~ERISA~~ Representations.

(a) Each Lender as of the Effective Date represents and warrants as of the Effective Date to the Agent and its Affiliates, and not, for the avoidance of doubt, for the benefit of Borrower or any other Credit Party, that such Lender is not and will not be (i) an employee benefit plan subject to Title I of ERISA, (ii) a plan or account subject to Section 4975 of the Code, (iii) an entity deemed to hold "plan assets" of

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any such plans or accounts for the purposes of ERISA or the Code, or (iv) a “governmental plan” within the meaning of ERISA. For the avoidance of doubt, a Lender may act as a service provider to or with respect to an ERISA plan and/or a plan or account subject to Section 4975 of the Code; provided, however, that such Lender shall not exercise any discretion or authority to utilize the assets of such plans or accounts to fund any loans or other credit extended hereunder.

(b) Each Lender severally agrees to pay to the Agent and its Affiliates any and all costs, expenses, losses and other damages suffered or incurred by the Agent and its Affiliates as a result of such Lender's failure to obtain, maintain and/or hold any license required in connection with the use of BSBY.

13. MISCELLANEOUS.

13.1 Accounting Principles; Divisions

(a) Where the character or amount of any asset or liability or item of income or expense is required to be determined or any consolidation or other accounting computation is required to be made for the purposes of this Agreement, it shall be done, unless otherwise specified herein, in accordance with GAAP. Notwithstanding anything to the contrary contained in the definitions of Capital Expenditures or Capitalized Leases, in the event of the recent change in GAAP requiring all leases to be capitalized, only those leases (assuming for purposes of this paragraph that they were in existence on the Effective Date) that would constitute Capitalized Leases on December 31, 2018 shall be considered Capitalized Leases (and all other such leases shall constitute operating leases) and all calculations and deliverables under this Agreement or the other Loan Documents shall be made in accordance therewith (other than the financial statements delivered pursuant to this Agreement); provided that all such financial statements delivered to Agent and Lenders in accordance with the terms of this Agreement after the date of such change in GAAP shall contain a schedule showing the adjustments necessary to reconcile such financial statements with GAAP as in effect immediately prior to such change.

(b) For all purposes under the Loan Documents, in connection with any Division, (a) if any asset, right, obligation or liability of any Dividing Person becomes the asset, right, obligation or liability of a Division Successor, then it shall be deemed to have been transferred from the Dividing Person to the Division Successor, and (b) any Division Successor shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

13.2 Consent to Jurisdiction

THE PARTIES AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS SHALL BE TRIED AND LITIGATED ONLY IN THE STATE AND FEDERAL COURTS LOCATED IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, PROVIDED, HOWEVER, THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT AGENT'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE AGENT ELECTS TO BRING SUCH ACTION OR WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. THE BORROWER, THE AGENT AND THE LENDERS WAIVE, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, ANY RIGHT EACH MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 13.2.

13.3 Governing Law

THE VALIDITY OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (UNLESS EXPRESSLY PROVIDED TO THE CONTRARY IN ANOTHER LOAN DOCUMENT IN RESPECT OF SUCH OTHER LOAN DOCUMENT), THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF AND THEREOF, AND THE RIGHTS OF THE PARTIES HERETO AND THERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD FOR PRINCIPLES OF CONFLICTS OF LAWS.

13.4 Interest

In the event the obligation of the Borrower to pay interest on the principal balance of the Notes or on any other amounts outstanding hereunder or under the other Loan Documents is or becomes in excess of the maximum interest rate which the Borrower is permitted by law to contract or agree to pay, giving due consideration to the execution date of this Agreement, then, in that event, the rate of interest applicable thereto with respect to such Lender's applicable Percentages shall be deemed to be immediately reduced to such maximum rate and all previous payments in excess of the maximum rate shall be deemed to have been payments in reduction of principal and not of interest.

13.5 Closing Costs and Other Costs; Indemnification.

(a) The Borrower shall pay or reimburse the Agent and its Affiliates for payment of, on demand, all reasonable and documented costs and expenses, including, by way of description and not limitation, reasonable and documented in-house and outside attorney fees and advances, appraisal and accounting fees, lien search fees, and required travel costs, incurred by the Agent and its Affiliates in connection with the commitment, consummation and closing of the loans contemplated hereby, or in connection with the administration or enforcement of this Agreement or the other Loan Documents (including the obtaining of legal advice regarding the rights and responsibilities of the parties hereto) or any refinancing or restructuring of the loans or Advances provided under this Agreement or the other Loan Documents, or any amendment or modification thereof requested by the Borrower. Furthermore, all reasonable and invoiced costs and expenses, including without limitation reasonable and invoiced attorney fees, incurred by the Agent and its Affiliates and, after the occurrence and during the continuance of an Event of Default, by the Lenders in revising, preserving, protecting, exercising or enforcing any of its or any of the Lenders' rights against the Borrower or any other Credit Party, or otherwise incurred by the Agent and its Affiliates and the Lenders in connection with any Event of Default or the enforcement of the loans (whether incurred through negotiations, legal proceedings or otherwise), including by way of description and not limitation, such charges in any court or bankruptcy proceedings or arising out of any claim or action by any person against the Agent, its Affiliates, or any Lender which would not have been asserted were it not for the Agent's or such Affiliate's or Lender's relationship with the Borrower hereunder or otherwise, shall also be paid by the Borrower. All of said amounts required to be paid by the Borrower hereunder and not paid forthwith upon demand, as aforesaid, shall bear interest, at the option of the Agent with notice to the Borrower, from the date incurred to the date payment is received by the Agent, at the Base Rate, plus two percent (2%).

(b) The Borrower agrees to indemnify and hold the Agent and each of the Lenders (and their respective Affiliates) harmless from all loss, cost, damage, liability or expenses, including reasonable and documented in-house and outside attorneys' fees and disbursements (but without duplication of such fees

and disbursements for the same services), incurred by the Agent and each of the Lenders by reason of an Event of Default, or enforcing the obligations of any Credit Party under this Agreement or any of the other Loan Documents, as applicable, or in the prosecution or defense of any action or proceeding concerning any matter growing out of or connected with this Agreement or any of the Loan Documents, excluding, however, any loss, cost, damage, liability or expenses to the extent arising as a result of the gross negligence or willful misconduct of the party seeking to be indemnified under this Section 13.5(b).

