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

FORM 10-K

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

For the fiscal year ended December 31, 2022

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

For the transition period from to

Commission File Number 000-51222

dexcom

DEXCOM, INC.

(Exact name of registrant as specified in its charter)

Delaware	**33-0857544**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)

6340 Sequence Drive, San Diego, CA 92121
(Address of principal executive offices)

(858) 200-0200
(Registrant's telephone number, including area code)

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

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

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

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

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

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

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

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

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

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

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

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

As of June 30, 2022, the last business day of the registrant's most recently completed second fiscal quarter, the aggregate market value of the registrant's common stock held by non-affiliates of the registrant was approximately $29.1 billion based on the closing sales price of $74.53 per share as reported on the Nasdaq Global Select Market.

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

Class	**Outstanding at February 2, 2023**
Common stock, $0.001 par value per share	386,413,690

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's definitive proxy statement relating to its 2023 Annual Meeting of Stockholders (the "Proxy Statement") are incorporated by reference in Part III, Items 10 through 14 of this Annual Report on Form 10-K, as specified in the responses to those item numbers. Except with respect to information specifically incorporated by reference in the Form 10-K, the Proxy Statement is not deemed to be filed as part hereof.

DexCom, Inc.
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CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

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

Summary of Risk Factors

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

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

- We are subject to a variety of risks due to our international operations that could adversely affect our business, our operations or profitability and operating results.
- We have incurred significant losses in the past and may incur losses in the future.
- We are subject to complex and evolving U.S. and foreign laws and regulations and other requirements and policy initiatives regarding privacy, data protection, security, data access and other matters. Many of these laws and regulations are subject to change and uncertain or evolving guidance and interpretation, and could result in claims, changes to our business practices, product development impacts, monetary penalties, increased cost of operations, or declines in user growth or engagement, or otherwise harm our business.
- Cybersecurity risks and cyber incidents could result in the compromise of confidential data or critical data systems and give rise to potential harm to customers, remediation and other expenses, expose us to costs, negative attention, or liability under HIPAA, FDA standards and requirements, consumer protection laws, or other common law theories, subject us to litigation and federal and state governmental inquiries, damage our reputation, and otherwise be disruptive to our business and operations.
- We conduct business in a heavily regulated industry and if we fail to comply with applicable laws and government regulations, we could become subject to government investigation, litigation, penalties, be excluded from participation in government programs, and/or be required to make significant changes to our operations.
- Managed care trends and consolidation in the health care industry could have an adverse effect on our revenues and results of operations.
- Health care policy changes, including U.S. health care reform legislation, may have a material adverse effect on our business.
- If we are unable to successfully complete the pre-clinical studies or clinical trials or otherwise develop the data necessary to support additional marketing authorizations, we may be unable to commercialize additional or modified CGM candidate systems under development, which could impair our business, financial condition and operating results.
- We are subject to claims of infringement or misappropriation of the intellectual property rights of others, which could prohibit us from shipping affected products, require us to obtain licenses from third parties or to develop non-infringing alternatives, and subject us to substantial monetary damages and injunctive relief. We may also be subject to other claims or suits.
- Our inability to adequately protect our intellectual property could allow our competitors and others to produce products based on our technology, which could substantially impair our ability to compete.
- We face the risk of product liability claims and may be subject to damages, fines, penalties and injunctions, among other things.
- We could become the subject of governmental investigations, claims and litigation.
- Our stock price is highly volatile and investing in our stock involves a high degree of risk, which could result in substantial losses for investors.
- We have indebtedness in the form of convertible senior notes, which could adversely affect our financial health and our ability to respond to changes in our business.
- Environmental, social and governance, or ESG, regulations, policies, provisions, initiatives and goals, and disclosures related thereto, could expose us to numerous risks, and climate change may have a long-term impact on our business.

PART I

ITEM 1 - BUSINESS

Overview

We are a medical device company primarily focused on the design, development and commercialization of continuous glucose monitoring, or CGM, systems for use by people with diabetes and by healthcare providers. We received approval from the United States Food and Drug Administration, or FDA, and commercialized our first product in 2006. We received FDA marketing authorization and launched our latest generation system, the Dexcom G6® integrated Continuous Glucose Monitoring System, or G6, in 2018 and more recently received marketing clearance from the FDA on the Dexcom G7® in December 2022. Unless the context requires otherwise, the terms "we," "us," "our," the "company," or "Dexcom" refer to DexCom, Inc. and its subsidiaries. The mailing address of our headquarters is 6340 Sequence Drive, San Diego, California, 92121 and our telephone number at that location is (858) 200-0200. Our Internet website address is www.dexcom.com. We provide free access to various reports that we file with or furnish to the SEC through our website, as soon as reasonably practicable after they have been filed or furnished. These reports include, but are not limited to, our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and any amendments to those reports. Information on our website does not constitute part of this Annual Report on Form 10-K or other report we file or furnish with the SEC. The reports are also available at www.sec.gov. Also available on our website are printable versions of our Audit Committee charter, Compensation Committee charter, Nominating and Corporate Governance Committee charter, Technology Committee charter, Corporate Governance Guidelines and Code of Conduct and Business Ethics. Stockholders may request copies of these documents by mail or telephone, at the address or phone number provided above.

Products

Dexcom G6®

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

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

In October 2019, we also received marketing authorization from the FDA for the Dexcom G6 Pro, or G6 Pro, which allows healthcare professionals to purchase the G6 for use with their patients. The G6 Pro has many of same features as the G6 and is intended for healthcare professionals to use with their patients ages two years and up. The G6 Pro may be used in a blinded or unblinded mode for up to 10 days.

For the G6, the sensor is inserted by the user and is intended to be used continuously for up to 10 days, after which it may be replaced with a new disposable sensor. Our transmitter is reusable until it reaches the end of its use life, labeled as three months. Our receiver is also reusable. As we establish an installed base of customers using our products, we expect to generate an increasing portion of our revenues through recurring sales of our disposable sensors.

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

- **Continuous glucose readings.** Automatically sends glucose readings to a Dexcom receiver or compatible display device every five minutes.
- **Mobile app and sharing.** Compatibility with mobile device applications allows for sharing glucose information with up to 10 other people for added support and care coordination.
- **Integration with the world's largest connected CGM ecosystem** (including Apple Watch, Garmin and other digital health apps).
- **Customizable alarms and alerts.** Personalized alert schedule immediately warns the user of pending dangerous high and low blood sugar levels.

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

- **Finger stick elimination.** No finger sticks are needed for calibration or diabetes treatment decisions, consistent with the instructions for use, unless symptoms do not match readings.
- **Easy sensor application.** Complete redesign of the sensor applicator allows for one-touch, simple self-insertion.
- **Discreet and low profile.** A redesigned transmitter with a 28% lower profile than the previous generation Dexcom CGM system makes the device comfortable and easy to wear under clothing.
- **Medication blocking.** Allows for more accurate glucose readings without interference from common medications taken at typical indication doses, such as acetaminophen.
- **Predictive low alert.** Alert feature intended to predict hypoglycemia before it hits to help avoid dangerous low blood sugar events.
- **Extended 10-day disposable sensor.** Up to 10-day sensor use allows for 43% longer wear than previous generation Dexcom CGM systems.

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

Dexcom G7®

In March 2022, we obtained CE Mark approval for G7. In December 2022, we obtained marketing authorization from the FDA for the G7 via the 510(k) review process. Like the G6, the G7 is an iCGM, is classified as a Class II device by the FDA, and is subject to special controls. The glucose value algorithm, ability to communicate with approved display and mobile devices, and compatibility with CLARITY® are all substantially equivalent in technical performance and capability to the G6. We are working to obtain reimbursement coverage by Medicare and Medicaid and by commercial insurers in the United States.

Dexcom G7 is now cleared in the United States for all people with diabetes ages two years and older, giving more people than ever access to a powerfully simple diabetes management solution. With an overall Mean Absolute Relative Difference, or MARD, of 8.2%, Dexcom G7 is the most accurate CGM cleared by the FDA, and is clinically proven to lower A1C (a blood test that provides information about average levels of blood glucose, over the prior three months), reduce hyper- and hypoglycemia and increase time in range.

The G7 carries forward important features of prior generation Dexcom CGM systems:

- **Finger stick elimination.** No finger sticks are needed for calibration or diabetes treatment decisions, consistent with the instructions for use, unless symptoms do not match readings.
- **Continuous glucose readings.** Automatically sends glucose readings to a Dexcom receiver or compatible display device every five minutes.
- **Mobile app and sharing.** Compatibility with mobile device applications allows for sharing glucose information with up to 10 other people for added support and care coordination.
- **Designed to integrate with the world's largest connected CGM ecosystem** (including insulin pumps and smart insulin pens, Apple Watch, Garmin and other digital health apps).
- **Customizable alarms and alerts.** Personalized alert schedule immediately warns the user of pending dangerous high and low blood sugar levels.
- **Easy sensor application.** Complete redesign of the sensor applicator allows for one-touch, simple self-insertion.

- **Medication blocking.** New feature allows for more accurate glucose readings without interference from common medications taken at typical indication doses, such as acetaminophen.
- **Predictive low alert.** Alert feature intended to predict hypoglycemia before it hits to help avoid dangerous low blood sugar events.
- **Extended 10-day disposable sensor.**

The G7 also has a number of new or improved features compared to our prior generation devices.

- **An even more discreet and low profile.** A redesigned transmitter makes for an all-in-one wearable combining our sensor and transmitter that is 60% smaller than the G6, making it even more comfortable and easier to wear under clothing.
- **Faster warm up.** 30-minute sensor warm up, fastest of any CGM on the market.
- **Expanded time to replace sensors.** 12-hour grace period to replace finished sensors for a more seamless transition between sessions.
- **New mobile app.** Redesigned and simplified mobile app with Dexcom Clarity integration.
- **Improved alert settings for enhanced discretion at the user's option**.
- **Redesigned receiver.** The optional receiver is smaller, with a more vibrant, easier to read display.
- **New indications for use.** Indicated in the United States for wear on the back of the upper arm for ages 2 years and older or the upper buttocks for ages 2-17 years old.
- **Less waste.** Smaller plastic components and packaging, resulting in less waste than the G6.

Other than the foregoing, the G7 is generally consistent with our prior generation CGM systems in its technical capabilities and its indications. Since the G7 is classified by the FDA as a Class II device, it is subject to special controls and modifications of, or revisions to, the device may be made under the 510(k) process.

Dexcom Share®

The Dexcom Share remote monitoring system, offered for use with any current Dexcom system, uses an app on the patient's compatible iPhone, iPod touch, iPad or Android mobile device to securely and wirelessly transmit glucose information to the cloud and then to apps on the mobile devices of up to five designated recipients, or "followers," who can remotely monitor a patient's glucose information and receive alert notifications anywhere they have a wireless connection. A patient's glucose data can also be displayed on a patient's or follower's wearable device, such as the Apple Watch and Wear OS by Google devices, when used in conjunction with the patient's or follower's compatible iPhone or Android mobile device.

Dexcom Real-Time API

In July 2021, we received FDA marketing clearance for an iCGM system incorporating our Real-Time Application Programming Interfaces (API), which is an added software component that expands connectivity and interoperability of the Dexcom CGM digital ecosystem, enabling communication of iCGM data to client software intended to receive data through the cloud. Dexcom Real-Time API enables authorized third-party software developers to integrate real-time CGM data into their digital health apps and devices for specific and permitted use cases including non-medical device application, medical device data analysis, iCGM secondary display alarm, active patient monitoring, and treatment decisions. Real-Time API is not permitted for use in environments not currently cleared for the Dexcom CGM System (e.g., hospital inpatient care), and is not intended to be used by automated insulin delivery systems.

Dexcom ONE®

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

Data and Insulin Delivery Collaborations

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

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

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

Verily Collaboration

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

In consideration of Verily's performance of its obligations under the joint development plan of the Restated Collaboration Agreement, the licenses granted to us and the amendment of the original agreement, we have made upfront, incentive, and product regulatory approval milestone payments, and will make potential additional milestone payments for future sales-based milestones. At our election, we may make these payments in shares of our common stock or cash. If we elect to make these milestone payments in cash, any such cash payment would be equal to the number of shares that would otherwise be issued for the given milestone payment multiplied by the value of our stock on the date the relevant milestone is achieved, adjusted for stock splits, dividends, and the like. We intend to pay the sales-based contingent milestones in shares of our common stock. See Note 2 "Development and Other Agreements" to the consolidated financial statements in Part II, Item 8 of this Annual Report and Exhibit 10.15 of this Annual Report for a further description of the Restated Collaboration Agreement, including the number of shares of stock for milestone payments.

Market Opportunity

Diabetes

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

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

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

Type 1 Diabetes

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

According to JDRF, greater than 60,000 people are diagnosed with Type 1 diabetes each year in the United States. In addition, according to the ADA in 2019, nearly 18,000 youth are newly diagnosed with Type 1 diabetes every year in the United States.

Type 2 Diabetes

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

Type 2 diabetes is occurring with increasing frequency in young people, with the increase in prevalence related to an increase in obesity amongst children. According to the CDC, as of 2017-2020, approximately 19.7% of children and adolescents aged 2-19 years, or 14.7 million children, in the United States were obese. In the United States, the percentage of children and adolescents affected by obesity has more than tripled since the 1970s.

Importance of Glucose Monitoring

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

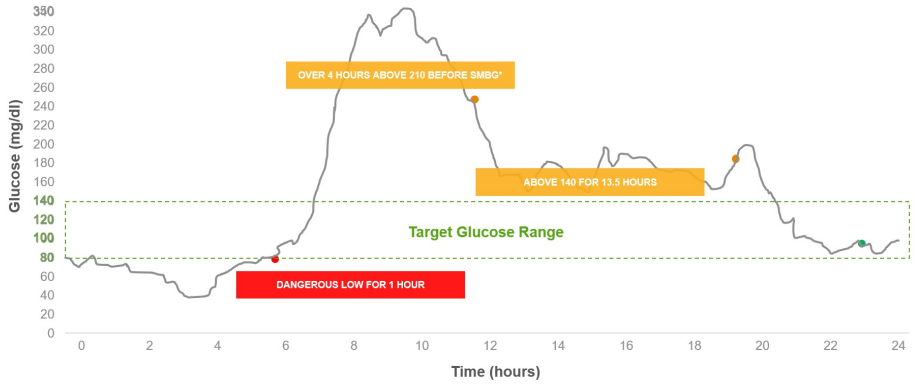
Limitations of Existing Glucose Monitoring Products

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

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

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

Single Day Continuous Data



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

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

The Dexcom Approach

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

The landmark 1993 Diabetes Control and Complications Trial, or DCCT, demonstrated that improving blood glucose control lowers the risk of developing diabetes-related complications by up to 50%. The study also demonstrated that people with Type 1 diabetes achieved sustained benefits with intensive management. However, according to an article published in *The New England Journal of Medicine* in November 2014, in two national registries, only 13% to 15% of people with diabetes met treatment guidelines for good glycemic control, and more than 20% had very poor glycemic control.

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

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

Our current target market consists primarily of people with Type 1 and Type 2 diabetes who utilize insulin therapy. We also believe that our CGM systems are beginning to have a positive impact on the broader Type 2 population that does not utilize insulin, a group that we estimate to be approximately 30 million people in the United States alone. We are extending our commercial efforts for this population through several channels, including through strategic partnerships. In the future, we plan to expand our product offering and cleared/approved indications to address people with pre-diabetes, people who are obese, people who are pregnant, and people in the hospital setting. Although the majority of our revenue has been generated in the United States, we have expanded our operations to include additional markets in North America, Africa, Asia Pacific, Europe, Latin America and the Middle East.

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

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

- **Connectivity to Wearables and Others.** Patients can monitor their glucose levels and trends on compatible wearable devices, such as Apple Watch and Wear OS by Google devices, when used with a compatible mobile device. Also, our Share remote monitoring systems enable users of our current CGM systems to have their sensor glucose information remotely monitored by their family, friends or other designated recipient, or follower, by wirelessly transmitting data from the user's smart phone to the cloud and then to the follower's mobile device. Several followers can remotely monitor a patient's glucose information and receive secondary alert notifications from almost anywhere with an Internet connection via each follower's mobile device.

Our Strategy

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

- Establishing and maintaining our technology platform as the leading approach to CGM and leveraging our development expertise to rapidly bring products to market, including for expanded indications.
- Supporting use of our ambulatory products through a direct sales and marketing effort, as well as key distribution arrangements.
- Supporting innovation through technology integration partnerships such as our current partnerships with Eli Lilly, Insulet, Novo Nordisk, Tandem Diabetes, The Ypsomed Group and others globally.
- Seeking broad coverage policies and reimbursement for our products from private third-party payors and national health systems.
- Providing cloud-based data repository platform that enables people with diabetes to aggregate and analyze data from numerous diabetes devices and share the data with their healthcare providers and other individuals involved in their diabetes management and care.
- Pursuing expansion of use of our products to other patient care settings and patient demographics, including use for people with Type 2 diabetes who are not on intensive insulin therapy, population health, patient monitoring including in the hospital setting, and people who are pregnant.
- Providing a high level of customer support, service and education.
- Pursuing the highest safety and quality levels for our products.

Our Technology Platform

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

Sensor Technology

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

Receiver and Transmitter Technology

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

Disposable Sensor and Reusable Transmitter

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

After a stabilization period, the user will begin receiving CGM data on his or her mobile device or dedicated receiver through the ten-day usage period. Our G6 and G7 systems have labeling from the FDA and CE Mark permitting their use as a replacement for finger sticks for making therapeutic adjustments.

The disposable sensors contained in the G6 and G7 systems respectively are each intended to function for up to ten days, after which the sensor should be replaced. To replace a sensor, the user simply removes the pod and attached sensor from the skin and discards them while retaining the reusable transmitter. A new sensor and pod can then be inserted and used with the same receiver and transmitter for a subsequent use period.

Handheld Receiver

Our small handheld receiver is carried by the user and wirelessly receives continuous glucose values from the transmitter. Proprietary algorithms and software, developed from our extensive database of continuous glucose data from clinical trials, are programmed into the G6 and G7 transmitter to process the glucose data from the sensor, which then sends the processed glucose data to the receiver and displays it on a user-friendly graphical user interface. With a push of a button, the user can access their current glucose value and one-, three-, six-, twelve- and twenty-four-hour trended data. Additionally, when glucose values are inappropriately high or low, the receiver provides an audible alert or vibrates. The receiver is a self-contained, durable unit with a rechargeable battery.

Compatible Mobile Devices

With our G6 and G7 systems, the functionalities of our proprietary receiver can be obtained through the use of a compatible mobile device, such as an iOS or Android device, and our mobile applications, depending on the patient's geographic location. A receiver may be required as the primary display device or a backup to the mobile device in some jurisdictions, including the United States.

Products in Development

We have gained our technology expertise by developing implants designed to withstand the rigors of functioning within the human body for extended periods of time, and designed to address other considerations such as device sealing, miniaturization, durability and sensor geometry.

We are leveraging this technology platform with the goal of enhancing the capabilities of our current products (including obtaining expanded indications for use) and to develop additional CGM products. We plan to develop future generations of technologies focused on improved performance and convenience that will enable intelligent insulin administration. Over the longer term, we plan to continue to develop and improve networked platforms with open architecture, connectivity and transmitters capable of communicating with other devices. We intend to expand our efforts to accumulate CGM patient data and metrics and apply predictive modeling and machine learning to generate interactive CGM insights with the potential to inform patient behavior.

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

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

Commercial Operations

We have built a direct sales organization in North America and certain international markets to call on health care professionals, such as endocrinologists, physicians and diabetes educators, who can educate patients about continuous glucose monitoring. We believe that focusing efforts on these participants is important given the instrumental role they each play in the decision-making process for diabetes therapy, and to ensure that health care

professionals and patients are knowledgeable about our products and their functionality. We focus on delivering this important information to participants to drive adoption of our current CGM systems. In addition, our direct sales efforts include the use of e-commerce resources in certain international markets where we have not built a sales force.

To complement our direct sales efforts, we have entered into distribution arrangements in North America and several international markets that allow distributors to sell our products. We expect to continue investing in our field sales force and believe our direct, highly specialized and focused sales organization and our domestic and international distribution agreements are sufficient for us to support our sales efforts for at least the next twelve months.

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

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

Direct-to-consumer (DTC) marketing is one of our key initiatives to increase awareness of our CGM systems and drive new leads for people with diabetes to our website. In jurisdictions where DTC marketing is permitted, we currently focus on reaching people with Type 1 and insulin intensive Type 2 diabetes. We advertise on television, in print, digital and video media, CRM, offer sponsorships, host or participate in diabetes related events, conduct public relations and maintain a brand ambassador program.

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

Competition

The market for glucose monitoring devices is intensely competitive, subject to rapid change and significantly affected by new product introductions and other market activities of industry participants. In selling our current CGM systems, we compete directly with the Diabetes Care division of Abbott Laboratories; Medtronic plc's Diabetes Group; Roche Diabetes Care, a division of Roche Diagnostics; privately-held LifeScan, Inc.; and Ascensia Diabetes Care, each of which manufactures and markets products for the single-point finger stick device market. Collectively, these companies currently account for the majority of the worldwide sales of self-monitored glucose testing systems.

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

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

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

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

- safe, reliable and high-quality performance of products;
- cost of products and eligibility for reimbursement;
- comfort and ease of use of products;
- effective sales, marketing and distribution networks;
- brand awareness and strong acceptance by healthcare professionals and people with diabetes;

- customer service and support and comprehensive education for people with diabetes and diabetes care providers;
- speed of product innovation and time to market;
- regulatory expertise; and
- technological leadership and superiority.

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

Manufacturing

We currently manufacture our products at our headquarters in San Diego, California and at our manufacturing facility in Mesa, Arizona, where we have approximately 46,800 square feet of laboratory space and approximately 85,200 square feet of controlled environment rooms. We are also near completion of the initial phase of construction of a new facility in Malaysia that we anticipate will add substantial manufacturing capacity. There are technical challenges to increasing manufacturing capacity, finding or enhancing new manufacturing facilities capable of meeting regulatory requirements, U.S. state licensure of manufacturing facilities, equipment design and automation, material procurement, problems with production yields, and quality control and assurance. We have focused significant effort on continual improvement programs in our manufacturing operations intended to improve quality, yields and throughput. We have made progress in manufacturing to enable us to supply adequate amounts of product to support our commercialization efforts, however we cannot guarantee that supply will not be constrained going forward. Additionally, the production of our continuous glucose monitoring systems must occur in a highly controlled and clean environment to minimize particles and other yield- and quality-limiting contaminants. Developing and maintaining commercial-scale manufacturing facilities has and will continue to require the investment of substantial additional funds and the hiring and retention of additional management, quality assurance, quality control and technical personnel who have the necessary manufacturing experience.

We manufacture our current CGM systems with certain components supplied by outside vendors and other components that we manufacture internally. Key components that we manufacture internally include our wire-based sensors. The remaining components and assemblies are purchased from outside vendors. We then assemble, test, package and ship the finished systems, which may include a reusable transmitter, a receiver and disposable sensors.

We purchase certain components and materials used in manufacturing from single sources due to quality considerations, costs or constraints resulting from regulatory or other requirements. As of December 31, 2022, those single sources include suppliers of application-specific integrated circuits used in our transmitters, seals used for the applicator and certain polymers used to synthesize polymeric membranes for our sensors. For additional information, please see our Risk Factor entitled, "*We depend upon third-party suppliers and outsource to other parties, making us vulnerable to supply disruptions, suboptimal quality, non-compliance and/or price fluctuations, which could harm our business*." For supply risks related to COVID-19, see our Risk Factor entitled "*The outbreak of the SARS-CoV-2 virus and its variants and the COVID-19 disease that it causes, or similar public health crises, could have a material adverse impact on our business, financial condition and results of operations, including our manufacturing, commercial operations and sales*."

Third-Party Coverage and Reimbursement

As a medical device company, coverage and reimbursement from Medicare, Medicaid or other governmental healthcare programs or systems, and private third-party healthcare payors is an important element of our success. In January 2017, the Centers for Medicare and Medicaid, or CMS, established a classification of "Therapeutic Continuous Glucose Monitors" as durable medical equipment under Medicare Part B, subject to payment by Medicare under certain coverage conditions which are determined and updated by CMS, by local Medicare Administrative Contractors or on a patient claim by claim basis. In December 2021, CMS published a final rule expanding the classification of DME under Medicare Parts B & C to also include adjunctive CGMs (i.e., CGMs do not replace standard blood glucose monitors for treatment decisions) and related supplies. We also have coverage under certain international markets and Medicaid coverage in about 45 states.

As of December 31, 2022, the eight largest private third-party payors, in terms of the number of covered lives, have issued coverage policies for the category of continuous glucose monitoring devices. In addition, we have negotiated contracted rates with all of those third-party payors for the purchase of our current CGM systems by their members. We have personnel with reimbursement expertise to assist customers in obtaining reimbursement from

private third-party payors. We also maintain a field-based reimbursement team charged with calling on third-party private payors to obtain coverage decisions and contracts. We have continued our efforts to create and liberalize coverage policies with third-party payors, including obtaining reimbursement for our products under pharmacy benefits and for more people with diabetes.

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

Intellectual Property

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

Our patent portfolio includes numerous issued and pending patent applications in the U.S. and other parts of the world, which in the aggregate, we believe to be of material importance in the operation of our business. U.S. patents, as well as most foreign patents, are generally effective for 20 years from the date the earliest application was filed. In some cases, the patent term may be extended. Our issued patents as of December 31, 2022 are set to expire over a range of years, from 2023 with respect to some of our earlier patents, to 2041, subject to any extensions. We also have various registered U.S. trademarks, registered European Community trademarks, and many other trademark registrations and pending trademark applications around other parts of the world. In addition, we have entered into exclusive and non-exclusive licenses in the ordinary course of business relating to a wide array of technologies or other intellectual property rights or assets.

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

We also rely on trade secrets, technical know-how and continuing innovation to develop and maintain our competitive position. We seek to protect our proprietary information and other intellectual property by generally requiring our employees, consultants, contractors, suppliers, outside scientific collaborators and other advisors to execute non-disclosure and assignment of invention agreements on commencement of their employment or engagement. Agreements with our employees also forbid them from bringing the proprietary rights of third parties to us. We also generally require confidentiality or material transfer agreements from third parties that receive our confidential data or materials. We cannot guarantee that employees and third parties will abide by the confidentiality or assignment terms of these agreements. Despite measures taken to protect our intellectual property, unauthorized parties might copy aspects of our products or obtain and use information that we regard as proprietary.

Sustainability

We believe that taking into account the interests of our various stakeholders – including patients, caregivers, employees, investors, and our communities – enables us to operate in a sustainable manner, supports the success of our business and drives long-term value. We do this by holding true to our core values: Listen, Think Big, Be Dependable, and Serve with Integrity. These values are at the heart of our sustainability initiatives.

- *Listen* – We believe in listening to our customers and our employees. We have launched a number of programs to advocate for individuals living with diabetes and we support our employees and their families through a number of benefit programs that are available. In addition, we promote diversity, practice fairness, and treat everyone with respect and dignity.

- *Think Big* – We seek to expand global healthcare access for people with diabetes and actively work to increase access to our products. We also have committed to operate our business in a manner that is environmentally sustainable and conserves natural resources and reduces waste.
- *Be Dependable* – We are committed to quality and believe that is best achieved through a safe and healthy workplace as well as a Quality Management System that is compliant with all applicable regulatory requirements and which is continuously being improved.
- *Serve with Integrity* – While oversight of our ethics and governance structure begins with our Board of Directors and Executive Leadership Team, we expect all employees to foster a culture of accountability in line with our Code of Conduct and Business Ethics. We also maintain a compliance program to help enforce ethical conduct and adherence to applicable laws and regulations.

The Nominating and Governance Committee of the Board of Directors oversees and reviews Dexcom's environmental, social and governance ("ESG") risks, opportunities, strategies, programs, policies, practices, measures, objectives and performance relating to ESG matters. Our management-level ESG Steering Committee, which is comprised of the functional leads from our Operations, Human Capital, Finance and Legal departments, is responsible for, among other things, setting the overall strategy with respect to ESG matters (subject to direction from the Chief Executive Officer and oversight of the NG Committee), establishing programs, policies and practices relating to ESG matters ("DexCom's ESG Program") and overseeing and monitoring the implementation of DexCom's ESG Program. The ESG Steering Committee reports to our Chief Executive Officer and provides periodic updates regarding our ESG programs, policies and practices to the Nominating and Governance Committee of the Board of Directors.

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

Government Regulation

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

U.S. Laws and Regulations

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

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

FDA Regulation

Unless an exemption applies, each medical device we wish to commercially distribute in the United States will require either prior 510(k) clearance, prior *de novo* down-classification and a related grant of marketing authorization, or prior approval from the FDA through the premarket approval, or PMA process. The FDA classifies medical devices into one of three classes. Devices requiring fewer controls because they are deemed to pose lower risk are placed in Class I or II. Class I devices are subject to general controls such as labeling, pre-market notification, and adherence to the FDA's manufacturing requirements, which are contained in the Quality System Regulation, or QSR. Class II devices are subject to special controls such as performance standards, post-market

surveillance, FDA guidelines, or particularized labeling, as well as general controls. Some Class I and Class II devices are exempted by regulation from the pre-market notification (i.e., 510(k) clearance) requirement, and/or the requirement of compliance with substantially all of the QSR. As an example, the mobile applications that comprise the Share System were classified by the FDA as Class II exempt. With the mobile applications classified as Class II exempt, we must comply with certain general and special controls required by the FDA but we do not need prior FDA review to commercialize changes to the mobile applications. Some devices are placed in Class III, which requires approval of a PMA application, if they are deemed by the FDA to pose the greatest risk, such as life-sustaining, life-supporting or certain implantable devices, or to be "not substantially equivalent" either to a previously 510(k) cleared device or to a "preamendment" Class III device in commercial distribution before May 28, 1976 for which PMA applications have not been required.

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

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

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

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

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

Clinical trials are almost always required to support a PMA application and are sometimes required for a 510(k) clearance. All clinical trials must be conducted in accordance with the FDA's IDE regulations, which govern investigational device labeling, prohibit promotion, and specify an array of Good Clinical Practice requirements, which include among other things, recordkeeping, reporting and monitoring responsibilities of study sponsors and study investigators. Clinical trials must further comply with the FDA's regulations for institutional review board approval and for informed consent and other human subject protections. Required records and reports are subject to inspection by the FDA. The results of clinical testing may be unfavorable or, even if the intended safety and efficacy success criteria are achieved, may not be considered sufficient for the FDA to grant approval or clearance of a product. The commencement or completion of any of our clinical trials may be delayed or halted, or be inadequate to support approval of a PMA application, for numerous reasons, including, but not limited to, the following:

- the FDA or other regulatory authorities do not approve a clinical trial protocol or a clinical trial, or place a clinical trial on hold;
- patients do not enroll in clinical trials at the rate we expect;
- patients do not comply with trial protocols;

- patient follow-up is not at the rate we expect;
- patients experience adverse side effects;
- patients die during a clinical trial, even though their death may not be related to our products;
- institutional review boards and third-party clinical investigators may delay or reject our trial protocol;
- third-party clinical investigators decline to participate in a trial or do not perform a trial on our anticipated schedule or consistent with the clinical trial protocol, good clinical practices or other FDA requirements;
- Dexcom or third-party organizations do not perform data collection, monitoring and analysis in a timely or accurate manner or consistent with the clinical trial protocol or investigational or statistical plans;
- third-party clinical investigators have significant financial interests related to Dexcom or the study that the FDA deems to make the study results unreliable, or Dexcom or investigators fail to disclose such interests;
- regulatory inspections of our clinical trials or manufacturing facilities, which may, among other things, require us to undertake corrective action or suspend or terminate our clinical trials;
- changes in governmental regulations or administrative actions applicable to our trial protocols, including, for example, recent legislation passed by Congress requiring clinical trial sponsors to increase engagement with the FDA on matters related to appropriate representation of racial and ethnic minorities in clinical trial data for pivotal studies;
- the interim or final results of the clinical trial are inconclusive or unfavorable as to safety or effectiveness; and
- the FDA concludes that the results from our trial and/or trial design are inadequate to demonstrate safety and effectiveness of the product.

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

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

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

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

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

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

periodic, unannounced inspections and market surveillance. Inspections may include the manufacturing facilities of our subcontractors.

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

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

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

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

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

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

Federal Civil False Claims Act. The federal Civil False Claims Act prohibits, among other things, knowingly presenting, or causing to be presented a false claim or the knowing use of false statements or records to obtain payment from the federal government. When an entity is determined to have violated the False Claims Act, it may

be subject to repayment of three times the actual damages sustained by the government, plus significant mandatory civil penalties for each separate false claim. Suits filed under the False Claims Act can be brought by any individual on behalf of the government and such individuals (known as "relators" or, more commonly, as "whistleblowers") may share in any amounts paid by the entity to the government in fines or settlement. These whistleblower-initiated False Claims Act cases are commonly referred to as "qui tam" actions. False Claims Act cases may also be initiated by the U.S. Department of Justice or any of its local U.S. Attorneys' Offices. In addition, certain states have enacted laws modeled after the federal False Claims Act. Qui tam actions have increased significantly in recent years, causing greater numbers of healthcare companies to have to defend a false claim action, even before the validity of the claim is established and even if the government decides not to intervene in the lawsuit. Healthcare companies may decide to agree to large settlements with the government and/or whistleblowers to avoid the cost and negative publicity associated with litigation. Federal enforcement agencies also have shown increased interest in pharmaceutical and medical device companies' product promotion, health care professional engagements, and patient assistance programs, including reimbursement and co-pay support services, and a number of investigations into these programs have resulted in significant civil and criminal settlements. In addition, the Affordable Care Act amended federal law to provide that the government may assert that a claim for items or services resulting from a violation of the federal Anti-Kickback Statute constitutes a false or fraudulent claim for purposes of the federal civil False Claims Act. Criminal prosecution is also possible for knowingly making or presenting a false or fictitious or fraudulent claim to the federal government.

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

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

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

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

Health Insurance Portability and Accountability Act of 1996 (HIPAA). The Health Insurance Portability and Accountability Act of 1996, as amended by the American Recovery and Reinvestment Act of 2009, and implementing regulations, collectively HIPAA, created two federal crimes: healthcare fraud and false statements relating to healthcare matters. The healthcare fraud statute prohibits knowingly and willfully executing a scheme to

defraud any healthcare benefit program, including private payors. A violation of this statute is a felony and may result in fines, imprisonment or exclusion from government sponsored programs. The false statements statute prohibits knowingly and willfully falsifying, concealing or covering up a material fact or making any materially false, fictitious or fraudulent statement in connection with the delivery of or payment for healthcare benefits, items or services.

HIPAA and Other U.S. Privacy Laws and Regulations. HIPAA, as well as a number of other federal and state data protection laws, also extensively regulate the use and disclosure of individually identifiable health information, and other personal information. HIPAA requires covered entities, including health plans and most health care providers, to implement administrative, physical and technical safeguards to protect the security of covered information (known as "protected health information") and sets limits and conditions on the uses and disclosures that may be made of such information without the authorization of the relevant individual. Certain provisions of HIPAA's security and privacy regulations apply to business associates (entities that handle protected health information on behalf of covered entities), and business associates are subject to direct liability for violation of these provisions. In addition, a covered entity may be subject to criminal and civil penalties as a result of a business associate violating HIPAA, if the business associate is found to be an agent of the covered entity. Covered entities must report breaches of unsecured protected health information to affected individuals without unreasonable delay and notification must also be made to the U.S. Department of Health & Human Services, Office for Civil Rights (OCR) and, in certain situations involving large breaches, to the media. Various U.S. state laws and regulations may also require us to notify affected individuals and state agencies in the event of a data breach involving individually identifiable information. The OCR enforces the HIPAA regulations and performs compliance audits.

On December 1, 2022, OCR issued a bulletin on the requirements under HIPAA for online tracking technologies (e.g., cookies, pixels) to protect the privacy and security of health information. This bulletin outlined OCR's position on the use of online tracking technology vendors, when certain information received by such vendors constitutes protected health information under HIPAA, and accordingly, when business associate agreements must be executed between covered entities, like Dexcom, and such vendors. In addition to enforcement by OCR, state attorneys general are authorized to bring civil actions seeking either injunction or damages in response to violations that threaten the privacy of state residents. Dexcom is a covered entity under HIPAA and in certain circumstances may also be a business associate of another covered entity. The HIPAA privacy regulations and security regulations impose and will continue to impose significant costs on us in order to comply with these standards.

There are numerous other laws and legislative and regulatory initiatives at the federal and state levels addressing privacy and security concerns. We also remain subject to federal or state privacy-related laws that may be more restrictive or contain different requirements than the privacy regulations issued under HIPAA. These laws vary and could impose additional penalties. For example, the Federal Trade Commission uses its consumer protection authority to initiate enforcement actions in response to alleged privacy and data security violations. Further, certain states have proposed or enacted legislation that will create new data privacy and security obligations for certain entities. These new laws include the California Consumer Privacy Act, or CCPA, which came into effect January 1, 2020 and was amended and expanded by the California Privacy Rights Act, or CPRA, passed on November 3, 2020, and effective as of January 1, 2023; the Virginia Consumer Data Protection Act, effective as of January 1, 2023; the Colorado Privacy Act and the Connecticut Data Privacy Act, both effective as of July 1, 2023; and the Utah Consumer Privacy Act, effective as of December 31, 2023. Among other things, these state-specific laws create new data privacy obligations for covered companies and provide new privacy rights to state residents, including the right to opt out of certain disclosures of their information. The CCPA also created a private right of action with statutory damages for certain data breaches, thereby potentially increasing risks associated with a data breach. Draft regulations implementing the CPRA and Colorado statute have been published, but many questions remain as to how all of the new statutes will be interpreted. The, the effects of state data protection laws are significant and have required us to modify our data processing practices, and may cause us to incur substantial costs and expenses to ensure ongoing compliance, particularly given our base of operations in California.

In addition to the laws discussed above, we may see more stringent state and federal privacy legislation passed in 2023 and beyond, as the increased cyber-attacks during the ongoing COVID-19 pandemic have once again put a spotlight on data privacy and security in the U.S. and other jurisdictions. We cannot predict where new legislation might arise, the scope of such legislation, or the potential impact to our business and operations.

FCPA and Other Anti-Bribery and Anti-Corruption Laws. The U.S. Foreign Corrupt Practices Act, or FCPA, prohibits U.S. corporations and their representatives from offering, promising, authorizing or making payments to any foreign government official, government staff member, political party or political candidate in an attempt to obtain or retain business abroad. The scope of the FCPA would include interactions with certain healthcare

professionals in many countries, either directly or through our contracted distributors. Our present and future business has been and will continue to be subject to various other U.S. and foreign laws, rules and/or regulations.

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

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

International Regulation

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

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

Outside the United States a range of anti-bribery and anti-corruption laws, as well and some industry-specific laws and codes of conduct, apply to the medical device industry and interactions with government officials and entities and healthcare professionals. Laws include the UK Bribery Act of 2010. Further, the EU member countries have emphasized a greater focus on healthcare fraud and abuse and have indicated greater attention to the industry by the European Anti-Fraud Office. MedTech Europe, the medical device industry association, also

introduced the Code of Ethical Business Practices, which came into effect on January 1, 2017. Countries in Asia have also become more active in their enforcement of anti-bribery laws and with respect to procurement and supply chain fraud.

In the European Union, increasingly stringent data protection and privacy rules that have and will continue to have substantial impact on the use of patient data across the healthcare industry became effective in May 2018. The EU General Data Protection Regulation, or GDPR, applies across the European Union and includes, among other things, a requirement for prompt notice of data breaches to data subjects and supervisory authorities in certain circumstances and significant fines for non-compliance. The GDPR fine framework can be up to 20 million euros, or up to 4% of the company's total global turnover of the preceding fiscal year, whichever is higher. The GDPR also requires companies processing personal data of individuals residing in the European Union to comply with EU privacy and data protection rules, even if the company itself does not have a physical presence in the European Union. Noncompliance could result in the imposition of fines, penalties, or orders to stop noncompliant activities. Due to the strong consumer protection aspects of the GDPR, companies subject to its purview are allocating substantial legal costs to the development of necessary policies and procedures and overall compliance efforts. We expect continued costs associated with maintaining compliance with GDPR into the future. For example, on July 16, 2020, the Court of Justice of the European Union issued a judgment in Case C-311/18 that declared the EU-U.S. Privacy Shield Framework invalid (Data Protection Commissioner v Facebook Ireland Ltd and Maximillian Schrems, also knowns as "Schrems II"). In the absence of the new adequacy decision, this judgment still results in additional compliance obligations for companies that rely on mechanisms other than the Privacy Shield, like standard contractual clauses and appropriate supplementary measures to ensure a valid basis for the transfer of personal data outside of Europe. Though a new adequacy decision (EU-U.S. Data Privacy Framework) may be put in place in the near future, it may also be subject to challenges similar to those faced by the Privacy Shield. In view of this and other developments, data transfer risk remains a potential issue that requires regular monitoring. We expect continued costs associated with maintaining compliance with the GDPR into the future, and these requirements, as interpreted by EU data protection authorities, could negatively impact our business, financial condition and results of operations.

Environmental Regulation

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

Advisory Boards and Consultants

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

Human Capital

We aim to foster a diverse, inclusive and engaging culture that values each person's unique skill set and to continue to attract – and retain – top talent throughout the organization. 2022 represented a year of growth across Dexcom; our employee population grew both by number and global footprint. With our shift from office to hybrid work, we have access to more – and more diverse – talent than ever before. As of December 31, 2022, we have approximately 7,600 employees around the globe, including 7,500 full-time employees. Approximately 60% of our full-time U.S. employees are ethnically diverse.

Country	Female	Male	Grand Total	Ethnically Diverse (US Only)*
United States	2,300	2,900	5,200	3,300
Non-United States ("OUS")	1,300	1,100	2,400	N/A
Grand Total**	3,600	4,000	7,600	3,300

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

**Includes full time and part time employees.

The human capital measures and objectives that we focus on include diversity, equity and inclusion ("DEI"); communications and engagement; health, safety and wellness; total rewards and pay equity; and talent growth and development.

Diversity, Equity and Inclusion

Our journey to create a more diverse, equitable and inclusive workplace continues. As Dexcom continues to grow and scale, our DEI initiatives have been critical not only for company culture but also for the growing diversity of patients our products will benefit across the globe.

With expanded talent and diversity staff, we have evolved the DEI Leadership Council, or DLC, as a means for leaders to work closely together to advance the broader DEI strategy across the organization. We are proud to support our global and local employee resource groups, whose employee-led activities and initiatives we believe continue to foster a sense of belonging for our employees. In 2022, foundational DEI training was launched to all employees. We also offered opportunities for employees to take a deeper dive into specific topics related to DEI. 2022 also allowed us to build out our talent programs to foster equitable access and visibility to our up-and-coming diverse leaders within the company. We continue to weave DEI into talent conversations, particularly at senior levels, which we believe has contributed to our improved representation of female leaders at Dexcom.

Communications and Engagement

Through strategic communications, we have strengthened the connection between our leaders and our business goals, as well as the behaviors needed to drive our employee experience. We also believe by listening to our employees, we can create a dynamic workplace that will foster productivity while promoting work-life balance and connection across the organization. We have continued to seek out "the voice of the employee" through life cycle surveys. Each year, we offer an engagement survey titled "We're Listening." Employee engagement scores remain high based on index and remains consistent at approximately 80% since November 2021. What is notable is people are proud to work here and see a clear link between their work and the Dexcom mission.

Health, Safety and Wellness

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

We also provide comprehensive well-being programs that support our employees and their families. For example, Inspire, our global wellness platform, helps employees and their family members develop and achieve their physical, emotional, and financial well-being goals. We offer our employees the choice of several health plans including the Level2 program, which is designed specifically to support individuals with type 2 diabetes, and provides participants a Dexcom CGM, an activity tracker, and ongoing coaching to encourage greater health outcomes.

As the COVID-19 pandemic continued in 2022, our goal to support our employees' needs remained constant. We continued to provide both COVID and flu vaccination clinics for employees and their families, proactive on-site testing for our employees who returned to the workplace, and continued support of remote work for employees whose roles allow for it. We also continue to evaluate how to maintain a hybrid workplace beyond the pandemic to ensure that we meet our employees' ever-changing needs outside the workplace.

Total Rewards and Pay Equity

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

In 2022, we continued our proactive year-end global market adjustment process intended to ensure we maintain pay equity between active employees and potential new external hires. Through this process, employees who meet predefined criteria may be eligible for an additional adjustment in base salary if they have fallen below Dexcom's determined minimum. We believe by continuing to ensure equitable pay between existing and new hires, we will be better positioned to retain valued employees.

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

Talent Growth and Development

We continue to invest in new learning systems and programming to support employee development. To support the personal and professional growth of our workforce, we have built an extensive library of development offerings to empower employees at all levels to advance their skill sets and knowledge base. Because there is no one-size-fits-all approach to career development, we continue to evolve our curriculum to meet the needs of our diverse workforce. At this time, our employees have completed over 32,000 hours dedicated to this learning.

In addition, each employee has unlimited access to LinkedIn Learning, which offers more than 13,000 courses designed to support career advancement. In 2022, more than one-third of our employees used LinkedIn Learning to assist in their professional development. We increased the utilization of this platform in 2022 by embedding videos and courses in learning initiatives, encouraging leader and peer recommendations, and using targeted marketing of this resource throughout the organization. This has resulted in our employees completing over 14,000 courses in 2022.

ITEM 1A - RISK FACTORS

Our short and long-term success is subject to numerous risks and uncertainties, many of which involve factors that are difficult to predict or beyond our control. Before making a decision to invest in, hold or sell our common stock, stockholders and potential stockholders should carefully consider the risks and uncertainties described below, in addition to the other information contained in or incorporated by reference into this Annual Report on Form 10-K, as well as the other information we file with the Securities and Exchange Commission. If any of the following risks are realized, our business, financial condition, results of operations and prospects could be materially and adversely affected. In that case, the value of our common stock could decline and stockholders may lose all or part of their investment. Furthermore, additional risks and uncertainties of which we are currently unaware, or which we currently consider to be immaterial, could have a material adverse effect on our business, financial condition or results of operations. Refer to our disclaimer regarding forward-looking statements at the beginning of Management's Discussion and Analysis of Financial Condition and Results of Operations in Item 7 of this Annual Report.

Risks Related to Our Business and Operations

Risks Related to Pricing and Reimbursement

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

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

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

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

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

Although many third-party payors have adopted some form of coverage policy for continuous glucose monitoring devices, our products do not always have such coverage, including simple broad-based contractual coverage, with third-party payors and we frequently experience administrative challenges in obtaining coverage or reimbursement for our products. If we are unable to obtain adequately broad coverage or reimbursement for our products or any future products from third-party payors, our revenue may be negatively impacted.

As a medical device company, reimbursement from government and/or commercial third-party healthcare payors, including Medicare and Medicaid, is an important element of our success. The Centers for Medicare & Medicaid Services, or CMS, provides coverage for "Therapeutic Continuous Glucose Monitors" as durable medical equipment eligible for coverage under Medicare Part B. Coverage criteria for therapeutic CGMs is determined by CMS under national coverage determinations as well as by local Medicare Administrative Contractors under local coverage determinations. Therefore, Medicare reimbursement for our CGM devices is subject to various coverage conditions and often requires a patient-specific coverage analysis. Medicare does not cover any items or services that are not "reasonable and necessary." Medicare covers the CGM system, which includes supplies necessary for the use of the device, under the Durable Medical Equipment, or DME, benefit category. In order to be covered under this benefit, one component of the CGM system must meet the criteria for a durable medical device. To date, the receiver satisfied this criteria. To the extent that a receiver is not used by a Medicare beneficiary or CMS otherwise determines that the items and supplies ordered are not medically necessary, Medicare may not cover that CGM system or any associated supplies.

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

As of December 31, 2022, the eight largest private third-party payors, in terms of the number of covered lives, have issued coverage policies for the category of CGM devices. In addition, we have negotiated contracted rates with all of those third-party payors for the purchase of our current CGM systems by their members. Nevertheless, coverage and reimbursement-related barriers remain. Among other things, people with diabetes without insurance that covers our products bear the financial cost of them. In addition, in the United States, people with diabetes using existing single-point finger stick devices are generally reimbursed all or part of the product cost by Medicare or other third-party payors, which may be perceived as more advantageous for consumers. Further, while many third-party payors have adopted some form of coverage policy on CGM devices, in a sizeable percentage of cases, under durable medical equipment benefits, those coverage policies frequently are restrictive and require significant medical documentation and other requirements in order for policy holders to obtain reimbursement, and as a result, we have difficulty improving the efficiency of our customer service group. Moreover, it is not uncommon for governmental, including federal and/or state, agencies and their contractors to conduct periodic routine billing and compliance reviews that may entail extensive documentation requests, cooperation with which may require significant time and resources, and may result in identification of overpayments that may need to be refunded. The commercial success of our products in both domestic and international markets will substantially depend on whether timely and comprehensive third-party reimbursement is widely available for individuals that use them.

CMS has proposed new draft coverage guidelines for CGMs, which if implemented, would have a favorable impact on us. Currently, Medicare coverage for CGM is only available to Medicare patients who take at least three doses of insulin a day, limiting CGM reimbursement for Medicare beneficiaries with intensive Type 1 and 2 diabetes. The draft Local Coverage Determination (LCD), if finalized, would extend Medicare CGM coverage to patients who use insulin at least once per day. Further, the LCD would also allow coverage for patients not taking insulin if the patient has a history of problematic hypoglycemia. We expect CMS to release the final coverage decision this year.

Nevertheless, third-party payors are increasingly attempting to contain healthcare costs by limiting both coverage and the level of reimbursement of new and existing medical devices, and, as a result, they may be restrictive, or they may not cover or provide adequate payment for our products. In order to obtain additional reimbursement arrangements, including under pharmacy benefits, we may have to agree to a net sales price lower than the net sales price we might charge in other sales channels. Our revenue may be limited by the continuing efforts of government and third-party payors to contain or reduce the costs of healthcare through various increasingly sophisticated means, such as leveraging increased competition, increasing eligibility requirements such as second opinions and other documentation, purchasing in a bundle, or redesigning benefits. In December 2021, CMS published a final rule expanding the classification of DME under Medicare Parts B & C to include adjunctive CGMs (i.e., CGMs that do not replace standard blood glucose monitors for treatment decisions) and related supplies. This final rule expands coverage of CGMs to include a large competitor's competing device, which may negatively impact our sales. We are unable to predict what effect the current or any future healthcare reform will

have on our business, or the effect these matters will have on our customers. Our dependence on the commercial success of our current CGM systems makes us particularly susceptible to any cost containment or reduction efforts. Accordingly, unless government and other third-party payors provide adequate coverage and reimbursement for our current CGM systems, people without coverage who have diabetes may not use our products. Furthermore, payors are increasingly basing reimbursement rates on factors such as prior approvals and the effectiveness of the product, clinical outcomes associated with the product, and any factors that negatively impact the effectiveness or clinical outcomes (or cause a perception of any such negative impact), such as the results of a clinical trial, a product defect, or a product recall, which could negatively impact the reimbursement rate. Also, the trends toward managed healthcare in the United States and legislative efforts intended to reduce the cost of government insurance programs could significantly influence the purchase of healthcare services and products and may result in lower prices for our products or the exclusion of our products from reimbursement programs.

In some foreign markets, pricing and profitability of medical devices are subject to government control. We are susceptible to changes in government-mandated coverage requirements and other controls which could impact access to and affordability of our products. In the United States, we expect that there will continue to be federal and state proposals for similar controls.

Risks Related to Product Development

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

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

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

The development and commercial launch timelines for our products depend a great deal on our ability to achieve clinical endpoints and satisfy regulatory requirements and to overcome technology challenges, and may be delayed due to scheduling issues with patients and investigators, requests from institutional review boards, or inquiries from regulators about our independent and collaborative product development activities, product performance and manufacturing supply constraints, among other factors. In addition, support of these clinical trials requires significant resources from employees involved in the production of our products, including research and development, manufacturing, quality assurance, and clinical and regulatory personnel. Even if our development and clinical trial efforts appear successful to us and our regulatory submission appears satisfactory to us, the FDA may disagree and may decide not to grant marketing authorization for the products or may require additional product testing or clinical trials or other data to be developed and submitted before approving the products, which would result in product launch delays and additional expense. Even if a product receives marketing authorization from the FDA, it may not be accepted in the marketplace by physicians and people with diabetes.

In the ordinary course of our business we enter into collaborative arrangements with third parties to expand into new markets, including with insulin device manufacturers such as Eli Lilly, Insulet, Novo Nordisk, Tandem Diabetes and The Ypsomed Group to integrate our CGM technology into their insulin delivery systems. We have also entered into collaborations with several organizations that are currently using, or are developing, programs for the treatment of Type 2 diabetes that utilize our current CGM systems. As a result of these relationships, our operating results depend, to some extent, on the ability of our partners to successfully commercialize their insulin delivery systems or monitoring products. Any factors that may limit our partners' ability to achieve widespread adoption of their systems, including competitive pressures, technological breakthroughs for the treatment or prevention of diabetes, adverse regulatory or legal actions relating to insulin pump products, or changes in

reimbursement rates or policies of third-party payors relating to insulin pumps or similar products, could have an adverse impact on our operating results.

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

Our products may not achieve or maintain market acceptance.

We expect that sales of our current CGM systems will account for substantially all of our product revenue for the foreseeable future. If and when we receive FDA or other regulators' marketing authorization for, and begin commercialization of, our next-generation CGM systems, we expect most patients will migrate onto those systems. In the periods leading up to the launch of new or upgraded versions of our CGM systems, however, our customers' anticipation of the release of those products may cause them to cancel, change or delay current period purchases of our current products, which could have a material adverse effect on our business, financial condition and results of operations.

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

- our G6 and G7 systems prompt the user to replace the sensor no later than the tenth day, which might make it expensive for users;
- widespread market acceptance of our products by physicians and people with diabetes will largely depend on our ability to demonstrate their relative safety, effectiveness, reliability, cost-effectiveness and ease of use;
- the limited size of our sales force;
- we may not have sufficient financial or other resources to adequately expand the commercialization efforts for our products;
- expanded coverage opportunities for our competitors' CGM devices and supplies, including coverage for adjunctive CGMs, increasing competition in the marketplace;
- our FDA and other regulatory authority marketing application submissions and reviews may be delayed, or cleared or approved with limited product indications and labeling;
- we may not be able to manufacture our products in commercial quantities commensurate with demand or at an acceptable cost;
- for people with Type 2 diabetes, current reimbursement from third-party payors is generally limited to people on intensive insulin therapy;
- the uncertainties associated with establishing and qualifying new manufacturing facilities;
- people with diabetes may need to incur the costs of single-point finger stick devices, in addition to our systems;
- the relative immaturity of the CGM market internationally, and limited international reimbursement of CGM systems by third-party payors and government healthcare providers outside the United States;
- the introduction and market acceptance of competing products and technologies, which may have a lower cost or price, allow for a convenience improvement and/or allow for improved accuracy and reliability;
- greater name or brand recognition and more established medical product distribution channels by some of our competitors;
- our inability to obtain sufficient quantities of supplies timely and at appropriate quality levels from our single- or sole-source and other key suppliers;
- our inability to manufacture products that perform in accordance with expectations of consumers; and
- rapid technological change may make our technology and our products obsolete.

In addition to the risks outlined above, our G6 and G7 systems are more invasive than many other self-monitored glucose testing systems, including single-point finger stick devices, and people with diabetes may be unwilling to insert a sensor in their body, especially if their current diabetes management involves no more than two finger sticks per day. Moreover, people with diabetes may not perceive the benefits of CGM and may be unwilling to change their current treatment regimens. Physicians may not recommend or prescribe our products unless and until (i) there is more long-term clinical evidence to convince them to alter their existing treatment methods, (ii) there are additional recommendations from prominent physicians that our products are effective in monitoring glucose levels, and (iii) reimbursement or insurance coverage is more widely available. In addition, market acceptance of our products by physicians and people with diabetes in Europe or other countries will largely depend on our ability to demonstrate their relative safety, effectiveness, reliability, cost-effectiveness and ease of use. If we are unable to do so, we may not be able to generate product revenue from our sales efforts in Europe or other countries. We cannot predict when, if ever, healthcare professionals, including physicians, and people with diabetes may adopt more widespread use of CGM systems, including our systems. If our CGM systems do not achieve and maintain an adequate level of acceptance by people with diabetes, healthcare professionals, including physicians, and third party payors, our future revenue may be reduced and our business may be harmed.

Risks Related to Manufacturing, Commercial Operations and Commercialization

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

Our existing manufacturing facilities are designed to manufacture current and next-generation sensors and transmitters, but may not be scaled quickly enough to permit us to manufacture one or more of our CGM systems in quantities sufficient to meet market demand. In the past, we have had difficulty scaling our manufacturing operations to provide a sufficient supply of product to support market demand and our commercialization efforts. From time to time, we have also experienced brief periods of backorder and, at times, have had to limit the efforts of our sales force to introduce our products to new customers. We have focused significant effort on continual improvement programs in our manufacturing operations intended to improve quality, yields and throughput. We have made progress in manufacturing to enable us to supply adequate amounts of product to support our commercialization efforts; however, we cannot guarantee that supply will not be constrained in the future. We may not adequately predict the market demand for our products, in order to produce our products in the quantities we anticipate will be necessary to meet market demand. We will need to adequately predict the market demand for our products and increase our manufacturing capacity by a significant factor over the current level to meet or exceed the anticipated market demand. In addition, we will have to modify our manufacturing design, reliability and process if and when our next-generation CGM technologies are approved, cleared or otherwise authorized by the applicable regulatory body and commercialized.

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

The scaling of manufacturing capacity is subject to numerous risks and uncertainties, and may lead to variability in product quality or reliability, increased construction timelines, as well as resources required to design, install and maintain manufacturing equipment, among others, all of which can lead to unexpected delays in manufacturing output. In addition, any changes to our manufacturing processes may trigger the need for submissions or notifications to, and in some cases advance approval from, the FDA or other regulatory authorities because of the potential impact of changes on our previously cleared, approved and/or authorized devices. Our facilities are subject to inspections by the FDA and corresponding state agencies on an ongoing basis, and we must comply with Good Manufacturing Practices and the FDA Quality System Regulation, as well as certain state requirements. We may be unable to adequately maintain, develop and expand our manufacturing process and operations or maintain compliance with FDA and state agency requirements, and manufacturing issues could impact our cleared and approved products. If we are unable to manufacture a sufficient supply of our current products or any future products for which we may receive approval or clearance, maintain control over expenses or otherwise adapt to anticipated growth, or if we underestimate growth, we may not have the capability to satisfy market demand, contractual obligations, and our business will suffer.

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

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

Additionally, the majority of our operations are conducted at facilities located in San Diego, California, Mesa, Arizona and, beginning in 2023, Penang Malaysia. We take precautions to safeguard our facilities, which include manufacturing protocols, insurance, health and safety protocols, and off-site storage of data. However, a natural or man-made disaster, such as fire, flood, earthquake, act of terrorism, cyber-attack or other disruptive event, such as the ongoing COVID-19 pandemic or another public health emergency, could cause substantial delays in our operations, damage, destroy or limit our manufacturing equipment, inventory, or records and cause us to incur additional expenses. Earthquakes are of particular significance since our manufacturing facilities in California are located in an earthquake-prone area. Wildfires are also increasingly more common in southern California and present risk to our manufacturing operations. Our Arizona facility may confront water supply issues resulting from the ongoing drought in the Western United States and our Malaysia facility may confront issues related to its construction on a reclaimed wetland and the political stability of the Malaysia government. In the event our existing manufacturing facilities or equipment are affected by man-made or natural disasters, we may be unable to manufacture products for sale or meet customer demands or sales projections. If our manufacturing operations were curtailed or ceased, it would seriously harm our business. The insurance we maintain against fires, floods, earthquakes and other natural disasters and similar events may not be adequate to cover our losses in any particular case. Further, insurance coverage may not be available or successfully secured for loss of profits or business interruption relating to the COVID-19 pandemic and its impacts.

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

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

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

Further, if our sole- or single-source suppliers shift their manufacturing and assembly sites to other locations, depending on the circumstances and nature of the item supplied, in addition to quality system activities such as verification and validation, there could be a need for FDA notifications or submissions, and the new locations could be subject to regulatory inspections. If there are regulatory delays or impediments impacting our suppliers or us for any reason, we may not be able to quickly establish additional or replacement suppliers, particularly for our single-source components, in part because of the custom nature of various parts we design. Any interruption or delay in the supply of components or materials, or our inability to obtain components or materials from alternate sources at acceptable prices in a timely manner, could impair our ability to meet the demand of our customers and cause them to cancel orders or switch to competitive products. For supply risks related to the ongoing COVID-19 pandemic see our Risk Factor entitled, *"The outbreak of the SARS-CoV-2 virus and its variants and the COVID-19 disease that it*

causes, or similar public health crises, could have a material adverse impact on our business, financial condition and results of operations, including our manufacturing, commercial operations and sales."

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

- we may experience a reduction or interruption in supply, and may not be able to obtain adequate supply in a timely manner or on commercially reasonable terms from additional or replacement sources;
- our products are technologically complex and it is difficult to develop alternative supply sources;
- we are not a major customer of many of our suppliers, and these suppliers may therefore give other customers' needs higher priority than ours;
- our suppliers may make errors in manufacturing components that could negatively affect the quality, effectiveness or safety of our products or cause delays in shipment of our products;
- we may have difficulty locating and qualifying alternative suppliers for our single-source supplies;
- switching components may require product redesign and submission to the FDA of new applications (such as new 510(k) submissions or PMA supplements) which could significantly delay production;
- our suppliers manufacture products for a range of customers, and fluctuations in demand for the products these suppliers manufacture for others may affect their ability to deliver components to us in a timely manner or at the current pricing;
- our suppliers may discontinue the production of components that are critical to our products; and
- our suppliers may encounter financial and/or other hardships unrelated to our demand for components, including those related to changes in global economic conditions and/or disease outbreaks, which could inhibit their ability to fulfill our orders and meet our requirements.

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

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

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

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

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

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

- recruit and retain adequate numbers of effective and experienced sales and marketing personnel;
- effectively train our sales and marketing personnel in the benefits and risks of our products;

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

We currently employ sales and marketing personnel for the direct sale and marketing of our products in North America, Asia Pacific, Europe and the Middle East. Our direct sales and marketing team calls on healthcare providers and people with diabetes throughout the applicable country, to the extent permissible, to raise awareness and initiate sales of our products. Our sales and marketing organization competes with the experienced, larger and well-funded marketing and sales operations of our competitors. We may not be able to successfully manage our dispersed sales force or increase our product sales at acceptable rates. COVID-19 restrictions vary by location across the United States and other regions of the world, which may continue to limit or prohibit our sales force from having in-person interactions with healthcare professionals and people with diabetes, which may result in decreased sales of our products.

We have also entered into distribution arrangements to leverage existing distributors (including wholesalers) already engaged in the distribution of drugs, devices and/or products in the diabetes marketplace. Some of our U.S distributors are focused on accessing underrepresented regions and or third-party payors that contract exclusively with distributors in the United States, while some of our international distributors call directly on healthcare providers and patients to market and sell our products. Because of the competition for their services, we may be unable to partner with or retain additional qualified distributors. Further, we may not be able to enter into agreements with distributors on commercially reasonable terms, if at all. Our distributors might not have the resources to continue to support our recent rapid growth.

Our distribution agreements with AdaptHealth, AmerisourceBergen, Byram and affiliates, Cardinal Health and affiliates (including Edgepark Medical Supplies), and McKesson, our most significant wholesalers and distributors, each generated 10% or more of our total revenue during the twelve months ended December 31, 2022. We cannot guarantee that these relationships will continue or that we will be able to maintain this volume of sales from these relationships in the future. A substantial decrease or loss of these sales could have a material adverse effect on our financial results and operating performance.

We have entered into arrangements with pharmacy organizations in various countries to dispense our products directly to patients. Because of the competition for their services, we may be unable to enter into new partnerships or otherwise expand our pharmacy network on commercially reasonable terms, if at all. In addition, we cannot guarantee that our existing pharmacy relationships will continue, or that we will be able to maintain or increase sales volume from these relationships in the future.

To the extent that we enter into additional arrangements with third parties to perform sales, marketing, distribution and billing services, our product margins could be lower than if we directly marketed and sold our products. To the extent that we enter into co-promotion or other marketing and sales arrangements with other companies, any revenue received will depend on the skills and efforts of others, and we cannot predict whether these efforts will be successful.

If we do not adequately predict market demand or otherwise optimize and operate our distribution channel successfully, it could result in excess or insufficient inventory or fulfillment capacity, increased costs, immediate shortages in product or component supply, or harm our business in other ways.

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

The market for glucose monitoring devices is intensely competitive, subject to rapid change and significantly affected by new product introductions and other market activities of industry participants, including enhanced software capabilities, and related data and IT platforms. Our products are based on our proprietary technology, but a number of companies and medical researchers are pursuing new technologies for the monitoring of glucose levels. FDA or other regulatory approval of a commercially viable continuous glucose monitor or sensor produced by one of our competitors could significantly reduce market acceptance of our systems. In addition, certain development efforts throughout the diabetes industry, including that of the National Institutes of Health and other supporters of diabetes research are continually seeking ways to prevent, cure or improve treatment of diabetes. Therefore, our

products may be rendered obsolete by technological breakthroughs in diabetes monitoring, treatment, prevention or cure.

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

Our competitors manufacturing adjunctive CGMs have also recognized expanded Medicare coverage of their CGM devices and supplies following CMS' December 2021 final rule expanding the classification of DME under Medicare Parts B & C to include adjunctive CGMs. These devices now directly compete with our CGM products in the Medicare market.

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

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

We also have begun to become aware of companies outside the traditional medical device sector that are attempting to develop competitive products and services, including for general health and wellness, or population health.

Some of the companies developing or marketing competing devices are large and well-known publicly traded companies, and these companies may possess competitive advantages over us, including:

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

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

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

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

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

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

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

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

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

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

We continue to take precautions to protect the health and safety of our employees, including monitoring community levels of COVID-19 and masking according to the Center for Disease Control's recommendations.

We continue to address other unique situations that arise among our workforce due to the ongoing COVID-19 pandemic on a case-by-case basis. While we believe that we have taken appropriate measures to ensure the health and well-being of our employees, there can be no assurances that our measures will be sufficient to protect our employees in our workplace or that they may not otherwise be exposed to COVID-19 outside of our workplace. If a number of our essential employees become ill, incapacitated or are otherwise unable to continue working during the current or any future epidemic, our operations may be adversely impacted.

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

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

Risks Related to our International Operations

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

Our operations in countries outside the United States, which accounted for approximately 26% of our revenue for the twelve months ended December 31, 2022, are accompanied by certain financial and other risks. In addition to our offices in countries such as, Australia, Canada, Germany, Lithuania, the Philippines, and the United Kingdom, we intend to continue to pursue growth opportunities in sales outside the United States, especially in Asia and Europe. Additionally, we may increase our use of administrative and support functions from locations outside the United States. These business activities could expose us to greater risks associated with our sales and operations.

As we pursue opportunities outside the United States, we may become more exposed to these risks and our ability to scale our operations effectively may be affected. For example, we are building out a manufacturing facility in Malaysia.

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

Our profitability and international operations are, and will continue to be, subject to a number of risks and potential costs, including:

- local product preferences and product requirements;
- longer-term receivables than are typical in the United States;
- fluctuations in foreign currency exchange rates;
- less intellectual property protection in some countries outside the United States than exists in the United States;
- trade protection measures and import and export licensing requirements;
- workforce instability;
- fluctuations in trade policy and tariff regulations; and
- political and economic instability.

Moreover, the tax laws in which we and our subsidiaries do business could change on a prospective or retroactive basis, and any such changes could adversely affect our business and financial condition. We have a significant presence in the European Union, as well as significant sales in the European Union, such that any changes in tax laws in the European Union will impact our business. The overall impact of such legislation in European Union member states is uncertain, and our business and financial condition could be adversely affected by any laws impacting our tax rate.

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

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

Following a 2016 referendum of voters in the United Kingdom, or the U.K, to exit from the European Union, or the E.U., the U.K. left the E.U. on January 31, 2020, which began a transition period that ended on December 31, 2020. In December 2020, the U.K. and E.U. agreed on a trade and cooperation agreement that was ratified by the parties in May 2021. The agreement sets out certain procedures for approval and recognition of medical products in each jurisdiction. Any delay in obtaining, or an inability to obtain, any marketing approvals, as a result of the trade and cooperation agreement or otherwise, could prevent us from marketing our CGM systems in the U.K. and/or the E.U. and restrict our ability to generate revenue and achieve and sustain profitability. Under the trade and cooperation agreement, U.K. service suppliers no longer benefit from automatic access to the entire E.U. single market, U.K. goods no longer benefit from the free movement of goods and there is no longer the free movement of people between the U.K. and the E.U. Depending on the application of the terms of the trade and cooperation agreement, we could face new regulatory costs and challenges which could have a material adverse effect on our business, results of operations, or financial condition.

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

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

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

The outbreak of the SARS-CoV-2 virus and its variants and the COVID-19 disease that it causes have also led to healthcare equipment shortages in the U.S. and around the world. For example, in 2020, certain U.S. federal government orders temporarily limited companies from exporting certain equipment (such as ventilators) to other countries. Though no such orders have been issued with respect to CGMs, if supply chain disruption causes significant shortages in CGMs or other equipment, it is possible that we could face additional barriers to exporting our devices outside of the United States.

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

The U.S. Foreign Corrupt Practices Act, the UK Bribery Act and similar worldwide anti-bribery laws in non-U.S. jurisdictions generally prohibit companies and their intermediaries from making improper payments to non-U.S. government officials and, in some instances, other persons for the purpose of obtaining or retaining business. Because of the predominance of government-sponsored healthcare systems around the world, most of our customer relationships outside of the United States are with governmental entities and are therefore potentially subject to such anti-bribery laws. Global enforcement of anti-corruption laws has increased substantially in recent years, with more frequent voluntary self-disclosures by companies, aggressive investigations and enforcement proceedings by U.S. and foreign governmental agencies, and assessment of significant fines and penalties against companies and individuals. Our international operations create the risk of unauthorized payments or offers of payments by one of our employees, consultants, sales agents, or distributors, because these parties are not always subject to our direct oversight and control. It is our policy to implement safeguards to educate our employees and agents on these legal requirements and discourage improper practices. However, our existing safeguards and any

future improvements may prove to be less than effective, and our employees, consultants, sales agents, or distributors may engage in conduct for which we might be held responsible. In addition, the government agencies may seek to hold us liable for successor liability for anti-corruption law violations committed by any companies in which we invest or that we acquire. Any alleged or actual violations of these regulations may subject us to government scrutiny, severe criminal or civil sanctions and other liabilities, including exclusion from government contracting, and could disrupt our business, and result in a material adverse effect on our business, financial condition, and results of operations.

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

Our operations and performance depend on worldwide economic and political conditions. These conditions have been adversely impacted by continued global economic uncertainty, political instability and military hostilities in multiple geographies, including the current conflict in Ukraine, concerns over the potential downgrade of U.S. sovereign debt and continued sovereign debt, monetary and financial uncertainties in Europe and other foreign countries, and global health pandemics such as the ongoing COVID-19 pandemic. These include potential reductions in the overall stability and suitability of the Euro as a single currency, given the economic and political challenges facing individual Eurozone countries. These conditions have made and may continue to make it difficult for our customers and potential customers to afford our products, and could cause our customers to stop using our products or to use them less frequently. If that were to occur, our revenue may decrease and our performance may be negatively impacted. In addition, the pressure on consumers to absorb more of their own health care costs has resulted in some cases in higher deductibles and limits on durable medical equipment, which may cause seasonality in purchasing patterns. Furthermore, during economic uncertainty, our customers have had job losses and may continue to have issues gaining timely access to sufficient health insurance or credit, which could result in their unwillingness to purchase products or impair their ability to make timely payments to us. While the potential economic impact brought by and the duration of the ongoing COVID-19 pandemic may be difficult to assess or predict, it has already caused, and is likely to result in further, significant disruption of global financial markets, which may reduce our ability to access capital on favorable terms or at all. In addition, a recession, depression or other sustained adverse market event resulting from the spread of COVID-19 could materially and adversely affect our business and the value of our common stock.

We cannot predict the reoccurrence of any economic slowdown or the strength or sustainability of the economic recovery, worldwide, in the United States, or in our industry. These and other economic factors could have a material adverse effect on our business, financial condition and results of operations.

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

We conduct limited commercial and marketing efforts in Africa, Asia, Australia, Canada, Europe, Latin America, the Middle East, and New Zealand with respect to our CGM systems and may seek to market our products in other regions in the future. Outside the United States, we can market a product only if we receive a marketing authorization and, in some cases, pricing approval, from the appropriate regulatory authorities. The marketing authorization procedures vary among countries and can involve additional testing, and the time required to obtain any required authorization or approval may differ from that required to obtain FDA marketing authorization(s). Foreign regulatory authorization or approval processes may include all of the risks associated with obtaining FDA marketing authorization(s) in addition to other risks. We may not obtain foreign regulatory authorizations or approvals on a timely basis, if at all. Obtaining a marketing authorization from the FDA does not ensure authorization or approval by regulatory authorities in other countries will follow, and authorization or approval by one foreign regulatory authority does not ensure authorization or approval by regulatory authorities in other foreign countries or by the FDA. In addition, in order to obtain the authorization to market our products in certain foreign jurisdictions, in some cases we may need to obtain a Certificate to Foreign Government from the FDA. The FDA may refuse to issue a Certificate to Foreign Government if significant compliance-related concerns are identified. As a result, there are a range of factors that could preclude or impede our ability to file for regulatory approvals or marketing authorizations or to receive necessary approvals or authorizations to commercialize our products in any market outside the United States on a timely basis, or at all.

Risks Related to Privacy and Security

We are subject to complex and evolving U.S. and foreign laws and regulations and other requirements regarding privacy, data protection, security, and other matters. Many of these laws and regulations are subject to change and uncertain interpretation, and could result in claims, changes to our business

practices, monetary penalties, increased cost of operations, or declines in user growth or engagement, or otherwise harm our business.

We are subject to a number of foreign, federal and state laws and regulations protecting the use, disclosure, and confidentiality of certain patient health and personal information, including patient records, and restricting the use and disclosure of that protected information, including state breach notification laws, the Health Insurance Portability and Accountability Act, as amended by the Health Information Technology for Economic and Clinical Health Act of 2009 (HIPAA), the European Union's General Data Protection Regulation (GDPR), the UK Data Protection Act and the UK GDPR, and the California Consumer Privacy Act (CCPA), among others . As our customer base grows to include U.S. federal government agencies, Dexcom may also need comply with Federal Risk and Authorization Management Program and Cybersecurity Maturity Model Certification requirements. These frameworks, in addition to similar laws being enacted by other states and counties, impose stringent cybersecurity standards and potentially significant non-compliance penalties, involve the expenditure of significant resources, the investment of significant resources and the investment of significant time and effort to comply. As these laws and regulations continue develop in the United States and internationally, we may be required to expend significant time and resources in order to update existing processes or implement additional mechanisms as necessary to ensure compliance with such cybersecurity laws.

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

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

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

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

The Administrative Simplification Provisions of HIPAA extensively regulate the use and disclosure of individually identifiable health information, known as "protected health information," and require covered entities, including health plans and most health care providers, to implement administrative, physical and technical safeguards to protect the security of such information. Certain provisions of the security and privacy regulations

apply to business associates (entities that handle protected health information on behalf of covered entities), and business associates are subject to direct liability for violation of these provisions. In addition, a covered entity may be subject to penalties as a result of a business associate violating HIPAA, if the business associate is found to be an agent of the covered entity. Dexcom is a covered entity under HIPAA and may also function in a business associate capacity to other covered entities.

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

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

There are numerous other laws and legislative and regulatory initiatives at the federal and state levels addressing privacy and security concerns. For example, from time-to-time, the OCR issues bulletins that outline its interpretations of HIPAA as applied to specific use cases. On December 1, 2022, OCR issued a bulletin on the requirements under HIPAA for online tracking technologies (e.g., cookies, pixels) to protect the privacy and security of health information. This bulletin outlined OCR's position on the use of online tracking technology vendors, when certain information received by such vendors constitutes protected health information under HIPAA, and accordingly, when business associate agreements must be executed between covered entities, like Dexcom, and such vendors. Dexcom is assessing its responsibilities under the bulletin and determining its next steps in order to comply with OCR's guidance in the bulletin.

We also remain subject to federal or state privacy-related laws that are more restrictive than the privacy regulations issued under HIPAA. These laws vary and could impose additional penalties. For example, the Federal Trade Commission uses its consumer protection authority to initiate enforcement actions in response to alleged privacy and data security violations. California enacted the California Consumer Privacy Act, or CCPA, which came into effect January 1, 2020, was amended and expanded by the California Privacy Rights Act, or CPRA, passed on November 3, 2020, which took effect January 1, 2023. The CCPA and CPRA, among other things, create data privacy obligations for covered companies and provide privacy rights to California residents, including the right to opt out of certain disclosures of their information. The CCPA also creates a private right of action with statutory damages for certain data breaches, thereby potentially increasing risks associated with a data breach. In addition, other states have, or may, enact similar legislation. It remains unclear what, if any, additional modifications will be made to this legislation or how it will be interpreted. The effects of the CCPA and CPRA are significant and will likely require us to modify our data processing practices, and may cause us to incur substantial costs and expenses to comply, particularly given our base of operations in California. There are also a number of other legislative proposals worldwide, including in the United States at both the federal and state level, that could impose additional and potentially conflicting obligations in areas affecting our business.

We are also subject to laws and regulations in foreign countries covering data privacy and other protection of health and employee information that may be more onerous than corresponding U.S. laws, including in particular the laws of Europe.

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

about the transfer of data to the United States. Though a new framework may be put in place, it may be challenged as well. We expect continued costs associated with maintaining compliance with GDPR into the future, and these provisions as interpreted by EU agencies, could negatively impact our business, financial condition and results of operations.

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

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

There are numerous and evolving risks to our cybersecurity and privacy from cyber threat actors. These cyber threat actors, whether internal of external to the Company, are becoming more frequent, sophisticated and coordinated in their attempts to access data, including third parties with whom the Company conducts business through, without limitation, malicious software; data privacy breaches by employees, insiders or others with authorized access; cyber of phishing-attacks; ransomware; attempts to gain unauthorized access to our data and systems; and other electronic security breaches. In the ordinary course of business, we collect and store sensitive information on our network, including intellectual property, proprietary business information and personally identifiable information of individuals, such as our customers and employees. The secure maintenance of this information and technology is critical to our business operations. We have implemented and deploy multiple layers of security measures to protect the confidentiality, integrity and availability of this data and the systems and devices that store and transmit such data. We utilize current security technologies, and our defenses are monitored and routinely tested internally and by external parties. Despite these efforts, threats from malicious persons and groups, new vulnerabilities and advanced new attacks against information systems create risk of cybersecurity incidents. These incidents can include, but are not limited to, gaining unauthorized access to digital systems for purposes of misappropriating assets or sensitive information, corrupting data, or causing operational disruption. Because the techniques used to obtain unauthorized access, disable or degrade service, or sabotage systems change frequently and may not immediately produce signs of intrusion, we may be unable to anticipate these incidents or techniques, timely discover them, or implement adequate preventative measures.

Additionally, in response to the onset of the COVID-19 pandemic, we modified our business practices and initially implemented telework policies for certain categories of “non-essential” employees to the extent possible. We have since adopted a hybrid workplace model for our employees. Our hybrid workplace allows us to work together globally to bring our life-changing products to as many people as possible. This means we have some employees who work primarily onsite, some who work primarily offsite, and others who flex in and out of the office based on the needs of the business and the individual. We recognized the need for flexibility in our physical workplace during the COVID-19 pandemic, but also noted the potential benefits of a hybrid workplace to expand and retain our talent pool and reduce our real estate needs. The hybrid workplace does, however, introduce additional operational risk, including increased cybersecurity risk. These cyber risks include, among other risks, increased phishing, malware, and other cybersecurity attacks, vulnerability to, or disruptions of, our information technology infrastructure and systems to support remote operations, increased risk of unauthorized access, use or dissemination of confidential information, limited ability to restore the systems in the event of a systems failure or interruption, greater risk of a security breach resulting in destruction, alteration or misuse of valuable information, including proprietary business information and personally identifiable information of individuals, all of which could expose us to risks of data or financial loss, litigation and liability.

These threats can come from a variety of sources, including criminal hackers, state-sponsored intrusions, industrial espionage and employee malfeasance. Cyber threats may be generic, or they may be custom-crafted against our information systems. Over the past several years, cyber-attacks have become more prevalent and much harder to detect and defend against. These threat actors may be able to penetrate our security measures, breach our information technology systems, misappropriate or compromise confidential and proprietary information of our company and our customers, cause system disruptions and shutdowns, or introduce ransomware, malware, or vulnerabilities into our products, systems, and networks or those of our customers and partners. Our network and storage applications, as well as those of our contractors, may be vulnerable to cyber-attack, malicious intrusion, malfeasance, loss of data privacy or other significant disruption and may be subject to unauthorized access by hackers, employees, consultants or other service providers. In addition, hardware, software or applications we

develop or procure from third parties may contain defects in design or manufacture or other problems that could unexpectedly compromise information security or other problems that unexpectedly could interfere with the operation of our products. Unauthorized parties may also attempt to gain access to our systems or facilities through fraud, trickery or other forms of deceiving our employees, contractors and temporary staff.

While we maintain cybersecurity insurance coverage there is no guarantee that it will be sufficient to cover the financial, legal, business, or reputational losses that may result from an interruption or breach of our systems. Our cybersecurity insurance includes coverage for a breach event covering expenses for notification, credit monitoring, investigation, crisis management, public relations and legal advice. Our cybersecurity insurance also provides coverage in relation to regulatory action defense including oversight, investigations and disclosure obligations as well as fines and penalties, potential payment card industry fines and penalties and costs related to cyber extortion; however, damages and claims arising from such incidents may not be covered and/or may exceed the amount of any coverage and do not cover the time and effort we incur investigating and responding to any incidents, which may be significant.

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

- harm to customers;
- business interruptions and delays;
- the loss, misappropriation, corruption or unauthorized access of data, confidential information or intellectual property;
- litigation, including potential class action litigation, and potential liability under privacy, security and consumer protection laws or other applicable laws;
- reputational damage;
- significant remediation costs, including liability for stolen customer or employee information, repairing system damage, or providing benefit to affected customers or employees;
- increase to insurance premiums; and
- foreign, federal and state governmental inquiries, violations or sanctions, any of which could have a material, adverse effect on our financial position and results of operations.

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

We rely on information technology and telephone networks and systems, including the Internet, to process and transmit sensitive electronic information and to manage or support a variety of business processes and activities, including sales, billing, customer service, procurement and supply chain, manufacturing, and distribution. We use enterprise information technology systems to record, process, and summarize financial information and results of operations for internal reporting purposes and to comply with regulatory financial reporting, legal, and tax requirements. System failures or outages, including any potential disruptions due to significantly increased global demand on certain cloud-based systems, or failures to adequately scale our data platforms and architectures support patient care could compromise our ability to perform these functions in a timely manner, which could harm our ability to conduct business or delay our financial reporting. Such failures could materially adversely affect our operating results and financial condition. Our information technology systems, some of which are managed by third parties, may be susceptible to damage, disruptions or shutdowns due to computer viruses, denial-of-service attacks, phishing attacks, ransomware or other malware, attacks by computer hackers, failures during the process of upgrading or replacing software, databases or components thereof, power outages, hardware failures, telecommunication failures, user errors or catastrophic events. Although we have developed systems and processes that are designed to protect customer information and prevent data loss and other security breaches, including systems and processes designed to reduce the impact of a security breach at a third-party vendor, such measures cannot provide absolute security. In addition, certain countries have implemented or may implement legislative and technological actions that either do or can effectively regulate access to the internet, including the ability of internet service providers to limit access to specific websites or content. Other countries have attempted or

are attempting to change or limit the legal protections available to businesses that depend on the internet for the delivery of their services. If our systems are breached or suffer severe damage, disruption or shutdown and we are unable to effectively resolve the issues in a timely manner, our business and operating results may significantly suffer and we may be subject to litigation, government enforcement actions and other actions for which we could face financial liability and other adverse consequences which may include:

- additional government oversight of our operations;
- loss of existing customers;
- difficulty in attracting new customers;
- problems in determining product cost estimates and establishing appropriate pricing;
- difficulty in preventing, detecting, and controlling fraud;
- disputes with customers, physicians, and other health care professionals;
- increases in operating expenses, incurrence of expenses, including notification and remediation costs;
- regulatory fines or penalties;
- individual actions or class actions for damages;
- loss of revenues (including through loss of coverage or reimbursement);
- product development delays;
- disruption of key business operations; and
- diversion of attention of management and key information technology resources.

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

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

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

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

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

- authorizations necessary for the clinical investigation and commercial marketing of products;
- the pricing of our products and services;
- the distribution of our products and services;
- the dispensing of our products;
- billing for or causing the submission of claims for our products and services;
- financial relationships with physicians and other referral sources;
- inducements and courtesies given to physicians and other health care providers and patients;
- labeling, advertising and promoting products;
- the characteristics and quality of our products and services;
- communications with payors and physicians and other healthcare stakeholders;
- confidentiality, maintenance and security issues associated with medical records and individually

identifiable health and other personal information;

- medical device adverse event reporting;
- prohibitions on kickbacks, including the Anti-Kickback Statute and related laws and/or regulations;
- any scheme to defraud any healthcare benefit program;
- physician and other healthcare professional payment disclosure requirements;
- use and disclosure of personal health information;
- privacy of health information and personal information;
- data protection and data localization;
- mobile communications;
- patient access and non-discrimination;
- patient consent;
- false claims; and
- licensure.