(c) The Borrower agrees to defend, indemnify and hold harmless the Agent and each Lender (and their respective Affiliates), and their respective employees, agents, officers and directors from and against any and all claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses of whatever kind or nature (including without limitation, reasonable and documented attorneys and consultants fees, investigation and laboratory fees, environmental studies required by the Agent or any Lender in connection with the violation of Hazardous Material Laws), court costs and litigation expenses, arising out of or related to (i) the presence, use, disposal, release or threatened release of any Hazardous Materials on, from or affecting any premises owned or occupied by any Credit Party in violation of or the non-compliance with applicable Hazardous Material Laws, (ii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials, (iii) any lawsuit or other proceeding brought or threatened, settlement reached or governmental order or decree relating to such Hazardous Materials, and/or (iv) complying or coming into compliance with all Hazardous Material Laws (including the cost of any remediation or monitoring required in connection therewith) or any other Requirement of Law; provided, however, that the Borrower shall have no obligations under this Section 13.5(c) with respect to claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses to the extent arising as a result of the gross negligence or willful misconduct of the Agent or such Lender, as the case may be. The obligations of the Borrower under this Section 13.5(c) shall be in addition to any and all other obligations and liabilities the Borrower may have to the Agent or any of the Lenders at common law or pursuant to any other agreement.

13.6 Notices.

(a) Except as expressly provided otherwise in this Agreement (and except as provided in clause (b) below), all notices and other communications provided to any party hereto under this Agreement or any other Loan Document shall be in writing and shall be given by personal delivery, by mail, by reputable overnight courier or by facsimile and addressed or delivered to it at its address set forth on Annex III or at such other address as may be designated by such party in a notice to the other parties that complies as to delivery with the terms of this Section 13.6 or posted to an E-System set up by or at the direction of the Agent (as set forth below). Any notice, if personally delivered or if mailed and properly addressed with postage prepaid and sent by registered or certified mail, shall be deemed given when received or when delivery is refused; any notice, if given to a reputable overnight courier and properly addressed, shall be deemed given two (2) Business Days after the date on which it was sent, unless it is actually received sooner by the named addressee; and any notice, if transmitted by facsimile, shall be deemed given when received. The Agent may, but, except as specifically provided herein, shall not be required to, take any action on the basis of any notice given to it by telephone, but the giver of any such notice shall promptly confirm such notice in writing or by facsimile, and such notice will not be deemed to have been received until such confirmation is deemed received in accordance with the provisions of this Section set forth above. If such telephonic notice conflicts with any such confirmation, the terms of such telephonic notice shall control. Any notice given by the Agent or any Lender to Borrower shall be deemed to be a notice to all of the Credit Parties.

(b) Notices and other communications provided to the Agent and the Lenders party hereto under this Agreement or any other Loan Document may be delivered or furnished by electronic

communication (including email and Internet or intranet websites) pursuant to procedures approved by the Agent. The Agent or the Borrower may, in their respective discretion, agree to accept notices and other communications to it hereunder by electronic communications (including email and any E-System) pursuant to procedures approved by it. Unless otherwise agreed to in a writing by and among the parties to a particular communication, (i) notices and other communications sent to an email address shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, return email, or other written acknowledgment) and (ii) notices and other communications posted to any E-System shall be deemed received upon the deemed receipt by the intended recipient at its email address as described in the foregoing clause (i) of notification that such notice or other communication is available and identifying the website address therefore.

13.7 Further Action

. The Borrower, from time to time, upon written request of the Agent will make, execute, acknowledge and deliver or cause to be made, executed, acknowledged and delivered, all such further and additional instruments, and take all such further action as may reasonably be required to carry out the intent and purpose of this Agreement or the Loan Documents, and to provide for Advances under and payment of the Notes, according to the intent and purpose herein and therein expressed.

13.8 Successors and Assigns; Participations; Assignments.

(a) This Agreement shall be binding upon and shall inure to the benefit of the Borrower and the Lenders and their respective successors and assigns.

(b) The foregoing shall not authorize any assignment by the Borrower of its rights or duties hereunder, and, except as otherwise provided herein, no such assignment shall be made (or be effective) without the prior written approval of the Lenders.

(c) No Lenders may at any time assign or grant participations in such Lender's rights and obligations hereunder and under the other Loan Documents except (i) by way of assignment to any Eligible Assignee in accordance with clause (d) of this Section, (ii) by way of a participation in accordance with the provisions of clause (e) of this Section 13.8 or (iii) by way of a pledge or assignment of a security interest subject to the restrictions of clause (g) of this Section 13.8 (and any other attempted assignment or transfer by any Lender shall be deemed to be null and void).

(d) Each assignment by a Lender of all or any portion of its rights and obligations hereunder and under the other Loan Documents, shall be subject to the following terms and conditions:

(i) each such assignment shall be made on a pro rata basis, and shall be in a minimum amount of the lesser of (x) Five Million Dollars (\$5,000,000) or such lesser amount as the Agent and the Borrower shall agree and (y) the entire remaining amount of assigning Lender's aggregate interest in the Revolving Credit (and participations in any outstanding Letters of Credit); provided however that, after giving effect to such assignment, in no event shall the entire remaining amount (if any) of assigning Lender's aggregate interest in the Revolving Credit (and participations in any outstanding Letters of Credit) be less than \$5,000,000;

(ii) the parties to any assignment shall execute and deliver to the Agent an Assignment Agreement substantially (as determined by the Agent) in the form attached hereto as Exhibit I (with appropriate insertions acceptable to the Agent), together with a processing and recordation fee in the amount, if any, required as set forth in the Assignment Agreement; and

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(iii) each such assignment shall be consented to by the Borrower (such consent not to be unreasonably withheld or delayed); provided that no consent of the Borrower shall be required for an assignment to a Lender or an Affiliate of a Lender or, if an Event of Default has occurred and is continuing, any other assignee.

Until the Assignment Agreement becomes effective in accordance with its terms and is recorded in the Register maintained by the Agent under clause (h) of this Section 13.8, and the Agent has confirmed that the assignment satisfies the requirements of this Section 13.8, the Borrower and the Agent shall be entitled to continue to deal solely and directly with the assigning Lender in connection with the interest so assigned.

From and after the effective date of each Assignment Agreement that satisfies the requirements of this Section 13.8, the assignee thereunder shall be deemed to be a party to this Agreement, such assignee shall have the rights and obligations of a Lender under this Agreement and the other Loan Documents (including without limitation the right to receive fees payable hereunder in respect of the period following such assignment) and the assigning Lender shall relinquish its rights and be released from its obligations under this Agreement and the other Loan Documents.

Upon request, the Borrower shall execute and deliver to the Agent, new Note(s) payable to the order of the assignee in an amount equal to the amount assigned to the assigning Lender pursuant to such Assignment Agreement, and with respect to the portion of the Indebtedness retained by the assigning Lender, to the extent applicable, new Note(s) payable to the order of the assigning Lender in an amount equal to the amount retained by such Lender hereunder. The Agent, the Lenders and the Borrower acknowledge and agree that any such new Note(s) shall be given in renewal and replacement of the Notes issued to the assigning lender prior to such assignment and shall not effect or constitute a novation or discharge of the Indebtedness evidenced by such prior Note, and each such new Note may contain a provision confirming such agreement.

(e) The Borrower and the Agent acknowledge that each of the Lenders may at any time and from time to time, subject to the terms and conditions hereof, grant participations in such Lender's rights and obligations hereunder (on a pro rata basis only) and under the other Loan Documents to any Person (other than a natural person or to Borrower or any of Borrower's Affiliates or Subsidiaries); provided that any participation permitted hereunder shall comply with all applicable laws and shall be subject to a participation agreement that incorporates the following restrictions:

(i) such Lender shall remain the holder of its Notes hereunder (if such Notes are issued), notwithstanding any such participation;

(ii) a participant shall not reassign or transfer, or grant any sub-participations in its participation interest hereunder or any part thereof;

(iii) such Lender shall retain the sole right and responsibility to enforce the obligations of the Credit Parties relating to the Notes and the other Loan Documents, including, without limitation, the right to proceed against any Guarantors, or cause the Agent to do so (subject to the terms and conditions hereof), and the right to approve any amendment, modification or waiver of any provision of this Agreement without the consent of the participant (unless such participant is an Affiliate of such Lender), except for those matters requiring the consent of each of the Lenders under Section 13.10(b) (provided that a participant may exercise approval rights over such matters only on an indirect basis, acting through such Lender and the Credit Parties, the Agent and the other Lenders may continue to deal directly with such Lender in connection with such Lender's rights and duties hereunder). Notwithstanding the foregoing, however, in the case of any participation granted by any Lender hereunder, the participant shall not have any rights under this Agreement or

any of the other Loan Documents against the Agent, any other Lender or any Credit Party; provided, however that the participant may have rights against such Lender in respect of such participation as may be set forth in the applicable participation agreement and all amounts payable by the Credit Parties hereunder shall be determined as if such Lender had not sold such participation. Each such participant shall be entitled to the benefits of Article 11 of this Agreement to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to clause (d) of this Section, provided that no participant shall be entitled to receive any greater amount pursuant to such the provisions of Article 11 than the issuing Lender would have been entitled to receive in respect of the amount of the participation transferred by such issuing Lender to such participant had no such transfer occurred and each such participant shall also be entitled to the benefits of Section 9.6 hereof as though it were a Lender, provided that such participant agrees to be subject to Section 10.3 hereof as though it were a Lender; and

(iv) each participant shall provide the relevant tax form required under Section ~~13.13~~11.10.

(f) Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each participant and the principal amounts (and stated interest) of each participant's interest in the Advances 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 Agent (in its capacity as Agent) shall have no responsibility for maintaining a Participant Register.

(g) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including its Notes, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledge or assignee for such Lender as a party hereto.

(h) The Borrower hereby designates the Agent, and Agent agrees to serve, as the Borrower's non-fiduciary agent solely for purposes of this Section 13.8(h) to maintain at its principal office in the United States a copy of each Assignment Agreement delivered to it and a register (the "Register") for the recordation of the names and addresses of the Lenders, the Percentages of such Lenders and the principal amount of each type of Advance owing to each such Lender from time to time. The entries in the Register shall be conclusive evidence, absent manifest error, and the Borrower, the Agent, and the Lenders may treat each Person whose name is recorded in the Register as the owner of the Advances recorded therein for all purposes of this Agreement. The Register shall be available for inspection by the Borrower or any Lender (but only with respect to any entry relating to such Lender's Percentages and the principal amounts owing to such Lender) upon reasonable notice to the Agent and a copy of such information shall be provided to any such party on their prior written request. The Agent shall give prompt written notice to the Borrower of the making of any entry in the Register or any change in such entry.

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(i) The Borrower authorizes each Lender to disclose to any prospective assignee or participant which has satisfied the requirements hereunder, any and all financial information in such Lender's possession concerning the Credit Parties which has been delivered to such Lender pursuant to this Agreement, provided that each such prospective assignee or participant shall execute a confidentiality agreement consistent with the terms of Section 13.11 hereof or shall otherwise agree to be bound by the terms thereof.

(j) Nothing in this Agreement, the Notes or the other Loan Documents, expressed or implied, is intended to or shall confer on any Person other than the respective parties hereto and thereto and their successors and assignees and participants permitted hereunder and thereunder any benefit or any legal or equitable right, remedy or other claim under this Agreement, the Notes or the other Loan Documents.

13.9 Counterparts

. This Agreement may be executed in several counterparts, and each executed copy shall constitute an original instrument, but such counterparts shall together constitute but one and the same instrument.

13.10 Amendment and Waiver

(a) No amendment or waiver of any provision of this Agreement or any other Loan Document, nor consent to any departure by any Credit Party therefrom, shall in any event be effective unless the same shall be in writing and signed by the Agent and the Majority Lenders (or by the Agent at the written request of the Majority Lenders) or, if this Agreement expressly so requires with respect to the subject matter thereof, by all Lenders (and, with respect to any amendments to this Agreement or the other Loan Documents, by any Credit Party or the Guarantors that are signatories thereto), and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. All references in this Agreement to "Lenders" or "the Lenders" shall refer to all Lenders, unless expressly stated to refer to Majority Lenders (or the like).