These laws and regulations are extremely complex and, in many cases, still evolving. If our operations are found to violate any of the foreign, federal, state or local laws and regulations which govern our activities, we may be subject to litigation, government enforcement actions, and applicable penalties associated with the violation, potentially including civil and criminal penalties, damages, fines, exclusion from participation in certain payor programs or curtailment of our operations. Compliance obligations under these various laws are oftentimes detailed and onerous, further contributing to the risk that we could be found to be out of compliance with particular requirements. The risk of being found in violation of these laws and regulations is further increased by the fact that many of them have not been fully interpreted by the regulatory authorities or the courts, particularly with respect to new and emerging technologies and remote delivery of services, and their provisions are open to a variety of interpretations.

The FDA, CMS, OIG, OCR, FTC, Department of Justice, states' attorneys general and other governmental authorities actively enforce the laws and regulations discussed above. In the United States, medical device manufacturers have been the target of numerous government prosecutions and investigations alleging violations of law, including claims asserting impermissible off-label promotion of medical devices, payments intended to influence the referral of federal or state healthcare business, and submission of false claims for government reimbursement. While we make every effort to comply with applicable laws, we cannot rule out the possibility that the government or other third parties could interpret these laws differently and challenge our practices under one or more of these laws. This likelihood of allegations of non-compliance is increased by the fact that under certain federal and state laws applicable to our business, individuals may bring an action on behalf of the government alleging violations of such laws, and potentially be awarded a share of any damages or penalties ultimately awarded to the applicable government body.

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

Any action against us alleging a violation of these laws or regulations, even if we successfully defend against it, could cause us to incur significant legal expenses and divert our management's time and attention from the operation of our business, and have a material effect on our business.

In addition, the laws and regulations impacting or affecting our business may change significantly in the future. Any new laws or regulations may adversely affect our business, including any changes in laws and regulations due to the COVID-19 pandemic or expiration of waivers and other regulatory flexibilities following expiration of the COVID-19 public health emergency declaration. A review of our business by courts or regulatory authorities may result in a determination that could adversely affect our operations. Also, the regulatory environment applicable to our business may change in a way that restricts or adversely impacts our operations.

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

Any product for which we obtain marketing approval, clearance or authorization (and the activities related to its production, distribution, and promotion, sale, and marketing) will be subject to continual review and periodic

inspections by the FDA and other regulatory bodies, which may include inspection of our manufacturing processes, complaint handling and adverse event reporting, post-approval clinical data and promotional activities for such product. The FDA's Medical Device Reporting, or MDR, regulations require that we report to the FDA any incident in which our product may have caused or contributed to a death or serious injury, or in which our product malfunctioned and, if the malfunction were to recur, it would likely cause or contribute to a death or serious injury.

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

We and certain of our suppliers are also required to comply with the FDA's Quality System Regulation, or QSR, and other regulations which cover the methods and documentation of the design, testing, production, control, selection and oversight of suppliers or contractors, quality assurance, labeling, packaging, storage, complaint handling, shipping and servicing of our products. The FDA may enforce the QSR through announced (through prior notification) or unannounced inspections.

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

- warning letters or untitled letters that require corrective action;
- delays in approving, or refusal to approve, our CGM systems;
- fines and civil or criminal penalties;
- unanticipated expenditures;
- FDA refusal to issue certificates to foreign governments needed to export our products for sale in other countries;
- suspension or withdrawal of clearance or approval by the FDA or other regulatory bodies;
- product recall or seizure;
- administrative detention;
- interruption of production, partial suspension, or complete shutdown of production;
- interruption of the supply of components from our key component suppliers;
- operating restrictions;
- court consent decrees;
- FDA orders to repair, replace, or refund the cost of devices;
- injunctions; and
- criminal prosecution.

The potential effect of these events can in some cases be difficult to quantify. If any of these actions were to occur, it would harm our reputation and cause our product sales and profitability to suffer. In addition, we believe events that could be classified as reportable events pursuant to MDR regulations are generally underreported by physicians and users, and any underlying problems could be of a larger magnitude than suggested by the number or types of MDRs filed by us. Furthermore, our key component suppliers may not currently be or may not continue to be in compliance with applicable regulatory requirements.

Even if regulatory approval or clearance of a product is granted, the approval or clearance may be subject to limitations on the indicated uses for which the product may be marketed or contain requirements for costly post-marketing testing or surveillance to monitor the safety or effectiveness of the product. Later discovery of previously unknown problems with our products, including software bugs, unanticipated adverse events or adverse events of unanticipated severity or frequency, manufacturing problems, or failure to comply with regulatory requirements such as the QSR, MDR reporting, or other post-market requirements may result in restrictions on such products or manufacturing processes, withdrawal of the products from the market, voluntary or mandatory recalls (through corrections or removals), fines, suspension of regulatory approvals, product seizures, injunctions, the imposition of civil or criminal penalties, or criminal prosecution. In addition, our distributors have rights to create marketing

materials for their sales of our products, and may not adhere to contractual, legal or regulatory limitations that are imposed on their marketing efforts.

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

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

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

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

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

Based on our experience, complications from use of our products may include sensor errors, sensor failures, broken sensors, lodged sensors or skin irritation under the adhesive dressing of the sensor. Inflammation or redness, swelling, minor infection, and minor bleeding at the sensor insertion site are also possible risks with an individual's use of our products. However, if unanticipated long-term side-effects result from the use of our products or other glucose monitoring systems we have under development, we could be subject to liability and the adoption of our systems may become more limited. With respect to our G6 systems, our clinical trials have been limited to ten days of continuous use. It is possible that the data from our clinical studies and trials may not be indicative of long-term patient outcomes. We cannot assure you that repeated, long-term use would not result in unanticipated adverse effects, potentially even after the sensor is removed.

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

In March 2018, via the *de novo* process, the FDA classified the G6 and substantially equivalent devices of this generic type (i.e., "integrated continuous glucose monitoring systems" or "iCGMs") into Class II, meaning that going forward products of this generic type may utilize the 510(k) pathway. Since then we have received 510(k) clearances for modifications to the G6 and approval for G7.

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

If future product candidates are not deemed by the FDA to meet the criteria for submission under the 510(k) pathway, or for down-classification under the *de novo* process or otherwise, we would need to pursue a PMA. The PMA process requires us to prove the safety and effectiveness of our systems to the FDA's satisfaction. This process can be expensive, prolonged and uncertain, requires detailed and comprehensive scientific and human

clinical data, and may never result in the FDA granting a PMA. The FDA's *de novo* classification of our G6 system under the generic name "integrated continuous glucose monitoring system," makes it a predicate device for future 510(k) submissions. Complying with this classification requires ongoing compliance with the general controls required by the federal Food Drug and Cosmetic Act and the special controls specified by the FDA's G6 order as a Class II device. Any future system or expanded indications for use of current generation systems will require approval of the applicable regulatory authorities. In addition, we intend to seek either 510(k) clearances or PMA approvals for certain changes and modifications to our existing software platform, but cannot predict when, if ever, those changes and modifications will be approved.

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

- the system may not be deemed by the FDA to be substantially equivalent to appropriate predicate devices under the 510(k) pathway;
- the system may not satisfy the FDA's safety or effectiveness requirements;
- the data from pre-clinical studies and clinical trials may be insufficient to support clearance or approval;
- the manufacturing process or facilities used may not meet applicable requirements; and
- changes in FDA approval policies or adoption of new regulations may require additional data.

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

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

We are subject to laws, regulations and contractual requirements regulating the provision of, and reimbursement for, health care goods and services in our capacity as a medical device manufacturer. The laws and regulations of health care goods and services that apply to us, including those described above, are subject to evolving interpretations and enforcement discretion. We have in place a compliance program, through which we seek to reduce common industry risks of noncompliance with U.S. federal and state and applicable foreign laws in areas such as sales contracts, marketing materials, referral source relationships, programmatic offerings, and billing practices (among others), monitor for compliance, and address non-compliance if identified. If a governmental authority were to conclude that we are not in compliance with applicable laws and regulations, we and our officers, directors and employees could be subject to criminal and civil penalties, as well as administrative sanctions such as exclusion from participation in federal healthcare programs, including but not limited to Medicare and Medicaid. Any failure to comply with laws, regulations or contractual requirements relating to reimbursement and health care goods and services could adversely affect our reputation, business, financial condition and cash flows.

Our products are purchased principally by individual patients, who may be eligible for insurance coverage of their devices from various third-party payors, such as governmental programs (*e.g.*, Medicare, Medicaid, TRICARE, other federal and state health benefit plans, and comparable non-U.S. programs), private insurance plans, and managed care plans. The ability of our customers to obtain appropriate reimbursement for products and services from third-party payors is critical because it affects which products customers purchase and the prices they are willing to pay. As a result, our products are subject to regulation regarding quality and cost by the U.S. Department of Health & Human Services, including CMS, as well as comparable state and non-U.S. agencies responsible for reimbursement and regulation of health care goods and services. The principal U.S. federal laws relating to reimbursement include those that prohibit (i) the filing of false or improper claims for federal payment, known as the federal civil False Claims Act, (ii) unlawful inducements for the referral of items and services reimbursed by Federal health care programs, known as the federal Anti-Kickback Statute, and (iii) the Civil Monetary Penalties Law, including its prohibitions on Beneficiary Inducement. Many states have similar laws that apply to reimbursement by state Medicaid and other government-funded programs, as well as, in some cases, to all payors, including self-pay patients. Insurance companies can also bring a private cause of action claiming treble damages against a manufacturer for causing a false claim to be filed under the federal Racketeer Influenced and Corrupt Organizations

Act, or RICO. Additionally, as a manufacturer of FDA-approved or -cleared devices reimbursable by federal healthcare programs, we are subject to the federal Physician Payments Sunshine Act, which requires us to annually report certain payments and other transfers of value we make to certain U.S.-licensed health care professionals and U.S. teaching hospitals, and under an expansion of the law to physician assistants, nurse practitioners, and other mid-level practitioners.

With respect to the federal Anti-Kickback Statute, Congress and the OIG have established a large number of statutory exceptions and regulatory safe harbors that protect financial relationships with our customers and referral sources. An arrangement that fits squarely into an exception or safe harborwill not be deemed to violate the Anti-Kickback Statute.

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

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

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

Private third-party payors and other managed care organizations, such as pharmacy benefit managers, continue to take action to manage utilization and control costs. Consolidation among managed care organizations has increased the negotiating power of managed care organizations and other private third-party payors. Private third-party payors, as well as governments, increasingly employ formularies to control costs by taking into account discounts in connection with decisions about formulary inclusion or favorable formulary placement. Failure to obtain or maintain timely adequate pricing or favorable formulary placement for our products, or failure to obtain such formulary placement at favorable pricing, could adversely impact revenue. Private third-party payors, including self-insured employers, often implement formularies with co-payment tiers to encourage utilization of certain products and have also been raising co-payments required from beneficiaries, particularly for higher-cost products. Private third-party payors also use additional measures such as value-based pricing/contracting to improve their cost-containment efforts. Private third-party payors also are increasingly imposing utilization management tools, such as requiring prior authorization or requiring the patient to first fail on a lower-cost product before permitting access to a higher-cost product.

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

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

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

To support current and any future additional PMA, 510(k), *de novo* applications or supplements, we together with our partners, must successfully complete pre-clinical studies, bench-testing, and in some cases clinical trials that will demonstrate that the product is safe and effective. Product development, including pre-clinical studies and clinical trials, is a long, expensive and uncertain process and is subject to delays (including any potential delays due to the ongoing COVID-19 pandemic) and failure at any stage. Furthermore, the data obtained from the studies and trials may be inadequate to support approval of an application and the FDA may request additional clinical data in support of those applications, which may result in significant additional clinical expenses and may delay product approvals. While we have in the past obtained, and may in the future obtain, an investigational device exemption, or IDE, prior to commencing clinical trials for our products, FDA approval of an IDE application permitting us to conduct testing does not mean that the FDA will consider the data gathered in the trial to be sufficient to support approval of a PMA, *de novo* or 510(k) application or supplement, even if the trial's intended safety and effectiveness endpoints are achieved.

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

Development or changes to the FDA or foreign regulatory approval standards and processes, including both legal and policy changes, could also delay or prevent the approval of our products submitted for review. For example, medical device cybersecurity continues to be an area of focus for and evolving guidance from FDA.

Additionally, at the end of 2022, Congress passed the Food and Drug Omnibus Reform Act of 2022, or FDORA which (among other things), and similarly to the 2022 FDA Guidance, requires device sponsors to submit clinical trial diversity action plans outlining the goals for increasing representation of participants from racial and ethnic minority populations that have been underrepresented in clinical trials.

Any change in the laws or regulations that govern the clearance and approval processes relating to our current and future products could make it more difficult and costly to obtain clearance or approval for new products, or to produce, market and distribute existing products. The data contained in our submissions, including data drawn from our clinical trials, may not be sufficient to support clearance or approval of our products or additional or expanded indications. Medical device company stock prices have declined significantly in certain circumstances where companies have failed to meet expectations in regards to the timing of regulatory approval. If the FDA's response causes product approval delays, or is not favorable for any of our products, our stock price (and the market price of our senior convertible notes) could decline substantially. It is uncertain how these potential changes may impact our ability to gain clearance or approval from FDA for our products in the future.

The commencement or completion of any of our clinical trials may be delayed or halted, or be inadequate to support approval of FDA marketing applications or supplements, for numerous reasons, including, but not limited to, the following:

- the FDA or other regulatory authorities do not approve a clinical trial protocol or a clinical trial, or place a clinical trial on hold;
- patients do not enroll in clinical trials at the rate we expect;
- patients or study site personnel who do not comply with clinical trial protocols;
- patient follow-up does not occur at the rate we expect;
- patients experience adverse side effects;
- patients die during a clinical trial, even though their death may not be related to our products;
- institutional review boards and third-party clinical investigators may delay or reject our clinical trial protocol;
- third-party clinical investigators decline to participate in a trial or do not perform a trial on our anticipated schedule or consistent with the investigator agreements, clinical trial protocol, good clinical practices or other FDA or institutional review board requirements;
- we or third-party organizations do not perform data collection, monitoring or analysis in a timely or accurate manner or consistent with the clinical trial protocol or investigational or statistical plans;
- third-party clinical investigators have significant financial interests related to us or the study that the FDA deems to make the study results unreliable, or we or clinical investigators fail to disclose such interests;

- regulatory inspections of our clinical trials or manufacturing facilities may results in allegations or findings of noncompliance and, among other things, require us to undertake corrective action or suspend or terminate our clinical trials;
- changes in governmental regulations, policies or administrative actions applicable to our trial protocols;
- the interim or final results of the clinical trial are inconclusive or unfavorable as to safety or efficacy; and
- the FDA concludes that the results from our trial and/or trial design are inadequate to demonstrate safety and effectiveness of the product.

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

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

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

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

We have received, and may continue to receive, numerous inquiries from hospitals around the country about the use of our CGM devices to remotely monitor COVID-19 patients admitted into the hospital. Extension of CGM system use to hospitalized patients during the ongoing COVID-19 pandemic allows hospital staff to monitor glucose remotely in patients and may reduce patient/provider interactions, which could help limit viral exposure for hospital staff and help conserve personal protective equipment. In the context of the ongoing COVID-19 pandemic, the FDA has permitted for regulatory flexibility in a variety of specific circumstances, to expedite the development and availability of critical medical products that may be helpful in COVID-19-related efforts.

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

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

- Hospitals should consider whether they have the resources and expertise necessary to adequately implement CGM use and provide appropriate training to healthcare providers.
- CGM glucose results are less accurate than blood glucose results obtained using traditional testing methods (e.g., lab glucose, blood glucose meters). Users should consider all CGM glucose information (e.g., trend) along with individual glucose values, and interpret CGM results in the context of the full clinical picture.

- CGM systems are subject to interferences that may generate falsely high and falsely low glucose readings. Levels of interference depend on drug concentration; substances that may not significantly interfere in non-hospitalized patients may interfere when used in the hospital setting because of higher dose levels. Most drugs used in hospital or critical care settings have not been evaluated and their interference with CGM systems is unknown. Known interferences vary by CGM brand, and can include Acetaminophen, Ascorbic acid, Hydroxyurea, or other reducing drugs/ compounds.
- Poor peripheral blood perfusion may cause inaccurate sensor readings. CGM results should be interpreted considering accompanying patient conditions and medications. Other clinical conditions may also cause inaccurate readings.

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

In February 2022, we received Breakthrough Device designation for our G6 CGM system in the hospital setting. The FDA's Breakthrough Device designation is designed to expedite the development and regulatory review of medical devices that hold the potential for more effective treatment or diagnosis of life-threatening or irreversibly debilitating disease or condition.

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

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

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

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

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

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

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

In response to perceived increases in health care costs in recent years, there have been and continue to be proposals by the federal government, state governments, regulators, and third-party payors to control these costs and, more generally, to reform the U.S. health care system. Certain of these proposals could limit the prices we are able to charge for our products or the amounts of reimbursement available for our products and could limit the acceptance and availability of our products.

In November 2020, the OIG published a Special Fraud Alert addressing manufacturer Speaker Programs, signaling both a more narrow government view of AKS compliance with respect to such programs as well as the potential for increased enforcement in this space by government oversight agencies such as the OIG and DOJ. On March 18, 2022, the Advanced Medical Technology Association, or AdvaMed, announced revisions to its Code of Ethics on Interactions with Health Care Professionals ("Code"). The revised Code, effective June 1, addressed concerns noted in the OIG's Special Fraud Alert, addressing things like virtual meetings, speaker programs and alcohol at events. The revised Code also addresses value-based care arrangements. We continue to assess industry responses to the Special Fraud Alert and have and may continue to make modifications to certain aspects of our speaker programs, which may have a detrimental impact on our ability to educate healthcare providers about our products and to promote use of our products, which may lead to decreased product sales and negatively impact our business, financial condition and results of operations.

Comprehensive healthcare legislation, signed into law in the United States in March 2010, titled the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Affordability Reconciliation Act of 2010, collectively, the ACA, imposes certain stringent compliance, recordkeeping, and reporting requirements on companies in various sectors of the life sciences industry, and enhanced penalties for non-compliance. Despite the ACA going into effect over a decade ago, there have been numerous legal and Congressional challenges to the law's provisions and the effect of certain provisions have made compliance costly.

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

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

Risks Related to Intellectual Property Protection and Use

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

Third parties have asserted, and may assert, infringement or misappropriation claims against us with respect to our current or future products. We are aware of numerous patents issued to third parties that may relate to aspects of our business, including the design and manufacture of CGM sensors and membranes, as well as methods for continuous glucose monitoring. Whether a product infringes a patent involves complex legal and factual issues, the determination of which is often uncertain. Therefore, we cannot be certain that we have not infringed the intellectual property rights of such third parties or others. Our competitors may assert that our CGM systems or the methods we employ in the use of our systems are covered by U.S. or foreign patents held by them. We have in the past settled some such allegations and may need to do so again in the future. This risk is exacerbated by the fact that there are numerous issued patents and pending patent applications relating to self-monitored glucose testing systems in the

medical technology field. Because patent applications may take years to issue, there may be applications now pending of which we are unaware that may later result in issued patents that our products infringe. There could also be existing patents of which we are unaware that one or more components of our system may inadvertently infringe. As the number of competitors in the market for CGM systems grows, the possibility of patent infringement by us or a patent infringement claim against us increases. If we are unable to successfully defend any such claims as they may arise or enter into or extend settlement and license agreements on acceptable terms or at all, our business operations may be harmed. We have been involved in various patent infringement actions in the past. For example, in July 2014, we entered into a Settlement and License Agreement with Abbott to settle all pending patent infringement legal proceedings brought by Abbott against us, which expired on March 31, 2021. Since the expiration of that agreement, we and certain Abbott entities have served complaints for patent infringement, validity, and other patent-related actions against each other in multiple jurisdictions, inside and outside the United States. We intend to vigorously pursue our claims and defenses in these cases to protect our intellectual property and to defend against Abbott's infringement allegations.

Any infringement or misappropriation claim could cause us to incur significant costs, place significant strain on our financial resources, divert management's attention from our business and harm our reputation. In addition, if the relevant patents are upheld as valid and enforceable and we are found to infringe such patents, we could be prohibited from selling any of our products that is found to infringe unless we could obtain licenses to use the technology covered by the patent or are able to design around the patent. We may be unable to obtain a license on terms acceptable to us, if at all, and we may not be able to redesign our products to avoid infringement. We may be unable to maintain or renew licenses on terms acceptable to us, if at all, and we may be prohibited from selling any of our products that required the technology covered by the relevant licensed patents. Even if we are able to redesign our products to avoid an infringement claim, we may not receive FDA approval for such changes in a timely manner or at all.

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

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

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

Our success and our ability to compete depend, in part, upon our ability to maintain the proprietary nature of our technologies. We rely on a combination of patent, copyright and trademark law, and trade secrets and nondisclosure agreements to protect our intellectual property. However, such methods may not be adequate to protect us or permit us to gain or maintain a competitive advantage. Our patent applications may not issue as patents in a form that will be advantageous to us, or at all. Our issued patents, and those that may issue in the future, may be challenged, invalidated or circumvented, which could limit our ability to stop competitors from marketing related products. In addition, there are numerous recent changes to the patent laws and proposed changes to the rules of the U.S. Patent and Trademark Office, which may have a significant impact on our ability to protect our technology and enforce our intellectual property rights.

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

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

Litigation Risks

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

Our business exposes us to the risk of product liability claims that is inherent in the testing, manufacturing and marketing of medical devices, including those which may arise from the misuse (including system hacking or other unauthorized access by third parties to our systems) or malfunction of, or design flaws in, our products. This liability may vary based on the FDA classification associated with our devices. Notably, the classification of our G6 and G7 systems as Class II medical devices is likely to weaken our ability to rely on federal preemption of state law claims that assert liability against us for harms arising from use of those systems. We may be subject to product liability claims if our products cause, or merely appear to have caused, an injury. Claims may be made by customers, healthcare providers or others selling our products. The risk of product liability claims may increase given that G6 and G7 do not require confirmatory finger sticks when making treatment decisions or finger stick tests each day for calibration, although it does require finger stick tests when symptoms do not match readings and when readings are unavailable. The risk of claims may also increase if our products are subject to a product recall or seizure. An example of the difficulty of complying with the regulatory requirements associated with the manufacture of our products, we issued notifications to our customers regarding the audible alarms and alerts associated with our receivers.

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

We may be subject to claims against us even if the apparent injury is due to the actions of others or misuse of the device or a partner device. Our customers, either on their own or following the advice of their physicians, may use our products in a manner not described in the products' labeling and that differs from the manner in which it was used in clinical studies and approved by the FDA. For example, our current systems are designed to be used by an individual continuously for up to 10 days for our G6 and G7 systems, but the individual might be able to circumvent the safeguards designed into the systems and use the products for longer than 10 days. Off-label use of products by customers is common, and any such off-label use of our products could subject us to additional liability, or require design changes to limit this potential off-label use once discovered. In addition, other regulatory agencies may in the future approve similar diabetes treatment indications. We expect that such diabetes treatment indications

could expose us to additional liability. These liabilities could prevent or interfere with our product commercialization efforts. Defending a suit, regardless of merit, could be costly, could divert management attention and might result in adverse publicity, which could result in the withdrawal of, or inability to recruit, clinical trial volunteers or result in reduced acceptance of our products in the market.

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

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

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

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

Any future investigations of our executives, our managers or us could result in significant liabilities or penalties to us, as well as adverse publicity. Even if we are found to have complied with applicable law, the investigation or litigation may pose a considerable expense and would divert management's attention, and have a potentially negative impact on the public's perception of us, all of which could negatively impact our financial position and results of operations. Further, should we be found out of compliance with any of these laws, regulations or programs, depending on the nature of the findings, our business, our financial position and our results of operations could be negatively impacted.

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

Our marketing, promotional and educational materials and practices are subject to FDCA, Federal Trade Commission Act, and other applicable laws and regulations, as may be amended from time to time. If the FDA, FTC or other regulatory body with competent jurisdiction over us, our activities or products takes the position that our marketing, promotional or other materials or activities constitute improper promotion or marketing of an unapproved or improper use, or that they contain untruthful, misleading, or inadequately substantiated statements or claims, such regulatory body could request that we modify our materials or practices, or subject us to regulatory enforcement actions, including the issuance, depending on the regulatory body and the nature of the alleged violation, of a warning letter, injunction, seizure, civil fine and criminal penalties. It is also possible that other federal, state or foreign enforcement authorities might take action if they consider promotional, marketing or other materials or activities to constitute improper promotion of an unapproved use, which could result in significant fines or penalties under other statutory authorities, such as laws prohibiting false claims for reimbursement. Recent court decisions have impacted the FDA's enforcement activity regarding off-label promotion in light of First Amendment considerations; however, there are still significant risks in this area in part due to the potential False Claims Act

exposure and the FDA's continued focus on ensuring devices are marketed in a manner consistent with their FDA-required labeling.

We are not actively promoting nor do we plan to actively promote our G6 or G7 systems for inpatient use, but if we supply them to such facilities as currently permitted by FDA, this supply could present an increased risk of product liability claims and associated damages should an adverse event occur. Given that the G6 and G7 systems have not yet been fully evaluated or tested (by us or by the FDA) to the extent that would be required in standard circumstances for product development and marketing authorization, there could be unknown or unanticipated risks presented by use in this environment.

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

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

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

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

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

Other Risks Related to Our Business and Financial Condition

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

We have incurred significant operating losses in the past. We have financed our operations primarily through private and public offerings of equity securities and debt and the sales of our products. We have devoted substantial resources to:

- research and development relating to our continuous glucose monitoring systems;
- sales and marketing and manufacturing expenses associated with the commercialization of our G6 and G7 systems; and
- expansion of our workforce.

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

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

We depend to a significant degree on our senior management, especially Kevin Sayer, our President and Chief Executive Officer. Our success will depend on our ability to retain our senior management and to attract and retain qualified personnel in the future, including salespersons, scientists, clinicians, engineers and other highly skilled personnel. Competition for senior management personnel, as well as salespersons, scientists, clinicians and engineers, is intense and we may not be able to retain our personnel. The loss of the services of members of our senior management, scientists, clinicians or engineers could prevent the implementation and completion of our objectives, including the commercialization of our current products and the development and introduction of additional products. The loss of a member of our senior management or our professional staff would require the remaining executive officers to divert immediate and substantial attention to seeking a replacement.

Each of our officers may terminate their employment at any time without notice and without cause or good reason. Additionally, volatility or a lack of positive performance in our stock price may adversely affect our ability to retain key employees.

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

We may undertake reorganizations of our workforce, which may result in a temporary reduction in the number of employees in certain locations. We would undertake a reorganization to reduce operating expenses or achieve other business objectives, though we cannot guarantee any specific amount of long-term cost savings. Further, the turnover in our employee base could result in operational and administrative inefficiencies, which could adversely impact the results of our operations, stock price and customer relationships, and could make recruiting for future management and other positions more difficult.

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

Our operations have consumed substantial amounts of cash since inception. We expect to continue to spend substantial amounts on commercialization of our products, including growth of our manufacturing capacity, on research and development, and conducting clinical trials for our next-generation ambulatory CGM sensors and systems. Although we raised substantial net proceeds through the private sale of our convertible notes, we could need funds to continue the commercialization of our current products and to develop and commercialize our next-generation sensors and systems or pursue other strategic initiatives. Additional financing may not be available on a timely basis on terms acceptable to us, or at all. Any additional financing may be dilutive to stockholders or may require us to grant a lender a security interest in our assets. The amount of funding we may need will depend on many factors, including:

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

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

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

The primary collection risks for our accounts receivable relate to the uninsured patient accounts and patient accounts for which the primary insurance carrier has paid the amounts covered by the applicable agreement, but patient responsibility amounts (exclusions, deductibles and copayments) remain outstanding. In addition, as a result

of the impact of the ongoing COVID-19 pandemic, some customers have, and others may, lose access to their private health insurance plan if they lose their job. As most of our customers rely on third-party payors, including private health insurance plans, to cover the cost of our products, there has been, and may continue to be, a shift in financial responsibility to our customers for the amounts previously covered by their primary insurance carrier.

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

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

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

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

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

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

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

Many laws and regulations, notably those adopted in connection with the Sarbanes-Oxley Act of 2002, the Dodd-Frank Wall Street Reform and Consumer Protection Act, new SEC regulations and The Nasdaq Stock Market listing rules, impose obligations on public companies, such as ours, which have increased the scope, complexity and cost of corporate governance, reporting and disclosure practices. Compliance with these laws and regulations, including enhanced new disclosures, has required and will continue to require substantial management time and

oversight and the incurrence of significant accounting and legal costs. The effects of new laws and regulations remain unclear and will likely require substantial management time and oversight and require us to incur significant additional accounting and legal costs. Additionally, changes to existing accounting rules or standards, such as the potential requirement that U.S. registrants prepare financial statements in accordance with International Financial Reporting Standards, may adversely impact our reported financial results and business, and may require us to incur greater accounting fees. These laws, regulations, and standards are subject to varying interpretations, in many cases due to their lack of specificity, and, as a result, their application in practice may evolve over time as new guidance is provided by regulatory and governing bodies. This could result in continuing uncertainty regarding compliance matters and higher costs necessitated by ongoing revisions to disclosure and governance practices. We intend to continue to invest resources to comply with evolving laws, regulations, and standards, and this investment may result in increased general and administrative expenses and a diversion of management's time and attention from revenue-generating activities to compliance activities. If our efforts to comply with new laws, regulations, and standards differ from the activities intended by regulatory or governing bodies due to ambiguities related to their application and practice, regulatory authorities may initiate legal proceedings against us and our business may be adversely affected.

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

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

There is growing pressure in many jurisdictions, including the United States, and from multinational organizations such as the OECD and the European Union to amend existing international tax rules in order to render them more responsive to current global business practices.

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

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

Our ability to use our net operating losses, or NOLs, to offset future taxable income may be subject to certain limitations which could subject our business to higher tax liability. We may be limited in the portion of NOL carryforwards that we can use in the future to offset taxable income for U.S. federal and state income tax purposes, and federal tax credits to offset federal tax liabilities. Sections 382 and 383 of the Internal Revenue Code of 1986, as amended, and similar state law provisions, limit the use of NOLs and tax credits after a cumulative change in corporate ownership of more than 50% occurs within a three-year period. The statutes place a formula limit on how much NOLs and tax credits a corporation can use in a tax year after a change in ownership. Avoiding an ownership change is generally beyond our control. Although the ownership changes we experienced in the past have not prevented us from using all NOLs and tax credits accumulated before such ownership changes, we could experience another ownership change that might limit our use of NOLs and tax credits in the future. In addition, realization of deferred tax assets, including net operating loss carryforwards, depends upon our future earnings in applicable tax jurisdictions. If we have insufficient future taxable income in the applicable tax jurisdiction for any reason, including any future corporate reorganization or restructuring activities, we may be limited in our ability to utilize some or all of our net operating losses to offset such income and reduce our tax liability in that jurisdiction. We utilized the majority of our remaining NOLs by the end of 2021, with the exception of the NOLs limited by Section 382 of the Internal Revenue Code of 1986. See Note 8 "Income Taxes" to the consolidated financial statements in Part II, Item 8 of this Annual Report for additional information.

There is also a risk that due to regulatory changes or changes to federal or state law, such as suspensions on the use of NOLs, or other unforeseen reasons, our existing NOLs could expire or otherwise be unavailable either in

whole or in part to offset future income tax liabilities. For example, under the Coronavirus Aid, Relief, and Economic Security Act of 2020, or CARES Act, which amended certain provisions of the Tax Cuts and Jobs Act of 2017, or TCJA, NOLs arising in taxable years beginning after December 31, 2017 and before January 1, 2021 may be carried back to each of the five taxable years preceding the tax year of such loss, but NOLs arising in taxable years beginning after December 31, 2020 may not be carried back. The TCJA, as amended by the CARES Act, also provides that NOLs from tax years that began after December 31, 2017 may offset no more than 80% of current taxable income annually for taxable years beginning after December 31, 2020.

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

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

For instance, estimating the fair value of share-based payments is highly dependent on assumptions regarding the future exercise behavior of our employees and changes in our stock price. If there are errors in our input assumptions for our valuations models, we may inaccurately calculate actual or estimated compensation expense for share-based payments.

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

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

Risks Related to Our Common Stock

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

Historically, the market price of our common stock, like the securities of many other medical products companies, fluctuates and could continue to be volatile in the future, especially as our business continues to grow and our business plan continues to evolve. From January 1, 2022 through December 31, 2022, the closing price of our common stock on the Nasdaq Global Select Market was as high as $132.89 per share and as low as $67.99 per share. In addition, the trading prices for our common stock and other medical device companies have been highly volatile as a result of the ongoing COVID-19 pandemic.

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

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

- global health pandemics, such as the ongoing COVID-19 pandemic;
- the consummation, and the anticipated benefits, of our Share Repurchase Program; and
- other events or factors, including the impact or perceived impact of our four-for-one forward stock split of our common stock, ongoing conflict in Ukraine, recessions, interest rates, local and national elections, international currency fluctuations, corruption, political instability and acts of war or terrorism.

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

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

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

This issuance of shares by us in the future, including by conversion of our senior convertible notes in certain circumstances, the issuance of shares of our common stock to partners, including up to 5,154,640 shares of our common stock that we may issue to Verily pursuant to the Restated Collaboration Agreement, or sales of shares by our stockholders may cause the market price of our common stock to decline, perhaps significantly, even if our business is performing well. The market price of our common stock could also decline if there is a perception that sales of our shares are likely to occur in the future. This might also make it more difficult for us to sell equity securities in the future at a time and at a price that we deem appropriate. Also, we may issue securities in connection with future financings and acquisitions, and those shares could dilute the holdings of other stockholders.

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

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

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

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

- our Board of Directors may, without stockholder approval, issue shares of preferred stock with special voting or economic rights;
- our stockholders do not have cumulative voting rights and, therefore, each of our directors can only be elected by holders of a majority of our outstanding common stock;
- a special meeting of stockholders may only be called by a majority of our Board of Directors, the Chairman of our Board of Directors, our Chief Executive Officer, our President or our Lead Independent Director;
- our stockholders may not take action by written consent;
- our Board of Directors is divided into three classes, only one of which is elected each year (however, over a three year period beginning with the 2022 annual meeting of stockholders the Board will be declassified and by the conclusion of this process all directors will be elected annually; and
- we require advance notice for nominations for election to the Board of Directors or for proposing matters that can be acted upon by stockholders at stockholder meetings.

Section 22 of the Securities Act creates concurrent jurisdiction for federal and state courts over all claims brought to enforce any duty or liability created by the Securities Act or the rules and regulations thereunder. In September 2020, we amended and restated our restated bylaws to provide that the federal district courts of the United States will, to the fullest extent permitted by law, be the exclusive forum for resolving any complaint asserting a cause of action arising under the Securities Act, or a Federal Forum Provision. Our decision to adopt a Federal

Forum Provision followed a decision by the Supreme Court of the State of Delaware holding that such provisions are facially valid under Delaware law. While there can be no assurance that federal or state courts will follow the holding of the Delaware Supreme Court or determine that the Federal Forum Provision should be enforced in a particular case, application of the Federal Forum Provision means that suits brought by our stockholders to enforce any duty or liability created by the Securities Act must be brought in federal court and cannot be brought in state court. Section 27 of the Exchange Act creates exclusive federal jurisdiction over all claims brought to enforce any duty or liability created by the Exchange Act or the rules and regulations thereunder. Neither the exclusive forum provision nor the Federal Forum Provision applies to suits brought to enforce any duty or liability created by the Exchange Act. Accordingly, actions by our stockholders to enforce any duty or liability created by the Exchange Act or the rules and regulations thereunder must be brought in federal court.

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

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

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

Risks Related to Our Debt

Increasing our financial leverage could affect our operations and profitability.

In October 2021, we entered into a Second Amended and Restated Credit Agreement, or the Amended Credit Agreement, with JPMorgan Chase and other syndicate lenders, which amended and restated the credit agreement, or the Credit Agreement, we had previously entered into in December 2018 and amended in May 2020. The Amended Credit Agreement is a five-year $200.0 million revolving credit facility, or the Credit Facility. As of December 31, 2022, we had no outstanding borrowings, $7.3 million in outstanding letters of credit, and a total available balance of $192.7 million under the Amended Credit Agreement.

Our leverage ratio may affect the availability to us of additional capital resources as well as our operations in several ways, including:

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

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

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

The Amended Credit Agreement imposes numerous financial and other restrictive covenants on our operations, including covenants relating to our general profitability and our liquidity. As of December 31, 2022, we were in compliance with the covenants imposed by the Amended Credit Agreement. If we violate these or any other covenants, any outstanding amounts under the Amended Credit Agreement could become due and payable prior to their stated maturity dates, each lender could proceed against any collateral in our operating accounts and our

ability to borrow funds in the future may be restricted or eliminated. These restrictions may also limit our ability to borrow additional funds and pursue other business opportunities or strategies that we would otherwise consider to be in our best interests.

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

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

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

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

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

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

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

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

In addition, our ability to purchase the Notes or repay prior to maturity any accelerated amounts under the Notes upon an event of default or pay cash upon conversions of the Notes may be limited by law, by regulatory authority or by agreements governing our indebtedness outstanding at the time, including our Credit Facility. Under our Credit Facility, we are only permitted to use cash to purchase the Notes or repay prior to maturity any accelerated amounts under the Notes if we meet certain conditions that are defined under the Credit Agreement. We may not meet these conditions in the future. Our failure to repurchase Notes at a time when the repurchase is required by the respective indenture (whether upon a fundamental change or otherwise under each indenture) or

pay cash payable on future conversions of the Notes as required by the indenture would constitute a default under each indenture. A default under each indenture or the fundamental change itself could also lead to a default under agreements governing our existing or future indebtedness, including our Credit Facility. If the repayment of the related indebtedness were to be accelerated after any applicable notice or grace periods, we may not have sufficient funds to repay the indebtedness, repurchase the Notes or make cash payments upon conversions thereof.

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

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

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

In connection with the sale of the 2023 Notes, we entered into convertible note hedge, or the 2023 Note Hedge, transactions with certain financial institutions, or option counterparties. We also entered into warrant transactions with the option counterparties pursuant to which we sold warrants for the purchase of our common stock, or the 2023 Warrants. The 2023 Note Hedge transactions are expected generally to reduce the potential dilution upon any conversion of the 2023 Notes and/or offset any cash payments we are required to make in excess of the principal amount of converted 2023 Notes. The 2023 Warrant transactions could separately have a dilutive effect to the extent that the market price per share of our common stock exceeds the exercise price of the 2023 Warrants, which is $49.60.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

If the conditional conversion feature of the Notes is triggered, holders of the Notes will be entitled to convert the Notes at any time during specified periods at their option. If one or more holders elect to convert their Notes, unless

we elect to satisfy our conversion obligation by delivering solely shares of our common stock (other than by paying cash in lieu of delivering any fractional share), we may settle all or a portion of our conversion obligation in cash, which could adversely affect our liquidity. In addition, the consideration received upon the unwind or termination of the capped call transactions may not completely offset, and may be substantially less than, any cash payments in excess of the principal amount of the Notes we are required to make upon conversion of the Notes. Even if holders do not elect to convert their Notes, we could be required under applicable accounting rules to reclassify all or a portion of the outstanding principal of the Notes as a current rather than long-term liability, which would result in a material reduction of our net working capital.

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

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

Risks Related to Environmental, Social and Governance Matters

Environmental, social and governance, or ESG, regulations, policies and provisions could expose us to numerous risks.

Increasingly regulators, customers, investors, employees and other stakeholders are focusing on ESG matters and related disclosures. These changing rules, regulations and stakeholder expectations have resulted in, and are likely to continue to result in, increased general and administrative expenses and increased management time and attention spent complying with or meeting such regulations and expectations. For example, collecting, measuring and reporting ESG-related data and information is subject to evolving reporting standards, including the SEC's proposed climate-related reporting requirements, and similar proposals by other international regulatory bodies. In addition, a number of our customers who are payors or distributors have adopted, or may adopt, procurement policies that include ESG provisions that their suppliers or manufacturers must comply with, or they may seek to include such provisions in their terms and conditions. An increasing number of participants in the medical device industry are also joining voluntary ESG groups or organizations, such as the Responsible Business Alliance. These ESG provisions and initiatives are subject to change, can be unpredictable, and may be difficult and expensive for us to comply with, given the complexity of our supply chain and the outsourced manufacturing of certain components of our products. If we are unable to comply, or are unable to cause our suppliers to comply, with such policies or provisions, a customer may stop purchasing products from us, and may take legal action against us, which could harm our reputation, revenue and results of operations.

Our business could be negatively impacted by evolving expectations and challenges relating to implementing ESG initiatives, setting ESG-related goals, collecting ESG-related data, and disclosing ESG-related information.

We may communicate certain initiatives and goals regarding ESG-related matters in our SEC filings or in other public disclosures. These ESG-related initiatives and goals could be difficult and expensive to implement, the technologies needed to implement them may not be cost effective and may not advance at a sufficient pace, and we could be criticized for the accuracy, adequacy or completeness of the disclosure. Further, statements about our ESG-related initiatives and goals, and progress against those goals, may be based on standards for measuring progress that are still developing, internal controls and processes that continue to evolve, and assumptions that are subject to change in the future. In addition, we could be criticized for the scope or nature of such initiatives or goals, or for any revisions to these goals. If our ESG-related data, processes and reporting are incomplete or inaccurate, or if we fail to achieve progress with respect to our ESG-related goals on a timely basis, or at all, our reputation, business, financial performance and growth could be adversely affected.

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

While we seek to partner with organizations that mitigate their business risks associated with climate change, we recognize that there are inherent risks related to climate change wherever business is conducted. Access to clean water and reliable energy in the communities where we conduct our business, whether for our offices or for our vendors, is a priority. Our manufacturing sites in California, Arizona and Malaysia and our operations in the Philippines are vulnerable to climate change effects. For example, in California and Arizona, increasing intensity of

droughts throughout the states and annual periods of wildfire danger increase the probability of planned and unplanned power outages in the communities where we work and live. While this danger has a low-assessed risk of disrupting normal business operations, it has the potential impact on employees' abilities to commute to work or to work from home and stay connected effectively. Climate-related events, including the increasing frequency of extreme weather events and their impact on the U.S., the Philippines, Malaysia and other major regions' critical infrastructure, have the potential to disrupt our business, our third-party suppliers, and/or the business of our customers, and may cause us to experience higher attrition, losses, and additional costs to maintain or resume operations.

General Risk Factors

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

Our operations and performance depend on worldwide economic and political conditions. These conditions have been adversely impacted by continued global economic uncertainty, political instability and military hostilities in multiple geographies (including the conflict between Ukraine and Russia), monetary and financial uncertainties in Europe and other foreign countries, global health pandemics such as the ongoing COVID-19 pandemic, rising interest rates, and domestic and global inflationary trends. These include potential reductions in the overall stability and suitability of the Euro as a single currency, given the economic and political challenges facing individual Eurozone countries. These conditions have made and may continue to make it difficult for our customers and potential customers to afford our products, and could cause our customers to stop using our products or to use them less frequently. If that were to occur, our revenue may decrease and our performance may be negatively impacted. In addition, the pressure on consumers to absorb more of their own health care costs has resulted in some cases in higher deductibles and limits on durable medical equipment, which may cause seasonality in purchasing patterns. Furthermore, during economic uncertainty, our customers have had job losses and may continue to have issues gaining timely access to sufficient health insurance or credit, which could result in their unwillingness to purchase products or impair their ability to make timely payments to us. While the potential economic impact brought by and the duration of the ongoing COVID-19 pandemic may be difficult to assess or predict, it has already caused, and is likely to result in further, significant disruption of global financial markets, which may reduce our ability to access capital on favorable terms or at all. A recession, depression or other sustained adverse market event, including any such event resulting from the spread of COVID-19 could materially and adversely affect our business and the value of our common stock.

We cannot predict the reoccurrence of any economic slowdown or the strength or sustainability of the economic recovery, worldwide, in the United States, or in our industry. These and other economic factors could have a material adverse effect on our business, financial condition and results of operations.

We may be adversely affected by the effects of inflation.

Inflation has the potential to adversely affect our liquidity, business, financial condition and results of operations by increasing our overall cost structure. The existence of inflation in the economy has resulted in, and may continue to result in, higher interest rates and capital costs, supply shortages, increased costs of labor, components, manufacturing and shipping, as well as weakening exchange rates and other similar effects. As a result of inflation, we have experienced and may continue to experience cost increases. Although we may take measures to mitigate the effects of inflation, if these measures are not effective, our business, financial condition, results of operations and liquidity could be materially adversely affected. Even if such measures are effective, there could be a difference between the timing of when these beneficial actions impact our results of operations and when the cost of inflation is incurred.

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

As a public company, we are required to maintain internal control over financial reporting and our management is required to evaluate the effectiveness of our internal control over financial reporting as of the end of each fiscal year. If we are not successful in maintaining effective internal control over financial reporting, there could be inaccuracies or omissions in the consolidated financial information we are required to file with the SEC. Additionally, even if there are no inaccuracies or omissions, we will be required to publicly disclose the conclusion of our management that our internal control over financial reporting or disclosure controls and procedures are not effective. These events could cause investors to lose confidence in our reported financial information, adversely

impact our stock price, result in increased costs to remediate any deficiencies, attract regulatory scrutiny or lawsuits that could be costly to resolve and distract management's attention, limit our ability to access the capital markets or cause our stock to be delisted from The Nasdaq Stock Market or any other securities exchange on which it is then listed.

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

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

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

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

- our inability to manufacture an adequate supply of product at appropriate quality levels and acceptable costs;
- possible delays in our research and development programs or in the completion of any clinical trials;
- a lack of acceptance of our products in the marketplace by physicians and people with diabetes;
- the inability of customers to receive reimbursements from third-party payors;
- the purchasing patterns of our customers, including as a result of seasonality;
- failures to comply with regulatory requirements, which could lead to withdrawal of products from the market;
- our failure to continue the commercialization of any of our CGM systems;
- competition;
- inadequate financial and other resources; and
- global political and economic conditions, political instability and military hostilities.

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

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

ITEM 1B - UNRESOLVED STAFF COMMENTS

None.

ITEM 2 - PROPERTIES

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

Location	Lease Expiration Dates
San Diego, California	2028 [1]
Mesa, Arizona	2030 [2]
Penang, Malaysia	2082 [3]

[1] Excludes renewals that would be at our option to extend the term of a lease expiring in 2028 for one additional three to five-year term.

[2] Excludes renewals that would be at our option to extend the term of a lease expiring in 2028 for four additional five-year terms and also excludes renewals that would be at our option to extend the term of a lease expiring in 2030 for two additional five-year terms.

[3] Represents 60-year land leases with the state authority expiring at varying dates through 2082.

Our headquarters, research and development, and certain of our manufacturing operations are located in San Diego, California. We also lease various manufacturing, administrative, warehouse and customer support real properties throughout the world including North America, Europe, and the Asia-Pacific region.

As of December 31, 2022, we had approximately 46,800 square feet of laboratory space and approximately 85,200 square feet of controlled environment rooms. In 2020, we commenced construction of a new facility in Malaysia that we anticipate will add substantial manufacturing capacity. We expect to begin operations out of the new Malaysia manufacturing facility in 2023.

ITEM 3 - LEGAL PROCEEDINGS

We are subject to various claims, complaints and legal actions that arise from time to time in the normal course of business, including commercial insurance, product liability, intellectual property and employment related matters. In addition, from time to time we may bring claims or initiate lawsuits against various third parties with respect to matters arising out of the ordinary course of our business, including commercial and employment related matters.

During the year ended December 31, 2022, we and certain Abbott Diabetes Care, Inc. (“Abbott”) entities served complaints for patent infringement, validity and other patent related actions against each other in multiple jurisdictions, inside and outside the United States. We intend to vigorously pursue our claims and defenses in these cases to protect our intellectual property and to defend against Abbott’s infringement allegations.

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

ITEM 4 - MINE SAFETY DISCLOSURES

Not applicable.

PART II

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

Market Information for Common Stock

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

Stockholders

We had fewer than 40 stockholders of record as of December 31, 2022. The number of beneficial owners of our common stock at that date was substantially greater than the number of record holders because a large portion of our common stock is held of record through brokerage firms in "street name."

Dividend Policy

We have never declared or paid any cash dividends on our capital stock. We currently intend to retain any future earnings to finance the operation and expansion of our business, and we do not expect to declare or pay any dividends in the foreseeable future.

Recent Sales of Unregistered Securities

There were no unregistered sales of equity securities which have not been previously disclosed in a quarterly report on Form 10-Q or a current report on Form 8-K during the fiscal year ended December 31, 2022.

Purchases of Equity Securities by the Issuer and Affiliated Purchasers

On July 28, 2022, we announced that a duly authorized committee of our Board of Directors authorized and approved a share repurchase program of up to $700 million of our outstanding common stock, with a repurchase period ending no later than June 30, 2023. As of December 31, 2022, approximately $142.3 million remained available for repurchase pursuant to our share repurchase program.

The following table provides information about purchases by the Company of its shares of common stock during the three months ended December 31, 2022:

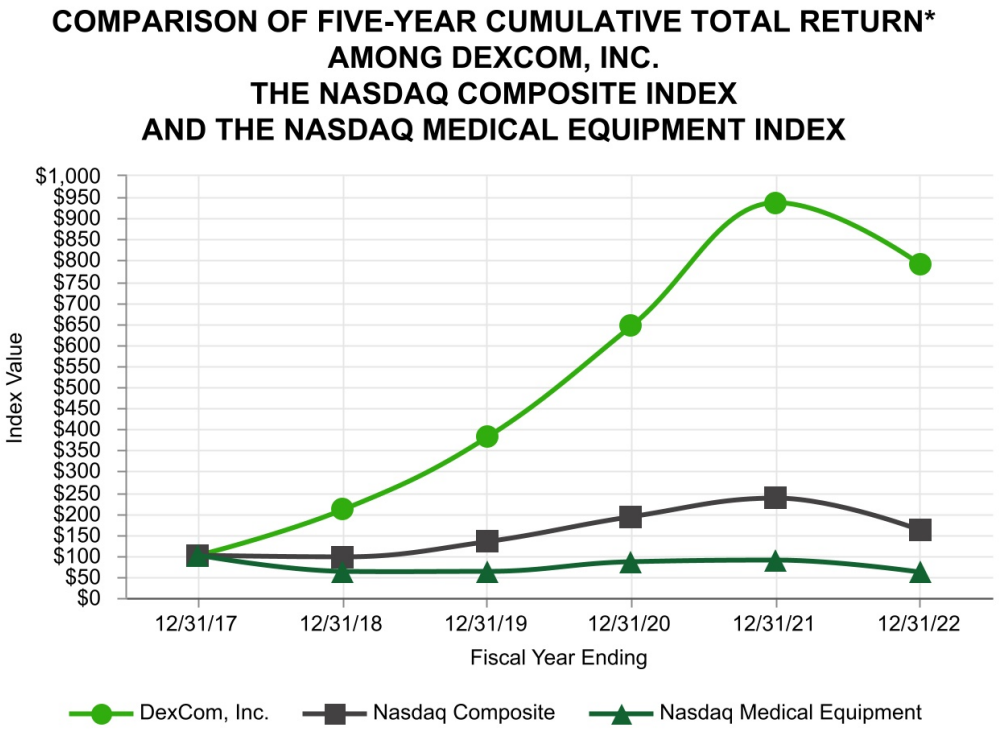
Period	Total number of shares purchased	Average price paid per share	Total number of shares purchased as part of publicly announced program	Maximum dollar value of shares that may yet be purchased under the program (in millions)
10/01/2022 - 10/31/2022	—	—	—	$ 142.3
11/01/2022 - 11/30/2022	—	—	—	$ 142.3
12/01/2022 - 12/31/2022	—	—	—	$ 142.3

See Note 9, "Share Repurchase Program and Treasury Shares" to the consolidated financial statements in Part II, Item 8 of this Annual Report for information about purchases for the year ended December 31, 2022.

Company Stock Price Performance

The graph below compares the cumulative total stockholder return on our common stock with the cumulative total returns on the Nasdaq Composite Index and the Nasdaq Medical Equipment Index over the five-year period ended December 31, 2022. The graph assumes that $100 was invested in Dexcom common stock and in each of the other indices on December 31, 2017 and that all dividends were reinvested. The comparisons in the graph below are based on historical data and are not intended to forecast the possible future performance of Dexcom's common stock.

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



* $100 invested on December 31, 2017 in stock or index, including reinvestment of any dividends.

	December 31, 2017	December 31, 2018	December 31, 2019	December 31, 2020	December 31, 2021	December 31, 2022
DexCom, Inc.	**$ 100.00**	**$ 208.75**	**$ 381.15**	**$ 644.22**	**$ 935.62**	**$ 789.27**
Nasdaq Composite	**$ 100.00**	**$ 97.16**	**$ 132.81**	**$ 192.47**	**$ 235.15**	**$ 158.65**
Nasdaq Medical Equipment	**$ 100.00**	**$ 62.72**	**$ 61.17**	**$ 85.34**	**$ 88.20**	**$ 59.54**

ITEM 6 - [RESERVED]

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

This document, including the following Management's Discussion and Analysis of Financial Condition and Results of Operations, contains forward-looking statements that are not purely historical regarding Dexcom's or its management's intentions, beliefs, expectations and strategies for the future. These forward-looking statements fall within the meaning of the federal securities laws that relate to future events or our future financial performance. In some cases, you can identify forward-looking statements by terminology such as "may," "will," "expect," "plan," "anticipate," "believe," "estimate," "intend," "potential" or "continue" or the negative of these terms or other comparable terminology. Forward-looking statements are made as of the date of this report, deal with future events, are subject to various risks and uncertainties, and actual results could differ materially from those anticipated in those forward looking statements. The risks and uncertainties include, among other things, impacts on our business due to health pandemics or other contagious outbreaks, such as the ongoing COVID-19 pandemic. The risks and uncertainties that could cause actual results to differ materially are more fully described under "Risk Factors" in Part I, Item 1A of this Annual Report, elsewhere in this Annual Report, and in our other reports filed with the SEC. We assume no obligation to update any of the forward-looking statements after the date of this report or to conform these forward-looking statements to actual results. You should read the following discussion and analysis together with our consolidated financial statements and related notes in Part II, Item 8 of this Annual Report.

Overview

Who We Are

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

We received approval from the Food and Drug Administration, or FDA, and commercialized our first product in 2006. We launched our latest generation system, the Dexcom G6® integrated Continuous Glucose Monitoring System, or G6, in 2018 and more recently received marketing clearance from the FDA on the Dexcom G7® in December 2022.

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

Global Presence

We have built a direct sales organization in North America and certain international markets to call on health care professionals, such as endocrinologists, physicians and diabetes educators, who can educate and influence patient adoption of continuous glucose monitoring. To complement our direct sales efforts, we have entered into distribution arrangements in North America and several international markets that allow distributors to sell our products.

Future Developments

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

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

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

Impact of Current Events

During 2020, 2021, and 2022, we have been subject to challenging social and economic conditions created as a result of the novel strain of coronavirus, SARS-CoV-2 and its variants, or COVID-19. These conditions continue to create various financial impacts to our operations by necessitating precautions for our personnel to operate safely both in person as well as remotely. Costs incurred include items like incremental payroll costs, consulting support, IT infrastructure and facilities-related costs.

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

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

In addition, the global supply chain shortages and disruptions are impacting our ability to obtain certain raw materials and components used in our products. We depend on single- or sole-source suppliers to obtain sufficient quantities of these components that are critical to manufacturing our products. Disruptions at these suppliers could lead to a similar disruption in our ability to manufacture products on time to meet consumer demand. In addition, these supply chain constraints may result in higher costs due to a more competitive supply environment. These conditions may impact our gross margin.

Critical Accounting Estimates

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

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

Pharmacy Rebates

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

Historically, adjustments to these estimates to reflect actual results or updated expectations, have not been material to our overall business and generally have been less than 1% of revenue. An increase or decrease of 1% in our estimate of products sold subject to rebate during 2022, holding all other assumptions constant, would increase or decrease revenue by approximately $19.1 million.

For more information, see *Revenue Recognition* in Note 1 “Organization and Significant Accounting Policies” to the consolidated financial statements in Part II, Item 8 of this Annual Report.

Excess and Obsolete Inventory

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

Income Taxes

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

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

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

Loss Contingencies

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

Overview of Financial Results

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

Key Highlights for fiscal 2022 include the following:

Revenue	Gross Profit	Operating Income	Net Income	Operating Cash Flow
$2.91 billion	$1.88 billion	$391.2 million	$341.2 million	$669.5 million
up 19% from 2021	up 12% from 2021	up 47% from 2021	up 57% from 2021	up 51% from 2021

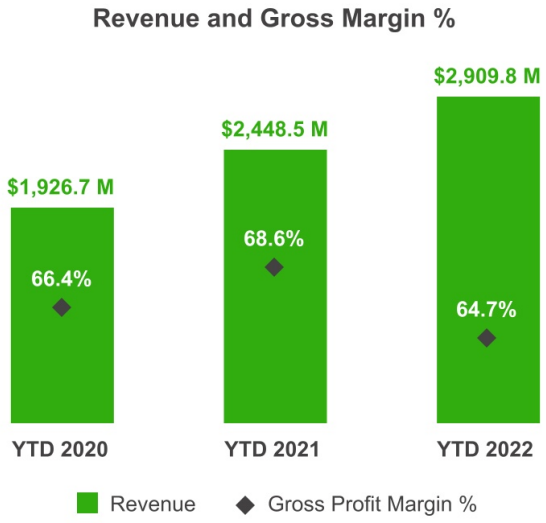
We ended fiscal 2022 with cash, cash equivalents and short-term marketable securities totaling $2.46 billion.

Business Trends

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

- Increase in the worldwide incidence of people diagnosed with diabetes and costs related to the management and treatment of diabetes.
- Changes in medical reimbursement policies and programs.
- Growing demand for digital health technologies by both healthcare providers and consumers to reduce costs.
- An expected interest in empowering consumers to make better-informed decisions about their own health and new potential options for facilitating prevention, early diagnosis of life-threatening diseases, and management of chronic conditions outside of traditional health care settings.
- Growing research and interest in the use of CGM technology outside of the ambulatory care setting, including use by hospital systems.
- Continued product innovation and competition from other CGM device makers.
- Our ability to scale efficiently with the construction of our production facility in Malaysia.

Results of Operations



Financial Overview

For discussion related to the results of operations and changes in financial condition for fiscal 2021 compared to fiscal 2020 refer to “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in Part II, Item 7 of our 2021 Annual Report on Form 10-K, which was filed with the United States Securities and Exchange Commission on February 14, 2022.

Twelve Months Ended December 31, 2022 Compared to Twelve Months Ended December 31, 2021

	Twelve Months Ended December 31,				2022 - 2021	
	2022	% of Revenue [1]	2021	% of Revenue [1]	$ Change	% Change
(In millions, except per share amounts)			(As Adjusted)*			
Revenue	$ 2,909.8	100 %	$ 2,448.5	100 %	$ 461.3	19 %
Cost of sales	1,026.7	35 %	768.0	31 %	258.7	34 %
Gross profit	1,883.1	64.7 %	1,680.5	68.6 %	202.6	12 %
Operating expenses:						
Research and development	484.2	17 %	517.1	21 %	(32.9)	(6)%
Collaborative research and development fee	—	— %	87.1	4 %	(87.1)	**
Amortization of intangible assets	7.5	— %	3.7	— %	3.8	**
Selling, general and administrative	1,000.2	34 %	806.8	33 %	193.4	24 %
Total operating expenses	1,491.9	51 %	1,414.7	58 %	77.2	5 %
Operating income	391.2	13 %	265.8	11 %	125.4	47 %
Interest expense	(18.6)	(1)%	(18.8)	(1)%	0.2	(1)%
Loss on extinguishment of debt	—	— %	(0.1)	— %	0.1	**
Income from equity investments	0.2	— %	11.6	— %	(11.4)	(98)%
Interest and other income (expense), net	18.0	1 %	(1.7)	— %	19.7	**
Income before income taxes	390.8	13 %	256.8	10 %	134.0	52 %
Income tax expense	49.6	2 %	39.9	2 %	9.7	24 %
Net income	$ 341.2	12 %	$ 216.9	9 %	$ 124.3	57 %
Basic net income per share	$ 0.88	**	$ 0.56	**	$ 0.32	57 %
Diluted net income per share	$ 0.82	**	$ 0.53	**	$ 0.29	55 %

[1] The sum of the individual percentages may not equal the total due to rounding.

* We adjusted our 2021 amounts to reflect the simplified convertible instruments accounting guidance, which we adopted on a full retrospective basis. All periods presented have also been adjusted to reflect the four-for-one stock split. Refer to Note 1, “Organization and Significant Accounting Policies,” to the consolidated financial statements in Part II, Item 8 of this Annual Report for further information.

** Not meaningful

Revenue

We expect that revenue we generate from the sales of our products will fluctuate from quarter to quarter. We typically experience seasonality, with lower sales in the first quarter of each year compared to the immediately preceding fourth quarter. This seasonal sales pattern relates to U.S. annual insurance deductible resets and unfunded flexible spending accounts.

Cost of sales

Cost of sales includes direct labor and materials costs related to each product sold or produced, including assembly, test labor and scrap, as well as factory overhead supporting our manufacturing operations. Factory overhead includes facilities, material procurement and control, manufacturing engineering, quality assurance, supervision and management. These costs are primarily salary, fringe benefits, share-based compensation, facility expense, supplies and purchased services. All of our manufacturing costs are included in cost of sales. In addition, amortization of certain licensing related intangibles are also included in cost of sales.

Research and development

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

Amortization of intangible assets

Our amortization expense primarily relates to acquired technology and intellectual property and other acquired intangible assets.

Selling, general and administrative

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

Interest expense

Interest expense is comprised primarily of costs related to our senior convertible notes.

Income from equity investments

Income from equity investments is comprised of realized gains from the sale of an equity investment.

Interest and other income (expense), net

Interest and other income (expense), net consists primarily of interest income on our cash, cash equivalents and short-term marketable securities portfolio and foreign currency transaction gains and losses due to the effects of foreign currency fluctuations.

	Twelve Months Ended December 31, 2022 Compared to Twelve Months Ended December 31, 2021
Revenue	The revenue increase was primarily driven by increased sales volume of our disposable sensors due to the continued growth of our worldwide customer base, partially offset by mix shift and price associated with the evolution of our channel and product strategy. Disposable sensor and other revenue comprised approximately 87% of total revenue and Reusable Hardware revenue comprised approximately 13% of total revenue for the twelve months ended December 31, 2022. Disposable sensor and other revenue comprised approximately 84% of total revenue and Reusable Hardware revenue comprised approximately 16% of total revenue for the twelve months ended December 31, 2021.
Cost of Sales & Gross Profit	Cost of sales and gross profit increased primarily due to an increase in sales volume. The decrease in gross profit margin in 2022 compared to 2021 was primarily driven by price, product, and channel mix changes and impact of foreign currencies on revenue.
Research and Development Expense	Research and development expense decreased primarily due to $43.0 million in lower third party and consulting fees most notably related to software development for new products and significant enhancements, $19.9 million in lower costs related to set-up and validation costs for new CGM equipment, and $9.7 million in lower clinical trials costs, partially offset by $26.5 million in compensation-related costs due to higher headcount. We continue to believe that focused investments in research and development are critical to our future growth and competitive position in the marketplace, and to the development of new and updated products and services that are central to our core business strategy.
Collaborative Research and Development Fee	Collaborative research and development fees of $87.1 million for the twelve months ended December 31, 2021 represents expense incurred in the fourth quarter of 2021 associated with a contingent milestone for regulatory approval under the Restated Collaboration Agreement. See Note 2 “Collaboration with Verily Life Sciences” to the consolidated financial statements in Part II, Item 8 of this Annual Report for more information.
Selling, General and Administrative Expense	Selling, general and administrative expense increased primarily due to $54.1 million in compensation-related costs most notably due to higher headcount, $26.0 million in advertising and marketing costs due to an increase in worldwide marketing campaigns, $23.0 million in long-lived asset impairment charges, $21.5 million in legal expense related to litigation, $13.0 million in travel and entertainment expenses, and $5.8 million in depreciation expense due to higher property and equipment balances and accelerated depreciation related to business transition activities.
Income from Equity Investments	Income from equity investments of $11.6 million for the twelve months ended December 31, 2021 consisted solely of realized gains from the sale of an equity investment.
Interest and Other Income (Expense), Net	Interest and other income (expense), net, increased primarily due to $22.1 million in interest income on our short-term marketable securities portfolio, partially offset by foreign currency transaction gains and losses due to the effects of foreign currency fluctuations. The increase in interest income was primarily related to a significant increase in market interest rates, as well as an increase in the average invested balances during 2022 compared to 2021.

Income Tax Expense

We recorded income tax expense on pre-tax book income for the twelve months ended December 31, 2022 and December 31, 2021. The income tax expense we recorded for 2022 is primarily attributable to income tax expense from normal, recurring operations offset by excess tax benefits recognized for share-based compensation for employees (net of disallowed executive compensation) and the Verily milestone payment, and generation of research and development tax credits. The income tax expense we recorded for 2021 is primarily attributable to income tax expense from normal, recurring operations offset by excess tax benefits recognized for employee share-based compensation, generation of research and development tax credits, and a one-time tax benefit related to tax law changes.

Liquidity and Capital Resources

Overview, Capital Resources, and Capital Requirements

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

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

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

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

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

A substantial portion of our operations are located in the United States, and the majority of our sales since inception have been made in U.S. dollars. We will be exposed to additional foreign currency exchange risk related to our foreign operations when we begin manufacturing in Malaysia and as our business continues to increase in

markets outside of the United States. See “Foreign Currency Exchange Risk” in Part II, Item 7A of this Annual Report for more information.

Main Sources of Liquidity

Cash, cash equivalents and short-term marketable securities

Our cash, cash equivalents and short-term marketable securities totaled $2.46 billion as of December 31, 2022. None of those funds were restricted and $2.29 billion (approximately 93%) of those funds were located in the United States.

Cash flow from Operations

For the twelve months ended December 31, 2022, we had positive cash flows of $669.5 million from operating activities. We anticipate that we will continue to generate positive cash flow from operations for the foreseeable future.

Senior Convertible Notes

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

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

Revolving Credit Agreement

As of December 31, 2022, we had no outstanding borrowings, $7.3 million in outstanding letters of credit, and a total available balance of $192.7 million under the Amended Credit Agreement. We monitor counterparty risk associated with the institutional lenders that are providing the Credit Facility. We currently believe that the Credit Facility will be available to us should we choose to borrow under it. Revolving loans will be available for general corporate purposes, including working capital and capital expenditures. See Note 5 “Debt” to the consolidated financial statements in Part II, Item 8 of this Annual Report for more details on the Revolving Credit Agreement.

Short-term Liquidity Requirements

Our short-term liquidity requirements primarily consist of regular operating costs, interest payments related to our senior convertible notes, capital expenditures for the development of our manufacturing facilities and office spaces, and short-term material cash requirements as described below. As of December 31, 2022, we had a working capital ratio of 1.99 and a quick ratio of 1.72, which indicates that our current assets are more than enough to cover our short-term liabilities. We expect to have significant capital expenditures for the next year to drive our strategic initiative of building out our manufacturing facility and equipment in Malaysia and the capacity scale-up in Mesa, Arizona.

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

We may use cash to repurchase Dexcom shares or for strategic initiatives that strengthen our foundation for long-term growth. On July 26, 2022, a duly authorized committee of our Board of Directors authorized a share repurchase program of up to $700.0 million of our outstanding common stock, with a repurchase period ending no later than June 30, 2023. As of December 31, 2022, approximately $142.3 million remained available for repurchase pursuant to our share repurchase program. See Note 9 “Employee Benefit Plans and Stockholders’ Equity” to the consolidated financial statements in Part II, Item 8 of this Annual Report for more details.

As of December 31, 2022, we have outstanding senior convertible notes that will mature in December 2023. We may elect to settle the remaining principal amount outstanding of the 2023 Notes with cash and/ or shares of Dexcom common stock prior to maturity once certain conditions are met.

Long-term Liquidity Requirements

Our long-term liquidity requirements primarily consist of interest and principal payments related to our senior convertible notes, capital expenditures for the development of our manufacturing facilities and office spaces, and long-term material cash requirements as described below. As of December 31, 2022, we had a debt-to-assets ratio of 0.37, which indicates that our total assets are more than enough to cover our short-term and long-term debts. As demand grows for our products, we will continue to expand global operations to meet demand through investments in manufacturing and operations. We expect to meet our long-term liquidity requirements from our main sources of liquidity as described above to support our future operations, capital expenditures, acquisitions, and other liquidity requirements associated with our operations beyond the next 12 months.

As of December 31, 2022, we have outstanding senior convertible notes that will mature in November 2025 for the 2025 Notes. However, the outstanding principal of our senior convertible notes could be converted into cash and/or shares of our common stock prior to maturity once certain conditions are met. See Note 5 “Debt” to the consolidated financial statements in Part II, Item 8 of this Annual Report for information on conversion rights prior to maturity.

Material Cash Requirements

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

As of January 1, 2022, for U.S. tax purposes, research and development expenses are required to be capitalized and amortized rather than immediately deducted. As a result, our annual cash tax payments to the United States Treasury have increased in the current year.

We issued senior convertible notes in November 2018 and May 2020. The aforementioned obligations include both principal and interest for these notes. Although these notes mature in December 2023 and November 2025, they may be converted into cash and shares of our common stock prior to maturity if certain conditions are met. Any conversion prior to maturity can result in repayment of the principal amounts sooner than the scheduled repayment. As of December 31, 2022, we had outstanding letters of credit of $7.3 million for which we cannot forecast with certainty the amount and timing of repayments. See Note 5 “Debt” to the consolidated financial statements in Part II, Item 8 of this Annual Report for further discussion of the terms of our senior convertible notes.

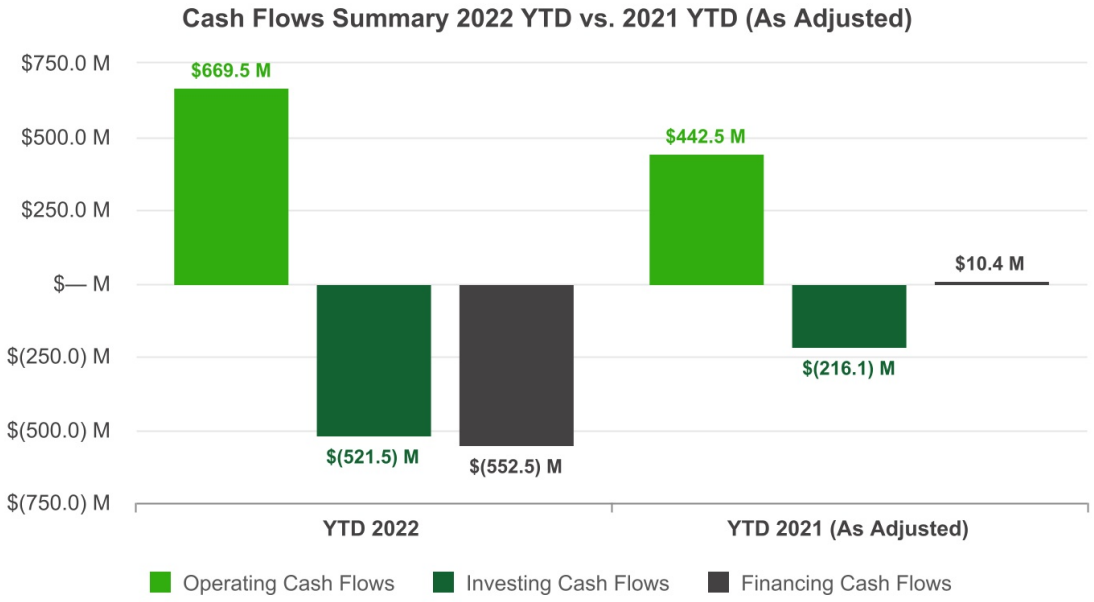
We are party to various leasing arrangements, primarily for office, manufacturing and warehouse space that expire at various times through December 2030, excluding any renewal options. We also have land leases in Penang, Malaysia for the build-out of our international manufacturing facility lease that expire through 2082. We anticipate incurring significant expenditures related to the build-out of the Malaysia manufacturing facility and equipment in the next two years. See *Leases* in Note 6 “Leases and Other Commitments” to the consolidated financial statements in Part II, Item 8 of this Annual Report for more information.

Under our Restated Collaboration Agreement with Verily, additional sales-based milestone payments equivalent to 5,154,640 shares of our common stock, calculated based on the $175.0 million initial milestone amount divided by the volume-weighted average trading price during the 15 consecutive days ending on the date of the Restated Collaboration Agreement, may become due and payable by us upon achievement of certain sales-based milestones. All milestones may be paid in cash or shares of our common stock, at our election. If we elect to make these milestone payments in cash, any such cash payment would be equal to the number of shares that would otherwise be issued for the given milestone payment multiplied by the value of our stock on the date the relevant milestone is achieved, adjusted for stock splits, dividends, and the like. We intend to pay these milestones in shares of our common stock and as such we do not expect to have a material cash requirement for this agreement. See Note 2 “Development and Other Agreements” to the consolidated financial statements in Part II, Item 8 of this Annual Report for further discussion of the Collaboration Agreement with Verily.

See Note 5 “Debt” to the consolidated financial statements in Part II, Item 8 of this Annual Report for more information about the terms of the Credit Agreement, our senior convertible notes, the 2023 Note Hedge, and the 2023 Warrants.

Cash Flows

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



As of December 31, 2022, we had $2.46 billion in cash, cash equivalents and short-term marketable securities, which is a decrease of $275.0 million compared to $2.73 billion as of December 31, 2021.

The primary cash flows during the twelve months ended December 31, 2022 and 2021 are described below. See the consolidated financial statements in Part II, Item 8 of this Annual Report for complete consolidated statements of cash flows for these periods.

	Twelve Months Ended	
	December 31, 2022	December 31, 2021
		As Adjusted
Operating Cash Flows	+ $341.2 million of net income and $301.6 million of net non-cash adjustments, partially offset by $26.7 million of net changes in working capital balances Net non-cash adjustments were primarily related to share-based compensation and depreciation and amortization.	+ $216.9 million of net income and $357.6 million of net non-cash adjustments, partially offset by $132.0 million of net changes in working capital balances Net non-cash adjustments were primarily related to collaborative research and development fees, share-based compensation, non-cash interest expense for our senior convertible notes, and depreciation and amortization.
Investing Cash Flows	- $364.8 million capital expenditures - $138.5 million net purchases of marketable securities - $14.5 million in purchases of equity investments	+ $193.2 million net proceeds from marketable securities + $15.7 million in proceeds from the sale of an equity investment - $389.2 million capital expenditures - $30.2 million in acquisitions, net of cash acquired - $5.0 million in purchases of equity investments
Financing Cash Flows	+ $22.5 million in proceeds from the issuance of common stock under our employee stock plans - $557.7 million in purchases of treasury stock - $15.6 million in payments for financing leases	+ $20.3 million in proceeds from the issuance of common stock under our employee stock plans - $9.9 million in payments for financing leases

Recent Accounting Guidance

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

ITEM 7A - QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Interest Rate Risk

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

Market Price Sensitive Instruments

In order to reduce potential equity dilution, in connection with the issuance of the 2023 Notes we entered into the 2023 Note Hedge which entitles us to purchase shares of our common stock. Upon conversion of the 2023 Notes, the 2023 Note Hedge is expected to reduce the equity dilution if the daily volume-weighted average price per share of our common stock exceeds the strike price of the hedge. We also entered into warrant transactions with the counterparties of the 2023 Note Hedge entitling them to acquire shares of our common stock. The warrant

transactions could have a dilutive effect on our earnings per share to the extent that the price of our common stock during a given quarterly or annual measurement period exceeds the strike price of the warrants. See Note 5 “Debt” to the consolidated financial statements in Part II, Item 8 of this Annual Report for more information.

Foreign Currency Exchange Risk

A substantial portion of our operations are located in the United States, and the majority of our sales since inception have been made in U.S. dollars. Historically, our exposure to foreign currency fluctuations is more significant with respect to our revenue than our expenses, as a significant portion of our expenses are denominated in U.S. dollars, such as cost of sales and operating expenses. Changes in foreign currencies impact currency translation and had a slightly negative effect on our revenues and gross profit margins.

We will be exposed to additional foreign currency exchange risk related to our foreign operations when we begin manufacturing in Malaysia and as our business continues to increase in markets outside of the United States. Fluctuations in the rate of exchange between the U.S. dollar and foreign currencies, primarily the Australian Dollar, the British Pound, the Canadian Dollar, the Euro, and the Malaysian Ringgit, could adversely affect our financial results, including income and losses as well as assets and liabilities in addition to risks to our revenues, revenue growth rates, and gross profit margins.

We translate the financial statements of our international subsidiaries with functional currencies other than the U.S. dollar into the U.S. dollar for consolidation using end-of-period exchange rates for assets and liabilities and average exchange rates during each reporting period for results of operations. We record net gains or losses resulting from the translation of these financial statements and the effect of exchange rate changes on intercompany receivables and payables of a long-term nature as a separate component of stockholders’ equity. These adjustments will affect net income only upon sale or liquidation of the underlying investment in international subsidiaries. We also record exchange rate fluctuations resulting from the translation of the short-term intercompany balances between domestic entities and our international subsidiaries as foreign currency transaction gains or losses and include them in interest and other income (expense), net in our consolidated statements of operations.

We enter into foreign currency forward contracts to hedge monetary assets and liabilities denominated in foreign currencies. These forward contracts are not designated as hedging instruments and generally mature in one month. The derivative gains and losses are included in interest and other income (expense), net in our consolidated statements of operations. See Note 3 “Fair Value Measurements” to the consolidated financial statements in Part II, Item 8 of this Annual Report for more information.

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

ITEM 8 - FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

The information required is set forth under “Report of Independent Registered Public Accounting Firm,” “Consolidated Balance Sheets,” “Consolidated Statements of Operations,” “ Consolidated Statements of Comprehensive Income,” “Consolidated Statements of Stockholders’ Equity,” “Consolidated Statements of Cash Flows” and “Notes to Consolidated Financial Statements” on pages F-10 to F-44 of this Annual Report and is incorporated into this Item 8 by reference.

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

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

Not applicable.

ITEM 9A - CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Regulations under the Securities Exchange Act of 1934 require public companies to maintain “disclosure controls and procedures,” which are defined to mean a company’s controls and other procedures that are designed to ensure that information required to be disclosed in the reports that it files or submits under the Securities Exchange Act of 1934 is accumulated and timely communicated to management, including our Chief Executive Officer and Chief Financial Officer, recorded, processed, summarized, and reported within the time periods specified in the Securities and Exchange Commission’s rules and forms. Our management, including our Chief Executive Officer and our Chief Financial Officer, conducted an evaluation as of the end of the period covered by this report of the effectiveness of our disclosure controls and procedures. Based on their evaluation as of December 31, 2022, our Chief Executive Officer and our Chief Financial Officer concluded that our disclosure controls and procedures were effective as of such date for this purpose.

Changes in Internal Control over Financial Reporting

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

Management’s Report on Internal Control over Financial Reporting

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

Our management, with the participation of the Chief Executive and Chief Financial Officers, assessed the effectiveness of our internal control over financial reporting as of December 31, 2022. In making this assessment, our management used the criteria set forth by the 2013 Committee of Sponsoring Organizations of the Treadway Commission (COSO) in Internal Control—Integrated Framework. Based on this assessment, our management, with the participation of the Chief Executive and Chief Financial Officers, believes that, as of December 31, 2022, our internal control over financial reporting is effective based on those criteria. The effectiveness of our internal control over financial reporting as of December 31, 2022 has been audited by Ernst & Young LLP an Independent Registered Public Accounting Firm, as stated in their report which is included herein.

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

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

Limitation on Effectiveness of Controls

It should be noted that any system of controls, however well designed and operated, can provide only reasonable, and not absolute, assurance that the objectives of the system are met. The design of any control system is based, in part, upon the benefits of the control system relative to its costs. Control systems can be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of the control. In addition, over time, controls may become inadequate because of changes in conditions, or the degree of compliance with the policies or procedures may deteriorate. Because of these and other inherent limitations of control systems, we cannot guarantee that any design will succeed in achieving its stated goals under all potential future conditions, regardless of how remote.

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors and Stockholders of DexCom, Inc.

Opinion on Internal Control over Financial Reporting

We have audited DexCom, Inc.'s internal control over financial reporting as of December 31, 2022, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 Framework) (the COSO criteria). In our opinion, DexCom, Inc. (the Company) maintained, in all material respects, effective internal control over financial reporting as of December 31, 2022, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated balance sheets of DexCom, Inc. as of December 31, 2022 and 2021, the related consolidated statements of operations, comprehensive income, stockholders' equity and cash flows for each of the three years in the period ended December 31, 2022, and the related notes and financial statement schedule listed in the Index at Item 15(a) and our report dated February 9, 2023 expressed an unqualified opinion thereon.

Basis for Opinion

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

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

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

Definition and Limitations of Internal Control Over Financial Reporting

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

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

/s/ Ernst & Young LLP
San Diego, California
February 9, 2023

ITEM 9B - OTHER INFORMATION

None.

ITEM 9C - DISCLOSURE REGARDING FOREIGN JURISDICTIONS THAT PREVENT INSPECTIONS

None.

PART III

ITEM 10 - DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

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

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

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

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

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

ITEM 11 - EXECUTIVE COMPENSATION

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

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

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

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

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

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

ITEM 14 - PRINCIPAL ACCOUNTANT FEES AND SERVICES

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

PART IV

ITEM 15 - EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

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

1. Financial Statements.

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

2. Financial Statement Schedules.

For the three fiscal years ended December 31, 2022, Schedule II – Valuation and Qualifying Accounts.

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

3. Exhibits.

		Incorporated by Reference				
Exhibit Number	Exhibit Description	Form	File No.	Date of First Filing	Exhibit Number	Provided Herewith
3.01	Restated Certificate of Incorporation of Dexcom, Inc.	8-K	000-51222	May 21, 2021	3.1	
3.02	Amended and Restated Bylaws of DexCom, Inc.	8-K	000-51222	May 21, 2021	3.3	
4.01	Form of Specimen Certificate for Registrant's common stock.	S-1/A	333-122454	March 24, 2005	4.01	
4.02	Indenture, dated as of November 30, 2018, between DexCom, Inc. and U.S. Bank National Association (including the form of 0.75% Convertible Senior Notes due 2023).	8-K	000-51222	December 3, 2018	4.1	
4.03	Indenture, dated as of May 14, 2020, between DexCom, Inc. and U.S. Bank National Association (including the form of 0.25% Convertible Senior Notes due 2025).	8-K	000-51222	May 15, 2020	4.1	
4.04	Description of Securities Registered Under Section 12 of the Exchange Act.	10-K	000-51222	February 11, 2021	4.04	
10.01	Offer letter between DexCom, Inc. and Kevin Sayer dated May 3, 2011.*	10-Q	000-51222	August 3, 2011	10.28	
10.02	Sublease between DexCom, Inc. and Entropic Communications, LLC dated February 1, 2016.	10-Q	000-51222	April 27, 2016	10.36	
10.03	Industrial Net Lease, Broadway dated April 28, 2016, by and between PRA/LB, L.L.C. and DexCom, Inc.	10-Q	000-51222	August 2, 2016	10.39	
10.04	Executive Deferred Compensation Plan.*	8-K	000-51222	June 4, 2019	10.02	
10.05	Third Amendment to Office Lease between DexCom, Inc. and John Hancock Life Insurance Company, dated January 9, 2019.**	10-K	000-51222	February 13, 2020	10.40	
10.06	Form of Indemnity Agreement between Registrant and each of its directors and executive officers.*	10-K	000-51222	February 11, 2021	10.43	

10.07	DexCom Incentive Bonus Plan.*	8-K	000-51222	March 17, 2021	10.1	
10.08	Second Amended and Restated Credit Agreement dated October 13, 2021 by and among DexCom, Inc., Bank of America, Silicon Valley Bank and Union Bank, and JPMorgan Chase Bank, as Administrative Agent.	10-K	000-51222	February 14, 2022	10.39	
10.09	Office Lease Agreement, dated March 31, 2006, between DexCom, Inc. and Kilroy Realty, L.P., as amended on August 18, 2010 and October 1, 2014.					X
10.10	Amendment Number One to Non-Exclusive Distribution Agreement, between RGH Enterprises, Inc. and DexCom, Inc., dated March 29, 2011, as amended on March 28, 2013, December 4, 2013, and April 30, 2016.**					X
10.11	Amended and Restated Non-Exclusive Distribution Agreement with Diabetes Management and Supplies, LLC, dated August 10, 2015, as amended on April 7, 2022.**					X
10.12	Distribution Services Agreement dated November 7, 2015 between DexCom, Inc. and AmerisourceBergen Drug Corporation, as amended on November 1, 2018 and December 2, 2022.**					X
10.13	Amended and Restated Non-Exclusive Distribution Agreement with Byram Healthcare dated February 1, 2016.**					X
10.14	Standard Form of Agreement dated May 2, 2016, by and between DexCom, Inc. and Skanska USA Building Inc. and Standard Form of Agreement dated May 1, 2017, by and between DexCom, Inc. and Skanska USA Building Inc.					X
10.15	Amendment No. 1 to Collaboration and License Agreement dated October 25, 2016 by and between DexCom, Inc. and Verily Life Sciences LLC (formerly Google Life Sciences LLC), as amended on November 20, 2018.**					X
10.16	Severance and Change in Control Plan and form of participation agreement.*					X
10.17	Amended and Restated 2015 Equity Incentive Plan and forms of award agreements.*					X
10.18	Fourth Amendment to Office Lease between DexCom, Inc. and Sequence Tech. Center CA LLC, dated September 9, 2019, as amended on October 21, 2019 and May 25, 2021, and December 23, 2022.**					X
10.19	2015 Employee Stock Purchase Plan, amended on December 13, 2019 and form of subscription agreement.*					X

10.20	Office Lease between DexCom, Inc. and GC Pacific Court Center Owner, LLC, dated January 31, 2020, as amended on November 17, 2020, and forms of certificates.	X
21.01	List of Subsidiaries.	X
23.01	Consent of Independent Registered Public Accounting Firm.	X
24.01	Power of Attorney (see signature page of this Form 10-K).	X
31.01	Certification of Chief Executive Officer Pursuant to Securities Exchange Act Rule 13a-14(a).	X
31.02	Certification of Chief Financial Officer Pursuant to Securities Exchange Act Rule 13a-14(a).	X
32.01	Certification of Chief Executive Officer Pursuant to 18 U.S.C. Section 1350 and Securities Exchange Act Rule 13a-14(b).***	X
32.02	Certification of Chief Financial Officer Pursuant to 18 U.S.C. Section 1350 and Securities Exchange Act Rule 13a-14(b).***	X
101.INS	Inline XBRL Instance Document	X
101.SCH	Inline XBRL Taxonomy Extension Schema Document	X
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document	X
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document	X
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document	X
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document	X
—	Cover Page Interactive Data File (Embedded within the Inline XBRL document and included in Exhibit 101)	X

* Represents a management contract or compensatory plan, contract or arrangement.