(b) Notwithstanding anything to the contrary herein,

(i) no amendment, waiver or consent shall increase the stated amount of or extend any Lender's commitment hereunder without such Lender's consent;

(ii) no amendment, waiver or consent shall, unless in writing and signed by the Lender or Lenders holding Indebtedness directly affected thereby, do any of the following:

(A) reduce the principal of, or interest on, any outstanding Indebtedness or any Fees or other amounts payable hereunder,

(B) postpone any date fixed for any payment of principal of, or interest on, any outstanding Indebtedness or any Fees or other amounts payable hereunder (except with respect to the payments required under Section 2.10(b)),

(C) change any of the provisions of this Section 13.10 or the definitions of "Majority Lenders", or any other provision of any Loan Document specifying the number or percentage of Lenders required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder; provided that changes to the definition of "Majority Lenders" may be made with the consent of only the Majority

Lenders to include the Lenders holding any additional credit facilities that are added to this Agreement with the approval of the appropriate Lenders, and

(D) any modifications to the definitions of “Borrowing Base”, “Eligible Monthly Recurring Revenue”, “Eligible Recurring Revenue Contracts”, “Recurring Revenue”, “Operational Performance Guarantees” and “PMPM Performance Cap”;

(iii) no amendment, waiver or consent shall, unless in writing and signed by all Lenders, do any of the following:

(A) except as expressly permitted hereunder or under the Collateral Documents, release all or substantially all of the Collateral (provided that neither the Agent nor any Lender shall be prohibited thereby from proposing or participating in a consensual or nonconsensual debtor-in-possession or similar financing), or release any material guaranty provided by any Person in favor of the Agent and the Lenders, provided however that the Agent shall be entitled, without notice to or any further action or consent of the Lenders, to release any Collateral which any Credit Party is permitted to sell, assign or otherwise transfer in compliance with this Agreement or the other Loan Documents or release any guaranty to the extent expressly permitted in this Agreement or any of the other Loan Documents (whether in connection with the sale, transfer or other disposition of the applicable Guarantor or otherwise),

(B) increase the maximum duration of Interest Periods permitted hereunder; or

(C) modify Sections 10.2 or 10.3 hereof;

(iv) any amendment, waiver or consent that will (A) reduce the principal of, or interest on, the Swing Line Note, (B) postpone any date fixed for any payment of principal of, or interest on, the Swing Line Note or (C) otherwise affect the rights and duties of the Swing Line Lender under this Agreement or any other Loan Document, shall require the written concurrence of the Swing Line Lender;

(v) any amendment, waiver or consent that will affect the rights or duties of Issuing Lender under this Agreement or any of the other Loan Documents, shall require the written concurrence of the Issuing Lender; and

(vi) any amendment, waiver, or consent that will affect the rights or duties of the Agent under this Agreement or any other Loan Document, shall require the written concurrence of the Agent.

(c) Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove of any amendment, consent, waiver or any other modification to any Loan Document (and all amendments, consents, waivers and other modifications may be effected without the consent of the Defaulting Lenders), except that the foregoing shall not permit, in each case without such Defaulting Lender’s consent, (i) an increase in such Defaulting Lender’s stated commitment amounts, (ii) the waiver, forgiveness or reduction of the principal amount of any Indebtedness owing to such Defaulting Lender (unless all other Lenders affected thereby are treated similarly), (iii) the extension of the final maturity date(s) of such Defaulting Lenders’ portion of any of the Indebtedness or the extension of any commitment to extend credit of such Defaulting Lender, or (iv) any other modification which requires the

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consent of all Lenders or the Lender(s) affected thereby which affects such Defaulting Lender more adversely than the other affected Lenders (other than a modification which results in a reduction of such Defaulting Lender's Percentage of any Commitments or repayment of any amounts owing to such Defaulting Lender on a non pro-rata basis).

(d) The Agent shall, upon the written request of the Borrower, execute and deliver to the Credit Parties such documents as may be necessary to evidence (1) the release of any Lien granted to or held by the Agent upon any Collateral: (a) upon Payment in Full of all Indebtedness; (b) which constitutes property (including, without limitation, Equity Interests in any Person) sold or to be sold or disposed of as part of or in connection with any disposition (whether by sale, by merger or by any other form of transaction and including the property of any Subsidiary that is disposed of as permitted hereby) permitted in accordance with the terms of this Agreement; (c) which constitutes property in which a Credit Party owned no interest at the time the Lien was granted or at any time thereafter; or (d) if approved, authorized or ratified in writing by the Majority Lenders, or all the Lenders, as the case may be, as provided in this Section 13.10; or (2) the release of any Person from its obligations under the Loan Documents (including without limitation the Guaranty) if all of the Equity Interests of such Person that were held by a Credit Party are sold or otherwise transferred to any transferee other than Borrower or a Subsidiary of Borrower as part of or in connection with any disposition (whether by sale, by merger or by any other form of transaction) permitted in accordance with the terms of this Agreement; provided that (i) the Agent shall not be required to execute any such release or subordination agreement under clauses (1) or (2) above on terms which, in the Agent's opinion, would expose the Agent to liability or create any obligation or entail any consequence other than the release of such Liens without recourse or warranty or such release shall not in any manner discharge, affect or impair the Indebtedness or any Liens upon any Collateral retained by any Credit Party, including (without limitation) the proceeds of the sale or other disposition, all of which shall constitute and remain part of the Collateral.

(e) Notwithstanding anything to the contrary herein (i) the Agent may, with the consent of the Borrower only, amend, modify or supplement this Agreement or any of the other Loan Documents to cure any ambiguity, omission, mistake, defect or inconsistency, and (ii) (A) the Agent may determine a Successor Rate and the Agent may make ~~Benchmark Replacement~~ Conforming Changes, in each case, in accordance with Section ~~11.11.3;~~ and (B) in connection with the use or administration of BSBY, the Agent will have the right to make Conforming Changes from time to time, and any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document (provided that the Agent will promptly notify the Borrower and the Lenders of the effectiveness of any Conforming Changes in connection with the use or administration of BSBY).

(f) Notwithstanding the foregoing, no amendment and restatement of this Agreement which is in all other respects approved by the Lenders in accordance with this Section 13.10 shall require the consent or approval of any Lender (i) which immediately after giving effect to such amendment and restatement, shall have no commitment or other obligation to maintain or extend credit under this Agreement (as so amended and restated), including, without limitation, any obligation to participate in any Letter of Credit and (ii) which, substantially contemporaneously with the effectiveness of such amendment and restatement, shall have received payment in full of all Indebtedness owing to such Lender under the Loan Documents (other than any Indebtedness owing to such Lender in connection with Lender Products or under any Hedging Agreements). From and after the effectiveness of any such amendment and restatement, any such Lender shall be deemed to no longer be a "Lender" hereunder or a party hereto, except that any such Lender shall retain the benefits of indemnification provisions hereof which, by the terms hereof would survive the termination of this Agreement.

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(g) Each of the parties hereto acknowledges and agrees that notwithstanding anything to the contrary set forth herein, no MIRE Event may be closed (x) until the date that is (i) if there are no Mortgaged Properties in a Flood Hazard Zone, ten (10) Business Days or (ii) if there are any Mortgaged Properties in a “special flood hazard area”, thirty (30) days, in each case, after the Agent or Borrower have delivered to the Lenders the following documents in respect of such real property: (A) a completed flood hazard determination from a third party vendor; (B) if such real property is located in a “special flood hazard area”, (1) a notification to the applicable Credit Parties of that fact and, if applicable, notification to the applicable Credit Parties that flood insurance coverage is not available and (2) evidence of the receipt by the applicable Credit Parties of such notice; and (3) if required by applicable Flood Laws, evidence of required flood insurance with respect to which flood insurance has been made available under applicable Flood Laws; provided that, subject to clause (y) below, any such MIRE Event may be closed prior to the expiration of such period if the Agent shall have received confirmation from each Lender that such Lender has completed any necessary flood insurance due diligence to its reasonable satisfaction or (y) if any part of such property is located in a Flood Hazard Zone and flood insurance coverage is not available.

13.11 Confidentiality

. Each of the Agent, the Lenders, the Swing Line Lender and the Issuing Lender agree to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential); (b) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners); (c) to the extent required by applicable laws or by any subpoena or similar legal process; (d) to any other party hereto; (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder; (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or participant in, or any prospective assignee of or participant in, any of its rights and obligations under this Agreement, or (ii) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to the Borrower and its obligations, this Agreement or payments hereunder; (g) on a confidential basis to (i) any rating agency in connection with rating the Borrower or its respective Subsidiaries or the Revolving Credit or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Revolving Credit; (h) with the consent of the Borrower; or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section, or (y) becomes available to the Agent, any Lender, Swing Line Lender, Issuing Lender or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower who did not acquire such information as a result of a breach of this Section. In addition, the Agent and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to the Agents or any Lender in connection with the administration of this Agreement, the other Loan Documents, and the Commitments.

For purposes of this Section, “Information” means all information received from any Credit Party relating to any Credit Party or any of their respective businesses, other than any such information that is available to the Agent, any Lender, Swing Line Lender or Issuing Lender on a nonconfidential basis prior to disclosure by any Credit Party; provided that, in the case of information received from any Credit Party after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of

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care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

13.12 Mitigation of Obligations; Substitution or Removal of Lenders.

(a) If any Lender has demanded compensation under Sections 3.4(c), 11.5 or 11.6, then such Lender shall (at the request of the Borrower) use reasonable efforts to designate a different lending office for funding or booking its Advances hereunder (or issuing or maintaining, or participating in, any Letters of Credit 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 3.4(c), 11.5 or 11.6, 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 agree to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) ~~(a)~~ With respect to any Lender (i) ~~whose obligation to make Eurodollar-based Advances has been suspended pursuant to Section 11.3 or 11.4,~~ (ii) that has demanded compensation under Sections 3.4(c), 11.5 or 11.6 and has declined or is unable to designate a different lending office in accordance with Section 13.12(a), ~~(iii)~~ (iii) that has become a Defaulting Lender or ~~(iv)~~ (iv) that has failed to consent to a requested amendment, waiver or modification to any Loan Document that requires the consent of all Lenders or all affected Lenders in accordance with Section 13.10 and as to which the Majority Lenders have already consented (in each case, an “Affected Lender”), then the Agent or (upon notice to the Agent) the Borrower may, at the Borrower’s sole expense, require the Affected Lender to sell and assign all of its interests, rights and obligations under this Agreement and the other Loan Documents, including, without limitation, its Commitments, to an ~~assignee~~ Eligible Assignee (which may be one or more of the Lenders) (such ~~assignee~~ Eligible Assignee shall be referred to herein as the “Purchasing Lender” or “Purchasing Lenders”) within two (2) Business Days after receiving notice from the Borrower requiring it to do so, for an aggregate price equal to the sum of the ~~portion~~ outstanding principal amount of all Advances made by it, interest and fees accrued for its account through but excluding the date of such payment, and all other amounts payable to it hereunder, from the Purchasing Lender(s) (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts, including without limitation, if demanded by the Affected Lender, the amount of any compensation then due to the Affected Lender under Sections 3.4(c), 11.1, 11.5 and 11.6 to but excluding said date), payable (in immediately available funds) in cash. The Affected Lender, as assignor, such Purchasing Lender, as assignee, the Borrower and the Agent, shall enter into an Assignment Agreement pursuant to Section 13.8 hereof, whereupon such Purchasing Lender shall be a Lender party to this Agreement, shall be deemed to be an assignee hereunder and shall have all the rights and obligations of the assigning Lender ~~with a Revolving Credit Percentage equal to its ratable share of the then applicable Revolving Credit Aggregate Commitment of the Affected Lender~~ to the extent of assigning Lender’s applicable Percentages, provided, however, that if the Affected Lender does not execute such Assignment Agreement within (2) Business Days of receipt thereof, the Agent may execute the Assignment Agreement as the Affected Lender’s attorney-in-fact. Each of the Lenders hereby irrevocably constitutes and appoints the Agent and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full power and authority in the name of such Lender or in its own name to execute and deliver the Assignment Agreement while such Lender is an Affected Lender hereunder (such power of attorney to be deemed coupled with an interest and irrevocable). In connection with any assignment pursuant to this Section 13.12 ~~(b), (I)~~ the Borrower or the Purchasing Lender shall pay to the Agent the administrative fee for processing such assignment referred to in Section 13.8-