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

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

ITEM 16 - FORM 10-K SUMMARY

None.

SIGNATURES

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

DEXCOM, INC.
(Registrant)

Dated: February 9, 2023

By: /s/ JEREME M. SYLVAIN

Jereme M. Sylvain,
Executive Vice President and Chief Financial Officer
(Principal Financial and Accounting Officer)

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Kevin R. Sayer and Jereme M. Sylvain, jointly and severally, his attorneys-in-fact, each with the power of substitution, for him in any and all capacities, to sign any amendments to this Report on Form 10-K and to file same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and confirming all that each of said attorneys-in-fact, or his substitutes, may do or cause to be done by virtue hereof.

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

Signature	Title	Date
/s/ KEVIN R. SAYER **Kevin R. Sayer**	Chairman of the Board of Directors, President and Chief Executive Officer (Principal Executive Officer)	February 9, 2023
/s/ JEREME M. SYLVAIN **Jereme M. Sylvain**	Executive Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)	February 9, 2023
/s/ MARK G. FOLETTA **Mark G. Foletta**	Lead Independent Director	February 9, 2023
/s/ STEVEN R. ALTMAN **Steven R. Altman**	Director	February 9, 2023
/s/ NICHOLAS AUGUSTINOS **Nicholas Augustinos**	Director	February 9, 2023
/s/ RICHARD A. COLLINS **Richard A. Collins**	Director	February 9, 2023
/s/ KAREN DAHUT **Karen Dahut**	Director	February 9, 2023
/s/ BRIDGETTE P. HELLER **Bridgette P. Heller**	Director	February 9, 2023
/s/ BARBARA E. KAHN **Barbara E. Kahn**	Director	February 9, 2023
/s/ KYLE MALADY **Kyle Malady**	Director	February 9, 2023
/s/ JAY S. SKYLER **Jay S. Skyler, M.D.**	Director	February 9, 2023
/s/ ERIC J. TOPOL **Eric J. Topol, M.D.**	Director	February 9, 2023

DexCom, Inc.
Index to Consolidated Financial Statements

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors and Stockholders of DexCom, Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of DexCom, Inc. (the Company) as of December 31, 2022 and 2021, the related consolidated statements of operations, comprehensive income, stockholders' equity and cash flows for each of the three years in the period ended December 31, 2022, and the related notes and financial statement schedule listed in the Index at Item 15(a) (collectively referred to as the "consolidated financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company at December 31, 2022 and 2021, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2022, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company's internal control over financial reporting as of December 31, 2022, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 Framework) and our report dated February 9, 2023 expressed an unqualified opinion thereon.

Basis for Opinion

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

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

Critical Audit Matter

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

Estimation of variable consideration for revenue recognition

Description of the Matter

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

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

How We Addressed the Matter in Our Audit

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

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

/s/ Ernst & Young LLP
We have served as the Company's auditor since 2000.
San Diego, California
February 9, 2023

DexCom, Inc.
Consolidated Balance Sheets

(In millions, except par value data)	December 31, 2022	December 31, 2021 (As Adjusted)*
Assets		
Current assets:		
Cash and cash equivalents	$ 642.3	$ 1,052.6
Short-term marketable securities	1,813.9	1,678.6
Accounts receivable, net	713.3	514.3
Inventory	306.7	357.3
Prepaid and other current assets	192.6	81.6
Total current assets	3,668.8	3,684.4
Property and equipment, net	1,055.6	801.8
Operating lease right-of-use assets	80.0	88.1
Goodwill	25.7	26.5
Intangibles, net	173.3	31.5
Deferred tax assets	341.2	290.5
Other assets	47.1	10.5
Total assets	$ 5,391.7	$ 4,933.3
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable and accrued liabilities	$ 901.8	$ 573.0
Accrued payroll and related expenses	134.3	125.2
Current portion of long-term senior convertible notes	772.6	—
Short-term operating lease liabilities	20.5	20.5
Deferred revenue	10.1	2.1
Total current liabilities	1,839.3	720.8
Long-term senior convertible notes	1,197.7	1,981.8
Long-term operating lease liabilities	94.6	98.6
Other long-term liabilities	128.3	90.0
Total liabilities	3,259.9	2,891.2
Commitments and contingencies		
Stockholders' equity:		
Preferred stock, $0.001 par value, 5.0 million shares authorized; no shares issued and outstanding at December 31, 2022 and December 31, 2021	—	—
Common stock, $0.001 par value, 800.0 million shares authorized; 393.2 million and 386.3 million shares issued and outstanding, respectively, at December 31, 2022; and 391.4 million and 388.0 million shares issued and outstanding, respectively, at December 31, 2021	0.4	0.4
Additional paid-in capital	2,258.1	2,108.7
Accumulated other comprehensive income (loss)	(11.6)	0.5
Retained earnings	479.9	138.7
Treasury stock, at cost; 6.9 million shares at December 31, 2022 and 3.4 million shares at December 31, 2021	(595.0)	(206.2)
Total stockholders' equity	2,131.8	2,042.1
Total liabilities and stockholders' equity	$ 5,391.7	$ 4,933.3

* We adjusted our 2021 amounts to reflect the simplified convertible instruments accounting guidance, which we adopted on a full retrospective basis. All periods presented have also been adjusted to reflect the four-for-one stock split. Refer to Note 1, "Organization and Significant Accounting Policies," to the consolidated financial statements for further information.

See accompanying notes

DexCom, Inc.
Consolidated Statements of Operations

(In millions, except per share data)	Twelve Months Ended December 31, 2022	2021 (As Adjusted)*	2020 (As Adjusted)*
Revenue	$ 2,909.8	$ 2,448.5	$ 1,926.7
Cost of sales	1,026.7	768.0	646.6
Gross profit	1,883.1	1,680.5	1,280.1
Operating expenses:			
Research and development	484.2	517.1	359.9
Collaborative research and development fee	—	87.1	—
Amortization of intangible assets	7.5	3.7	2.5
Selling, general and administrative	1,000.2	806.8	618.2
Total operating expenses	1,491.9	1,414.7	980.6
Operating income	391.2	265.8	299.5
Interest expense	(18.6)	(18.8)	(17.7)
Loss on extinguishment of debt	—	(0.1)	—
Income from equity investments	0.2	11.6	—
Interest and other income (expense), net	18.0	(1.7)	16.1
Income before income taxes	390.8	256.8	297.9
Income tax expense (benefit)	49.6	39.9	(251.8)
Net income	$ 341.2	$ 216.9	$ 549.7
Basic net income per share	$ 0.88	$ 0.56	$ 1.46
Shares used to compute basic net income per share	389.4	386.9	377.5
Diluted net income per share	$ 0.82	$ 0.53	$ 1.33
Shares used to compute diluted net income per share	427.5	428.8	420.4

* We adjusted our 2021 and 2020 amounts to reflect the simplified convertible instruments accounting guidance, which we adopted on a full retrospective basis. All periods presented have also been adjusted to reflect the four-for-one stock split. Refer to Note 1, “Organization and Significant Accounting Policies,” to the consolidated financial statements for further information.

See accompanying notes

DexCom, Inc.
Consolidated Statements of Comprehensive Income

(In millions)	Twelve Months Ended December 31, 2022	2021 (As Adjusted)*	2020 (As Adjusted)*
Net income	$ 341.2	$ 216.9	$ 549.7
Other comprehensive income (loss), net of tax:			
Translation adjustments and other	(9.8)	(1.0)	1.1
Unrealized loss on marketable debt securities	(2.3)	(1.7)	(0.2)
Total other comprehensive income (loss), net of tax	(12.1)	(2.7)	0.9
Comprehensive income	$ 329.1	$ 214.2	$ 550.6

* We adjusted our 2021 and 2020 amounts to reflect the simplified convertible instruments accounting guidance, which we adopted on a full retrospective basis. Refer to Note 1, “Organization and Significant Accounting Policies,” to the consolidated financial statements for further information.

See accompanying notes

DexCom, Inc.
Consolidated Statements of Stockholders' Equity

(In millions)	Common Stock Shares	Common Stock Amount	Additional Paid-In Capital	Accumulated Other Comprehensive Income (Loss)	Retained Earnings (Accumulated Deficit)	Treasury Stock	Total Stockholders' Equity
Balance at December 31, 2019 (As Adjusted)*	366.4	$ 0.4	$ 1,675.6	$ 2.3	$ (695.7)	$ (100.0)	$ 882.6
ASU 2020-06 Convertible Debt Full Retrospective Adoption	—	—	(242.3)	—	67.8	—	(174.5)
Issuance of common stock under equity incentive plans	4.2	—	0.3	—	—	—	0.3
Issuance of common stock for Employee Stock Purchase Plan	0.3	—	15.0	—	—	—	15.0
Tax benefit related to Senior Convertible Notes	—	—	45.6	—	—	—	45.6
Repurchase and conversions of 2022 Notes	13.5	—	112.9	—	—	—	112.9
Share-based compensation expense	—	—	119.4	—	—	—	119.4
Net income	—	—	—	—	549.7	—	549.7
Other comprehensive income, net of tax	—	—	—	0.9	—	—	0.9
Balance at December 31, 2020 (As Adjusted)*	384.4	0.4	1,726.5	3.2	(78.2)	(100.0)	1,551.9
Issuance of common stock under equity incentive plans	2.9	—	—	—	—	—	—
Issuance of common stock for Employee Stock Purchase Plan	0.3	—	20.3	—	—	—	20.3
Tax benefit related to Senior Convertible Notes	—	—	(2.0)	—	—	—	(2.0)
Conversions of 2023 Notes	1.4	—	32.6	—	—	24.6	57.2
Benefit of note hedge upon conversions of 2023 Notes	(1.0)	—	130.8	—	—	(130.8)	—
Share-based compensation expense	—	—	113.4	—	—	—	113.4
Collaborative research and development fee	—	—	87.1	—	—	—	87.1
Net income	—	—	—	—	216.9	—	216.9
Other comprehensive loss, net of tax	—	—	—	(2.7)	—	—	(2.7)
Balance at December 31, 2021 (As Adjusted)*	388.0	0.4	2,108.7	0.5	138.7	(206.2)	2,042.1
Issuance of common stock under equity incentive plans	1.6	—	—	—	—	—	—
Issuance of common stock for Employee Stock Purchase Plan	0.3	—	22.5	—	—	—	22.5
Issuance of common stock in connection with achievement of regulatory approval milestone, net of issuance costs	2.9	—	(189.3)	—	—	189.2	(0.1)
Purchases of treasury stock	(6.6)	—	—	—	—	(557.7)	(557.7)
Tax benefit related to Senior Convertible Notes	—	—	(0.4)	—	—	—	(0.4)
Conversions of 2023 Notes	0.4	—	4.2	—	—	13.2	17.4
Benefit of note hedge upon conversions of 2023 Notes	(0.3)	—	33.5	—	—	(33.5)	—
Share-based compensation expense	—	—	126.5	—	—	—	126.5
Capitalization of sales-based milestones	—	—	152.4	—	—	—	152.4
Net income	—	—	—	—	341.2	—	341.2
Other comprehensive loss, net of tax	—	—	—	(12.1)	—	—	(12.1)
Balance at December 31, 2022	386.3	$ 0.4	$ 2,258.1	$ (11.6)	$ 479.9	$ (595.0)	$ 2,131.8

* We adjusted our 2021 and 2020 amounts to reflect the simplified convertible instruments accounting guidance, which we adopted on a full retrospective basis on January 1, 2020. All periods presented have also been adjusted to reflect the four-for-one stock split. Refer to Note 1, "Organization and Significant Accounting Policies," to the consolidated financial statements for further information.

See accompanying notes

DexCom, Inc.
Consolidated Statements of Cash Flows

(In millions)	Twelve Months Ended December 31, 2022	2021 (As Adjusted)*	2020 (As Adjusted)*
Operating activities			
Net income	$ 341.2	$ 216.9	$ 549.7
Adjustments to reconcile net income to cash provided by operating activities:			
Depreciation and amortization	155.9	102.0	67.1
Share-based compensation	126.5	113.4	119.4
Collaborative research and development fee	—	87.1	—
Loss on extinguishment of debt	—	0.1	—
Non-cash interest expense	6.3	7.2	7.0
Realized (gain) loss on equity investment	(0.2)	(11.6)	—
Deferred income taxes (including benefit from valuation allowance release)	(21.6)	15.8	(260.5)
Other non-cash income and expenses	34.7	43.6	13.7
Changes in operating assets and liabilities:			
Accounts receivable, net	(199.9)	(75.5)	(142.3)
Inventory	49.3	(112.2)	(114.5)
Prepaid and other assets	(131.6)	(21.3)	(2.4)
Operating lease right-of-use assets and liabilities, net	(5.8)	(0.1)	(0.8)
Accounts payable and accrued liabilities	295.1	58.0	194.5
Accrued payroll and related expenses	8.5	10.4	26.1
Deferred revenue and other liabilities	11.1	8.7	18.6
Net cash provided by operating activities	669.5	442.5	475.6
Investing activities			
Purchase of marketable securities	(2,266.3)	(2,473.1)	(3,058.2)
Proceeds from sale and maturity of marketable securities	2,127.8	2,666.3	2,250.5
Purchases of property and equipment	(364.8)	(389.2)	(199.0)
Acquisitions, net of cash acquired	(3.9)	(30.2)	—
Other investing activities	(14.3)	10.1	(11.3)
Net cash used in investing activities	(521.5)	(216.1)	(1,018.0)
Financing activities			
Net proceeds from issuance of common stock	22.5	20.3	15.3
Purchases of treasury stock	(557.7)	—	—
Proceeds from issuance of convertible notes, net of issuance costs	—	—	1,188.8
Repurchase of convertible notes	—	—	(282.6)
Other financing activities	(17.3)	(9.9)	(9.4)
Net cash provided by (used in) financing activities	(552.5)	10.4	912.1
Effect of exchange rate changes on cash, cash equivalents and restricted cash	(5.8)	(1.4)	2.1
Increase (decrease) in cash, cash equivalents and restricted cash	(410.3)	235.4	371.8
Cash, cash equivalents and restricted cash, beginning of period	1,053.6	818.2	446.4
Cash, cash equivalents and restricted cash, end of period	$ 643.3	$ 1,053.6	$ 818.2
Reconciliation of cash, cash equivalents and restricted cash, end of period:			
Cash and cash equivalents	$ 642.3	$ 1,052.6	$ 817.6
Restricted cash	1.0	1.0	0.6
Total cash, cash equivalents and restricted cash	$ 643.3	$ 1,053.6	$ 818.2

	Twelve Months Ended December 31,		
	2022	2021	2020
		(As Adjusted)*	(As Adjusted)*
Supplemental disclosure of non-cash investing and financing transactions:			
Shares issued for repurchase and conversions of senior convertible notes	$ 35.9	$ 157.7	$ 1,350.9
Shares received under note hedge upon conversion of 2023 Notes	$ (33.5)	$ (130.8)	$ —
Acquisition of property and equipment included in accounts payable and accrued liabilities	$ 25.7	$ 45.4	$ 35.3
Supplemental cash flow information:			
Cash paid during the year for interest	$ 12.2	$ 11.6	$ 10.6
Cash paid during the year for income taxes	$ 114.2	$ 16.8	$ 3.6

* We adjusted our 2021 and 2020 amounts to reflect the simplified convertible instruments accounting guidance, which we adopted on a full retrospective basis. Refer to Note 1, “Organization and Significant Accounting Policies,” to the consolidated financial statements for further information.

See accompanying notes

1. Organization and Significant Accounting Policies

Organization and Business

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

Basis of Presentation and Principles of Consolidation

These consolidated financial statements include the accounts of DexCom, Inc. and our wholly owned subsidiaries. All significant intercompany balances and transactions have been eliminated in consolidation. We have reclassified certain amounts previously reported in our financial statements to conform to the current presentation. Amortization expense related to intangible assets has been presented separately from selling, general and administrative expenses in our consolidated statement of operations.

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

Stock Split

On June 10, 2022, the Company effected a four-for-one forward stock split of its common stock to shareholders of record as of May 19, 2022. The par value of the common stock remains $0.001 per share. All share and per share information has been retroactively adjusted to reflect the stock split for all periods presented.

Use of Estimates

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

Fair Value Measurements

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

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

Level 2—Uses inputs other than quoted prices included in Level 1 that are observable, either directly or indirectly, through correlation with market data. These include quoted prices in active markets for similar assets or liabilities; quoted prices for identical or similar assets or liabilities in markets that are not active; and inputs to valuation models or other pricing methodologies that do not require significant judgment because the inputs used in

the model, such as interest rates and volatility, can be corroborated by readily observable market data for substantially the full term of the assets or liabilities.

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

We estimate the fair value of most of our cash equivalents using Level 1 inputs. We estimate the fair value of our marketable equity securities using Level 1 inputs and we estimate the fair value of our marketable debt securities using Level 2 inputs. We carry our marketable securities at fair value. We carry our other financial instruments, such as cash and cash equivalents, accounts receivable, prepaid expenses and other current assets, accounts payable and accrued liabilities, at cost, which approximates the related fair values due to the short-term maturities of these instruments. See Note 3 “Fair Value Measurements” to the consolidated financial statements for more information.

Cash and Cash Equivalents

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

Marketable Securities

We have classified our marketable securities with remaining maturity at purchase of more than three months and remaining maturities of one year or less as short-term marketable securities. We have also classified marketable securities with remaining maturities of greater than one year as short-term marketable securities based upon our ability and intent to use any and all of those marketable securities to satisfy the liquidity needs of our current operations.

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

We invest in various types of debt securities, including debt securities in government-sponsored entities, corporate debt securities, U.S. Treasury securities, supranational securities, and commercial paper. We do not generally intend to sell these investments and it is not more likely than not that we will be required to sell the investments before recovery of their amortized cost bases, which may be at maturity. See Note 3 “Fair Value Measurements” and *Short-Term Marketable Securities* in Note 4 “Balance Sheet Details” to the consolidated financial statements for more information on our marketable securities.

Accounts Receivable and Allowance for Doubtful Accounts

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

Concentration of Credit Risk and Significant Customers

Financial instruments which potentially subject us to concentrations of credit risk consist primarily of cash, cash equivalents, short-term marketable securities, and accounts receivable. We limit our exposure to credit risk by placing our cash and investments with a few major financial institutions. We have also established guidelines regarding diversification of our investments and their maturities that are designed to maintain principal and

maximize liquidity. We review these guidelines periodically and modify them to take advantage of trends in yields and interest rates and changes in our operations and financial position.

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

	Revenue**			Gross Accounts Receivable	
	Twelve Months Ended December 31,			As of December 31,	
	2022	2021	2020	2022	2021
Customer A	32 %	28 %	23 %	19 %	16 %
Customer B	11 %	12 %	11 %	10 %	11 %
Customer C	26 %	21 %	18 %	17 %	13 %
Customer D	29 %	18 %	11 %	22 %	13 %
Customer E	10 %	*	*	*	*

* Less than 10%

** Total revenue for each customer is net of fees, cash discounts, and rebates directly allocable to that customer. Rebates paid to other entities are excluded; therefore, the combined value may exceed 100%.

Inventory

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

We record adjustments to inventory for potential excess or obsolete inventory, as well as inventory that does not pass quality control testing, in order to state inventory at net realizable value. Factors influencing these adjustments include inventories on hand and on order compared to estimated future usage and sales for existing and new products, as well as judgments regarding quality control testing data and assumptions about the likelihood of scrap and obsolescence. Once written down the adjustments are considered permanent and are not reversed until the related inventory is disposed of or sold.

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

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

Property and Equipment

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

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

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

Goodwill

We record goodwill when the fair value of consideration transferred in a business combination exceeds the fair value of the identifiable assets acquired and liabilities assumed. Goodwill and other intangible assets that have indefinite useful lives are not amortized, but we test them annually for impairment in the fourth quarter of our fiscal year and whenever events or changes in circumstances indicate that it is more likely than not that the fair value is less than the carrying value. Events that would indicate impairment and trigger an interim impairment assessment include, but are not limited to, current economic and market conditions, including a decline in market capitalization, a significant adverse change in legal factors, business climate or operational performance of the business, and an adverse action or assessment by a regulator.

We perform our goodwill impairment analysis at the reporting unit level, which aligns with Dexcom's reporting structure and the availability of discrete financial information. We perform the first step of our annual impairment analysis by either comparing a reporting unit's estimated fair value to its carrying amount or doing a qualitative assessment of a reporting unit's fair value from the last quantitative assessment to determine if there is potential impairment. We may do a qualitative assessment when the results of the previous quantitative test indicated the reporting unit's estimated fair value was significantly in excess of the carrying value of its net assets and we do not believe there have been significant changes in the reporting unit's operations that would significantly decrease its estimated fair value or significantly increase its net assets. If a quantitative assessment is performed the evaluation includes management estimates of cash flow projections based on internal future projections and/or use of a market approach by looking at market values of comparable companies. Key assumptions for these projections include revenue growth, future gross margin and operating margin growth, and weighted cost of capital and terminal growth rates. The revenue and margin growth are based on increased sales of new and existing products as we maintain investments in research and development. Additional assumed value creators may include increased efficiencies from capital spending. The resulting cash flows are discounted using a weighted average cost of capital. Operating mechanisms and requirements to ensure that growth and efficiency assumptions will ultimately be realized are also considered in the evaluation, including the timing and probability of regulatory approvals for our products to be commercialized. We also consider Dexcom's market capitalization as a part of our analysis.

If the estimated fair value of a reporting unit exceeds the carrying amount of the net assets assigned to that unit, goodwill is not impaired and no further analysis is required. If the carrying value of the net assets assigned to a reporting unit exceeds the estimated fair value of the unit, we perform the second step of the impairment test. In this step we allocate the fair value of the reporting unit calculated in step one to all of the assets and liabilities of that unit, as if we had just acquired the reporting unit in a business combination. The excess of the fair value of the reporting unit over the total amount allocated to the assets and liabilities represents the implied fair value of goodwill. If the carrying amount of a reporting unit's goodwill exceeds its implied fair value, we would record an impairment loss equal to the difference. We recorded no goodwill impairment charges for the twelve months ended December 31, 2022, 2021 or 2020.

The change in goodwill for the twelve months ended December 31, 2022 and 2020 consisted of translation adjustments on our foreign currency denominated goodwill. The change in goodwill for the twelve months ended December 31, 2021 consisted of goodwill we recorded for acquisitions that were not significant, individually or in the aggregate, and translation adjustments on our foreign currency denominated goodwill.

Intangible Assets and Other Long-Lived Assets

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

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

We recorded no significant intangible asset impairment charges for the twelve months ended December 31, 2022, 2021 or 2020.

Income Taxes

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

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

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

We file federal and state income tax returns in the United States and income tax returns in various other foreign jurisdictions with varying statutes of limitations. Due to net operating losses incurred on our U.S. Federal returns, our income tax returns from inception to date are subject to examination by taxing authorities.

We recognize interest expense and penalties related to income tax matters, including unrecognized tax benefits, as a component of income tax expense.

We recognize income tax expense for basis differences related to global intangible low-taxed income ("GILTI") as a period cost if and when incurred. GILTI is a category of income that is earned abroad by U.S.-controlled foreign corporations (CFCs) and is subject to special treatment under the U.S. tax code.

Warranty Accrual

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

Loss Contingencies

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

Comprehensive Income

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

Revenue Recognition

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

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

Contracts and Performance Obligations

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

Transaction Price

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

Variable Consideration

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

Estimates

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

Rebates

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

Chargebacks

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

Consideration Payable to the Customer

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

Product Returns

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

Prompt Payment Discounts

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

Various Other Promotional or Incentive Arrangements

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

Revenue Recognition

We record revenue from sales of Components upon transfer of control of the product to the customer. We typically determine transfer of control based on when the product is shipped or delivered and title passes to the customer.

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

Our sales of Components include an assurance-type warranty.

Contract Balances

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

Accounts receivable as of December 31, 2022 included unbilled accounts receivable of $9.0 million. We expect to invoice and collect all unbilled accounts receivable within twelve months.

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

Our performance obligations are generally satisfied within twelve months of the initial contract date. The deferred revenue balances related to performance obligations that will be satisfied after twelve months was $19.0 million as of December 31, 2022 and $16.1 million as of December 31, 2021. These balances are included in other

long-term liabilities in our consolidated balance sheets. Revenue recognized in the period from performance obligations satisfied in previous periods was not material for the periods presented.

Deferred Cost of Sales

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

Incentive Compensation Costs

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

Senior Convertible Notes

In August 2020, the FASB issued ASU 2020-06, which simplifies the accounting for convertible debt instruments, amends the guidance on derivative scope exceptions for contracts in an entity's own equity, and modifies the guidance on diluted earnings per share calculations.

We previously followed in Accounting Standard Codification, or ASC, 470-20, which required us to separate each of our convertible debt instruments at issuance into two units of accounting, a liability component, based on our nonconvertible debt borrowing rate at issuance, and an equity component. Under ASU 2020-06, we now account for each of our convertible debt instruments as a single unit of accounting, a liability, because we concluded that there were no material conversion features that require bifurcation as a derivative under ASC 815-15 and our convertible debt instruments were not issued at a substantial premium. Since we adopted ASU 2020-06 using the full retrospective approach, we were required to apply the guidance to all convertible debt instruments we had outstanding as of January 1, 2020.

Upon adoption of ASU 2020-06 as of January 1, 2020, we recognized $67.8 million cumulative-effect adjustment to increase retained earnings for the decrease in interest expense and $242.3 million decrease in additional paid in capital for the elimination of the equity component. We have updated these financial statements to reflect the cumulative adjustment for the periods presented. We have labeled our prior period financial statements and related notes "As Adjusted" to indicate the change required under the new accounting guidance.

Below is a summary of the changes in our consolidated balance sheets we originally reported as of December 31, 2020 and 2021 under the ASC 470-20 legacy guidance compared to our adjusted consolidated balance sheets under the new ASU 2020-06 guidance we adopted and reflective of our four-for-one forward stock split:

Consolidated Balance Sheet	**As of December 31, 2020**			
(In millions)	**As Previously Reported**	**ASU 2020-06 Adjustment**	**Stock Split Adjustment**	**As Adjusted**
Deferred tax assets	$ 216.4	$ 91.3	$ —	$ 307.7
Long-term senior convertible notes	1,667.2	365.9	—	2,033.1
Common stock	0.1	—	0.3	0.4
Additional paid-in-capital	2,125.3	(398.5)	(0.3)	1,726.5
Accumulated deficit	$ (202.1)	$ 123.9	$ —	$ (78.2)

Consolidated Balance Sheet	**As of December 31, 2021**			
(In millions)	**As Previously Reported**	**ASU 2020-06 Adjustment**	**Stock Split Adjustment**	**As Adjusted**
Deferred tax assets	$ 220.8	$ 69.7	$ —	$ 290.5
Long-term senior convertible notes	1,702.7	279.1	—	1,981.8
Common stock	0.1	—	0.3	0.4
Additional paid-in-capital	2,504.5	(395.5)	(0.3)	2,108.7
Retained earnings (accumulated deficit)	$ (47.4)	$ 186.1	$ —	$ 138.7

Below is a summary of the changes in our consolidated statements of operations for the twelve months ended December 31, 2020 and December 31, 2021 we originally reported at December 31, 2021 under the ASC 470-20 legacy guidance compared to our adjusted balance sheets under the new ASU 2020-06 guidance we adopted and reflective of our four-for-one forward stock split:

Consolidated Statement of Operations	**Twelve Months Ended December 31, 2020**		
(In millions, except per share data)	**As Previously Reported**	**ASU 2020-06 Adjustment**	**As Adjusted**
Loss on extinguishment of debt	$ (5.9)	$ 5.9	$ —
Interest expense	(84.7)	67.0	(17.7)
Income before income taxes	225.0	72.9	297.9
Income tax expense (benefit)	(268.6)	16.8	(251.8)
Net income	493.6	56.1	549.7
Basic net income per share	1.31	0.15	1.46
Diluted net income per share [(1)]	$ 1.27	$ 0.06	$ 1.33
Shares used to compute diluted net income per share	389.8	30.6	420.4

[(1)] Dilutive net income used for diluted net income per share under ASU 2020-06 includes $11.1 million add back of interest expense, net of tax, attributable to assumed conversion of senior convertible notes.

Consolidated Statement of Operations	**Twelve Months Ended December 31, 2021**		
(In millions, except per share data)	**As Previously Reported**	**ASU 2020-06 Adjustment**	**As Adjusted**
Loss on extinguishment of debt	$ (1.5)	$ 1.4	$ (0.1)
Interest expense	(100.3)	81.5	(18.8)
Income before income taxes	173.9	82.9	256.8
Income tax expense	19.2	20.7	39.9
Net income	154.7	62.2	216.9
Basic net income per share	0.40	0.16	0.56
Diluted net income per share [(1)]	$ 0.39	$ 0.14	$ 0.53
Shares used to compute diluted net income per share	400.4	28.4	428.8

[(1)] Dilutive net income used for diluted net income per share under ASU 2020-06 includes $11.4 million add back of interest expense, net of tax, attributable to assumed conversion of senior convertible notes.

Below is a summary of our consolidated balance sheet as of December 31, 2022 and consolidated statement of operations for the twelve months ended December 31, 2022 under the ASC 470-20 legacy guidance compared to the new ASU 2020-06 guidance we adopted.

Consolidated Balance Sheet	**As of December 31, 2022**		
(In millions)	**As computed under ASC 470-20**	**ASU 2020-06 Adjustment**	**As reported under ASU 2020-06**
Prepaid and other current assets	$ 191.5	$ 1.1	$ 192.6
Deferred tax assets	293.1	48.1	341.2
Current portion of long-term senior convertible notes	740.9	31.7	772.6
Long-term senior convertible notes	1,034.9	162.8	1,197.7
Additional paid-in-capital	2,652.2	(394.1)	2,258.1
Retained earnings	$ 231.1	$ 248.8	$ 479.9

Consolidated Statement of Operations	Twelve Months Ended December 31, 2022		
(In millions, except per share data)	As computed under ASC 470-20	ASU 2020-06 Adjustment	As reported under ASU 2020-06
Loss on extinguishment of debt	$ (0.4)	$ 0.4	$ —
Interest expense	(101.9)	83.3	(18.6)
Income before income taxes	307.1	83.7	390.8
Income tax expense	28.6	21.0	49.6
Net income	278.5	62.7	341.2
Basic net income per share	0.72	0.16	0.88
Diluted net income per share [(1)]	$ 0.70	$ 0.12	$ 0.82
Shares used to compute diluted net income per share	400.5	27.0	427.5

[(1)] Dilutive net income used for diluted net income per share under ASU 2020-06 includes $11.0 million add back of interest expense, net of tax, attributable to assumed conversion of senior convertible notes.

Product Shipment Costs

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

Research and Development

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

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

Collaboration Agreements

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

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

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

Advertising Costs

We expense costs to produce advertising as we incur them whereas costs to communicate advertising are expensed when the advertising is first run. Advertising costs are included in selling, general and administrative expenses. Advertising expense was $133.0 million, $126.4 million and $76.5 million for the twelve months ended December 31, 2022, 2021 and 2020, respectively.

Leases

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

Share-Based Compensation

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

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

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

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

Net Income Per Share

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

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

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

	Twelve Months Ended December 31,		
	2022	2021	2020
(In millions, except per share data)		As Adjusted	As Adjusted
Net income	$ 341.2	$ 216.9	$ 549.7
Add back interest expense, net of tax attributable to assumed conversion of senior convertible notes	11.0	11.4	11.1
Net income - diluted	$ 352.2	$ 228.3	$ 560.8
Net income per common share			
Basic	$ 0.88	$ 0.56	$ 1.46
Diluted	$ 0.82	$ 0.53	$ 1.33
Basic weighted average shares outstanding	389.4	386.9	377.5
Dilutive potential common stock outstanding:			
Restricted stock units and performance stock units	1.0	2.1	4.0
Warrants	10.2	11.5	8.4
Senior convertible notes	26.9	28.3	30.5
Diluted weighted average shares outstanding	427.5	428.8	420.4

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

	Twelve Months Ended December 31,		
	2022	2021	2020
(In millions)		As Adjusted	As Adjusted
Restricted stock units	0.4	—	0.1

Recent Accounting Guidance

Recently Adopted Accounting Pronouncements

In August 2020, the FASB issued ASU No. 2020-06, *Debt—Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging—Contracts in Entity's Own Equity (Subtopic 815-40)*. This new guidance is intended to reduce the complexity of accounting for convertible instruments. The guidance also addresses how convertible instruments are accounted for in the diluted earnings per share calculation and requires enhanced disclosures about the terms of convertible instruments. Entities may adopt ASU 2020-06 using either a partial retrospective or fully retrospective method of transition. This ASU is effective for public business entities for fiscal years beginning after December 15, 2021, including interim periods within those fiscal years. Early adoption is permitted for fiscal years beginning after December 15, 2020, including interim periods within those fiscal years. We adopted ASU 2020-06 in the first quarter of 2022 using the full retrospective method, reflecting the application of the new standard in each prior reporting period.

Recently Issued Accounting Pronouncements Not Yet Adopted

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

2. Development and Other Agreements

Collaboration with Verily Life Sciences

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

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

In consideration of Verily's performance of its obligations under the joint development plan of the Restated Collaboration Agreement, the licenses granted to us and the amendment of the original agreement, we made upfront, incentive, and the product regulatory approval payments, and will make potential payments for contingent sales-based milestones upon the achievement of certain revenue targets.

We account for the contingent milestones payable in shares of our common stock as equity instruments within the scope of ASC Topic 718. The product regulatory approval and sales-based milestones are accounted for as performance-based awards that vest when the performance conditions have been achieved and are recognized when the achievement of the respective contingent milestone is deemed probable. The value of the contingent milestones is based on our closing stock price on December 28, 2018, which was $29.57 per share.

Upfront and Incentive payments

In the fourth quarter of 2018, we made an initial payment for an upfront fee of $250.0 million through the issuance of 7,363,772 shares of our common stock. We recorded a $217.7 million charge in our consolidated statements of operations during 2018 relating to the issuance of this common stock because this milestone payment did not meet the capitalization criteria. The value of the charge was based on our closing stock price of $29.57 per share on December 28, 2018, the date on which we obtained the necessary regulatory approvals and represents the date the performance- based awards were issued. In 2019, we made a cash incentive payment of $3.2 million due to the completion of certain development obligations and we recorded these payments as research and development expense in our consolidated statements of operations.

Contingent milestones

In the fourth quarter of 2021, we determined the achievement of the regulatory approval milestone to be probable and recorded an $87.1 million research and development charge in our consolidated statements of operations. This charge is associated with IPR&D obtained in an asset acquisition prior to regulatory approval and therefore does not have an alternative future use.

In the first quarter of 2022, we received regulatory approval and issued 2,945,508 shares of our common stock in connection with our achievement of the related milestone.

In December 2022, we received FDA approval and determined the achievement of the sales-based milestones to be probable. As such, we capitalized the full value of the sales-based milestones, $152.4 million, as an intangible asset. The sales-based milestones are contingent upon the achievement of certain revenue targets. The value of the sales based milestones is based on: 1) 5,154,640 shares of our common stock, as agreed upon in November 2018 and 2) our closing stock price on December 28, 2018 of $29.57 per share. December 28, 2018 is the date on which we obtained the necessary regulatory approvals and represents the date the performance- based awards were issued. The intangible asset will be amortized using the straight-line method over its estimated useful life of 64 months through March 2028. The related amortization expense is recognized in Cost of Sales in our consolidated

statements of operations and disclosed in Note 4 “Intangibles, Net” to the consolidated financial statements in Part II, Item 8 of this Annual Report.

All milestones may be paid in cash or shares of our common stock, at our election. If we elect to make these milestone payments in cash, any such cash payment would be equal to the number of shares that would otherwise be issued for the given milestone payment multiplied by the value of our stock on the date the relevant milestone is achieved, and adjusted to give effect to any stock splits, dividends, or similar events. We intend to pay the sales-based contingent milestones in shares of our common stock.

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

3. Fair Value Measurements

Assets and Liabilities Measured at Fair Value on a Recurring Basis

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

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

The following table summarizes financial assets that we measured at fair value on a recurring basis as of December 31, 2022, classified in accordance with the fair value hierarchy:

	Fair Value Measurements Using			
(In millions)	Level 1	Level 2	Level 3	Total
Cash equivalents	$ 375.9	$ 44.8	$ —	$ 420.7
Debt securities, available-for-sale:				
U.S. government agencies [1]	—	1,530.7	—	1,530.7
Commercial paper	—	119.4	—	119.4
Corporate debt	—	163.8	—	163.8
Supranationals	—	—	—	—
Total debt securities, available-for-sale	—	1,813.9	—	1,813.9
Other assets [2]	10.2	—	—	10.2
Total assets measured at fair value on a recurring basis	$ 386.1	$ 1,858.7	$ —	$ 2,244.8

[1] Includes debt obligations issued by U.S. government-sponsored enterprises or U.S. government agencies.

[2] Includes assets which are held pursuant to a deferred compensation plan for senior management, which consist mainly of mutual funds.

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

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

[1] Includes assets which are held pursuant to a deferred compensation plan for senior management, which consist mainly of mutual funds.

There were no transfers into or out of Level 3 securities during the twelve months ended December 31, 2022 and 2021.

We hold certain other investments that we do not measure at fair value on a recurring basis. The carrying values of these investments are $19.0 million as of December 31, 2022 and $4.5 million as of December 31, 2021. We include them in other assets in our consolidated balance sheets. It is impracticable for us to estimate the fair value of these investments on a recurring basis due to the fact that these entities are privately held and limited information is available. We monitor the information that becomes available from time to time and adjust the carrying values of these investments if there are identified events or changes in circumstances that have a significant effect on the fair values.

Fair Value of Senior Convertible Notes

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

	Fair Value Measurements Using Level 1	
(In millions)	December 31, 2022	December 31, 2021
Senior Convertible Notes due 2023	$ 2,136.2	$ 2,589.6
Senior Convertible Notes due 2025	1,314.9	1,432.9
Total fair value of outstanding senior convertible notes	$ 3,451.1	$ 4,022.5

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

Foreign Currency and Derivative Financial Instruments

We enter into foreign currency forward contracts to hedge monetary assets and liabilities denominated in foreign currencies. Our foreign currency forward contracts are not designated as hedging instruments. Therefore, changes in the fair values of these contracts are recognized in earnings, thereby offsetting the current earnings effect of the related foreign currency assets and liabilities. The duration of these contracts is generally one month. The derivative gains and losses are included in interest and other income (expense), net in our consolidated statements of operations.

As of December 31, 2022 and December 31, 2021, the notional amounts of outstanding foreign currency forward contracts were $62.0 million and $40.0 million, respectively. The resulting impact on our consolidated financial statements from currency hedging activities was not significant for the twelve months ended December 31, 2022, 2021 and 2020.

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

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

In accordance with authoritative guidance, we measure certain non-financial assets and liabilities at fair value on a non-recurring basis. These measurements are usually performed using the discounted cash flow method or cost method and Level 3 inputs. These include items such as non-financial assets and liabilities initially measured at fair value in a business combination and non-financial long-lived assets measured at fair value for an impairment assessment. In general, non-financial assets, including goodwill, intangible assets, and property and equipment, are measured at fair value when there are indicators of impairment and are recorded at fair value only when an impairment is recognized.

During the fourth quarter 2022, we vacated a leased building and made it available for sublease, resulting in an impairment of its asset group which consisted primarily of leasehold improvements and right-of-use asset. We recorded $23.0 million in impairment losses during the twelve months ended December 31, 2022. See Note 6 “Leases” to the consolidated financial statements for more information. There were no significant impairment losses during the twelve months ended December 31, 2021 and 2020.

4. Balance Sheet Details

Short-Term Marketable Securities

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

	December 31, 2022			
(In millions)	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Market Value
Debt securities, available-for-sale:				
U.S. government agencies [1]	$ 1,535.1	$ 0.2	$ (4.6)	$ 1,530.7
Commercial paper	119.6	—	(0.2)	119.4
Corporate debt	164.3	—	(0.5)	163.8
Supranationals	—	—	—	—
Total debt securities, available-for-sale	$ 1,819.0	$ 0.2	$ (5.3)	$ 1,813.9

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

[1] Includes debt obligations issued by U.S. government-sponsored enterprises or U.S. government agencies.

As of December 31, 2022, the estimated market value of our short-term debt securities with contractual maturities up to 12 months was $1.81 billion. As of December 31, 2021, the estimated market value of our short-term debt securities with contractual maturities up to 12 months and up to 18 months was $1.36 billion and $320.7 million, respectively. Gross realized gains and losses on sales of our short-term debt securities for the twelve months ended December 31, 2022, 2021 and 2020 were not significant.

We periodically review our portfolio of debt securities to determine if any investment is impaired due to credit loss or other potential valuation concerns. For debt securities where the fair value of the investment is less than the amortized cost basis, we have assessed at the individual security level for various quantitative factors including, but not limited to, the nature of the investments, changes in credit ratings, interest rate fluctuations, industry analyst reports, and the severity of impairment. Unrealized losses on available-for-sale debt securities at December 31, 2022 were primarily due to increases in interest rates, including market credit spreads, and not due to increased credit risks associated with specific securities. Accordingly, we have not recorded an allowance for credit losses. We do not intend to sell these investments and it is not more likely than not that we will be required to sell the investments before recovery of their amortized cost bases, which may be at maturity.

Equity Investments

During the twelve months ended December 31, 2022, 2021 and 2020, we had no unrealized gains or losses recognized during the reporting period on equity investments. Realized gains from the sale of an equity investment were $0.2 million and $11.6 million for the twelve months ended December 31, 2022 and 2021, respectively.

Accounts Receivable

	December 31,	
(In millions)	2022	2021
Accounts receivable	$ 720.6	$ 519.7
Less allowance for doubtful accounts	(7.3)	(5.4)
Total accounts receivable, net	$ 713.3	$ 514.3

Reserve for prompt payment cash discounts recorded against accounts receivable, excluding allowance for doubtful accounts, was $8.3 million, $13.7 million, $15.9 million as of December 31, 2022, 2021, and 2020, respectively.

Inventory

	December 31,	
(In millions)	2022	2021
Raw materials	$ 159.0	$ 145.2
Work-in-process	17.2	16.2
Finished goods	130.5	195.9
Total inventory	$ 306.7	$ 357.3

During the twelve months ended December 31, 2022, 2021 and 2020, we recorded excess and obsolete inventory charges of $13.9 million, $28.1 million and $24.4 million respectively, in cost of sales as a result of our ongoing assessment of sales demand, inventory on hand for each product and the continuous improvement and innovation of our products.

Prepaid and Other Current Assets

	December 31,	
(In millions)	2022	2021
Prepaid expenses	$ 48.9	$ 39.8
Prepaid inventory	67.8	12.1
Income tax receivables	38.9	2.3
Other current assets	37.0	27.4
Total prepaid and other current assets	$ 192.6	$ 81.6

Property and Equipment

(In millions)	December 31, 2022	December 31, 2021
Land [1]	$ 26.9	$ 15.6
Building [1]	54.3	49.1
Furniture and fixtures	32.6	30.7
Computer software and hardware	48.8	52.7
Machinery and equipment	449.2	272.9
Leasehold improvements	264.4	251.6
Construction in progress	542.6	360.7
Total cost	1,418.8	1,033.3
Less accumulated depreciation and amortization	(363.2)	(231.5)
Total property and equipment, net	$ 1,055.6	$ 801.8

[1] Represents finance lease right-of-use assets.

Depreciation expense related to property and equipment for the twelve months ended December 31, 2022, 2021 and 2020 was $144.1 million, $96.3 million and $64.0 million, respectively.

Loss on disposal of property and equipment during the twelve months ended December 31, 2022, 2021 and 2020 recorded in operating expenses was $2.2 million, $24.5 million and $13.6 million, respectively.

Intangibles, Net

The following table summarizes the components of gross intangible assets, accumulated amortization, and net intangible asset balances as of December 31, 2022 and December 31, 2021

(Dollars in millions)	Weighted Average Useful Life (in years)	December 31, 2022 Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Verily intangible asset [1]	5.3	$ 152.4	$ (2.4)	$ 150.0
Customer relationships	3.3	24.1	(8.7)	15.4
Acquired technology and intellectual property [2]	1.7	14.6	(9.6)	5.0
Trademarks and trade name	3.5	4.2	(1.3)	2.9
Intangibles, other	0.0	0.2	(0.2)	—
Total	4.9	$ 195.5	$ (22.2)	$ 173.3

[1] See Note 2 “Development and Other Agreements” to the consolidated financial statements in Part II, Item 8 of this Annual Report for more information.

[2] Excludes Verily intangible asset.

(Dollars in millions)	Weighted Average Useful Life (in years)	December 31, 2021 Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Customer relationships	4.5	$ 22.9	$ (3.5)	$ 19.4
Acquired technology and intellectual property	2.7	15.2	(7.1)	8.1
Trademarks and trade name	4.5	4.4	(0.5)	3.9
Intangibles, other	1.1	0.3	(0.2)	0.1
Total	4.0	$ 42.8	$ (11.3)	$ 31.5

The following table presents the total amortization expense of finite-lived intangible assets for the twelve months ended December 31, 2022, 2021 and 2020:

	Twelve Months Ended December 31,		
(In millions)	2022	2021	2020
Amortization expense included in cost of sales	$ 4.3	$ 1.9	$ 0.6
Amortization expense included in operating expenses	7.5	3.7	2.5
Total amortization of intangible assets	$ 11.8	$ 5.6	$ 3.1

The following table presents estimated future amortization of the Company's finite-lived intangible assets as of December 31, 2022:

(In millions)	
2023	37.3
2024	35.8
2025	33.2
2026	31.3
2027	28.6
Thereafter	7.1
Total	$ 173.3

Other Assets

Other assets were $47.1 million and $10.5 million as of December 31, 2022 and December 31, 2021, respectively. The increase in other assets is primarily due to an increase in long-term equity investments in privately held entities, long-term prepaid assets, and term deposits.

Accounts Payable and Accrued Liabilities

	December 31,	
	2022	2021
(In millions)		As Adjusted
Accounts payable trade	$ 237.9	$ 189.4
Accrued tax, audit, and legal fees	44.8	40.6
Accrued rebates	556.4	260.5
Accrued warranty	12.8	12.9
Contractual obligations	—	15.0
Other accrued liabilities	49.9	54.6
Total accounts payable and accrued liabilities	$ 901.8	$ 573.0

Accrued Payroll and Related Expenses

	December 31,	
(In millions)	2022	2021
Accrued wages, bonus and taxes	$ 96.8	$ 91.8
Other accrued employee benefits	37.5	33.4
Total accrued payroll and related expenses	$ 134.3	$ 125.2

Accrued Warranty

Warranty costs are reflected in our statements of operations as cost of sales. Reconciliations of our accrued warranty costs for the twelve months ended December 31, 2022, 2021 and 2020 were as follows:

	Twelve Months Ended December 31,		
(In millions)	2022	2021	2020
Beginning balance	$ 12.9	$ 11.7	$ 7.4
Charges to costs and expenses	43.0	41.5	41.3
Costs incurred	(43.1)	(40.3)	(37.0)
Ending balance	$ 12.8	$ 12.9	$ 11.7

Other Long-Term Liabilities

	December 31,	
(In millions)	2022	2021
Finance lease obligations	$ 59.6	$ 57.0
Deferred revenue, long-term	19.0	16.1
Deferred tax liabilities	4.9	5.9
Other tax liabilities	32.7	2.8
Other liabilities	12.1	8.2
Total other long-term liabilities	$ 128.3	$ 90.0

5. Debt

Senior Convertible Notes

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

	December 31,	
	2022	2021
(In millions)		As Adjusted
Principal amount:		
Senior Convertible Notes due 2023	$ 774.8	$ 792.3
Senior Convertible Notes due 2025	1,207.5	1,207.5
Total principal amount	1,982.3	1,999.8
Unamortized debt issuance costs	(12.0)	(18.0)
Carrying amount of senior convertible notes	$ 1,970.3	$ 1,981.8

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

	December 31,	
(In millions)	2022	2021
Senior Convertible Notes due 2023	$ 1,361.5	$ 1,797.3
Senior Convertible Notes due 2025	33.6	141.8
Total by which the notes' if-converted value exceeds their principal amount	$ 1,395.1	$ 1,939.1

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

	Twelve Months Ended December 31,		
	2022	2021	2020
(Dollars in millions)		As Adjusted	As Adjusted
Cash interest expense:			
Contractual coupon interest [1]	$ 8.8	$ 9.3	$ 9.3
Non-cash interest expense:			
Amortization of debt issuance costs	5.9	6.0	5.5
Total interest expense recognized on senior notes	$ 14.7	$ 15.3	$ 14.8
Effective interest rate:			
Senior Convertible Notes due 2022 [2]	*	*	1.3 %
Senior Convertible Notes due 2023	1.1 %	1.1 %	1.1 %
Senior Convertible Notes due 2025	0.5 %	0.5 %	0.5 %

[1] Interest on the 2022 Notes began accruing upon issuance and was payable semi-annually on May 15 and November 15 of each year. Interest on the 2023 Notes began accruing upon issuance and is payable semi-annually on June 1 and December 1 of each year. Interest on the 2025 Notes began accruing upon issuance and is payable semi-annually on May 15 and November 15 of each year.

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

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

Repurchase, Conversion, and Redemption of 2022 Notes

In May 2020, we used approximately $282.6 million of the net proceeds from the 2025 Notes offering described below and issued 7,812,268 shares of Dexcom common stock to repurchase $260.0 million principal amount outstanding of the 2022 Notes and the associated conversion feature of the repurchased notes (which was recorded in additional paid-in capital). Holders of $140.0 million in aggregate principal amount of the 2022 Notes elected conversion at their option during the twelve months ended December 31, 2020. We settled these conversions by issuing 5,649,988 shares of our common stock.

0.75% Senior Convertible Notes due 2023

In November 2018, we completed an offering of $850.0 million aggregate principal amount of unsecured senior convertible notes with a stated interest rate of 0.75% and a maturity date of December 1, 2023 (the “2023 Notes”). The net proceeds from the offering, after deducting initial purchasers’ discounts and costs directly related to the offering, were approximately $836.6 million. The initial conversion rate of the 2023 Notes is 24.3476 shares per $1,000 principal amount of notes, which is equivalent to a conversion price of approximately $41.07 per share, subject to adjustments. We entered into transactions for a convertible note hedge (the “2023 Note Hedge”) and warrants (the “2023 Warrants”) concurrently with the issuance of the 2023 Notes. The 2023 Notes may be settled in cash, stock, or a combination thereof, solely at our discretion. We use the if-converted method for assumed conversion of the 2023 Notes to compute the weighted average shares of common stock outstanding for diluted earnings per share.

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

For the twelve months ended December 31, 2021, holders of $57.7 million in aggregate principal amount of the 2023 Notes elected conversion at their option. We settled these conversions by issuing a combination of common stock and treasury stock. We issued 1,403,112 shares to settle the converted 2023 Notes during the twelve months ended December 31, 2021, of which 794,588 shares were issued out of treasury stock. We received 967,380

shares of common stock from the exercise of a portion of the 2023 Note Hedge that we purchased concurrently with the issuance of the 2023 Notes, as described below.

For the twelve months ended December 31, 2022, holders of $17.5 million in aggregate principal amount of the 2023 Notes elected conversion at their option. We settled these conversions using treasury stock. We issued 425,552 treasury shares to settle the converted 2023 Notes. We received 287,492 shares of common stock from the exercise of a portion of the 2023 Note Hedge that we purchased concurrently with the issuance of the 2023 Notes, as described below.

Conversion Rights at the Option of the Holders

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

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

(1) during any calendar quarter commencing after March 31, 2019 (and only during such calendar quarter), if the last reported sale price of Dexcom's common stock for at least 20 trading days (whether or not consecutive) during the period of 30 consecutive trading days ending on the last trading day of the immediately preceding calendar quarter is greater than or equal to 130% of the applicable conversion price of the 2023 Notes on each such trading day;

(2) during the five business day period after any five consecutive trading day period in which the trading price per $1,000 principal amount of the 2023 Notes for each day of that five-day consecutive trading day period was less than 98% of the product of the last reported sale price of Dexcom's common stock and the applicable conversion rate of the 2023 Notes on such trading day;

(3) if we call any or all of the 2023 Notes for redemption, at any time prior to the close of business on the scheduled trading day immediately preceding the redemption date; or

(4) upon the occurrence of specified corporate transactions.

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

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

Conversion Rights at Our Option

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

2023 Note Hedge

In connection with the offering of the 2023 Notes, in November 2018 we entered into convertible note hedge transactions with two of the initial purchasers of the 2023 Notes (the "2023 Counterparties") entitling us to purchase up to 20.7 million shares of our common stock at an initial price of $41.07 per share, each of which is subject to adjustment. The cost of the 2023 Note Hedge was $218.9 million and we accounted for it as an equity instrument by recognizing $218.9 million in additional paid-in capital during 2018. The 2023 Note Hedge will expire on December 1, 2023. The 2023 Note Hedge is expected to reduce the potential equity dilution upon any conversion of the 2023 Notes and/or offset any cash payments we are required to make in excess of the principal amount of

converted 2023 Notes if the daily volume-weighted average price per share of our common stock exceeds the strike price of the 2023 Note Hedge. The strike price of the 2023 Note Hedge initially corresponds to the conversion price of the 2023 Notes and is subject to certain adjustments under the terms of the 2023 Note Hedge. An assumed exercise of the 2023 Note Hedge by us is considered anti-dilutive since the effect of the inclusion would always be anti-dilutive with respect to the calculation of diluted earnings per share. See above for a description of conversion activity related to the 2023 Notes and shares received as the result of exercising a portion of the 2023 Note Hedge.

2023 Warrants

In November 2018, we also sold warrants to the 2023 Counterparties to acquire up to 20.7 million shares of our common stock. The 2023 Warrants require net share settlement and a pro rated number of warrants will expire on each of the 60 scheduled trading days starting on March 1, 2024. We received $183.8 million in cash proceeds from the sale of the 2023 Warrants, which we recorded in additional paid-in capital during 2018. The 2023 Warrants could have a dilutive effect on our earnings per share to the extent that the price of our common stock during a given measurement period exceeds the strike price of the 2023 Warrants. The strike price of the 2023 Warrants is initially $49.60 per share and is subject to certain adjustments under the terms of the warrant agreements. We use the treasury share method for assumed conversion of the 2023 Warrants when computing the weighted average common shares outstanding for diluted earnings per share.

0.25% Senior Convertible Notes due 2025

In May 2020, we completed an offering of $1.21 billion aggregate principal amount of unsecured senior convertible notes with a stated interest rate of 0.25% and a maturity date of November 15, 2025 (the “2025 Notes”). The net proceeds from the offering, after deducting initial purchasers’ discounts and estimated costs directly related to the offering, were approximately $1.19 billion. The initial conversion rate of the 2025 Notes is 6.6620 shares per $1,000 principal amount of notes, which is equivalent to a conversion price of approximately $150.11 per share, subject to adjustments. The 2025 Notes may be settled in cash, stock, or a combination thereof, solely at our discretion. We use the if-converted method for assumed conversion of the 2025 Notes to compute the weighted average shares of common stock outstanding for diluted earnings per share.

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

Conversion Rights at the Option of the Holders

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

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

(1) during any calendar quarter commencing after September 30, 2020 (and only during such calendar quarter), if the last reported sale price of Dexcom’s common stock for at least 20 trading days (whether or not consecutive) during the period of 30 consecutive trading days ending on the last trading day of the immediately preceding calendar quarter is greater than or equal to 130% of the applicable conversion price of the Notes on each such trading day;

(2) during the five business day period after any five consecutive trading day period in which the trading price per $1,000 principal amount of the Notes for each day of that five day consecutive trading day period was less than 98% of the product of the last reported sale price of Dexcom’s common stock and the applicable conversion rate of the Notes on such trading day;

(3) if we call any or all of the Notes for redemption, at any time prior to the close of business on the scheduled trading day immediately preceding the redemption date; or

(4) upon the occurrence of specified corporate transactions.

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

Conversion Rights at Our Option

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

Revolving Credit Agreement

Terms of the Revolving Credit Agreement

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

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

(In millions)		December 31, 2022
Available principal amount	$	200.0
Letters of credit sub-facility		25.0
Outstanding borrowings		—
Outstanding letters of credit		7.3
Total available balance	$	192.7

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

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

Amended Credit Agreement also requires us to maintain a maximum leverage ratio and a minimum fixed charge coverage ratio. We were in compliance with these covenants as of December 31, 2022.

As of December 31, 2022, we also have a guarantee facility related to our international operations which is collateralized by a $10.7 million term deposit that is included in non-current “Other assets” on our consolidated balance sheets.

6. Leases and Other Commitments

Leases

We lease office, manufacturing and warehouse space facilities under various domestic and international non-cancellable operating and finance lease arrangements. We also have land leases in Penang, Malaysia that expire through 2082 for the build-out of our international manufacturing facility. Our leases, excluding our land leases in Penang, Malaysia, have remaining lease terms of up to eighteen years. Some of the leases include one or more options to extend the leases for up to five years per option. Options to extend or terminate the lease are included in the lease liability if they are reasonably certain of being exercised. Leases are classified as operating or financing at lease commencement.

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

As of December 31, 2022, the maturities of our operating and finance lease liabilities were as shown in the table below:

(In millions)	Operating Leases	Finance Leases
2023	$ 26.6	$ 7.3
2024	25.0	6.3
2025	23.9	5.4
2026	23.5	5.4
2027	18.3	5.4
Thereafter	18.1	65.5
Total future lease cost [1]	135.4	95.3
Less: Imputed interest	(20.3)	(31.5)
Present value of future payments	115.1	63.8
Less: Current portion	(20.5)	(4.2)
Long-term portion	$ 94.6	$ 59.6

[1] Total future lease cost excludes $0.6 million of legally binding minimum lease payments for leases signed but not yet commenced.

Certain lease agreements require us to return designated areas of leased space to its original condition upon termination of the lease agreement, for which we record an asset retirement obligation and a corresponding capital asset in an amount equal to the estimated fair value of the obligation. In subsequent periods, the asset retirement obligation is accreted for the change in its present value and the capitalized asset is depreciated, both over the term of the associated lease agreement. Asset retirement obligations of $11.1 million and $7.4 million as of December 31, 2022 and 2021, respectively, are included in other long-term liabilities in our consolidated balance sheets.

The components of lease expense for the twelve months ended December 31, 2022, 2021 and 2020 were as follows:

(In millions)	Twelve Months Ended December 31, 2022	2021	2020
Finance lease cost:			
Amortization of right-of-use assets	$ 5.6	$ 4.1	$ 2.0
Interest on lease liabilities	3.3	3.0	1.9
Operating lease cost	22.6	23.3	18.4
Right-of-use asset impairment	6.3	—	—
Short-term lease cost	3.5	2.3	1.3
Variable lease cost [1]	8.0	6.0	4.2
Total lease cost	$ 49.3	$ 38.7	$ 27.8

[1] Variable lease costs are primarily related to common area maintenance charges and property taxes.

As the result of the Company's transition to a flexible working environment, we vacated a building in San Diego during the fourth quarter and made it available for sublease. This resulted in an impairment indicator. We tested the asset group as of November 30, 2022 consisting primarily of the leasehold improvements and right-of-use asset for recoverability by comparing its carrying value to an estimate of future undiscounted cash flows. Based on the results of the recoverability test, we determined that the undiscounted cash flows of the asset group were below its carrying value.

We determined the fair value of the asset group by discounting the estimated future cash flows using level 3 fair value inputs under ASC 820 as described in Note 1. As a result of the impairment test, we recorded a non-cash charge of $23.0 million for the twelve months ended December 31, 2022 in the "Selling, general and administrative" caption of our consolidated statements of operations. The fair value of the asset group immediately subsequent to the impairment was $2.5 million and was categorized as Level 3 within the ASC 820, "Fair Value Measurements" fair value hierarchy.

Other information related to our leases is as follows:

(Dollars in millions)	Twelve Months Ended December 31, 2022	2021	2020
Cash paid for amounts included in the measurement of lease liabilities:			
Operating cash flows from operating leases	$ 26.0	$ 23.3	$ 18.3
Operating cash flows from finance leases	3.1	1.9	0.7
Financing cash flows from finance leases	15.5	9.9	8.5
Right-of-use assets obtained in exchange for lease liabilities:			
Operating leases	15.6	13.1	33.5
Finance leases	$ 16.1	$ 6.4	$ 41.7
Weighted average remaining lease term:			
Operating leases	5.5 years	5.5 years	6.1 years
Finance leases	15.2 years	15.9 years	23.3 years
Weighted average discount rate:			
Operating leases	6.0 %	5.0 %	5.0 %
Finance leases	5.1 %	5.1 %	5.0 %

Amortization of operating lease right-of-use asset included in cash flows from operating activities in our consolidated statements of cash flows was $16.4 million for the twelve months ended December 31, 2022, $18.0 million for the twelve months ended December 31, 2021 and $12.4 million for the twelve months ended December 31, 2020.

Purchase Commitments

We are party to various purchase arrangements related to our manufacturing and research and development activities. We had approximately $442.7 million as of December 31, 2022 and $324.1 million as of December 31, 2021 of open purchase orders and contractual obligations in the ordinary course of business, the majority of which are due within one year.

7. Contingencies

Litigation

We are subject to various claims, complaints and legal actions that arise from time to time in the normal course of business, including commercial insurance, product liability, intellectual property and employment related matters. In addition, from time to time we may bring claims or initiate lawsuits against various third parties with respect to matters arising out of the ordinary course of our business, including commercial and employment related matters.

During the year ended December 31, 2022, we and certain Abbott Diabetes Care, Inc. (“Abbott”) entities served complaints for patent infringement, validity and other patent related actions against each other in multiple jurisdictions, inside and outside the United States. We intend to vigorously pursue our claims and defenses in these cases to protect our intellectual property and to defend against Abbott’s infringement allegations.

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

8. Income Taxes

Income (loss) before income taxes subject to taxes in the following jurisdictions is as follows:

	Twelve Months Ended December 31,		
	2022	2021	2020
(In millions)		As Adjusted	As Adjusted
United States	$ 463.5	$ 318.2	$ 343.6
Outside of the United States	(72.7)	(61.4)	(45.7)
Total	$ 390.8	$ 256.8	$ 297.9

Significant components of the provision for income taxes are as follows:

	Twelve Months Ended December 31,		
	2022	2021	2020
(In millions)		As Adjusted	As Adjusted
Current:			
Federal	$ 32.6	$ 5.7	$ —
State	26.1	8.3	6.1
Foreign	12.5	10.1	2.6
Total current income taxes	71.2	24.1	8.7
Deferred:			
Federal	(4.3)	23.0	(182.9)
State	(17.6)	(0.2)	(50.5)
Foreign	0.3	(7.0)	(27.1)
Total deferred income taxes	(21.6)	15.8	(260.5)
Total	$ 49.6	$ 39.9	$ (251.8)

Significant loss and tax credit carryforwards and years of expiration are as follows:

(In millions)	December 31, 2022	December 31, 2021	Year of Expiration
Net operating loss:			
Federal	$ 28.7	$ 38.0	2028
California	185.0	236.3	2031
Other states	8.5	21.3	2029
UK	90.5	102.4	Indefinite
Other foreign	9.7	—	2033
Tax credits:			
Federal			
R&D credits	—	80.1	
Foreign tax credits	—	1.5	
California R&D credits	$ 96.4	$ 81.4	Indefinite

Utilization of net operating losses and credit carryforwards is subject to an annual limitation due to ownership change limitations provided by Section 382 and 383 of the Internal Revenue Code of 1986, as amended, and similar state provisions. An ownership change limitation occurred as a result of the stock offering completed in February 2009. The limitation will result in approximately $1.7 million of U.S. research and development tax credits that will expire unused, and is therefore, not reflected in the tax credit carryforwards above. In addition, the related deferred tax assets have been removed from the components of our deferred tax assets as summarized in the table below. The tax benefits related to the remaining federal and state net operating losses and tax credit carryforwards may be further limited or lost if future cumulative changes in ownership exceed 50% within any three-year period.

Significant components of our deferred tax assets and liabilities as of December 31, 2022 and 2021 are shown below. Significant judgment is required to evaluate the need for a valuation allowance against deferred tax assets. We review all available positive and negative evidence, including projections of pre-tax book income, earnings history, reliability of forecasting, and reversal of temporary differences. A valuation allowance is established when it is more likely than not that some or all of the deferred tax assets will not be realized. Realization of deferred tax assets is dependent upon future earnings in applicable tax jurisdictions.

(In millions)	December 31, 2022	December 31, 2021 As Adjusted
Deferred tax assets:		
Net operating loss carryforwards	$ 46.4	$ 53.0
Capitalized research and development expenses	211.9	49.3
Tax credits	61.1	105.5
Share-based compensation	16.8	13.3
Fixed and intangible assets	34.4	26.4
Accrued liabilities and reserves	105.3	105.5
Collaborative agreement milestone accrual [1]	—	21.9
Convertible debt	9.3	21.6
Other	—	0.5
Total gross deferred tax assets	485.2	397.0
Less: valuation allowance	(78.7)	(69.9)
Total net deferred tax assets	406.5	327.1
Deferred tax liabilities:		
Fixed assets and acquired intangibles assets	(69.9)	(42.5)
Other	(0.3)	—
Total deferred tax liabilities	(70.2)	(42.5)
Net deferred tax assets (liabilities)	$ 336.3	$ 284.6

[1] This amount is related to the $87.1 million charge recorded in the fourth quarter of 2021 associated with our Restated Collaboration Agreement with Verily, as discussed in Note 2 “Development and Other Agreements” to the consolidated financial statements.

We maintain a valuation allowance of $78.7 million against our California research and development tax credits and certain foreign intangible assets. During the year ended December 31, 2022, the valuation allowance increased by $8.9 million primarily due to generation of California research and development tax credits.

The reconciliation between our effective tax rate on income (loss) from continuing operations and the statutory rate is as follows:

(In millions)	Twelve Months Ended December 31, 2022	2021 As Adjusted	2020 As Adjusted
U.S. federal statutory tax rate	$ 82.1	$ 53.9	$ 62.6
State income tax, net of federal benefit	5.4	8.9	5.3
Permanent items	0.6	5.2	2.6
Research and development credits	(23.3)	(28.9)	(24.4)
Foreign tax credit	—	(3.7)	—
Foreign rate differential	27.7	20.9	9.8
Stock and officers compensation	(1.2)	(20.4)	(28.7)
Collaboration agreement milestone share-based payment	(52.9)	—	—
Change in statutory tax rates	1.0	(10.0)	(4.1)
Other	1.3	(0.4)	0.1
Change in valuation allowance	8.9	14.4	(275.0)
Income taxes at effective rates	$ 49.6	$ 39.9	$ (251.8)

The following table summarizes the activity related to our gross unrecognized tax benefits:

(In millions)	
Balance at January 1, 2020	$ 29.5
Decreases related to prior year tax positions	(0.9)
Increases related to current year tax positions	8.0
Balance at December 31, 2020	36.6
Increases related to prior year tax positions	0.4
Increases related to current year tax positions	9.8
Balance at December 31, 2021	46.8
Decreases related to prior year tax positions	(0.9)
Increases related to current year tax positions	6.1
Balance at December 31, 2022	$ 52.0

Of the total unrecognized tax benefits at December 31, 2022, 2021, and 2020, $32.5 million, $29.5 million and $23.5 million, respectively, would affect our annual effective tax rate if recognized. Also included in the balance of unrecognized tax benefits at December 31, 2022 is $0.2 million of tax benefits that, if recognized, would result in adjustments to other tax accounts, primarily deferred tax assets.

Interest and penalties are classified as a component of income tax expense and were not material for any period presented. Although the timing and outcome of audit settlements are uncertain, it is unlikely there will be a significant reduction of the uncertain tax benefits in the next twelve months.

Due to our global business activities, we file income tax returns and are subject to routine compliance audits in numerous jurisdictions, including those material jurisdictions listed in the following table. The U.S. net operating losses generated since 1999 and utilized in recent years are open for examination. The years remaining subject to audit, by major jurisdiction, are as follows:

Jurisdiction	**Fiscal Year**
United States (Federal and state)	1999 - 2022
Germany	2019 - 2022
United Kingdom	2019 - 2022
Canada	2018 - 2022

We operate under a tax holiday in the Philippines, which is effective through December 31, 2023, and may be extended for another three years if certain additional requirements are satisfied. The tax holiday is conditional upon remaining in good standing, committing no violation of Philippine Economic Zone Authority Rules and Regulations, pertinent circulars and directives. The impact of this tax holiday was immaterial in in 2022, 2021, and 2020. We have been granted a tax holiday by the Malaysian Investment Development Authority (MIDA) in Malaysia, which will not be triggered until we commence operations. The tax incentive had no effect on foreign taxes during 2022, 2021, or 2020.

We have approximately $9.1 million of undistributed earnings attributable to operations in our controlled foreign corporations as of December 31, 2022. We assert that any foreign earnings will be indefinitely reinvested. Accordingly, we have not recorded a liability for taxes associated with these undistributed earnings. If we determine that all or a portion of such foreign earnings are no longer indefinitely reinvested, we may be subject to additional foreign withholding taxes and U.S. state income taxes. Determination of the amount of unrecognized deferred tax liability on these unremitted earnings is not practicable.

9. Employee Benefit Plans and Stockholders' Equity

401(k) Plan

We have a defined contribution 401(k) retirement plan (the 401(k) Plan) covering substantially all employees in the United States that meet certain age requirements. Employees who participate in the 401(k) Plan may contribute up to 90% of their compensation each year, subject to Internal Revenue Service limitations and the terms and conditions of the plan. Under the terms of the 401(k) Plan, we may elect to match a discretionary percentage of contributions. We match 50% of contributions up to 5% of eligible compensation. Total matching contributions were $11.1 million, $9.9 million and $6.7 million for the twelve months ended December 31, 2022, 2021 and 2020, respectively.

Employee Stock Purchase Plan ("ESPP")

Under the 2015 Employee Stock Purchase Plan (the 2015 ESPP), amended in December 2019, eligible employees may purchase shares of our common stock at semi-annual intervals through periodic payroll deductions during defined Offering Periods. Payroll deductions may not exceed 10% of the participant's cash compensation subject to certain limitations, and the purchase price will be 85% of the lower of the fair market value of the common stock at either the beginning of the applicable Offering Period or the Purchase Date. A total of 6.0 million shares of common stock are reserved for issuance under the 2015 ESPP. The 2015 ESPP shall continue until the earlier to occur of (a) termination of the 2015 ESPP by our Board of Directors, (b) issuance of all of the shares of common stock reserved for issuance under the plan, or (c) May 28, 2025.

We issued 292,552, 239,240 and 356,776 shares of common stock under the 2015 ESPP during the twelve months ended December 31, 2022, 2021 and 2020, respectively. As of December 31, 2022, approximately 2.9 million shares remained available for future issuance under the 2015 ESPP.

Equity Incentive Plans

In May 2015, we adopted the Amended and Restated 2015 Equity Incentive Plan (the 2015 Plan), which replaced our 2005 Equity Incentive Plan and provides for the grant of incentive and nonstatutory stock options, restricted stock, stock bonuses, stock appreciation rights, restricted stock units or RSUs, and performance stock units or PSUs to employees, directors or consultants of the Company. On May 30, 2019, our stockholders approved an increase to the maximum number of shares that may be issued under the 2015 Plan.

We are authorized to issue up to 39.2 million shares of our common stock under the 2015 Plan. As of December 31, 2022, approximately 15.3 million shares remained available for future issuance under the 2015 Plan. We issue new shares of common stock to satisfy RSU and PSU vesting under our employee equity incentive plans.

RSU awards typically vest in annual installments over three or four years and vesting is subject to continued service. PSUs are granted to a group of senior officers and the number of shares of our common stock to be received at vesting will range from 0% to 200% of the target award based on the achievement of pre-established performance and market goals. PSUs vest three years from the date of grant, subject to continued employment through that date.

Share Repurchase Program and Treasury Shares

Repurchased shares of our common stock are held as treasury shares until they are reissued or retired. When we reissue treasury stock, if the proceeds from the sale are more than the average price we paid to acquire the shares we record an increase in additional paid-in capital. Conversely, if the proceeds from the sale are less than the average price we paid to acquire the shares, we record a decrease in additional paid-in capital to the extent of increases previously recorded for similar transactions and a decrease in retained earnings for any remaining amount.

The following table summarizes our treasury share activity for the periods shown. No treasury share activity occurred during the twelve months ended December 31, 2020.

	Twelve Months Ended December 31,	
(In millions)	**2022**	**2021**
Shares issued in connection with 2023 Notes conversions	0.4	0.8
Shares received from Note Hedge	(0.3)	(1.0)
Shares issued in connection with the Restated Collaboration Agreement	2.9	—
Shares repurchased under the Share Repurchase Program	(6.6)	—

On July 26, 2022, a duly authorized committee of our Board of Directors authorized and approved a share repurchase program of up to $700.0 million of our outstanding common stock, with a repurchase period ending no later than June 30, 2023 (the "Share Repurchase Program"). Shares of common stock repurchased under the Share Repurchase Program become treasury shares. Repurchases of our common stock under the Share Repurchase Program may be made from time to time, on the open market, in privately negotiated transactions or by other methods, at our discretion, and in accordance with the limitations set forth in Rule 10b-18 promulgated under the Securities Exchange Act of 1934, as amended, and other applicable federal and state laws and regulations.

On August 1, 2022, we entered into an accelerated share repurchase ("ASR") agreement with JPMorgan Chase Bank, National Association ("JP Morgan") to repurchase up to $700.0 million of our common stock on an accelerated basis through September 29, 2022. On August 3, 2022, we paid $700.0 million to JP Morgan and received an initial delivery of approximately 3.0 million shares of common stock. The final notional amount under the ASR agreement was $557.7 million or approximately 6.6 million shares of our common stock based on the daily average volume-weighted average price of our common stock during the term of the ASR for the period from August 1, 2022 to August 31, 2022, less a discount. The ASR agreement concluded on September 1, 2022.

The ASR was a forward contract indexed to our own common stock. The forward contract met all of the applicable criteria for equity classification, so we did not account for it as a derivative instrument. We have reflected the shares delivered to us by the financial institution as treasury shares as of the dates they were delivered to us in computing weighted average shares outstanding for both basic and diluted net income per share.

Repurchased shares of our common stock are held as treasury shares until they are reissued or retired. We have not yet determined the ultimate disposition of repurchased shares and consequently we continue to hold them as treasury shares rather than retiring them. Future stock repurchases under the Share Repurchase Program are at the discretion of our management, and authorization of future stock repurchase programs is subject to the final determination of our Board of Directors. The Share Repurchase Program does not obligate us to repurchase any dollar amount or number of shares, and the program may be extended, modified, suspended, or discontinued at any time.

Stock Options

We have not granted any stock options since 2010. As of December 31, 2022 and December 31, 2021, we had no stock options outstanding. The total intrinsic value of stock options exercised during the twelve months ended December 31, 2020 was $7.9 million.

Equity Award Activity

All periods presented have also been adjusted to reflect the four-for-one stock split. Refer to Note 1, "Organization and Significant Accounting Policies," to the consolidated financial statements for further information.

A summary of RSU and PSU activity under the 2015 Plan for the twelve months ended December 31, 2022, 2021 and 2020 is as follows:

(In millions, except weighted average grant date fair value)	Shares Available for Grant	Nonvested RSU and PSU Activity		
		Shares	Weighted Average Grant Date Fair Value	Aggregate Intrinsic Value
Balance at December 31, 2019	19.6	7.2	$ 24.20	
Granted	(2.0)	2.0	75.09	
Vested	—	(4.1)	23.10	
Forfeited	0.4	(0.4)	34.36	
Balance at December 31, 2020	18.0	4.7	45.88	$ 430.6
Granted	(1.7)	1.7	87.67	
Vested	—	(2.9)	34.47	
Forfeited	0.5	(0.5)	69.77	
Balance at December 31, 2021	16.8	3.0	76.88	403.8
Granted	(1.9)	1.9	96.79	
Vested	—	(1.6)	63.90	
Forfeited	0.4	(0.4)	92.54	
Balance at December 31, 2022	15.3	2.9	$ 94.08	$ 325.6

The total vest-date fair value of RSUs and PSUs that vested during the twelve months ended December 31, 2022, 2021 and 2020 was $160.1 million, $284.5 million and $331.8 million, respectively. As of December 31, 2022, 2.6 million unvested RSUs and 0.3 million unvested PSUs were outstanding under the 2015 Plan.

Share-based Compensation

Our share-based compensation expense is associated with RSUs, PSUs, and the 2015 ESPP. The following table summarizes the share-based compensation expense included in our consolidated statements of operations for the periods shown.

(In millions)	Twelve Months Ended December 31,		
	2022	2021	2020
Cost of sales	$ 11.1	$ 8.5	$ 14.6
Research and development	42.7	41.0	37.8
Selling, general and administrative	72.7	63.9	67.0
Total share-based compensation expense	$ 126.5	$ 113.4	$ 119.4

We value RSUs at the date of grant using the intrinsic value method. We estimate the fair value of PSUs at the date of grant using the intrinsic value method and the probability that the specified performance criteria will be met. We estimate the fair value of ESPP purchase rights on the date of grant using the Black-Scholes option pricing model and the assumptions below for the specified reporting periods.

	Twelve Months Ended December 31,		
	2022	2021	2020
Risk free interest rate	0.60% - 3.34%	0.06% - 0.07%	0.13% - 0.95%
Dividend yield	— %	— %	— %
Expected volatility of Dexcom common stock	45% - 55%	36% - 45%	51% - 63%
Expected life (in years)	0.5	0.5	0.5

At December 31, 2022, unrecognized estimated compensation costs related to RSUs, PSUs, and the 2015 ESPP totaled $175.5 million and are expected to be recognized through 2026.

10. Business Segment and Geographic Information

Reportable Segments

An operating segment is identified as a component of a business that has discrete financial information available and for which the chief operating decision maker must decide the level of resource allocation. In addition, the guidance for segment reporting indicates certain quantitative materiality thresholds. None of the components of our business meet the definition of an operating segment.

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

Disaggregation of Revenue

We disaggregate revenue by geographic region and by major sales channel. We have determined that disaggregating revenue into these categories achieves the ASC Topic 606 disclosure objectives of depicting how the nature, amount, timing and uncertainty of revenue and cash flows are affected by economic factors.

Dexcom is domiciled in the United States. We sell our CGM systems through a direct sales organization and through distribution arrangements that allow distributors to sell our products.

Revenue by geographic region

During the twelve months ended December 31, 2022, 2021 and 2020, no individual country outside the United States generated revenue that represented more than 10% of our total revenue. The table below sets forth revenue by our two primary geographical markets, the United States and outside of the United States, based on the geographic location to which we deliver the components. The majority of our long-lived assets are located in the United States.

	Twelve Months Ended December 31,					
	2022		2021		2020	
(Dollars in millions)	Amount	% of Total	Amount	% of Total	Amount	% of Total
United States	$ 2,142.0	74 %	$ 1,849.4	76 %	$ 1,509.5	78 %
Outside of the United States	767.8	26 %	599.1	24 %	417.2	22 %
Total revenue	$ 2,909.8	100 %	$ 2,448.5	100 %	$ 1,926.7	100 %

Revenue by customer sales channel

The following table sets forth revenue by major sales channel for the twelve months ended December 31, 2022, 2021 and 2020:

	Twelve Months Ended December 31,					
	2022		2021		2020	
(Dollars in millions)	Amount	% of Total	Amount	% of Total	Amount	% of Total
Distributor	$ 2,470.8	85 %	$ 2,024.3	83 %	$ 1,437.6	75 %
Direct	439.0	15 %	424.2	17 %	489.1	25 %
Total revenue	$ 2,909.8	100 %	$ 2,448.5	100 %	$ 1,926.7	100 %

DexCom, Inc.
SCHEDULE II – VALUATION AND QUALIFYING ACCOUNTS
(In millions)

Allowance for doubtful accounts		
Balance at December 31, 2019	$	5.8
Provision for doubtful accounts		3.2
Write-offs and adjustments		(2.1)
Recoveries		0.3
Balance at December 31, 2020	$	7.2

Allowance for doubtful accounts		
Balance at December 31, 2020	$	7.2
Provision for doubtful accounts		(1.4)
Write-offs and adjustments		(0.5)
Recoveries		0.1
Balance at December 31, 2021	$	5.4

Allowance for doubtful accounts		
Balance at December 31, 2021	$	5.4
Provision for doubtful accounts		2.4
Write-offs and adjustments		(0.5)
Recoveries		—
Balance at December 31, 2022	$	7.3

Exhibit 10.09

OFFICE LEASE

KILROY REALTY

6340 SEQUENCE DRIVE

KILROY REALTY, L.P.

a Delaware limited partnership,

as Landlord,

and

DEXCOM, INC.,

a Delaware corporation,

as Tenant.

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6340 SEQUENCE DRIVE

OFFICE LEASE

This Office Lease (the "**Lease**"), dated as of the date set forth in Section 1 of the Summary of Basic Lease Information (the "**Summary**"), below, is made by and between **KILROY REALTY, L.P.**, a Delaware limited partnership ("**Landlord**"), and **DEXCOM, INC.**, a Delaware corporation ("**Tenant**").

SUMMARY OF BASIC LEASE INFORMATION

TERMS OF LEASE	DESCRIPTION
1. Date	March 31, 2006.
2. Premises: 2.1 Building	That certain two (2)-story building (the "**Building**") located at 6340 Sequence Drive, San Diego, California 92121, which Building contains 66,400 rentable square feet of space.
2.2 Premises:	All of the Building, consisting of (i) all of the first (1st) level the Building containing 38,381 rentable square feet of space (the "**Initial Premises**"), and (ii) all of the second (2nd) level of the Building containing 28,019 rentable square feet of space (the "**Must-Take Space**"), all as more particularly identified in **Exhibit A** to this Lease.
2.3 Project:	The Building is the primary component of a single-building office project known as "**6340 Sequence Drive**," as further set forth in Section 1.1.2 of this Lease.
3. Lease Term (Article 2):	
Length of Term:	Eight (8) years and no (0) months.
Lease Commencement Date:	May 1, 2006.
Lease Expiration Date:	April 30, 2014.
Option Term(s):	One (1) five (5)-year option(s) to renew, as more particularly set forth in Section 2.2 of this Lease.
4. Base Rent (Article 3):	

Period during Lease Term	Annualized Base Rent*	Monthly Installment of Base Rent*	Monthly Rental Rate per Rentable Square Foot*
May 1, 2006 to August 31, 2006**	$ 0.00	$ 0.00	$ 0.000
September 1, 2006 to August 31, 2007**	$ 621,772.20	$ 51,814.35	$ 1.350
September 1, 2007 to October 31, 2007**	$ 646,644.00	$ 53,887.00	$ 1.404
November 1, 2007 to August 31, 2008	$ 1,118,706.00	$ 93,225.50	$ 1.404
September 1, 2008 to August 31, 2009	$ 1,163,454.00	$ 96,954.50	$ 1.460
September 1, 2009 to August 31, 2010	$ 1,209,993.00	$ 100,832.75	$ 1.519
September 1, 2010 to August 31, 2011	$ 1,258,392.00	$ 104,866.00	$ 1.579
September 1, 2011 to August 31, 2012	$ 1,308,729.00	$ 109,060.75	$ 1.642
September 1, 2012 to August 31, 2013	$ 1,361,079.00	$ 113,423.25	$ 1.708
September 1, 2013 to April 30, 2014	$ 1,415,520.00	$ 117,960.00	$ 1.777

* The initial Monthly Installment of Base Rent (and Annualized Base Rent) was calculated by multiplying the applicable Monthly Rental Rate per Rentable Square Foot by the then-applicable number of rentable square feet of space in the Premises. In all subsequent Lease Years, the calculation of the Monthly Installment of Base Rent (and corresponding Annualized Base Rent) reflects an annual increase of 4.0%; provided, however, (i) in each instance the resulting Monthly Installment of Base Rent was rounded up or down, as applicable, to the nearest twenty-five cents ($0.25), (ii) the corresponding Annualized Base Rent is, therefore, an amount equal to exactly twelve (12) times such rounded Monthly Installment of Base Rent amount, and (iii) the Monthly Rental Rate per Rentable Square Foot is, in each instance where such rounding occurred, only an approximation for reference purposes only.

** The foregoing schedule is reflective of (i) the "Initial Premises Rent Abatement" applicable during the first four (4) month period of the initial Lease Term, pursuant to the terms and conditions of Section 3.2.1 of the Lease, and (ii) the "Must-Take Space Rent Abatement" applicable during the period commencing on the Lease Commencement Date and ending on the earlier to occur of (A) the date Tenant commences business operations from the Must Take Space, and (B) November 1, 2007 (i.e., the first day of the nineteenth (19th) calendar month of the initial Lease Term), pursuant to the terms and conditions of Section 3.2.2 of the Lease.