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~~(b) If any Lender is an Affected Lender of the type described in Section 13.12(a)(iii) and (iv) (any such Lender, a “Non-Compliant Lender”), the Borrower may, with the prior written consent of the Agent, and notwithstanding Section 10.3 of this Agreement or any other provisions requiring pro rata payments to the Lenders, elect to reduce any Commitments by an amount equal to the Non-Compliant Lender’s Percentage of (II) in the Commitment case of any such Non-Compliant Lender and repay such Non-Compliant Lender an amount equal the principal amount of all Advances owing to it, all interest assignment resulting from a demand for compensation under clause (i) above, such assignment will result in a reduction in such compensation or payments thereafter, and fees accrued for its account through but excluding the date of such repayment, and all other amounts payable to it hereunder (including without limitation, if demanded by the Non-Compliant Lender, the amount of any compensation then due to the Non-Compliant Lender under Sections 3.4(c), 11.1, 11.5 and 11.6 to but excluding said date), payable (in immediately available funds) in cash, so long as, after giving effect to the termination of Commitments and the repayments described in this clause (b), any Fronting Exposure of such Non-Compliant (III) in the case of any assignment resulting from a Lender failing to consent under clause (iii) above, the applicable assignee shall have consented to the applicable amendment, waiver or modification. A Lender shall be reallocated among the Lenders that are not Non-Compliant Lenders in accordance with their respective Revolving Credit Percentages, but only to the extent that the sum of the aggregate principal amount of all Revolving Credit Advances made not be required to make any such assignment pursuant to this Section 13.12(b) if, prior thereto, as a result of a waiver by each such Lender, plus such Lender’s Percentage of the aggregate outstanding principal amount of Swing Line Advances and Letter of Credit Obligations prior to giving effect to such reallocation plus such Lender’s Percentage of the Fronting Exposure to be reallocated does not exceed such Lender’s Percentage of the Revolving Credit Aggregate Commitment, and with respect to any portion of the Fronting Exposure that may not be reallocated, the Borrower shall deliver to the Agent, for the benefit of the Issuing Lender and/or Swing Line Lender, as applicable, cash collateral or other security satisfactory to the Agent, with respect any such remaining Fronting Exposure or otherwise, the circumstances entitling the Borrower to require such assignment cease to apply.~~

~~13.13 Withholding Taxes.~~

~~(a) (i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Agent, at the time or times reasonably requested by the Borrower or the Agent, such properly completed and executed documentation reasonably requested by the Borrower or the 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 Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Borrower or the Agent as will enable the Borrower or the 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 clauses (a)(ii)(A), (a)(ii)(B) and (a)(ii)(D) of this Section 13.13) 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. Borrower,~~

~~(A) any Lender that is a U.S. Person shall deliver to the Borrower and the 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 Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;~~

~~(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the 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 Agent), whichever of the following is applicable:~~

~~(i) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E 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 or IRS Form W-8BEN-E 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;~~

~~(ii) executed copies of IRS Form W-8ECI;~~

~~(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(e) of the Code, (x) a certificate substantially in the form of Exhibit L-1 to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(e)(3)(A) of the Code, a “10 percent shareholder” of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, or a “controlled foreign corporation” related to the Borrower as described in Section 881(e)(3)(C) of the Code (a “U.S. Tax Compliance Certificate”) and (y) executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E; or~~

~~(iv) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit L-2 or Exhibit L-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 L-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 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 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 Agent to determine the withholding or deduction required to be made; and~~

~~(D) if a payment made to a Lender or Agent under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender or Agent were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender or Agent shall deliver to the Borrower and the Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Agent such documentation prescribed by applicable law~~

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~~(including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Agent as may be necessary for the Borrower and the Agent to comply with their obligations under FATCA and to determine that such Lender or Agent has complied with such Lender's or Agent'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 Agent in writing of its legal inability to do so.~~

~~(E) to the extent legally permissible, on or prior to the date on which the Agent becomes a party to this Agreement, and at the other time or times reasonably requested by the Borrower, the Agent shall deliver to Borrower an IRS Form W-9 properly executed by the Agent. The Agent represents and warrants that it is a U.S. Person and will remain a U.S. Person during the term of this Agreement.~~

~~(b) Promptly upon notice from the Agent of any determination by the IRS that any payments previously made to such Lender hereunder were subject to United States income Tax withholding when made (or subject to withholding at a higher rate than that applied to such payments), such Lender shall pay to the Agent the excess of the aggregate amount required to be withheld from such payments over the aggregate amount (if any) actually withheld by the Agent, provided that, following any such payment, such Lender shall retain all of its rights and remedies against the Borrower with respect thereto.~~

~~For purposes of this Section 13.13, the term "Lender" includes any Issuing Lender and the term "applicable law" includes FATCA~~

~~Notwithstanding anything in this Section 13.12(b) to the contrary, (i) any Lender that acts as an Issuing Lender may not be replaced hereunder at any time it has any Letter of Credit outstanding hereunder unless arrangements satisfactory to such Lender (including the furnishing of a backstop standby letter of credit in form and substance, and issued by an issuer, reasonably satisfactory to such Issuing Lender or the depositing of cash collateral into a cash collateral account in amounts and pursuant to arrangements reasonably satisfactory to such Issuing Lender) have been made with respect to such outstanding Letter of Credit and (ii) the Lender that acts as the Agent may not be replaced hereunder.~~

13.13 [Reserved]

13.14 WAIVER OF JURY TRIAL/ JUDICIAL REFERENCE

JURY TRIAL WAIVER. TO THE EXTENT PERMITTED BY LAW, THE BORROWER, THE LENDERS AND THE AGENT HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREIN OR THEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. THE BORROWER, THE LENDERS AND THE AGENT REPRESENT THAT EACH HAS REVIEWED THIS WAIVER AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH

LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

(a) Judicial Reference.

(i) In the event the jury trial waiver set forth above is not enforceable, the parties elect to proceed under this judicial reference provision.

(ii) With the exception of the items specified in clause (iii), below, any controversy, dispute or claim (each, a "Claim") between the parties arising out of or relating to this Agreement, the Notes or the other Loan Documents, any other will be resolved by a reference proceeding in California in accordance with the provisions of Sections 638 et seq. of the California Code of Civil Procedure ("CCP"), or their successor sections, which shall constitute the exclusive remedy for the resolution of any Claim, including whether the Claim is subject to the reference proceeding. Except as otherwise provided in this Agreement, the Notes or the other Loan Documents, venue for the reference proceeding will be in the state or federal court in the county or district where the real property involved in the action, if any, is located or in the state or federal court in the county or district where venue is otherwise appropriate under applicable law (the "Court").