5. Tenant's Share (Article 4): One hundred percent (100%).

6. Permitted Use (Article 5):	Tenant shall use the Premises solely for (i) general office use, (ii) research and development/product testing laboratory use, (iii) medical device manufacturing, (iv) storage, and (v) uses incidental thereto (the "**Permitted Use**"); provided, however, that notwithstanding anything to the contrary set forth hereinabove, and as more particularly set forth in the Lease, Tenant shall be responsible for operating and maintaining the Premises pursuant to, and in no event may Tenant's Permitted Use violate, (A) Landlord's "Rules and Regulations," as that term is set forth in Section 5.2 of this Lease, (B) all "Applicable Laws," as that term is set forth in Article 24 of this Lease, (C) all applicable zoning (i.e., the existing IP-1-1 zone in which the Building is located), building codes and the "CC&Rs," as that term is set forth in Section 5.3 of this Lease, and (D) the character of the Project as a first-class office Project.
7. Security Deposit (Article 21):	$89,640.00.
8. Letter of Credit (Article 22):	Subject to the terms and conditions of Article 22 of the Lease, Tenant shall provide Landlord with a Letter of Credit in an amount (the "**Letter of Credit Amount**") equal to Six Hundred Sixty-Four Thousand and No/100 Dollars ($664,000.00) (i.e., an amount equal to the Improvement Allowances).
9. Parking Spaces (Article 28):	A total of two hundred forty-three (243) parking spaces.
10. Address of Tenant (Section 29.18):	DexCom, Inc. 5555 Oberlin Drive San Diego, CA 92121 Attention: Mr. Steve Kemper Chief Financial Officer (*Prior to Lease Commencement Date*) and DexCom, Inc. 6340 Sequence Drive San Diego, CA 92121 Attention: Mr. Steve Kemper Chief Financial Officer (*After Lease Commencement Date*)
11. Address of Landlord (Section 29.18):	See Section 29.18 of the Lease.
12. Broker(s) (Section 29.24):	
Representing Tenant: Irving Hughes 655 West Broadway, Suite 1650 San Diego, CA 92101 Attention: Mr. Shaun Burnett	*Representing Landlord:* Cushman & Wakefield | CREA 9191 Towne Centre Drive, Suite 600 San Diego, CA 92122 Attention: Mr. Eric A. Nortbrook Mr. Michael J. Macie
13. Improvement Allowances (Section 2 of **Exhibits B** and **B-1**):	

Initial Premises Allowance:	$383,810.00 (which amount was calculated based upon $10.00 per Rentable Square Foot for each of the 38,381 Rentable Square Feet of space in the Initial Premises).
Must-Take Space Allowance:	$280,190.00 (which amount was calculated based upon $10.00 per Rentable Square Foot for each of the 28,019 Rentable Square Feet of space in the Must- Take Space).

ARTICLE 1

PREMISES, BUILDING, PROJECT, AND COMMON AREAS

1.1 **Premises, Building, Project and Common Areas**.

1.1.1 **The Premises**. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the initial premises set forth in Section 2.2 of the Summary (the "**Initial Premises**") and the expansion premises set forth in Section 2.2 of the Summary (the "**Must-Take Space**") (such Initial Premises and Must-Take Space are, collectively, the "**Premises**"). The outline of the Premises is set forth in **Exhibit A** attached hereto and contains approximately the number of rentable square feet as set forth in Section 2.2 of the Summary. Subject to the conditions of Section 29.25 of this Lease, the parties hereto agree that the lease of the Premises is upon and subject to the terms, covenants and conditions (the "**TCCs**") herein set forth, and Tenant covenants as a material part of the consideration for this Lease to keep and perform each and all of such TCCs by it to be kept and performed and that this Lease is made upon the condition of such performance. The parties hereto hereby acknowledge that the purpose of **Exhibit A** is to show the approximate location of the Premises and the "**Building**," as that term is defined in Section 1.1.2, below, only, and such Exhibit is not meant to constitute an agreement, representation or warranty as to the construction of the Premises, the precise area thereof or the specific location of the "**Common Areas**," as that term is defined in Section 1.1.3, below, or the elements thereof or of the accessways to the Premises or the "**Project**," as that term is defined in Section 1.1.2, below. Except as specifically set forth in this Lease and in the Work Letter Agreements attached hereto as **Exhibits B** and **B-1** (the "**Work Letter Agreements**"), Landlord shall not be obligated to provide or pay for any improvement work or services related to the improvement of the Premises. Tenant also acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty regarding the condition of the Premises, the Building or the Project or with respect to the suitability of any of the foregoing for the conduct of Tenant's business, except as specifically set forth in this Lease and the Work Letter Agreements. The taking of possession of the Premises by Tenant shall conclusively establish that the Premises and the Building were at such time in good and sanitary order, condition and repair, subject only to (i) punchlist items provided to Landlord in writing within thirty (30) days following Landlord's delivery of the Premises to Tenant, (ii) the "good working order" requirements of Section 1.2 of the Work Letter Agreement attached to this Lease as **Exhibit B**, and (iii) Landlord's ongoing obligations set forth in Article 7 of this Lease.

1.1.2 **The Building and The Project**. The Premises (*i.e.*, the Initial Premises and Must-Take Space) constitutes the entire building set forth in Section 2.1 of the Summary (the "**Building**"). The Building is the principle component of a single- building office project known as "**6340 Sequence Drive**." The term "**Project**," as used in this Lease, shall mean (i) the Building and the Common Areas, and (ii) the land (which is improved with landscaping, parking facilities and other improvements) upon which the Building and the Common Areas are located.

1.1.3 **Common Areas**. Landlord and Tenant acknowledge that as the Premises constitutes all (or substantially all) of the Building, there are no "common areas" in the Building to which third parties have general rights of access or use; provided, however, given Landlord's ownership of the Building, Project and ongoing obligations and rights set forth in this Lease, Landlord may nevertheless reasonably designate certain areas within the Building and Project as "**Common Areas**," including certain areas designated for the exclusive use of Landlord, or to be shared by Landlord and Tenant and, where applicable, third party owners and tenants of properties adjacent to the Project; provided further, however, in no event shall any portion of the Building be deemed Common Area for purposes of such third parties. Subject to the Rules and Regulations, Tenant shall have the non-exclusive right to use in common with Landlord and other reasonably designated parties, such Common Areas. The manner in which the

Common Areas are maintained and operated shall be at the reasonable discretion of Landlord and the use thereof shall be subject to such reasonable and non-discriminatory rules, regulations and restrictions as Landlord may make from time to time, provided that such rules, regulations and restrictions do not unreasonably interfere with the rights granted to Tenant under this Lease and the permitted use granted under Section 5.1, below. Landlord reserves the right to close temporarily, make alterations or additions to, or change the location of elements of the Project and the Common Areas; provided that no such changes shall be permitted which materially reduce Tenant's rights or access hereunder. Except when and where Tenant's right of access is specifically excluded in this Lease, Tenant shall have the right of access to the Premises, the Building, and the Project parking facility twenty-four (24) hours per day, seven (7) days per week during the "Lease Term," as that term is defined in Section 2.1, below.

1.1.4 **Stipulation of Rentable Square Feet of Premises and Building**. For purposes of this Lease, "rentable square feet" and "usable square feet" of the Premises (*i.e.*, the Initial Premises and the Must-Take Space) shall be deemed as set forth in Section 2.2 of the Summary and the rentable square feet of the Building shall be deemed as set forth in Section 2.1 of the Summary.

ARTICLE 2

LEASE TERM; OPTION TERM(S)

2.1 **Initial Lease Term**. The TCCs and provisions of this Lease shall be effective as of the date of this Lease. The term of this Lease (the "**Lease Term**") shall be as set forth in Section 3.1 of the Summary, shall commence on the date set forth in Section 3.2 of the Summary (the "**Lease Commencement Date**"), and shall terminate on the date set forth in Section 3.3 of the Summary (the "Lease Expiration Date") unless this Lease is sooner terminated as hereinafter provided. For purposes of this Lease, the term "**Lease Year**" shall in general mean each consecutive twelve (12) month period during the Lease Term; provided, however, (i) that the first Lease Year shall commence on the Lease Commencement Date and end on August 31, 2007, (ii) the second and each succeeding Lease Year shall run from September 1st though August 31st of the following calendar year, and (iii) the last Lease Year shall end on the Lease Expiration Date. At any time during the Lease Term, Landlord may deliver to Tenant a notice in the form as set forth in **Exhibit C**, attached hereto, as a confirmation only of the information set forth therein, which Tenant shall execute and return to Landlord within five (5) days of receipt thereof.

2.2 **Option Term(s)**.

2.2.1 **Option Right**. Landlord hereby grants the Original Tenant and any "Permitted Transferee," as that term is set forth in Section 14.8 of this Lease, one (1) option to extend the Lease Term for the entire Premises by a period of five (5) years (the "**Option Term**"). Such option shall be exercisable only by Notice delivered by Tenant to Landlord as provided below, provided that, as of the date of delivery of such Notice, (i) no "Event of Default," as that term is set forth in Section 19.1 of this Lease, is then occurring, (ii) no more than one (1) Event of Default has occurred during the prior twelve (12) month period, (iii) no more than three (3) Events of Default have occurred during the Lease Term, and (iv) the Original Tenant and any Permitted Transferee is in occupancy of no less than seventy-five percent (75%) of the then-existing Premises. Upon the proper exercise of such option to extend, and provided that, as of the end of the then applicable Lease term, (A) no Event of Default is then occurring, (B) no more than one (1) Event of Default has occurred during the prior twelve (12) month period, (C) no more than three (3) Events of Default have occurred during the Lease Term, and (D) the Original Tenant and any Permitted Transferee is in occupancy of no less than seventy-five percent (75%) of the then- existing Premises, then the Lease Term, as it applies to the entire Premises (i.e., the Initial Premises and Must-Take Space, shall be extended for a period of five (5) years. The rights contained in this Section 2.2 shall only be exercised by the Original Tenant and/or its Permitted Transferee (and not any other assignee, sublessee or other transferee of the Original Tenant's interest in this Lease).

2.2.2 **Option Rent**. The Rent payable by Tenant during the Option Term (the "**Option Rent**") shall be equal to the Market Rent as set forth below. For purposes of this Lease, the term "**Market Rent**" shall mean rent (including additional rent and considering any "base year" or "expense stop" applicable thereto), including all escalations, at which tenants, as of the commencement of the applicable term are, pursuant to transactions completed within the twenty-four (24) months prior to the first day of the applicable Option Term, leasing non-sublease, non-encumbered, non-synthetic, non-equity space (unless such space was leased pursuant to a definition of "fair market" comparable to the definition of Market Rent) comparable in size, location and quality to the Premises for a "Comparable Term," as that term is defined in this Section 2.2.2 (the "**Comparable Deals**"), which comparable space is located in the

"Comparable Buildings," as that term is defined in this Section 2.2.2, giving appropriate consideration to the annual rental rates per rentable square foot (adjusting the base rent component of such rate to reflect a net value after accounting for whether or not utility expenses are directly paid by the tenant such as Tenant's direct utility payments provided for in Section 6.1 of this Lease), the standard of measurement by which the rentable square footage is measured, the ratio of rentable square feet to usable square feet, and taking into consideration only, and granting only, the following concessions (provided that the rent payable in Comparable Deals in which the terms of such Comparable Deals are determined by use of a discounted fair market rate formula shall be equitably increased in order that such Comparable Deals will not reflect a discounted rate) (collectively, the "**Rent Concessions**"): (a) rental abatement concessions or build-out periods, if any, being granted such tenants in connection with such comparable spaces; (b) improvements or improvement allowances provided or to be provided for such comparable space, taking into account the value of the existing improvements in the Premises, such value to be based upon the age, quality and layout of the improvements and the extent to which the same could be utilized by general office users as contrasted with this specific Tenant, (c) any Proposition 13 protection, and (d) all other monetary concessions, if any, being granted such tenants in connection with such comparable space; provided, however, that notwithstanding anything to the contrary herein, no consideration shall be given to the fact that Landlord is or is not required to pay a real estate brokerage commission in connection with the applicable term or the fact that the Comparable Deals do or do not involve the payment of real estate brokerage commissions. The term "**Comparable Term**" shall refer to the length of the lease term, without consideration of options to extend such term, for the space in question. In addition, the determination of the Market Rent shall include a determination as to whether, and if so to what extent, Tenant must provide Landlord with financial security, such as a letter of credit or guaranty, for Tenant's rent obligations during any Option Term. Such determination shall be made by reviewing the extent of financial security then generally being imposed in Comparable Transactions upon tenants of comparable financial condition and credit history to the then existing financial condition and credit history of Tenant (with appropriate adjustments to account for differences in the then-existing financial condition of Tenant and such other tenants). If in determining the Market Rent, Tenant is entitled to a improvement allowance or comparable allowance for the improvement of the Premises (the "**Option Term TI Allowance**"), Landlord may, at Landlord's sole option, elect any or a portion of the following: (A) to grant some or all of the Option Term TI Allowance to Tenant in the form as described above (i.e., as an improvement allowance), and/or (B) to reduce the rental rate component of the Market Rent to be an effective rental rate which takes into consideration that Tenant will not receive the total dollar value of such excess Option Term TI Allowance (in which case the Option Term TI Allowance evidenced in the effective rental rate shall not be granted to Tenant). The term "**Comparable Buildings**" shall mean the Building and other institutionally owned, office / lab buildings which are comparable to the Building in terms of age (based upon the date of completion of construction or major renovation as to the building containing the portion of the Premises in question), quality of construction, level of services and amenities (including parking availability, type and cost), size and appearance, and are located in the Sorrento Mesa / UTC area of San Diego, California (the "**Comparable Area**").

2.2.3 **Exercise of Option**. The option contained in this Section 2.2 shall be exercised by Tenant, if at all, only in the manner set forth in this Section 2.2.3. Tenant shall deliver notice (the "**Exercise Notice**") to Landlord not more than fifteen (15) months nor less than twelve (12) months prior to the expiration of the then existing Lease Term, stating that Tenant is thereby exercising its option. Within thirty (30) days following its delivery of such Exercise Notice, Tenant shall deliver to Landlord Tenant's calculation of the Market Rent (the "**Tenant's Option Rent Calculation**"). Landlord shall deliver notice (the "**Landlord Response Notice**") to Tenant on or before the date which is thirty (30) days after Landlord's receipt of Tenant's Option Rent Calculation (the "**Landlord Response Date**"), stating that (A) Landlord is accepting Tenant's Option Rent Calculation as the Market Rent, or (B) rejecting Tenant's Option Rent Calculation and setting forth Landlord's calculation of the Market Rent (the "**Landlord's Option Rent Calculation**"). Within ten (10) business days of its receipt of the Landlord Response Notice, Tenant may, at its option, accept Landlord's Option Rent Calculation. If Tenant does not affirmatively accept or Tenant rejects Landlord's Option Rent Calculation, the parties shall follow the procedure, and the Market Rent shall be determined as set forth in Section 2.2.4.

2.2.4 **Determination of Market Rent**. In the event Tenant objects or is deemed to have objected to the Market Rent, Landlord and Tenant shall attempt to agree upon the Market Rent using reasonable good-faith efforts. If Landlord and Tenant fail to reach agreement within sixty (60) days following Tenant's objection or deemed objection to the Landlord's Option Rent Calculation (the "**Outside Agreement Date**"), then, within two (2) business days following such Outside Agreement Date, (*x*) Landlord may reestablish the Landlord's Option Rent Calculation by delivering written notice thereof to Tenant, and (*y*) Tenant may reestablish the Tenant's Option Rent Calculation by delivering written notice thereof to Tenant. If Landlord and Tenant thereafter fail to reach agreement within seven (7) business days of the Outside Agreement Date, then in connection with the Option Rent, Landlord's Option Rent

Calculation and Tenant's Option Rent Calculation, each as most recently delivered to the other party pursuant to the TCCs of this Section 2.2, shall be submitted to the "Neutral Arbitrator," as that term is defined in Section 2.2.4.1 of this Lease, pursuant to the TCCs of this Section 2.2.4; provided, however, to the extent Tenant delivers to Landlord, within seven (7) business days of the Outside Agreement Date, a written notice rescinding its Exercise Notice, then the Lease Term shall not be extended for the Option Term, but shall instead expire as originally scheduled, pursuant to the remaining TCCs of this Lease. The submittals shall be made concurrently with the selection of the Neutral Arbitrator pursuant to this Section 2.2.4 and shall be submitted to arbitration in accordance with Section 2.2.4.1 through 2.2.4.5 of this Lease, but subject to the conditions, when appropriate, of Section 2.2.3.

2.2.4.1 Landlord and Tenant shall mutually, reasonably appoint one (1) arbitrator who shall by profession be a real estate broker, appraiser or attorney who shall have been active over the five (5) year period ending on the date of such appointment in the leasing (or appraisal, as the case may be) of first-class corporate headquarters properties in the Comparable Area (the "**Neutral Arbitrator**"). The determination of the Neutral Arbitrator shall be limited solely to the issue of whether Landlord's Option Rent Calculation or Tenant's Option Rent Calculation, each as submitted to the Neutral Arbitrator pursuant to Section 2.2.4, above, is the closest to the actual Market Rent as determined by such Neutral Arbitrator, taking into account the requirements of Section 2.2.2 of this Lease. Such Neutral Arbitrator shall be appointed within fifteen (15) days after the applicable Outside Agreement Date. Neither the Landlord or Tenant may, directly or indirectly, consult with the Neutral Arbitrator prior to subsequent to his or her appearance. The Neutral Arbitrator shall be retained via an engagement letter jointly prepared by Landlord's counsel and Tenant's counsel.

2.2.4.2 The Neutral Arbitrator shall, within thirty (30) days of his/her appointment, reach a decision as to Market Rent and determine whether the Landlord's Option Rent Calculation or Tenant's Option Rent Calculation, each as submitted to the Neutral Arbitrator pursuant to Section 2.2.4, above, is closest to Market Rent as determined by such Neutral Arbitrator and simultaneously publish a ruling ("**Award**") indicating whether Landlord's Option Rent Calculation or Tenant's Option Rent Calculation is closest to the Market Rent as determined such Neutral Arbitrator. Following notification of the Award, the Landlord's Option Rent Calculation or Tenant's Option Rent Calculation, whichever is selected by the Neutral Arbitrator as being closest to Market Rent, shall become the then applicable Option Rent.

2.2.4.3 The Award issued by such Neutral Arbitrator shall be binding upon Landlord and Tenant.

2.2.4.4 If Landlord and Tenant fail to appoint the Neutral Arbitrator within fifteen (15) days after the applicable Outside Agreement Date, either party may petition the presiding judge of the Superior Court of San Diego County to appoint such Neutral Arbitrator subject to the criteria in Section 2.2.4.1 of this Lease, or if he or she refuses to act, either party may petition any judge having jurisdiction over the parties to appoint such Neutral Arbitrator.

2.2.4.5 The cost of arbitration shall be paid by Landlord and Tenant equally.

ARTICLE 3

BASE RENT

3.1. **Base Rent**. Tenant shall pay, without prior notice or demand, to Landlord or Landlord's agent at such place as Landlord may from time to time designate in writing, by a check for currency which, at the time of payment, is legal tender for private or public debts in the United States of America, base rent ("**Base Rent**") as set forth in Section 4 of the Summary, payable in equal monthly installments as set forth in Section 4 of the Summary in advance on or before the first day of each and every calendar month during the Lease Term, without any setoff or deduction whatsoever. The Base Rent for the first full month of the Lease Term which occurs after the expiration of any free rent period shall be paid at the time of Tenant's execution of this Lease. If any Rent payment date (including the Lease Commencement Date) falls on a day of the month other than the first day of such month or if any payment of Rent is for a period which is shorter than one month, the Rent for any such fractional month shall accrue on a daily basis during such fractional month and shall total an amount equal to the product of (i) a fraction, the numerator of which is the number of days in such fractional month and the denominator of which is the actual number of days occurring in such calendar month, and (ii) the then-applicable Monthly Installment of Base Rent. All other payments or adjustments required to be made under the TCCs of this Lease that require proration on a time basis shall be prorated on the same basis.

3.2. **Abated Base Rent**.

3.2.1 **Initial Premises Rent Abatement**. Provided that no Event of Default is then occurring, then during the period beginning on the Lease Commencement Date and ending on August 31, 2006 (the "**IP Rent Abatement Period**"), Tenant shall not be obligated to pay any Base Rent otherwise attributable to the Initial Premises for such IP Rent Abatement Period (the "**Initial Premises Rent Abatement**").

3.2.2 **Must-Take Space Rent Abatement**. Provided that no Event of Default is then occurring, then during the period beginning on the Lease Commencement Date and ending upon the earlier to occur of (i) the date upon which Tenant first commences to conduct business in the Must-Take Space, and (ii) October 31, 2007 (the "**MTS Rent Abatement Period**"), Tenant shall not be obligated to pay Base Rent otherwise attributable to the Must Take Space throughout such MTS Rent Abatement Period (the "**Must-Take Space Rent Abatement**").

3.2.3 **In General**. The Initial Premises Rent Abatement and the Must-Take Space Rent Abatement are, collectively, the "**Rent Abatement**"). Tenant acknowledges and agrees that notwithstanding such Rent Abatement, the IP Rent Abatement Period and/or the MTS Rent Abatement Period, such abatement of Base Rent shall have no effect on the calculation of any future increases in Base Rent, Operating Expenses or Tax Expenses payable by Tenant pursuant to the terms of this Lease, which increases shall be calculated without regard to such abatement of Base Rent or corresponding abatement periods. Such Rent Abatement has been granted to Tenant as additional consideration for entering into this Lease, and for agreeing to pay the rent and performing the terms and conditions otherwise required under the Lease, as amended. Notwithstanding anything to the contrary set forth in this Section 3.2, to the extent an Event of Default is then occurring, then Landlord may at its option, by notice to Tenant, elect, in addition to any other remedies Landlord may have under the Lease, one or both of the following remedies: (i) that Tenant shall immediately become obligated to pay to Landlord all Base Rent abated hereunder during the IP Rent Abatement Period and/or MTS Rent Abatement Period, as applicable, with interest as provided pursuant to the Lease from the date such Base Rent would have otherwise been due but for the abatement provided herein, or (ii) that the dollar amount of the unapplied portion of the Rent Abatement as of such Event of Default shall be converted to a credit to be applied to the Base Rent applicable to the Premises at the end of the Lease Term and Tenant shall immediately be obligated to begin paying Base Rent for the entire Premises in full.

ARTICLE 4

ADDITIONAL RENT

4.1 **General Terms**. In addition to paying the Base Rent specified in Article 3 of this Lease, Tenant shall pay "**Tenant's Share**" of the annual "**Direct Expenses**," as those terms are defined in Sections 4.2.6 and 4.2.2, respectively, of this Lease. Such payments by Tenant, together with any and all other amounts payable by Tenant to Landlord pursuant to the TCCs of this Lease, are hereinafter collectively referred to as the "**Additional Rent**," and the Base Rent and the Additional Rent are herein collectively referred to as "**Rent**." All amounts due under this Article 4 as Additional Rent shall be payable for the same periods and in the same manner as the Base Rent. Without limitation on other obligations of Tenant which survive the expiration of the Lease Term, the obligations of Tenant to pay the Additional Rent provided for in this Article 4 shall survive the expiration of the Lease Term.

4.2 **Definitions of Key Terms Relating to Additional Rent**. As used in this Article 4, the following terms shall have the meanings hereinafter set forth:

4.2.1 Intentionally Deleted.

4.2.2 "**Direct Expenses**" shall mean "Operating Expenses" and "Tax Expenses."

4.2.3 "**Expense Year**" shall mean each calendar year in which any portion of the Lease Term falls, through and including the calendar year in which the Lease Term expires, provided that Landlord, upon notice to Tenant, may change the Expense Year from time to time to any other twelve (12) consecutive month period, and, in the event of any such change, Tenant's Share of Direct Expenses shall be equitably adjusted for any Expense Year involved in any such change.

4.2.4 "**Operating Expenses**" shall mean, without duplication, all expenses, costs and amounts of every kind and nature which Landlord pays or accrues during any Expense Year because of or in connection with the ownership, management, maintenance, security, repair, replacement, restoration or operation of the Project, or any portion thereof, in accordance with sound real estate management and accounting principles, consistently applied. Without limiting the generality of the foregoing, Operating Expenses shall specifically include any and all of the following: (i) the cost of supplying all utilities, the cost of operating, repairing, maintaining, and renovating the utility, telephone, mechanical, sanitary, storm drainage, and elevator systems, and the cost of maintenance and service contracts in connection therewith; (ii) the cost of licenses, certificates, permits and inspections and the cost of contesting any governmental enactments which may affect Operating Expenses, and the costs incurred in connection with a governmentally mandated transportation system management program or similar program; (iii) the cost of all insurance carried by Landlord in connection with the Project; (iv) the cost of landscaping, relamping, and all supplies, tools, equipment and materials used in the operation, repair and maintenance of the Project, or any portion thereof; (v) costs incurred in connection with the parking areas servicing the Project; (vi) fees and other costs, including management fees, consulting fees, legal fees and accounting fees, of all contractors and consultants in connection with the management, operation, maintenance and repair of the Project; (vii) payments under any equipment rental agreements and the fair rental value of any management office space; (viii) wages, salaries and other compensation and benefits, including taxes levied thereon, of all persons (other than persons generally considered to be higher in rank than the position of Project manager) engaged in the operation, maintenance and security of the Project; (ix) costs under any instrument pertaining to the sharing of costs by the Project; (x) operation, repair, maintenance and replacement of all systems and equipment and components thereof of the Building; (xi) the cost of janitorial, alarm, security and other services, replacement of wall and floor coverings, ceiling tiles and fixtures in common areas, maintenance and replacement of curbs and walkways, repair to roofs and re- roofing; (xii) amortization of the cost of acquiring or the rental expense of personal property used in the maintenance, operation and repair of the Project, or any portion thereof (which amortization calculation shall include interest at the "Interest Rate," as that term is set forth in Article 25 of this Lease); (xiii) the cost of capital improvements or other costs incurred in connection with the Project (A) which are intended to effect economies in the operation or maintenance of the Project, or any portion thereof, (B) that are required to comply with present or anticipated conservation programs, (C) which are replacements or modifications of nonstructural items located in the Common Areas required to keep the Common Areas in good order or condition, or (D) that are required under any governmental law or regulation by a federal, state or local governmental agency, except for capital repairs, replacements or other improvements to remedy a condition existing prior to the Lease Commencement Date which an applicable governmental authority, if it had knowledge of such condition prior to the Lease Commencement Date, would have then required to be remedied pursuant to then- current governmental laws or regulations in their form existing as of the Lease Commencement Date and pursuant to the then-current interpretation of such governmental laws or regulations by the applicable governmental authority as of the Lease Commencement Date; provided, however, that any capital expenditure shall be shall be amortized with interest at the Interest Rate over the shorter of (*X*) seven (7) years, or (*Y*) its useful life as Landlord shall reasonably determine in accordance with sound real estate management and accounting principles; (xiv) costs, fees, charges or assessments imposed by, or resulting from any mandate imposed on Landlord by, any federal, state or local government for fire and police protection, trash removal, community services, or other services which do not constitute "Tax Expenses" as that term is defined in Section 4.2.5, below; and (xv) payments under any easement, license, operating agreement, declaration, restrictive covenant, or instrument pertaining to the sharing of costs by the Building. Notwithstanding the foregoing, for purposes of this Lease, Operating Expenses shall not, however, include:

(a) costs, including marketing costs, legal fees, space planners' fees, advertising and promotional expenses, and brokerage fees incurred in connection with the original construction or development, or original or future leasing of the Project, and costs, including permit, license and inspection costs, incurred with respect to the installation of improvements made for new tenants initially occupying space in the Project after the Lease Commencement Date or incurred in renovating or otherwise improving, decorating, painting or redecorating vacant space for tenants or other occupants of the Project (excluding, however, such costs relating to any common areas of the Project or parking facilities);

(b) except as set forth in items (xii), (xiii), and (xiv) above, amortization of any expenditures of a capital nature, depreciation, interest and/or principal payments on mortgages and other debt costs, if any, penalties and interest;

(c) costs for which the Landlord is reimbursed by any tenant or occupant of the Project or by insurance by its carrier or any tenant's carrier or by anyone else, and electric power costs for which any tenant directly contracts with the local public service company;

(d) any bad debt loss, rent loss, reserves for bad debts or rent loss, or any other reserves;

(e) costs associated with the operation of the business of the partnership or entity which constitutes the Landlord, as the same are distinguished from the costs of operation of the Project (which shall specifically include, but not be limited to, accounting costs associated with the operation of the Project). Costs associated with the operation of the business of the partnership or entity which constitutes the Landlord include costs of partnership accounting and legal matters, costs of defending any lawsuits with any mortgagee (except as the actions of the Tenant may be in issue), costs of selling, syndicating, financing, mortgaging or hypothecating any of the Landlord's interest in the Project, and costs incurred in connection with any disputes between Landlord and its employees, between Landlord and Project management, or between Landlord and other tenants or occupants, and Landlord's general corporate overhead and general and administrative expenses;

(f) the wages and benefits of any employee who does not devote substantially all of his or her employed time to the Project unless such wages and benefits are prorated to reflect time spent on operating and managing the Project vis-a-vis time spent on matters unrelated to operating and managing the Project; provided, that in no event shall Operating Expenses for purposes of this Lease include wages and/or benefits attributable to personnel above the level of Project manager;

(g) amount paid as ground rental for the Project by the Landlord;

(h) overhead and profit increment paid to the Landlord or to subsidiaries or affiliates of the Landlord for services in the Project to the extent the same exceeds the costs of such services rendered by qualified, first-class unaffiliated third parties on a competitive basis;

(i) any compensation paid to clerks, attendants or other persons in commercial concessions operated by the Landlord, provided that any compensation paid to any concierge at the Project shall be includable as an Operating Expense;

(j) rentals and other related expenses incurred in leasing air conditioning systems, elevators or other equipment which if purchased the cost of which would be excluded from Operating Expenses as a capital cost, except equipment not affixed to the Project which is used in providing janitorial or similar services and, further excepting from this exclusion such equipment rented or leased to remedy or ameliorate an emergency condition in the Project ;

(k) all items and services for which Tenant or any other tenant in the Project reimburses Landlord or which Landlord provides selectively to one or more tenants (other than Tenant) without reimbursement;

(l) costs, other than those incurred in ordinary maintenance and repair, for sculpture, paintings, fountains or other objects of art;

(m) any costs expressly excluded from Operating Expenses elsewhere in this Lease;

(n) rent for any office space occupied by Project management personnel to the extent the size or rental rate of such office space exceeds the size or fair market rental value of office space occupied by management personnel of the Comparable Buildings in the vicinity of the Building, with adjustment where appropriate for the size of the applicable project;

(o) costs arising from the negligence or willful misconduct of Landlord or its agents, employees, vendors, contractors, or providers of materials or services; and

(p) costs incurred to comply with Applicable Laws with regard to "Hazardous Material," as that term is set forth in Section 29.33.1 of this Lease, which was in existence in the Building or on the Project prior to the Lease Commencement Date; and costs incurred with respect to Hazardous Material, which Hazardous Material is brought into the Building or onto the Project after the date hereof by Landlord or any other tenant of the Project or by anyone other than Tenant or Tenant Parties.

If Landlord is not furnishing any particular work or service (the cost of which, if performed by Landlord, would be included in Operating Expenses) to a tenant who has undertaken to perform such work or service in lieu of the performance thereof by Landlord, Operating Expenses shall be deemed to be increased by an amount equal to the additional Operating Expenses which would reasonably have been incurred during such period by Landlord if it had at its own expense furnished such work or service to such tenant.

4.2.5 **Taxes**.

4.2.5.1 "**Tax Expenses**" shall mean, without duplication, all federal, state, county, or local governmental or municipal taxes, fees, charges or other impositions of every kind and nature, whether general, special, ordinary or extraordinary, (including, without limitation, real estate taxes, general and special assessments, transit taxes, leasehold taxes or taxes based upon the receipt of rent, including gross receipts or sales taxes applicable to the receipt of rent, unless required to be paid by Tenant, personal property taxes imposed upon the fixtures, machinery, equipment, apparatus, systems and equipment, appurtenances, furniture and other personal property used in connection with the Project, or any portion thereof), which shall be paid or accrued during any Expense Year (without regard to any different fiscal year used by such governmental or municipal authority) because of or in connection with the ownership, leasing and operation of the Project, or any portion thereof.

4.2.5.2 Tax Expenses shall include, without limitation: (i) Any tax on the rent, right to rent or other income from the Project, or any portion thereof, or as against the business of leasing the Project, or any portion thereof; (ii) Any assessment, tax, fee, levy or charge in addition to, or in substitution, partially or totally, of any assessment, tax, fee, levy or charge previously included within the definition of real property tax, it being acknowledged by Tenant and Landlord that Proposition 13 was adopted by the voters of the State of California in the June 1978 election ("**Proposition 13**") and that assessments, taxes, fees, levies and charges may be imposed by governmental agencies for such services as fire protection, street, sidewalk and road maintenance, refuse removal and for other governmental services formerly provided without charge to property owners or occupants, and, in further recognition of the decrease in the level and quality of governmental services and amenities as a result of Proposition 13, Tax Expenses shall also include any governmental or private assessments or the Project's contribution towards a governmental or private cost-sharing agreement for the purpose of augmenting or improving the quality of services and amenities normally provided by governmental agencies; (iii) Any assessment, tax, fee, levy, or charge allocable to or measured by the area of the Premises or the Rent payable hereunder, including, without limitation, any business or gross income tax or excise tax with respect to the receipt of such rent, or upon or with respect to the possession, leasing, operating, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises, or any portion thereof; and (iv) Any assessment, tax, fee, levy or charge, upon this transaction or any document to which Tenant is a party, creating or transferring an interest or an estate in the Premises. All assessments which can be paid by Landlord in installments, shall be paid by Landlord in the maximum number of installments permitted by law (except to the extent inconsistent with the general practice of landlords of the Comparable Buildings) and shall be included as Tax Expenses in the year in which the installment is actually paid.

4.2.5.3 Any costs and expenses (including, without limitation, reasonable attorneys' fees) incurred in attempting to protest, reduce or minimize Tax Expenses shall be included in Tax Expenses in the Expense Year such expenses are paid. Except as set forth in Section 4.2.5.4, below, refunds of Tax Expenses shall be credited against Tax Expenses and refunded to Tenant regardless of when received, based on the Expense Year to which the refund is applicable, provided that in no event shall the amount to be refunded to Tenant for any such Expense Year exceed the total amount paid by Tenant as Additional Rent under this Article 4 for such Expense Year. If Tax Expenses for any period during the Lease Term or any extension thereof are increased after payment thereof for any reason, including, without limitation, error or reassessment by applicable governmental or municipal authorities, Tenant shall pay Landlord upon demand Tenant's Share of any such increased Tax Expenses included by Landlord as Building Tax Expenses pursuant to the TCCs of this Lease. Notwithstanding anything to the contrary contained in this Section 4.2.8 (except as set forth in Section 4.2.8.1, above), there shall be excluded from Tax Expenses (i) all excess profits taxes, franchise taxes, gift taxes, capital stock taxes, inheritance and succession taxes, estate taxes, federal and state income taxes, and other taxes to the extent applicable to Landlord's general or net income (as opposed to rents, receipts or income attributable to operations at the Project), (ii) any items included as Operating Expenses, and (iii) any items paid by Tenant under Section 4.5 of this Lease.

4.2.6 "**Tenant's Share**" shall mean the percentage set forth in Section 6 of the Summary.

4.3 **Intentionally Omitted**.

4.4 **Calculation and Payment of Additional Rent**. Tenant shall pay to Landlord, in the manner set forth in Section 4.4.1, below, and as Additional Rent, Tenant's Share of Direct Expenses for each Expense Year; provided, however, notwithstanding anything to the contrary set forth in this Article 4, during the period commencing on May 1, 2006 and ending on April 30, 2007 (the "**Direct Expense Cap Period**"), in no event shall Tenant's Share of Direct Expenses exceed Three and 60/100 Dollars ($3.60) per Rentable Square Foot of the entire Premises (*i.e.*, $0.30 per Rentable Square Foot per month).

4.4.1 **Statement of Actual Building Direct Expenses and Payment by Tenant**. Landlord shall give to Tenant following the end of each Expense Year, a statement (the "**Statement**") which shall state in general major categories the Building Direct Expenses incurred or accrued for such preceding Expense Year, and which shall indicate the amount of Tenant's Share of Direct Expenses. Landlord shall use commercially reasonable efforts to deliver such Statement to Tenant on or before May 1 following the end of the Expense Year to which such Statement relates. Upon receipt of the Statement for each Expense Year commencing or ending during the Lease Term, Tenant shall pay, within thirty (30) days after receipt of the Statement, the full amount of Tenant's Share of Direct Expenses for such Expense Year, less the amounts, if any, paid during such Expense Year as "Estimated Direct Expenses," as that term is defined in Section 4.4.2, below, and if Tenant paid more as Estimated Direct Expenses than the actual Tenant's Share of Direct Expenses (an "**Excess**"), Tenant shall receive a credit in the amount of such Excess against Rent next due under this Lease. The failure of Landlord to timely furnish the Statement for any Expense Year shall not prejudice Landlord or Tenant from enforcing its rights under this Article 4. Even though the Lease Term has expired and Tenant has vacated the Premises, when the final determination is made of Tenant's Share of Direct Expenses for the Expense Year in which this Lease terminates, if Tenant's Share of Direct Expenses is greater than the amount of Estimated Direct Expenses previously paid by Tenant to Landlord, Tenant shall, within thirty (30) days after receipt of the Statement, pay to Landlord such amount, and if Tenant paid more as Estimated Direct Expenses than the actual Tenant's Share of Direct Expenses (again, an Excess), Landlord shall, within thirty (30) days, deliver a check payable to Tenant in the amount of such Excess. The provisions of this Section 4.4.1 shall survive the expiration or earlier termination of the Lease Term. Notwithstanding the immediately preceding sentence, Tenant shall not be responsible for Tenant's Share of any Building Direct Expenses attributable to any Expense Year which are first billed to Tenant more than two (2) calendar years after the Lease Expiration Date, provided that in any event Tenant shall be responsible for Tenant's Share of Direct Expenses levied by any governmental authority or by any public utility companies at any time following the Lease Expiration Date which are attributable to any Expense Year.

4.4.2 **Statement of Estimated Building Direct Expenses**. In addition, Landlord shall give Tenant a yearly expense estimate statement (the "**Estimate Statement**") which shall set forth in general major categories Landlord's reasonable estimate (the "**Estimate**") of what the total amount of Direct Expenses for the then-current Expense Year shall be and the estimated Tenant's Share of Direct Expenses (the "**Estimated Direct Expenses**"). Landlord shall use commercially reasonable efforts to deliver such Estimate Statement to Tenant on or before May 1 following the end of the Expense Year to which such Estimate Statement relates. The failure of Landlord to timely furnish the Estimate Statement for any Expense Year shall not preclude Landlord from enforcing its rights to collect any Estimated Direct Expenses under this Article 4, nor shall Landlord be prohibited from revising any Estimate Statement or Estimated Direct Expenses theretofore delivered to the extent necessary. Thereafter, Tenant shall pay, within thirty (30) days after receipt of the Estimate Statement, a fraction of the Estimated Direct Expenses for the then-current Expense Year (reduced by any amounts paid pursuant to the second to last sentence of this Section 4.4.2). Such fraction shall have as its numerator the number of months which have elapsed in such current Expense Year, including the month of such payment, and twelve (12) as its denominator. Until a new Estimate Statement is furnished (which Landlord shall have the right to deliver to Tenant at any time), Tenant shall pay monthly, with the monthly Base Rent installments, an amount equal to one-twelfth (1/12) of the total Estimated Direct Expenses set forth in the previous Estimate Statement delivered by Landlord to Tenant. Throughout the Lease Term Landlord shall maintain books and records with respect to Building Direct Expenses in accordance with generally accepted real estate accounting and management practices, consistently applied.

4.5 **Taxes and Other Charges for Which Tenant Is Directly Responsible**.

1 Tenant shall be liable for and shall pay ten (10) days before delinquency, taxes levied against Tenant's equipment, furniture, fixtures and any other personal property located in or about the Premises. If any such taxes on Tenant's equipment, furniture, fixtures and any other personal property are levied against Landlord or Landlord's property or if the assessed value of Landlord's property is increased by the inclusion therein of a value placed upon such equipment, furniture, fixtures or any other personal property and if Landlord pays the taxes based upon such increased assessment, which Landlord shall have the right to do regardless of the validity thereof but only under proper protest if requested by Tenant, Tenant shall upon demand repay to Landlord the taxes so levied against Landlord or the proportion of such taxes resulting from such increase in the assessment, as the case may be.

2 Notwithstanding any contrary provision herein, Tenant shall pay prior to delinquency any (i) rent tax or sales tax, service tax, transfer tax or value added tax, or any other applicable tax on the rent or services herein or otherwise respecting this Lease, (ii) taxes assessed upon or with respect to the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises or any portion of the Project, including the Project parking facility; or (iii) taxes assessed upon this transaction or any document to which Tenant is a party creating or transferring an interest or an estate in the Premises.

4.6 **Landlord's Books and Records**. Upon Tenant's written request given not more than thirteen (13) months after Tenant's receipt of a Statement for a particular Expense Year, and provided that no Event of Default is then existing, Landlord shall furnish Tenant with such reasonable supporting documentation in connection with said Building Direct Expenses as Tenant may reasonably request. Landlord shall provide said information to Tenant within sixty (60) days after Tenant's written request therefor. Within sixty (60) days following Tenant's receipt of the requested information from Landlord (the "**Review Period**"), if Tenant disputes the amount of Additional Rent set forth in the Statement, an independent certified public accountant (which accountant (A) is a member of a nationally or regionally recognized accounting firm, and (B) is not working on a contingency fee basis), designated and paid for by Tenant, may, after reasonable notice to Landlord and at reasonable times, inspect Landlord's records with respect to the Statement at Landlord's offices, provided that no Event of Default is then occurring and Tenant has paid all amounts required to be paid under the applicable Estimate Statement and Statement, as the case may be. In connection with such inspection, Tenant and Tenant's agents must agree in advance to follow Landlord's reasonable rules and procedures regarding inspections of Landlord's records, and shall execute a commercially reasonable confidentiality agreement regarding such inspection. Tenant's failure to dispute the amount of Additional Rent set forth in any Statement within the Review Period shall be deemed to be Tenant's approval of such Statement and Tenant, thereafter, waives the right or ability to dispute the amounts set forth in such Statement. If after such inspection, Tenant still disputes such Additional Rent, a determination as to the proper amount shall be made, at Tenant's expense, by an independent certified public accountant (the "**Accountant**") selected by Landlord and subject to Tenant's reasonable approval; provided that if such determination by the Accountant proves that Direct Expenses were overstated by more than five percent (5%), then the cost of the Accountant and the cost of such determination shall be paid for by Landlord. Tenant hereby acknowledges that Tenant's sole right to inspect Landlord's books and records and to contest the amount of Direct Expenses payable by Tenant shall be as set forth in this Section 4.6, and Tenant hereby waives any and all other rights pursuant to applicable law to inspect such books and records and/or to contest the amount of Direct Expenses payable by Tenant. To the extent a determination is made, pursuant to the TCCs of this Section 4.6, that Tenant paid more as Estimated Direct Expenses than the actual Tenant's Share of Direct Expenses (again, an "**Excess**"), Tenant shall receive a credit in the amount of such Excess against Rent next due under this Lease; provided, however, to the extent the Lease Term is then expired, Landlord shall, within thirty (30) days of such determination, deliver a check payable to Tenant in the amount of such Excess.

ARTICLE 5

USE OF PREMISES

5.1 **Permitted Use**. Tenant shall use the Premises solely for the Permitted Use set forth in Section 7 of the Summary and Tenant shall not use or permit the Premises or the Project to be used for any other purpose or purposes whatsoever without the prior written consent of Landlord, which may be withheld in Landlord's sole discretion.

5.2 **Prohibited Uses**. The uses prohibited under this Lease shall include, without limitation, use of the Premises or a portion thereof for (i) offices of any agency or bureau of the United States or any state or political subdivision thereof; (ii) offices or agencies of any foreign governmental or political

subdivision thereof; (iii) medical offices of any health care professionals or service organization; (iv) schools or other training facilities which are not ancillary to corporate, executive or professional office use; (v) retail or restaurant uses; or (vi) communications firms such as radio and/or television stations. Tenant further covenants and agrees that Tenant shall not use, or suffer or permit any person or persons to use, the Premises or any part thereof for any use or purpose contrary to the provisions of the Rules and Regulations set forth in **Exhibit D**, attached hereto, or in violation of the laws of the United States of America, the State of California, or the ordinances, regulations or requirements of the local municipal or county governing body or other lawful authorities having jurisdiction over the Project) including, without limitation, any such laws, ordinances, regulations or requirements relating to hazardous materials or substances, as those terms are defined by applicable laws now or hereafter in effect; provided, however, Landlord shall not enforce, change or modify the Rules and Regulations in a discriminatory manner and Landlord agrees that the Rules and Regulations shall not be modified or enforced in a manner which will unreasonably interfere with the normal and customary conduct of Tenant's business. Tenant shall not do or permit anything to be done in or about the Premises which will in any way damage the reputation of the Project or obstruct or interfere with the rights of other tenants or occupants of the Building, or injure or annoy them or use or allow the Premises to be used for any improper, unlawful or objectionable purpose, nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises. Tenant shall comply with all recorded covenants, conditions, and restrictions now or hereafter affecting the Project.

5.3 **CC&Rs**. Tenant shall comply with all recorded covenants, conditions, and restrictions currently affecting the Project (the "**Current CC&Rs**"). Additionally, Tenant acknowledges that the Project may be subject to any future covenants, conditions, and restrictions, including amendments to the Current CC&Rs (collectively with the Current CC&Rs, the "**CC&Rs**") which Landlord, in Landlord's discretion, deems reasonably necessary or desirable, and Tenant agrees that this Lease shall be subject and subordinate to such CC&Rs. Landlord shall have the right to require Tenant to execute and acknowledge, within fifteen (15) business days of a request by Landlord, a "Recognition of Covenants, Conditions, and Restriction," in a form substantially similar to that attached hereto as **Exhibit F**, agreeing to and acknowledging the CC&Rs; provided, however, to the extent any CC&Rs relate to Project specific programs and are within Landlord's control (*i.e.*, Landlord has the ability, either directly or indirectly, to cause the disapproval of such covenant, condition, and restriction, or amendment thereto), then (i) such specific programs shall be subject to Tenant's reasonable review and prior approval, and (ii) no such future CC&Rs shall be permitted which materially diminish Tenant's beneficial use or enjoyment or access, or materially increase Tenant's obligation, hereunder.

ARTICLE 6

SERVICES AND UTILITIES

6.1 **Standard Tenant Services**. Landlord shall maintain and operate the Building in a manner consistent with the Comparable Buildings, and shall keep the Building Structure in condition and repair consistent with the Comparable Buildings. In addition, Landlord shall provide, as part of the Building Structure, (i) adequate electrical wiring to subpanel facilities for the Building for Tenant's connection with a minimum capacity of 3000 Amps at 277/480 Volts (three (3)-phase, four (4) wire), (ii) city water and sewer stubbed to the Premises, and (iii) elevator services.

Notwithstanding the foregoing, Tenant shall directly pay for all utilities (including without limitation, electricity, gas, sewer and water) attributable to its use of the entire Premises and shall also provide its own janitorial and security services for the Building. Such utility use shall include electricity, water, and gas use for lighting, incidental use and "HVAC," as that term is defined below. In addition to the foregoing, Tenant shall provide, at Tenant's sole cost and expense, pest control services to the Building in a manner consistent with or greater than the Comparable Buildings. All such utility, janitorial and security payments shall be excluded from Operating Expenses and shall be paid directly by Tenant prior to the date on which the same are due to the utility provider, janitorial company, pest control company and/or security company, as applicable. The parties hereby acknowledge and agree that the Premises is separately metered for all utilities.

Landlord shall not be required to provide any services other than with regard to its maintenance and repair obligation relating to the Building Structure and the Common Areas.

6.2 **Tenant Maintained Building Systems; HVAC**. Tenant shall, at Tenant's sole cost and expense, (i) maintain the Building's mechanical, electrical, life safety, plumbing, fire-sprinkler systems (except to the extent Landlord retains repair and maintenance responsibility for the portion of such fire-sprinkler system contained in the Building Structure), (ii) subject to limitations imposed by all

governmental rules, regulations and guidelines applicable thereto, maintain (itself or through a service provider) heating and air conditioning to the Premises ("**HVAC**") (items identified in (i) and (ii) collectively, the "**Building Systems**"), and (iii) maintain the remaining portions of the Premises which are not part of the "Building Structure," as that term is set forth in Article 7 of this Lease to the extent such Building Structure is to be maintained and repaired by Landlord.

6.3 **Tenant Maintained Services**.

6.3.1 **Security Services**. Tenant hereby acknowledges that Landlord shall have no obligation to provide guard service or other security measures for the benefit of the Premises, the Building or the Project. Any security measures desired by Tenant for the benefit of the Premises, the Building or the Project shall be provided by Tenant, at Tenant's sole cost and expense. Tenant hereby assumes all responsibility for the protection of Tenant and its agents, employees, contractors, invitees and guests, and the property thereof, from acts of third parties, including keeping doors locked and other means of entry to the Premises closed.

6.3.2 **Janitorial Services**. Tenant shall, at Tenant's sole cost and expense, provide (or directly contract for) janitorial services in and about the Premises in a manner reasonably consistent with the Comparable Buildings.

6.4 **Tenant Maintenance Standards**. All Tenant maintained Building Systems, including HVAC, shall be maintained in accordance with manufacturer specifications by Tenant in a commercially reasonable condition. In addition, Tenant shall provide to Landlord copies of any service contracts and records of Tenant's maintenance of such Building Systems.

6.5 **Landlord's Assumption Of Maintenance**. Landlord shall have the reasonable right, after twenty-four (24) hours notice to Tenant, to inspect the Building, Building Systems, and/or Tenant's maintenance records, in order to ensure compliance with this Article 6. In the event Tenant fails, in the reasonable judgment of Landlord, to provide the maintenance services (or cause the same to be provided) in accordance with the obligations set forth in this Article 6, Landlord shall deliver a written notice (a "**Maintenance Failure Notice**") to Tenant stating with particularity the nature of such failure (such failure by Tenant to be known as a "**Tenant Maintenance Failure**"). If such Tenant Maintenance Failure continues at the end of the fifth (5th) business day following the date of delivery of such Maintenance Failure Notice, then Landlord shall have the right to provide such maintenance and Tenant shall pay Landlord the cost thereof promptly upon being billed for same (including a percentage of the cost thereof sufficient to reimburse Landlord for all overhead, general conditions, fees and other costs or expenses arising from Landlord's involvement with such maintenance); provided, however, in the event of an emergency, Landlord may take such remedial action immediately following the delivery of the Maintenance Failure Notice. In the event more than two (2) Tenant Maintenance Failures occur during any calendar year during the Lease Term, Landlord may, but need not, assume such repair and maintenance obligations on behalf of Tenant for the remainder of the Lease Term, in which case (i) Tenant shall pay Landlord the cost thereof promptly upon being billed for same, and (ii) Landlord's management fee for the Project shall, notwithstanding the management fee set forth in Section 4.2.4(vi), be increased to five percent (5%). Tenant shall at all times maintain written records of maintenance and repairs and shall provide Landlord, within ten (10) business days following any request by Landlord therefor (which requests shall not occur more often than once per calendar quarter), a copy of all such maintenance and repair records and/or reports. In addition, to the extent Tenant contracts with third parties to perform such maintenance (a "**Service Contract**"), Tenant shall deliver full and complete copies of all such Service Contracts entered into by Tenant for the Building Systems to Landlord within thirty (30) days after the effective date of such Service Contract. Any such cost or expense paid by Tenant pursuant to a Landlord approved Service Contract shall not be included in Operating Expenses.

6.6 **Interruption of Use**. Except as otherwise expressly provided in Section 6.7 or elsewhere in this Lease, Tenant agrees that Landlord shall not be liable for damages, by abatement of Rent or otherwise, for failure to furnish or delay in furnishing any service (including telephone and telecommunication services), or for any diminution in the quality or quantity thereof, when such failure or delay or diminution is occasioned, in whole or in part, by breakage, repairs, replacements, or improvements, by any strike, lockout or other labor trouble, by inability to secure electricity, gas, water, or other fuel at the Building or Project after reasonable effort to do so, by any riot or other dangerous condition, emergency, accident or casualty whatsoever, by act or default of Tenant or other parties, or by any other cause beyond Landlord's reasonable control; and such failures or delays or diminution shall never be deemed to constitute an eviction or disturbance of Tenant's use and possession of the Premises

or relieve Tenant from paying Rent or performing any of its obligations under this Lease, except as otherwise expressly provided in Section 6.4 or elsewhere in this Lease.

6.7 **Rent Abatement**. If (i) Landlord fails to perform the obligations required of Landlord under the TCCs of this Lease (whether or not such failure relates to the negligence or willful misconduct of Landlord, its employees, agents, or contractors), (ii) such failure causes all or a portion of the Premises to be untenantable by Tenant, and (iii) such failure relates to (A) the nonfunctioning of the heat, ventilation, and air conditioning system in the Premises, the nonfunctioning of electricity in the Premises, the nonfunctioning of the elevator service to the Premises, the nonfunctioning of the fire sprinkler-system, or (B) a failure to provide access to the Premises, Tenant shall give Landlord notice (the "**Initial Notice**"), specifying such failure to perform by Landlord (the "**Abatement Event**"). If Landlord has not cured such Abatement Event within three (3) business days after the receipt of the Initial Notice (the "**Eligibility Period**"), Tenant may deliver an additional notice to Landlord (the "**Additional Notice**"), specifying such Abatement Event and Tenant's intention to abate the payment of Rent under this Lease. If Landlord does not cure such Abatement Event within two (2) business days of receipt of the Additional Notice, Tenant may, upon written notice to Landlord, immediately abate Rent payable under this Lease for that portion of the Premises rendered untenantable and not used by Tenant, for the period beginning on the date three (3) business days after the Initial Notice to the earlier of the date Landlord cures such Abatement Event or the date Tenant recommences the use of such portion of the Premises. Such right to abate Rent shall be Tenant's sole and exclusive remedy at law or in equity for an Abatement Event. Except as provided in this Section 6.7, nothing contained herein shall be interpreted to mean that Tenant is excused from paying Rent due hereunder.

ARTICLE 7

REPAIRS

Landlord shall maintain in first-class condition and operating order and keep in good repair and condition the structural portions of the Building, including without limitation the foundation, floor/ceiling slabs, roof structure (as opposed to roof membrane), curtain wall, exterior glass and mullions, columns, beams, shafts (including elevator shafts), stairs, parking areas, landscaping, exterior Project signage, stairwells, and all common and public areas (collectively, "**Building Structure**") and the base first-sprinkler systems which were not constructed by Tenant Parties and the Common Areas; provided, however, that to the extent such fire-sprinkler system (as existing as of the date of this Lease) is altered by Tenant, Tenant shall thereafter be responsible therefor (at which time any warranties relating to such system shall be transferred to Tenant); provided further, however, that until such time as Tenant becomes responsible for the base fire-sprinkler systems pursuant to the foregoing clause, all references to Building Structure shall be deemed to include such base fire-sprinkler system. Notwithstanding anything in this Lease to the contrary, Tenant shall be required to repair the Building Structure to the extent caused due to Tenant's use of the Premises for other than normal and customary implementation of the business operations contemplated under Tenant's Permitted Use (as expressly in Sections 6(i)-(iii) of the Summary), unless and to the extent such damage is covered by insurance carries or required to be carried by Landlord pursuant to Article 10 and to which the waiver of subrogation is applicable (such obligation to the extent applicable to Tenant as qualified and conditioned will hereinafter be defined as the "**BS Exception**"). Tenant shall, at Tenant's own expense, pursuant to the TCCs of this Lease (including, without limitation, Article 8 hereof) keep the Premises, including all improvements, fixtures and furnishings therein, the roof membrane, and the floors of the Building on which the Premises are located, in good order, repair and condition at all times during the Lease Term (but such obligation shall not extend to the Building Structure, except pursuant to the BS Exception). In addition, Tenant shall, at Tenant's own expense, but under the supervision and subject to the prior approval of Landlord, and within any reasonable period of time specified by Landlord, promptly and adequately repair all damage to the Premises and replace or repair all damaged, broken, or worn fixtures and appurtenances (but such obligation shall not extend to the Building Structure, except pursuant to the BS Exception), except for damage caused by ordinary wear and tear or beyond the reasonable control of Tenant; provided however, that, at Landlord's option, or if Tenant fails to make such repairs, Landlord may, after written notice to Tenant and Tenant's failure to repair within five (5) days thereafter, but need not, make such repairs and replacements, and Tenant shall pay Landlord the cost thereof, including a percentage of the cost thereof (to be uniformly established for the Building and/or the Project) sufficient to reimburse Landlord for all overhead, general conditions, fees and other costs or expenses arising from Landlord's involvement with such repairs and replacements forthwith upon being billed for same. Landlord may, but shall not be required to, enter the Premises at all reasonable times to make such repairs, alterations, improvements or additions to the Premises or to the Project or to any equipment located in the Project as Landlord shall desire or deem necessary or as Landlord may be required to do by governmental or quasi-governmental authority or court order or decree; provided, however, except for (i) emergencies, (ii) repairs, alterations,

improvements or additions required by governmental or quasi-governmental authorities or court order or decree, or (iii) repairs which are the obligation of Tenant hereunder, any such entry into the Premises by Landlord shall be performed in a manner so as not to materially interfere with Tenant's use of, or access to, the Premises; provided that, with respect to items (ii) and (iii) above, Landlord shall use commercially reasonable efforts to not materially interfere with Tenant's use of, or access to, the Premises. Tenant hereby waives any and all rights under and benefits of subsection 1 of Section 1932 and Sections 1941 and 1942 of the California Civil Code or under any similar law, statute, or ordinance now or hereafter in effect.

ARTICLE 8

ADDITIONS AND ALTERATIONS

8.1 **Landlord's Consent to Alterations**. Tenant may not make any improvements, alterations, additions or changes to the Premises or any mechanical, plumbing or HVAC facilities or systems pertaining to the Premises (collectively, the "**Alterations**") without first procuring the prior written consent of Landlord to such Alterations, which consent shall be requested by Tenant not less than fifteen (15) business days prior to the commencement thereof, and which consent shall not be unreasonably withheld by Landlord, provided it shall be deemed reasonable for Landlord to withhold its consent to any Alteration which adversely affects the structural portions or the systems or equipment of the Building or is visible from the exterior of the Building. Notwithstanding the foregoing, Tenant shall be permitted to make Alterations following ten (10) business days notice to Landlord, but without Landlord's prior consent, to the extent that such Alterations do not (i) involve the expenditure of more than Twenty-Five Thousand and No/100 Dollars ($25,000) for any particular Alterations, or more than One Hundred Fifty Thousand and No/100 Dollars ($150,000.00) in the aggregate in any Lease Year, (ii) adversely affect the systems and equipment of the Building or the Building Structure, or (iii) adversely affect the exterior appearance of the Building (the "**Cosmetic Alterations**"). The construction of the initial improvements to the Premises shall be governed by the terms of the Work Letter Agreements and not the terms of this Article 8.

8.2 **Manner of Construction**. Landlord may impose, as a condition of its consent to any and all Alterations or repairs of the Premises or about the Premises, such requirements as Landlord in its reasonable discretion may deem desirable; provided, however, such requirement shall at a minimum include, but not be limited to, the following: (i) the requirement that Tenant utilize for such purposes only contractors reasonably approved by Landlord, (ii) the requirement that upon Landlord's timely request (as more particularly set forth in Section 8.5, below), Tenant shall, at Tenant's expense, remove such Alterations upon the expiration or any early termination of the Lease Term and return the affected portion of the Premises to the "Warm Shell" condition as more particularly identified in Section 2.3 of the Work Letter Agreement attached as **Exhibit B** to this Lease, (iii) the requirement that a copy of Tenant's contract(s) with its contractors be delivered to Landlord prior to the commencement of any such construction (which contracts shall state that all change orders must be approved, in writing, by Landlord prior to implementation); (iv) Landlord's review and approval of the final budget (contractor's cost proposal) for such Alterations or repairs; and (v) the requirement that Tenant shall meet with Landlord, prior to the commencement of any construction, to discuss Landlord's design parameters and code compliance issues. Tenant shall construct such Alterations and perform such repairs in a good and workmanlike manner, in conformance with any and all applicable federal, state, county or municipal laws, rules and regulations and pursuant to a valid building permit, issued by the City of San Diego, all in conformance with Landlord's construction rules and regulations. In the event Tenant performs any Alterations in the Premises which require or give rise to governmentally required changes to the "Base Building," as that term is defined below, then Landlord shall, at Tenant's expense, make such changes to the Base Building. The "**Base Building**" shall consist of the Building Structure. In performing the work of any such Alterations, Tenant shall have the work performed in such manner so as not to obstruct access to the Project or any portion thereof, by any other tenant of the Project, and so as not to obstruct the business of Landlord or other tenants in the Project. Tenant shall use commercially reasonable efforts to use contractors, services, workmen, labor, materials or equipment in a manner that minimizes any material disturbance to labor harmony with the workforce or trades engaged in performing other work, labor or services in or about the Project. In addition to Tenant's obligations under Article 9 of this Lease, upon completion of any Alterations, Tenant agrees to cause a Notice of Completion to be recorded in the office of the Recorder of the County of San Diego in accordance with Section 3093 of the Civil Code of the State of California or any successor statute, and Tenant shall deliver to the Project construction manager a reproducible copy of the "as built" drawings of the Alterations, to the extent applicable, as well as all permits, approvals and other documents issued by any governmental agency in connection with the Alterations.

8.3 **Payment for Improvements**. If payment is made directly to contractors, Tenant shall (i) comply with Landlord's requirements for final lien releases and waivers in connection with Tenant's payment for work to contractors, and (ii) sign Landlord's standard contractor's rules and regulations, if any. If Tenant orders any work directly from Landlord, Tenant shall pay to Landlord an amount equal to five percent of the cost of such work to compensate Landlord for all overhead, general conditions, fees and other costs and expenses arising from Landlord's involvement with such work. If Tenant does not order any work directly from Landlord, Tenant shall reimburse Landlord for Landlord's reasonable, actual, out-of-pocket costs and expenses actually incurred in connection with Landlord's review of such work.

8.4 **Construction Insurance**. In addition to the requirements of Article 10 of this Lease, in the event that Tenant makes any Alterations, prior to the commencement of such Alterations, Tenant shall provide Landlord with evidence that Tenant carries "Builder's All Risk" insurance in an amount reasonably approved by Landlord covering the construction of such Alterations, and such other insurance as Landlord may reasonably require, it being understood and agreed that all of such Alterations shall be insured by Tenant pursuant to Article 10 of this Lease immediately upon completion thereof. In addition, Landlord may, in its reasonable discretion, require Tenant to obtain a lien and completion bond or some alternate form of security satisfactory to Landlord in an amount sufficient to ensure the lien-free completion of such Alterations and naming Landlord as a co-obligee.

8.5 **Landlord's Property**. Landlord and Tenant hereby acknowledge and agree that (i) all Alterations, improvements, fixtures, equipment and/or appurtenances which may be installed or placed in or about the Premises, from time to time, shall be at the sole cost of Tenant and shall be and become the property of Landlord, and (ii) the Improvements to be constructed in the Premises pursuant to the TCCs of the Work Letters shall, upon completion of the same, be and become a part of the Premises and the property of Landlord. Furthermore, Landlord may, by written notice to Tenant prior to the end of the Lease Term, or given following any earlier termination of this Lease, require Tenant, at Tenant's expense, to (i) remove any Alterations or improvements in the Premises, and/or (ii) remove any "Non-Conforming Improvements, as that term is defined in Section 2.4 of the Work Letter Agreement, to the extent timely identified for removal by Landlord pursuant to such Section 2.4 of the Work Letter Agreements, and return the affected portions of the Premises to the Warm Shell condition; provided, however, if, in connection with its notice to Landlord with respect to any such Alterations or Cosmetic Alterations, (*x*) Tenant requests Landlord's decision with regard to the removal of such Alterations or Cosmetic Alterations, and (*y*) Landlord thereafter agrees in writing to waive the removal requirement with regard to such Alterations or Cosmetic Alterations, then Tenant shall not be required to so remove such Alterations or Cosmetic Alterations; provided further, however, that if Tenant requests such a determination from Landlord and Landlord, within ten (10) business days following Landlord's receipt of such request from Tenant with respect to Alterations or Cosmetic Alterations, fails to address the removal requirement with regard to such Alterations or Cosmetic Alterations, Landlord shall be deemed to have agreed to waive the removal requirement with regard to such Alterations or Cosmetic Alterations. If Tenant fails to complete such removal and/or to repair any damage caused by the removal of any Alterations or improvements in the Premises, and returns the affected portion of the Premises to the "Warm Shell" condition, then at Landlord's option, either (A) Tenant shall be deemed to be holding over in the Premises and Rent shall continue to accrue in accordance with the terms of Article 16, below, until such work shall be completed, or (B) Landlord may do so and may charge the cost thereof to Tenant. Tenant hereby protects, defends, indemnifies and holds Landlord harmless from any liability, cost, obligation, expense or claim of lien in any manner relating to the installation, placement, removal or financing of any such Alterations, improvements, fixtures and/or equipment in, on or about the Premises, which obligations of Tenant shall survive the expiration or earlier termination of this Lease.

ARTICLE 9

COVENANT AGAINST LIENS

Tenant shall keep the Project and Premises free from any liens or encumbrances arising out of the work performed, materials furnished or obligations incurred by or on behalf of Tenant, and shall protect, defend, indemnify and hold Landlord harmless from and against any claims, liabilities, judgments or costs (including, without limitation, reasonable attorneys' fees and costs) arising out of same or in connection therewith. Tenant shall give Landlord notice at least twenty (20) days prior to the commencement of any such work on the Premises (or such additional time as may be necessary under applicable laws) to afford Landlord the opportunity of posting and recording appropriate notices of non-responsibility. Tenant shall remove any such lien or encumbrance by bond or otherwise within five (5) business days after notice by Landlord, and if Tenant shall fail to do so, Landlord may pay the amount necessary to remove such lien or encumbrance, without being responsible for investigating the validity thereof. The amount so paid shall be deemed Additional Rent under this Lease payable upon demand,

without limitation as to other remedies available to Landlord under this Lease. Nothing contained in this Lease shall authorize Tenant to do any act which shall subject Landlord's title to the Building or Premises to any liens or encumbrances whether claimed by operation of law or express or implied contract. Any claim to a lien or encumbrance upon the Building or Premises arising in connection with any such work or respecting the Premises not performed by or at the request of Landlord shall be null and void, or at Landlord's option shall attach only against Tenant's interest in the Premises and shall in all respects be subordinate to Landlord's title to the Project, Building and Premises.

ARTICLE 10

INSURANCE

10.1 **Indemnification and Waiver**. Except to the extent (i) otherwise expressly set forth in this Lease to the contrary, or (ii) caused by the negligence or willful misconduct of the "Landlord Parties," as that term is defined in this Section 10.1, Tenant hereby assumes all risk of damage to property or injury to persons in, upon or about the Premises from any cause whatsoever and agrees that Landlord, its partners, subpartners and their respective officers, agents, servants, employees, and independent contractors (collectively, "**Landlord Parties**") shall not be liable for, and are hereby released from any responsibility for, any damage either to person or property or resulting from the loss of use thereof, which damage is sustained by Tenant or by other persons claiming through Tenant. Tenant shall indemnify, defend, protect, and hold harmless the Landlord Parties from any and all loss, cost, damage, expense and liability (including without limitation court costs and reasonable attorneys' fees) incurred in connection with or arising from any cause in, on or about the Premises, any acts, omissions or negligence of Tenant or of any person claiming by, through or under Tenant, or of the contractors, agents, servants, employees, invitees, guests or licensees of Tenant or any such person, in, on or about the Project or any breach of the TCCs of this Lease, either prior to, during, or after the expiration of the Lease Term, provided that the terms of the foregoing indemnity shall not apply to the extent (*w*) otherwise expressly set forth in this Lease to the contrary, or (*x*) caused by the negligence or willful misconduct of the Landlord Parties. Should Landlord be named as a defendant in any suit brought against Tenant and to the extent covered by the indemnity of Tenant set forth in this Section 10.1, Tenant shall pay to Landlord its reasonable costs and expenses incurred in such suit, including without limitation, its actual professional fees such as appraisers', accountants' and attorneys' fees. Further, Tenant's agreement to indemnify Landlord pursuant to this Section 10.1 is not intended and shall not relieve any insurance carrier of its obligations under policies required to be carried by Tenant pursuant to the provisions of this Lease, to the extent such policies cover the matters subject to Tenant's indemnification obligations; nor shall they supersede any inconsistent agreement of the parties set forth in any other provision of this Lease. The provisions of this Section 10.1 shall survive the expiration or sooner termination of this Lease with respect to any claims or liability arising in connection with any event occurring prior to such expiration or termination. Notwithstanding anything to the contrary contained in this Lease, nothing in this Lease shall impose any obligations on Tenant or Landlord to be responsible or liable for, and each hereby releases the other from all liability for, consequential damages other than those consequential damages incurred by Landlord in connection with a holdover of the Premises by Tenant after the expiration or earlier termination of this Lease or incurred by Landlord in connection with any repair, physical construction or improvement work performed by or on behalf of Tenant in the Project.

10.2 **Landlord's Fire, Casualty and Liability Insurance**.

10.2.1 Landlord shall maintain Commercial/Comprehensive General Liability Insurance with respect to the Building during the Lease Term covering claims for bodily injury, personal injury and property damage in the Project Common Areas and with respect to Landlord's activities in the Premises.

10.2.2 Landlord shall insure the Building and Landlord's remaining interest in the Improvements and Alterations with a policy of Physical Damage Insurance including building ordinance coverage, written on a standard Causes of Loss — Special Form basis (against loss or damage due to fire and other casualties covered within the classification of fire and extended coverage, vandalism, and malicious mischief, sprinkler leakage, water damage and special extended coverage), covering the full replacement cost of the Base Building, Premises and other improvements (including coverages for enforcement of Applicable Laws requiring the upgrading, demolition, reconstruction and/or replacement of any portion of the Building as a result of a covered loss) without deduction for depreciation.

10.2.3 Landlord shall maintain Boiler and Machinery/Equipment Breakdown Insurance covering the Building against risks commonly insured against by a Boiler & Machinery/Equipment

Breakdown policy and such policy shall cover the full replacement costs, without deduction for depreciation.

10.2.4 The foregoing coverages shall contain commercially reasonable deductible amounts from such companies, and on such other terms and conditions, as Landlord may from time to time reasonably determine.

10.2.5 Additionally, at the option of Landlord, such insurance coverage may include the risk of (i) earthquake, (ii) flood damage and additional hazards, (iii) a rental loss endorsement for a period of up to two (2) years, (iv) one or more loss payee endorsements in favor of holders of any mortgages or deeds of trust encumbering the interest of Landlord in the Building, or any portion thereof.

10.2.6 In addition to the insurance coverage identified in Section 10.2.5, Landlord may, at the option of Landlord, maintain "Pollution Legal Liability Environmental Insurance," as that term is set forth below. For purposes of this Lease, the "**Pollution Legal Liability Environmental Insurance**" (aka an "Owner's Policy" of environmental insurance) shall mean insurance (1) from an insurance carrier with a credit rating of no less than A—X in Best's Insurance Guide, it being acknowledged and agreed by Landlord that, as of the date of this Lease, AIG, Chubb, Zurich and the XL Insurance Company currently satisfy such credit rating, and (2) providing, at a minimum, the following: (a) an initial three (3)-year policy term (with successive 1-year terms renewable on a rolling annual basis, until such time as the policy term equals or exceeds the Lease Expiration Date), (b) $2,000,000 coverage per incident or occurrence, (c) $2,000,000 aggregate coverage, (d) a deductible or self-insured retention of no more than $100,000, and (e) coverage for: (A) unknown pre-existing conditions; (B) unknown and later discovered conditions; (C) on-site and off-site third-party claims for bodily injury or property damage; and (D) legal defense expenses. Furthermore, the policy of insurance must include an automatic extended reporting period that provides the Insured a period of no less than sixty (60) days following the effective date of termination of coverage in which to provide written notice to the insurance carrier of claims first made and reported within the automatic extended reporting period. All other terms, coverage, exclusions, or conditions of the policy shall be at Landlord's sole and complete discretion. Notwithstanding the foregoing, to the extent no Event of Default is then occurring, Tenant shall have the option, upon sixty (60) days written notice to Landlord, to itself carry such Pollution Legal Liability Environmental Insurance in lieu of Landlord carrying such insurance; provided further, however, to the extent Tenant so elects to carry such Pollution Legal Liability Environmental Insurance pursuant to the foregoing clause, Tenant shall comply with the express coverage requirements set forth hereinabove, and such coverage shall otherwise comply with the TCCs of Section 10.4, below.

10.2.7 In connection with the foregoing provisions of this Section 10.2, the coverage and amounts of insurance carried by Landlord in connection with the Building and Project shall, at a minimum, be comparable to the coverage and amounts of insurance which are carried by reasonably prudent landlords of Comparable Buildings, and Worker's Compensation and Employer's Liability coverage as required by applicable law. Tenant shall, at Tenant's expense, comply with all insurance company requirements pertaining to the use of the Premises.

If Tenant's conduct or use of the Premises causes any increase in the premium for such insurance policies then Tenant shall reimburse Landlord for any such increase. Tenant, at Tenant's expense, shall comply with all rules, orders, regulations or requirements of the American Insurance Association (formerly the National Board of Fire Underwriters) and with any similar body.

10.3 **Tenant's Insurance**. Tenant shall maintain the following coverages in the following amounts.

10.3.1 Commercial General Liability Insurance covering the insured against claims of bodily injury, personal injury and property damage (including loss of use thereof) arising out of Tenant's operations, and contractual liabilities (covering the performance by Tenant of its indemnity agreements) including a Broad Form contractual liability endorsement covering the insuring provisions of this Lease. Landlord shall be named as an additional insured as their interests may appear using form CG2011 or a comparable form approved by Landlord. An endorsement showing that Tenant's coverage is primary and any insurance carried by Landlord shall be excess and noncontributing. Such insurance shall (i) name Landlord, and any other party the Landlord so specifies that has a material financial interest in the Project as an additional insured, including Landlord's managing agent, if any, and (ii) specifically cover the liability assumed by Tenant under this Lease, including, but not limited to, Tenant's obligations under Section 10.1 of this Lease. Liability limits shall not be less than:

Bodily Injury and Property Damage Liability $4,000,000 each occurrence
$5,000,000 annual aggregate, or
any combination of primary
insurance and excess insurance

Personal Injury Liability $4,000,000 each occurrence
$5,000,000 annual aggregate, or
any combination of primary insurance
and excess insurance
0% Insured's participation

10.3.2 Property Insurance covering (i) all office furniture, business and trade fixtures, office equipment, free- standing cabinet work, movable partitions, merchandise and all other items of Tenant's property on the Premises installed by, for, or at the expense of Tenant, (ii) the Improvements and any other improvements which exist in the Premises as of the Lease Commencement Date (excluding the Base Building (the "**Original Improvements**"), and (iii) all other improvements, alterations and additions to the Premises. Such insurance shall be written on an "all risks" of physical loss or damage basis, for the full replacement cost value (subject to reasonable deductible amounts) new without deduction for depreciation of the covered items and in amounts that meet any co- insurance clauses of the policies of insurance and shall include coverage for damage or other loss caused by fire or other peril including, but not limited to, vandalism and malicious mischief, theft, water damage of any type, including sprinkler leakage, bursting or stoppage of pipes, and explosion.

10.3.3 Worker's Compensation or other similar insurance pursuant to all applicable state and local statutes and regulations, and Employer's Liability Insurance or other similar insurance pursuant to all applicable state and local statutes and regulations, with minimum limits of One Million and No/100 Dollars ($1,000,000.00) per employee and One Million and No/100 Dollars ($1,000,000.00) per occurrence.

10.3.4 Commercial Automobile Liability Insurance covering all owned, hired, or non-owned vehicles with the following limits of liability: One Million Dollars ($1,000,000.00) combined single limit for bodily injury and property damage.

10.3.5 Business Interruption, loss of income and extra expense insurance in such amounts as will reimburse Tenant for actual direct or indirect loss of earnings for up to one (1) year attributable to the risks outlined in Section 10.3.2, above.

10.4 **Form of Policies**. The minimum limits of policies of insurance required of Tenant under this Lease shall in no event limit the liability of Tenant under this Lease. Such insurance shall (i) name Landlord, and any other party the Landlord so specifies that has a material financial interest in the Project, as an additional insured, including Landlord's managing agent, if any; (ii) specifically cover the liability assumed by Tenant under this Lease, including, but not limited to, Tenant's obligations under Section 10.1 of this Lease; (iii) be issued by an insurance company having a rating of not less than A-X in Best's Insurance Guide or which is otherwise acceptable to Landlord and licensed to do business in the State of California; (iv) be primary insurance as to all claims thereunder and provide that any insurance carried by Landlord is excess and is non-contributing with any insurance requirement of Tenant; (v) be in form and content reasonably acceptable to Landlord; and (vi) provide that said insurance shall not be canceled or coverage changed unless thirty (30) days' prior written notice shall have been given to Landlord and any mortgagee of Landlord, the identity of whom has been provided to Tenant in writing. Tenant shall deliver said policy or policies or certificates thereof to Landlord on or before the Lease Commencement Date and at least thirty (30) days before the expiration dates thereof. In the event Tenant shall fail to procure such insurance, or to deliver such policies or certificate, Landlord may, at its option, after written notice to Tenant and Tenant's failure to obtain such insurance within five (5) days thereafter, procure such policies for the account of Tenant, and the cost thereof shall be paid to Landlord within thirty (30) days after delivery to Tenant of bills therefor.

10.5 **Subrogation**. Landlord and Tenant intend that their respective property loss risks shall be borne by reasonable insurance carriers to the extent above provided, and Landlord and Tenant hereby agree to look solely to, and seek recovery only from, their respective insurance carriers in the event of a property loss to the extent that such coverage is agreed to be provided hereunder. The parties each hereby waive all rights and claims against each other for such losses, and waive all rights of subrogation of their respective insurers, provided such waiver of subrogation shall not affect the right to the insured to recover thereunder. The parties agree that their respective insurance policies are now, or shall be,

endorsed such that the waiver of subrogation shall not affect the right of the insured to recover thereunder, so long as no material additional premium is charged therefor.

10.6 **Additional Insurance Obligations**. Tenant shall carry and maintain during the entire Lease Term, at Tenant's sole cost and expense, increased amounts of the insurance required to be carried by Tenant pursuant to this Article 10 and such other reasonable types of insurance coverage and in such reasonable amounts covering the Premises and Tenant's operations therein, as may be reasonably requested by Landlord. Notwithstanding the foregoing, Landlord's request shall only be considered reasonable if such increased coverage amounts and/or such new types of insurance are consistent with the requirements of a majority of Comparable Buildings, and Landlord shall not so increase the coverage amounts or require additional types of insurance during the first five (5) years of the Lease Term and thereafter no more often than one time in any five (5) year period.

ARTICLE 11

DAMAGE AND DESTRUCTION

11.1 **Repair of Damage to Premises by Landlord**. Tenant shall promptly notify Landlord of any material damage to the Premises resulting from fire or any other casualty. If the Premises or any Common Areas serving or providing access to the Premises shall be damaged by fire or other casualty, Landlord shall promptly and diligently, subject to reasonable delays for insurance adjustment or other matters beyond Landlord's reasonable control, and subject to all other terms of this Article 11, restore the Base Building and such Common Areas. Such restoration shall be to substantially the same condition of the Base Building and the Common Areas prior to the casualty, except for modifications required by zoning and building codes and other laws or by the holder of a mortgage on the Building or Project or any other modifications to the Common Areas deemed desirable by Landlord, which are consistent with the character of the Project, provided that access to the Premises and any common restrooms serving the Premises shall not be materially impaired. Upon the occurrence of any damage to the Premises, upon notice (the "**Landlord Repair Notice**") to Tenant from Landlord, Tenant shall assign to Landlord (or to any party designated by Landlord) all insurance proceeds payable to Tenant under Tenant's insurance required under Section 10.3(ii) and (iii) of this Lease, and Landlord shall repair any injury or damage to the Improvements and the Original Improvements installed in the Premises and shall return such Improvements and Original Improvements to their original condition; provided that if the cost of such repair by Landlord exceeds the amount of insurance proceeds received by Landlord from Tenant's insurance carrier, as assigned by Tenant, the cost of such repairs shall be paid by Tenant to Landlord prior to Landlord's commencement of repair of the damage. In the event that Landlord does not deliver the Landlord Repair Notice within sixty (60) days following the date the casualty becomes known to Landlord, Tenant shall, at its sole cost and expense, repair any injury or damage to the Improvements and the Original Improvements installed in the Premises and shall return such Improvements and Original Improvements to their original condition. Whether or not Landlord delivers a Landlord Repair Notice, prior to the commencement of construction, Tenant shall submit to Landlord, for Landlord's review and approval, all plans, specifications and working drawings relating thereto, and Landlord shall select the contractors to perform such improvement work. Landlord shall not be liable for any inconvenience or annoyance to Tenant or its visitors, or injury to Tenant's business resulting in any way from such damage or the repair thereof; provided however, that if such fire or other casualty shall have damaged the Premises or Common Areas necessary to Tenant's occupancy, and the Premises are not occupied by Tenant as a result thereof, then during the time and to the extent the Premises are unfit for occupancy, the Rent shall be abated in proportion to the ratio that the amount of rentable square feet of the Premises which is unfit for occupancy for the purposes permitted under this Lease bears to the total rentable square feet of the Premises. In the event that Landlord shall not deliver the Landlord Repair Notice, Tenant's right to rent abatement pursuant to the preceding sentence shall terminate as of the date which is reasonably determined by Landlord to be the date Tenant should have completed repairs to the Premises assuming Tenant used reasonable due diligence in connection therewith.

11.2 **Landlord's Option to Repair**. Within forty-five (45) days after the date of discovery of the damage, Landlord shall provide Tenant with written notice setting forth a determination, in Landlord's reasonable judgment, when repairs are anticipated to be completed the "**Damage Determination Notice**"); provided, however, Landlord shall nevertheless use commercially reasonable efforts to provide such Damage Determination Notice as early as reasonably practicable. To the extent Landlord fails to timely deliver the Damage Determination Notice, Tenant may notify Landlord in writing of such failure and if, within ten (10) business days thereafter, Landlord's failure to deliver the Damage Determination Notice continues, then Landlord shall be deemed to have concluded that, in Landlord's reasonable judgment, the repairs cannot reasonably be completed within one hundred eighty (180) days after the discover of the damage (when such repairs are made without the payment of overtime or other premiums), and Tenant

shall have the resulting right to terminate this Lease as more particularly set forth herein below. Notwithstanding the terms of Section 11.1 of this Lease, Landlord may elect not to rebuild and/or restore the Premises, Building and/or Project, and instead terminate this Lease, by notifying Tenant in writing of such termination within sixty (60) days after the date of discovery of the damage, such notice to include a termination date giving Tenant sixty (60) days to vacate the Premises, but Landlord may so elect only if the Building or Project shall be damaged by fire or other casualty or cause, whether or not the Premises are affected, and one or more of the following conditions is present: (i) in Landlord's reasonable judgment, repairs cannot reasonably be completed within one hundred eighty (180) days after the date of discovery of the damage (when such repairs are made without the payment of overtime or other premiums); (ii) the holder of any mortgage on the Building or Project or ground lessor with respect to the Building or Project shall require that the insurance proceeds or any portion thereof be used to retire the mortgage debt, or shall terminate the ground lease, as the case may be; (iii) the damage is not fully covered by Landlord's insurance policies; (iv) Landlord decides to rebuild the Building or Common Areas so that they will be substantially different structurally or architecturally; (v) the damage occurs during the last twelve (12) months of the Lease Term; or (vi) any owner of any other portion of the Project, other than Landlord, does not intend to repair the damage to such portion of the Project; provided, however, that if Landlord (A) timely delivered the Damage Determination Notice (following the notice and cure period identified in this Section 11.2, above), or (B) does not elect to terminate this Lease pursuant to Landlord's termination right as provided above, and the repairs cannot, in the reasonable opinion of Landlord (as expressly identified in such Damage Determination Notice), be completed within one hundred eighty (180) days after the date of discovery of the damage (when such repairs are made without the payment of overtime or other premiums), Tenant may elect, no earlier than the date of its receipt (or deemed receipt) of the Damage Determination Notice and not later than ninety (90) days after the date of such damage, to terminate this Lease by written notice to Landlord effective as of the date specified in the notice, which date shall not be less than thirty (30) days nor more than sixty (60) days after the date such notice is given by Tenant; provided further, however, to the extent that, as a result of changes in zoning, building codes or other Applicable Laws which become applicable to the Building as a result of, and following, material damage to the Building and subsequent implementation of the repairs pursuant to this Article 11, Tenant will be unable, following such repairs, to maintain its use of, and operations in, the Building in a manner materially consistent with its use of, and operations in, the Building prior to such material damage, then Tenant may elect to terminate this Lease by no less than thirty (30) days advance written notice to Landlord, which termination notice shall be delivered no earlier than the date of its receipt (or deemed receipt) of the Damage Determination Notice and not later than ninety (90) days after the date of such damage. Furthermore, if neither Landlord nor Tenant has terminated this Lease, and the repairs are not actually completed on or before the later to occur of (*x*) the date which is one hundred eighty (180) days after the date of discovery of the damage, and (*y*) the last day of the longer, estimated period of repair specified in Landlord's Damage Determination Notice, Tenant shall have the right to terminate this Lease during the first five (5) business days of each calendar month following the end of such period until such time as the repairs are complete, by notice to Landlord (the "**Damage Termination Notice**"), effective as of a date set forth in the Damage Termination Notice (the "**Damage Termination Date**"), which Damage Termination Date shall not be less than ten (10) business days following the end of each such month. Notwithstanding the foregoing, if Tenant delivers a Damage Termination Notice to Landlord, then Landlord shall have the right to suspend the occurrence of the Damage Termination Date for a period ending thirty (30) days after the Damage Termination Date set forth in the Damage Termination Notice by delivering to Tenant, within five (5) business days of Landlord's receipt of the Damage Termination Notice, a certificate of Landlord's contractor responsible for the repair of the damage certifying that it is such contractor's good faith judgment that the repairs shall be substantially completed within thirty (30) days after the Damage Termination Date. If repairs shall be substantially completed prior to the expiration of such thirty-day period, then the Damage Termination Notice shall be of no force or effect, but if the repairs shall not be substantially completed within such thirty-day period, then this Lease shall terminate upon the expiration of such thirty-day period. At any time, from time to time, after the date occurring sixty (60) days after the date of the damage, Tenant may request that Landlord inform Tenant of Landlord's reasonable opinion of the date of completion of the repairs and Landlord shall respond to such request within five (5) business days. Notwithstanding the provisions of this Section 11.2, Tenant shall have the right to terminate this Lease under this Section 11.2 only if each of the following conditions is satisfied: (a) the damage to the Project by fire or other casualty was not caused by the gross negligence or intentional act of Tenant or its partners or subpartners and their respective officers, agents, servants, employees, and independent contractors; and (b) as a result of the damage, Tenant cannot reasonably conduct business from the Premises; and, (d) as a result of the damage to the Project, Tenant does not occupy or use more than twenty percent (20%) of the then-existing Premises. In the event this Lease is terminated in accordance with the terms of this Section 11.2, Tenant shall assign to Landlord (or to any party designated by Landlord) all insurance proceeds payable to Tenant under Tenant's insurance required under items (ii) and (iii) of Section 10.3.2 of this Lease; provided, however, in no event shall Tenant be obligated to assign any such proceeds to the extent they exceed the then-remaining, unamortized portion of the Improvement

Allowances disbursed by Landlord pursuant to the TCCs of the Work Letter Agreements, provided the foregoing amortization determination shall be calculated as of the termination date based upon the initial Lease Term, with interest at the Interest Rate.