(iii) The matters that shall not be subject to a reference are the following: (a) foreclosure of any security interests in real or personal property, (b) exercise of self-help remedies (including, without limitation, set-off), (c) appointment of a receiver and (d) temporary, provisional or ancillary remedies (including, without limitation, writs of attachment, writs of possession, temporary restraining orders or preliminary injunctions). This reference provision does not limit the right of any party to exercise or oppose any of the rights and remedies described in clauses (a) and (b) or to seek or oppose from a court of competent jurisdiction any of the items described in clauses (c) and (d). The exercise of, or opposition to, any of those items does not waive the right of any party to a reference pursuant to this reference provision as provided herein.

(iv) The referee shall be a retired judge or justice selected by mutual written agreement of the parties. If the parties do not agree within ten (10) days of a written request to do so by any party, then, upon request of any party, the referee shall be selected by the Presiding Judge of the Court (or his or her representative). A request for appointment of a referee may be heard on an ex parte or expedited basis, and the parties agree that irreparable harm would result if ex parte relief is not granted. Pursuant to CCP § 170.6, each party shall have one peremptory challenge to the referee selected by the Presiding Judge of the Court (or his or her representative).

(v) The parties agree that time is of the essence in conducting the reference proceedings. Accordingly, the referee shall be requested, subject to change in the time periods specified herein for good cause shown, to (a) set the matter for a status and trial-setting conference within fifteen (15) days after the date of selection of the referee, (b) if practicable, try all issues of law or fact within one hundred twenty (120) days after the date of the conference and (c) report a statement of decision within twenty (20) days after the matter has been submitted for decision.

(vi) The referee will have power to expand or limit the amount and duration of discovery. The referee may set or extend discovery deadlines or cutoffs for good cause, including a party's failure to provide requested discovery for any reason whatsoever. Unless otherwise ordered based upon good cause shown, no party shall be entitled to "priority" in conducting discovery, depositions may be taken by either party upon seven (7) days written notice, and all other discovery shall be responded to within fifteen (15) days after service. All disputes relating to

discovery which cannot be resolved by the parties shall be submitted to the referee whose decision shall be final and binding.

(vii) Except as expressly set forth herein, the referee shall determine the manner in which the reference proceeding is conducted including the time and place of hearings, the order of presentation of evidence, and all other questions that arise with respect to the course of the reference proceeding. All proceedings and hearings conducted before the referee, except for trial, shall be conducted without a court reporter, except that when any party so requests, a court reporter will be used at any hearing conducted before the referee, and the referee will be provided a courtesy copy of the transcript. The party making such a request shall have the obligation to arrange for and pay the court reporter. Subject to the referee's power to award costs to the prevailing party, the parties will equally share the cost of the referee and the court reporter at trial.

(viii) The referee shall be required to determine all issues in accordance with existing case law and the statutory laws of the State of California. The rules of evidence applicable to proceedings at law in the State of California will be applicable to the reference proceeding. The referee shall be empowered to enter equitable as well as legal relief, enter equitable orders that will be binding on the parties and rule on any motion which would be authorized in a court proceeding, including without limitation motions for summary judgment or summary adjudication. The referee shall issue a decision at the close of the reference proceeding which disposes of all claims of the parties that are the subject of the reference. Pursuant to CCP § 644, such decision shall be entered by the Court as a judgment or an order in the same manner as if the action had been tried by the Court and any such decision will be final, binding and conclusive. The parties reserve the right to appeal from the final judgment or order or from any appealable decision or order entered by the referee. The parties reserve the right to findings of fact, conclusions of laws, a written statement of decision, and the right to move for a new trial or a different judgment, which new trial, if granted, is also to be a reference proceeding under this provision.

(ix) If the enabling legislation which provides for appointment of a referee is repealed (and no successor statute is enacted), any dispute between the parties that would otherwise be determined by reference procedure will be resolved and determined by arbitration. The arbitration will be conducted by a retired judge or justice, in accordance with the California Arbitration Act §1280 through §1294.2 of the CCP as amended from time to time. The limitations with respect to discovery set forth above shall apply to any such arbitration proceeding.

(x) THE PARTIES RECOGNIZE AND AGREE THAT ALL CONTROVERSIES, DISPUTES AND CLAIMS RESOLVED UNDER THIS REFERENCE PROVISION WILL BE DECIDED BY A REFEREE AND NOT BY A JURY. AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF ITS, HIS OR HER OWN CHOICE, EACH PARTY KNOWINGLY AND VOLUNTARILY, AND FOR THE MUTUAL BENEFIT OF ALL PARTIES, AGREES THAT THIS REFERENCE PROVISION WILL APPLY TO ANY CONTROVERSY, DISPUTE OR CLAIM BETWEEN OR AMONG THEM ARISING OUT OF OR IN ANY WAY RELATED TO, THIS AGREEMENT, THE NOTES OR THE OTHER LOAN DOCUMENTS.]

13.15 USA Patriot Act Notice

. Pursuant to Section 326 of the USA Patriot Act, the Agent and the Lenders hereby notify the Credit Parties that if they or any of their Subsidiaries open an account, including any loan, deposit account, treasury management account, or other extension of credit with the Agent or any Lender, the Agent or the

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applicable Lender will request the applicable Person's name, tax identification number, business address and other information necessary to identify such Person (and may request such Person's organizational documents or other identifying documents) to the extent necessary for the Agent and the applicable Lender to comply with the USA Patriot Act.

13.16 Complete Agreement; Conflicts

. This Agreement, the Notes (if issued), any Requests for Revolving Credit Advance, and Requests for Swing Line Advance, and the Loan Documents contain the entire agreement of the parties hereto, superseding all prior agreements, discussions and understandings relating to the subject matter hereof, and none of the parties shall be bound by anything not expressed in writing. In the event of any conflict between the terms of this Agreement and the other Loan Documents, this Agreement shall govern.

13.17 Severability

. In case any one or more of the obligations of the Credit Parties under this Agreement, the Notes or any of the other Loan Documents shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining obligations of the Credit Parties shall not in any way be affected or impaired thereby, and such invalidity, illegality or unenforceability in one jurisdiction shall not affect the validity, legality or enforceability of the obligations of the Credit Parties under this Agreement, the Notes or any of the other Loan Documents in any other jurisdiction.