11.3 **Waiver of Statutory Provisions**. The provisions of this Lease, including this Article 11, constitute an express agreement between Landlord and Tenant with respect to any and all damage to, or destruction of, all or any part of the Premises, the Building or the Project, and any statute or regulation of the State of California, including, without limitation, Sections 1932(2) and 1933(4) of the California Civil Code, with respect to any rights or obligations concerning damage or destruction in the absence of an express agreement between the parties, and any other statute or regulation, now or hereafter in effect, shall have no application to this Lease or any damage or destruction to all or any part of the Premises, the Building or the Project.

ARTICLE 12

NONWAIVER

No provision of this Lease shall be deemed waived by either party hereto unless expressly waived in a writing signed thereby. The waiver by either party hereto of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of same or any other term, covenant or condition herein contained. The subsequent acceptance of Rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular Rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such Rent. No acceptance of a lesser amount than the Rent herein stipulated shall be deemed a waiver of Landlord's right to receive the full amount due, nor shall any endorsement or statement on any check or payment or any letter accompanying such check or payment be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the full amount due. No receipt of monies by Landlord from Tenant after the termination of this Lease shall in any way alter the length of the Lease Term or of Tenant's right of possession hereunder, or after the giving of any notice shall reinstate, continue or extend the Lease Term or affect any notice given Tenant prior to the receipt of such monies, it being agreed that after the service of notice or the commencement of a suit, or after final judgment for possession of the Premises, Landlord may receive and collect any Rent due, and the payment of said Rent shall not waive or affect said notice, suit or judgment.

ARTICLE 13

CONDEMNATION

If the whole or any part of the Premises, Building or Project shall be taken by power of eminent domain or condemned by any competent authority for any public or quasi-public use or purpose, or if any adjacent property or street shall be so taken or condemned, or reconfigured or vacated by such authority in such manner as to require the use, reconstruction or remodeling of any part of the Premises, Building or Project, or if Landlord shall grant a deed or other instrument in lieu of such taking by eminent domain or condemnation, Landlord shall have the option to terminate this Lease effective as of the date possession is required to be surrendered to the authority. If more than twenty-five percent (25%) of the rentable square feet of the Premises is taken, or if access to the Premises is substantially impaired, in each case for a period in excess of one hundred eighty (180) days, Tenant shall have the option to terminate this Lease effective as of the date possession is required to be surrendered to the authority. Tenant shall not because of such taking assert any claim against Landlord or the authority for any compensation because of such taking and Landlord shall be entitled to the entire award or payment in connection therewith, except that Tenant shall have the right to file any separate claim available to Tenant for any taking of Tenant's personal property and fixtures belonging to Tenant and removable by Tenant upon expiration of the Lease Term pursuant to the terms of this Lease, and for moving expenses, so long as such claims do not diminish the award available to Landlord, its ground lessor with respect to the Building or Project or its mortgagee, and such claim is payable separately to Tenant. All Rent shall be apportioned as of the date of such termination. If any part of the Premises shall be taken, and this Lease shall not be so terminated, the Rent shall be proportionately abated. Tenant hereby waives any and all rights it might otherwise have pursuant to Section 1265.130 of The California Code of Civil Procedure. Notwithstanding anything to the contrary contained in this Article 13, in the event of a temporary taking of all or any portion of the Premises for a period of one hundred and eighty (180) days or less, then this Lease shall not terminate but the Base Rent and the Additional Rent shall be abated for the period of such taking in proportion to the ratio that the amount of rentable square feet of the Premises taken bears to the total rentable square

feet of the Premises. Landlord shall be entitled to receive the entire award made in connection with any such temporary taking.

ARTICLE 14

ASSIGNMENT AND SUBLETTING

14.1 **Transfers**. Subject to the TCCs of Section 14.8, below, Tenant shall not, without the prior written consent of Landlord, assign, mortgage, pledge, hypothecate, encumber, or permit any lien to attach to, or otherwise transfer, this Lease or any interest hereunder, permit any assignment, or other transfer of this Lease or any interest hereunder by operation of law, sublet the Premises or any part thereof, or enter into any license or concession agreements or otherwise permit the occupancy or use of the Premises or any part thereof by any persons other than Tenant and its employees and contractors (all of the foregoing are hereinafter sometimes referred to collectively as "**Transfers**" and any person to whom any Transfer is made or sought to be made is hereinafter sometimes referred to as a "**Transferee**"). If Tenant desires Landlord's consent to any Transfer, Tenant shall notify Landlord in writing, which notice (the "**Transfer Notice**") shall include (i) the proposed effective date of the Transfer, which shall not be less than thirty (30) days nor more than one hundred eighty (180) days after the date of delivery of the Transfer Notice, (ii) a description of the portion of the Premises to be transferred (the "**Subject Space**"), (iii) all of the terms of the proposed Transfer and the consideration therefor, including calculation of the "**Transfer Premium**", as that term is defined in Section 14.3 below, in connection with such Transfer, the name and address of the proposed Transferee, and a copy of all existing executed and/or proposed documentation pertaining to the proposed Transfer, including all existing operative documents to be executed to evidence such Transfer or the agreements incidental or related to such Transfer, provided that Landlord shall have the right to require Tenant to utilize Landlord's standard Transfer documents in connection with the documentation of such Transfer, (iv) current financial statements of the proposed Transferee certified by an officer, partner or owner thereof, business credit and personal references and history of the proposed Transferee and any other information required by Landlord which will enable Landlord to determine the financial responsibility, character, and reputation of the proposed Transferee, nature of such Transferee's business and proposed use of the Subject Space and (v) an executed estoppel certificate from Tenant in the form attached hereto as **Exhibit E**.

Any Transfer made without Landlord's prior written consent shall, at Landlord's option, be null, void and of no effect, and shall, at Landlord's option, constitute a default by Tenant under this Lease. Whether or not Landlord consents to any proposed Transfer, Tenant shall pay Landlord's review and processing fees, as well as any reasonable professional fees (including, without limitation, attorneys', accountants', architects', engineers' and consultants' fees) incurred by Landlord, within thirty (30) days after written request by Landlord.

14.2 **Landlord's Consent**. Landlord shall not unreasonably withhold its consent to any proposed Transfer of the Subject Space to the Transferee on the terms specified in the Transfer Notice. Without limitation as to other reasonable grounds for withholding consent, the parties hereby agree that it shall be reasonable under this Lease and under any applicable law for Landlord to withhold consent to any proposed Transfer where one or more of the following apply:

14.2.1 The Transferee is of a character or reputation or engaged in a business which is not consistent with the quality of the Building or the Project;

14.2.2 The Transferee intends to use the Subject Space for purposes which are not permitted under this Lease;

14.2.3 The Transferee is either a governmental agency or instrumentality thereof;

14.2.4 The Transferee is not a party of reasonable financial worth and/or financial stability in light of the responsibilities to be undertaken in connection with the Transfer on the date consent is requested;

14.2.5 The proposed Transfer would cause a violation of another lease for space in the Project, or would give an occupant of the Project a right to cancel its lease; provided, however, Landlord and Tenant hereby acknowledge and agree that the TCCs of this Section 14.2.5 shall only apply to the extent that (i) Landlord recaptures a portion of the Premises pursuant to the express TCCs of Section 14.4 of this Lease, below, (ii) Landlord subsequently leases such recaptured space to a third-party tenant, and (iii) such third-party would have a right to cancel its lease as a result of the proposed Transfer.

14.2.6 The terms of the proposed Transfer will allow the Transferee to exercise a right of renewal, right of expansion, right of first offer, or other similar right held by Tenant (or will allow the Transferee to occupy space leased by Tenant pursuant to any such right) in violation of the express provisions of Section 2.2 and/or any other express provisions of this Lease; or Either the proposed Transferee, or any person or entity which directly or indirectly, controls, is controlled by, or is under common control with, the proposed Transferee, (i) occupies space in the Project at the time of the request for consent, or (ii) is negotiating with Landlord to lease space in the vicinity of the Project at such time, or (iii) has negotiated with Landlord during the twelve (12)-month period immediately preceding the Transfer Notice; or

If Landlord consents to any Transfer pursuant to the terms of this Section 14.2 (and does not exercise any recapture rights Landlord may have under Section 14.4 of this Lease), Tenant may within six (6) months after Landlord's consent, but not later than the expiration of said six-month period, enter into such Transfer of the Premises or portion thereof, upon substantially the same terms and conditions as are set forth in the Transfer Notice furnished by Tenant to Landlord pursuant to Section 14.1 of this Lease, provided that if there are any changes in the terms and conditions from those specified in the Transfer Notice (i) such that Landlord would initially have been entitled to refuse its consent to such Transfer under this Section 14.2, or (ii) which would cause the proposed Transfer to be more favorable to the Transferee than the terms set forth in Tenant's original Transfer Notice, Tenant shall again submit the Transfer to Landlord for its approval and other action under this Article 14 (including Landlord's right of recapture, if any, under Section 14.4 of this Lease). Notwithstanding anything to the contrary in this Lease, if Tenant or any proposed Transferee claims that Landlord has unreasonably withheld or delayed its consent under Section 14.2 or otherwise has breached or acted unreasonably under this Article 14, their sole remedies shall be (*x*) a declaratory judgment and an injunction for the relief sought without any monetary damages, and (*y*) any attorneys' fees and costs that may be awarded by the court in connection therewith, as provided in Section 29.21, below, Tenant hereby waives all other remedies, including, without limitation, any right at law or equity to terminate this Lease, on its own behalf and, to the extent permitted under all applicable laws, on behalf of the proposed Transferee.

14.3 **Transfer Premium**. If Landlord consents to a Transfer, as a condition thereto which the parties hereby agree is reasonable, Tenant shall pay to Landlord fifty percent (50%) of any "Transfer Premium," as that term is defined in this Section 14.3, received by Tenant from such Transferee. "**Transfer Premium**" shall mean all rent, additional rent or other consideration payable by such Transferee in connection with the Transfer in excess of the Rent and Additional Rent payable by Tenant under this Lease during the term of the Transfer on a per rentable square foot basis if less than all of the Premises is transferred, after deducting the reasonable expenses incurred by Tenant for (i) any changes, alterations and improvements to the Premises in connection with the Transfer, (ii) any free base rent or other economic concessions reasonably provided to the Transferee, and (iii) any brokerage commissions in connection with the Transfer. "Transfer Premium" shall also include, but not be limited to, key money, bonus money or other cash consideration paid by Transferee to Tenant in connection with such Transfer, and to the extent any such payment is in excess of fair market value, for (A) services rendered by Tenant to Transferee, or (B) assets, fixtures, inventory, equipment, or furniture transferred by Tenant to Transferee in connection with such Transfer. In the calculations of the Rent (as it relates to the Transfer Premium calculated under this Section 14.3), and the Transferee's Rent and Quoted Rent under Section 14.2 of this Lease, the Rent paid during each annual period for the Subject Space, and the Transferee's Rent and the Quoted Rent, shall be computed after adjusting such rent to the actual effective rent to be paid, taking into consideration any and all leasehold concessions granted in connection therewith, including, but not limited to, any rent credit and any improvement allowance. For purposes of calculating any such effective rent all such concessions shall be amortized on a straight-line basis over the relevant term.

14.4 **Landlord's Option as to Subject Space**. In the event that a proposed Transfer, if consented to, would cause more seventy-five percent (75%) of the Premises, cumulatively, to be subleased or licensed to a party (or parties) other than Original Tenant or a Permitted Transferee, then notwithstanding anything to the contrary contained in this Article 14, Landlord shall have the option, by giving written notice to Tenant within thirty (30) days after receipt of any Transfer Notice, to recapture the Subject Space. Such recapture notice shall cancel and terminate this Lease with respect to the Subject Space as of the date stated in the Transfer Notice as the effective date of the proposed Transfer until the last day of the term of the Transfer as set forth in the Transfer Notice (or at Landlord's option, shall cause the Transfer to be made to Landlord or its agent, in which case the parties shall execute the Transfer documentation promptly thereafter). In the event of a recapture by Landlord, if this Lease shall be canceled with respect to less than the entire Premises, the Rent reserved herein shall be prorated on the basis of the number of rentable square feet retained by Tenant in proportion to the number of rentable square feet contained in the Premises, and this Lease as so amended shall continue thereafter in full

force and effect, and upon request of either party, the parties shall execute written confirmation of the same. However, if Landlord delivers a recapture notice to Tenant, Tenant may, within ten (10) business days after Tenant's receipt of such recapture notice, deliver written notice to Landlord indicating that Tenant is rescinding its request for consent to the proposed transfer, in which case such Transfer shall not be consummated and this Lease shall remain in full force and effect as to the portion of the Premises that was the subject of the proposed Transfer. If Landlord declines, or fails to elect in a timely manner to recapture the Subject Space under this Section 14.4, then, provided Landlord has consented to the proposed Transfer, Tenant shall be entitled to proceed to transfer the Subject Space to the proposed Transferee, subject to provisions of this Article 14.

14.5 **Effect of Transfer**. If Landlord consents to a Transfer, (i) the TCCs of this Lease shall in no way be deemed to have been waived or modified, (ii) such consent shall not be deemed consent to any further Transfer by either Tenant or a Transferee, (iii) Tenant shall deliver to Landlord, promptly after execution, an original executed copy of all documentation pertaining to the Transfer in form reasonably acceptable to Landlord, (iv) Tenant shall furnish upon Landlord's request a complete statement, certified by an independent certified public accountant, or Tenant's chief financial officer, setting forth in detail the computation of any Transfer Premium Tenant has derived and shall derive from such Transfer, and (v) no Transfer relating to this Lease or agreement entered into with respect thereto, whether with or without Landlord's consent, shall relieve Tenant or any guarantor of the Lease from any liability under this Lease, including, without limitation, in connection with the Subject Space. Landlord or its authorized representatives shall have the right at all reasonable times to audit the books, records and papers of Tenant relating to any Transfer, and shall have the right to make copies thereof. If the Transfer Premium respecting any Transfer shall be found understated, Tenant shall, within thirty (30) days after demand, pay the deficiency, and if understated by more than two percent (2%), Tenant shall pay Landlord's costs of such audit.

14.6 **Additional Transfers**. For purposes of this Lease, the term "**Transfer**" shall also include (i) if Tenant is a partnership, the withdrawal or change, voluntary, involuntary or by operation of law, of fifty percent (50%) or more of the partners, or transfer of fifty percent (50%) or more of partnership interests, within a twelve (12)-month period, or the dissolution of the partnership without immediate reconstitution thereof, and (ii) if Tenant is a closely held corporation (*i.e.*, whose stock is not publicly held and not traded through an exchange or over the counter), (A) the dissolution, merger, consolidation or other reorganization of Tenant or (B) the sale or other transfer of an aggregate of fifty percent (50%) or more of the voting shares of Tenant (other than (1) to immediate family members by reason of gift or death, or (2) to family controlled affiliates or other Affiliates), within a twelve (12)-month period, or (C) the sale, mortgage, hypothecation or pledge of an aggregate of fifty percent (50%) or more of the value of the unencumbered assets of Tenant within a twelve (12)-month period.

14.7 **Occurrence of Default**. Any Transfer hereunder shall be subordinate and subject to the provisions of this Lease, and if this Lease shall be terminated during the term of any Transfer, Landlord shall have the right to: (i) treat such Transfer as cancelled and repossess the Subject Space by any lawful means, or (ii) require that such Transferee attorn to and recognize Landlord as its landlord under any such Transfer. If an Event of Default is then occurring under this Lease, Landlord is hereby irrevocably authorized, as Tenant's agent and attorney-in-fact, to direct any Transferee to make all payments under or in connection with the Transfer directly to Landlord (which Landlord shall apply towards Tenant's obligations under this Lease) until such Event of Default is cured. Such Transferee shall rely on any representation by Landlord that an Event of Default is then occurring under this Lease, without any need for confirmation thereof by Tenant. Upon any assignment, the assignee shall assume in writing all obligations and covenants of Tenant thereafter to be performed or observed under this Lease. No collection or acceptance of rent by Landlord from any Transferee shall be deemed a waiver of any provision of this Article 14 or the approval of any Transferee or a release of Tenant from any obligation under this Lease, whether theretofore or thereafter accruing. In no event shall Landlord's enforcement of any provision of this Lease against any Transferee be deemed a waiver of Landlord's right to enforce any term of this Lease against Tenant or any other person. If Tenant's obligations hereunder have been guaranteed, Landlord's consent to any Transfer shall not be effective unless the guarantor also consents to such Transfer.

14.8 **Non-Transfers**. Notwithstanding anything to the contrary contained in this Article 14, (i) an assignment or subletting of all or a portion of the Premises to an affiliate of Tenant (an entity which is controlled by, controls, or is under common control with, Tenant), (ii) an assignment of the Premises to an entity which acquires all or substantially all of the assets or interests (partnership, stock or other) of Tenant, or (iii) an assignment of the Premises to an entity which is the resulting entity of a merger or consolidation of Tenant, shall not be deemed a Transfer under this Article 14, provided that Tenant notifies Landlord of any such assignment or sublease and promptly supplies Landlord with any documents or

information requested by Landlord regarding such assignment or sublease or such affiliate, and further provided that such assignment or sublease is not a subterfuge by Tenant to avoid its obligations under this Lease or otherwise effectuate any "release" by Tenant of such obligations. The transferee under a transfer specified in items (i), (ii) or (iii) above shall be referred to as a "**Permitted Transferee**." "**Control**," as used in this Section 14.8, shall mean the ownership, directly or indirectly, of more than fifty percent (50%) of the voting securities of, or possession of the right to vote, in the ordinary direction of its affairs, of more than fifty percent (50%) of the voting interest in, any person or entity.

ARTICLE 15

SURRENDER OF PREMISES; OWNERSHIP AND REMOVAL OF TRADE FIXTURES

15.1 **Surrender of Premises**. No act or thing done by Landlord or any agent or employee of Landlord during the Lease Term shall be deemed to constitute an acceptance by Landlord of a surrender of the Premises unless such intent is specifically acknowledged in writing by Landlord. The delivery of keys to the Premises to Landlord or any agent or employee of Landlord shall not constitute a surrender of the Premises or effect a termination of this Lease, whether or not the keys are thereafter retained by Landlord, and notwithstanding such delivery Tenant shall be entitled to the return of such keys at any reasonable time upon request until this Lease shall have been properly terminated. The voluntary or other surrender of this Lease by Tenant, whether accepted by Landlord or not, or a mutual termination hereof, shall not work a merger, and at the option of Landlord shall operate as an assignment to Landlord of all subleases or subtenancies affecting the Premises or terminate any or all such sublessees or subtenancies.

15.2 **Removal of Tenant Property by Tenant**. Upon the expiration of the Lease Term, or upon any earlier termination of this Lease, Tenant shall, subject to the provisions of this Article 15, quit and surrender possession of the Premises to Landlord in as good order and condition as when Tenant took possession and as thereafter improved by Landlord and/or Tenant, reasonable wear and tear and repairs which are specifically made the responsibility of Landlord hereunder excepted. Upon such expiration or termination, Tenant shall, without expense to Landlord, remove or cause to be removed from the Premises all debris and rubbish, and such items of furniture, equipment, business and trade fixtures, free-standing cabinet work, movable partitions and other articles of personal property owned by Tenant or installed or placed by Tenant at its expense in the Premises, and such similar articles of any other persons claiming under Tenant, as Landlord may, in its sole discretion, require to be removed, and Tenant shall repair at its own expense all damage to the Premises and Building resulting from such removal.

ARTICLE 16

HOLDING OVER

If Tenant holds over after the expiration of the Lease Term or earlier termination thereof, with or without the express or implied consent of Landlord, such tenancy shall be from month-to-month only, and shall not constitute a renewal hereof or an extension for any further term, and in such case Rent shall be payable at a monthly rate equal to the product of (i) the Rent applicable during the last rental period of the Lease Term under this Lease, and (ii) a percentage equal to one hundred fifty percent (150%). Such month-to-month tenancy shall be subject to every other applicable term, covenant and agreement contained herein. Nothing contained in this Article 16 shall be construed as consent by Landlord to any holding over by Tenant, and Landlord expressly reserves the right to require Tenant to surrender possession of the Premises to Landlord as provided in this Lease upon the expiration or other termination of this Lease. The provisions of this Article 16 shall not be deemed to limit or constitute a waiver of any other rights or remedies of Landlord provided herein or at law. If Tenant fails to surrender the Premises upon the termination or expiration of this Lease, in addition to any other liabilities to Landlord accruing therefrom, Tenant shall protect, defend, indemnify and hold Landlord harmless from all loss, costs (including reasonable attorneys' fees) and liability resulting from such failure, including, without limiting the generality of the foregoing, any claims made by any succeeding tenant founded upon such failure to surrender and any lost profits to Landlord resulting therefrom.

ARTICLE 17

ESTOPPEL CERTIFICATES

Within ten (10) business days following a request in writing by Landlord, Tenant shall execute, acknowledge and deliver to Landlord an estoppel certificate, which, as submitted by Landlord, shall be substantially in the form of **Exhibit E**, attached hereto (or such other form as may be required by any prospective mortgagee or purchaser of the Project, or any portion thereof), indicating therein any exceptions thereto that may exist at that time, and shall also contain any other information reasonably requested by Landlord or Landlord's mortgagee or prospective mortgagee. Any such certificate may be relied upon by any prospective mortgagee or purchaser of all or any portion of the Project. Tenant shall execute and deliver whatever other instruments may be reasonably required for such purposes. At any time during the Lease Term, Landlord may require Tenant to provide Landlord with a current financial statement and financial statements of the two (2) years prior to the current financial statement year. Such statements shall be prepared in accordance with generally accepted accounting principles and, if such is the normal practice of Tenant, shall be audited by an independent certified public accountant. Failure of Tenant to timely execute, acknowledge and deliver such estoppel certificate or other instruments shall constitute an acceptance of the Premises and an acknowledgment by Tenant that statements included in the estoppel certificate are true and correct, without exception. Landlord hereby agrees to provide to Tenant an estoppel certificate signed by Landlord, containing the same types of information, and within the same periods of time, as set forth above, with such changes as are reasonably necessary to reflect that the estoppel certificate is being granted and signed by Landlord to Tenant, or the party designated by Tenant in writing to Landlord, rather than from Tenant to Landlord or a lender. Landlord hereby agrees to provide to Tenant an estoppel certificate signed by Landlord, containing the same types of information, and within the same periods of time and with the same conditions as to frequency, all as set forth hereinabove, with such changes as are reasonably necessary to reflect that the estoppel certificate is being granted and signed by Landlord to Tenant, rather than from Tenant to Landlord or a lender.

ARTICLE 18

SUBORDINATION

Subject to Tenant's receipt of an appropriate non-disturbance agreement(s) as set forth below, this Lease shall be subject and subordinate to all present and future ground or underlying leases of the Building or Project and to the lien of any mortgage, trust deed or other encumbrances now or hereafter in force against the Building or Project or any part thereof, if any, and to all renewals, extensions, modifications, consolidations and replacements thereof, and to all advances made or hereafter to be made upon the security of such mortgages or trust deeds, unless the holders of such mortgages, trust deeds or other encumbrances, or the lessors under such ground lease or underlying leases, require in writing that this Lease be superior thereto. Landlord's delivery to Tenant of commercially reasonable non-disturbance agreement(s) (the "**Nondisturbance Agreement**") in favor of Tenant from any ground lessor, mortgage holders or lien holders of Landlord who later come into existence at any time prior to the expiration of the Lease Term shall be in consideration of, and a condition precedent to, Tenant's agreement to be bound by the terms and conditions of this Article 18. Tenant covenants and agrees in the event any proceedings are brought for the foreclosure of any such mortgage or deed in lieu thereof (or if any ground lease is terminated), to attorn, without any deductions or set- offs whatsoever, to the lienholder or purchaser or any successors thereto upon any such foreclosure sale or deed in lieu thereof (or to the ground lessor), if so requested to do so by such purchaser or lienholder or ground lessor, and to recognize such purchaser or lienholder or ground lessor as the lessor under this Lease, provided such lienholder or purchaser or ground lessor shall agree to accept this Lease and not disturb Tenant's occupancy, so long as Tenant timely pays the rent and observes and performs the TCCs of this Lease to be observed and performed by Tenant. Landlord's interest herein may be assigned as security at any time to any lienholder. Tenant shall, within ten (10) business days of request by Landlord, execute such further instruments or assurances as Landlord may reasonably deem necessary to evidence or confirm the subordination or superiority of this Lease to any such mortgages, trust deeds, ground leases or underlying leases. Tenant waives the provisions of any current or future statute, rule or law which may give or purport to give Tenant any right or election to terminate or otherwise adversely affect this Lease and the obligations of the Tenant hereunder in the event of any foreclosure proceeding or sale.

ARTICLE 19

DEFAULTS; REMEDIES

19.1 **Events of Default**. The occurrence of any of the following shall constitute an "**Event of Default**" of this Lease by Tenant:

19.1.1 Any failure by Tenant to pay any Rent or any other charge required to be paid under this Lease, or any part thereof, within five (5) business days of Tenant's receipt of written notice that the same was not paid when due; or

19.1.2 Except where a specific time period is otherwise set forth for Tenant's performance in this Lease, in which event the failure to perform by Tenant within such time period shall be a default by Tenant under this Section 19.1.2, any failure by Tenant to observe or perform any other provision, covenant or condition of this Lease to be observed or performed by Tenant where such failure continues for thirty (30) days after written notice thereof from Landlord to Tenant; provided that if the nature of such default is such that the same cannot reasonably be cured within a thirty (30) day period, Tenant shall not be deemed to be in default if it diligently commences such cure within such period and thereafter diligently proceeds to rectify and cure such default, but in no event exceeding a period of time in excess of sixty (60) days after written notice thereof from Landlord to Tenant; or

19.1.3 To the extent permitted by law, a general assignment by Tenant or any guarantor of this Lease for the benefit of creditors, or the taking of any corporate action in furtherance of bankruptcy or dissolution whether or not there exists any proceeding under an insolvency or bankruptcy law, or the filing by or against Tenant or any guarantor of any proceeding under an insolvency or bankruptcy law, unless in the case of a proceeding filed against Tenant or any guarantor the same is dismissed within sixty (60) days, or the appointment of a trustee or receiver to take possession of all or substantially all of the assets of Tenant or any guarantor, unless possession is restored to Tenant or such guarantor within thirty (30) days, or any execution or other judicially authorized seizure of all or substantially all of Tenant's assets located upon the Premises or of Tenant's interest in this Lease, unless such seizure is discharged within thirty (30) days; or

19.1.4 Abandonment of the Premises pursuant to California Civil Code Section 1951.3; or

19.1.5 The failure by Tenant to observe or perform according to the provisions of Articles 5, 14, 17 or 18 of this Lease where such failure continues for more than two (2) business days after notice from Landlord; or

The notice periods provided herein are in lieu of, and not in addition to, any notice periods provided by law.

19.2 **Remedies Upon Default**. Upon the occurrence of any Event of Default by Tenant, Landlord shall have, in addition to any other remedies available to Landlord at law or in equity (all of which remedies shall be distinct, separate and cumulative), the option to pursue any one or more of the following remedies, each and all of which shall be cumulative and nonexclusive, without any notice or demand whatsoever.

19.2.1 Terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord, and if Tenant fails to do so, Landlord may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, without being liable for prosecution or any claim or damages therefor; and Landlord may recover from Tenant the following:

(a) The worth at the time of award of any unpaid rent which has been earned at the time of such termination; plus

(b) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

(c) The worth at the time of award of the amount by which the unpaid rent for the balance of the Lease Term after the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

(d) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, specifically including but not limited to, brokerage commissions and advertising expenses incurred, expenses of remodeling the Premises or any portion thereof for a new tenant, whether for the same or a different use, and any special concessions made to obtain a new tenant; and

(e) At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law.

The term "**rent**" as used in this Section 19.2 shall be deemed to be and to mean all sums of every nature required to be paid by Tenant pursuant to the terms of this Lease, whether to Landlord or to others. As used in Sections 19.2.1(a) and (b), above, the "worth at the time of award" shall be computed by allowing interest at the Interest Rate. As used in Section 19.2.1(c), above, the "worth at the time of award" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

19.2.2 Landlord shall have the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has the right to sublet or assign, subject only to reasonable limitations). Accordingly, if Landlord does not elect to terminate this Lease on account of any Event of Default, Landlord may, from time to time, without terminating this Lease, enforce all of its rights and remedies under this Lease, including the right to recover all rent as it becomes due.

19.2.3 Landlord shall at all times have the rights and remedies (which shall be cumulative with each other and cumulative and in addition to those rights and remedies available under Sections 19.2.1 and 19.2.2, above, or any law or other provision of this Lease), without prior demand or notice except as required by applicable law, to seek any declaratory, injunctive or other equitable relief, and specifically enforce this Lease, or restrain or enjoin a violation or breach of any provision hereof.

19.3 **Subleases of Tenant**. Whether or not Landlord elects to terminate this Lease on account of any Event of Default, as set forth in this Article 19, Landlord shall have the right to terminate any and all subleases, licenses, concessions or other consensual arrangements for possession entered into by Tenant and affecting the Premises or may, in Landlord's sole discretion, succeed to Tenant's interest in such subleases, licenses, concessions or arrangements. In the event of Landlord's election to succeed to Tenant's interest in any such subleases, licenses, concessions or arrangements, Tenant shall, as of the date of notice by Landlord of such election, have no further right to or interest in the rent or other consideration receivable thereunder.

19.4 **Form of Payment After Default**. Following the occurrence of an Event of Default, Landlord shall have the right to require that any or all subsequent amounts paid by Tenant to Landlord hereunder, whether to cure the applicable Event of Default or otherwise, be paid in the form of cash, money order, cashier's or certified check drawn on an institution acceptable to Landlord, or by other means approved by Landlord, notwithstanding any prior practice of accepting payments in any different form.

19.5 **Efforts to Relet**. No re-entry or repossession, repairs, maintenance, changes, alterations and additions, reletting, appointment of a receiver to protect Landlord's interests hereunder, or any other action or omission by Landlord shall be construed as an election by Landlord to terminate this Lease or Tenant's right to possession, or to accept a surrender of the Premises, nor shall same operate to release Tenant in whole or in part from any of Tenant's obligations hereunder, unless express written notice of such intention is sent by Landlord to Tenant. Tenant hereby irrevocably waives any right otherwise available under any law to redeem or reinstate this Lease.

19.6 **Landlord Default**. Notwithstanding anything to the contrary set forth in this Lease, Landlord shall be in default in the performance of any material obligation required to be performed by Landlord pursuant to this Lease if Landlord fails to substantially perform such material obligation within thirty (30) days after the receipt of notice from Tenant specifying in detail Landlord's failure to perform; provided, however, if the nature of Landlord's obligation is such that more than thirty (30) days are

required for its performance, then Landlord shall not be in default under this Lease if it shall commence such performance within such thirty (30) day period and thereafter diligently pursues the same to completion. Upon any such default by Landlord under this Lease, Tenant may, except as otherwise specifically provided in this Lease to the contrary, exercise any of its rights provided at law or in equity. Any award from a court or arbitrator in favor of Tenant requiring payment by Landlord which is not paid by Landlord within the time period directed by such award, may be offset by Tenant from Rent next due and payable under this Lease; provided, however, Tenant may not deduct the amount of the award against more than fifty percent (50%) of Base Rent next due and owing (until such time as the entire amount of such judgment is deducted) to the extent following a foreclosure or a deed-in-lieu of foreclosure.

ARTICLE 20

COVENANT OF QUIET ENJOYMENT

Landlord covenants that Tenant, on paying the Rent, charges for services and other payments herein reserved and on keeping, observing and performing all the other TCCs, provisions and agreements herein contained on the part of Tenant to be kept, observed and performed, shall, during the Lease Term, peaceably and quietly have, hold and enjoy the Premises subject to the TCCs, provisions and agreements hereof without interference by any persons lawfully claiming by or through Landlord. The foregoing covenant is in lieu of any other covenant express or implied.

ARTICLE 21

SECURITY DEPOSIT

Concurrent with Tenant's execution of this Lease, Tenant shall deposit with Landlord a security deposit (the "**Security Deposit**") in the amount set forth in Section 7 of the Summary, as security for the faithful performance by Tenant of all of its obligations under this Lease. If an Event of Default is then occurring under this Lease, including, but not limited to, the provisions relating to the payment of Rent, the removal of property and the repair of resultant damage, Landlord may, without notice to Tenant, but shall not be required to apply all or any part of the Security Deposit for the payment of any Rent or any other sum in default and Tenant shall, upon demand therefor, restore the Security Deposit to its original amount. Any unapplied portion of the Security Deposit shall be returned to Tenant, or, at Landlord's option, to the last assignee of Tenant's interest hereunder, within sixty (60) days following the expiration of the Lease Term. Tenant shall not be entitled to any interest on the Security Deposit. Tenant hereby waives the provisions of Section 1950.7 of the California Civil Code, or any successor statute.

ARTICLE 22

LETTER OF CREDIT

22.1 **Delivery of Letter of Credit**. Tenant shall deliver to Landlord, concurrently with the mutual execution of this Lease, an unconditional, clean, irrevocable letter of credit (the "**L-C**") in the amount (the "**L-C Amount**") set forth in Section 8 of the Summary, which L-C shall be issued by a money-center bank (a bank which accepts deposits, maintains accounts, has a local, Southern California office which will negotiate a letter of credit, and whose deposits are insured by the FDIC) reasonably acceptable to Landlord, and which L-C shall be in the form of **Exhibit G**, attached hereto. Tenant shall pay all expenses, points and/or fees incurred by Tenant in obtaining the L-C.

22.2 **Application of Letter of Credit**. Landlord shall have the immediate right to draw upon the L-C, in whole or in part and without prior notice to Tenant, other than that required under the Lease, at any time and from time to time: (i) if an Event of Default is then occurring, or (ii) Tenant either files a voluntary petition, or an involuntary petition is filed against Tenant by an entity other than Landlord, under any chapter of the Federal Bankruptcy Code or Tenant executes an assignment for the benefit of creditors. No condition or term of this Lease shall be deemed to render the L-C conditional, thereby justifying the issuer of the L-C in failing to honor a drawing upon such L-C in a timely manner. The L-C and its proceeds shall constitute Landlord's sole and separate property (and not Tenant's property or, in the event of a bankruptcy filing by Tenant, property of Tenant's bankruptcy estate) and Landlord may immediately upon any draw (and without notice to Tenant) apply or offset the proceeds of the L-C: (A) against any amounts payable by Tenant under this Lease that are not paid when due, after the expiration of any applicable notice and cure period; (B) against all losses and damages that Landlord has suffered or may reasonably estimate that it may suffer as a result of any Event of Default under this Lease, including any damages arising under Section 1951.2 of the California Civil Code for rent due following

termination of this Lease; (C) against any costs incurred by Landlord in connection with this Lease (including attorneys' fees); and (D) against any other amount that Landlord may spend or become obligated to spend by reason of any Event of Default under this Lease but in no event in excess of amounts to which the Landlord would be entitled under the law. To the extent to Event of Default is ongoing, Landlord agrees to pay to Tenant within thirty (30) days after the Lease Expiration Date the amount of any proceeds of the L-C received by Landlord and not applied as allowed above, and return the L-C to Tenant within the foregoing thirty (30) day period; provided that if prior to the Lease Expiration Date a voluntary petition is filed by Tenant, or an involuntary petition is filed against Tenant by any of Tenant's creditors other than Landlord, under the Federal Bankruptcy Code, or Tenant executes an assignment for the benefit of creditors, then Landlord shall not be obligated to return the L-C or any proceeds of the L-C until all statutes of limitations for any preference avoidance statutes applicable to such bankruptcy or assignment for the benefit of creditors have elapsed or the bankruptcy court or assignee, whichever is applicable, has executed a binding release releasing the Landlord of any and all liability for preferential transfers relating to payments made under this Lease, and Landlord may retain and offset against any remaining L-C proceeds the full amount Landlord is required to pay to any third party on account of preferential transfers relating to this Lease. If Landlord draws on the L-C as permitted in this Section 21.2, then, upon demand of Landlord, Tenant shall restore the amount available under the L-C to the amount set forth in

22.3 Section 21.1, above, by providing Landlord with an amendment to the L-C evidencing that the amount available under the L-C has been restored to the amount set forth in Section 21.1, above. In the alternative, Tenant may provide Landlord with cash, to be held by Landlord in accordance with this Section 21.2 in an amount equal to the restoration amount required under this Section 21.2. Tenant shall pay all expenses, points and fees incurred by Tenant or Landlord in renewing, replacing, drawing or transferring the L-C. Landlord and Tenant (1) acknowledge and agree that in no event or circumstance shall the L-C or any renewal thereof or substitute therefor or any proceeds thereof be deemed to be or treated as a "security deposit" under any law applicable to security deposits in the commercial context, including, but not limited to, Section 1950.7 of the California Civil Code, as such Section now exists or as it may be hereafter amended or succeeded (the "**Security Deposit Laws**"), (2) acknowledge and agree that the L-C (including any renewal thereof or substitute therefor or any proceeds thereof) is not intended to serve as a security deposit, and the Security Deposit Laws shall have no applicability or relevancy thereto, and (c) waive any and all rights, duties and obligations that any such party may now, or in the future will, have relating to or arising from the Security Deposit Laws. Tenant hereby waives the provisions of Section 1950.7 of the California Civil Code and all other provisions of law, now or hereafter in effect, which (x) establish the time frame by which a landlord must refund a security deposit under a lease, and/or (y) provide that a landlord may claim from a security deposit only those sums reasonably necessary to remedy defaults in the payment of rent, to repair damage caused by a tenant or to clean the premises, it being agreed that Landlord may, in addition, claim those sums specified in this Section 21.2 and/or those sums reasonably necessary to compensate Landlord for any loss or damage caused by Tenant's breach of this Lease, including any damages Landlord suffers following termination of this Lease.

ARTICLE 23

SIGNS

23.1 **Generally**. Subject to Landlord's prior written approval (which approval shall not be unreasonably withheld, conditioned or delayed), Tenant and its Permitted Transferees may install identification signage anywhere in the Premises (including in the elevator lobby of the Premises)..

23.2 **Intentionally Omitted**.

23.3 **Prohibited Signage and Other Items**. Any signs, notices, logos, pictures, names or advertisements which are installed without Landlord's consent pursuant to Section 23.1 or Section 23.2 may be removed without notice by Landlord at the sole expense of Tenant. Except as permitted under Section 23.4 below, Tenant may not install any signs on the exterior or roof of the Project or the Common Areas. Any signs, window coverings, or blinds (even if the same are located behind the Landlord-approved window coverings for the Buildings), or other items visible from the exterior of the Premises or Buildings, shall be subject to the prior approval of Landlord, in its sole discretion.

23.4 **Tenant's Signage**. The Original Tenant and its Permitted Transferee shall be entitled to install the following signage in connection with Tenant's lease of the Premises (collectively, the "**Tenant's Signage**"):

Article 1 Exclusive Building-top signage consisting of one (1) building-top sign (maximum size per building-top sign is 100 square feet pursuant to the signage guidelines for the Project) identifying Tenant's name or logo located at the top of the Building (on the Sequence Drive-facing elevation) in one (1) location; and

(i) A monument sign to be located adjacent to the entrance of the Building in a location, in a design, and with materials and other reasonable parameters to be approved by Landlord in accordance with the TCCs of Section 23.4.1, below (the "**Building Monument Sign**"), with exclusive signage thereon. Tenant hereby acknowledges and agrees that Landlord may, at Landlord's sole cost and expense, place a standard "owned and managed" sign on such Building Monument Sign, provided that such "owned and managed" sign shall not be larger than Tenant's signage.

23.4.2 **Specifications and Permits**. Tenant's Signage shall set forth Tenant's name and logo as determined by Tenant in its sole discretion; provided, however, in no event shall Tenant's Signage include an "Objectionable Name," as that term is defined in Section 23.4.2, of this Lease. The graphics, materials, color, design, lettering, lighting, size, illumination, specifications and exact location of Tenant's Signage (collectively, the "**Sign Specifications**") shall be subject to the prior written approval of Landlord, which approval shall not be unreasonably withheld, conditioned or delayed, and shall be consistent and compatible with the quality and nature of the Project and Landlord's Building standard signage program. For purposes of this Section 23.4.1, the reference to "name" shall mean name and/or logo. In addition, Tenant's Signage shall be subject to Tenant's receipt of all required governmental permits and approvals and shall be subject to all Applicable Law and to any covenants, conditions and restrictions affecting the Project. Landlord shall use commercially reasonable efforts to assist Tenant in obtaining all necessary governmental permits and approvals for Tenant's Signage. Tenant hereby acknowledges that, notwithstanding Landlord's approval of Tenant's Signage, Landlord has made no representation or warranty to Tenant with respect to the probability of obtaining all necessary governmental approvals and permits for Tenant's Signage. In the event Tenant does not receive the necessary governmental approvals and permits for Tenant's Signage, Tenant's and Landlord's rights and obligations under the remaining TCCs of this Lease shall be unaffected.

23.4.3 **Objectionable Name**. To the extent Original Tenant desires to change the name and/or logo set forth on Tenant's Signage, such name and/or logo shall not have a name which relates to an entity which is of a character or reputation, or is associated with a political faction or orientation, which is inconsistent with the quality of the Project, or which would otherwise reasonably offend a landlord of the Comparable Buildings (an "**Objectionable Name**"). The parties hereby agree that the names "DexCom, Inc." or any reasonable derivation thereof, shall not be deemed an Objectionable Name.

23.4.4 **Termination of Right to Tenant's Signage**. The rights contained in this Section 23.4 shall be personal to the Original Tenant, its Affiliates and any Permitted Assignee, and may only be exercised by the Original Tenant, its Affiliates or a Permitted Assignee (and not any other assignee, sublessee or other transferee of the Original Tenant's interest in this Lease) if the Original Tenant and its Permitted Transferee are in occupancy of no less than seventy-five percent (75%) of the then-existing Premises.

23.4.5 **Cost and Maintenance**. The costs of the actual signs comprising Tenant's Signage and the installation, design, construction, and any and all other costs associated with Tenant's Signage, including, without limitation, utility charges and hook-up fees, permits, and maintenance and repairs, shall be the sole responsibility of Tenant; provided that the costs and fees associated with the initial installation, design, and construction of such Tenant's Signage may, at Tenant's option, be deemed a "Improvement Allowance Item," as that term is set forth in Section 2.2 of the Work Letter Agreements; provided further that Landlord shall construct and install the Building Monument Sign(s) (including, but not limited to, running sufficient power and utilities to the site of the Building Monument Sign), at Tenant's sole cost and expense, and Tenant shall be responsible for the cost of Tenant's sign on the Building Monument Sign(s), but Landlord shall maintain all monument signs set forth in this Article 23 in good condition and repair, the cost of which in connection with the Building Monument Sign(s) shall be included in Operating Expenses. Should Tenant's Signage require repairs and/or maintenance, as determined in Landlord's reasonable judgment, Landlord shall have the right to provide Notice thereof to Tenant and Tenant (except

as set forth above) shall cause such repairs and/or maintenance to be performed within thirty (30) days after receipt of such Notice from Landlord, at Tenant's sole cost and expense; provided, however, if such repairs and/or maintenance are reasonably expected to require longer than thirty (30) days to perform, Tenant shall commence such repairs and/or maintenance within such thirty (30) day period and shall diligently prosecute such repairs and maintenance to completion. Should Tenant fail to perform such repairs and/or maintenance within the periods described in the immediately preceding sentence, Landlord shall, upon the delivery of an additional five (5) business days' prior written notice, have the right to cause such work to be performed and to charge Tenant as Additional Rent for the Actual Cost of such work. Upon the expiration or earlier termination of this Lease, Tenant shall, at Tenant's sole cost and expense, cause Tenant's Signage to be removed and shall cause the areas in which such Tenant's Signage was located to be restored to the condition existing immediately prior to the placement of such Tenant's Signage (excepting normal wear and tear caused by the sun, rain and other elements to which such Tenant's Signage is exposed). If Tenant fails to timely remove such Tenant's Signage or to restore the areas in which such Tenant's Signage was located, as provided in the immediately preceding sentence, then Landlord may perform such work, and all Actual Costs incurred by Landlord in so performing shall be reimbursed by Tenant to Landlord within thirty (30) days after Tenant's receipt of an invoice therefor. The TCCs of this Section 23.3.4 shall survive the expiration or earlier termination of this Lease.

ARTICLE 24

COMPLIANCE WITH LAW

Tenant shall not do anything or suffer anything to be done in or about the Premises or the Project which will in any way conflict with any law, statute, ordinance or other governmental rule, regulation or requirement now in force or which may hereafter be enacted or promulgated (collectively, "**Applicable Laws**"). At its sole cost and expense, Tenant shall promptly comply with all such Applicable Laws which relate to (i) Tenant's use of the Premises for uses inconsistent with a normal and customary implementation of the business operations contemplated under Tenant's Permitted Use (as expressly in Sections 6(i)-(iii) of the Summary), (ii) the Alterations or Improvements in the Premises, or (iii) the Base Building, but, as to the Base Building, only to the extent such obligations are triggered by Tenant's Alterations, the Improvements, or a use of the Premises which is inconsistent with a normal and customary implementation of the business operations contemplated under Tenant's Permitted Use (as expressly in Sections 6(i)-(iii) of the Summary). Should any standard or regulation now or hereafter be imposed on Landlord or Tenant by a state, federal or local governmental body charged with the establishment, regulation and enforcement of occupational, health or safety standards for employers, employees, landlords or tenants, then Tenant agrees, subject to Article 7 of this Lease, at its sole cost and expense, to comply promptly with such standards or regulations. The judgment of any court of competent jurisdiction or the admission of Tenant in any judicial action, regardless of whether Landlord is a party thereto, that Tenant has violated any of said governmental measures, shall be conclusive of that fact as between Landlord and Tenant. Landlord shall comply with all Applicable Laws relating to the Base Building, provided that compliance with such Applicable Laws is not the responsibility of Tenant under this Lease, and provided further that Landlord's failure to comply therewith would prohibit Tenant from obtaining or maintaining a certificate of occupancy for the Premises, or would unreasonably and materially affect the safety of Tenant's employees or create a significant health hazard for Tenant's employees. Landlord shall be permitted to include in Operating Expenses any costs or expenses incurred by Landlord under this Article 24 to the extent consistent with the terms of Section 4.2.4, above.

ARTICLE 25

LATE CHARGES

If any installment of Rent or any other sum due from Tenant shall not be received by Landlord or Landlord's designee when due, then Tenant shall pay to Landlord a late charge equal to five percent (5%) of the overdue amount plus any attorneys' fees incurred by Landlord by reason of Tenant's failure to pay Rent and/or other charges when due hereunder; provided, however, with regard to the first such failure in any twelve (12) month period, Landlord will waive such late charge to the extent Tenant cures such failure within five (5) business days following Tenant's receipt of written notice from Landlord that the same was not received when due. The late charge shall be deemed Additional Rent and the right to require it shall be in addition to all of Landlord's other rights and remedies hereunder or at law and shall not be construed as liquidated damages or as limiting Landlord's remedies in any manner. In addition to the late charge described above, any Rent or other amounts owing hereunder which are not paid within ten (10) days after the date they are due shall bear interest from the date when due until paid at the "Interest Rate." For purposes of this Lease, the "**Interest Rate**" shall be an annual rate equal to the lesser of (i) the annual "**Bank Prime Loan**" rate cited in the Federal Reserve Statistical Release Publication G.13(415),

published on the first Tuesday of each calendar month (or such other comparable index as Landlord and Tenant shall reasonably agree upon if such rate ceases to be published), plus four (4) percentage points, and (ii) the highest rate permitted by applicable law.

ARTICLE 26

LANDLORD'S RIGHT TO CURE DEFAULT; PAYMENTS BY TENANT

26.1 **Landlord's Cure**. All covenants and agreements to be kept or performed by Tenant under this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any reduction of Rent, except to the extent, if any, otherwise expressly provided herein. If Tenant shall fail to perform any obligation under this Lease, and such failure shall continue in excess of the time allowed under Section 19.1.2, above, unless a specific time period is otherwise stated in this Lease, Landlord may, but shall not be obligated to, make any such payment or perform any such act on Tenant's part without waiving its rights based upon any Event of Default and without releasing Tenant from any obligations hereunder.

26.2 **Tenant's Reimbursement**. Except as may be specifically provided to the contrary in this Lease, Tenant shall pay to Landlord, upon delivery by Landlord to Tenant of statements therefor: (i) sums equal to expenditures reasonably made and obligations incurred by Landlord in connection with the remedying by Landlord of any Event of Default under this Lease pursuant to the provisions of Section 26.1; (ii) sums equal to all losses, costs, liabilities, damages and expenses referred to in Article 10 of this Lease; and (iii) sums equal to all expenditures made and obligations incurred by Landlord in collecting or attempting to collect the Rent or in enforcing or attempting to enforce any rights of Landlord under this Lease or pursuant to law, including, without limitation, all legal fees and other amounts so expended. Tenant's obligations under this Section 26.2 shall survive the expiration or sooner termination of the Lease Term.

ARTICLE 27

ENTRY BY LANDLORD

Landlord reserves the right at all reasonable times (during Building Hours with respect to items (i) and (ii) below) and upon at least twenty-four (24) hours prior notice to Tenant (except in the case of an emergency) to enter the Premises to (i) inspect them; (ii) show the Premises to prospective purchasers, or to current or prospective mortgagees, ground or underlying lessors or insurers, or during the last twelve (12) months of the Lease Term, to prospective tenants; (iii) post notices of nonresponsibility; or (iv) alter, improve or repair the Premises or the Building, or for structural alterations, repairs or improvements to the Building or the Building's systems and equipment. Notwithstanding anything to the contrary contained in this Article 27, Landlord may enter the Premises at any time to (A) perform services required of Landlord, including janitorial service; (B) take possession due to any breach of this Lease in the manner provided herein; and (C) perform any covenants of Tenant which Tenant fails to perform. Landlord may make any such entries without the abatement of Rent, except as otherwise provided in this Lease, and may take such reasonable steps as required to accomplish the stated purposes; provided, however, except for (i) emergencies, (ii) repairs, alterations, improvements or additions required by governmental or quasi-governmental authorities or court order or decree, or (iii) repairs which are the obligation of Tenant hereunder, any such entry shall be performed in a manner so as not to unreasonably interfere with Tenant's use of the Premises and shall be performed after normal business hours if reasonably practical. With respect to items (ii) and (iii) above, Landlord shall use commercially reasonable efforts to not materially interfere with Tenant's use of, or access to, the Premises. Except as otherwise expressly set forth in Section 6.7 or elsewhere in this Lease, Tenant hereby waives any claims for damages or for any injuries or inconvenience to or interference with Tenant's business, lost profits, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned thereby. For each of the above purposes, Landlord shall at all times have a key with which to unlock all the doors in the Premises, excluding Tenant's vaults, safes and special security areas designated in advance by Tenant. In an emergency, Landlord shall have the right to use any means that Landlord may deem proper to open the doors in and to the Premises. Any entry into the Premises by Landlord in the manner hereinbefore described shall not be deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an actual or constructive eviction of Tenant from any portion of the Premises. No provision of this Lease shall be construed as obligating Landlord to perform any repairs, alterations or decorations except as otherwise expressly agreed to be performed by Landlord herein.

ARTICLE 28

TENANT PARKING

As set forth in Section 9 of the Summary, Tenant shall be entitled to utilize, without charge, commencing on the Lease Commencement Date, two hundred forty-three (243) parking spaces on a monthly basis throughout the initial Lease Term, one hundred seventy three (173) of which parking spaces shall be located adjacent to the Building and seventy (70) of which parking spaces shall be located adjacent to the Project (*i.e.*, at 6260 Sequence Drive), all as more particularly identified on **Exhibit A** attached to this Lease. Notwithstanding the foregoing, Tenant shall be responsible for the full amount of any taxes imposed by any governmental authority in connection with the renting of such parking spaces by Tenant or the use of the parking facility by Tenant. Tenant's continued right to use the parking spaces is conditioned upon Tenant abiding by all rules and regulations which are prescribed from time to time for the orderly operation and use of the parking facility where the parking spaces are located, including any sticker or other identification system established by Landlord, Tenant's cooperation in seeing that Tenant's employees and visitors also comply with such rules and regulations. To the extent reasonably necessary to ensure Tenant's parking rights hereunder are readily available to Tenant and its employees, Landlord shall establish a sticker or other identification system for the Project; provided, however, to the extent the foregoing measures prove insufficient, Landlord shall additionally implement, at Tenant's sole cost and expense, reasonable access control with regard to such Project parking facilities. Landlord specifically reserves the right to change the size, configuration, design, layout and all other aspects of the Project parking facility at any time and Tenant acknowledges and agrees that Landlord may, without incurring any liability to Tenant and without any abatement of Rent under this Lease, from time to time, close-off or restrict access to the Project parking facility for purposes of permitting or facilitating any such construction, alteration or improvements. Landlord may delegate its responsibilities hereunder to a parking operator in which case such parking operator shall have all the rights of control attributed hereby to the Landlord. The parking spaces rented by Tenant pursuant to this Article 28 are provided to Tenant solely for use by Tenant's own personnel and such spaces may not be transferred, assigned, subleased or otherwise alienated by Tenant without Landlord's prior approval. Tenant may validate visitor parking by such method or methods as the Landlord may establish, at the validation rate from time to time generally applicable to visitor parking.

ARTICLE 29

MISCELLANEOUS PROVISIONS

29.1 **Terms; Captions**. The words "Landlord" and "Tenant" as used herein shall include the plural as well as the singular. The necessary grammatical changes required to make the provisions hereof apply either to corporations or partnerships or individuals, men or women, as the case may require, shall in all cases be assumed as though in each case fully expressed. The captions of Articles and Sections are for convenience only and shall not be deemed to limit, construe, affect or alter the meaning of such Articles and Sections.

29.2 **Binding Effect**. Subject to all other provisions of this Lease, each of the covenants, conditions and provisions of this Lease shall extend to and shall, as the case may require, bind or inure to the benefit not only of Landlord and of Tenant, but also of their respective heirs, personal representatives, successors or assigns, provided this clause shall not permit any assignment by Tenant contrary to the provisions of Article 14 of this Lease.

29.3 **No Air Rights**. No rights to any view or to light or air over any property, whether belonging to Landlord or any other person, are granted to Tenant by this Lease. If at any time any windows of the Premises are temporarily darkened or the light or view therefrom is obstructed by reason of any repairs, improvements, maintenance or cleaning in or about the Project, the same shall be without liability to Landlord and without any reduction or diminution of Tenant's obligations under this Lease.

29.4 **Modification of Lease**. Should any current or prospective mortgagee or ground lessor for the Building or Project require a modification of this Lease, which modification will not cause an increased cost or expense to Tenant or in any other way materially and adversely change the rights and obligations of Tenant hereunder, then and in such event, Tenant agrees that this Lease may be so modified and agrees to execute whatever documents are reasonably required therefor and to deliver the same to Landlord within ten (10) business days following a request therefor. At the request of Landlord or any mortgagee or ground lessor, Tenant agrees to execute a short form of Lease and deliver the same to Landlord within ten (10) business days following the request therefor.

29.5 **Transfer of Landlord's Interest**. Tenant acknowledges that Landlord has the right to transfer all or any portion of its interest in the Project or Building and in this Lease, and Tenant agrees that in the event of any such transfer, Landlord shall automatically be released from all liability under this Lease and Tenant agrees to look solely to such transferee for the performance of Landlord's obligations hereunder after the date of transfer and such transferee shall be deemed to have fully assumed and be liable for all obligations of this Lease to be performed by Landlord, including the return of any Security Deposit, and Tenant shall attorn to such transferee. Tenant further acknowledges that Landlord may assign its interest in this Lease to a mortgage lender as additional security and agrees that such an assignment shall not release Landlord from its obligations hereunder and that Tenant shall continue to look to Landlord for the performance of its obligations hereunder.

29.6 **Prohibition Against Recording**. Except as provided in Section 29.4 of this Lease, neither this Lease, nor any memorandum, affidavit or other writing with respect thereto, shall be recorded by Tenant or by anyone acting through, under or on behalf of Tenant.

29.7 **Landlord's Title**. Landlord's title is and always shall be paramount to the title of Tenant. Nothing herein contained shall empower Tenant to do any act which can, shall or may encumber the title of Landlord.

29.8 **Relationship of Parties**. Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent, partnership, joint venturer or any association between Landlord and Tenant.

29.9 **Application of Payments**. Landlord shall have the right to apply payments received from Tenant pursuant to this Lease, regardless of Tenant's designation of such payments, to satisfy any obligations of Tenant hereunder, in such order and amounts as Landlord, in its sole discretion, may elect.

29.10 **Time of Essence**. Time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor.

29.11 **Partial Invalidity**. If any term, provision or condition contained in this Lease shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, provision or condition to persons or circumstances other than those with respect to which it is invalid or unenforceable, shall not be affected thereby, and each and every other term, provision and condition of this Lease shall be valid and enforceable to the fullest extent possible permitted by law.

29.12 **No Warranty**. In executing and delivering this Lease, Tenant has not relied on any representations, including, but not limited to, any representation as to the amount of any item comprising Additional Rent or the amount of the Additional Rent in the aggregate or that Landlord is furnishing the same services to other tenants, at all, on the same level or on the same basis, or any warranty or any statement of Landlord which is not set forth herein or in one or more of the exhibits attached hereto.

29.13 **Landlord Exculpation**. Except for (i) Tenant's rights of rent abatement and offset expressly set forth in this Lease, and (ii) Tenant's retained ability to bring an action against Landlord for claims which are not breach of Landlord's obligations under the TCC's of this Lease (*e.g.*, claims based upon tortuous acts, etc.), the liability of Landlord or the Landlord Parties to Tenant for any default by Landlord under this Lease or arising in connection herewith or with Landlord's operation, management, leasing, repair, renovation, alteration or any other matter relating to the Project or the Premises shall be limited solely and exclusively to an amount equal the "net" interest of Landlord (following payment of any outstanding liens and/or mortgages, whether attributable to sales or insurance proceeds or otherwise) in the Project, including any rents, profits and insurance proceeds received by Landlord or the Landlord Parties in connection with the Project. Neither Landlord, nor any of the Landlord Parties shall have any personal liability therefor, and Tenant hereby expressly waives and releases such personal liability on behalf of itself and all persons claiming by, through or under Tenant. The limitations of liability contained in this Section 29.13 shall inure to the benefit of Landlord's and the Landlord Parties' present and future partners, beneficiaries, officers, directors, trustees, shareholders, agents and employees, and their respective partners, heirs, successors and assigns. Under no circumstances shall any present or future partner of Landlord (if Landlord is a partnership), or trustee or beneficiary (if Landlord or any partner of Landlord is a trust), have any liability for the performance of Landlord's obligations under this Lease. Notwithstanding any contrary provision herein, neither Landlord nor the Landlord Parties shall be liable under any circumstances for injury or damage to, or interference with, Tenant's business, including but not limited to, loss of profits, loss of rents or other revenues, loss of business opportunity, loss of goodwill or loss of use, in each case, however occurring.

29.14 **Entire Agreement**. It is understood and acknowledged that there are no oral agreements between the parties hereto affecting this Lease and this Lease (including all exhibits attached hereto) constitutes the parties' entire agreement with respect to the leasing of the Premises and supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements and understandings, if any, between the parties hereto or displayed by Landlord to Tenant with respect to the subject matter thereof, and none thereof shall be used to interpret or construe this Lease. None of the terms, covenants, conditions or provisions of this Lease can be modified, deleted or added to except in writing signed by the parties hereto.

29.15 **Right to Lease**. Landlord reserves the absolute right to effect such other tenancies in the Project as Landlord in the exercise of its sole business judgment shall determine to best promote the interests of the Building or Project. Tenant does not rely on the fact, nor does Landlord represent, that any specific tenant or type or number of tenants shall, during the Lease Term, occupy any space in the Building or Project.

29.16 **Force Majeure**. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain services, labor, or materials or reasonable substitutes therefor, governmental actions, civil commotions, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform, except with respect to the obligations imposed with regard to Rent and other charges to be paid by Tenant pursuant to this Lease and except as to Tenant's obligations under Articles 5 and 24 of this Lease (collectively, a "**Force Majeure**"), notwithstanding anything to the contrary contained in this Lease, shall excuse the performance of such party for a period equal to any such prevention, delay or stoppage and, therefore, if this Lease specifies a time period for performance of an obligation of either party, that time period shall be extended by the period of any delay in such party's performance caused by a Force Majeure.

29.17 **Waiver of Redemption by Tenant**. Tenant hereby waives, for Tenant and for all those claiming under Tenant, any and all rights now or hereafter existing to redeem by order or judgment of any court or by any legal process or writ, Tenant's right of occupancy of the Premises after any termination of this Lease.

29.18 **Notices**. All notices, demands, statements, designations, approvals or other communications (collectively, "**Notices**") given or required to be given by either party to the other hereunder or by law shall be in writing, shall be (A) sent by United States certified or registered mail, postage prepaid, return receipt requested ("**Mail**"), (B) transmitted by facsimile, if such facsimile is promptly followed by a Notice sent by Mail, (C) delivered by a nationally recognized overnight courier, or (D) delivered personally. Any Notice shall be sent, transmitted, or delivered, as the case may be, to Tenant at the appropriate address set forth in Section 10 of the Summary, or to such other place as Tenant may from time to time designate in a Notice to Landlord, or to Landlord at the addresses set forth below, or to such other places as Landlord may from time to time designate in a Notice to Tenant. Any Notice will be deemed given (i) three (3) days after the date it is posted if sent by Mail, (ii) the date the telecopy is transmitted, (iii) the date the overnight courier delivery is made, or (iv) the date personal delivery is made or attempted to be made. If Tenant is notified of the identity and address of Landlord's mortgagee or ground or underlying lessor, Tenant shall give to such mortgagee or ground or underlying lessor written notice of any default by Landlord under the terms of this Lease by registered or certified mail, and such mortgagee or ground or underlying lessor shall be given a reasonable opportunity to cure such default prior to Tenant's exercising any remedy available to Tenant. As of the date of this Lease, any Notices to Landlord must be sent, transmitted, or delivered, as the case may be, to the following addresses:

Kilroy Realty Corporation
12200 West Olympic Boulevard
Suite 200
Los Angeles, California 90064
Attention: Legal Department

with copies to:

Kilroy Realty Corporation
3611 Valley Centre Drive, Suite 550
San Diego, California 92130
Attention: Mr. Brian Galligan

and

Allen Matkins Leck Gamble Mallory & Natsis LLP
1901 Avenue of the Stars, Suite 1800
Los Angeles, California 90067
Attention: Anton N. Natsis, Esq.

29.19 **Joint and Several**. If there is more than one Tenant, the obligations imposed upon Tenant under this Lease shall be joint and several.

29.20 **Authority**. If Tenant is a corporation, trust or partnership, each individual executing this Lease on behalf of Tenant hereby represents and warrants on behalf of Tenant that Tenant is a duly formed and existing entity qualified to do business in California and that Tenant has full right and authority to execute and deliver this Lease and that each person signing on behalf of Tenant is authorized to do so. In such event, Tenant shall, within ten (10) days after execution of this Lease, deliver to Landlord satisfactory evidence of such authority and, if a corporation, upon demand by Landlord, also deliver to Landlord satisfactory evidence of (i) good standing in Tenant's state of incorporation and (ii) qualification to do business in California.

29.21 **Attorneys' Fees**. In the event that either Landlord or Tenant should bring suit for the possession of the Premises, for the recovery of any sum due under this Lease, or because of the breach of any provision of this Lease or for any other relief against the other, then all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party therein shall be paid by the other party, which obligation on the part of the other party shall be deemed to have accrued on the date of the commencement of such action and shall be enforceable whether or not the action is prosecuted to judgment.

29.22 **Governing Law; WAIVER OF TRIAL BY JURY**. This Lease shall be construed and enforced in accordance with the laws of the State of California. IN ANY ACTION OR PROCEEDING ARISING HEREFROM, LANDLORD AND TENANT HEREBY CONSENT TO (I) THE JURISDICTION OF ANY COMPETENT COURT WITHIN THE STATE OF CALIFORNIA, (II) SERVICE OF PROCESS BY ANY MEANS AUTHORIZED BY CALIFORNIA LAW, AND (III) IN THE INTEREST OF SAVING TIME AND EXPENSE, TRIAL WITHOUT A JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER OR THEIR SUCCESSORS IN RESPECT OF ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, TENANT'S USE OR OCCUPANCY OF THE PREMISES, AND/OR ANY CLAIM FOR INJURY OR DAMAGE, OR ANY EMERGENCY OR STATUTORY REMEDY. IN THE EVENT LANDLORD COMMENCES ANY SUMMARY PROCEEDINGS OR ACTION FOR NONPAYMENT OF BASE RENT OR ADDITIONAL RENT, TENANT SHALL NOT INTERPOSE ANY COUNTERCLAIM OF ANY NATURE OR DESCRIPTION (UNLESS SUCH COUNTERCLAIM SHALL BE MANDATORY) IN ANY SUCH PROCEEDING OR ACTION, BUT SHALL BE RELEGATED TO AN INDEPENDENT ACTION AT LAW.

29.23 **Submission of Lease**. Submission of this instrument for examination or signature by Tenant does not constitute a reservation of, option for or option to lease, and it is not effective as a lease or otherwise until execution and delivery by both Landlord and Tenant.

29.24 **Brokers**. Landlord and Tenant hereby warrant to each other that they have had no dealings with any real estate broker or agent in connection with the negotiation of this Lease, excepting only the real estate brokers or agents specified in Section 12 of the Summary (the "**Brokers**"), and that they know of no other real estate broker or agent who is entitled to a commission in connection with this Lease. Landlord shall pay the Brokers pursuant to the terms of separate commission agreements. Each party agrees to indemnify and defend the other party against and hold the other party harmless from any and all claims, demands, losses, liabilities, lawsuits, judgments, costs and expenses (including without limitation reasonable attorneys' fees) with respect to any leasing commission or equivalent compensation alleged to be owing on account of any dealings with any real estate broker or agent, other than the Brokers, occurring by, through, or under the indemnifying party.

29.25 **Independent Covenants**. This Lease shall be construed as though the covenants herein between Landlord and Tenant are independent and not dependent and Tenant hereby expressly waives the benefit of any statute to the contrary and agrees that if Landlord fails to perform its obligations set forth herein, Tenant shall not be entitled to make any repairs or perform any acts hereunder at Landlord's expense or to any setoff of the Rent or other amounts owing hereunder against Landlord.

29.26 **Project or Building Name and Signage**. Landlord shall have the right at any time to change the name of the Project or Building and to install, affix and maintain any and all signs on the exterior and on the interior of the Project or Building as Landlord may, in Landlord's sole discretion, desire. Tenant shall not use the name of the Project or Building or use pictures or illustrations of the Project or Building in advertising or other publicity or for any purpose other than as the address of the business to be conducted by Tenant in the Premises, without the prior written consent of Landlord.

29.27 **Counterparts**. This Lease may be executed in counterparts with the same effect as if both parties hereto had executed the same document. Both counterparts shall be construed together and shall constitute a single lease.

29.28 **Confidentiality**. Tenant acknowledges that the content of this Lease and any related documents are confidential information. Tenant shall keep such confidential information strictly confidential and shall not disclose such confidential information to any person or entity other than Tenant's financial, legal, and space planning consultants.

29.29 **Transportation Management**. Tenant shall fully comply with all present or future programs intended to manage parking, transportation or traffic in and around the Building, and in connection therewith, Tenant shall take responsible action for the transportation planning and management of all employees located at the Premises by working directly with Landlord, any governmental transportation management organization or any other transportation-related committees or entities.

29.30 **Building Renovations**. It is specifically understood and agreed that Landlord has made no representation or warranty to Tenant and has no obligation and has made no promises to alter, remodel, improve, renovate, repair or decorate the Premises, Building, or any part thereof and that no representations respecting the condition of the Premises or the Building have been made by Landlord to Tenant except as specifically set forth herein or in the Work Letter Agreements. However, Tenant hereby acknowledges that Landlord is currently renovating or may during the Lease Term renovate, improve, alter, or modify (collectively, the "**Renovations**") the Project, the Building and/or the Premises including without limitation the parking structure, common areas, systems and equipment, roof, and structural portions of the same, which Renovations may include, without limitation, (i) installing sprinklers in the Building common areas and tenant spaces, (ii) modifying the common areas and tenant spaces to comply with applicable laws and regulations, including regulations relating to the physically disabled, seismic conditions, and building safety and security, and (iii) installing new floor covering, lighting, and wall coverings in the Building common areas, and in connection with any Renovations, Landlord may, among other things, erect scaffolding or other necessary structures in the Building, limit or eliminate access to portions of the Project, including portions of the common areas, or perform work in the Building, which work may create noise, dust or leave debris in the Building. Except as otherwise provided in the Lease, Tenant hereby agrees that such Renovations and Landlord's actions in connection with such Renovations shall in no way constitute a constructive eviction of Tenant nor entitle Tenant to any abatement of Rent. Except as otherwise provided in the Lease, Landlord shall have no responsibility or for any reason be liable to Tenant for any direct or indirect injury to or interference with Tenant's business arising from the Renovations, nor shall Tenant be entitled to any compensation or damages from Landlord for loss of the use of the whole or any part of the Premises or of Tenant's personal property or improvements resulting from the Renovations or Landlord's actions in connection with such Renovations, or for any inconvenience or annoyance occasioned by such Renovations or Landlord's actions. Landlord shall use commercially reasonable efforts to have all such work performed in a manner which will minimize any unreasonable interference with the operations of Tenant's business in the Premises.

29.31 **No Violation**. Tenant and Landlord each hereby warrant and represent to the other that neither its execution of nor performance under this Lease shall cause such party to be in violation of any agreement, instrument, contract, law, rule or regulation by which such party is bound, and Tenant and Landlord shall each protect, defend, indemnify and hold the other harmless against any claims, demands, losses, damages, liabilities, costs and expenses, including, without limitation, reasonable attorneys' fees and costs, arising from such party's breach of this warranty and representation.

29.32 **Communications and Computer Lines**. Tenant may install, maintain, replace, remove or use any communications or computer wires and cables (collectively, the "**Lines**") at the Project in or serving the Premises, provided that (i) the provisions of Article 8 applicable to Cosmetic Alterations shall apply to the installation of such Lines, (ii) an acceptable number of spare Lines and space for additional Lines shall be maintained for existing and future occupants of the Project, as determined in Landlord's reasonable opinion, (iii) the Lines therefor (including riser cables) shall be (x) appropriately insulated to

prevent excessive electromagnetic fields or radiation, (y) surrounded by a then-customary protective conduit, and (z) identified in accordance with the "Identification Requirements," as that term is set forth hereinbelow, (iv) any new or existing Lines servicing the Premises shall comply with all applicable governmental laws and regulations, and (v) Tenant shall pay all costs in connection therewith. All Lines shall be clearly marked with adhesive plastic labels (or plastic tags attached to such Lines with wire) to show Tenant's name, suite number, telephone number and the name of the person to contact in the case of an emergency (A) every four feet (4') outside the Premises (specifically including, but not limited to, the electrical room risers and other Common Areas), and (B) at the Lines' termination point(s) (collectively, the "**Identification Requirements**"). Landlord reserves the right to require that Tenant remove any Lines located in or serving the Premises which are installed in violation of these provisions, or which are at any time (1) are in violation of any Applicable Laws, (2) are inconsistent with then-existing industry standards (such as the standards promulgated by the National Fire Protection Association (e.g., such organization's "2002 National Electrical Code")), or (3) otherwise represent a dangerous or potentially dangerous condition.

29.33 **Hazardous Substances**.

29.33.1 **Definitions**. For purposes of this Lease, the following definitions shall apply: "**Hazardous Material(s)**" shall mean any solid, liquid or gaseous substance or material that is described or characterized as a toxic or hazardous substance, waste, material, pollutant, contaminant or infectious waste, or any matter that in certain specified quantities would be injurious to the public health or welfare, or words of similar import, in any of the "Environmental Laws," as that term is defined below, or any other words which are intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity or reproductive toxicity, which Hazardous Material(s) shall include, without limitation, asbestos, petroleum (including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture thereof), petroleum products, polychlorinated biphenyls, urea formaldehyde, radon gas, nuclear or radioactive matter, medical waste, soot, vapors, fumes, acids, alkalis, chemicals, microbial matters (such as molds, fungi or other bacterial matters), biological agents and chemicals which may cause adverse health effects, including but not limited to, cancers and /or toxicity. "**Environmental Laws**" shall mean any and all federal, state, local or quasi-governmental laws (whether under common law, statute or otherwise), ordinances, decrees, codes, rulings, awards, rules, regulations or guidance or policy documents now or hereafter enacted or promulgated and as amended from time to time, in any way relating to (i) the protection of the environment, the health and safety of persons (including employees), property or the public welfare from actual or potential release, discharge, escape or emission (whether past or present) of any Hazardous Materials or (ii) the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of any Hazardous Materials.

29.33.2 **Compliance with Environmental Laws**. Tenant covenants that during the Lease Term, Tenant shall comply with all Environmental Laws in accordance with, and as required by, the TCCs of Article 24 of this Lease. Tenant shall not sell, use, or store in or around the Premises any Hazardous Materials, except if stored, properly packaged and labeled, disposed of and/or used in accordance with applicable Environmental Laws. In addition, Tenant agrees that it: (i) shall not cause or suffer to occur, the release, discharge, escape or emission of any Hazardous Materials at, upon, under or within the Premises or any contiguous or adjacent premises that were brought there by Tenant or any of its agents; (ii) shall not engage in activities regarding Hazardous Materials that were brought there by Tenant or any of its agents at the Premises that could result in, give rise to, or lead to the imposition of liability upon Tenant or Landlord or the creation of a lien upon the building or land upon which the Premises is located; (iii) shall notify Landlord promptly following receipt of any knowledge with respect to any actual release, discharge, escape or emission (whether past or present) of any Hazardous Materials at, upon, under or within the Premises; (iv) shall promptly forward to Landlord copies of all orders, notices, permits, applications and other communications and reports in connection with any release, discharge, escape or emission of any Hazardous Materials at, upon, under or within the Premises or any contiguous or adjacent premises, and (v) in connection with Tenant's surrender of the Premises upon the expiration or earlier termination of this Lease, and with regard to Hazardous Materials brought upon the Premises by Tenant or any of its agents (the "**Tenant Haz Mat**"), Tenant shall deliver the Premises free of Hazardous Materials brought upon, kept or used in or about the Premises (solely regarding Tenant Haz Mat), and shall obtain and provide (solely with regard to Tenant Haz Mat) to Landlord (A) all Hazardous Materials Clearances regarding such Tenant Haz Mat, (B) evidence from the applicable governmental entities of "closure" of all permits regarding Tenant Haz Mat which had been required for Tenant's use of the Premises, together with "no further action letters" from such applicable governmental entities and a "no further action letter" for unrestricted future use of the Premises solely with regard to Tenant Haz Mat, and (C) a Phase I report (and, if reasonably required, a Phase II report) with regard to the Premises (specifically including, but not limited to, the Premises' ceiling tiles, mechanical duct work, air-filters and all

related Building Systems, as well as the soils and groundwater under and about the Premises). Such Phase I report (and, if applicable, such Phase II report) shall be (*x*) performed by an environmental assessment or engineering firm and on a scope of work acceptable to Landlord in its sole discretion, (*y*) shall identify Landlord as a beneficiary of such report, and (*z*) completed no earlier than six (6) months prior to the expiration of this Lease and no later than the Lease Expiration Date; provided, however, in the event this Lease is terminated early for any reason, Tenant shall complete such Phase I report within a commercially reasonable time immediately following such early termination of this Lease. Such Phase I report shall either (1) indicate that the property shows no evidence of reasonably possible hazardous materials contamination of the building, soil or groundwater by reason of Tenant Haz Mat; or (2) recommend further investigation of the site, in which event, if such further investigation relates to Tenant Haz Mat, then it shall be performed by an environmental assessment or engineering firm and on a scope of work acceptable to Landlord in its sole discretion and at the Tenant's sole expense. Such additional investigation, if any, shall be completed within sixty (60) days of such recommendation.

29.33.3 **List of Documents and Operations**. As a material inducement to Landlord to allow Tenant to use Hazardous Materials in connection with its business, Tenant agrees to deliver to Landlord, prior to the Lease Commencement Date, a list identifying each type of Hazardous Materials to be present on the Premises and setting forth any and all governmental approvals or permits required in connection with the presence of such Hazardous Materials on the Premises (the "**Hazardous Materials List**"). Tenant shall deliver to Landlord an updated Hazardous Materials List at least once a year and shall also deliver an updated list before any new Hazardous Material(s) is brought onto to the Premises by Tenant or any of its agents. Tenant shall deliver to Landlord true and correct copies of the following documents (the "**Haz Mat Documents**") related to the handling, use, storage, disposal and emission of Hazardous Materials prior to the Lease Commencement Date, or if unavailable at that time, concurrent with the receipt from, or submission to, a governmental agency: permits; approvals; reports and correspondences; storage and manufacturing plans; notice of violations of any laws; plans relating to the installation of any storage tanks to be installed in or under the Project (provided, said installation of tanks shall only be permitted after Landlord has given Tenant its written consent to do so, which consent may be withheld in Landlord's reasonable discretion); and all closure plans or any other documents required by any and all federal, state, and local governmental agencies and authorities for any storage tanks installed in, on or under the Project for the closure of any such tanks. Tenant is not required, however, to provide Landlord with any portion(s) of the Haz Mat Documents containing information of a proprietary nature which, in and of themselves, do not contain a reference to any Hazardous Materials or hazardous activities. It is not the intent of this Section 29.33.3 to provide Landlord with information which could be detrimental to Tenant's business should such information become possessed by Tenant's competitors. In connection with the foregoing, Tenant hereby represents and warrants to Landlord that neither Tenant, or any of its legal predecessors, have been required by any prior landlord, lender or governmental authority at any time during the immediately preceding thirty-six (36) months to take remedial action in connection with Hazardous Materials contaminating a property which contamination was permitted by Tenant or resulting from Tenant's action or use of the property in question, and Tenant is not subject to any enforcement order issued by any governmental authority in connection with the use, disposal or storage of a Hazardous Materials. If Landlord determines that this representation and warranty was not true as of the date of this Lease, Landlord shall have the right to terminate this Lease in Landlord's sole and absolute discretion.

29.33.4 **Landlord's Right of Environmental Audit**. Landlord may, upon reasonable notice to Tenant, be granted access to and enter the Premises no more than once annually to perform or cause to have performed an environmental inspection, site assessment or audit. Such environmental inspector or auditor may be chosen by Landlord, in its sole discretion, and be performed at Landlord's sole expense. To the extent that the report prepared upon such inspection, assessment or audit, indicates the presence of Tenant Haz Mat in violation of Environmental Laws, or provides recommendations or suggestions to prohibit the release, discharge, escape or emission of any Tenant Haz Mat at, upon, under or within the Premises, or to comply with any Environmental Laws, Tenant shall promptly, at Tenant's sole expense, comply with such recommendations or suggestions, including, but not limited to performing such additional investigative or subsurface investigations or remediation(s) as recommended by such inspector or auditor (taking into account all legal requirements and applicable governmental agency recommendations). Notwithstanding the above, if at any time, Landlord has actual notice or reasonable cause to believe that Tenant has violated, or permitted any violations of any Environmental Law, then Landlord will be entitled to perform its environmental inspection, assessment or audit at any time, notwithstanding the above mentioned annual limitation, and Tenant must reimburse Landlord for the cost or fees incurred for such as Additional Rent.

29.33.5 **Indemnifications**. Except to the extent attributable to the negligence or willful misconduct of Tenant or any Tenant Parties, Landlord agrees to indemnify, defend, protect and hold

harmless the Tenant Parties from and against any liability, obligation, damage or costs, including without limitation, attorneys' fees and costs, resulting directly or indirectly from any use, presence, removal or disposal of any Hazardous Materials that was not Tenant Haz Mat. Except to the extent attributable to the negligence or willful misconduct of Landlord or any Landlord Parties, Tenant agrees to indemnify, defend, protect and hold harmless the Landlord Parties from and against any liability, obligation, damage or costs, including without limitation, attorneys' fees and costs, resulting directly or indirectly from any use, presence, removal or disposal of any Tenant Haz Mat. The foregoing reciprocal environmental indemnities shall survive any expiration or termination of this Lease, and are not affected by any claims of breach of any other provisions of this Lease.

29.33.6 **Ongoing Obligations**. All obligations of Tenant hereunder not fully performed as of the termination of the Lease Term, including the obligations of Tenant pursuant to this Section 29.33, shall survive the expiration or earlier termination of the Lease, including, without limitation, indemnity obligations, payment obligations with respect to Rent and obligations concerning the condition and repair of the Premises.

29.34 **No Discrimination**. Tenant covenants by and for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through Tenant, and this Lease is made and accepted upon and subject to the following conditions: that there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, sex, religion, marital status, ancestry or national origin in the leasing, subleasing, transferring, use, or enjoyment of the Premises, nor shall Tenant itself, or any person claiming under or through Tenant, establish or permit such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy, of tenants, lessees, sublessees, subtenants or vendees in the Premises.

[*signature page immediately follows*]

IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease to be executed the day and date first above written.

"LANDLORD":

KILROY REALTY, L.P.,
a Delaware limited partnership

By: Kilroy Realty Corporation,
a Maryland corporation,
General Partner

By: /s/ Jeffrey C. Hansen

Its: Executive Vice President

By: /s/ John Fucci

Its: Sr. Vice President

"TENANT":

DEXCOM, INC.,
a Delaware corporation

By: /s/ Steven J. Kemper
Its: Chief Financial Officer

EXHIBIT A
6340 SEQUENCE DRIVE
OUTLINE OF PREMISES, BUILDING AND TENANT PARKING AREAS
[*ATTACHED*]

EXHIBIT B
6340 SEQUENCE DRIVE
WORK LETTER AGREEMENT
(INITIAL PREMISES)

This Work Letter Agreement shall set forth the terms and conditions relating to the construction of the improvements in the Initial Premises. This Work Letter Agreement is essentially organized chronologically and addresses the issues of the construction of the Premises, in sequence, as such issues will arise during the actual construction of the Premises. All references in this Work Letter Agreement to Articles or Sections of "this Lease" shall mean the relevant portion of Articles 1 through 29 of the Office Lease to which this Work Letter Agreement is attached as **Exhibit B** and of which this Work Letter Agreement forms a part, and all references in this Work Letter Agreement to Sections of "this Work Letter Agreement" shall mean the relevant portion of Sections 1 through 5 of this Work Letter Agreement. Capitalized terms used in this Work Letter Agreement shall have the same meaning as those terms are used and defined in the Lease, unless such terms are otherwise defined in this Work Letter Agreement.

SECTION 1
LANDLORD'S INITIAL CONSTRUCTION IN THE PREMISES

1.1 **Base Building as Constructed by Landlord**. Upon the full execution and delivery of this Lease by Landlord and Tenant, Landlord shall deliver the Premises and "Base Building," as that term is defined below, to Tenant, and Tenant shall accept the Premises and Base Building from Landlord in their presently existing, "as-is" condition. The "**Base Building**" shall consist of those portions of the Premises which were in existence prior to the construction of any improvements in the Premises for the prior tenant of the Premises.

1.2 **HVAC, Plumbing and Electrical Systems**. Notwithstanding anything to the contrary set forth in the Lease or Section 1.1 of this Work Letter Agreement, above, and subject to the TCCs of the last sentence of Section 1.1.1 of the Lease, Landlord shall, upon its delivery of the Premises to Tenant, cause the Base Building's HVAC, plumbing and electrical systems to be in good working order.

SECTION 2
IMPROVEMENTS

2.1 **Improvement Allowance**. Tenant shall be entitled to a one-time improvement allowance (the "**Initial Premises Improvement Allowance**") in the amount of $383,810.00 (which amount was calculated based upon $10.00 per Rentable Square Foot for each of the 38,381 Rentable Square Feet of space in the Initial Premises) for the costs relating to the initial design and construction of the improvements which are permanently affixed to the Initial Premises portion of the Premises or as otherwise allowed pursuant to the express terms of the Lease or this Work Letter Agreement (the "**Improvements**"). Except as otherwise expressly set forth herein, in no event shall Landlord be obligated to make disbursements pursuant to this Work Letter Agreement in a total amount which exceeds the Initial Premises Improvement Allowance. All Improvements for which the Initial Premises Improvement Allowance has been made available shall, as more particularly identified in Section 8.5 of the Lease, be and become the property of Landlord.

2.2 **Disbursement of the Improvement Allowance**. Landlord shall pay to Tenant the full amount of the Initial Premises Improvement Allowance within five (5) business days following the later to occur of (i) September 1, 2006, and (ii) the completion of construction of the Initial Premises; provided, however, such completion of construction shall not be deemed to have occurred unless and until (*x*) Tenant delivers to Landlord properly executed mechanics lien releases in compliance with both California Civil Code Section 3262(d)(2) and either Section 3262(d)(3) or Section 3262(d)(4), (*y*) Landlord has determined that no substandard work exists which adversely effects the mechanical, electrical, plumbing, heating, ventilating and air conditioning, life-safety or other systems of the Building, the curtain wall of the Building, or the structure or exterior appearance of the Building, and (*z*) Architect delivers to Landlord a certificate, in a form reasonably acceptable to Landlord, certifying that the construction of the Improvements in the Initial Premises has been substantially completed.

2.3 **Building Standards for Improvements; Warm Shell Condition**. Tenant acknowledges that Landlord has established minimum specifications (the "**Building Standards for Improvements**") for the Building standard components to be used in the construction of the Improvements in the Initial Premises, which Building Standards for Improvements are set forth on **Schedule 1** attached hereto. Except for Building-standard doors, door hardware and lock sets, as well as all other items expressly identified on **Schedule 1** as "not changeable," Landlord and Tenant hereby acknowledge and agree that Tenant is not required to use any of the specific items set forth in **Schedule 1** in the construction of the Improvements, but that such **Schedule 1** establishes the minimum quality and quantity of items listed thereon that are required with regard to the construction of the PA Improvements. In connection with such Building Standards for Improvements, Landlord has also established certain "**Warm Shell**" condition specifications, which Warm Shell condition specifications are set forth on **Schedule 2**, attached hereto.

2.4 **Removal of Non-Conforming Improvements**. To the extent any particular Improvements do not conform to the Building Standards for Improvements (collectively, the "**Non-Conforming Improvements**"), and the same are identified for removal by Landlord at the time of Landlord's approval of the Construction Drawings, then Tenant, at its sole cost and expense, shall (A) remove from the Premises any such Non-Conforming Improvements so identified for removal, (B) repair any damage caused by such removal, and (C) and return the affected portion of the Premises to the Warm Shell condition. Unless Landlord, in its sole and absolute discretion, rescinds such removal/repair/reconfiguration requirement in writing at least sixty (60) days prior to the end of the Lease Term, such removal and replacement of Non-Conforming Improvements shall be performed promptly and shall be completed by Tenant on or before the end of the Lease Term.

SECTION 3
CONSTRUCTION DRAWINGS

3.1 **Selection of Architect/Construction Drawings**. Subject to Landlord's approval, which approval shall not be unreasonably withheld, delayed, or conditioned, Tenant shall select and retain an architect/space planner (the "**Architect**") to prepare the "Construction Drawings," as that term is defined in this Section 3.1; provided, however, Landlord hereby pre-approves Tony Mansour. Tenant shall retain (A) the structural, mechanical and electrical engineering consultants designated by Landlord, and (B) subject to Landlord's approval (which approval shall not be unreasonably withheld, delayed, or conditioned), all other engineering consultants designated by Tenant (the "**Engineers**") to prepare all plans and engineering working drawings relating to the structural, mechanical, electrical, plumbing, HVAC, lifesafety, and sprinkler work in the Premises, which work is not part of the Base Building. The plans and drawings to be prepared by Architect and the Engineers hereunder shall be known collectively as the "**Construction Drawings**." All Construction Drawings shall comply with the drawing format and specifications reasonably determined by Landlord, and shall be subject to Landlord's approval; provided, however, Landlord shall only disapprove any such Construction Drawing to the extent of a "Design Problem," as that term is defined below. Tenant and Architect shall verify, in the field, the dimensions and conditions as shown on the relevant portions of the base building plans, and Tenant and Architect shall be solely responsible for the same, and Landlord shall have no responsibility in connection therewith. Landlord's review of the Construction Drawings as set forth in this Section 3, shall be for its sole purpose and shall not imply Landlord's review of the same, or obligate Landlord to review the same, for quality, design, Code compliance or other like matters. Accordingly, notwithstanding that any Construction Drawings are reviewed by Landlord or its space planner, architect, engineers and consultants, and notwithstanding any advice or assistance which may be rendered to Tenant by Landlord or Landlord's space planner, architect, engineers, and consultants, Landlord shall have no liability whatsoever in connection therewith and shall not be responsible for any omissions or errors contained in the Construction Drawings, and Tenant's waiver and indemnity set forth in this Lease shall specifically apply to the Construction Drawings. A "**Design Problem**" is defined as, and shall be deemed to exist if there could be (i) an effect on the exterior appearance of the Building, (ii) an adverse effect on the Base Building (including without limitation the Building Structure), (iii) an adverse effect on the Building Systems or the operation and maintenance thereof, or (iv) any failure to comply with Applicable Laws or Code. Notwithstanding anything to the contrary contained herein, Landlord acknowledges that Tenant's security systems are fundamental to its business operations in the Premises, and Landlord shall reasonably cooperate with Tenant, at no material extra cost to Landlord, to permit such security systems to be installed in the Premises in accordance with Tenant's reasonable security requirements. Landlord further acknowledges that the Improvements may include data center, cafeteria and exercise facilities, and that Landlord shall reasonably cooperate with Tenant, at no material extra cost to Landlord, in Tenant's design of such facilities.

3.2 **Final Space Plan**. Tenant shall supply Landlord with four (4) copies signed by Tenant of its final space plan for the Premises before any architectural working drawings or engineering drawings have been commenced. The final space plan (the "**Final Space Plan**") shall include a layout and designation of all offices, rooms and other partitioning, their intended use, and equipment to be contained therein. Landlord may request clarification or more specific drawings for special use items not included in the Final Space Plan. Landlord shall advise Tenant within five (5) business days after Landlord's receipt of the Final Space Plan for the Premises if the same is unsatisfactory or incomplete in any respect; provided, however, Landlord shall only disapprove such Final Space Plans to the extent of a Design Problem. Landlord shall advise Tenant within five (5) business days after Landlord's receipt of the Final Space Plan for the Premises if the same is unsatisfactory or incomplete in any respect. Landlord shall set forth with reasonable specificity in what respect the Final Space Plan is unsatisfactory or incomplete (based upon a commercially reasonable standard). If Tenant is so advised, Tenant shall promptly direct the Architect to cause the Final Space Plan to be revised to correct any deficiencies or other matters Landlord may reasonably require, and immediately thereafter Architect shall promptly re-submit the Final Space Plan to Landlord for its approval. Such procedure shall continue until the Final Space Plan is approved by Landlord.

3.3 **Final Working Drawings**. After the Final Space Plan has been approved by Landlord, Tenant shall supply the Engineers with a complete listing of standard and non-standard equipment and specifications, including, without limitation, B.T.U. calculations, electrical requirements and special electrical receptacle requirements for the Premises, to enable the Engineers and the Architect to complete the "Final Working Drawings" (as that term is defined below) in the manner as set forth below. Upon the approval of the Final Space Plan by Landlord and Tenant, Tenant shall promptly cause the Architect and the Engineers to complete the architectural and engineering drawings for the Premises, and Architect shall compile a fully coordinated set of architectural, structural, mechanical, electrical and plumbing working drawings in a form which is complete to allow subcontractors to bid on the work and to obtain all applicable permits (collectively, the "**Final Working Drawings**") and shall submit the same to Landlord for Landlord's approval. Tenant shall supply Landlord with four (4) copies signed by Tenant of such Final Working Drawings. Landlord shall, within five (5) business days after Landlord's receipt of all of the Final Working Drawings, either (i) approve the Final Working Drawings, (ii) approve the Final Working Drawings subject to specified conditions, which conditions must be stated in a reasonably clear and complete manner, and shall only be conditions reasonably intended to address a potential Design Problem, or (iii) disapprove and return the Construction Drawings to Tenant with requested revisions; provided, however, Landlord shall only disapprove such Final Working Drawings to the extent of a Design Problem. If Landlord disapproves the Final Working Drawings, Tenant may resubmit the Final Working Drawings to Landlord at any time, and Landlord shall approve or disapprove the resubmitted Final Working Drawings, based upon the criteria set forth in this Section 3.3, within three (3) business days after Landlord receives such resubmitted Final Working Drawings. Such procedure shall be repeated until the Final Working Drawings are approved.

3.4 **Approved Working Drawings**. The Final Working Drawings shall be approved by Landlord (the "**Approved Working Drawings**") prior to the commencement of construction of the Premises by Tenant. After approval by Landlord of the Final Working Drawings, Tenant shall submit the same to the appropriate municipal authorities for all applicable building permits. Tenant hereby agrees that neither Landlord nor Landlord's consultants shall be responsible for obtaining any building permit or certificate of occupancy for the Premises and that obtaining the same shall be Tenant's responsibility; provided, however, that Landlord shall cooperate with Tenant in executing permit applications and performing other ministerial acts reasonably necessary to enable Tenant to obtain any such permit or certificate of occupancy. No changes, modifications or alterations in the Approved Working Drawings may be made without the prior written consent of Landlord, provided, however, that Landlord may only disapprove of any such change to the extent the necessary to eliminate a Design Problem (as requested and approved, a "**Tenant Change**").

SECTION 4
CONSTRUCTION OF THE IMPROVEMENTS

4.1 **Tenant's Selection of Contractors**.

4.1.1 **The Contractor**. A general contractor shall be retained by Tenant to construct the Improvements in the Initial Premises. Such general contractor ("**Contractor**") shall be Good & Roberts or otherwise selected by Tenant from a list of approved general contractors mutually and reasonably agreed

upon by Landlord and Tenant, and Tenant shall deliver to Landlord notice of its selection of the Contractor upon such selection.

4.1.2 **Tenant's Agents**. All subcontractors, laborers, materialmen, and suppliers used by Tenant (such subcontractors, laborers, materialmen, and suppliers, and the Contractor to be known collectively as "**Tenant's Agents**") must be approved in writing by Landlord, which approval shall not be unreasonably withheld or delayed. If Landlord does not approve any of Tenant's proposed subcontractors, laborers, materialmen or suppliers, Tenant shall submit other proposed subcontractors, laborers, materialmen or suppliers for Landlord's written approval.

4.2 **Construction of Improvements by Tenant's Agents**.

4.2.1 **Construction Contract; Final Costs**. Prior to Tenant's execution of the construction contract and general conditions with Contractor (the "**Contract**"), Tenant shall submit the Contract to Landlord for its approval, which approval shall not be unreasonably withheld or delayed. Prior to the commencement of the construction of the Improvements, and after Tenant has accepted all bids for the Improvements, Tenant shall provide Landlord with a detailed breakdown, by trade, of the final costs to be incurred or which have been incurred, as set forth more particularly in Sections 2.2.1.1 through 2.2.1.9, above, in connection with the design and construction of the Improvements to be performed by or at the direction of Tenant or the Contractor, which costs form a basis for the amount of the Contract (the "**Final Costs**"). In the event that, after the Final Costs have been delivered by Tenant to Landlord, the costs relating to the design and construction of the Improvements shall change, any additional costs that arise in connection with the construction of the Improvements shall be paid by Tenant. During its construction of the Improvements, Tenant shall make monthly progress payments to the Contractor pursuant to Section 4.4 of this Work Letter Agreement.

4.2.2 **Tenant's Agents**.

4.2.2.1 **Landlord's General Conditions for Tenant's Agents and Improvement Work**. Tenant's and Tenant's Agent's construction of the Improvements shall comply with the following: (i) the Improvements shall be constructed in strict accordance with the Approved Working Drawings; (ii) Tenant's Agents shall submit schedules of all work relating to the Tenant's Improvements to Contractor and Contractor shall, within five (5) business days of receipt thereof, inform Tenant's Agents of any changes which are necessary thereto, and Tenant's Agents shall adhere to such corrected schedule; and (iii) Tenant shall abide by all rules made by Landlord's Building manager with respect to the use of freight, loading dock and service elevators, storage of materials, coordination of work with the contractors of other tenants, and any other matter in connection with this Work Letter Agreement, including, without limitation, the construction of the Improvements. Tenant shall pay a logistical coordination fee (the "**Coordination Fee**") to Landlord in an amount equal to the product of (A) two percent (2.0%) and (B) an amount equal to the "hard costs" incurred for the actual construction of the Tenant Improvements; provided, however, in no event shall the amount of such "hard costs" be deemed to exceed the amount of the Initial Premises Improvement Allowance; provided further, however, Landlord and Tenant hereby acknowledge that such Coordination Fee shall be for services relating to the coordination of the construction of the Improvements.

4.2.2.2 **Indemnity**. Tenant's indemnity of Landlord as set forth in this Lease shall also apply with respect to any and all costs, losses, damages, injuries and liabilities related in any way to any act or omission of Tenant or Tenant's Agents, or anyone directly or indirectly employed by any of them, or in connection with Tenant's non-payment of any amount arising out of the Improvements and/or Tenant's disapproval of all or any portion of any request for payment. Such indemnity by Tenant, as set forth in this Lease, shall also apply with respect to any and all costs, losses, damages, injuries and liabilities related in any way to Landlord's performance of any ministerial acts reasonably necessary (i) to permit Tenant to complete the Improvements, and (ii) to enable Tenant to obtain any building permit or certificate of occupancy for the Premises.

4.2.2.3 **Requirements of Tenant's Agents**. Each of Tenant's Agents shall guarantee to Tenant and for the benefit of Landlord that the portion of the Improvements for which it is responsible shall be free from any defects in workmanship and materials for a period of not less than one (1) year from the date of completion thereof. Each of Tenant's Agents shall be responsible for the replacement or repair, without additional charge, of all work done or furnished in accordance with its contract that shall become defective within one (1) year after the later to occur of (i) completion of the work performed by such contractor or subcontractors and (ii) the Lease Commencement Date. The correction of such work shall include, without additional charge, all additional expenses and damages

incurred in connection with such removal or replacement of all or any part of the Improvements, and/or the Building and/or common areas that may be damaged or disturbed thereby. All such warranties or guarantees as to materials or workmanship of or with respect to the Improvements shall be contained in the Contract or subcontract and shall be written such that such guarantees or warranties shall inure to the benefit of both Landlord and Tenant, as their respective interests may appear, and can be directly enforced by either. Tenant covenants to give to Landlord any assignment or other assurances which may be necessary to effect such right of direct enforcement.

4.2.2.4 **Insurance Requirements**.

4.2.2.4.1 General Coverages. All of Tenant's Agents shall carry worker's compensation insurance covering all of their respective employees, and shall also carry public liability insurance, including property damage, all with limits, in form and with companies as are required to be carried by Tenant as set forth in this Lease.

4.2.2.4.2 Special Coverages. Tenant shall carry "Builder's All Risk" insurance in an amount approved by Landlord covering the construction of the Improvements, and such other insurance as Landlord may require, it being understood and agreed that the Improvements shall be insured by Tenant pursuant to this Lease immediately upon completion thereof; provided, however, to the extent such insurance is not available on a commercially reasonable basis, then Tenant shall not be required to carry such insurance. Such insurance shall be in amounts and shall include such extended coverage endorsements as may be reasonably required by Landlord including, but not limited to, the requirement that all of Tenant's Agents shall carry excess liability and Products and Completed Operation Coverage insurance, each in amounts not less than $500,000 per incident, $1,000,000 in aggregate, and in form and with companies as are required to be carried by Tenant as set forth in this Lease.

4.2.2.4.3 General Terms. Certificates for all insurance carried pursuant to this Section 4.2.2.4 shall be delivered to Landlord before the commencement of construction of the Improvements and before the Contractor's equipment is moved onto the site. All such policies of insurance must contain a provision that the company writing said policy will give Landlord thirty (30) days prior written notice of any cancellation or lapse of the effective date or any reduction in the amounts of such insurance. In the event that the Improvements are damaged by any cause during the course of the construction thereof, Tenant shall immediately repair the same at Tenant's sole cost and expense. Tenant's Agents shall maintain all of the foregoing insurance coverage in force until the Improvements are fully completed and accepted by Landlord, except for any Products and Completed Operation Coverage insurance required by Landlord, which is to be maintained for ten (10) years following completion of the work and acceptance by Landlord and Tenant. All policies carried under this Section 4.2.2.4 shall insure Landlord and Tenant, as their interests may appear, as well as Contractor and Tenant's Agents. All insurance, except Workers' Compensation, maintained by Tenant's Agents shall preclude subrogation claims by the insurer against anyone insured thereunder. Such insurance shall provide that it is primary insurance as respects the owner and that any other insurance maintained by owner is excess and noncontributing with the insurance required hereunder. The requirements for the foregoing insurance shall not derogate from the provisions for indemnification of Landlord by Tenant under Section 4.2.2.2 of this Work Letter Agreement. Landlord may, in its reasonable discretion, require Tenant to obtain a lien and completion bond or some alternate form of security satisfactory to Landlord in an amount sufficient to ensure the lien-free completion of the Improvements and naming Landlord as a co-obligee.

4.2.3 **Governmental Compliance**. The Improvements shall comply in all material respects with the following: (i) the Code and other state, federal, city or quasi-governmental laws, codes, ordinances and regulations, as each may apply according to the rulings of the controlling public official, agent or other person; (ii) applicable standards of the American Insurance Association (formerly, the National Board of Fire Underwriters) and the National Electrical Code; and (iii) building material manufacturer's specifications.

4.2.4 **Inspection by Landlord**. Landlord shall have the reasonable right to inspect the Improvements at all times, provided however, that Landlord's failure to inspect the Improvements shall in no event constitute a waiver of any of Landlord's rights hereunder nor shall Landlord's inspection of the Improvements constitute Landlord's approval of the same. Should Landlord disapprove any portion of the Improvements, Landlord shall notify Tenant in writing of such disapproval and shall specify the items disapproved. Any defects or deviations in, and/or disapproval by Landlord of, the Improvements shall be rectified by Tenant at no expense to Landlord, provided however, that in the event Landlord determines that a defect or deviation exists or disapproves of any matter in connection with any portion of the Improvements and such defect, deviation or matter might adversely effect the mechanical, electrical,

plumbing, heating, ventilating and air conditioning or life-safety systems of the Building, the structure or exterior appearance of the Building or any other tenant's use of such other tenant's leased premises, Landlord may, take such action as Landlord deems necessary, at Tenant's expense and without incurring any liability on Landlord's part, to correct any such defect, deviation and/or matter, including, without limitation, causing the cessation of performance of the construction of the Improvements until such time as the defect, deviation and/or matter is corrected to Landlord's satisfaction.

4.2.5 **Meetings**. Tenant and Landlord shall hold regular meetings at reasonable times (but in no event to be required more often than weekly), with the Architect and the Contractor regarding the progress of the preparation of Construction Drawings and the construction of the Improvements, which meetings shall be held at a location and at times mutually and reasonably agreed upon by Landlord and Tenant, and Landlord and/or its agents shall receive prior notice of, and shall have the right to attend, all such meetings, and, upon Landlord's request, certain of Tenant's Agents shall attend such meetings. In addition, minutes shall be taken at all such meetings, a copy of which minutes shall be promptly delivered to Landlord. One such meeting each month shall include the review of Contractor's current request for payment.

4.3 **Notice of Completion; Copy of Record Set of Plans**. Within ten (10) days after completion of construction of the Improvements, Tenant shall cause a Notice of Completion to be recorded in the office of the Recorder of the county in which the Building is located in accordance with Section 3093 of the Civil Code of the State of California or any successor statute, and shall furnish a copy thereof to Landlord upon such recordation. If Tenant fails to do so, Landlord may execute and file the same on behalf of Tenant as Tenant's agent for such purpose, at Tenant's sole cost and expense. At the conclusion of construction, (i) Tenant shall cause the Architect and Contractor (A) to update the Approved Working Drawings as necessary to reflect all changes made to the Approved Working Drawings during the course of construction, (B) to certify to the best of their knowledge that the "record-set" of as-built drawings are true and correct, which certification shall survive the expiration or termination of this Lease, and (C) to deliver to Landlord two (2) sets of copies of such record set of drawings within ninety (90) days following issuance of a certificate of occupancy for the Premises, and (ii) Tenant shall deliver to Landlord a copy of all warranties, guaranties, and operating manuals and information relating to the improvements, equipment, and systems in the Premises.

4.4 **Monthly Disbursements**. On or before a designated day of each calendar month during the construction of the Improvements, Tenant shall pay the Contractor, on a progress-payment basis, pursuant to the terms of the Contract; provided, however, at least five (5) business days prior to making such monthly disbursements, Tenant shall have delivered to Landlord: (i) a construction schedule showing, by trade, the percentage of completion of the Improvements in the Initial Premises, detailing the portion of the work completed and the portion not completed; (ii) copies of invoices from all of Tenant's Agents for labor rendered and materials delivered to the Premises; (iii) executed mechanic's lien releases from all of Tenant's Agents which shall comply with the appropriate provisions, as reasonably determined by Landlord, of California Civil Code Section 3262(d); and (iv) all other information reasonably requested by Landlord (collectively, the "**Payment Package**"). Tenant's submission of each Payment Package to Landlord and corresponding payment to Contractor shall be deemed Tenant's acceptance and approval of the work furnished and/or the materials supplied as set forth in such Payment Package.

SECTION 5
MISCELLANEOUS

5.1 **Tenant's Representative**. Tenant has designated Mr. Mark Brister as its sole representative with respect to the matters set forth in this Work Letter Agreement, who shall have full authority and responsibility to act on behalf of the Tenant as required in this Work Letter Agreement.

5.2 **Landlord's Representative**. Landlord has designated Mr. Rick Mount as its sole representatives with respect to the matters set forth in this Work Letter Agreement, who, until further notice to Tenant, shall have full authority and responsibility to act on behalf of the Landlord as required in this Work Letter Agreement.

5.3 **Time of the Essence in This Work Letter Agreement**. Unless otherwise indicated, all references herein to a "number of days" shall mean and refer to calendar days. If any item requiring approval is timely disapproved by Landlord, the procedure for preparation of the document and approval thereof shall be repeated until the document is approved by Landlord.

SCHEDULE 1 TO EXHIBIT B
BUILDING STANDARDS FOR IMPROVEMENTS
[*ATTACHED*]

SCHEDULE 2 TO EXHIBIT B
WARM SHELL CONDITION SPECIFICATIONS
[*ATTACHED*]

EXHIBIT B-1
6340 SEQUENCE DRIVE
WORK LETTER AGREEMENT
(MUST-TAKE SPACE)

This Work Letter Agreement shall set forth the terms and conditions relating to the construction of the improvements in the Must-Take Space. This Work Letter Agreement is essentially organized chronologically and addresses the issues of the construction of the Premises, in sequence, as such issues will arise during the actual construction of the Premises. All references in this Work Letter Agreement to Articles or Sections of "this Lease" shall mean the relevant portion of Articles 1 through 29 of the Office Lease to which this Work Letter Agreement is attached as **Exhibit B** and of which this Work Letter Agreement forms a part, and all references in this Work Letter Agreement to Sections of "this Work Letter Agreement" shall mean the relevant portion of Sections 1 through 5 of this Work Letter Agreement. Capitalized terms used in this Work Letter Agreement shall have the same meaning as those terms are used and defined in the Lease, unless such terms are otherwise defined in this Work Letter Agreement.

SECTION 1

LANDLORD'S INITIAL CONSTRUCTION IN THE PREMISES

1.1 **Base Building as Constructed by Landlord**. Upon the full execution and delivery of this Lease by Landlord and Tenant, Landlord shall deliver the Premises and "Base Building," as that term is defined below, to Tenant, and Tenant shall accept the Premises and Base Building from Landlord in their presently existing, "as-is" condition. The "**Base Building**" shall consist of those portions of the Premises which were in existence prior to the construction of any improvements in the Premises for the prior tenant of the Premises.

1.2 **HVAC, Plumbing and Electrical Systems**. Notwithstanding anything to the contrary set forth in the Lease or Section 1.1 of this Work Letter Agreement, above, and subject to the TCCs of the last sentence of Section 1.1.1 of the Lease, Landlord shall, upon its delivery of the Premises to Tenant, cause the Base Building's HVAC, plumbing and electrical systems to be in good working order.

SECTION 2

IMPROVEMENTS

2.1 **Improvement Allowance**. Tenant shall be entitled to a one-time improvement allowance (the "**Must-Take Space Improvement Allowance**") in the amount of $280,190.00 (which amount was calculated based upon $10.00 per Rentable Square Foot for each of the 28,019 Rentable Square Feet of space in the Must-Take Space) for the costs relating to the initial design and construction of the improvements which are permanently affixed to the Must-Take Space portion of the Premises or as otherwise allowed pursuant to the express terms of the Lease or this Work Letter Agreement (the "**Improvements**"). Except as otherwise expressly set forth herein, in no event shall Landlord be obligated to make disbursements pursuant to this Work Letter Agreement in a total amount which exceeds the Must-Take Space Improvement Allowance. All Improvements for which the Must-Take Space Improvement Allowance has been made available shall, as more particularly identified in Section 8.5 of the Lease, be and become the property of Landlord.

2.2 **Disbursement of the Improvement Allowance**. Landlord shall pay to Tenant the full amount of the Must-Take Space Improvement Allowance within five (5) business days following the later to occur of (*w*) the expiration of the MTS Rent Abatement Period, (*x*) the date Tenant delivers to Landlord properly executed mechanics lien releases in compliance with both California Civil Code Section 3262(d)(2) and either Section 3262(d)(3) or Section 3262(d)(4), (*y*) the Landlord has determined that no substandard work exists which adversely effects the mechanical, electrical, plumbing, heating, ventilating and air conditioning, life- safety or other systems of the Building, the curtain wall of the Building, or the structure or exterior appearance of the Building, and (*z*) the date Architect delivers to Landlord a certificate, in a form reasonably acceptable to Landlord, certifying that the construction of the Improvements in the Must-Take Space has been substantially completed.

2.3 **Building Standards for Improvements; Warm Shell Condition**. Tenant acknowledges that Landlord has established the Building Standards for Improvements and Warm Shell condition

specifications, as more particularly set forth in **Exhibit B** to this Lease and in **Schedules 1 and 2** to such **Exhibit B**.

2.4 **Removal of Non-Conforming Improvements**. To the extent any particular Improvements do not conform to the Building Standards for Improvements (collectively, the "**Non-Conforming Improvements**"), and the same are identified for removal by Landlord at the time of Landlord's approval of the Construction Drawings, then Tenant, at its sole cost and expense, shall (A) remove from the Premises any such Non-Conforming Improvements so identified for removal, (B) repair any damage caused by such removal, and (C) and return the affected portion of the Premises to the Warm Shell condition. Unless Landlord, in its sole and absolute discretion, rescinds such removal/repair/reconfiguration requirement in writing at least sixty (60) days prior to the end of the Lease Term, such removal and replacement of Non-Conforming Improvements shall be performed promptly and shall be completed by Tenant on or before the end of the Lease Term.

SECTION 3
CONSTRUCTION DRAWINGS

3.1 **Selection of Architect/Construction Drawings**. Subject to Landlord's approval, which approval shall not be unreasonably withheld, delayed, or conditioned, Tenant shall select and retain an architect/space planner (the "**Architect**") to prepare the "Construction Drawings," as that term is defined in this Section 3.1; provided, however, Landlord hereby pre-approves Tony Mansour. Tenant shall retain (A) the structural, mechanical and electrical engineering consultants designated by Landlord, and (B) subject to Landlord's approval (which approval shall not be unreasonably withheld, delayed, or conditioned), all other engineering consultants designated by Tenant (the "**Engineers**") to prepare all plans and engineering working drawings relating to the structural, mechanical, electrical, plumbing, HVAC, lifesafety, and sprinkler work in the Premises, which work is not part of the Base Building. The plans and drawings to be prepared by Architect and the Engineers hereunder shall be known collectively as the "**Construction Drawings**." All Construction Drawings shall comply with the drawing format and specifications reasonably determined by Landlord, and shall be subject to Landlord's approval; provided, however, Landlord shall only disapprove any such Construction Drawing to the extent of a "Design Problem," as that term is defined below. Tenant and Architect shall verify, in the field, the dimensions and conditions as shown on the relevant portions of the base building plans, and Tenant and Architect shall be solely responsible for the same, and Landlord shall have no responsibility in connection therewith. Landlord's review of the Construction Drawings as set forth in this Section 3, shall be for its sole purpose and shall not imply Landlord's review of the same, or obligate Landlord to review the same, for quality, design, Code compliance or other like matters. Accordingly, notwithstanding that any Construction Drawings are reviewed by Landlord or its space planner, architect, engineers and consultants, and notwithstanding any advice or assistance which may be rendered to Tenant by Landlord or Landlord's space planner, architect, engineers, and consultants, Landlord shall have no liability whatsoever in connection therewith and shall not be responsible for any omissions or errors contained in the Construction Drawings, and Tenant's waiver and indemnity set forth in this Lease shall specifically apply to the Construction Drawings. A "**Design Problem**" is defined as, and shall be deemed to exist if there could be (i) an effect on the exterior appearance of the Building, (ii) an adverse effect on the Base Building (including without limitation the Building Structure), (iii) an adverse effect on the Building Systems or the operation and maintenance thereof, or (iv) any failure to comply with Applicable Laws or Code. Notwithstanding anything to the contrary contained herein, Landlord acknowledges that Tenant's security systems are fundamental to its business operations in the Premises, and Landlord shall reasonably cooperate with Tenant, at no material extra cost to Landlord, to permit such security systems to be installed in the Premises in accordance with Tenant's reasonable security requirements. Landlord further acknowledges that the Improvements may include data center, cafeteria and exercise facilities, and that Landlord shall reasonably cooperate with Tenant, at no material extra cost to Landlord, in Tenant's design of such facilities.

3.2 **Final Space Plan**. Tenant shall supply Landlord with four (4) copies signed by Tenant of its final space plan for the Premises before any architectural working drawings or engineering drawings have been commenced. The final space plan (the "**Final Space Plan**") shall include a layout and designation of all offices, rooms and other partitioning, their intended use, and equipment to be contained therein. Landlord may request clarification or more specific drawings for special use items not included in the Final Space Plan. Landlord shall advise Tenant within five (5) business days after Landlord's receipt of the Final Space Plan for the Premises if the same is unsatisfactory or incomplete in any respect; provided, however, Landlord shall only disapprove such Final Space Plans to the extent of a Design Problem. Landlord shall advise Tenant within five (5) business days after Landlord's receipt of the Final Space Plan for the Premises if the same is unsatisfactory or incomplete in any respect. Landlord shall set

forth with reasonable specificity in what respect the Final Space Plan is unsatisfactory or incomplete (based upon a commercially reasonable standard). If Tenant is so advised, Tenant shall promptly direct the Architect to cause the Final Space Plan to be revised to correct any deficiencies or other matters Landlord may reasonably require, and immediately thereafter Architect shall promptly re-submit the Final Space Plan to Landlord for its approval. Such procedure shall continue until the Final Space Plan is approved by Landlord.

3.3 **Final Working Drawings**. After the Final Space Plan has been approved by Landlord, Tenant shall supply the Engineers with a complete listing of standard and non-standard equipment and specifications, including, without limitation, B.T.U. calculations, electrical requirements and special electrical receptacle requirements for the Premises, to enable the Engineers and the Architect to complete the "Final Working Drawings" (as that term is defined below) in the manner as set forth below. Upon the approval of the Final Space Plan by Landlord and Tenant, Tenant shall promptly cause the Architect and the Engineers to complete the architectural and engineering drawings for the Premises, and Architect shall compile a fully coordinated set of architectural, structural, mechanical, electrical and plumbing working drawings in a form which is complete to allow subcontractors to bid on the work and to obtain all applicable permits (collectively, the "**Final Working Drawings**") and shall submit the same to Landlord for Landlord's approval. Tenant shall supply Landlord with four (4) copies signed by Tenant of such Final Working Drawings. Landlord shall, within five (5) business days after Landlord's receipt of all of the Final Working Drawings, either (i) approve the Final Working Drawings, (ii) approve the Final Working Drawings subject to specified conditions, which conditions must be stated in a reasonably clear and complete manner, and shall only be conditions reasonably intended to address a potential Design Problem, or (iii) disapprove and return the Construction Drawings to Tenant with requested revisions; provided, however, Landlord shall only disapprove such Final Working Drawings to the extent of a Design Problem. If Landlord disapproves the Final Working Drawings, Tenant may resubmit the Final Working Drawings to Landlord at any time, and Landlord shall approve or disapprove the resubmitted Final Working Drawings, based upon the criteria set forth in this Section 3.3, within three (3) business days after Landlord receives such resubmitted Final Working Drawings. Such procedure shall be repeated until the Final Working Drawings are approved.

3.4 **Approved Working Drawings**. The Final Working Drawings shall be approved by Landlord (the "**Approved Working Drawings**") prior to the commencement of construction of the Premises by Tenant. After approval by Landlord of the Final Working Drawings, Tenant shall submit the same to the appropriate municipal authorities for all applicable building permits. Tenant hereby agrees that neither Landlord nor Landlord's consultants shall be responsible for obtaining any building permit or certificate of occupancy for the Premises and that obtaining the same shall be Tenant's responsibility; provided, however, that Landlord shall cooperate with Tenant in executing permit applications and performing other ministerial acts reasonably necessary to enable Tenant to obtain any such permit or certificate of occupancy. No changes, modifications or alterations in the Approved Working Drawings may be made without the prior written consent of Landlord, provided, however, that Landlord may only disapprove of any such change to the extent the necessary to eliminate a Design Problem (as requested and approved, a "**Tenant Change**").

SECTION 4

CONSTRUCTION OF THE IMPROVEMENTS

4.1 **Tenant's Selection of Contractors**.

4.1.1 **The Contractor**. A general contractor shall be retained by Tenant to construct the Improvements in the Must-Take Space. Such general contractor ("**Contractor**") shall be Good & Roberts or otherwise selected by Tenant from a list of approved general contractors mutually and reasonably agreed upon by Landlord and Tenant, and Tenant shall deliver to Landlord notice of its selection of the Contractor upon such selection.

4.1.2 **Tenant's Agents**. All subcontractors, laborers, materialmen, and suppliers used by Tenant (such subcontractors, laborers, materialmen, and suppliers, and the Contractor to be known collectively as "**Tenant's Agents**") must be approved in writing by Landlord, which approval shall not be unreasonably withheld or delayed. If Landlord does not approve any of Tenant's proposed subcontractors, laborers, materialmen or suppliers, Tenant shall submit other proposed subcontractors, laborers, materialmen or suppliers for Landlord's written approval.

4.2 **Construction of Improvements by Tenant's Agents**.

4.2.1 **Construction Contract; Final Costs**. Prior to Tenant's execution of the construction contract and general conditions with Contractor (the "**Contract**"), Tenant shall submit the Contract to Landlord for its approval, which approval shall not be unreasonably withheld or delayed. Prior to the commencement of the construction of the Improvements, and after Tenant has accepted all bids for the Improvements, Tenant shall provide Landlord with a detailed breakdown, by trade, of the final costs to be incurred or which have been incurred, as set forth more particularly in Sections 2.2.1.1 through 2.2.1.9, above, in connection with the design and construction of the Improvements to be performed by or at the direction of Tenant or the Contractor, which costs form a basis for the amount of the Contract (the "**Final Costs**"). In the event that, after the Final Costs have been delivered by Tenant to Landlord, the costs relating to the design and construction of the Improvements shall change, any additional costs that arise in connection with the construction of the Improvements shall be paid by Tenant. During its construction of the Improvements, Tenant shall make monthly progress payments to the Contractor pursuant to Section 4.4 of this Work Letter Agreement.

4.2.2 **Tenant's Agents**.

4.2.2.1 **Landlord's General Conditions for Tenant's Agents and Improvement Work**. Tenant's and Tenant's Agent's construction of the Improvements shall comply with the following: (i) the Improvements shall be constructed in strict accordance with the Approved Working Drawings; (ii) Tenant's Agents shall submit schedules of all work relating to the Tenant's Improvements to Contractor and Contractor shall, within five (5) business days of receipt thereof, inform Tenant's Agents of any changes which are necessary thereto, and Tenant's Agents shall adhere to such corrected schedule; and (iii) Tenant shall abide by all rules made by Landlord's Building manager with respect to the use of freight, loading dock and service elevators, storage of materials, coordination of work with the contractors of other tenants, and any other matter in connection with this Work Letter Agreement, including, without limitation, the construction of the Improvements. Tenant shall pay a logistical coordination fee (the "**Coordination Fee**") to Landlord in an amount equal to the product of (A) two percent (2.0%) and (B) an amount equal to the "hard costs" incurred for the actual construction of the Tenant Improvements; provided, however, in no event shall the amount of such "hard costs" be deemed to exceed the amount of the Must-Take Space Improvement Allowance; provided further, however, Landlord and Tenant hereby acknowledge that such Coordination Fee shall be for services relating to the coordination of the construction of the Improvements.

4.2.2.2 **Indemnity**. Tenant's indemnity of Landlord as set forth in this Lease shall also apply with respect to any and all costs, losses, damages, injuries and liabilities related in any way to any act or omission of Tenant or Tenant's Agents, or anyone directly or indirectly employed by any of them, or in connection with Tenant's non-payment of any amount arising out of the Improvements and/or Tenant's disapproval of all or any portion of any request for payment. Such indemnity by Tenant, as set forth in this Lease, shall also apply with respect to any and all costs, losses, damages, injuries and liabilities related in any way to Landlord's performance of any ministerial acts reasonably necessary (i) to permit Tenant to complete the Improvements, and (ii) to enable Tenant to obtain any building permit or certificate of occupancy for the Premises.

4.2.2.3 **Requirements of Tenant's Agents**. Each of Tenant's Agents shall guarantee to Tenant and for the benefit of Landlord that the portion of the Improvements for which it is responsible shall be free from any defects in workmanship and materials for a period of not less than one (1) year from the date of completion thereof. Each of Tenant's Agents shall be responsible for the replacement or repair, without additional charge, of all work done or furnished in accordance with its contract that shall become defective within one (1) year after the later to occur of (i) completion of the work performed by such contractor or subcontractors and (ii) the Lease Commencement Date. The correction of such work shall include, without additional charge, all additional expenses and damages incurred in connection with such removal or replacement of all or any part of the Improvements, and/or the Building and/or common areas that may be damaged or disturbed thereby. All such warranties or guarantees as to materials or workmanship of or with respect to the Improvements shall be contained in the Contract or subcontract and shall be written such that such guarantees or warranties shall inure to the benefit of both Landlord and Tenant, as their respective interests may appear, and can be directly enforced by either. Tenant covenants to give to Landlord any assignment or other assurances which may be necessary to effect such right of direct enforcement.

4.2.2.4 **Insurance Requirements**.

4.2.2.4.1 General Coverages. All of Tenant's Agents shall carry worker's compensation insurance covering all of their respective employees, and shall also carry public

liability insurance, including property damage, all with limits, in form and with companies as are required to be carried by Tenant as set forth in this Lease.

4.2.2.4.2 Special Coverages. Tenant shall carry "Builder's All Risk" insurance in an amount approved by Landlord covering the construction of the Improvements, and such other insurance as Landlord may require, it being understood and agreed that the Improvements shall be insured by Tenant pursuant to this Lease immediately upon completion thereof; provided, however, to the extent such insurance is not available on a commercially reasonable basis, then Tenant shall not be required to carry such insurance. Such insurance shall be in amounts and shall include such extended coverage endorsements as may be reasonably required by Landlord including, but not limited to, the requirement that all of Tenant's Agents shall carry excess liability and Products and Completed Operation Coverage insurance, each in amounts not less than $500,000 per incident, $1,000,000 in aggregate, and in form and with companies as are required to be carried by Tenant as set forth in this Lease.

4.2.2.4.3 General Terms. Certificates for all insurance carried pursuant to this Section 4.2.2.4 shall be delivered to Landlord before the commencement of construction of the Improvements and before the Contractor's equipment is moved onto the site. All such policies of insurance must contain a provision that the company writing said policy will give Landlord thirty (30) days prior written notice of any cancellation or lapse of the effective date or any reduction in the amounts of such insurance. In the event that the Improvements are damaged by any cause during the course of the construction thereof, Tenant shall immediately repair the same at Tenant's sole cost and expense. Tenant's Agents shall maintain all of the foregoing insurance coverage in force until the Improvements are fully completed and accepted by Landlord, except for any Products and Completed Operation Coverage insurance required by Landlord, which is to be maintained for ten (10) years following completion of the work and acceptance by Landlord and Tenant. All policies carried under this Section 4.2.2.4 shall insure Landlord and Tenant, as their interests may appear, as well as Contractor and Tenant's Agents. All insurance, except Workers' Compensation, maintained by Tenant's Agents shall preclude subrogation claims by the insurer against anyone insured thereunder. Such insurance shall provide that it is primary insurance as respects the owner and that any other insurance maintained by owner is excess and noncontributing with the insurance required hereunder. The requirements for the foregoing insurance shall not derogate from the provisions for indemnification of Landlord by Tenant under Section 4.2.2.2 of this Work Letter Agreement. Landlord may, in its reasonable discretion, require Tenant to obtain a lien and completion bond or some alternate form of security satisfactory to Landlord in an amount sufficient to ensure the lien-free completion of the Improvements and naming Landlord as a co-obligee.

4.2.3 **Governmental Compliance**. The Improvements shall comply in all material respects with the following: (i) the Code and other state, federal, city or quasi-governmental laws, codes, ordinances and regulations, as each may apply according to the rulings of the controlling public official, agent or other person; (ii) applicable standards of the American Insurance Association (formerly, the National Board of Fire Underwriters) and the National Electrical Code; and (iii) building material manufacturer's specifications.

4.2.4 **Inspection by Landlord**. Landlord shall have the reasonable right to inspect the Improvements at all times, provided however, that Landlord's failure to inspect the Improvements shall in no event constitute a waiver of any of Landlord's rights hereunder nor shall Landlord's inspection of the Improvements constitute Landlord's approval of the same. Should Landlord disapprove any portion of the Improvements, Landlord shall notify Tenant in writing of such disapproval and shall specify the items disapproved. Any defects or deviations in, and/or disapproval by Landlord of, the Improvements shall be rectified by Tenant at no expense to Landlord, provided however, that in the event Landlord determines that a defect or deviation exists or disapproves of any matter in connection with any portion of the Improvements and such defect, deviation or matter might adversely effect the mechanical, electrical, plumbing, heating, ventilating and air conditioning or life-safety systems of the Building, the structure or exterior appearance of the Building or any other tenant's use of such other tenant's leased premises, Landlord may, take such action as Landlord deems necessary, at Tenant's expense and without incurring any liability on Landlord's part, to correct any such defect, deviation and/or matter, including, without limitation, causing the cessation of performance of the construction of the Improvements until such time as the defect, deviation and/or matter is corrected to Landlord's satisfaction.

4.2.5 **Meetings**. Tenant and Landlord shall hold regular meetings at reasonable times (but in no event to be required more often than weekly), with the Architect and the Contractor regarding the progress of the preparation of Construction Drawings and the construction of the Improvements, which meetings shall be held at a location and at times mutually and reasonably agreed upon by Landlord and Tenant, and Landlord and/or its agents shall receive prior notice of, and shall have the right to attend,

all such meetings, and, upon Landlord's request, certain of Tenant's Agents shall attend such meetings. In addition, minutes shall be taken at all such meetings, a copy of which minutes shall be promptly delivered to Landlord. One such meeting each month shall include the review of Contractor's current request for payment.

4.3 **Notice of Completion; Copy of Record Set of Plans**. Within ten (10) days after completion of construction of the Improvements, Tenant shall cause a Notice of Completion to be recorded in the office of the Recorder of the county in which the Building is located in accordance with Section 3093 of the Civil Code of the State of California or any successor statute, and shall furnish a copy thereof to Landlord upon such recordation. If Tenant fails to do so, Landlord may execute and file the same on behalf of Tenant as Tenant's agent for such purpose, at Tenant's sole cost and expense. At the conclusion of construction, (i) Tenant shall cause the Architect and Contractor (A) to update the Approved Working Drawings as necessary to reflect all changes made to the Approved Working Drawings during the course of construction, (B) to certify to the best of their knowledge that the "record-set" of as-built drawings are true and correct, which certification shall survive the expiration or termination of this Lease, and (C) to deliver to Landlord two (2) sets of copies of such record set of drawings within ninety (90) days following issuance of a certificate of occupancy for the Premises, and (ii) Tenant shall deliver to Landlord a copy of all warranties, guaranties, and operating manuals and information relating to the improvements, equipment, and systems in the Premises.

4.4 **Monthly Disbursements**. On or before a designated day of each calendar month during the construction of the Improvements, Tenant shall pay the Contractor, on a progress-payment basis, pursuant to the terms of the Contract; provided, however, at least five (5) business days prior to making such monthly disbursements, Tenant shall have delivered to Landlord: (i) a construction schedule showing, by trade, the percentage of completion of the Improvements in the Must-Take Space, detailing the portion of the work completed and the portion not completed; (ii) copies of invoices from all of Tenant's Agents for labor rendered and materials delivered to the Premises; (iii) executed mechanic's lien releases from all of Tenant's Agents which shall comply with the appropriate provisions, as reasonably determined by Landlord, of California Civil Code Section 3262(d); and (iv) all other information reasonably requested by Landlord (collectively, the "**Payment Package**"). Tenant's submission of each Payment Package to Landlord and corresponding payment to Contractor shall be deemed Tenant's acceptance and approval of the work furnished and/or the materials supplied as set forth in such Payment Package.

SECTION 5

MISCELLANEOUS

5.1 **Tenant's Representative**. Tenant has designated Mr. Mark Brister as its sole representative with respect to the matters set forth in this Work Letter Agreement, who shall have full authority and responsibility to act on behalf of the Tenant as required in this Work Letter Agreement.

5.2 **Landlord's Representative**. Landlord has designated Mr. Rick Mount as its sole representatives with respect to the matters set forth in this Work Letter Agreement, who, until further notice to Tenant, shall have full authority and responsibility to act on behalf of the Landlord as required in this Work Letter Agreement.

5.3 **Time of the Essence in This Work Letter Agreement**. Unless otherwise indicated, all references herein to a "number of days" shall mean and refer to calendar days. If any item requiring approval is timely disapproved by Landlord, the procedure for preparation of the document and approval thereof shall be repeated until the document is approved by Landlord.

EXHIBIT C

6340 SEQUENCE DRIVE

NOTICE OF LEASE TERM DATES

To:

Re: Office Lease dated , 200 between , a ("Landlord"), and , a ("Tenant") concerning Suite on floor(s) of the office building located at , , California.

Gentlemen:

In accordance with the Office Lease (the "Lease"), we wish to advise you and/or confirm as follows:

1. The Lease Term shall commence on or has commenced on for a term of ending on .
2. Rent commenced to accrue on , in the amount of .
3. If the Lease Commencement Date is other than the first day of the month, the first billing will contain a pro rata adjustment. Each billing thereafter, with the exception of the final billing, shall be for the full amount of the monthly installment as provided for in the Lease.
4. Your rent checks should be made payable to at .
5. The exact number of rentable/usable square feet within the Premises is square feet.
6. Tenant's Share as adjusted based upon the exact number of usable square feet within the Premises is %.

"Landlord":

__,
a __

By: __
Its: __

Agreed to and Accepted
as of , 200 .

"Tenant":

__
a __

By: __
Its: __

EXHIBIT D

6340 SEQUENCE DRIVE

RULES AND REGULATIONS

Tenant shall faithfully observe and comply with the following Rules and Regulations. Landlord shall not be responsible to Tenant for the nonperformance of any of said Rules and Regulations by or otherwise with respect to the acts or omissions of any other tenants or occupants of the Project; provided, however, in no event shall Landlord enforce such Rules and Regulations in a discriminatory manner to the detriment of Tenant. In the event of any conflict between the Rules and Regulations and the other provisions of this Lease, the latter shall control.

1. Safes and other heavy objects shall, if reasonably considered necessary by Landlord, stand on supports of such thickness as is necessary to properly distribute the weight. Landlord will not be responsible for loss of or damage to any such safe or property in any case. Any damage to any part of the Building, its contents, occupants or visitors by moving or maintaining any such safe or other property shall be the sole responsibility and expense of Tenant.

2. The requirements of Tenant will be attended to only upon application at Landlord's management office or at such office location designated by Landlord. Employees of Landlord shall not perform any work or do anything outside their regular duties unless under special instructions from Landlord.

3. No outdoor advertisement, notice or handbill (or any interior advertisement, notice or handbill to the extent clearly visible from the exterior of the Building) shall be exhibited, distributed, painted or affixed by Tenant on any part of the Project without the prior written consent of the Landlord. Tenant shall not disturb, solicit, peddle, or canvass any occupant of the Project and shall cooperate with Landlord and its agents of Landlord to prevent same.

4. Tenant shall not overload the floor of the Premises.

5. Tenant shall not use or keep in or on the Premises, the Building, or the Project any kerosene, gasoline, explosive material, corrosive material, material capable of emitting toxic fumes, or other inflammable or combustible fluid chemical, substitute or material, except in compliance with applicable law. Tenant shall maintain material safety data sheets for any Hazardous Material used or kept on the Premises.

6. Tenant shall not use, keep or permit to be used or kept, any foul or noxious gas or substance in or on the Premises to the extent the same is noticeable in the Common Areas of the Pacific Corporate Center or which affects other tenants of the Pacific Corporate Center. Tenant shall not throw anything out of doors, windows or skylights.

7. No cooking shall be done or permitted on the Premises (unless Tenant receives Landlord's prior written approval to install a cafeteria for its employees in the Premises), nor shall the Premises be used for lodging. Notwithstanding the foregoing, Underwriters' laboratory-approved equipment and microwave ovens may be used in the Premises for heating food and brewing coffee, tea, hot chocolate and similar beverages for employees and visitors, provided that such use is in accordance with all applicable federal, state, county and city laws, codes, ordinances, rules and regulations.

8. Tenant shall store all its trash and garbage within the interior of the Premises or in the appropriate external trash area(s) for the Building. No material shall be placed in the trash boxes or receptacles if such material is of such nature that it may not be disposed of in the ordinary and customary manner of removing and disposing of trash and garbage in San Diego, California without violation of any law or ordinance governing such disposal; provided, however, Tenant may maintain separate trash enclosures for the storage of non-conforming disposal items to the extent Tenant satisfies and complies with any applicable laws or other governmental regulations relating to the storage and disposal thereof. If the Premises is or becomes infested with vermin as a result of the use or any misuse or neglect of the Premises by Tenant, its agents, servants, employees, contractors, visitors or licensees, Tenant shall forthwith, at Tenant's expense, cause the Premises to be exterminated from time to time to the satisfaction of Landlord and shall employ such licensed exterminators as shall be approved in writing in advance by Landlord.

9. Tenant shall comply with all safety, fire protection and evacuation procedures and regulations established by any governmental agency.

10. Neither the interior nor exterior of any windows shall be coated or otherwise sunscreened without the prior written consent of Landlord. Tenant shall be responsible for any damage to the window film on the exterior windows of the Premises and shall promptly repair any such damage at Tenant's sole cost and expense.

11. Tenant must comply with requests by the Landlord concerning the informing of their employees of items of reasonable importance to the Landlord vis-à-vis the operation of the Project and the Pacific Corporate Center.

12. Tenant must comply with any applicable "**NO-SMOKING**" Ordinances. If Tenant is required under the ordinance to adopt a written smoking policy, a copy of said policy shall be on file in the office of the Building. Additionally, Tenant must provide at least one area within the Premises in which its employees, invitees and visitors may smoke, to the extent such area is required by law.

13. Tenant hereby acknowledges that Landlord shall have no obligation to provide guard service or other security measures for the benefit of the Premises, the Building or the Project. Tenant hereby assumes all responsibility for the protection of Tenant and its agents, employees, contractors, invitees and guests, and the property thereof, from acts of third parties, including keeping doors locked and other means of entry to the Premises closed, whether or not Landlord, at its option, elects to provide security protection for the Project or any portion thereof. Tenant further assumes the risk that any safety and security devices, services and programs which Landlord elects, in its sole discretion, to provide may not be effective, or may malfunction or be circumvented by an unauthorized third party, and Tenant shall, in addition to its other insurance obligations under this Lease, obtain its own insurance coverage to the extent Tenant desires protection against losses related to such occurrences. Tenant shall cooperate in any reasonable safety or security program developed by Landlord or required by law.

14. No auction, liquidation, fire sale, going-out-of-business or bankruptcy sale shall be conducted in the Premises without the prior written consent of Landlord.

15. No tenant shall use or permit the use of any portion of the Premises for living quarters, sleeping apartments or lodging rooms.

Landlord reserves the right at any time to change or rescind any one or more of these Rules and Regulations, or to make such other and further reasonable, non-discriminatory Rules and Regulations as in Landlord's judgment may from time to time be necessary (relative to a building occupied solely by one tenant) for the management, safety, care and cleanliness of the Premises, Building, the Common Areas and the Project, and for the preservation of good order therein, as well as for the convenience of other occupants and tenants therein. Landlord may waive any one or more of these Rules and Regulations for the benefit of any particular tenants, but no such waiver by Landlord shall be construed as a waiver of such Rules and Regulations in favor of any other tenant, nor prevent Landlord from thereafter enforcing any such Rules or Regulations against any or all tenants of the Project; provided, however, in no event shall Landlord enforce such Rules and Regulations in a discriminatory manner to the detriment of Tenant. Tenant shall be deemed to have read these Rules and Regulations and to have agreed to abide by them as a condition of its occupancy of the Premises.

EXHIBIT E
6340 SEQUENCE DRIVE
FORM OF TENANT'S ESTOPPEL CERTIFICATE

The undersigned as Tenant under that certain Office Lease (the "Lease") made and entered into as of , 200 by and between as Landlord, and the undersigned as Tenant, for Premises on the floor(s) of the office building located at , , California , certifies as follows:

1. Attached hereto as Exhibit A is a true and correct copy of the Lease and all amendments and modifications thereto. The documents contained in Exhibit A represent the entire agreement between the parties as to the Premises.

2. The undersigned currently occupies the Premises described in the Lease, the Lease Term commenced on , and the Lease Term expires on , and the undersigned has no option to terminate or cancel the Lease or to purchase all or any part of the Premises, the Building and/or the Project.

3. Base Rent became payable on .

4. The Lease is in full force and effect and has not been modified, supplemented or amended in any way except as provided in Exhibit A.

5. Tenant has not transferred, assigned, or sublet any portion of the Premises nor entered into any license or concession agreements with respect thereto except as follows:

6. Tenant shall not modify the documents contained in Exhibit A without the prior written consent of Landlord's mortgagee.

7. All monthly installments of Base Rent, all Additional Rent and all monthly installments of estimated Additional Rent have been paid when due through . The current monthly installment of Base Rent is $.

8. All conditions of the Lease to be performed by Landlord necessary to the enforceability of the Lease have been satisfied and Landlord is not in default thereunder. In addition, the undersigned has not delivered any notice to Landlord regarding a default by Landlord thereunder.

9. No rental has been paid more than thirty (30) days in advance and no security has been deposited with Landlord except as provided in the Lease.

10. As of the date hereof, there are no existing defenses or offsets, or, to the undersigned's knowledge, claims or any basis for a claim, that the undersigned has against Landlord.

11. If Tenant is a corporation or partnership, each individual executing this Estoppel Certificate on behalf of Tenant hereby represents and warrants that Tenant is a duly formed and existing entity qualified to do business in California and that Tenant has full right and authority to execute and deliver this Estoppel Certificate and that each person signing on behalf of Tenant is authorized to do so.

12. There are no actions pending against the undersigned under the bankruptcy or similar laws of the United States or any state.

13. Other than in compliance with all applicable laws and incidental to the ordinary course of the use of the Premises, the undersigned has not used or stored any hazardous substances in the Premises.

14. To the undersigned's knowledge, all improvement work to be performed by Landlord under the Lease has been completed in accordance with the Lease and has been accepted by the undersigned and all reimbursements and allowances due to the undersigned under the Lease in connection with any improvement work have been paid in full.

The undersigned acknowledges that this Estoppel Certificate may be delivered to Landlord or to a prospective mortgagee or prospective purchaser, and acknowledges that said prospective mortgagee or prospective purchaser will be relying upon the statements contained herein in making the loan or acquiring the property of which the Premises are a part and that receipt by it of this certificate is a condition of making such loan or acquiring such property.

Executed at on the day of , 200 .

"Tenant":

__,
a __

By: __
Its: __

By: __
Its: __

EXHIBIT F
6340 SEQUENCE DRIVE

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

ALLEN MATKINS LECK GAMBLE
& MALLORY LLP
1901 Avenue of the Stars, 18th Floor
Los Angeles, California 90067
Attention: Anton N. Natsis, Esq.

RECOGNITION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

This Recognition of Covenants, Conditions, and Restrictions (this "**Agreement**") is entered into as of the day of , 200 , by and between ("Landlord"), and ("Tenant"), with reference to the following facts:

A. Landlord and Tenant entered into that certain Office Lease Agreement dated , 200 (the "Lease"). Pursuant to the Lease, Landlord leased to Tenant and Tenant leased from Landlord space (the "**Premises**") located in an office building on certain real property described in **Exhibit A** attached hereto and incorporated herein by this reference (the "**Property**").

B. The Premises are located in an office building located on real property which is part of an area owned by Landlord containing approximately ( ) acres of real property located in the City of , California (the "**Project**"), as more particularly described in **Exhibit B** attached hereto and incorporated herein by this reference.

C. Landlord, as declarant, has previously recorded, or proposes to record concurrently with the recordation of this Agreement, a Declaration of Covenants, Conditions, and Restrictions (the "**Declaration**"), dated , 200 , in connection with the Project.

D. Tenant is agreeing to recognize and be bound by the terms of the Declaration, and the parties hereto desire to set forth their agreements concerning the same.

NOW, THEREFORE, in consideration of (a) the foregoing recitals and the mutual agreements hereinafter set forth, and (b) for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows,

1. Tenant's Recognition of Declaration. Notwithstanding that the Lease has been executed prior to the recordation of the Declaration, Tenant agrees to recognize and by bound by all of the terms and conditions of the Declaration.

2. Miscellaneous.

2.1 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, estates, personal representatives, successors, and assigns.

2.2 This Agreement is made in, and shall be governed, enforced and construed under the laws of, the State of California.

2.3 This Agreement constitutes the entire understanding and agreements of the parties with respect to the subject matter hereof, and shall supersede and replace all prior understandings and agreements, whether verbal or in writing. The parties confirm and acknowledge that there are no other promises, covenants, understandings, agreements, representations, or warranties with respect to the subject matter of this Agreement except as expressly set forth herein.

2.4 This Agreement is not to be modified, terminated, or amended in any respect, except pursuant to any instrument in writing duly executed by both of the parties hereto.

2.5 In the event that either party hereto shall bring any legal action or other proceeding with respect to the breach, interpretation, or enforcement of this Agreement, or with respect to any dispute relating to any transaction covered by this Agreement, the losing party in such action or proceeding shall reimburse the prevailing party therein for all reasonable costs of litigation, including reasonable attorneys' fees, in such amount as may be determined by the court or other tribunal having jurisdiction, including matters on appeal.

2.6 All captions and heading herein are for convenience and ease of reference only, and shall not be used or referred to in any way in connection with the interpretation or enforcement of this Agreement.

2.7 If any provision of this Agreement, as applied to any party or to any circumstance, shall be adjudged by a court of competent jurisdictions to be void or unenforceable for any reason, the same shall not affect any other provision of this Agreement, the application of such provision under circumstances different form those adjudged by the court, or the validity or enforceability of this Agreement as a whole.

2.8 Time is of the essence of this Agreement.

2.9 The Parties agree to execute any further documents, and take any further actions, as may be reasonable and appropriate in order to carry out the purpose and intent of this Agreement.

2.10 As used herein, the masculine, feminine or neuter gender, and the singular and plural numbers, shall each be deemed to include the others whenever and whatever the context so indicates.

SIGNATURE PAGE OF RECOGNITION OF

COVENANTS, CONDITIONS AND RESTRICTIONS

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

"Landlord":

__,
a __

By: __
Its: __

"Tenant":

__
a __

By: __
Its: __

By: __
Its: __

EXHIBIT G
6340 SEQUENCE DRIVE

FORM OF LETTER OF CREDIT
(Letterhead of a money center bank
acceptable to the Landlord)

, 200

Gentlemen:

We hereby establish our Irrevocable Letter of Credit and authorize you to draw on us at sight for the account of , a , the aggregate amount of ($).

Funds under this Letter of Credit are available to the beneficiary hereof as follows:

Any or all of the sums hereunder may be drawn down at any time and from time to time from and after the date hereof by a representative of ("Beneficiary") when accompanied by this Letter of Credit and a written statement signed by a representative of Beneficiary, certifying that such moneys are due and owing to Beneficiary.

This Letter of Credit is transferable in its entirety at no cost to Beneficiary. Should a transfer be desired, such transfer will be subject to the return to us of this advice, together with written instructions.

The amount of each draft must be endorsed on the reverse hereof by the negotiating bank. We hereby agree that this Letter of Credit shall be duly honored upon presentation and delivery of the certification specified above.

This Letter of Credit shall expire on .

Notwithstanding the above expiration date of this Letter of Credit, the term of this Letter of Credit shall be automatically renewed for successive, additional one (1) year periods unless, at least thirty (30) days prior to any such date of expiration, the undersigned shall give written notice to Beneficiary, by certified mail, return receipt requested and at the address set forth above or at such other address as may be given to the undersigned by Beneficiary, that this Letter of Credit will not be renewed.

This Letter of Credit is governed by the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication 500.

Very truly yours,
(Name of Issuing Bank)

By: __

FIRST AMENDMENT TO OFFICE LEASE

This FIRST AMENDMENT TO OFFICE LEASE ("**First Amendment**") is made and entered into as of the 18th day of August, 2010, by and between KILROY REALTY, L.P., a Delaware limited partnership ("**Landlord**"), and DEXCOM, INC., a Delaware corporation ("**Tenant**").

RECITALS:

A. Landlord and Tenant entered into that certain Office Lease dated March 31, 2006 (the "**Lease**"), whereby Landlord leases to Tenant and Tenant leases from Landlord those certain premises consisting of approximately 66,400 rentable square feet ("**Existing Premises**"), which Existing Premises constitutes the entirety of that certain office building located at 6340 Sequence Drive, San Diego, California ("**6340 Building**").

B. Tenant desires to expand the Existing Premises to include a total of 62,415 rentable square feet of space comprising (i) that certain space consisting of approximately 36,444 rentable square feet of space (the "**6310 Initial Premises**") comprising (x) the entire second (2nd) floor, as well as (y) a portion of the first (1st) floor comprising, amongst other areas, the lobby, the training room, the IT room and the locker room (the "**6310 Initial First Floor Premises**"), both of which foregoing areas (x) and (y) are located in that certain office building located at 6310 Sequence Drive, San Diego (the "**6310 Building**"), which 6310 Building is adjacent to the 6340 Building, and (ii) that certain space consisting of all of the remaining, approximately 25,971 rentable square feet of space in the 6310 Building (the "**6310 Must-Take Premises**") all of which is located on the balance of the first (1st) floor of such 6310 Building, and to make other modifications to the Lease. The 6310 Initial Premises and 6310 Must-Take Premises are more particularly delineated on **Exhibit A-1** and **Exhibit A-2** attached hereto and made a part hereof. The 6310 Initial Premises and the 6310 Must-Take Premises are, collectively, the "**6310 Expansion Premises**." In connection with the foregoing, Landlord and Tenant desire to amend the Lease as hereinafter provided.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Capitalized Terms**. All capitalized terms when used herein shall have the same meaning as is given such terms in the Lease unless expressly superseded by the terms of this First Amendment.

2. **Modification of Premises**.

2.1. **6310 Initial Premises**. Effective as of September 15, 2010 (the "**Expansion Commencement Date**"), Tenant shall lease from Landlord and Landlord shall lease to Tenant the 6310 Initial Premises. Consequently, effective upon the Expansion Commencement Date, the Existing Premises shall be expanded to include the 6310 Initial Premises (the Existing Premises together with the 6310 Initial Premises are sometimes collectively referred to herein as the "**Initially Expanded Premises**"). Landlord and Tenant hereby acknowledge that the Initially Expanded Premises shall, effective as of the Expansion Commencement Date, contain a total of approximately 102,844 rentable square feet. For the period ending on the day immediately preceding the 6310 Must-Take Premises Commencement Date, the Initially Expanded Premises is also referred to in the underlying Lease as the "**Premises**."

2.2. **6310 Must-Take Premises**. Effective as of the earlier to occur of (i) the date Tenant first commences to conduct its "Business Operations" (as that term is defined below) from any portion of the 6310 Must-Take Premises, and (ii) September 1, 2012 (as applicable, the "**6310 Must-Take Premises Commencement Date**"), Tenant shall lease from Landlord and Landlord shall lease to Tenant the 6310 Must-Take Premises. For purposes hereof, "**Business Operations**" shall mean (i) the stationing of employees in any portion of the 6310 Must-Take Premises, or (ii) the operating of equipment in any portion of the 6310 Must-Take Premises, or (iii) the storing of items related to Tenant's business in a total area which is larger than 500 rentable square feet of space in the 6310 Must-Take Premises; provided, however, in no event shall "Business Operations" be deemed to have commenced in the 6310 Must-Take Premises if Tenant, its employees or agents are (a) solely using the restrooms located in the 6310 Must-Take Premises, (b) Tenant, its employees or agents are solely using 500 rentable square feet of space or less in the 6310 Must-Take Premises to store items related to its business (subject to Landlord's

reasonable rules and regulations), and/or (c) solely constructing "Improvements" (as that term is defined in Section 2.1.1 of the Work Letter) in the 6310 Must-Take Premises for a period of not more than eight (8) weeks prior to the Must-Take Premises Commencement Date. Landlord shall deliver possession of the 6310 Must-Take Premises to Tenant concurrently with its delivery of possession of the 6310 Initial Premises to Tenant, and therefore during the period prior to the 6310 Must-Take Premises Commencement Date, other than (i) Tenant's obligation to pay Base Rent with respect to the 6310 Must-Take Premises, and (ii) Tenant's right to use the 6310 Must-Take Premises for the Permitted Use, all of the terms and conditions of the Lease shall apply during the period occurring prior to the date immediately preceding the 6310 Must-Take Premises Commencement Date as if the 6310 Must-Take Premises Commencement Date had occurred (it nevertheless being acknowledged that the 6310 Must-Take Premises Commencement Date shall not actually occur until the occurrence of the same pursuant to the terms of this Section 2.2). Therefore, concurrently with Landlord's delivery of possession of the 6310 Initial Premises, Tenant shall be obligated to pay Tenant's Share of Direct Expenses in connection with the 6310 Expansion Premises in accordance with the terms of Article 4 of the Lease, and Section 5.2 of this First Amendment. Tenant shall accept the 6310 Initial Premises and Base Building from Landlord in their presently existing, "as-is" condition, and Landlord and Tenant hereby acknowledge that effective as of the 6310 Must-Take Premises Commencement Date, the "**Premises**" shall be comprised of the Existing Premises, the 6310 Initial Premises and the 6310 Must-Take Premises (*i.e.*, the entire 6340 Building and the entire 6310 Building).

2.3. **No-Remeasurement of 6310 Expansion Premises**. For purposes of the Lease (as hereby amended), "rentable square feet" of the 6310 Expansion Premises (*i.e.*, the 6310 Initial Premises and the 6310 Must-Take Premises) shall be deemed as set forth in **Recital B** of this First Amendment, and therefore neither Landlord nor Tenant shall have the right to re-measure the Premises at any time during the Expansion Term. Landlord represents that to its knowledge and belief that if it were to re-measure the 6310 Building using Office Building: Methods of Measurement and Calculating Rentable Area – 2010 (Method B) as applicable to single-tenant buildings (i.e., rentable square footage equating to Gross Building Area), the 6310 Building would not contain less than 62,415 rentable square feet of space.

2.4. **Relocation Inquiry Notice**. Provided that Tenant remains in occupancy of the entire then-existing Premises, Tenant may, within the first three (3) years following the Expansion Commencement Date, deliver to Landlord a notice (the "**Relocation Interest Notice**") indicating Tenant is interested in relocating the Premises to up to 310,000 rentable square feet of contiguous space (the "**Relocation Interest Space**") in another Landlord-owned building in the "Comparable Area" (as that term is defined in Section 2.2.2 of the Lease). Such Relocation Interest Notice shall identify Tenant's desired specifications of the Relocation Interest Space. During the two (2) month period following Landlord's receipt of the Relocation Interest Notice from Tenant, Landlord shall notify Tenant (the "**Relocation Interest Response Notice**") from time to time if Relocation Interest Space within another Landlord owned Building is "Available for Lease" (as that term is defined below). The Relocation Interest Response Notice shall describe the Relocation Interest Space and the economic terms upon which Landlord is willing to lease such space to third-parties. For the purposes hereof, the term "**Available for Lease**" shall mean such space is then-vacant and unleased, or is otherwise scheduled to become vacant (including, without limitation, as a result of any scheduled expiration of the terms of a lease for such space) within two (2) months after the date of Landlord's receipt of the Relocation Interest Notice, provided that any such space shall not be deemed to be Available for Lease if and to the extent the same is (i) then subject to any lease or any expansion, extension, first offer, first refusal or other expansion rights of another tenant of the particular project in which the Relocation Interest Space is located, or (ii) the subject, in whole or in part, of ongoing discussions with respect to a lease of such space to a third party, as evidenced by a written lease proposal, letter of intent, term sheet, or lease document delivered or received by Landlord within the one-hundred eighty (180) day period immediately preceding Landlord's receipt of the Relocation Interest Notice. In the event both Landlord and Tenant agree to relocate the Premises to Relocation Interest Space in another Landlord-owned building (each in their sole and absolute discretion) upon economic and non-economic terms agreeable to both Landlord and Tenant (again, each in their sole and absolute discretion), Landlord and Tenant shall within thirty (30) days after the date upon which Tenant executes a letter of intent (or its equivalent) for the lease of such Relocation Interest Space, execute an amendment to the Lease (as hereby amended) relocating the Premises to the Relocation Interest Space, and Tenant shall lease such Relocation Interest Space on the economic and non-economic terms mutually agreeable to Landlord and Tenant (each in their sole and absolute discretion). Tenant shall not have any rights under this Section 2.4, and Landlord shall have no obligations hereunder, if, as of the date of Tenant's delivery of the Relocation Interest Notice, an Event of Default exists. The rights contained in this Section 2.4 shall be personal to the Tenant originally named herein (the "**Original Tenant**") and any Permitted Transferee and may only be exercised by the Original Tenant or a Permitted Transferee (and not any other assignee, sublessee or other transferee of the Original Tenant's interest in the Lease). The obligations contained in this Section 2.4 shall apply only to the Landlord originally named herein, and therefore any future landlord

shall have no obligation to comply with the terms of this Section 2.4, and no such future landlord shall have any obligation to provide Tenant with a Relocation Interest Response Notice.

3. **Term**.

3.1. **Extension of Existing Premises Lease Term**. Landlord and Tenant acknowledge that Tenant's lease of the Existing Premises is scheduled to expire on April 30, 2014, pursuant to the terms of the Lease. Notwithstanding anything to the contrary in the Lease, the term of Tenant's lease of the Existing Premises shall be extended to expire coterminously with the term of Tenant's lease of the 6310 Expansion Premises on November 30, 2016 (the "**Lease Expiration Date**"), unless sooner terminated as provided in the Lease, as hereby amended. The period of time commencing on the Expansion Commencement Date (i.e., September 15, 2010) and terminating on the Lease Expiration Date (i.e., November 30, 2016) shall be referred to herein as the "**Expansion Term**."

3.2. **The 6310 Initial Premises**. The term of Tenant's lease of the 6310 Initial Premises (the "**6310 Initial Premises Term**") shall commence on the 6310 Initial Premises Commencement Date (i.e., September 15, 2010) and shall expire on the Lease Expiration Date (i.e., November 30, 2016), unless sooner terminated or otherwise extended as expressly provided in the Lease, as hereby amended.

3.3. **The 6310 Must-Take Premises**. The term of Tenant's lease of the 6310 Must-Take Premises (the "**6310 Must-Take Premises Term**") shall commence on the 6310 Must-Take Premises Commencement Date (*i.e.*, the earlier to occur of (i) the date Tenant first commences to conduct its "Business Operations" from any portion of the 6310 Must-Take Premises, and (ii) September 1, 2012) and shall expire on the Lease Expiration Date (*i.e.*, November 30, 2016), unless sooner terminated as provided in the Lease, as hereby amended.

3.4. **Option Term**. Notwithstanding any provision contained in the Lease to the contrary, Landlord and Tenant hereby acknowledge and agree that the option to extend the Lease Term contained in Section 2.2 (Option Term) of the Lease shall continue to apply to the Premises identified herein (*i.e.*, the Existing Premises, together with both the 6310 Initial Premises and 6310 Must-Take Premises) as of the end of the Expansion Term; provided, however, effective as of the date of this First Amendment, such Section 2.2 shall be revised such that all references therein to the "initial Lease Term" shall be revised to read the "Expansion Term."

3.5. **Option Term Refurbishment Allowance**. In the event that Tenant effectively exercises its Option Right pursuant to the terms and conditions of Section 2.2 of the Lease (as amended by Section 3.4 of this First Amendment), then Tenant shall be entitled to a refurbishment allowance from Landlord (the "**Option Term Refurbishment Allowance**") in connection with the corresponding Option Right in a total amount equal to Five and 00/100 Dollars ($5.00) per rentable square foot of the then existing Premises for the costs relating to the design and construction of improvements, alterations, additions or changes which are permanently affixed to the Premises (collectively, the "**Option Term Alterations**") after such date. Any such Option Term Alterations shall be constructed/installed in accordance with the terms of Article 8 of the Lease. Following the completion of any such Alterations, the Option Term Refurbishment Allowance shall be disbursed in accordance with Landlord's standard disbursement procedures, including, without limitation, following Landlord's receipt of (i) evidence (i.e., invoices or other documentation reasonably satisfactory to Landlord) of payment for the Option Term Alterations, and (ii) fully executed, unconditional lien releases from all contractors, subcontractors, laborers, materialmen, and suppliers used by Tenant in connection with Option Term Alterations. In no event shall Landlord be obligated to disburse any portion of the Option Term Refurbishment Allowance subsequent to the date which is twelve (12) months from the date on which the Option Term commences, nor shall Landlord be obligated to disburse any amount in excess of Five and 00/100 Dollars ($5.00) per rentable square foot of the then existing Premises in connection with the construction of the Option Term Alterations with respect to the Option Term. No portion of the Option Term Refurbishment Allowance, if any, remaining after the construction of the Option Term Alterations shall be available for use by Tenant.

4. **Base Rent**.

4.1. **Existing Premises**. Notwithstanding anything to the contrary in the Lease as hereby amended, the Base Rent schedule in Section 4 of the Summary of Basic Lease Information of the Lease is hereby amended and restated as follows:

Period During Expansion Term	Annualized Base Rent*	Monthly Installment of Base Rent*	Approximate Monthly Rental Rate per Rentable Square Foot*
September 1, 2009 to August 31, 2010	$ 1,209,993.00	$ 100,832.75	$ 1.519
September 1, 2010 to August 31, 2011	$ 1,258,392.00	$ 104,866.00	$ 1.579
September 1, 2011 to August 31, 2012	$ 1,308,729.00	$ 109,060.75	$ 1.642
September 1, 2012 to August 31, 2013	$ 1,361,079.00	$ 113,423.25	$ 1.708
September 1, 2013 to August 31, 2014	$ 1,415,520.00	$ 117,960.00	$ 1.777
September 1, 2014 to August 31, 2015	$ 1,458,390.90	$ 121,532.58	$ 1.830
September 1, 2015 to August 31, 2016	$ 1,501,888.30	$ 125,157.36	$ 1.885
September 1, 2016 to November 30, 2016	$ 1,547,206.90	$ 128,933.91	$ 1.942

* The Monthly Installment of Base Rent (and Annualized Base Rent) for the period commencing September 1, 2014, and ending on August 31, 2015, was calculated by multiplying the applicable Monthly Rental Rate per Rentable Square Foot by the number of rentable square feet of space in the 6340 Building, which Monthly Rental Rate per Rentable Square Foot was calculated by increasing the prior Monthly Rental Rate per Rentable Square Foot (i.e., $1.777) by three percent (3%). In all subsequent Lease Years (as defined in Section 2.1 of the Lease), the calculation of the Monthly Installment of Base Rent (and corresponding Annualized Base Rent) reflects an annual increase of three percent (3.0%) in the Monthly Rental Rate per Rentable Square Foot.

4.2. **The 6310 Expansion Premises**. Commencing on the Expansion Commencement Date and continuing throughout the Expansion Term, Tenant shall pay to Landlord monthly installments of Base Rent for the entire 6310 Expansion Premises** as follows:

Period During Expansion Term	Annualized Base Rent*	Monthly Installment of Base Rent*	Approximate Monthly Rental Rate per Rentable Square Foot*
September 15, 2010 to August 31, 2011**–***	$ 612,259.20 –***	$ 51,021.60 –***	$ 1.40
September 1, 2011 to August 31, 2012**	$ 629,752.32	$ 52,479.36	$ 1.44
September 1, 2012 to August 31, 2013	$ 1,112,430.03	$ 92,702.50	$ 1.49
September 1, 2013 to August 31, 2014	$ 1,145,802.94	$ 95,483.58	$ 1.53
September 1, 2014 to August 31, 2015	$ 1,180,177.02	$ 98,348.09	$ 1.58
September 1, 2015 to August 31, 2016	$ 1,215,582.33	$ 101,298.53	$ 1.62
September 1, 2016 to November 30, 2016	$ 1,250,796.60	$ 104,233.05	$ 1.67

* The initial Monthly Installment of Base Rent (and Annualized Base Rent) was calculated by (A) multiplying the applicable Monthly Rental Rate per Rentable Square Foot by the then-applicable number of rentable square feet of space in the Initially Expanded Premises or in the 6310 Expansion Premises, as appropriate, and (B) increasing such amount by the "Additional Monthly Base Rent," if any, as that term is set forth in Section 2.1.2 of the Work Letter Agreement, attached hereto as **Exhibit B**. In all subsequent Lease Years, the calculation of the Monthly Installment of Base Rent (and corresponding Annualized Base Rent) reflects an annual increase of three percent (3.0%).

** The foregoing schedule assumes the Must-Take Premises Commencement Date occurs on September 1, 2012. To the extent the Must-Take Premises Commencement Date occurs prior to September 1, 2012, the foregoing schedule shall be updated such that the Monthly Installment of Base Rent is recalculated based upon the entire 6310 Expansion Premises (i.e., inclusive of the 6310 Must-Take Premises) from and following the 6310 Must-Take Premises Commencement Date.

*** Pursuant to the terms of Section 3.1 of the Lease, as the Lease Commencement Date falls on a day of the month which is not the first day of such month, the Rent for such fractional month shall accrue on a daily basis and shall total an amount equal to the product of (i) a fraction, the numerator of which is the number of days in such fractional month and the denominator of which is the actual number of days occurring in such calendar month, and (ii) the then-applicable monthly installment of Rent. Accordingly, Tenant hereby acknowledges and agrees that the Base Rent due and owing under the Lease with respect to the Initial 6310 Premises for the period commencing November 15, 2010, and ending November 30, 2010, is equal to Twenty-Seven Thousand Two Hundred Eleven and 52/100 Dollars ($27,211.52), and that such amount shall be paid by Tenant to Landlord on or before the Expansion Commencement Date.

– Subject to the terms set forth in Section 4.3 below, the Base Rent attributable to the period commencing on September 15, 2010, and ending on November 14, 2010 shall be abated. Accordingly, Tenant hereby acknowledges and agrees that, with respect to the Base Rent due and owing under the Lease for the Initial 6310 Premises for the period commencing November 15, 2010, and ending November 30, 2010, is equal to Twenty-Seven Thousand Two Hundred Eleven and 52/100 Dollars ($27,211.52).

4.3. **Base Rent Abatement**. Provided that no Event of Default is then occurring, then during the period beginning on the Expansion Commencement Date and ending on November 14, 2010 (the "**Base Rent Abatement Periods**"), Tenant shall not be obligated to pay any Base Rent otherwise attributable to the 6310 Initial Premises for such Base Rent Abatement Period (the "**Base Rent Abatement**"). Tenant acknowledges and agrees that notwithstanding such Base Rent Abatement, such abatement of Base Rent shall have no effect on the calculation of any future increases in Base Rent, Operating Expenses or Tax Expenses payable by Tenant pursuant to the terms of the Lease (as hereby amended), which increases shall be calculated without regard to such abatement of Base Rent or corresponding abatement periods. Such Base Rent Abatement has been granted to Tenant as additional consideration for entering into this First Amendment, and for agreeing to pay the "rent" and performing the terms and conditions otherwise required under the Lease, as amended. Notwithstanding anything to the contrary set forth in this Section 4.3, to the extent an Event of Default is then occurring, then Landlord may at its option, by notice to Tenant, elect, in addition to any other remedies Landlord may have under the Lease, one or both of the following remedies: (i) that Tenant shall immediately become obligated to pay to Landlord all Base Rent abated hereunder during the Base Rent Abatement Period, with interest as provided pursuant to the Lease from the date such Base Rent would have otherwise been due but for the abatement provided herein, or (ii) that the dollar amount of the unapplied portion of the Base Rent Abatement as of such Event of Default shall be converted to a credit to be applied to the Base Rent applicable to the Premises at the end of the Expansion Term and Tenant shall immediately be obligated to begin paying Base Rent for the entire Premises in full.

5. **Tenant's Share of Building Direct Expenses**.

5.1. **Existing Premises**. Notwithstanding the extension of the Lease Term as provided herein, Tenant shall continue to be obligated to pay Tenant's Share of the annual Direct Expenses in connection with the Existing Premises which arise or accrue prior to April 30, 2014, in accordance with the terms of Article 4 of the Lease. Effective as of May 1, 2014, and continuing through the Lease Expiration Date, Tenant shall pay Tenant's Share of all Direct Expenses in connection with the Existing Premises which arise or accrue on or after May 1, 2014, in accordance with the terms of Article 4 of the Lease.

5.2. **6310 Expansion Premises**. Except as specifically set forth in this Section 5.2, commencing on the Expansion Commencement Date, Tenant shall pay Tenant's Share of Direct Expenses in connection with the 6310 Expansion Premises in accordance with the terms of Article 4 of the Lease (i.e., Tenant's Share of the 6310 Expansion Premises shall equal one hundred percent (100%)); provided, however, that with respect to the calculation of Tenant's Share of Direct Expenses in connection with the 6310 Expansion Premises, notwithstanding the management fee set forth in Section 4.2.4(vi) of the Lease, Landlord's management fee attributable to the 6310 Building portions of the Project shall not exceed three percent (3%) of the then-current Base Rent attributable to the 6310 Expansion Premises.

6. **Improvements**. Except as specifically set forth herein, Landlord shall not be obligated to provide or pay for any improvement work or services related to the improvement of the 6310 Expansion Premises, and Tenant shall accept the 6310 Expansion Premises in its presently existing, "as-is" condition. Notwithstanding the foregoing, Landlord shall construct the improvements in the 6310 Expansion Premises pursuant to the terms of the Work Letter Agreement, attached hereto as **Exhibit B**.

7. **Broker**. Landlord and Tenant hereby warrant to each other that they have had no dealings with any real estate broker or agent in connection with the negotiation of this First Amendment other than Irving Hughes (the "**Broker**"), and that they know of no other real estate broker or agent who is entitled to a commission in connection with this First Amendment. Each party agrees to indemnify and defend the other party against and hold the other party harmless from any and all claims, demands, losses, liabilities, lawsuits, judgments, and costs and expenses (including, without limitation, reasonable attorneys' fees) with respect to any leasing commission or equivalent compensation alleged to be owing on account of the indemnifying party's dealings with any real estate broker or agent, other than the Broker, occurring by, through, or under the indemnifying party. The terms of this Section 7 shall survive the expiration or earlier termination of this First Amendment.

8. **Parking**.