13.18 Table of Contents and Headings; Section References

. The table of contents and the headings of the various subdivisions hereof are for convenience of reference only and shall in no way modify or affect any of the terms or provisions hereof and references herein to "sections," "subsections," "clauses," "paragraphs," "subparagraphs," "exhibits" and "schedules" shall be to sections, subsections, clauses, paragraphs, subparagraphs, exhibits and schedules, respectively, of this Agreement unless otherwise specifically provided herein or unless the context otherwise clearly indicates.

13.19 Construction of Certain Provisions

. If any provision of this Agreement or any of the Loan Documents refers to any action to be taken by any Person, or which such Person is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly by such Person, whether or not expressly specified in such provision.

13.20 Independence of Covenants

. Each covenant hereunder shall be given independent effect (subject to any exceptions stated in such covenant) so that if a particular action or condition is not permitted by any such covenant (taking into account any such stated exception), the fact that it would be permitted by an exception to, or would be otherwise within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default.

13.21 Electronic Transmissions.

(a) Each of the Agent, the Credit Parties, the Lenders, and each of their Affiliates is authorized (but not required) to transmit, post or otherwise make or communicate, in its sole discretion, Electronic

CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENTS, MARKED BY [*], HAS BEEN OMITTED BECAUSE ACCOLADE, INC. HAS DETERMINED THE INFORMATION (I) IS NOT MATERIAL AND (II) WOULD LIKELY CAUSE COMPETITIVE HARM TO ACCOLADE, INC. IF PUBLICLY DISCLOSED.**

Transmissions in connection with any Loan Document and the transactions contemplated therein. The Borrower and each other Credit Party hereby acknowledges and agrees that the use of Electronic Transmissions is not necessarily secure and that there are risks associated with such use, including risks of interception, disclosure and abuse and each indicates it assumes and accepts such risks by hereby authorizing the transmission of Electronic Transmissions.

(b) All uses of an E-System shall be governed by and subject to, in addition to Section 13.6 and this Section 13.22, separate terms and conditions posted or referenced in such E-System and related contractual obligations executed by the Agent, the Credit Parties and the Lenders in connection with the use of such E-System.

(c) All E-Systems and Electronic Transmissions shall be provided “as is” and “as available”. None of the Agent or any of its Affiliates, nor Borrower or any of its respective Affiliates warrants the accuracy, adequacy or completeness of any E-Systems or Electronic Transmission, and each disclaims all liability for errors or omissions therein. No warranty of any kind is made by the Agent or any of its Affiliates, or Borrower or any of its respective Affiliates in connection with any E-Systems or Electronic Transmission, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects. The Agent, the Borrower and its Subsidiaries, and the Lenders agree that the Agent has no responsibility for maintaining or providing any equipment, software, services or any testing required in connection with any Electronic Transmission or otherwise required for any E-System. The Agent and the Lenders agree that the Borrower has no responsibility for maintaining or providing any equipment, software, services or any testing required in connection with any Electronic Transmission or otherwise required for any E-System.

13.22 Advertisements

. The Agent and the Lenders may disclose the names of the Credit Parties and the existence of the Indebtedness in general advertisements and trade publications.

13.23 Reliance on and Survival of Provisions

. All terms, covenants, agreements, representations and warranties of the Credit Parties to any of the Loan Documents made herein or in any of the Loan Documents or in any certificate, report, financial statement or other document furnished by or on behalf of any Credit Party in connection with this Agreement or any of the Loan Documents shall be deemed to have been relied upon by the Lenders, notwithstanding any investigation heretofore or hereafter made by any Lender or on such Lender’s behalf, and those covenants and agreements of the Borrower and the Lenders, as applicable, set forth in Sections 3.9, 3.10, 10.5, 11.10, 12.7 and 13.5 hereof (together with any other indemnities of any Credit Party or Lender contained elsewhere in this Agreement or in any of the other Loan Documents) shall survive the Payment in Full of the Indebtedness and the termination of this Agreement and the other Loan Documents, including any commitment to extend credit thereunder.

13.24 [Reserved].

13.25 Acknowledgment and Consent to Bail-In of EEA Financial Institutions

. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured,

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may be subject to the write down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

[Signatures Follow On Succeeding Page]

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Document comparison by Workshare Compare on Tuesday, October 4, 2022
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Input:	
Document 1 ID	netdocuments://4883-0369-8472/1
Description	Accolade, Inc. -- Exhibit to Seventh Amendment (Amended Credit Agreement)
Document 2 ID	netdocuments://4883-0369-8472/6
Description	Accolade, Inc. -- Exhibit to Seventh Amendment (Amended Credit Agreement)
Rendering set	Standard

Legend:	
Insertion	
Deletion	
Moved from	
Moved to	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	542
Deletions	593
Moved from	58
Moved to	58
Style changes	0
Format changes	0
Total changes	1251

**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Rajeev Singh, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Accolade, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: October 6, 2022

/s/ Rajeev Singh
Rajeev Singh
Chief Executive Officer
(Principal Executive Officer)

**CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Stephen Barnes, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Accolade, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: October 6, 2022

/s/ Stephen Barnes
Stephen Barnes
Chief Financial Officer
(Principal Financial Officer)

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER
PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

Pursuant to the requirement set forth in Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended, (the “Exchange Act”) and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. §1350), Rajeev Singh, Chief Executive Officer of Accolade, Inc. (the “Company”), and Stephen Barnes, Chief Financial Officer of the Company, each hereby certifies that, to the best of his knowledge:

1. The Company’s Quarterly Report on Form 10-Q for the period ended August 31, 2022, to which this Certification is attached as Exhibit 32.1 (the “**Periodic Report**”), fully complies with the requirements of Section 13(a) or Section 15(d) of the Exchange Act; and
2. The information contained in the Periodic Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: October 6, 2022

IN WITNESS WHEREOF, the undersigned have set their hands hereto as of the 6th day of October, 2022.

/s/ Rajeev Singh
Rajeev Singh
Chief Executive Officer

/s/ Stephen Barnes
Stephen Barnes
Chief Financial Officer

“This certification accompanies the Form 10-Q to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of Accolade, Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Form 10-Q), irrespective of any general incorporation language contained in such filing.”