8.1. **In General**. Effective as of the Expansion Commencement Date and continuing throughout the Expansion Term, Tenant shall be entitled to rent up to two hundred fourteen (214) unreserved parking passes and seven (7) handicap parking passes adjacent to the 6310 Building in connection with Tenant's lease of the 6310 Expansion Space (the "**Expansion Parking Passes**"). In connection with Tenant's continued lease of the Existing Premises (and in addition to the Expansion Parking Passes), effective as of the Expansion Commencement Date, rather than the parking passes originally identified in Section 9 of the Summary of Basic Lease Information of the Lease, Tenant shall, subject to the terms of Section 8.2 below, be entitled to use, in connection with its lease of the Existing Premises and the 6310 Expansion Premises, an aggregate total of four hundred thirty-three (433) parking passes (or spaces, as the case may be) comprised of (i) one hundred thirty-six (136) unreserved parking passes adjacent to the 6340 Building, (ii) six (6) handicap parking passes adjacent to the 6340 Building, (iii) seventy (70) parking passes adjacent to that certain office building located at 6260 Sequence Drive, San Diego (the parking passes set forth in items (i) through (iii) being, collectively, the "**Amended 6340 Parking Passes**"), and (iv) the Expansion Parking Passes. Except as set forth in this Section 8, Tenant shall lease the Expansion Parking Passes, the Amended 6340 Parking Passes, and the "Supplemental Parking Passes" (defined in Section 8.2 below) (as applicable) in accordance with the provisions of Article 28 of the Lease, and such Expansion Parking Passes, Amended 6340 Parking Passes, and Supplemental Parking Passes shall be subject to all of the terms, conditions and covenants of Article 28 of the Lease which do not conflict with the provisions of this Section 8.

8.2. **Supplemental Parking Passes**. During the Expansion Term specified herein (*i.e.*, through November 30, 2016), Tenant shall have the right (but not the obligation) to use up to an additional one hundred (100) parking passes (the "**Supplemental Parking Passes**") in the parking facility serving that building located at 10243 Genetic Center Drive in San Diego. The cost of each of such Supplemental Parking Passes which Tenant has elected to use pursuant to this Section 8.2, shall be Twenty-Five and 00/100 Dollars ($25.00) per pass per month (the "**SPP Charge**"), but shall be increased on each anniversary of the Expansion Commencement Date occurring during the Expansion Term to an amount equal to one hundred three percent (103%) of the monthly SPP Charge in effect immediately prior to the applicable anniversary of the Expansion Commencement Date. Nevertheless (and notwithstanding the fact that Tenant shall pay the SPP Charge in connection with Tenant's use of the Supplemental Parking Passes), Tenant shall be responsible for the full amount of any taxes imposed by any governmental authority in connection with the use of such Supplemental Parking Passes by Tenant or the use of the parking facility in which the Supplemental Parking Passes are located by Tenant. The location of the Supplemental Parking Passes will be limited to the upper level of the parking structure serving the building located at 10243 Genetic Center Drive in San Diego, but the exact location on such upper level shall otherwise be determined by Landlord at the time Tenant elects to exercise its rights under this Section 8.2. Tenant may exercise its right to any number of the then-available Supplemental Parking Passes, up to an aggregate total of one hundred (100), beginning on September 15, 2010, with written notice of commencement from Tenant to Landlord which specifies the number of Supplemental Parking Passes it wishes to exercise, provided that once Tenant has elected its right to lease each such Supplemental Parking Pass pursuant to the terms of this Section 8.2, such Supplemental Parking Passes shall be leased by Tenant for the entire remaining Expansion Term (*i.e.*, through November 30, 2016). The locations of the Expansion Parking Passes, the Amended 6340 Parking Passes as well as the Supplemental Parking Passes is set forth on **Exhibit C** attached hereto and made a part hereof.

9. **Signage**. Effective upon the Expansion Commencement Date, all signage rights and responsibilities set forth in Article 23 of the Lease in connection with the Existing Premises shall additionally apply with respect to the 6310 Expansion Premises; provided, however, the logo to be displayed on such signage, which logo is identified on **Exhibit D**, is hereby approved by Landlord, and Landlord hereby consents to Tenant's Building-top signage on the 6310 Building having dimensions of up to three (3) feet high and twenty-five (25) feet long; provided, however, all other aspects of Tenant's signage (including, but not limited to, color and lighting) shall be subject to Landlord's prior written approval (which approval shall not be unreasonably withheld, conditioned or delayed). Tenant hereby acknowledges that, notwithstanding any approval by Landlord of Tenant's logo as well as the dimensions applicable to Tenant's Building-top sign on the 6310 Building, Landlord has made no representations or warranty to Tenant with respect to the probability of obtaining the necessary governmental approvals and/or permits for the same.

10. **Notices**. Notwithstanding any provision to the contrary set forth in the Lease, effective as of the date of this First Amendment, any Notices to Landlord must be sent, transmitted, or delivered, as the case may be, to the following addresses:

DexCom, Inc.
6340 Sequence Drive
San Diego, California 92121
Attention: Jess Roper and
John Lister, Esq.

11. **"Project"/"Building Definition**. Landlord and Tenant hereby expressly acknowledge and agree that the definition of the "**Project**" (as that term is originally defined in Section 1.1.2 of the Lease) shall be revised to mean (i) the 6340 Building and its Common Areas, (ii) the land (which is improved with landscaping, parking facilities and other improvements) upon which the 6340 Building and its Common Areas are located, (iii) the 6310 Building and its Common Areas, and (iv) the land (which is improved with landscaping, parking facilities and other improvements) upon which the 6310 Building and its Common Areas are located. As used in the Lease (as amended), the defined term "**Building**" shall refer to the 6340 Building or the 6310 Building (as the case may be).

12. **No Further Modification**. Except as set forth in this First Amendment, all of the terms and provisions of the Lease shall apply with respect to the 6310 Expansion Premises and shall remain unmodified and in full force and effect.

[Signatures follow on next page]

IN WITNESS WHEREOF, this First Amendment has been executed as of the day and year first above written.

"LANDLORD":

KILROY REALTY, L.P.,
a Delaware limited partnership

By: Kilroy Realty Corporation,
a Maryland corporation,
General Partner

By: /s/ Tyler Rose
Its: E.V.P. & C.F.O.

By: /s/ Heidi Roth
Its: Sr. V.P. & Controller

"TENANT":

DEXCOM, INC.,
a Delaware corporation

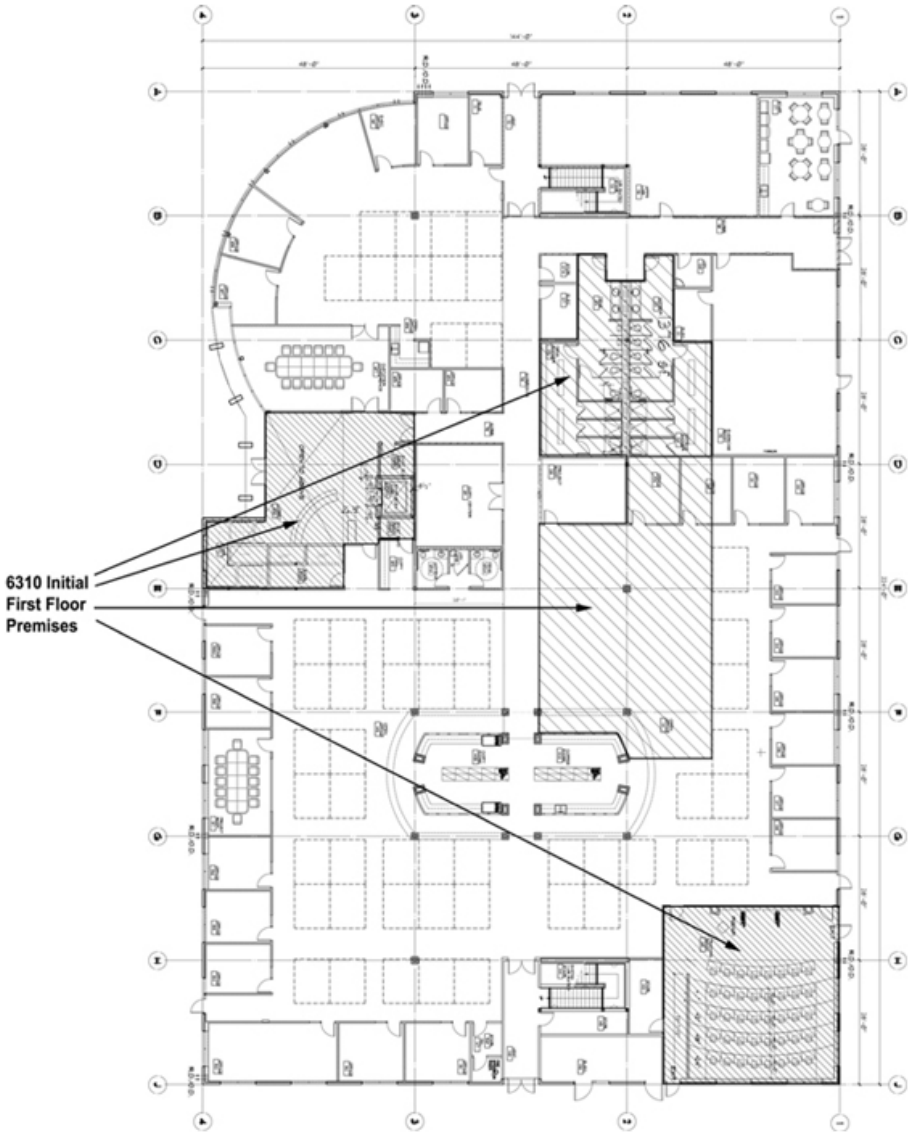
By: /s/ Jess Roper
Its: V.P. & C.F.O.

By: /s/ Steven Pacelli
Its: Chief Operating Officer

EXHIBIT A-1

6340/6310 SEQUENCE DRIVE

OUTLINE OF 6310 INITIAL PREMISES



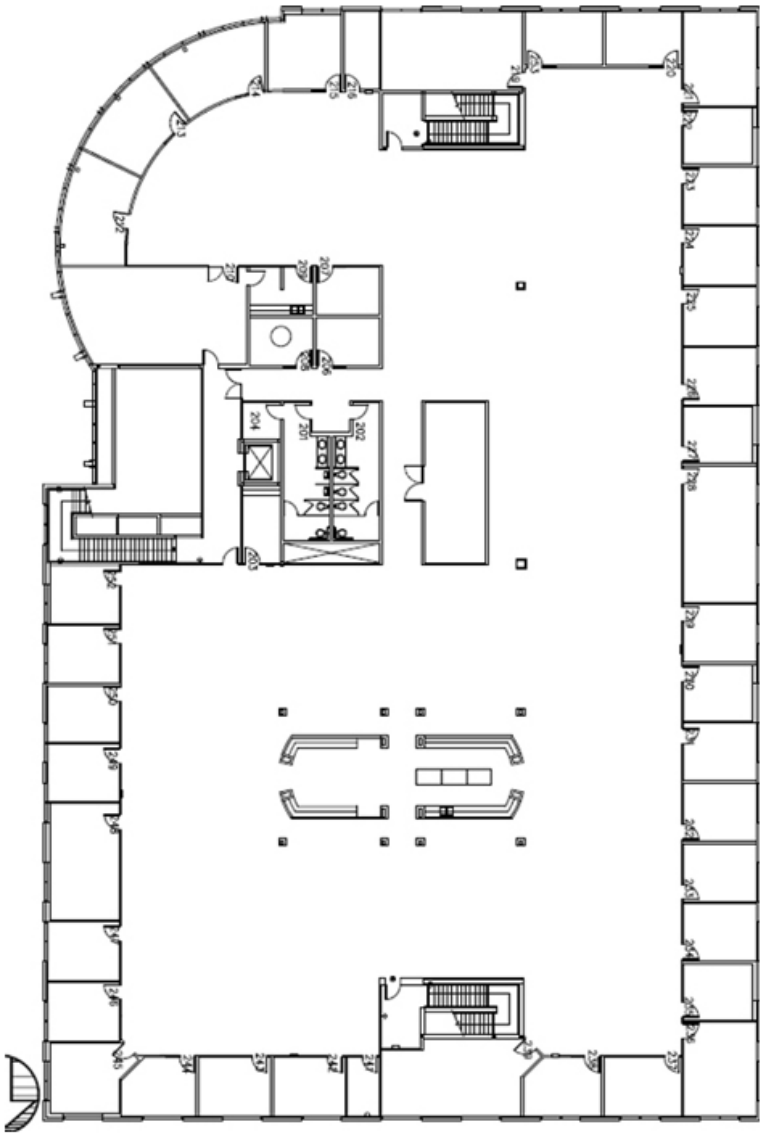


EXHIBIT A-2

6340/6310 SEQUENCE DRIVE

OUTLINE OF THE 6310 MUST-TAKE PREMISES

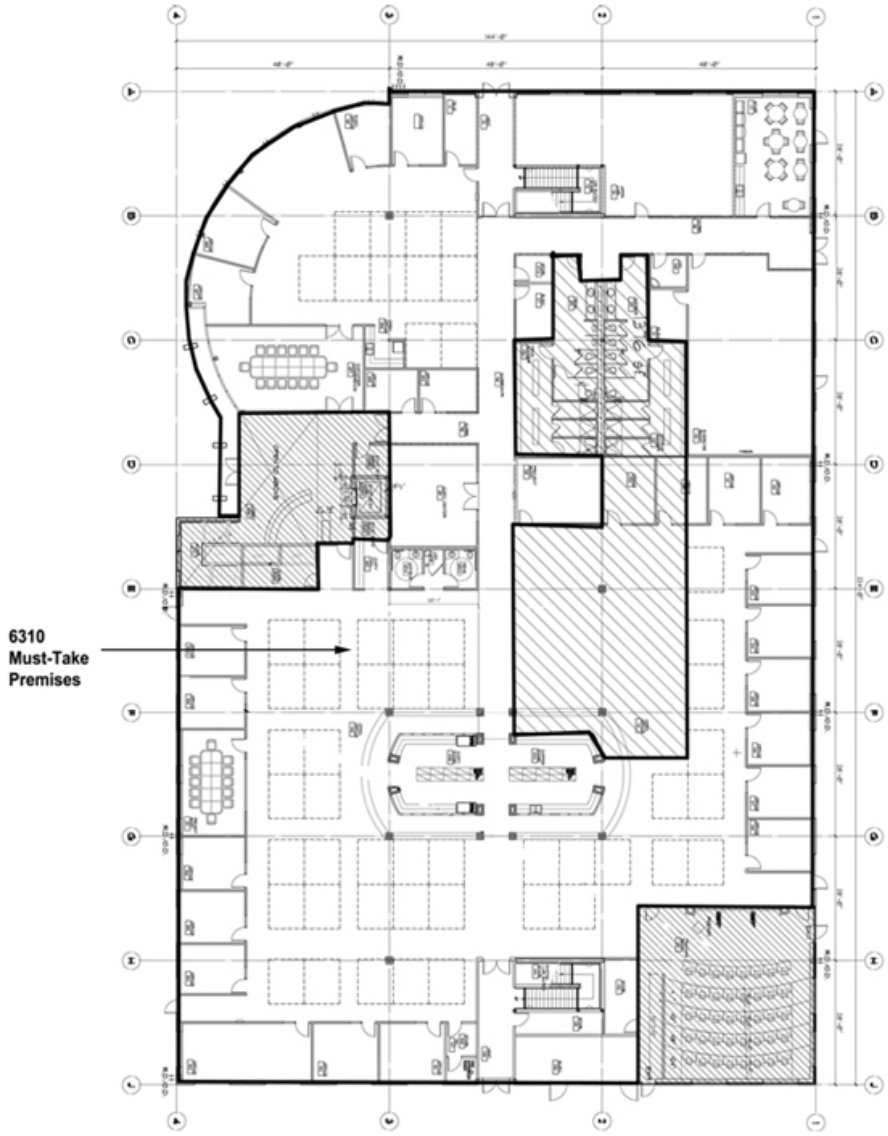


EXHIBIT B

6340/6310 SEQUENCE DRIVE

WORK LETTER AGREEMENT

This Work Letter Agreement shall set forth the terms and conditions relating to the construction of the improvements in the 6310 Expansion Premises. This Work Letter Agreement is essentially organized chronologically and addresses the issues of the construction of the 6310 Expansion Premises, in sequence, as such issues will arise during the actual construction of the 6310 Expansion Premises. All references in this Work Letter Agreement to Articles or Sections of "this Amendment" shall mean the relevant portion of the First Amendment to which this Work Letter Agreement is attached as **Exhibit B** and of which this Work Letter Agreement forms a part, all references in this Work Letter Agreement to "this Lease" or "the Original Lease" shall mean the relevant portion of Articles 1 through 29 of the Lease and all references in this Work Letter Agreement to Sections of "this Work Letter Agreement" shall mean the relevant portion of Sections 1 through 5 of this Work Letter Agreement. Capitalized terms used in this Work Letter Agreement shall have the same meaning as those terms are used and defined in the Lease, unless such terms are otherwise defined in this Work Letter Agreement.

SECTION 1

LANDLORD'S INITIAL CONSTRUCTION IN THE PREMISES

1.1 **Base Building as Constructed by Landlord**. Upon the full execution and delivery of this First Amendment by Landlord and Tenant, Landlord shall deliver the 6310 Initial Premises and "Base Building," as that term is defined below, to Tenant, and Tenant shall accept the 6310 Initial Premises and Base Building from Landlord in their presently existing, "as-is" condition. The "**Base Building**" shall consist of those portions of the Premises which were in existence prior to the construction of any improvements in the 6310 Initial Premises for the prior tenant of the 6310 Initial Premises.

1.2 **HVAC, Plumbing and Electrical Systems**. Notwithstanding anything to the contrary set forth in the Original Lease, the Amendment or Section 1.1 of this Work Letter Agreement, above, and subject to the TCCs of the last sentence of Section 1.1.1 of the Original Lease, Landlord shall, upon its delivery of the 6310 Expansion Premises to Tenant, cause the Base Building's HVAC, plumbing and electrical systems to be in good working order.

SECTION 2

IMPROVEMENTS

2.1 **In General**.

2.1.1 **Improvement Allowance**. Tenant shall be entitled to a one-time improvement allowance (the "**6310 Expansion Premises Improvement Allowance**") in a total amount equal to Three Hundred Twelve Thousand Seventy-Five and 00/100 Dollars ($312,075.00) (which amount was calculated based upon Five and 00/100 ($5.00) per Rentable Square Foot for each of the 62,415 Rentable Square Feet of space in the 6310 Expansion Premises) comprising the sum of (i) One Hundred Eighty-Two Thousand Two Hundred Twenty and 00/100 Dollars ($182,220.00) (*i.e.*, Five and 00/100 Dollars ($5.00) per each of rentable square feet of the 6310 Initial Premises) (the "**6310 Initial Premises Allowance**"), and (ii) One Hundred Twenty-Nine Thousand Eight Hundred Fifty-Five and 00/100 Dollars ($129,855.00) (*i.e.*, Five and 00/100 Dollars ($5.00) for each of the rentable square feet of the 6310 Must-Take Premises) (the "**6310 Must-Take Premises Allowance**"). The 6310 Initial Premises Allowance shall only be used for costs relating to the initial design, permitting, management and construction of the improvements which are permanently affixed to the 6310 Initial Premises, which improvements may include carpet, or as otherwise allowed pursuant to the express terms of the Lease, as amended, or this Work Letter Agreement (the "**Improvements**") in the 6310 Initial Premises. The 6310 Must-Take Premises Allowance shall only be used for costs relating to the Improvements in the 6310 Must-Take Premises. Accordingly, in no event the 6310 Initial Premises Allowance be used by Tenant in any portion of the Building or Project other than the 6310 Initial Premises, and in no event shall the 6310 Must-Take Premises Allowance be used by Tenant, in any portion of the Building or Project other than the 6310 Must-Take Premises. Except as otherwise expressly set forth herein, in no event shall Landlord be obligated to make disbursements pursuant to this Work Letter Agreement in a total amount which exceeds the 6310 Expansion Premises Improvement Allowance. All Improvements for which the 6310

Expansion Premises Improvement Allowance has been made available shall, as more particularly identified in Section 8.5 of the Original Lease, be and become the property of Landlord.

2.1.2 **Additional Allowance**. In addition to the 6310 Expansion Premises Improvement Allowance set forth in Section 2.1.1, above, Tenant shall, but only if so elected by Tenant in writing prior to the date upon which Tenant commences to construct the Improvements in the 6310 Initial Premises or the 6310 Must-Take Premises (as applicable), be entitled to a one-time additional allowance in an amount not to exceed Ten and 00/100 Dollars ($10.00) per rentable square foot of each of the 6310 Initial Premises and the 6310 Must-Take Premises (the "**Additional Allowance**") to be used solely for hard costs in the construction of the Improvements. In the event Tenant exercises its right to use all or any portion of the Additional Allowance, the Monthly Installment of Base Rent for the applicable 6310 Initial Premises or the 6310 Must-Take Premises (as otherwise set forth in Section 4 of the Summary of Basic Lease Information, as amended by Section 4.2 of this First Amendment) shall be increased by an amount equal to the "**Additional Monthly Base Rent**" (defined below) applicable to the 6310 Initial Premises or the 6310 Must-Take Premises (as the case may be). The "Additional Monthly Base Rent" shall mean either (A) to the extent the Additional Allowance is applicable to the construction of Improvements in the 6310 Initial Premises, an amount equal to the missing component of an annuity, which annuity shall have (i) such actual amount of the Additional Allowance (if any) utilized by Tenant in connection with the construction of the Improvements in the 6310 Initial Premises (expressed as a total amount up to Ten and 00/100 Dollars ($10.00)/per rentable square foot (e.g., Three Hundred Sixty-Four Thousand Four Hundred Forty and 00/100 Dollars ($364,440.00)) as the present value amount, (ii) seventy-two (72) as the number of payments, and (iii) 0.81, which is equal to nine percent and three quarters (9.75%) divided by twelve (12) months per year, as the monthly interest factor, or (B) to the extent the Additional Allowance is applicable to the construction of Improvements in the 6310 Must-Take Premises, an amount equal to the missing component of an annuity, which annuity shall have (i) such actual amount of the Additional Allowance (if any) utilized by Tenant in connection with the construction of the Improvements in the 6310 Must-Take Premises (expressed as a total amount up to Ten and 00/100 Dollars ($10.00)/per rentable square foot (e.g., Two Hundred Fifty Nine Thousand Seven Hundred Ten and 00/100 Dollars ($259,710.00)) as the present value amount, (ii) a whole number which is equal to the number of full calendar months during the 6310 Must-Take Premises Term, and (iii) 0.81, which is equal to nine and three quarters percent (9.75%) divided by twelve (12) months per year, as the monthly interest factor.

2.1.3 **Total Improvement Allowance**. The 6310 Expansion Premises Improvement Allowance and the Additional Allowance, if and to the extent elected to be used by Tenant, are collectively referred to as the "**Improvement Allowance**." In no event shall Landlord be obligated to make disbursements pursuant to this Work Letter Agreement in a total amount which exceeds the Improvement Allowance. One-half (1/2) of the Improvement Allowance shall be used on or before December 31, 2011, and therefore, as of such date, any amount of the Improvement Allowance in excess of one-half (1/2) of the Improvement Allowance shall remain with Landlord and Tenant shall have no further right thereto. Any remaining one-half (1/2) of the Improvement Allowance which thereafter continues to exist and has not been used on or before March 31, 2013, shall remain with Landlord and Tenant shall have no further right thereto.

2.2 **Disbursement of the Improvement Allowance**. Landlord shall pay to Tenant the full amount of the 6310 Initial Premises Improvement Allowance within five (5) business days following the later to occur of (i) January 15, 2011, and (ii) the completion of construction of the 6310 Initial Premises; provided, however, such completion of construction shall not be deemed to have occurred unless and until (x) Tenant delivers to Landlord properly executed mechanics lien releases in compliance with both California Civil Code Section 3262(d)(2) and either Section 3262(d)(3) or Section 3262(d)(4), (y) Landlord has determined that no substandard work exists which adversely affects the mechanical, electrical, plumbing, heating, ventilating and air conditioning, life-safety or other systems of the 6310 Building, the curtain wall of the 6310 Building, or the structure or exterior appearance of the 6310 Building, and (z) Architect delivers to Landlord a certificate, in a form reasonably acceptable to Landlord, certifying that the construction of the Improvements in the 6310 Initial Premises has been substantially completed. Similarly, Landlord shall pay to Tenant the full amount of the 6310 Must-Take Premises Improvement Allowance within five (5) business days following the completion of construction of the 6310 Must-Take Premises; provided, however, such completion of construction shall not be deemed to have occurred unless and until (x) Tenant delivers to Landlord properly executed mechanics lien releases in compliance with both California Civil Code Section 3262(d)(2) and either Section 3262(d)(3) or Section 3262(d)(4), (y) Landlord has determined that no substandard work exists which adversely affects the mechanical, electrical, plumbing, heating, ventilating and air conditioning, life-safety or other systems of the 6310 Building, the curtain wall of the 6310 Building, or the structure or exterior appearance of the 6310 Building, and (z) Architect delivers to Landlord a certificate, in a form reasonably acceptable to Landlord, certifying that the construction of the Improvements in the 6310 Must-Take Premises has been substantially completed

2.3 **Building Standards for Improvements; Warm Shell Condition**. Tenant acknowledges that Landlord has established minimum specifications (the "**Building Standards for Improvements**") for the Building standard components to be used in the construction of the Improvements in the 6310 Expansion Premises, which Building Standards for Improvements are set forth on **Schedule 1** attached hereto. Except for Building-standard doors, door hardware and lock sets, as well as all other items expressly identified on **Schedule 1** as "not changeable," Landlord and Tenant hereby acknowledge and agree that Tenant is not required to use any of the specific items set forth in **Schedule 1** in the construction of the Improvements, but that such **Schedule 1** establishes the minimum quality and quantity of items listed thereon that are required with regard to the construction of the Improvements.

2.4 **Removal of Non-Conforming Improvements**. To the extent any particular Improvements do not conform to the Building Standards for Improvements (collectively, the "**Non-Conforming Improvements**"), and the same are identified for removal by Landlord at the time of Landlord's approval of the Construction Drawings, then Tenant, at its sole cost and expense, shall (A) remove from the 6310 Expansion Premises any such Non-Conforming Improvements so identified for removal, (B) repair any damage caused by such removal, and (C) and return the affected portion of the 6310 Expansion Premises to the Warm Shell condition. Unless Landlord, in its sole and absolute discretion, rescinds such removal/repair/reconfiguration requirement in writing at least sixty (60) days prior to the end of the Lease Term, as amended, such removal and replacement of Non-Conforming Improvements shall be performed promptly and shall be completed by Tenant on or before the end of the Lease Term, as amended.

SECTION 3

CONSTRUCTION DRAWINGS

3.1 **Selection of Architect/Construction Drawings**. Subject to Landlord's approval, which approval shall not be unreasonably withheld, delayed, or conditioned, Tenant shall select and retain an architect/space planner (the "**Architect**") to prepare the "Construction Drawings," as that term is defined in this Section 3.1; provided, however, Landlord hereby pre-approves Tony Mansour. Tenant shall retain (A) the structural, mechanical and electrical engineering consultants of its choice, subject to reasonable approval by Landlord (which approval shall not be unreasonably withheld, delayed or conditioned), and (B) subject to Landlord's approval (which approval shall not be unreasonably withheld, delayed, or conditioned), all other engineering consultants designated by Tenant (the "**Engineers**") to prepare all plans and engineering working drawings relating to the structural, mechanical, electrical, plumbing, HVAC, lifesafety, and sprinkler work in the 6310 Expansion Premises, which work is not part of the Base Building. The plans and drawings to be prepared by Architect and the Engineers hereunder shall be known collectively as the "**Construction Drawings**." All Construction Drawings shall comply with the drawing format and specifications reasonably determined by Landlord, and shall be subject to Landlord's approval; provided, however, Landlord shall only disapprove any such Construction Drawing to the extent of a "Design Problem," as that term is defined below. Tenant and Architect shall verify, in the field, the dimensions and conditions as shown on the relevant portions of the base building plans, and Tenant and Architect shall be solely responsible for the same, and Landlord shall have no responsibility in connection therewith. Landlord's review of the Construction Drawings as set forth in this Section 3, shall be for its sole purpose and shall not imply Landlord's review of the same, or obligate Landlord to review the same, for quality, design, Code compliance or other like matters. Accordingly, notwithstanding that any Construction Drawings are reviewed by Landlord or its space planner, architect, engineers and consultants, and notwithstanding any advice or assistance which may be rendered to Tenant by Landlord or Landlord's space planner, architect, engineers, and consultants, Landlord shall have no liability whatsoever in connection therewith and shall not be responsible for any omissions or errors contained in the Construction Drawings, and Tenant's waiver and indemnity set forth in this Lease shall specifically apply to the Construction Drawings. A "**Design Problem**" is defined as, and shall be deemed to exist if there could be (i) an effect on the exterior appearance of the 6310 Building, (ii) an adverse effect on the Base Building (including without limitation the Building Structure), (iii) an adverse effect on the Building Systems or the operation and maintenance thereof, or (iv) any failure to comply with Applicable Laws or Code. Notwithstanding anything to the contrary contained herein, Landlord acknowledges that Tenant's security systems are fundamental to its business operations in the 6310 Expansion Premises, and Landlord shall reasonably cooperate with Tenant, at no material extra cost to Landlord, to permit such security systems to be installed in the 6310 Expansion Premises in accordance with Tenant's reasonable security requirements. Landlord further acknowledges that the Improvements may include data center, cafeteria and exercise facilities, and that Landlord shall reasonably cooperate with Tenant, at no material extra cost to Landlord, in Tenant's design of such facilities.

3.2 **Final Space Plan**. Tenant shall supply Landlord with four (4) copies signed by Tenant of its final space plan for the 6310 Expansion Premises before any architectural working drawings or engineering

drawings have been commenced. The final space plan (the "**Final Space Plan**") shall include a layout and designation of all offices, rooms and other partitioning, their intended use, and equipment to be contained therein. Landlord may request clarification or more specific drawings for special use items not included in the Final Space Plan. Landlord shall advise Tenant within five (5) business days after Landlord's receipt of the Final Space Plan for the applicable 6310 Expansion Premises if the same is unsatisfactory or incomplete in any respect; provided, however, Landlord shall only disapprove such Final Space Plans to the extent of a Design Problem. Landlord shall advise Tenant within five (5) business days after Landlord's receipt of the Final Space Plan for the applicable 6310 Expansion Premises if the same is unsatisfactory or incomplete in any respect. Landlord shall set forth with reasonable specificity in what respect the Final Space Plan is unsatisfactory or incomplete (based upon a commercially reasonable standard). If Tenant is so advised, Tenant shall promptly direct the Architect to cause the Final Space Plan to be revised to correct any deficiencies or other matters Landlord may reasonably require, and immediately thereafter Architect shall promptly re-submit the Final Space Plan to Landlord for its approval. Such procedure shall continue until the Final Space Plan is approved by Landlord.

3.3 **Final Working Drawings**. After the Final Space Plan has been approved by Landlord, Tenant shall supply the Engineers with a complete listing of standard and non-standard equipment and specifications, including, without limitation, B.T.U. calculations, electrical requirements and special electrical receptacle requirements for the applicable 6310 Expansion Premises, to enable the Engineers and the Architect to complete the "Final Working Drawings" (as that term is defined below) in the manner as set forth below. Upon the approval of the Final Space Plan by Landlord and Tenant, Tenant shall promptly cause the Architect and the Engineers to complete the architectural and engineering drawings for the applicable 6310 Expansion Premises, and Architect shall compile a fully coordinated set of architectural, structural, mechanical, electrical and plumbing working drawings in a form which is complete to allow subcontractors to bid on the work and to obtain all applicable permits (collectively, the "**Final Working Drawings**") and shall submit the same to Landlord for Landlord's approval. Tenant shall supply Landlord with four (4) copies signed by Tenant of such Final Working Drawings. Landlord shall, within five (5) business days after Landlord's receipt of all of the Final Working Drawings, either (i) approve the Final Working Drawings, (ii) approve the Final Working Drawings subject to specified conditions, which conditions must be stated in a reasonably clear and complete manner, and shall only be conditions reasonably intended to address a potential Design Problem, or (iii) disapprove and return the Construction Drawings to Tenant with requested revisions; provided, however, Landlord shall only disapprove such Final Working Drawings to the extent of a Design Problem. If Landlord disapproves the Final Working Drawings, Tenant may resubmit the Final Working Drawings to Landlord at any time, and Landlord shall approve or disapprove the resubmitted Final Working Drawings, based upon the criteria set forth in this Section 3.3, within three (3) business days after Landlord receives such resubmitted Final Working Drawings. Such procedure shall be repeated until the Final Working Drawings are approved.

3.4 **Approved Working Drawings**. The Final Working Drawings shall be approved by Landlord (the "**Approved Working Drawings**") prior to the commencement of construction of the applicable 6310 Expansion Premises by Tenant. After approval by Landlord of the Final Working Drawings, Tenant shall submit the same to the appropriate municipal authorities for all applicable building permits. Tenant hereby agrees that neither Landlord nor Landlord's consultants shall be responsible for obtaining any building permit or certificate of occupancy for the applicable 6310 Expansion Premises and that obtaining the same shall be Tenant's responsibility; provided, however, that Landlord shall cooperate with Tenant in executing permit applications and performing other ministerial acts reasonably necessary to enable Tenant to obtain any such permit or certificate of occupancy. No changes, modifications or alterations in the Approved Working Drawings may be made without the prior written consent of Landlord, provided, however, that Landlord may only disapprove of any such change to the extent the necessary to eliminate a Design Problem (as requested and approved, a "**Tenant Change**").

3.5 **Electronic Approvals**. Notwithstanding any provision to the contrary contained in the Lease or this Work Letter Agreement, Landlord may, in Landlord's sole and absolute discretion, transmit or otherwise deliver any of the approvals required under this Work Letter via electronic mail to Tenant's representative identified in Section 5.1 of this Work Letter, or by any of the other means identified in Section 29.18 of this Lease.

SECTION 4

CONSTRUCTION OF THE IMPROVEMENTS

4.1 **Tenant's Selection of Contractors**.

4.1.1 **The Contractor**. To the extent applicable, a general contractor shall be retained by Tenant to construct the Improvements in the 6310 Expansion Premises. Such general contractor ("**Contractor**") shall be selected by Tenant, subject to Landlord's prior approval thereof, which approval shall not be unreasonably withheld or delayed.

4.1.2 **Tenant's Agents**. All subcontractors, laborers, materialmen, and suppliers used by Tenant (such subcontractors, laborers, materialmen, and suppliers, and the Contractor to be known collectively as "**Tenant's Agents**") must be approved in writing by Landlord, which approval shall not be unreasonably withheld or delayed. If Landlord does not approve any of Tenant's proposed subcontractors, laborers, materialmen or suppliers, Tenant shall submit other proposed subcontractors, laborers, materialmen or suppliers for Landlord's written approval.

4.2 **Construction of Improvements by Tenant's Agents**.

4.2.1 **Construction Contract; Final Costs**. To the extent a construction contract of any type, scope or nature is entered into by Tenant in connection with the Improvements identified herein, prior to Tenant's execution of the construction contract and general conditions with Contractor (the "**Contract**"), Tenant shall submit the Contract to Landlord for its approval, which approval shall not be unreasonably withheld or delayed. Prior to the commencement of the construction of the Improvements, and after Tenant has accepted all bids for the Improvements, Tenant shall provide Landlord with a detailed breakdown, by trade, of the final costs to be incurred or which have been incurred in connection with the design and construction of the Improvements to be performed by or at the direction of Tenant or the Contractor, which costs form a basis for the amount of the Contract (the "**Final Costs**"). To the extent applicable during its construction of the Improvements, Tenant shall make monthly progress payments to the Contractor pursuant to Section 4.4 of this Work Letter Agreement.

4.2.2 **Tenant's Agents**.

4.2.2.1 **Landlord's General Conditions for Tenant's Agents and Improvement Work**. Tenant's and Tenant's Agent's construction of the Improvements shall comply with the following: (i) the Improvements shall be constructed in strict accordance with the Approved Working Drawings; (ii) Tenant's Agents shall submit schedules of all work relating to the Tenant's Improvements to Contractor and Contractor shall, within five (5) business days of receipt thereof, inform Tenant's Agents of any changes which are necessary thereto, and Tenant's Agents shall adhere to such corrected schedule; and (iii) Tenant shall abide by all rules made by Landlord's Building manager with respect to the use of freight, loading dock and service elevators, storage of materials, coordination of work with the contractors of other tenants, and any other matter in connection with this Work Letter Agreement, including, without limitation, the construction of the Improvements. Tenant shall pay a logistical coordination fee (the "**Coordination Fee**") to Landlord in an amount equal to the product of (A) one percent (1.0%) and (B) an amount equal to the "hard costs" incurred for the actual construction of the Improvements; provided, however, in no event shall the amount of such "hard costs" be deemed to exceed the amount of the 6310 Expansion Premises Improvement Allowance; provided further, however, Landlord and Tenant hereby acknowledge that such Coordination Fee shall be for services relating to the coordination of the construction of the Improvements.

4.2.2.2 **Indemnity**. Tenant's indemnity of Landlord as set forth in this Lease shall also apply with respect to any and all costs, losses, damages, injuries and liabilities related in any way to any act or omission of Tenant or Tenant's Agents, or anyone directly or indirectly employed by any of them, or in connection with Tenant's non-payment of any amount arising out of the Improvements and/or Tenant's disapproval of all or any portion of any request for payment. Such indemnity by Tenant, as set forth in this Lease, shall also apply with respect to any and all costs, losses, damages, injuries and liabilities related in any way to Landlord's performance of any ministerial acts reasonably necessary (i) to permit Tenant to complete the Improvements, and (ii) to enable Tenant to obtain any building permit or certificate of occupancy for the 6310 Initial Premises or the 6310 Must-Take Premises (as the case may be).

4.2.2.3 **Requirements of Tenant's Agents**. Each of Tenant's Agents shall guarantee to Tenant and for the benefit of Landlord that the portion of the Improvements for which it is responsible shall be free from any defects in workmanship and materials for a period of not less than one (1) year from the date of completion thereof. Each of Tenant's Agents shall be responsible for the replacement or repair, without additional charge, of all work done or furnished in accordance with its contract that shall become defective within one (1) year after the later to occur of (i) completion of the work performed by such contractor or subcontractors and (ii) the Lease Commencement Date. The correction of such work shall include, without additional charge, all additional expenses and damages incurred in connection with such removal or replacement of all or any part of the Improvements, and/or the 6310 Building and/or common areas that may be damaged or disturbed thereby. All such warranties or guarantees as to materials or workmanship of or with respect to the Improvements shall be contained in the Contract or subcontract and shall be written such that such guarantees or warranties shall inure to the benefit of both Landlord and Tenant, as their respective interests may appear, and can be directly enforced by either. Tenant covenants to give to Landlord any assignment or other assurances which may be necessary to effect such right of direct enforcement.

4.2.2.4 **Insurance Requirements**.

4.2.2.4.1 General Coverages. All of Tenant's Agents shall carry worker's compensation insurance covering all of their respective employees, and shall also carry public liability insurance, including property damage, all with limits, in form and with companies as are required to be carried by Tenant as set forth in this Lease.

4.2.2.4.2 Special Coverages. Tenant shall carry "Builder's All Risk" insurance in an amount approved by Landlord covering the construction of the Improvements, and such other insurance as Landlord may require, it being understood and agreed that the Improvements shall be insured by Tenant pursuant to this Lease immediately upon completion thereof; provided, however, to the extent such insurance is not available on a commercially reasonable basis, then Tenant shall not be required to carry such insurance. Such insurance shall be in amounts and shall include such extended coverage endorsements as may be reasonably required by Landlord including, but not limited to, the requirement that all of Tenant's Agents shall carry excess liability and Products and Completed Operation Coverage insurance, each in amounts not less than $500,000 per incident, $1,000,000 in aggregate, and in form and with companies as are required to be carried by Tenant as set forth in this Lease.

4.2.2.4.3 General Terms. Certificates for all insurance carried pursuant to this Section 4.2.2.4 shall be delivered to Landlord before the commencement of construction of the Improvements and before the Contractor's equipment is moved onto the site. All such policies of insurance must contain a provision that the company writing said policy will give Landlord thirty (30) days prior written notice of any cancellation or lapse of the effective date or any reduction in the amounts of such insurance. In the event that the Improvements are damaged by any cause during the course of the construction thereof, Tenant shall immediately repair the same at Tenant's sole cost and expense. Tenant's Agents shall maintain all of the foregoing insurance coverage in force until the Improvements are fully completed and accepted by Landlord, except for any Products and Completed Operation Coverage insurance required by Landlord, which is to be maintained for ten (10) years following completion of the work and acceptance by Landlord and Tenant. All policies carried under this Section 4.2.2.4 shall insure Landlord and Tenant, as their interests may appear, as well as Contractor and Tenant's Agents. All insurance, except Workers' Compensation, maintained by Tenant's Agents shall preclude subrogation claims by the insurer against anyone insured thereunder. Such insurance shall provide that it is primary insurance as respects the owner and that any other insurance maintained by owner is excess and noncontributing with the insurance required hereunder. The requirements for the foregoing insurance shall not derogate from the provisions for indemnification of Landlord by Tenant under Section 4.2.2.2 of this Work Letter Agreement. Landlord may, in its reasonable discretion, require Tenant to obtain a lien and completion bond or some alternate form of security satisfactory to Landlord in an amount sufficient to ensure the lien-free completion of the Improvements and naming Landlord as a co-obligee.

4.2.3 **Governmental Compliance**. The Improvements shall comply in all material respects with the following: (i) the Code and other state, federal, city or quasi-governmental laws, codes, ordinances and regulations, as each may apply according to the rulings of the controlling public official, agent or other person; (ii) applicable standards of the American Insurance Association (formerly, the National Board of Fire Underwriters) and the National Electrical Code; and (iii) building material manufacturer's specifications.

4.2.4 **Inspection by Landlord**. Landlord shall have the reasonable right to inspect the Improvements at all times, provided however, that Landlord's failure to inspect the Improvements shall in no event constitute a waiver of any of Landlord's rights hereunder nor shall Landlord's inspection of the Improvements constitute Landlord's approval of the same. Should Landlord disapprove any portion of the Improvements, Landlord shall notify Tenant in writing of such disapproval and shall specify the items disapproved. Any defects or deviations in, and/or disapproval by Landlord of, the Improvements shall be rectified by Tenant at no expense to Landlord, provided however, that in the event Landlord determines that a defect or deviation exists or disapproves of any matter in connection with any portion of the Improvements and such defect, deviation or matter might adversely effect the mechanical, electrical, plumbing, heating, ventilating and air conditioning or life-safety systems of the 6310 Building, the structure or exterior appearance of the 6310 Building or any other tenant's use of such other tenant's leased premises, Landlord may, take such action as Landlord deems necessary, at Tenant's expense and without incurring any liability on Landlord's part, to correct any such defect, deviation and/or matter, including, without limitation, causing the cessation of performance of the construction of the Improvements until such time as the defect, deviation and/or matter is corrected to Landlord's satisfaction.

4.2.5 **Meetings**. Tenant and Landlord shall hold regular meetings at reasonable times (but in no event to be required more often than weekly), with the Architect and the Contractor regarding the progress of the preparation of Construction Drawings and the construction of the Improvements, which meetings shall be held at a location and at times mutually and reasonably agreed upon by Landlord and Tenant, and Landlord and/or its agents shall receive prior notice of, and shall have the right to attend, all such meetings, and, upon Landlord's request, certain of Tenant's Agents shall attend such meetings. In addition, minutes shall be taken at all such meetings, a copy of which minutes shall be promptly delivered to Landlord. One such meeting each month shall include the review of Contractor's current request for payment.

4.3 **Notice of Completion; Copy of Record Set of Plans**. Within ten (10) days after completion of construction of the Improvements, Tenant shall cause a Notice of Completion to be recorded in the office of the Recorder of the county in which the 6310 Building is located in accordance with Section 3093 of the Civil Code of the State of California or any successor statute, and shall furnish a copy thereof to Landlord upon such recordation. If Tenant fails to do so, Landlord may execute and file the same on behalf of Tenant as Tenant's agent for such purpose, at Tenant's sole cost and expense. At the conclusion of construction, (i) Tenant shall cause the Architect and Contractor (A) to update the Approved Working Drawings as necessary to reflect all changes made to the Approved Working Drawings during the course of construction, (B) to certify to the best of their knowledge that the "record-set" of as-built drawings are true and correct, which certification shall survive the expiration or termination of this Lease, and (C) to deliver to Landlord two (2) sets of copies of such record set of drawings within ninety (90) days following issuance of a certificate of occupancy for the applicable 6310 Expansion Premises, and (ii) Tenant shall deliver to Landlord a copy of all warranties, guaranties, and operating manuals and information relating to the improvements, equipment, and systems in the applicable 6310 Expansion Premises.

4.4 **Monthly Disbursements**. On or before a designated day of each calendar month during the construction of the Improvements, Tenant shall pay the Contractor, on a progress-payment basis, pursuant to the terms of the Contract; provided, however, and notwithstanding any provision to the contrary contained in this Work Letter Agreement, at least five (5) business days prior to making such monthly disbursements (or any disbursements of the Improvement Allowance), Tenant shall have delivered to Landlord: (i) a construction schedule showing, by trade, the percentage of completion of the Improvements in the applicable 6310 Expansion Premises, detailing the portion of the work completed and the portion not completed; (ii) copies of invoices from all of Tenant's Agents for labor rendered and materials delivered to the applicable 6310 Expansion Premises; (iii) executed mechanic's lien releases from all of Tenant's Agents which shall comply with the appropriate provisions, as reasonably determined by Landlord, of California Civil Code Section 3262(d); and (iv) all other information reasonably requested by Landlord (collectively, the "**Payment Package**"). Tenant's submission of each Payment Package to Landlord and corresponding payment to Contractor shall be deemed Tenant's acceptance and approval of the work furnished and/or the materials supplied as set forth in such Payment Package.

SECTION 5

MISCELLANEOUS

5.1 **Tenant's Representative**. Tenant has designated James Gillard as its sole representative with respect to the matters set forth in this Work Letter Agreement (whose e-mail address for the purposes of

this Work Letter is jgillard@dexcom.com, who shall have full authority and responsibility to act on behalf of the Tenant as required in this Work Letter Agreement.

5.2 **Landlord's Representative**. Landlord has designated Mr. Rick Mount as its sole representatives with respect to the matters set forth in this Work Letter Agreement (whose e-mail address for the purposes of this Work Letter is rmount@kilroyrealty.com), who, until further notice to Tenant, shall have full authority and responsibility to act on behalf of the Landlord as required in this Work Letter Agreement.

5.3 **Time of the Essence in This Work Letter Agreement**. Unless otherwise indicated, all references herein to a "number of days" shall mean and refer to calendar days. If any item requiring approval is timely disapproved by Landlord, the procedure for preparation of the document and approval thereof shall be repeated until the document is approved by Landlord.

SCHEDULE 1 TO EXHIBIT B

BUILDING STANDARDS FOR IMPROVEMENTS

The following Premises Improvements Standards identify the minimum quality for items used in the construction of Premises Improvements at the property identified above.

All Premises Improvement work associated with the project identified above shall comply with this Building Standard for a minimum quality of material and general design guidelines for specific design criteria, product specifications and means and methods to be employed during the execution of the work.

STANDARD PARTITIONS

DEMISING PARTITION

a. 3-5/8" x 25 min. gauge metal studs @ 16" on center.

b. 1 layer each side 5/8" thick type 'x' gypsum wallboard (where required).

c. From floor slab to underside of concrete and metal deck floor/roof structure.

d. R11 batt sound insulation in partition cavity (portion of walls – corridor, bathrooms & some office).

e. Partition taped and sanded smooth to receive paint.

f. Fire caulk @ partition and metal deck as required by City of San Diego.

g. Provide minimum opening above ceiling as required for return air, with sound boots.

INTERIOR PARTITION

a. 2-1/2" x 25 gauge metal studs @ 24" on center.

b. 1 layer each side 5/8" thick type 'x' gypsum wallboard. From floor slab to underside of ceiling grids as applicable. Height may vary.

c. Diagonal Bracing: 2-1/2" x 25 gauge metal studs at 45 degree diagonal to structure above staggered @ 4'-0" on center, and at door openings.

d. Partition taped and sanded smooth to receive paint to a minimum of Level 4 finish.

e. Metal corner bead at terminations of partitions and at the ceiling.

f. All demising walls and tenant conference room walls to receive R-11 batt insulation within partition cavity and four foot on either side of partition over ceiling.

INTERIOR ONE-HOUR SEPARATION PARTITION

a. Same as demising partition with fire dampers as required for penetrations and return air.

b. Type X 5/8" wallboard shall be fire taped where fire ratings are required.

INTERIOR LOW PARTITION

a. 2-1/2" x 25 gauge metal studs @ 16" on center.

b. 1 layer each side and top 5/8" thick type 'x' gypsum wallboard.

c. Heights vary to maximum of 68" above floor.

d. Metal corner beads at all exposed corners.

e. Partition taped and sanded smooth to receive paint to a minimum of Level 4 finish.

f. Pipe support at free end within partition cavity and every 4' on center.

EXTERIOR WALL FURRING

a. Below glazing sill and above glazing head, 1 layer 5/8" thick gypsum wallboard.

b. Taped and sanded smooth to receive paint.

COLUMN FURRING

a. 2-1/2" x 25 gauge metal studs @ 24" on center.

b. 1 layer one side 5/8" thick type 'x' gypsum wallboard.

c. From floor slab to 6" above ceiling grid or to deck above.

d. Partition taped and sanded smooth to receive paint to a minimum of Level 4 finish.

DOORS, FRAMES AND HARDWARE

SINGLE CORRIDOR DOOR AND HARDWARE

a. Single leaf U.L. rated, 20-minute suite entry door label attached to hinge side of door, 1-3/4" x 3'-0" x 8'-10", solid core wood, clear plain sliced select white maple, book matched edges. Door shall be pre-finished and pre-mortised for hardware.

b. Frame: 3'-0" x 8'-10" " Western Integrated prefinished satin aluminum with clear coat with squared edge, 20-minute fire rated.

c. Hardware: Butts: two pair per door, Hager 700; Door Hardware: Schlage "L" Series, Lever style #17, A- Wrought Rose- typ.; Entrance Lockset # L9453P-626, Latchset # L9010P-626, and Office Lockset # L9050-626; Door Stop: Hager 236W, concave wall stop; Closer: LCN #1461FC (where required); typical hardware finish: satin aluminum or satin stainless steel throughout unless otherwise noted.

d. Closer at entry doors and any rated doors required by code: LCN 1460 Series, 4111 cylinder for accessibility.

DOUBLE CORRIDOR DOOR AND HARDWARE

a. Double leaf U.L. rated 20-minute suite entry doors with label attached to hinge side of doors, 1-3/4" x 6'-0" x 8'-10", solid core wood, clear plain sliced select white maple, book matched edges. Door shall be pre-finished and pre-mortised for hardware. Book match face veneers with premium veneers grade of doors with matching veneer at vertical edge.

b. Door shall be pre-finished and mortised for hardware.

c. Frame: 6'-0" x 8'-10", 'Western Integrated' prefinished satin aluminum with clear coat with squared edge, 20-minute fire rated.

d. Hardware: Same as above modified and supplemented for double doors.

SINGLE INTERIOR DOOR AND HARDWARE

a. Single leaf, 1-3/4" x 3'-0" x 8'-10", solid core wood, 5 ply, plain sliced maple veneer, clear finish and premium grade.

b. Matching veneer at vertical edges.

c. 20-minute rated with label attached to hinge side of door.

d. Door shall be prefinished and mortised for hardware.

e. Frame: 3’-0” x 8’-10”, ‘Western Integrated’ flush trim clear anodized extruded aluminum, 20-minute fire rated.

f. Hardware: Schlage “L” Series: Lever style #17, A- Wrought Rose, finish 626 satin chrome. Corbin Russwin cylinders with an inter-changeable core and keyway. Hinges: AB700, 4.5 x 4.5, ‘Hager’, finish: stainless steel – satin. Stop: ‘Trimco’ 1211 series, finish 626.

g. Sidelights shall be provided at all private offices as applicable.

DOUBLE INTERIOR DOOR AND HARDWARE

a. Double leaf, 1-3/4” x 6’-0” x 8’-10”, solid core wood, 5 ply, plain sliced maple veneer, clear finish and premium grade.

b. Match face veneers of doors. Matching veneer at vertical edges.

c. 20-minute rated with label attached to hinge side of the door.

d. Door shall be prefinished and mortised for hardware.

e. Frame: 6’-0” x 8’-10”, ‘Western Intgrated’ flush trim clear anodized extruded aluminum, 20-minute fire rated.

f. Hardware: Schlage “L” Series: , Lever style #17, A- Wrought Rose- typ, finish 626 hardware finish 626 satin chrome. Corbin Russwin cylinders with an inter-changeable core and D3 keyway. Hinges: AB700, 4.5 x 4.5, ‘Hager’, finish: stainless steel – satin. Stop: ‘Trimco’ 1211 series, finish 626. Auto flush bolts: DCI No. 942, finish to match 626. Coordinator: DCI No. 600 series, finish to match 626. Closer: LCN 4041 series, parallel arm-heavy duty, finish: to match 626. Closer: LCN 4041 series, parallel arm-heavy duty, finish to match 626. Astragal: ‘Pemco’ 355CV.

OPTIONAL DOORS AS APPROVED BY LANDLORD

a. Optional Doors as Selected by the Tenant for the tenant’s interior space may be submitted as outlined below subject to Landlords Approval:

Premium Grade wood doors with single glass lites with a stained and lacquered finish. Colors to match building standard, subject to Landlord Approval

Herculite Glass Doors with Stainless Steel Styles at top and bottom and concealed hinges.

Aluminum Storefront Doors with clear anodized finish set in Aluminum frames to match.

ACOUSTICAL CEILINGS

a. 2’ X 2’ x 9/16” Armstrong, Superfine XL 9/16” exposed tee system, finish: matte white, Steel T-bar grid system with wire suspension and seismic bracing per code.

b. Tile: 24” X 24” X 7/8” Armstrong acoustical tile; Pattern - Dune with tegular edge detail: Color - white.

c. Optional Ceiling Tile and Grid as Selected by the Tenant for the tenant’s interior space may be submitted as outlined below subject to Landlords Approval.

d. Premium Grade Architectural Ceiling Tile and Grid subject to code compliance with textures and finishes as selected by tenant, subject to Landlord Approval.

e. Tenant may elect to design an open ceiling plan subject to Landlords Approval.

f. Open Ceilings may incorporate the following:

Floating Architectural Ceilings with Composo Edges and trims.

Floating Hard lid ceilings.

Painted and Exposed Structure for Loft Style Architectural Impact.

ELECTRICAL

The main base building electrical service consists of a 1,200 Amp, 480/277 Volt 3 Phase, 4 Wire Switch board identified as HSE located within an electrical room for house panels and core services

A separate 3,000 Amp, 480/277 Volt - 3 Phase - 4 wire Switchboard identified as “MSE” is also located within the electrical room for tenant distribution.

277v distribution, lighting panels, transformers and 120v convenience power panels shall be part of the Premise Improvements.

All electrical distribution shall be fully engineered in compliance with local building codes, the National Electric Code and California Title 24 and shall be subject to Landlords review and approval.

Tenant electrical drawings shall include a review of the base building electrical drawings to include all necessary metering, distribution and connections.

Tenant electrical design, fixtures and components shall be subject to certification by Landlord’s consultant.

LIGHT FIXTURES

a. Recessed Columbia 2x4 Direct/Indirect Fluorescent Fixture. (Verify and Match existing)

    a. STR24-2326-MPO-EB8277

    b. Micro Perforated Mesh Lamp Shield.

    c. (2) T-8 lamps per fixture with electronic rapid start ballast

    d. Lamps: Phillips 32 Watt

    e. Color 3500K

b. Recessed Columbia 2x2 Direct/Indirect Fluorescent Fixture. (Verify and Match existing)

    a. STR22-217G-MPO-EB8277

    b. Micro Perforated Mesh Lamp Shield.

    c. (2) T-8 lamps per fixture with electronic rapid start ballast

    d. Lamps: (2) 17w WT8-82CRI

    e. Color 3500K

c. Delray Rocket II Pendant Hung Compact Fluorescent Light Fixtures

d. Verve II Suspended Linear Indirect Fixture

Tenant may elect to use additional or alternate Architectural Lighting subject to Landlords Approval of Plans and Specs.

LIGHT CONTROLS

a. Novitas Sensors.

b. Wall - #01-DL401.

c. Ceiling: One Way 01-100.

d. Ceiling: Two Way 01-110

ELECTRICAL WALL OUTLET

a. Specification Grade, Leviton 15A, 125V, Decora/single switch.

b. Color - White.

c. Mounted vertically.

d. Outlet height at 15” above finish floor to centerline of outlet U.O.N. as required for ADA compliance.

TELEPHONE WALL OUTLET

a. Mud ring cut into wall - mounted vertically.

b. ¾” metal conduit stub above ceiling with 6” pigtail at top of wall.

c. Cover plate and wiring by Tenant’s telephone vendor.

EXIT SIGN LIGHTS

a. Alkco Edge-Glo Exit /Directional signs, recessed ceiling mounted LED housing, green letters on a clear panel background or equivalent.

b. Provide exit lights with battery back up at all exits required by code.

c. All life safety items including horns & strobes and speaker shall have white covers.

AUTOMATIC FIRE SPRINKLERS

a. Fully fire sprinklered building with main and branch distribution lines available for tenant modification.

b. Reliable sprinkler model “G” pendant semi-recessed sprinkler with white sprinkler and escutcheon.

165 degree Fahrenheit temperature rating.

c. Reliable sprinkler model “G4” concealed sprinkler head with white cover plate. (To be used in all public areas).

165 degree Fahrenheit temperature rating.

HEATING AND AIR CONDITIONING DISTRIBUTION

All mechanical design shall be fully engineered in compliance with local building codes, the Uniform Mechanical Code and California Title 24.

All new mechanical fixtures and components shall be subject to certification by Landlord’s consultant.

AIR DISTRIBUTION FOR TYPICAL FLOORS

Interior Zones shall be conditioned by Water Source Heat Pumps and installed as part of the tenant improvements. Water Source Heat Pumps shall be sized as required to meet ASHREA standards and equipped with Vibration Isolators, Balancing Valves, Strainers, Flow Controls and Shut Off Valves.

Condenser water is delivered to the individual floors by a condenser water loop that is sized as required and installed as a part of the shell construction.

Each zone shall be controlled by an electronic thermostats tied back to the base building energy management system.

Tenant may elect to design an open ceiling plan with existing exposed galvanized rigid ductwork configured as required for tenant distribution of conditioned air.

Air delivery above concealed ceiling spaces may be via low pressure, insulated ducting with air diffusers as described below. Diffusers may be any one of the following as selected by the tenant and tenant's Architect.

Lay-in tile ceiling diffusers.

Architectural air-bar linear diffusers.

Light troffer diffusers.

PLUMBING

All plumbing design shall be fully engineered in compliance with local building codes, the Uniform Plumbing Code and California Title 24.

All new plumbing fixtures shall be subject to certification by Landlord's consultant.

Approved plumbing fixtures include:

a. "Elkay" Pacemaker sink # PSR-1720 - stainless steel, two faucet holes, or equivalent.

b. Hi-Arc Dual Handle bar faucet by "Elkay" # LK-2437-BH or equivalent.

c. Undercounter Dishwasher: Asko model #D1706, suitable for ADA requirements.

d. Garbage Disposal: Insinkerator, Model #77, 3/4 horsepower, stainless steel construction.

FINISHES

GLAZING / WINDOW FRAMES AT OFFICES & CONFERENCE ROOM:

a. Shall be Western Integrated aluminum, 3-3/4" or 4-7/8" throat, pre-finished satin aluminum w/ clear coat with squared edge- to match standard door frames style and color.

b. ¼" glazing, clear, tempered where required by code.

c. Side-lite glazing, size: 1'-6" wide by full height (inside window frame to window frame)

d. All private office shall have side-lites.

PAINT

a. Manufacturer: As approved Landlord.

b. Two coats minimum semi-gloss interior latex washable paint.

c. Include paint on tenant side of demising partition, both sides of interior partition, above and below exterior glazing as required and all column fur outs and perimeter walls.

FLOOR COVERING/LOBBY & COMMON AREAS

a. Carpet: Loop: 28 oz. or equal, Manufacture as approved Landlord.

b. Direct glue down installation for all carpet.

c. 12 x 12 Vinyl Tile shall be 'Armstrong' or approved equal.

d. Optional architectural flooring as approved by Landlord

TILE FLOORING

a. Ceramic tile or Natural stone as selected by tenant subject to Landlord's approval.

BASE

a. 2-1/2" Rubber Base by Roppe

b. 2 1/2" tile base in tiled areas as approved by Landlord.

PLASTIC LAMINATE

a. Formica, Wilsonart or approved equal.

WINDOW COVERINGS

a. Exterior window covering to be PVC Perforated Vertical Blinds.

b. Blinds to be sized to fit inside window module.

c. MechoShade –With Landlord's prior approval, manually operated units are to receive ThermoVeil 0900 Series Privacy Weave ShadeCloth with an approximate openness factor of 0-1%. Color is to match (0910 Light Grey) the fabric used on the shades.

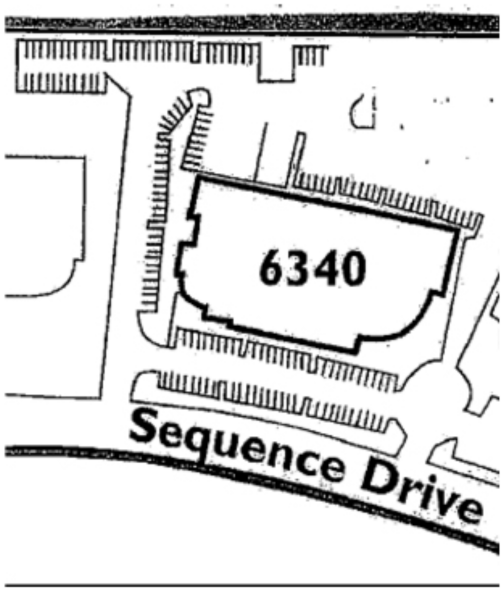
FIRE/LIFE SAFETY

Fire Life Safety components shall be furnished and installed as required by the City of San Diego Fire Marshall and installed by the Landlord's Building Life Safety contractor at the Tenant's sole cost and expense.

EXHIBIT C

LOCATION OF THE EXPANSION PARKING PASSES

LOCATION OF AMENDED 6340 PARKING PASSES



LOCATION OF SUPPLEMENTAL PARKING PASSES

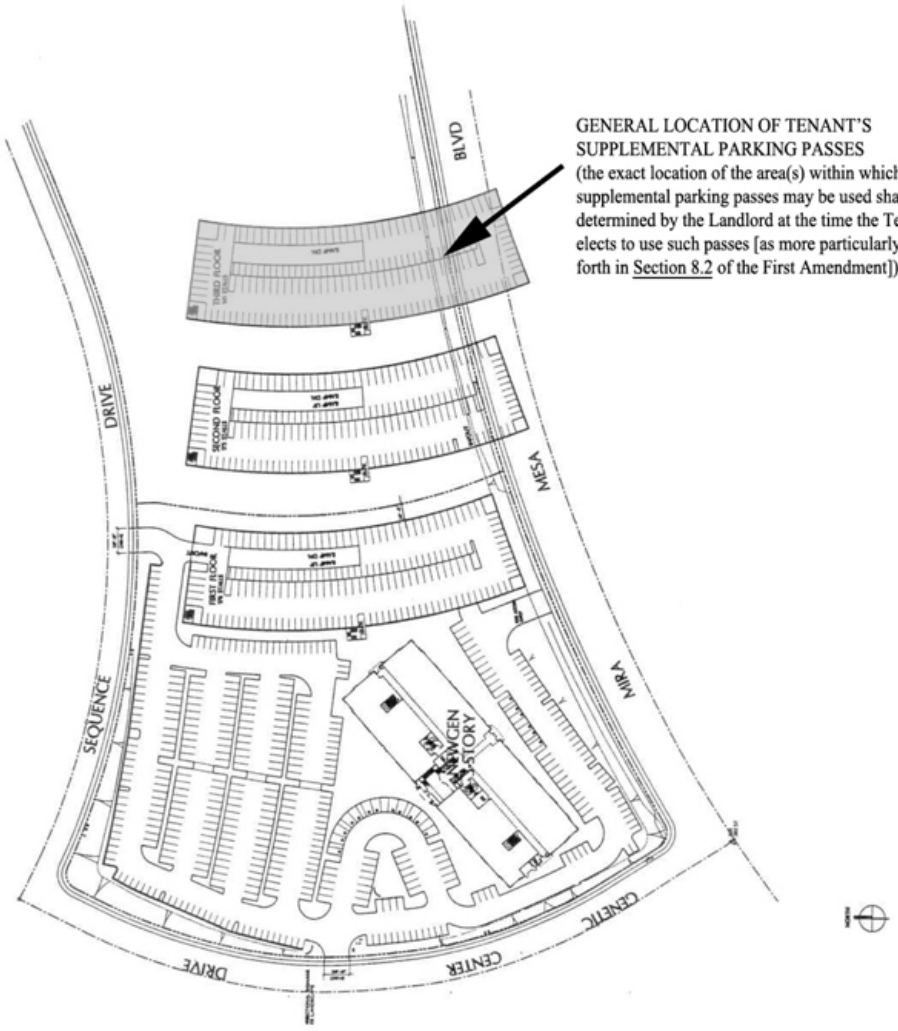


EXHIBIT D

PRE-APPROVED LOGO

SECOND AMENDMENT TO OFFICE LEASE

This SECOND AMENDMENT TO OFFICE LEASE ("**Second Amendment**") is made and entered into as of the 1st. day of October , 2014, by and between KILROY REALTY, L.P., a Delaware limited partnership ("**Landlord**"), and DEXCOM, INC., a Delaware corporation ("**Tenant**").

R E C I T A L S :

A. Landlord and Tenant entered into that certain Office Lease dated March 31, 2006 (the "**Original Lease**"), as amended by that certain First Amendment to Office Lease dated August 18, 2010 ("**First Amendment**"), whereby Landlord leases to Tenant and Tenant leases from Landlord those certain premises (collectively, the "**Existing Premises**") consisting of (i) 66,400 rentable square feet constituting the entirety of that certain office building located at 6340 Sequence Drive, San Diego, California ("**6340 Building**") and (ii) 62,415 rentable square feet constituting the entirety of that certain office building located at 6310 Sequence Drive, San Diego, California ("**6310 Building**"). The Original Lease, as amended by the First Amendment, may be referred to herein as the "**Lease**".

B. Tenant desires to expand the Existing Premises to include a total of 90,000 rentable square feet of space comprising (i) that certain space consisting of approximately 45,000 rentable square feet of space (the "**6290 Initial Premises**") comprising a portion of that certain office building located at 6290 Sequence Drive, San Diego (the "**6290 Building**"), and (ii) that certain space consisting of all of the remaining approximately 45,000 rentable square feet of space in the 6290 Building (the "**6290 Must-Take Premises**"), and to make other modifications to the Lease. The 6290 Initial Premises and 6290 Must-Take Premises are more particularly delineated on **Exhibit A** attached hereto and made a part hereof. The 6290 Initial Premises is shown shaded on **Exhibit A**. The remaining unshaded area on **Exhibit A** is the 6290 Must-Take Premises. The 6290 Initial Premises and the 6290 Must-Take Premises are, collectively, the "**6290 Expansion Premises**." In connection with the foregoing, Landlord and Tenant desire to amend the Lease as hereinafter provided.

A G R E E M E N T :

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Capitalized Terms**. All capitalized terms when used herein shall have the same meaning as is given such terms in the Lease unless expressly superseded by the terms of this Second Amendment.

2. **Modification of Premises**.

2.1. **6290 Initial Premises**. Effective as of the date which is five (5) months after Landlord's delivery of the 6290 Initial Premises to Tenant in the condition required under Section 1 of the Work Letter Agreement (the "**Work Letter Agreement**") attached hereto as Exhibit B (the "**Expansion Commencement Date**"), Tenant shall lease from Landlord and Landlord shall lease to Tenant the 6290 Initial Premises. Consequently, effective upon the Expansion Commencement Date, the Existing Premises shall be expanded to include the 6290 Initial Premises (the Existing Premises together with the 6290 Initial Premises are sometimes collectively referred to herein as the "**Initially Expanded Premises**"). Landlord and Tenant hereby acknowledge that the Initially Expanded Premises shall, effective as of the Expansion Commencement Date, contain a total of approximately 173,815 rentable square feet. For the period commencing as of the Expansion Commencement Date and ending on the day immediately preceding the 6290 Must-Take Premises Commencement Date, the Initially Expanded Premises is also referred to in the underlying Lease as the "**Premises**."

2.2. **6290 Must-Take Premises**. Effective as of the earlier to occur of (i) the date Tenant first commences to conduct its "Business Operations" (as that term is defined below) from greater than 32,000 rentable square feet of the 6290 Must-Take Premises, and (ii) the date which is twenty-four (24) months after the Expansion Commencement Date (as applicable, the "**6290 Must-Take Premises Commencement Date**"), Tenant shall lease from Landlord and Landlord shall lease to Tenant the 6290 Must-Take Premises. For purposes hereof, "**Business Operations**" shall mean (i) the stationing of employees in any portion of the 6290 Must-Take Premises, or (ii) the operating of equipment in any portion of the 6290 Must-Take Premises, or (iii) the storing of items related to Tenant's business in a total

area which is larger than 500 rentable square feet of space in the 6290 Must-Take Premises; provided, however, in no event shall "Business Operations" be deemed to have commenced in the 6290 Must-Take Premises if Tenant, its employees or agents are (a) solely using the restrooms located in the 6290 Must-Take Premises, (b) Tenant, its employees or agents are solely using 500 rentable square feet of space or less in the 6290 Must-Take Premises to store items related to its business (subject to Landlord's reasonable rules and regulations), and/or (c) solely constructing "Improvements" (as that term is defined in Section 2.1.1 of the Work Letter Agreement) in the 6290 Must-Take Premises for a period of not more than sixty (60) days prior to the Must-Take Premises Commencement Date. Notwithstanding the foregoing or anything to the contrary contained herein, Tenant may choose to commence to conduct Business Operations in approximately 15,000 rentable square foot increments (up to a total of approximately 30,000 rentable square feet) of the 6290 Must-Take Premises prior to the 6290 Must-Take Premises Commencement Date, in which case Tenant shall so notify Landlord in writing of such commencement of Business Operations in such increment(s) and, commencing upon the date Tenant first commences to conduct Business Operations in such increment(s), and continuing until the 6290 Must-Take Premises Commencement Date, Tenant shall be obligated to pay Base Rent at the rate of $1.80 per rentable square foot of such increment per month. For clarity, Landlord and Tenant hereby acknowledge that if Tenant elects to commence to conduct Business Operations in two (2) increments of approximately 15,000 rentable square feet each, for an aggregate total of approximately 30,000 rentable square feet, then so long as such aggregate total remains less than approximately 32,000 rentable square feet, and so long as such Business Operations commence prior to the date which is twenty-four (24) months after the Expansion Commencement Date, the 6290 Must-Take Premises Commencement Date shall not be deemed to have occurred merely by Tenant electing to commence to conduct Business Operations in such two (2) increments of approximately 15,000 rentable square feet each. Landlord shall deliver possession of the 6290 Must-Take Premises to Tenant concurrently with its delivery of possession of the 6290 Initial Premises to Tenant, and therefore during the period prior to the 6290 Must-Take Premises Commencement Date, other than (i) Tenant's obligation to pay Base Rent with respect to the 6290 Must-Take Premises, and (ii) Tenant's right to use the 6290 Must-Take Premises for the Permitted Use, all of the terms and conditions of the Lease shall apply during the period occurring prior to the date immediately preceding the 6290 Must-Take Premises Commencement Date as if the 6290 Must-Take Premises Commencement Date had occurred (it nevertheless being acknowledged that the 6290 Must-Take Premises Commencement Date shall not actually occur until the occurrence of the same pursuant to the terms of this Section 2.2). Therefore, concurrently with Landlord's delivery of possession of the 6290 Initial Premises, Tenant shall be obligated to pay Tenant's Share of Direct Expenses in connection with the 6290 Expansion Premises in accordance with the terms of Article 4 of the Lease, and Section 5 of this Second Amendment. Subject to Section 1 of the Work Letter Agreement, Tenant shall accept the 6290 Initial Premises and Base Building from Landlord in their presently existing, "as-is" condition, and Landlord and Tenant hereby acknowledge that effective as of the 6290 Must-Take Premises Commencement Date, the "**Premises**" shall be comprised of a total of 218,815 rentable square feet consisting of the Existing Premises, the 6290 Initial Premises and the 6290 Must-Take Premises (i.e., the entire 6340 Building, 6310 Building and 6290 Building). Promptly after the occurrence of the Expansion Commencement Date and the 6290 Must-Take Premises Commencement Date, Landlord and Tenant shall execute a written confirmation of such dates.

2.3. **No-Remeasurement of 6290 Expansion Premises**. For purposes of the Lease (as hereby amended), "rentable square feet" of the Premises shall be deemed as set forth in **Recital A** and **Recital B** of this Second Amendment, and therefore neither Landlord nor Tenant shall have the right to re-measure the Premises at any time.

2.4. **Right of First Refusal**. Section 2.4 of the First Amendment shall be deleted and shall be of no further force or effect and in lieu thereof, Landlord hereby grants to Tenant a continuing right of first refusal to lease space in any of the following buildings owned by Landlord in San Diego, California (collectively, the "**First Refusal Space**"): 6260 Sequence Drive, 6350 Sequence Drive, 10390 Pacific Center Court, 10394 Pacific Center Court, 10398 Pacific Center Court, 10421 Pacific Center Court, 10445 Pacific Center Court and 10455 Pacific Center Court (individually, an "**Encumbered Building**" and collectively, the "**Encumbered Buildings**"). Notwithstanding the foregoing (i) such first refusal right of Tenant shall become effective only following the expiration or earlier termination of the applicable existing lease pertaining to the First Refusal Space (collectively, the "**Superior Leases**"), including any renewal or extension of such existing lease, whether or not such renewal or extension is pursuant to an express written provision in such lease, and regardless of whether any such renewal or extension is consummated pursuant to a lease amendment or a new lease, and (ii) Tenant's first refusal right shall be subordinate and secondary to all rights of expansion, first offer, first refusal or similar rights granted to the tenants of the Superior Leases (the rights described in items (i) and (ii), above to be known collectively as "**Superior Rights**"). Tenant's right of first refusal shall be on the terms and conditions set forth in this Section 2.4.

2.4.1. Procedure. Landlord shall notify Tenant (the "**First Refusal Notice**") from time to time when Landlord receives a proposal or request for proposal that Landlord would seriously consider for First Refusal Space, where no holder of a Superior Right desires to lease such space. The First Refusal Notice shall describe the space so offered to Tenant and shall set forth Landlord's proposed material economic terms and conditions applicable to Tenant's lease of such space (collectively, the "**Economic Terms**"), including the proposed term of lease and the proposed rent payable for the First Refusal Space. Notwithstanding the foregoing, Landlord's obligation to deliver the First Refusal Notice shall not apply during the last twelve (12) months of the New Expansion Term (as defined in Section 3.1 below) nor during the last twelve (12) months of the first Option Term, unless Tenant has delivered an Exercise Notice to Landlord pursuant to Section 3.4.3 below.

2.4.2. Procedure for Acceptance. If Tenant wishes to exercise Tenant's right of first refusal with respect to the space described in the First Refusal Notice, then within ten (10) business days after delivery of the First Refusal Notice to Tenant, Tenant shall deliver an unconditional irrevocable notice to Landlord of Tenant's exercise of its right of first refusal with respect to the entire space described in the First Refusal Notice, and the Economic Terms shall be as set forth in the First Refusal Notice. If Tenant does not unconditionally exercise its right of first refusal within the ten (10) business day period, then Landlord shall be free to lease the space described in the First Refusal Notice to anyone to whom Landlord desires on any terms Landlord desires and Tenant's right of first refusal shall terminate as to the First Refusal Space described in the First Refusal Notice; provided, however, that if Landlord intends to enter into a lease upon Economic Terms which are more than ten percent (10%) more favorable to a third (3rd) party tenant than those Economic Terms proposed by Landlord in the First Refusal Notice, Landlord shall first deliver written notice to Tenant ("**Second Chance Notice**") providing Tenant with the opportunity to lease such First Refusal Space on such more favorable Economic Terms. Tenant's failure to elect to lease the First Refusal Space upon such more favorable Economic Terms by written notice to Landlord within three (3) business days after Tenant's receipt of such Second Chance Notice from Landlord shall be deemed to constitute Tenant's election not to lease such space upon such more favorable Economic Terms, in which case Landlord shall be entitled to lease such space to any third (3rd) party on terms no more favorable to the third (3rd) party than those set forth in the Second Chance Notice. Furthermore, if Landlord fails to enter into a lease with a third (3rd) party for such First Refusal Space within six (6) months after the date of the First Refusal Notice, Landlord shall again be obligated to provided Tenant with a First Refusal Notice and the procedure described herein shall be repeated prior to Landlord's lease of such First Refusal Space to a third (3rd) party. If Landlord does lease such First Refusal Space to a third (3rd) party tenant pursuant to the terms and conditions of this Section 2.4.2 above, Tenant shall have a continuing right of first refusal to lease such First Refusal Space after the expiration or earlier termination of such third (3rd) party lease, and the new third (3rd) party lease for such First Refusal Space shall be deemed to be a Superior Lease, and Tenant's continuing right of first refusal shall thereafter be subject the Superior Rights associated with such Superior Lease. Notwithstanding anything to the contrary contained herein, Tenant must elect to exercise its right of first refusal, if at all, with respect to all of the space offered by Landlord to Tenant at any particular time, and Tenant may not elect to lease only a portion thereof unless Landlord expressly provides to the contrary in the applicable First Refusal Notice.

2.4.3. Lease of First Refusal Space. If Tenant timely and properly exercises Tenant's right to lease the First Refusal Space as set forth herein, Landlord and Tenant shall execute, at Landlord's option, either a new lease for the First Refusal Space or an amendment adding such First Refusal Space to the Lease (as amended), in each case upon the Economic Terms provided in this Section 2.4. If the First Refusal Space consists of only a portion of the applicable building, such lease or amendment shall include appropriate provisions to account for the fact that such space is being leased in a multi-tenant building rather than a single-tenant building.

2.4.4. No Defaults. The rights contained in this Section 2.4 shall be personal to the Original Tenant and any Permitted Transferee, and may only be exercised by the Original Tenant or a Permitted Transferee (and not any other assignee, sublessee or other transferee of the Original Tenant's interest in the Lease). Tenant shall not have the right to lease First Refusal Space as provided in this Section 2.4 if, as of the date of the First Refusal Notice, an Event of Default exists and remains uncured when Tenant delivers its notice of exercise.

2.4.5. No Future Obligation. The obligations contained in this Section 2.4 shall apply to the Landlord originally named herein, and shall only apply to a future owner of an Encumbered Building to the extent such future owner is also then the owner of the 6340 Building, the 6310 Building and/or the 6290 Building (individually, an "**Original Building**" and collectively, the "**Original Buildings**") (and only if Tenant then still leases such Original Building(s)). For clarity, a future owner of an Encumbered Building shall only have the obligation to honor Tenant's right of first refusal if, at such time, such owner then also owns one (1) or more Original Buildings, but such future owner shall not have the

obligation to honor the right of first refusal if, at such time, Tenant no longer leases (by virtue of Section 3.4 below, Section 3.5 below or otherwise) any of the Original Buildings then owned by such future owner.

3. **Term**.

3.1. **Extension of Existing Premises Lease Term**. Landlord and Tenant acknowledge that Tenant's lease of the Existing Premises is scheduled to expire on November 30, 2016, pursuant to the terms of the Lease. Notwithstanding anything to the contrary in the Lease, the term of Tenant's lease of the Existing Premises shall be extended to expire coterminously with the term of Tenant's lease of the 6290 Expansion Premises on the New Expiration Date, unless sooner terminated as provided in the Lease, as hereby amended. The "**New Expiration Date**" shall be the date immediately preceding the seventh (7th) anniversary of the Expansion Commencement Date; provided, however, that if the Expansion Commencement Date is a date other than the first (1st) day of a month, the New Expiration Date shall be the last day of the month which is eighty-four (84) months after the month in which the Expansion Commencement Date falls. The period commencing on the Expansion Commencement Date and terminating on the New Expiration Date shall be referred to herein as the "**New Expansion Term**."

3.2. **The 6290 Initial Premises**. The term of Tenant's lease of the 6290 Initial Premises (the "**6290 Initial Premises Term**") shall commence on the Expansion Commencement Date and shall expire on the New Expiration Date, unless sooner terminated or otherwise extended as expressly provided in the Lease, as hereby amended.

3.3. **The 6290 Must-Take Premises**. The term of Tenant's lease of the 6290 Must-Take Premises (the "**6290 Must-Take Premises Term**") shall commence on the 6290 Must-Take Premises Commencement Date and shall expire on the New Expiration Date, unless sooner terminated as provided in the Lease, as hereby amended.

3.4. **Option Terms**. Section 2.2 of the Original Lease and Section 3.4 of the First Amendment shall be null and void and in lieu thereof, Landlord hereby grants the Original Tenant and any "Permitted Transferee," as that term is set forth in Section 14.8 of the Original Lease, two (2) separate options to extend the Lease Term for all of the 6340 Building, all of the 6310 Building and/or all of the 6290 Building (but not for just a portion of any building), with each such option to extend to be for a period of not less than three (3) years and not more than five (5) years, with the specific period for such option to extend to be identified by Tenant in the Notice delivered to Landlord for the exercise of such option to extend (the "**Option Terms**"). For clarity, (i) Tenant may elect to have each Option Term be for any period of time between three (3) years and not more than five (5) years, (ii) the period so selected by Tenant for the Option Term must apply to all buildings for which Tenant chooses to exercise such extension option (so that Tenant may not vary the period of the Option Term between or among such buildings), and (iii) the period selected by Tenant for the first Option Term shall have no bearing on the period that Tenant may select for the second (2nd) Option Term. Additionally, Tenant may elect to extend the Lease Term for any or all of the 6340 Building, the 6310 Building or the 6290 Building, but in no event may Tenant exercise the second (2nd) option to extend for any such building for which the New Expansion Term was not extended for the first Option Term.

3.4.1. **Option Rights**. Such options shall be exercisable only by Notice delivered by Tenant to Landlord as provided below, provided that, as of the date of delivery of such Notice, (i) no "Event of Default," as that term is set forth in Section 19.1 of the Original Lease, is then occurring, (ii) no more than one (1) Event of Default has occurred during the prior twelve (12) month period, (iii) no more than three (3) Events of Default have occurred during the New Expansion Term, and (iv) the Original Tenant and any Permitted Transferee are in occupancy of no less than fifty percent (50%) of the applicable building(s). Upon the proper exercise of such option to extend, and provided that, as of the end of the then applicable Lease term, (A) no Event of Default is then occurring, (B) no more than one (1) Event of Default has occurred during the prior twelve (12) month period, (C) no more than three (3) Events of Default have occurred during the Lease Term, and (D) the Original Tenant and any Permitted Transferee are in occupancy of no less than fifty percent (50%) of the applicable building(s), then the New Expansion Term or first Option Term, as applicable, shall be extended for the period identified by Tenant for such Option Term. The rights contained in this Section 3.4 may only be exercised by the Original Tenant and/or a Permitted Transferee (and not any other assignee, sublessee or other transferee of the Original Tenant's interest in the Lease, as amended).

3.4.2. **Option Rent**. The Rent payable by Tenant during the Option Term (the "**Option Rent**") shall be equal to the lesser of (i) the Base Rent payable for such space immediately prior

to the Option Term with a 3.25% increase as of the first day of the Option Term and 3.25% annual increases thereafter throughout the Option Term (the "**Escalated Rent**"), or (ii) the Market Rent as set forth below. The term "**Market Rent**" shall mean rent (including additional rent and considering any "base year" or "expense stop" applicable thereto), including all escalations, at which tenants, as of the commencement of the applicable Option Term are, pursuant to transactions completed within the twenty-four (24) months prior to the first day of the applicable Option Term, leasing non-sublease, non-encumbered, non-synthetic, non-equity space (unless such space was leased pursuant to a definition of "fair market" comparable to the definition of Market Rent) comparable in size, location and quality to the applicable building(s) for a "Comparable Term," as that term is defined in this Section 3.4.2 (the "**Comparable Deals**"), which comparable space is located in the "Comparable Buildings," as that term is defined in this Section 3.4.2, giving appropriate consideration to the annual rental rates per rentable square foot (adjusting the base rent component of such rate to reflect a net value after accounting for whether or not utility expenses are directly paid by the tenant such as Tenant's direct utility payments provided for in Section 6.1 of the Original Lease), the standard of measurement by which the rentable square footage is measured, the ratio of rentable square feet to usable square feet, and taking into consideration only, and granting only, the following concessions (provided that the rent payable in Comparable Deals in which the terms of such Comparable Deals are determined by use of a discounted fair market rate formula shall be equitably increased in order that such Comparable Deals will not reflect a discounted rate) (collectively, the "**Rent Concessions**"): (a) rental abatement concessions or build-out periods, if any, being granted such tenants in connection with such comparable spaces; (b) improvements or improvement allowances provided or to be provided for such comparable space, taking into account the value of the existing improvements in the Premises, such value to be based upon the age, quality and layout of the improvements and the extent to which the same could be utilized by general office users as contrasted with this specific Tenant, (c) any Proposition 13 protection, and (d) all other monetary concessions, if any, being granted such tenants in connection with such comparable space; provided, however, that notwithstanding anything to the contrary herein, no consideration shall be given to the fact that Landlord is or is not required to pay a real estate brokerage commission in connection with the applicable term or the fact that the Comparable Deals do or do not involve the payment of real estate brokerage commissions. The term "**Comparable Term**" shall refer to the length of the lease term, without consideration of options to extend such term, for the space in question. In addition, the determination of the Market Rent shall include a determination as to whether, and if so to what extent, Tenant must provide Landlord with financial security, such as a letter of credit or guaranty, for Tenant's rent obligations during any Option Term. Such determination shall be made by reviewing the extent of financial security then generally being imposed in Comparable Transactions upon tenants of comparable financial condition and credit history to the then existing financial condition and credit history of Tenant (with appropriate adjustments to account for differences in the then-existing financial condition of Tenant and such other tenants). If in determining the Market Rent, Tenant is entitled to an improvement allowance or comparable allowance for the improvement of the applicable building(s) (the "**Option Term TI Allowance**"), Landlord may, at Landlord's sole option, elect any or a portion of the following: (A) to grant some or all of the Option Term TI Allowance to Tenant in the form as described above (i.e., as an improvement allowance), and/or (B) to reduce the rental rate component of the Market Rent to be an effective rental rate which takes into consideration that Tenant will not receive the total dollar value of such Option Term TI Allowance (in which case the Option Term TI Allowance evidenced in the effective rental rate shall not be granted to Tenant). The term "**Comparable Buildings**" shall mean the Premises and other institutionally owned, office/lab buildings which are comparable to the Premises in terms of age (based upon the date of completion of construction or major renovation as to the building containing the portion of the Premises in question), quality of construction, level of services and amenities (including parking availability, type and cost), size and appearance, and are located in the Sorrento Mesa / UTC area of San Diego, California (the "**Comparable Area**").

3.4.3. **Exercise of Options**. The options contained in this Section 3.4 shall be exercised by Tenant, if at all, only in the manner set forth in this Section 3.4.3. Tenant shall deliver notice (the "**Exercise Notice**") to Landlord not more than fifteen (15) months nor less than twelve (12) months prior to the expiration of the then existing Lease Term, stating that Tenant is thereby exercising its option. The Exercise Notice shall specify whether Tenant is exercising such option as to all of the 6340 Building, all of the 6310 Building and/or all of the 6290 Building. Within thirty (30) days following its delivery of such Exercise Notice, Tenant shall deliver to Landlord Tenant's calculation of the Market Rent or indicate that the Escalated Rent is less than the Market Rent (the "**Tenant's Option Rent Calculation**"). Landlord shall deliver notice (the "**Landlord Response Notice**") to Tenant on or before the date which is thirty (30) days after Landlord's receipt of Tenant's Option Rent Calculation (the "**Landlord Response Date**"), stating that (A) Landlord is accepting Tenant's Option Rent Calculation, or (B) if Tenant's Option Rent Calculation indicates that Tenant believes that the Market Rent is less than the Escalated Rent, rejecting Tenant's Option Rent Calculation and setting forth Landlord's calculation of the Market Rent (the "**Landlord's Option Rent Calculation**"). Within fifteen (15) business days of its receipt of the Landlord

Response Notice, Tenant may, at its option, accept Landlord's Option Rent Calculation. If Tenant does not affirmatively accept or Tenant rejects Landlord's Option Rent Calculation, the parties shall follow the procedure, and the Market Rent shall be determined as set forth in Section 3.4.4. By way of clarification, if Tenant's Option Rent Calculation indicates that the Escalated Rent is less than the Market Rent or if the parties otherwise agree that the Escalated Rent is less than the Market Rent, then the Escalated Rent shall apply and there shall be no need for determination of the Market Rent.

3.4.4. **Determination of Market Rent**. In the event Tenant objects or is deemed to have objected to the Market Rent, Landlord and Tenant shall attempt to agree upon the Market Rent using reasonable good-faith efforts. If Landlord and Tenant fail to reach agreement within sixty (60) days following Tenant's objection or deemed objection to the Landlord's Option Rent Calculation (the "**Outside Agreement Date**"), then, within two (2) business days following such Outside Agreement Date, (x) Landlord may reestablish the Landlord's Option Rent Calculation by delivering written notice thereof to Tenant, and (y) Tenant may reestablish the Tenant's Option Rent Calculation by delivering written notice thereof to Tenant. If Landlord and Tenant thereafter fail to reach agreement within seven (7) business days of the Outside Agreement Date, then in connection with the Option Rent, Landlord's Option Rent Calculation and Tenant's Option Rent Calculation, each as most recently delivered to the other party pursuant to the TCCs of this Section 3.4.4, shall be submitted to the "Neutral Arbitrator," as that term is defined in Section 3.4.4.1 of this Second Amendment, pursuant to the TCCs of this Section 3.4.4; provided, however, to the extent Tenant delivers to Landlord, within seven (7) business days of the Outside Agreement Date, a written notice rescinding its Exercise Notice, then the Lease Term shall not be extended for the Option Term, but shall instead expire as originally scheduled, pursuant to the remaining TCCs of the Lease, as amended. The submittals shall be made concurrently with the selection of the Neutral Arbitrator pursuant to this Section 3.4.4 and shall be submitted to arbitration in accordance with Section 3.4.4.1 through 3.4.4.5 of this Second Amendment, but subject to the conditions, when appropriate, of Section 3.4.3.

3.4.4.1 Landlord and Tenant shall mutually, reasonably appoint one (1) arbitrator who shall by profession be a commercial real estate broker or a commercial real estate appraiser who shall have been active over the five (5) year period ending on the date of such appointment in the leasing (or appraisal, as the case may be) of first-class corporate headquarters properties in the Comparable Area (the "**Neutral Arbitrator**"). The determination of the Neutral Arbitrator shall be limited solely to the issue of whether Landlord's Option Rent Calculation or Tenant's Option Rent Calculation, each as submitted to the Neutral Arbitrator pursuant to Section 3.4.4, above, is the closest to the actual Market Rent as determined by such Neutral Arbitrator, taking into account the requirements of Section 3.4.2 of this Second Amendment. Such Neutral Arbitrator shall be appointed within fifteen (15) days after the applicable Outside Agreement Date. Neither the Landlord nor Tenant may, directly or indirectly, consult with the Neutral Arbitrator prior to subsequent to his or her appearance. The Neutral Arbitrator shall be retained via an engagement letter jointly prepared by Landlord's counsel and Tenant's counsel.

3.4.4.2 The Neutral Arbitrator shall, within thirty (30) days of his/her appointment, reach a decision as to Market Rent and determine whether the Landlord's Option Rent Calculation or Tenant's Option Rent Calculation, each as submitted to the Neutral Arbitrator pursuant to Section 3.4.4, above, is closest to Market Rent as determined by such Neutral Arbitrator and simultaneously publish a ruling ("**Award**") indicating whether Landlord's Option Rent Calculation or Tenant's Option Rent Calculation is closest to the Market Rent as determined such Neutral Arbitrator. Following notification of the Award, the Landlord's Option Rent Calculation or Tenant's Option Rent Calculation, whichever is selected by the Neutral Arbitrator as being closest to Market Rent, shall become the then applicable Option Rent.

3.4.4.3 The Award issued by such Neutral Arbitrator shall be binding upon Landlord and Tenant.

3.4.4.4 If Landlord and Tenant fail to appoint the Neutral Arbitrator within fifteen (15) days after the applicable Outside Agreement Date, either party may petition the presiding judge of the Superior Court of San Diego County to appoint such Neutral Arbitrator subject to the criteria in Section 3.4.4.1 of this Second Amendment, or if he or she refuses to act, either party may petition any judge having jurisdiction over the parties to appoint such Neutral Arbitrator.

3.4.4.5 The cost of arbitration shall be paid by Landlord and Tenant equally.

3.5. **Termination Option**. Provided Tenant fully and completely satisfies each of the conditions set forth in this Section 3.5, Tenant shall have the one-time option ("**Termination Option**") to terminate the Lease (as amended) as to the 6340 Building, the 6310 Building and/or the 6290 Building effective as of any date of the New Expansion Term selected by Tenant after the date which is fifty-four (54) months after the Expansion Commencement Date specified in Section 2.1 hereof (any such date to be referred to herein as the "**Termination Date**"); provided, however, that in no event may Tenant exercise the Termination Option with respect to the 6310 Building unless Tenant also exercises the Termination Option for the 6340 Building and/or the 6290 Building and in no event may Tenant exercise the Termination Option for just a portion of any building. In order to exercise the Termination Option, Tenant must fully and completely satisfy each and every one of the following conditions: (a) Tenant must give Landlord written notice ("**Termination Notice**") of its exercise of the Termination Option, which Termination Notice shall specify the applicable Termination Date and which Termination Notice must be delivered to Landlord at least twelve (12) months prior to the designated Termination Date, (b) at the time of the Termination Notice, an Event of Default must not exist, and (c) concurrently with Tenant's delivery of the Termination Notice to Landlord, Tenant shall pay to Landlord a termination fee ("**Termination Fee**") equal to the sum of (i) the "**Amortization Installment**", comprised of the unamortized balance, as of the Termination Date, of the (A) Improvement Allowance and Additional Allowance (if applicable) actually utilized by Tenant for such space pursuant to Section 2.1 of the Work Letter Agreement, (B) brokerage commissions paid by Landlord in connection with this Second Amendment and applicable to such space, and (C) Base Rent Abatement applicable to such space pursuant to Section 4.3 below, plus (ii) the "**Base Rent Installment**", comprised of an amount equal to three (3) months of Base Rent for such space calculated at the rate payable as of the date of delivery of the Termination Notice. Amortization pursuant to subsection (i), above, shall be calculated on a straight-line basis without an interest component over a seven (7) year amortization schedule (with respect to the 6290 Initial Premises), over a period from the 6290 Must-Take Premises Commencement Date through the New Expiration Date (with respect to the 6290 Must-Take Premises) and over the period from December 1, 2016 through the New Expiration Date (with respect to the Existing Premises). Upon written request from Tenant delivered to Landlord at any time prior to Tenant's delivery of the Termination Notice, Landlord and Tenant shall use good faith efforts to mutually agree upon the calculation of the Amortization Installment. Notwithstanding Tenant's payment of the Termination Fee, Tenant shall remain responsible for payment of Base Rent and all other obligations of Tenant with respect to such space through the Termination Date.

4. **Base Rent**.

4.1. **Existing Premises**. Base Rent for the Existing Premises shall continue to be paid pursuant to the Base Rent Schedule set forth in Section 4.1 of the First Amendment through November 30, 2016. Commencing as of December 1, 2016 and continuing through the New Expiration Date, Base Rent shall be payable for the Existing Premises as follows:

Period	Annualized Base Rent*	Monthly Installment of Base Rent**	Approximate Monthly Rental Rate per Rentable Square Foot*
December 1, 2016 to November 30, 2017	$2,782,404.00	$231,867.00*	$1.800
December 1, 2017 to November 30, 2018	$2,872,832.16	$239,402.68	$1.859
December 1, 2018 to November 30, 2019	$2,966,199.12	$247,183.26	$1.919
December 1, 2019 to November 30, 2020	$3,062,600.64	$255,216.72	$1.981
December 1, 2020 to November 30, 2021	$3,162,135.12	$263,511.26	$2.046
December 1, 2021 to New Expiration Date	$3,264,904.56	$272,075.38	$2.112

* Subject to abatement as provided in Section 4.3 below.

** Based upon 3.25% annual increases.

4.2. **The 6290 Expansion Premises**. Commencing on the Expansion Commencement Date and continuing throughout the New Expansion Term, Tenant shall pay to Landlord monthly installments of Base Rent for the entire 6290 Expansion Premises as follows:

Year of New Expansion Term	Annualized Base Rent*	Monthly Installment of Base Rent***	Approximate Monthly Rental Rate per Rentable Square Foot*
1**	$972,000.00◊	$81,000.00*◊	$1.800
2**	$1,003,590.00	$83,632.50	$1.859
3	$2,072,520.00	$172,710.00	$1.919
4	$2,139,876.96	$178,323.08	$1.981
5	$2,209,422.84	$184,118.57	$2.046
6	$2,281,229.16	$190,102.43	$2.112
7	$2,355,369.12	$196,280.76	$2.181

* If the Expansion Commencement Date falls on a day of the month which is not the first day of such month, the Base Rent for such fractional month shall accrue on a daily basis and shall total an amount equal to the product of (i) a fraction, the numerator of which is the number of days in such fractional month and the denominator of which is the actual number of days occurring in such calendar month, and (ii) the then-applicable monthly installment of Base Rent. Such fractional month shall be added to the first year of the New Expansion Term.

** The foregoing schedule assumes the 6290 Must-Take Premises Commencement Date occurs on the date which is two (2) years after the Expansion Commencement Date. To the extent the 6290 Must-Take Premises Commencement Date occurs prior to such date, and/or extent Tenant elects to commence Business Operations in increments of the 6290 Must-Take Premises prior to such date, the foregoing schedule shall be updated.

*** Based upon 3.25% annual increases.

◊ Subject to abatement as set forth in Section 4.3 below.

4.3. **Base Rent Abatement**. Provided that no Event of Default is then occurring, then (i) during the first seven (7) full calendar months of the 6290 Initial Premises Term, Tenant shall not be obligated to pay any Base Rent otherwise attributable to the 6290 Initial Premises, and (ii) during the period commencing December 1, 2016 and continuing through and including March 31, 2017, Tenant shall not be obligated to pay any Base Rent otherwise attributable to the Existing Premises. The Base Rent which is so abated pursuant to the immediately preceding sentence may be referred to herein as the ("**Base Rent Abatement**"). The Base Rent Abatement shall not apply to any Additional Monthly Base Rent payable pursuant to Section 2.1.2 of the Work Letter Agreement. Tenant acknowledges and agrees that notwithstanding such Base Rent Abatement, such abatement of Base Rent shall have no effect on the calculation of any future payments of Base Rent, Operating Expenses or Tax Expenses payable by Tenant pursuant to the terms of the Lease (as hereby amended), which payments shall be calculated without regard to such abatement of Base Rent or corresponding abatement periods. Such Base Rent Abatement has been granted to Tenant as additional consideration for entering into this Second Amendment, and for agreeing to pay the "rent" and performing the terms and conditions otherwise required under the Lease, as amended. Notwithstanding anything to the contrary set forth in this Section 4.3, to the extent an Event of Default is then occurring, then Landlord may at its option, by notice to Tenant, elect, in addition to any other remedies Landlord may have under the Lease, one or both of the following remedies: (i) that Tenant shall immediately become obligated to pay to Landlord all Base Rent

abated hereunder, with interest as provided pursuant to the Lease from the date such Base Rent would have otherwise been due but for the abatement provided herein, or (ii) that the dollar amount of the unapplied portion of the Base Rent Abatement as of such Event of Default shall be converted to a credit to be applied to the Base Rent applicable to the Premises at the end of the New Expansion Term and Tenant shall immediately be obligated to begin paying Base Rent for the entire Premises in full.

5. **Direct Expenses**.

5.1. **Tenant's Share**. Tenant's share with respect to the Existing Premises shall continue to be 100%. Tenant's share with respect to the 6290 Building shall, effective as of the Expansion Commencement Date, be 100%.

5.2. **"Project" Definition**. Landlord and Tenant hereby expressly acknowledge and agree that the definition of the "**Project**" shall be revised to mean (i) the 6340 Building and its Common Areas, (ii) the land (which is improved with landscaping, parking facilities and other improvements) upon which the 6340 Building and its Common Areas are located, (iii) the 6310 Building and its Common Areas, (iv) the land (which is improved with landscaping, parking facilities and other improvements) upon which the 6310 Building and its Common Areas are located, (v) the 6290 Building and its Common Areas, and (vi) the land (which is comprised with landscaping, parking facilities and other improvements) upon which the 6290 Building and its Common Areas are located. As the Project contains more than one (1) building, the parties acknowledge that the costs and expenses incurred in connection with the Project (i.e. the Direct Expenses) should be shared among the 6340 Building, the 6310 Building and the 6290 Building. Accordingly, as set forth in Section 4.2 of the Lease, Direct Expenses are determined annually for the Project as a whole, and a portion of the Direct Expenses, which portion shall be determined by Landlord on an equitable basis, shall be allocated to the 6340 Building, the 6310 Building or the 6290 Building (as the case may be) and such portion shall be the Direct Expenses for purposes of the Lease (as amended). Such portion of Direct Expenses allocated to the 6310 Building shall include all Direct Expenses attributable solely to the 6310 Building and an equitable portion of the Direct Expenses attributable to the Project as a whole. Such portion of Direct Expenses allocated to the 6340 Building shall include all Direct Expenses attributable solely to the 6340 Building and an equitable portion of the Direct Expenses attributable to the Project as a whole. Such portion of Direct Expenses allocated to the 6290 Building shall include all Direct Expenses attributable solely to the 6290 Building and an equitable portion of the Direct Expenses attributable to the Project as a whole.

5.3. **Direct Expense Cap**. Landlord and Tenant acknowledge and agree that the cap on Direct Expenses otherwise set forth in Section 4.4 of the Original Lease is no longer applicable. However, Landlord agrees that the management fee payable throughout the New Expansion Term shall be three percent (3%) of the Rent payable for the Premises per year.

5.4. **Proposition 13 Protection**. Notwithstanding anything to the contrary contained in this Lease, in the event that, at any time during the first three (3) years of the New Expansion Term, a sale or change in ownership of all or any portion of the Project is consummated, and as a result thereof, and to the extent that in connection therewith, all or any portion of the Project is reassessed (the "**Reassessment**") for real estate tax purposes by the appropriate governmental authority pursuant to the terms of Proposition 13, then the following provisions shall apply to such Reassessment of the Project.

5.4.1. **Tax Increase**. For purposes of this Section 5.4, the term "**Tax Increase**" shall mean that portion of the Tax Expenses, as calculated immediately following the Reassessment, which is attributable solely to the Reassessment. Accordingly, the term Tax Increase shall not include any portion of the Tax Expenses, as calculated immediately following the Reassessment, which (i) is attributable to the initial assessment of the value of the Project or the tenant improvements located in the Project, (ii) is attributable to assessments which were pending immediately prior to the Reassessment which assessments were conducted during, and included in, such Reassessment, or which assessments were otherwise rendered unnecessary following the Reassessment, or (iii) is attributable to the annual inflationary increase of real estate taxes permitted to be assessed annually under Proposition 13, or (iv) is attributable to Tax Expenses calculated prior to the Reassessment without including any Proposition 8 reduction. During the first three (3) years of the New Expansion Term, any Tax Increase shall be excluded from Tax Expenses. After the first three (3) years of the New Expansion Term, any Tax Increase (including any Tax Increase which may occur during the first three (3) years of the New Expansion Term) shall be included in Tax Expenses.

5.4.2. **Buy-Back Right**. The amount of Tax Expenses which Tenant is not obligated to pay or will not be obligated to pay during the first three (3) years of the New Expansion Term

in connection with a particular Reassessment pursuant to the terms of this Section 5.4, shall be sometimes referred to hereafter as a "**Proposition 13 Protection Amount**." If the occurrence of a Reassessment is reasonably foreseeable by Landlord and the Proposition 13 Protection Amount attributable to such Reassessment can be reasonably quantified or estimated, the terms of this Section 5.4.2 shall apply to such Reassessment. Upon notice to Tenant, Landlord shall have the right to purchase the Proposition 13 Protection Amount relating to the applicable Reassessment (the "**Applicable Reassessment**"), at any time prior to expiration of the third (3rd) year of the New Expansion Term, by paying to Tenant an amount equal to the Proposition 13 Purchase Price, as that term is defined below, provided that the right of any successor of Landlord to exercise its right of repurchase hereunder shall not apply to any Reassessment which results from the event pursuant to which such successor of Landlord became the Landlord under the Lease, as amended. As used herein, "**Proposition 13 Purchase Price**" shall mean the present value of the Proposition 13 Protection Amount remaining as of the date of payment of the Proposition 13 Purchase Price by Landlord. Such present value shall be calculated (i) by using the portion of the Proposition 13 Protection Amount attributable to each remaining year of the New Expansion Term (as though the portion of such Proposition 13 Protection Amount benefited Tenant at the end of each year), as the amounts to be discounted, and (ii) by using discount rates for each amount to be discounted equal to (A) the prime interest rate, as reported in the Wall Street Journal as of the date of Landlord's exercise of its right to purchase, as set forth in this Section 5.4, plus (B) two percent (2%) per annum. Upon such payment of the Proposition 13 Purchase Price, the provisions of Section 5.4.1 of this Second Amendment shall not apply to any Tax Increase attributable to the Applicable Reassessment. Since Landlord is estimating the Proposition 13 Purchase Price because a Reassessment has not yet occurred, then when such Reassessment occurs, if Landlord has underestimated the Proposition 13 Purchase Price, then upon notice by Landlord to Tenant, Tenant's Base Rent next due shall be credited with the amount of such underestimation, and if Landlord overestimates the Proposition 13 Purchase Price, then upon notice by Landlord to Tenant, Base Rent next due shall be increased by the amount of the overestimation.

6. **Improvements**. Except as specifically set forth herein, Landlord shall not be obligated to provide or pay for any improvement work or services related to the improvement of the 6290 Expansion Premises, and Tenant shall accept the 6290 Expansion Premises in its presently existing, "as-is" condition. Notwithstanding the foregoing, Landlord shall perform the work and otherwise construct the improvements in the 6290 Expansion Premises pursuant to the terms of the Work Letter Agreement, attached hereto as **Exhibit B** and Tenant may construct improvements in the 6290 Expansion Premises and renovate the Existing Premises in accordance with the Work Letter Agreement.

7. **Broker**. Landlord and Tenant hereby warrant to each other that they have had no dealings with any real estate broker or agent in connection with the negotiation of this Second Amendment other than Cushman & Wakefield of San Diego, Inc. (the "**Broker**"), and that they know of no other real estate broker or agent who is entitled to a commission in connection with this Second Amendment. Each party agrees to indemnify and defend the other party against and hold the other party harmless from any and all claims, demands, losses, liabilities, lawsuits, judgments, and costs and expenses (including, without limitation, reasonable attorneys' fees) with respect to any leasing commission or equivalent compensation alleged to be owing on account of the indemnifying party's dealings with any real estate broker or agent, other than the Broker, occurring by, through, or under the indemnifying party. The terms of this Section 7 shall survive the expiration or earlier termination of this Second Amendment.

8. **Parking**.

8.1. **In General**. Notwithstanding anything to the contrary contained in the Lease, effective as of the Expansion Commencement Date and continuing throughout the New Expansion Term, Tenant shall be entitled to use of all of the parking areas for the Project as shown on **Exhibit C** attached hereto and made a part hereof ("**Parking Areas**"). Tenant's use of the Parking Areas shall be in accordance with the provisions of Article 28 of the Original Lease; provided, however, that Tenant may, subject to CC&R's and Applicable Laws, at Tenant's sole cost, (i) designate any parking stalls within the Parking Areas as reserved and assigned for Tenant's exclusive use, and (ii) re-stripe all or any portion of the Parking Areas and/or implement tandem assisted valet parking. Furthermore, Landlord agrees that Tenant may structure parking arrangements with other tenants located within other properties owned by Landlord in the vicinity of the Project and Landlord shall consent to any such agreements, provided such agreements are in compliance with the terms of Landlord's lease with such other tenant(s).

8.2. **Supplemental Parking Passes**. Tenant shall continue to have the right to the Supplemental Parking Passes as provided in Section 8.2 of the First Amendment through November 30,

2016. However, effective as of the date of full execution and delivery of this Second Amendment, the seventy (70) parking spaces to which Tenant is entitled at 6260 Sequence Drive pursuant to the first sentence of Article 28 of the Original Lease shall be relocated to the parking lot for the 6340 Building.

8.3. **Additional Parking**.

8.3.1. **Additional Parking Notice**. If Tenant requires additional parking over and above the parking described in Sections 8.1 and 8.2 above, Tenant may notify Landlord in writing (the "**Additional Parking Notice**"), which Additional Parking Notice shall specify the number of additional parking stalls required by Tenant (up to a maximum of two hundred (200) additional stalls) (the "**Requested Stalls**"), and which Additional Parking Notice may be delivered by Tenant to Landlord at any time during the period from the first (1st) day of the twenty-fifth (25th) full calendar month of the New Expansion Term through and including the last day of the forty-eighth (48th) full calendar month of the New Expansion Term.

8.3.2. **Offsite Parking Stalls**. If Tenant timely delivers an Additional Parking Notice to Landlord, Landlord shall then use good faith efforts to locate and contract for additional parking for Tenant at a location within the area ("**Parking Limit Area**") which is no greater than one-half (1/2) mile from the Project, but north of Mira Mesa Boulevard, for the number of Requested Stalls specified by Tenant in the Additional Parking Notice, but not in excess of two hundred (200) such additional parking stalls. Such additional parking stalls may be referred to herein as the "**Offsite Parking Stalls**". If Landlord is successful in locating and contracting for use of the Offsite Parking Stalls, Tenant shall be responsible for any costs associated with Tenant's use of such Offsite Parking Stalls including, without limitation, any rental costs, any costs incurred to shuttle employees to and from such Offsite Parking Stalls and any costs incurred by Tenant to implement a valet or other parking assistance solution. However, commencing as of the later of (i) the first day of the thirty-fifth (35th) full calendar month of the New Expansion Term or (ii) the first day of the calendar month after Landlord's receipt of the Additional Parking Notice from Tenant, Tenant shall be entitled to a credit against Base Rent payable by Tenant for the Premises in the amount of Ten Thousand Dollars ($10,000.00) per month ("**Parking Credit**"), which Parking Credit shall continue to apply for the remainder of the New Expansion Term.

8.3.3. **Parking Structure Option**. If, despite Landlord's good faith efforts, Landlord is unable to locate and contract for the Offsite Parking Stalls within sixty (60) days after Landlord's receipt of an Additional Parking Notice, Landlord shall so notify Tenant thereof in writing (the "**Parking Structure Option Notice**"). If Landlord delivers a Parking Structure Option Notice to Tenant, Landlord shall no longer have an obligation to seek such Offsite Parking Stalls, but Tenant shall have the option to require Landlord to construct a parking structure (the "**Parking Structure**") at a location within the Parking Limit Area which shall include at least the number of Requested Stalls specified by Tenant in Tenant's Additional Parking Notice. Unless Tenant notifies Landlord in writing that Tenant has chosen not to pursue the use of such Parking Structure, within thirty (30) days after Landlord's delivery of the Parking Structure Option Notice, Landlord shall provide written notice to Tenant ("**Parking Structure Detail Notice**") describing the specific location selected by Landlord within the Parking Limit Area for construction of such Parking Structure (which location may be within the Project), the estimated total number of parking stalls that will be included within the Parking Structure, the estimated delivery date upon which the Parking Structure shall be available for use, and the total estimated costs of design, construction and permitting of such Parking Structure (collectively, "**Parking Structure Costs**") and Tenant's estimated financial contribution toward the Parking Structure Costs. Tenant's financial contribution to the Parking Structure Costs shall be an amount equal to the product of the actual total Parking Structure Costs multiplied by a fraction, the numerator of which is the number of Requested Stalls and the denominator of which is the total number of parking stalls located within said Parking Structure; provided, however, that in no event shall Tenant's contribution to the Parking Structure Costs exceed Four Million Dollars ($4,000,000.00). By way of example only, and not as a limitation upon the foregoing, if the number of Requested Stalls is two hundred (200) and such Parking Structure will contain three hundred (300) parking stalls and the total Parking Structure Costs are Four Million Five Hundred Thousand Dollars ($4,500,000.00), Tenant's portion of the Parking Structure Costs would be Three Million Dollars ($3,000,000.00), but if in the same example the total Parking Structure Costs are Seven Million Dollars ($7,000,000.00), Tenant's portion of the Parking Structure Costs would be capped at Four Million Dollars ($4,000,000.00). Tenant may choose to pay for all or any portion of Tenant's portion of Parking Structure Costs through application of Tenant's Parking Credit and/or by application of up to Four Million Dollars ($4,000,000.00) of the Improvement Allowance (as that term is defined in the Work Letter Agreement attached hereto as **Exhibit B**), provided that Tenant so notifies Landlord in writing of Tenant's election to apply such amounts (from Tenant's Parking Credit and/or the Improvement Allowance) on or before the last day of the forty-eighth (48th) full calendar month of the New Expansion Term.

8.3.4. **Parking Structure Agreement**. Upon Landlord's delivery of the Parking Structure Detail Notice to Tenant, if Tenant chooses to proceed with Landlord's construction of the Parking Structure, Landlord and Tenant shall use good faith efforts to mutually agree upon and execute, within thirty (30) days following Tenant's election to proceed with Landlord's construction of the Parking Structure, a definitive agreement documenting the terms of Landlord's obligation to construct the Parking Structure and Tenant's agreement to pay for its share of the Parking Structure Costs and other commercially reasonable terms for such agreement (the "**Parking Structure Agreement**"). Upon full execution and delivery of the Parking Structure Agreement by Landlord and Tenant, Landlord shall commence design, permitting and construction of the Parking Structure.

8.3.5. **Late Delivery of Parking Structure**. In the event that substantial completion of the Parking Structure (i.e., completion other than minor "punch-list" items) has not occurred by the "**Outside Date**," which shall be the date which is twelve (12) month after the date of full execution and delivery of the Parking Structure Agreement, as such date may be extended by delays attributable to Force Majeure including, without limitation, any delays due to excess time in obtaining governmental permits or approvals for construction of the Parking Structure beyond the time period normally required to obtain such permits or approvals for similar structures in San Diego, California (collectively, "**Force Majeure Delays**"), then the sole remedy of Tenant shall be the right to deliver a notice to Landlord (the "**Outside Date Termination Notice**") electing to terminate Tenant's lease of the 6290 Building effective upon a date specified by Tenant in the Outside Date Termination Notice (the "**Effective Date**"). For each day of any such extension of such twelve (12) month period due to Force Majeure Delays, Tenant shall not be obligated to pay any Base Rent for the 6290 Building. The Outside Date Termination Notice must be delivered by Tenant to Landlord, if at all, not earlier than the Outside Date (as may be so extended) and prior to the date of substantial completion of the Parking Structure. If Tenant delivers the Outside Date Termination Notice to Landlord, then Landlord shall have the right to suspend such termination for a period ending thirty (30) days after Landlord's receipt of the Outside Date Termination Notice. In order to suspend such termination, Landlord must deliver to Tenant, within five (5) business days after Landlord's receipt of the Outside Date Termination Notice, (a) a written notice acknowledging that Tenant shall not be obligated to pay any Base Rent for the 6290 Building during such suspension period, and (b) a certificate of the general contractor for the Parking Structure certifying that it is such contractor's best good faith judgment that substantial completion of the Parking Structure will occur within thirty (30) days after the date of Landlord's receipt of the Outside Date Termination Notice. If substantial completion of the Parking Structure occurs within said thirty (30) day suspension period, then the Outside Date Termination Notice shall be of no further force or effect, and Tenant shall not be obligated to pay any Base Rent for the 6290 Building for the number of days after the Outside Date until the date substantial completion of the Parking Structure occurs. If, however, substantial completion of the Parking Structure does not occur within said thirty (30) day suspension period, then Tenant's lease of the 6290 Building shall terminate as of the Effective Date, Tenant shall not be obligated to pay any Base Rent for the 6290 Building during such thirty (30) day period, but all other provisions of this Second Amendment shall continue to apply.

9. **Signage**. Effective upon the Expansion Commencement Date, all signage rights and responsibilities set forth in Article 23 of the Lease in connection with the Existing Premises shall additionally apply with respect to the 6290 Expansion Premises; provided, however, the logo to be displayed on such signage, which logo is identified on **Exhibit D**, is hereby approved by Landlord, and Landlord hereby consents to Tenant's Building-top signage on the 6290 Building having dimensions of up to three (3) feet high and twenty-five (25) feet long; provided, however, all other aspects of Tenant's signage (including, but not limited to, color and lighting) shall be subject to Landlord's prior written approval (which approval shall not be unreasonably withheld, conditioned or delayed). Tenant hereby acknowledges that, notwithstanding any approval by Landlord of Tenant's logo as well as the dimensions applicable to Tenant's Building-top sign on the 6290 Building, Landlord has made no representations or warranty to Tenant with respect to the probability of obtaining the necessary governmental approvals and/or permits for the same.

10. **Security Deposit/Letter of Credit**. Landlord shall continue to hold the Security Deposit pursuant to the terms and conditions of Article 21 of the Original Lease and the L-C in accordance with the terms and provisions of Article 22 of the Original Lease throughout the New Expansion Term, as may be extended.

11. **Security System**. Tenant shall be entitled to install, at Tenant's sole cost and expense (chargeable to the Improvement Allowance), a separate security system for any or all buildings of the Premises as an Alteration or as a part of the Improvements; provided, however, that the plans and specifications for any such system shall be subject to Landlord's reasonable approval, any such system must be compatible with the existing systems of the Project, Tenant's obligation to indemnify, defend and hold Landlord harmless as provided in, and subject to, Section 10.1 of the Original Lease shall also apply

to Tenant's use and operation of any such system, and the installation of such system shall otherwise be subject to the terms and conditions of this Section 11. At Landlord's option, upon the expiration or earlier termination of the Lease (as amended), Tenant shall remove such security system and repair any damage to the Project resulting from such removal. Tenant shall at all times provide Landlord with a contact person who can disarm the system and who is familiar with the functions of the system in the event of a malfunction, and Tenant shall provide Landlord with the codes or other necessary information required to disarm the system in the event Landlord must enter the Premises in an emergency.

12. **Communication Equipment**. If Tenant desires to use the roof of any building(s) constituting the Premises to install communication equipment to be used from the Premises, Tenant may so notify Landlord in writing ("**Communication Equipment Notice**"), which Communication Equipment Notice shall generally describe the specifications for the equipment desired by Tenant. Subject to all CC&R's and Applicable Laws, Tenant and Tenant's contractors (which shall first be reasonably approved by Landlord) shall have the right and access to install, repair, replace, remove, operate and maintain so-called "satellite dishes" or other similar devices, such as antennae (collectively, "**Communication Equipment**"), together with aesthetic screening designated by Landlord and all cable, wiring, conduits and related equipment, for the purpose of receiving and sending radio, television, computer, telephone or other communication signals, at a location on the roof of the Project designated by Landlord. If roof penetrations cannot be avoided, Tenant shall retain Landlord's designated roofing contractor to make any necessary penetrations and associated repairs to the roof in order to preserve Landlord's roof warranty. Tenant's installation and operation of the Communication Equipment shall be governed by the following terms and conditions:

12.1. Tenant's right to install, replace, repair, remove, operate and maintain the Communication Equipment shall be subject to all Applicable Laws and CC&R's and Landlord makes no representation that such CC&R's and Applicable Laws permit such installation and operation.

12.2. All plans and specifications for the Communication Equipment shall be subject to Landlord's reasonable approval.

12.3. All costs of installation, operation and maintenance of the Communication Equipment and any necessary related equipment (including, without limitation, costs of obtaining any necessary permits and connections to the electrical system) shall be borne by Tenant.

12.4. Landlord shall not have any obligations with respect to the Communication Equipment. Landlord makes no representation that the Communication Equipment will be able to receive or transmit communication signals without interference or disturbance (whether or not by reason of the installation or use of similar equipment by others) and Tenant agrees that Landlord shall not be liable to Tenant therefor. Tenant shall not lease or otherwise make the Communication Equipment available to any third party and the Communication Equipment shall be only for Tenant's use in connection with the conduct of Tenant's business in the Premises.

12.5. Tenant shall (i) be solely responsible for any damage caused as a result of the Communication Equipment, (ii) promptly pay any tax, license or permit fees charged pursuant to any Applicable Laws in connection with the installation, maintenance or use of the Communication Equipment and comply with all precautions and safeguards recommended by all governmental authorities, and (iii) pay for all necessary repairs, replacements to or maintenance of the Communication Equipment.

12.6. The Communication Equipment shall remain the sole property of Tenant. Tenant shall remove the Communication Equipment and related equipment at Tenant's sole cost and expense upon the expiration or sooner termination of the Lease, as amended, or upon the imposition of any governmental law or regulation which may require removal, and shall repair the Project upon such removal to the extent required by such work of removal. If Tenant fails to remove the Communication Equipment and repair the Project within fifteen (15) days after the expiration or earlier termination of the Lease, as amended, Landlord may do so at Tenant's expense. The provisions of this Section 12.6 shall survive the expiration or earlier termination of the Lease, as amended.

12.7. The Communication Equipment shall be deemed to constitute a portion of the Premises for purposes of Article 10 of the Original Lease.

12.8. Upon request from Landlord, Tenant agrees to execute a license agreement with Landlord or Landlord's rooftop management company regarding Tenant's installation, use and operation

of the Communication Equipment, which license agreement shall be in commercially reasonable form and shall incorporate the terms and conditions of this Section 12.

13. **Backup Generator(s)**. Subject to Landlord's prior approval of all plans and specifications, which approval shall not be unreasonably withheld, Landlord shall permit Tenant to install and maintain, at Tenant's sole cost and expense, a backup generator(s) at location(s) within the Project designated by Tenant and reasonably approved by Landlord. Such backup generator(s) shall be used by Tenant only during (i) testing and regular maintenance, and (ii) any period of electrical power outage in the Project. Tenant shall submit the specifications for design, operation, installation and maintenance of the backup generator(s) for Landlord's consent, which consent shall not be unreasonably withheld or delayed and may be conditioned on Tenant complying with such reasonable requirements imposed by Landlord, based on the advice of Landlord's structural and mechanical engineers, so that the Project's systems and equipment are not adversely affected. In addition, Tenant shall ensure that the backup generator(s) do not result in any Hazardous Materials being introduced to the Project in violation of Environmental Laws, and Section 29.33 of the Original Lease will apply to Tenant's installation, use and removal of the backup generator(s). Any repairs and maintenance of such generator(s) shall be the sole responsibility of Tenant and Landlord makes no representation or warranty with respect to such generator(s). If Tenant elects to do so, in its discretion, or if Tenant is so notified by Landlord, Tenant shall, at Tenant's sole cost and expense, remove such generator(s) upon the expiration or earlier termination of the Lease Term and repair all damage to the Project resulting from such removal. Such generator(s) shall be deemed to be a part of the Premises for purposes of Article 10 of the Original Lease.

14. **Multiple Buildings**. Landlord and Tenant acknowledge that it is Landlord's current intention to cause the ownership of all of the buildings of the Project to be held by the same entity. If, however, at any time during the New Expansion Term or any Option Term, Landlord determines to separate ownership of the buildings or to separately finance the buildings (where the lender requires separate documentation), Tenant agrees to promptly after request from Landlord, execute commercially reasonable documents in order to separate Tenant's lease of such building(s) of the Premises from the remaining building(s) of the Premises. Any such documentation shall be on the exact same terms as specified in the Lease (as amended) but as applicable to the relevant portion of the Premises.

15. **Entry by Landlord**. The reference to twenty-four (24) hours in the first sentence of Article 27 of the Original Lease is hereby extended to forty-eight (48) hours. Furthermore, except in an emergency, Landlord shall permit representatives of Tenant to be present during any such entry into the Premises by Landlord pursuant to Article 27 of the Original Lease.

16. **Holding Over**. The reference to one hundred fifty percent (150%) in the first sentence of Article 16 of the Original Lease is hereby reduced to one hundred twenty-five percent (125%). Furthermore, any such hold over by Tenant shall be at sufferance only (rather than from month-to-month) such that such payments which may be owed from Tenant to Landlord shall accrue on a per diem basis rather than a monthly basis.

17. **Utility Billing Information**. To the extent Tenant contracts directly for the provision of electricity, gas and/or water services to the Premises, Tenant shall promptly, but in no event more than twenty (20) days following its receipt of request from Landlord, provide Landlord with copies of invoices for such services (the "**Utility Bills**"). In addition, Tenant hereby authorizes Landlord to obtain copies of the Utility Bills directly from the utility providers and Tenant hereby authorizes each utility provider to provide Utility Bills and related utility usage information for the Premises directly to Landlord. From time to time, within twenty (20) days after Landlord's written request, Tenant shall execute and deliver to Landlord further assurances requested by Landlord authorizing such utility providers to provide to Landlord the Utility Bills and other information relating to utility usage at the Premises.

18. **No Certified Access Specialist Inspection**. For purposes of Section 1938 of the California Civil Code, Landlord hereby discloses to Tenant, and Tenant hereby acknowledges, that the Project has not undergone inspection by a certified access specialist (CASp).

19. **California Energy Disclosures**. Tenant acknowledges that Landlord has complied with Cal. Pub. Res. Code § 25402.10 and the disclosure regulations issued in connection therewith (e.g., California Code of Regulations, Title 20, Sections 1680 – 1684) by, among other things, delivering to Tenant the Disclosure Summary Sheet, Statement of Energy Performance, Data Checklist and Facility Summary (as such terms are defined in California Code of Regulations, Title 20, Section 1681) for the 6290 Expansion Premises (collectively, the "**Energy Information**") prior to the date hereof. Tenant acknowledges and agrees that (i) Landlord makes no representation or warranty regarding the energy

performance of the 6290 Expansion Premises or the accuracy or completeness of the Energy Information, (ii) the Energy Information is for the current occupancy and use of the 6290 Expansion Premises and that the energy performance of the 6290 Expansion Premises may vary, and (iii) Landlord shall have no liability for any errors or omissions in the Energy Information.

20. **Cosmetic Alterations**. The definition of Cosmetic Alterations set forth in the second sentence of Section 8.1 of the Original Lease is hereby deleted and replaced with the following: "Notwithstanding the foregoing, Tenant shall be permitted to make Alterations following ten (10) business days notice to Landlord, but without Landlord's prior consent, to the extent that such Alterations do not (i) adversely affect the systems and equipment of the Building or the Building Structure, or (ii) affect the exterior appearance of the Building (the "**Cosmetic Alterations**")."

21. **Non-Transfers**. Section 14.8 of the Original Lease is hereby modified by adding the following sentence: "In addition to the foregoing, Landlord's consent shall not be required for the use or occupancy of up to ten percent (10%) of the Premises by the employees and/or representatives of Tenant's business partners and/or of any joint venture enterprise in which Tenant or any of its affiliates is a participant, nor for the use thereof by any of Tenant's vendors, contractors and professional services providers, for the purpose of providing services in support of Tenant's business operations at the Premises, pursuant to any license agreement that does not survive the expiration or earlier termination of this Lease. However, (i) Tenant shall provide Landlord with written notice of any such license agreement, (ii) this clause shall not apply to any use or occupancy pursuant to a sublease, and (iii) this clause shall only apply to space within a building in which Tenant leases the entire building."

22. **Landlord Default**. Section 19.6 of the Original Lease is hereby modified by adding the following sentence: "Notwithstanding the foregoing, in the event Landlord is in default in the performance of any material obligation required to be performed by Landlord pursuant to this Lease beyond any cure period provided to Landlord under Section 19.6 of the Original Lease, and as a result thereof, Tenant is deprived of any of the following services in the quality and character as designated in the Lease: water, electricity, heating, ventilation and air conditioning, elevator service, paths of travel or the integrity of the Premises floor is significantly compromised (e.g. broken windows, façade damage, leaks), then upon delivery of an additional written notice to Landlord and the expiration of an additional ten (10) day cure period, Tenant may make such repairs or replacements as necessary to cure such default on Landlord's behalf. If Tenant takes such action and such work will affect the systems or structural integrity of the applicable building, Tenant shall use only those contractors used by Landlord for such work on such systems or structure unless such contractors are unwilling or unable to perform, or timely perform, such work, in which event Tenant may utilize the services of any other qualified contractor which is experienced in similar work in first-class office buildings. Tenant shall be entitled to prompt reimbursement by Landlord of Tenant's actual and reasonable costs in taking such action. However, if the work so performed by Tenant pertains to items that would otherwise be includable in Operating Expenses, then Landlord may include the amount of such reimbursement in Operating Expenses. If Landlord fails to reimburse Tenant for the actual and reasonable costs incurred by Tenant within thirty (30) days following receipt of an invoice from Tenant accompanied by reasonable evidence of such costs and if Landlord also fails to deliver a detailed written objection to such payment to Tenant within such thirty (30) day period, Tenant may offset, to the extent of all rental obligations under the Lease, all such costs (including reasonable attorney's fees and interest) incurred in exercising such self-help right(s). If, however, Landlord delivers to Tenant within thirty (30) days after receipt of Tenant's invoice, a written objection to the payment of such invoice, setting forth with reasonably particularity Landlord's reasons for its claim that such action did not have to be taken by Landlord pursuant to the terms of the Lease or that the charges are excessive (in which case Landlord shall pay the amount it contends is not excessive), then Tenant shall not be entitled to such deduction from rent, but Tenant may proceed to initiate an action to collect such amount from Landlord."

23. **Actual Cost**. Throughout the Lease, where reference is made to the obligation of Tenant to pay the "Actual Cost," "Actual Costs," or lower cased variations of such terms, as applicable to costs and expenses incurred, out-of-pocket or otherwise, such amounts shall be the actual costs paid or incurred by Landlord, as reasonably estimated by Landlord. Upon request by Tenant, Landlord shall, within thirty (30) business days of receipt of a written request by Tenant, disclose to Tenant in writing the basis for its estimate, excluding, when applicable, depreciation pertaining to increased utilization of certain equipment, and also excluding any profit to or overhead charge by Landlord and excluding the cost of personnel already charged to operating expenses. In the event such disclosure demonstrates that Landlord's estimate of the Actual Costs was done unreasonably, than the Actual Costs shall be adjusted to reflect what they should have been if Landlord had reasonably estimated said Actual Costs. In the case of an increase resulting from such adjustment, Tenant shall pay Landlord the difference within thirty (30)

days of demand therefore. In the case of a decrease, Landlord shall pay to Tenant the difference within thirty (30) days of demand therefore.

24. **No Further Modification**. Except as set forth in this Second Amendment, all of the terms and provisions of the Lease shall apply with respect to the 6290 Expansion Premises and the Lease shall remain unmodified and in full force and effect.

[Signatures follow on next page]

IN WITNESS WHEREOF, this Second Amendment has been executed as of the day and year first above written.

"LANDLORD":

KILROY REALTY,
L.P.,
a Delaware limited
partnership

By: /s/ Robert Palmer
Robert Palmer
Senior Vice President,
Operations

By: /s/ John T. Fucci
John T. Fucci
Senior Vice President, Asset
Management

"TENANT":

DEXCOM, INC.,

a Delaware corporation

By: /s/ Kevin Sayer
Kevin Sayer
President and Chief Operating Officer

By: /s/ Jess Roper
Jess Roper
Chief Operating Officer

EXHIBIT A
SEQUENCE TECHNOLOGY CENTER
OUTLINE OF 6290 INITIAL PREMISES AND 6290 MUST-TAKE PREMISES

EXHIBIT B

SEQUENCE TECHNOLOGY CENTER

WORK LETTER AGREEMENT

This Work Letter Agreement shall set forth the terms and conditions relating to the construction of the improvements in the 6290 Expansion Premises and the renovation of the leasehold improvements in the Existing Premises. This Work Letter Agreement is essentially organized chronologically and addresses the issues of the construction of the 6290 Expansion Premises and the renovation of the leasehold improvements in the Existing Premises, in sequence, as such issues will arise during the actual construction. All references in this Work Letter Agreement to Articles or Sections of "this Amendment" shall mean the relevant portion of the Second Amendment to which this Work Letter Agreement is attached as **Exhibit B** and of which this Work Letter Agreement forms a part. Capitalized terms used in this Work Letter Agreement shall have the same meaning as those terms are used and defined in the Second Amendment, unless such terms are otherwise defined in this Work Letter Agreement.

SECTION 1

LANDLORD'S INITIAL CONSTRUCTION IN THE PREMISES

1.1 **Base Building as Constructed by Landlord**. Upon the full execution and delivery of this Second Amendment by Landlord and Tenant, Landlord shall deliver the 6290 Expansion Premises and "Base Building," as that term is defined below, to Tenant, and Tenant shall accept the 6290 Expansion Premises and Base Building from Landlord in their presently existing, "as-is" condition. The "**Base Building**" shall consist of those portions of the 6290 Expansion Premises which were in existence prior to the construction of any improvements in the 6290 Expansion Premises for the prior tenant of the 6290 Expansion Premises.

1.2 **HVAC, Plumbing and Electrical Systems**. Notwithstanding anything to the contrary set forth in the Lease, the Second Amendment or Section 1.1 of this Work Letter Agreement, above, and subject to the TCCs of the last sentence of Section 1.1.1 of the Original Lease, Landlord shall, at Landlord's sole cost and prior to the Expansion Commencement Date, (i) cause the Base Building's HVAC, plumbing and electrical systems to be in good working order (the "**Systems Work**"), and (ii) cause the Commons Areas outside of the 6290 Building to comply with all Applicable Laws in effect as of the date of the Second Amendment (the "**Exterior Work**"). Landlord and Tenant acknowledge that the Systems Work and the Exterior Work may be performed concurrently with Tenant's construction of the Improvements in the 6290 Initial Premises and Landlord and Tenant agree to work together, in good faith, so that Landlord's construction of the Systems Work and the Exterior Work does not interfere with Tenant's construction of the Improvements in the 6290 Initial Premises and Tenant's construction of Improvements in the 6290 Initial Premises does not interfere with Landlord's construction of the Systems Work or the Exterior Work.

SECTION 2

IMPROVEMENTS

2.1 **In General**.

2.1.1 **Improvement Allowance**. Tenant shall be entitled to an improvement allowance (the "**6290 Expansion Premises Improvement Allowance**") in a total amount equal to $3,600,000.00 (which amount was calculated based upon $40.00 per rentable square foot for each of the 90,000 rentable square feet of space in the 6290 Expansion Premises) comprising the sum of (i) $1,800,000.00 (i.e., $40.00 per each rentable square foot of the 6290 Initial Premises) (the "**6290 Initial Premises Allowance**"), and (ii) $1,800,000.00 (i.e., $40.00 for each rentable square foot of the 6290 Must-Take Premises) (the "**6290 Must-Take Premises Allowance**"). In addition, Tenant shall be entitled to an improvement allowance (the "**Existing Premises Improvement Allowance**") in a total amount equal to $2,576,300.00 (which amount was calculated based up on $20.00 per rentable square foot for each of the 128,815 rentable square feet of space in the Existing Premises). The 6290 Expansion Premises Improvement Allowance and the Existing Premises Improvement Allowance may be collectively referred to herein as the "**Improvement Allowance**". The Improvement Allowance may be used for costs relating to the initial design, permitting, management and construction of improvements which are permanently affixed to the 6290 Expansion Premises and/or the Existing Premises (the "**Improvements**") and up to

$1,094,075.00 of the Improvement Allowance (based upon $5.00 per rentable square foot of the entire Premises) also may be used for costs of purchase and installation of built-in furniture, cabling, audio/visual equipment, security equipment, heating, ventilating and air conditioning equipment and systems, fire suppression and related equipment for the Existing Premises and/or the 6290 Expansion Premises (collectively, "**Miscellaneous Items**"). Tenant may utilize the 6290 Expansion Premises Improvement Allowance for Improvements and Miscellaneous Items in the 6290 Expansion Premises and/or the Existing Premises and Tenant may utilize the Existing Premises Improvement Allowance for Improvements and Miscellaneous Items in the Existing Premises and/or the 6290 Expansion Premises; provided, however, that at least One Million Eight Hundred Thousand Dollars ($1,800,000.00) of the Improvement Allowance must be used by Tenant for hard and soft costs of construction of the Improvements in the 6290 Expansion Premises (the "**6290 Minimum Allocation**"). All Improvements shall, as more particularly identified in Section 8.5 of the Original Lease, be and become the property of Landlord. Any portion of the Improvement Allowance used by Tenant for Miscellaneous Items shall be reimbursed to Tenant within thirty (30) days after Landlord's receipt of paid invoices for such items.

2.1.2 **Additional Allowance**. In addition to the 6290 Expansion Premises Improvement Allowance and the Existing Premises Improvement Allowance set forth in Section 2.1.1, above, Tenant shall, but only if so elected by Tenant in writing prior to the date upon which Tenant commences to construct the Improvements in the 6290 Initial Premises, the 6290 Must-Take Premises or the Existing Premises (as applicable), be entitled to a one-time additional allowance in an amount not to exceed $15.00 per rentable square foot of each of the 6290 Initial Premises, the 6290 Must-Take Premises and the Existing Premises (the "**Additional Allowance**") to be used solely for hard costs in the construction of the Improvements. In the event Tenant exercises its right to use all or any portion of the Additional Allowance, the monthly installments of Base Rent for the applicable 6290 Initial Premises, the 6290 Must-Take Premises or the Existing Premises (as otherwise set forth in Section 4 of this Second Amendment) shall be increased by an amount equal to the "**Additional Monthly Base Rent**" (defined below) applicable to the 6290 Initial Premises, the 6290 Must-Take Premises or the Existing Premises (as the case may be). The "Additional Monthly Base Rent" shall mean the amount sufficient to fully amortize the Additional Allowance utilized by Tenant over the "Amortization Period" (as that term is defined below) based up on equal monthly payments of principal and interest throughout such Amortization Period, with interest imputed on the outstanding principal balance at the rate of eight point five percent (8.5%) per annum. The "**Amortization Period**" shall mean (i) for any Additional Allowance attributable to the 6290 Initial Premises, a period of seven (7) years commencing upon the Expansion Commencement Date, (ii) for any Additional Allowance attributable to the 6290 Must-Take Premises, the period from the 6290 Must-Take Premises Commencement Date through the New Expiration Date, and (iii) for any Additional Allowance attributable to the Existing Premises, the period commencing upon the earlier of (A) the date of substantial completion of Improvements in the Existing Premises or (B) the date which is sixty (60) days after the date Tenant commences construction of Improvements in the Existing Premises, through the New Expiration Date. In no event shall the Additional Monthly Base Rent be subject to abatement.

2.1.3 **Improvement Allowance Sunset Date**. Any portion of the first $1,500,000.00 of the Improvement Allowance which has not been used for Improvements and Miscellaneous Items in the 6290 Initial Premises on or before the last day of the sixteenth (16th) full calendar month after the Expansion Commencement Date (the "**16 Month Deadline**") shall remain with Landlord and Tenant shall have no further right thereto. Any portion of the Improvement Allowance over and above the first $1,500,000.00 which has not been used on or before the last day of the forty-eighth (48th) full calendar month after the Expansion Commencement Date shall remain with Landlord and Tenant shall have no further right thereto. For clarity, Tenant's use of at least $1,500,000.00 of the 6290 Minimum Allocation for Improvements and Miscellaneous Items in the 6290 Initial Premises on or before the 16 Month Deadline shall satisfy the condition imposed by this Section 2.1.3 on such $1,500,000.00 portion of the Improvement Allowance.

2.2 **Disbursement of the Improvement Allowance**.

2.2.1 **Monthly Disbursements**. On or before a designated day of each calendar month during the construction of the Improvements, Tenant shall pay the Contractor, on a progress-payment basis, pursuant to the terms of the Contract (and net of any retention provided in the Contract); provided, however, and notwithstanding any provision to the contrary contained in this Work Letter Agreement, at least five (5) business days prior to making such monthly disbursements (or thirty (30) days prior to request for any monthly disbursements of the Improvement Allowance), Tenant shall have delivered to Landlord: (i) a construction schedule showing, by trade, the percentage of completion of the Improvements in the applicable portion of the Premises, detailing the portion of the work completed and the portion not completed; (ii) copies of invoices from all of Tenant's Agents for labor rendered and materials delivered to the applicable portion of the Premises; (iii) executed mechanic's lien releases from

all of Tenant's Agents which shall comply with the appropriate provisions, as reasonably determined by Landlord, of the California Civil Code; and (iv) all other information reasonably requested by Landlord (collectively, the "**Payment Package**"). Tenant's submission of each Payment Package to Landlord and corresponding payment to Contractor shall be deemed Tenant's acceptance and approval of the work furnished and/or the materials supplied as set forth in such Payment Package.

2.2.2 **Final Payments**. Landlord shall pay to Tenant the remaining portion of the Improvement Allowance attributable to the 6290 Initial Premises within five (5) business days following the later to occur of (i) the Expansion Commencement Date, and (ii) the completion of construction of Improvements in the 6290 Initial Premises; provided, however, such completion of construction shall not be deemed to have occurred unless and until (x) Tenant delivers to Landlord properly executed mechanics lien releases in compliance with both California Civil Code Section 8136 and Section 8138, (y) Landlord has determined that no substandard work exists which adversely affects the mechanical, electrical, plumbing, heating, ventilating and air conditioning, life-safety or other systems of the 6290 Building, the curtain wall of the 6290 Building, or the structure or exterior appearance of the 6290 Building, and (z) Architect delivers to Landlord a certificate, in a form reasonably acceptable to Landlord, certifying that the construction of the Improvements in the 6290 Initial Premises has been substantially completed. Similarly, Landlord shall pay to Tenant the remaining portion of the Improvement Allowance attributable to the 6290 Must-Take Premises within five (5) business days following the completion of construction of Improvements in the 6290 Must-Take Premises; provided, however, such completion of construction shall not be deemed to have occurred unless and until (x) Tenant delivers to Landlord properly executed mechanics lien releases in compliance with both California Civil Code Section 8136 and Section 8138, (y) Landlord has determined that no substandard work exists which adversely affects the mechanical, electrical, plumbing, heating, ventilating and air conditioning, life-safety or other systems of the 6290 Building, the curtain wall of the 6290 Building, or the structure or exterior appearance of the 6290 Building, and (z) Architect delivers to Landlord a certificate, in a form reasonably acceptable to Landlord, certifying that the construction of the Improvements in the 6290 Must-Take Premises has been substantially completed. Finally, Landlord shall pay to Tenant the remaining portion of the Improvement Allowance attributable to the Existing Premises within five (5) business days following the completion of construction of Improvements in the Existing Premises; provided, however, such completion of construction shall not be deemed to have occurred unless and until (x) Tenant delivers to Landlord properly executed mechanics lien releases in compliance with both California Civil Code Section 8136 and Section 8138, (y) Landlord has determined that no substandard work exists which adversely affects the mechanical, electrical, plumbing, heating, ventilating and air conditioning, life-safety or other systems of the Existing Premises, the curtain wall of the Existing Premises, or the structure or exterior appearance of the Existing Premises, and (z) Architect delivers to Landlord a certificate, in a form reasonably acceptable to Landlord, certifying that the construction of the Improvements in the Existing Premises has been substantially completed.

2.3 **Building Standards for Improvements; Warm Shell Condition**. Tenant acknowledges that Landlord has established minimum specifications (the "**Building Standards for Improvements**") for the Building standard components to be used in the construction of the Improvements in the 6290 Expansion Premises, which Building Standards for Improvements are set forth on **Schedule 1** attached hereto. Except for Building-standard doors, door hardware and lock sets, as well as all other items expressly identified on **Schedule 1** as "not changeable," Landlord and Tenant hereby acknowledge and agree that Tenant is not required to use any of the specific items set forth in **Schedule 1** in the construction of the Improvements, but that such Schedule 1 establishes the minimum quality and quantity of items listed thereon that are required with regard to the construction of the Improvements.

2.4 **Removal of Non-Conforming Improvements**. To the extent any particular Improvements do not conform to the Building Standards for Improvements (collectively, the "**Non-Conforming Improvements**"), and the same are identified for removal by Landlord at the time of Landlord's approval of the Construction Drawings, then Tenant, at its sole cost and expense, shall (A) remove any such Non-Conforming Improvements so identified for removal, (B) repair any damage caused by such removal, and (C) and return the affected portion of the Premises to the Warm Shell condition. Unless Landlord, in its sole and absolute discretion, rescinds such removal/repair/reconfiguration requirement in writing at least sixty (60) days prior to

the end of the Lease Term, as amended, such removal and replacement of Non-Conforming Improvements shall be performed promptly and shall be completed by Tenant on or before the end of the Lease Term, as amended. Notwithstanding the foregoing or anything to the contrary contained herein, Landlord agrees that Tenant shall not be required to remove any of the existing leasehold improvements from the Existing Premises other than those items listed on **Schedule 2** attached hereto.

SECTION 3

CONSTRUCTION DRAWINGS

3.1 **Selection of Architect/Construction Drawings**. Subject to Landlord's approval, which approval shall not be unreasonably withheld, delayed, or conditioned, Tenant shall select and retain an architect/space planner (the "**Architect**") to prepare the "Construction Drawings," as that term is defined in this Section 3.1; provided, however, Landlord hereby pre-approves Tony Mansour. Tenant shall retain (A) the structural, mechanical and electrical engineering consultants of its choice, subject to reasonable approval by Landlord (which approval shall not be unreasonably withheld, delayed or conditioned), and (B) subject to Landlord's approval (which approval shall not be unreasonably withheld, delayed, or conditioned), all other engineering consultants designated by Tenant (the "**Engineers**") to prepare all plans and engineering working drawings relating to the structural, mechanical, electrical, plumbing, HVAC, lifesafety, and sprinkler work for the Improvements, which work is not part of the Base Building. The plans and drawings to be prepared by Architect and the Engineers hereunder shall be known collectively as the "**Construction Drawings**." All Construction Drawings shall comply with the drawing format and specifications reasonably determined by Landlord, and shall be subject to Landlord's approval; provided, however, Landlord shall only disapprove any such Construction Drawing to the extent of a "Design Problem," as that term is defined below. Tenant and Architect shall verify, in the field, the dimensions and conditions as shown on the relevant portions of the base building plans, and Tenant and Architect shall be solely responsible for the same, and Landlord shall have no responsibility in connection therewith. Landlord's review of the Construction Drawings as set forth in this Section 3, shall be for its sole purpose and shall not imply Landlord's review of the same, or obligate Landlord to review the same, for quality, design, Code compliance or other like matters. Accordingly, notwithstanding that any Construction Drawings are reviewed by Landlord or its space planner, architect, engineers and consultants, and notwithstanding any advice or assistance which may be rendered to Tenant by Landlord or Landlord's space planner, architect, engineers, and consultants, Landlord shall have no liability whatsoever in connection therewith and shall not be responsible for any omissions or errors contained in the Construction Drawings, and Tenant's waiver and indemnity set forth in this Lease shall specifically apply to the Construction Drawings. A "**Design Problem**" is defined as, and shall be deemed to exist if there could be (i) an effect on the exterior appearance of the Project, (ii) an adverse effect on the Base Building (including without limitation the Building Structure), (iii) an adverse effect on the Building Systems or the operation and maintenance thereof, or (iv) any failure to comply with Applicable Laws or Code. Notwithstanding anything to the contrary contained herein, Landlord acknowledges that Tenant's security systems are fundamental to its business operations, and Landlord shall reasonably cooperate with Tenant, at no material extra cost to Landlord, to permit such security systems to be installed in the 6290 Expansion Premises in accordance with Tenant's reasonable security requirements. Landlord further acknowledges that the Improvements may include a truck well/loading and unloading area, as well as a data center, cafeteria, fitness, exercise and other on-site facilities (subject to Landlord's approval of Construction Drawings for any such item(s)), and that Landlord shall reasonably cooperate with Tenant, at no material extra cost to Landlord, in Tenant's design of such facilities.

3.2 **Final Space Plan**. Tenant shall supply Landlord with four (4) copies signed by Tenant of its final space plan for any portion of the Improvements before any architectural working drawings or engineering drawings have been commenced. The final space plan (the "**Final Space Plan**") shall include a layout and designation of all offices, rooms and other partitioning, their intended use, and equipment to be contained therein. Landlord may request clarification or more specific drawings for special use items not included in the Final Space Plan. Landlord shall advise Tenant within five (5) business days after Landlord's receipt of the Final Space Plan for the applicable portion of the Improvements if the same is unsatisfactory or incomplete in any respect; provided, however, Landlord shall only disapprove such Final Space Plans to the extent of a Design Problem. If Tenant is so advised, Tenant shall promptly direct the Architect to cause the Final Space Plan to be revised to correct any deficiencies or other matters Landlord may reasonably require, and immediately thereafter Architect shall promptly re-submit the Final Space Plan to Landlord for its approval. Such procedure shall continue until the Final Space Plan is approved by Landlord.

3.3 **Final Working Drawings**. After the Final Space Plan has been approved by Landlord, Tenant shall supply the Engineers with a complete listing of standard and non-standard equipment and specifications, including, without limitation, B.T.U. calculations, electrical requirements and special electrical receptacle requirements for the applicable portion of the Improvements, to enable the Engineers and the Architect to complete the "Final Working Drawings" (as that term is defined below) in the manner as set forth below. Upon the approval of the Final Space Plan by Landlord and Tenant, Tenant shall promptly cause the Architect and the Engineers to complete the architectural and engineering drawings for the applicable portion of the Improvements, and Architect shall compile a fully coordinated set of

architectural, structural, mechanical, electrical and plumbing working drawings in a form which is complete to allow subcontractors to bid on the work and to obtain all applicable permits (collectively, the "**Final Working Drawings**") and shall submit the same to Landlord for Landlord's approval. Tenant shall supply Landlord with four (4) copies signed by Tenant of such Final Working Drawings. Landlord shall, within five (5) business days after Landlord's receipt of all of the Final Working Drawings, either (i) approve the Final Working Drawings, (ii) approve the Final Working Drawings subject to specified conditions, which conditions must be stated in a reasonably clear and complete manner, and shall only be conditions reasonably intended to address a potential Design Problem, or (iii) disapprove and return the Construction Drawings to Tenant with requested revisions; provided, however, Landlord shall only disapprove such Final Working Drawings to the extent of a Design Problem. If Landlord disapproves the Final Working Drawings, Tenant may resubmit the Final Working Drawings to Landlord at any time, and Landlord shall approve or disapprove the resubmitted Final Working Drawings, based upon the criteria set forth in this Section 3.3, within three (3) business days after Landlord receives such resubmitted Final Working Drawings. Such procedure shall be repeated until the Final Working Drawings are approved.

3.4 **Approved Working Drawings**. The Final Working Drawings shall be approved by Landlord (the "**Approved Working Drawings**") prior to the commencement of construction of the applicable portion of the Improvements by Tenant. After approval by Landlord of the Final Working Drawings, Tenant shall submit the same to the appropriate municipal authorities for all applicable building permits. Tenant hereby agrees that neither Landlord nor Landlord's consultants shall be responsible for obtaining any building permit or certificate of occupancy for the applicable portion of the Improvements and that obtaining the same shall be Tenant's responsibility; provided, however, that Landlord shall cooperate with Tenant in executing permit applications and performing other ministerial acts reasonably necessary to enable Tenant to obtain any such permit or certificate of occupancy. No changes, modifications or alterations in the Approved Working Drawings may be made without the prior written consent of Landlord, provided, however, that Landlord may only disapprove of any such change to the extent the necessary to eliminate a Design Problem (as requested and approved, a "**Tenant Change**").

3.5 **Electronic Approvals**. Notwithstanding any provision to the contrary contained in the Lease or this Work Letter Agreement, Landlord may, in Landlord's sole and absolute discretion, transmit or otherwise deliver any of the approvals required under this Work Letter via electronic mail to Tenant's representative identified in Section 5.1 of this Work Letter, or by any of the other means identified in Section 29.18 of this Lease.

SECTION 4

CONSTRUCTION OF THE IMPROVEMENTS

4.1 **Tenant's Selection of Contractors**.

4.1.1 **The Contractor**. To the extent applicable, a general contractor shall be retained by Tenant to construct the Improvements. Such general contractor ("**Contractor**") shall be selected by Tenant, subject to Landlord's prior approval thereof, which approval shall not be unreasonably withheld or delayed.

4.1.2 **Tenant's Agents**. All subcontractors, laborers, materialmen, and suppliers used by Tenant (such subcontractors, laborers, materialmen, and suppliers, and the Contractor to be known collectively as "**Tenant's Agents**") must be approved in writing by Landlord, which approval shall not be unreasonably withheld or delayed. If Landlord does not approve any of Tenant's proposed subcontractors, laborers, materialmen or suppliers, Tenant shall submit other proposed subcontractors, laborers, materialmen or suppliers for Landlord's written approval.

4.2 **Construction of Improvements by Tenant's Agents**.

4.2.1 **Construction Contract; Final Costs**. To the extent a construction contract of any type, scope or nature is entered into by Tenant in connection with the Improvements identified herein, prior to Tenant's execution of the construction contract and general conditions with Contractor (the "**Contract**"), Tenant shall submit the Contract to Landlord for its approval, which approval shall not be unreasonably withheld or delayed. Prior to the commencement of the construction of the Improvements, and after Tenant has accepted all bids for the Improvements, Tenant shall provide Landlord with a detailed breakdown, by trade, of the final costs to be incurred or which have been incurred in connection with the design and construction of the Improvements to be performed by or at the direction of Tenant or the Contractor, which costs form a basis for the amount of the Contract (the "**Final Costs**"). To the extent

applicable during its construction of the Improvements, Tenant shall make monthly progress payments to the Contractor pursuant to Section 2.2.1 of this Work Letter Agreement.

4.2.2 **Tenant's Agents**.

4.2.2.1 **Landlord's General Conditions for Tenant's Agents and Improvement Work**. Tenant's and Tenant's Agent's construction of the Improvements shall comply with the following: (i) the Improvements shall be constructed in strict accordance with the Approved Working Drawings; (ii) Tenant's Agents shall submit schedules of all work relating to the Tenant's Improvements to Contractor and Contractor shall, within five (5) business days of receipt thereof, inform Tenant's Agents of any changes which are necessary thereto, and Tenant's Agents shall adhere to such corrected schedule; and (iii) Tenant shall abide by all rules made by Landlord's Building manager with respect to the use of freight, loading dock and service elevators, storage of materials, coordination of work with the contractors of other tenants, and any other matter in connection with this Work Letter Agreement, including, without limitation, the construction of the Improvements. Tenant shall pay a logistical coordination fee (the "**Coordination Fee**") to Landlord in an amount equal to the product of (A) one percent (1.0%) and (B) an amount equal to the "hard costs" incurred for the actual construction of the Improvements; provided, however, in no event shall the amount of such "hard costs" be deemed to exceed the amount of the Improvement Allowance; provided further, however, Landlord and Tenant hereby acknowledge that such Coordination Fee shall be for services relating to the coordination of the construction of the Improvements.

4.2.2.2 **Indemnity**. Tenant's indemnity of Landlord as set forth in this Lease shall also apply with respect to any and all costs, losses, damages, injuries and liabilities related in any way to any act or omission of Tenant or Tenant's Agents, or anyone directly or indirectly employed by any of them, or in connection with Tenant's non-payment of any amount arising out of the Improvements and/or Tenant's disapproval of all or any portion of any request for payment. Such indemnity by Tenant, as set forth in this Lease, shall also apply with respect to any and all costs, losses, damages, injuries and liabilities related in any way to Landlord's performance of any ministerial acts reasonably necessary (i) to permit Tenant to complete the Improvements, and (ii) to enable Tenant to obtain any building permit or certificate of occupancy for the 6290 Initial Premises or the 6290 Must-Take Premises (as the case may be).

4.2.2.3 **Requirements of Tenant's Agents**. Each of Tenant's Agents shall guarantee to Tenant and for the benefit of Landlord that the portion of the Improvements for which it is responsible shall be free from any defects in workmanship and materials for a period of not less than one (1) year from the date of completion thereof. Each of Tenant's Agents shall be responsible for the replacement or repair, without additional charge, of all work done or furnished in accordance with its contract that shall become defective within one (1) year after the completion of the work performed by such contractor or subcontractors. The correction of such work shall include, without additional charge, all additional expenses and damages incurred in connection with such removal or replacement of all or any part of the Improvements, and/or the applicable building and/or Common Areas that may be damaged or disturbed thereby. All such warranties or guarantees as to materials or workmanship of or with respect to the Improvements shall be contained in the Contract or subcontract and shall be written such that such guarantees or warranties shall inure to the benefit of both Landlord and Tenant, as their respective interests may appear, and can be directly enforced by either. Tenant covenants to give to Landlord any assignment or other assurances which may be necessary to effect such right of direct enforcement.

4.2.2.4 **Insurance Requirements**.

4.2.2.4.1 General Coverages. All of Tenant's Agents shall carry worker's compensation insurance covering all of their respective employees, and shall also carry public liability insurance, including property damage, all with limits, in form and with companies as are required to be carried by Tenant as set forth in this Lease.

4.2.2.4.2 Special Coverages. Tenant shall carry "Builder's All Risk" insurance in an amount approved by Landlord covering the construction of the Improvements, and such other insurance as Landlord may require, it being understood and agreed that the Improvements shall be insured by Tenant pursuant to the Lease immediately upon completion thereof; provided, however, to the extent such insurance is not available on a commercially reasonable basis, then Tenant shall not be required to carry such insurance. Such insurance shall be in amounts and shall include such extended coverage endorsements as may be reasonably required by Landlord including, but not limited to, the requirement that all of Tenant's Agents shall carry excess liability and Products and Completed Operation

Coverage insurance, each in amounts not less than $500,000 per incident, $1,000,000 in aggregate, and in form and with companies as are required to be carried by Tenant as set forth in the Lease.

4.2.2.4.3 General Terms. Certificates for all insurance carried pursuant to this Section 4.2.2.4 shall be delivered to Landlord before the commencement of construction of the Improvements and before the Contractor's equipment is moved onto the site. All such policies of insurance must contain a provision that the company writing said policy will give Landlord thirty (30) days prior written notice of any cancellation or lapse of the effective date or any reduction in the amounts of such insurance. In the event that the Improvements are damaged by any cause during the course of the construction thereof, Tenant shall immediately repair the same at Tenant's sole cost and expense. Tenant's Agents shall maintain all of the foregoing insurance coverage in force until the Improvements are fully completed and accepted by Landlord, except for any Products and Completed Operation Coverage insurance required by Landlord, which is to be maintained for ten (10) years following completion of the work and acceptance by Landlord and Tenant. All policies carried under this Section 4.2.2.4 shall insure Landlord and Tenant, as their interests may appear, as well as Contractor and Tenant's Agents. All insurance, except Workers' Compensation, maintained by Tenant's Agents shall preclude subrogation claims by the insurer against anyone insured thereunder. Such insurance shall provide that it is primary insurance as respects the owner and that any other insurance maintained by owner is excess and noncontributing with the insurance required hereunder. The requirements for the foregoing insurance shall not derogate from the provisions for indemnification of Landlord by Tenant under Section 4.2.2.2 of this Work Letter Agreement. Landlord may, in its reasonable discretion, require Tenant to obtain a lien and completion bond or some alternate form of security satisfactory to Landlord in an amount sufficient to ensure the lien-free completion of the Improvements and naming Landlord as a co-obligee.

4.2.3 **Governmental Compliance**. The Improvements shall comply in all material respects with the following: (i) the Code and other state, federal, city or quasi-governmental laws, codes, ordinances and regulations, as each may apply according to the rulings of the controlling public official, agent or other person; (ii) applicable standards of the American Insurance Association (formerly, the National Board of Fire Underwriters) and the National Electrical Code; and (iii) building material manufacturer's specifications.

4.2.4 **Inspection by Landlord**. Landlord shall have the reasonable right to inspect the Improvements at all times, provided however, that Landlord's failure to inspect the Improvements shall in no event constitute a waiver of any of Landlord's rights hereunder nor shall Landlord's inspection of the Improvements constitute Landlord's approval of the same. Should Landlord disapprove any portion of the Improvements, Landlord shall notify Tenant in writing of such disapproval and shall specify the items disapproved. Any defects or deviations in, and/or disapproval by Landlord of, the Improvements shall be rectified by Tenant at no expense to Landlord, provided however, that in the event Landlord determines that a defect or deviation exists or disapproves of any matter in connection with any portion of the Improvements and such defect, deviation or matter might adversely effect the mechanical, electrical, plumbing, heating, ventilating and air conditioning or life-safety systems of the applicable building, the structure or exterior appearance of the applicable building or any other tenant's use of such other tenant's leased premises, Landlord may, take such action as Landlord deems necessary, at Tenant's expense and without incurring any liability on Landlord's part, to correct any such defect, deviation and/or matter, including, without limitation, causing the cessation of performance of the construction of the Improvements until such time as the defect, deviation and/or matter is corrected to Landlord's satisfaction.

4.2.5 **Meetings**. Tenant and Landlord shall hold regular meetings at reasonable times (but in no event to be required more often than weekly), with the Architect and the Contractor regarding the progress of the preparation of Construction Drawings and the construction of the Improvements, which meetings shall be held at a location and at times mutually and reasonably agreed upon by Landlord and Tenant, and Landlord and/or its agents shall receive prior notice of, and shall have the right to attend, all such meetings, and, upon Landlord's request, certain of Tenant's Agents shall attend such meetings. In addition, minutes shall be taken at all such meetings, a copy of which minutes shall be promptly delivered to Landlord. One such meeting each month shall include the review of Contractor's current request for payment.

4.3 **Notice of Completion; Copy of Record Set of Plans**. Within ten (10) business days after completion of construction of the Improvements, Tenant shall cause a Notice of Completion to be recorded in the office of the Recorder of San Diego County in accordance with the Civil Code of the State of California, and shall furnish a copy thereof to Landlord upon such recordation. If Tenant fails to do so, Landlord may execute and file the same on behalf of Tenant as Tenant's agent for such purpose, at Tenant's sole cost and expense. At the conclusion of construction, (i) Tenant shall cause the Architect and

Contractor (A) to update the Approved Working Drawings as necessary to reflect all changes made to the Approved Working Drawings during the course of construction, (B) to certify to the best of their knowledge that the "record-set" of as-built drawings are true and correct, which certification shall survive the expiration or termination of this Lease, and (C) to deliver to Landlord two (2) sets of copies of such record set of drawings, and (ii) Tenant shall deliver to Landlord a copy of all warranties, guaranties, and operating manuals and information relating to the improvements, equipment, and systems in the applicable portion of the Premises.

SECTION 5

MISCELLANEOUS

5.1 **Tenant's Representative**. Tenant has designated James Gillard as its sole representative with respect to the matters set forth in this Work Letter Agreement (whose e-mail address for the purposes of this Work Letter is jgillard@dexcom.com, who shall have full authority and responsibility to act on behalf of the Tenant as required in this Work Letter Agreement.

5.2 **Landlord's Representative**. Landlord has designated Mr. Jake Brehm as its sole representative with respect to the matters set forth in this Work Letter Agreement (whose e-mail address for the purposes of this Work Letter is jbrehm@kilroyrealty.com), who, until further notice to Tenant, shall have full authority and responsibility to act on behalf of the Landlord as required in this Work Letter Agreement.

5.3 **Time of the Essence in This Work Letter Agreement**. Unless otherwise indicated, all references herein to a "number of days" shall mean and refer to calendar days. If any item requiring approval is timely disapproved by Landlord, the procedure for preparation of the document and approval thereof shall be repeated until the document is approved by Landlord.

SCHEDULE 1 TO EXHIBIT B

BUILDING STANDARDS FOR IMPROVEMENTS

The following Improvements Standards identify the minimum quality for items used in the construction of Improvements.

All Improvements work shall comply with this Building Standard for a minimum quality of material and general design guidelines for specific design criteria, product specifications and means and methods to be employed during the execution of the work.

STANDARD PARTITIONS

DEMISING PARTITION
a. 3-5/8" x 25 min. gauge metal studs @ 16" on center.
b. 1 layer each side 5/8" thick type 'x' gypsum wallboard (where required).
c. From floor slab to underside of concrete and metal deck floor/roof structure.
d. R11 batt sound insulation in partition cavity (portion of walls – corridor, bathrooms & some office).
e. Partition taped and sanded smooth to receive paint.
f. Fire caulk @ partition and metal deck as required by City of San Diego.
g. Provide minimum opening above ceiling as required for return air, with sound boots.

INTERIOR PARTITION
a. 2-1/2" x 25 gauge metal studs @ 24" on center.
b. 1 layer each side 5/8" thick type 'x' gypsum wallboard. From floor slab to underside of ceiling grids as applicable. Height may vary.
c. Diagonal Bracing: 2-1/2" x 25 gauge metal studs at 45 degree diagonal to structure above staggered @ 4'-0" on center, and at door openings.
d. Partition taped and sanded smooth to receive paint to a minimum of Level 4 finish.
e. Metal corner bead at terminations of partitions and at the ceiling.
f. All demising walls and tenant conference room walls to receive R-11 batt insulation within partition cavity and four foot on either side of partition over ceiling.

INTERIOR ONE-HOUR SEPARATION PARTITION
a. Same as demising partition with fire dampers as required for penetrations and return air.
b. Type X 5/8" wallboard shall be fire taped where fire ratings are required.

INTERIOR LOW PARTITION
a. 2-1/2" x 25 gauge metal studs @ 16" on center.
b. 1 layer each side and top 5/8" thick type 'x' gypsum wallboard.
c. Heights vary to maximum of 68" above floor.
d. Metal corner beads at all exposed corners.
e. Partition taped and sanded smooth to receive paint to a minimum of Level 4 finish.
f. Pipe support at free end within partition cavity and every 4' on center.

EXTERIOR WALL FURRING
a. Below glazing sill and above glazing head, 1 layer 5/8" thick gypsum wallboard.
b. Taped and sanded smooth to receive paint.

COLUMN FURRING
a. 2-1/2" x 25 gauge metal studs @ 24" on center.
b. 1 layer one side 5/8" thick type 'x' gypsum wallboard.
c. From floor slab to 6" above ceiling grid or to deck above.
d. Partition taped and sanded smooth to receive paint to a minimum of Level 4 finish.

DOORS, FRAMES AND HARDWARE

SINGLE CORRIDOR DOOR AND HARDWARE
a. Single leaf U.L. rated, 20-minute suite entry door label attached to hinge side of door, 1-3/4" x 3'-0" x 8'-10", solid core wood, clear plain sliced select white maple, book matched edges. Door shall be pre-finished and pre-mortised for hardware.

b. Frame: 3’-0” x 8’-10” “ Western Integrated prefinished satin aluminum with clear coat with squared edge, 20-minute fire rated.
c. Hardware: Butts: two pair per door, Hager 700; Door Hardware: Schlage “L” Series, Lever style #17, A- Wrought Rose- typ.; Entrance Lockset # L9453P-626, Latchset # L9010P-626, and Office Lockset # L9050-626; Door Stop: Hager 236W, concave wall stop; Closer: LCN #1461FC (where required); typical hardware finish: satin aluminum or satin stainless steel throughout unless otherwise noted.
d. Closer at entry doors and any rated doors required by code: LCN 1460 Series, 4111 cylinder for accessibility.

DOUBLE CORRIDOR DOOR AND HARDWARE
a. Double leaf U.L. rated 20-minute suite entry doors with label attached to hinge side of doors, 1-3/4” x 6’-0” x 8’-10”, solid core wood, clear plain sliced select white maple, book matched edges. Door shall be pre-finished and pre-mortised for hardware. Book match face veneers with premium veneers grade of doors with matching veneer at vertical edge.
b. Door shall be pre-finished and mortised for hardware.
c. Frame: 6’-0” x 8’-10”, ‘Western Integrated’ prefinished satin aluminum with clear coat with squared edge, 20-minute fire rated.
d. Hardware: Same as above modified and supplemented for double doors.

SINGLE INTERIOR DOOR AND HARDWARE
a. Single leaf, 1-3/4” x 3’-0” x 8’-10”, solid core wood, 5 ply, plain sliced maple veneer, clear finish and premium grade.
b. Matching veneer at vertical edges.
c. 20-minute rated with label attached to hinge side of door.
d. Door shall be prefinished and mortised for hardware.
e. Frame: 3’-0” x 8’-10”, ‘Western Integrated’ flush trim clear anodized extruded aluminum, 20-minute fire rated.
f. Hardware: Schlage “L” Series: Lever style #17, A- Wrought Rose, finish 626 satin chrome. Corbin Russwin cylinders with an inter-changeable core and keyway. Hinges: AB700, 4.5 x 4.5, ‘Hager’, finish: stainless steel – satin. Stop: ‘Trimco’ 1211 series, finish 626.
g. Sidelights shall be provided at all private offices as applicable.

DOUBLE INTERIOR DOOR AND HARDWARE
a. Double leaf, 1-3/4” x 6’-0” x 8’-10”, solid core wood, 5 ply, plain sliced maple veneer, clear finish and premium grade.
b. Match face veneers of doors. Matching veneer at vertical edges.
c. 20-minute rated with label attached to hinge side of the door.
d. Door shall be prefinished and mortised for hardware.
e. Frame: 6’-0” x 8’-10”, ‘Western Intgrated’ flush trim clear anodized extruded aluminum, 20-minute fire rated.
f. Hardware: Schlage “L” Series: Lever style #17, A- Wrought Rose- typ, finish 626 hardware finish 626 satin chrome. Corbin Russwin cylinders with an inter-changeable core and D3 keyway. Hinges: AB700, 4.5 x 4.5, ‘Hager’, finish: stainless steel – satin. Stop: ‘Trimco’ 1211 series, finish 626. Auto flush bolts: DCI No. 942, finish to match 626. Coordinator: DCI No. 600 series, finish to match 626. Closer: LCN 4041 series, parallel arm-heavy duty, finish: to match 626. Closer: LCN 4041 series, parallel arm-heavy duty, finish to match 626. Astragal: ‘Pemco’ 355CV.

OPTIONAL DOORS AS APPROVED BY LANDLORD
a. Optional Doors as Selected by the Tenant for the tenant’s interior space may be submitted as outlined below subject to Landlords Approval:
Premium Grade wood doors with single glass lites with a stained and lacquered finish. Colors to match building standard, subject to Landlord Approval
Herculite Glass Doors with Stainless Steel Styles at top and bottom and concealed hinges.
Aluminum Storefront Doors with clear anodized finish set in Aluminum frames to match.

ACOUSTICAL CEILINGS
a. 2’ X 2’ x 9/16” Armstrong, Superfine XL 9/16” exposed tee system, finish: matte white, Steel T-bar grid system with wire suspension and seismic bracing per code.
b. Tile: 24” X 24” X 7/8” Armstrong acoustical tile; Pattern - Dune with tegular edge detail: Color - white.
c. Optional Ceiling Tile and Grid as Selected by the Tenant for the tenant’s interior space may be submitted as outlined below subject to Landlords Approval.

d. Premium Grade Architectural Ceiling Tile and Grid subject to code compliance with textures and finishes as selected by tenant, subject to Landlord Approval.
e. Tenant may elect to design an open ceiling plan subject to Landlords Approval.
f. Open Ceilings may incorporate the following:
Floating Architectural Ceilings with Composo Edges and trims.
Floating Hard lid ceilings.
Painted and Exposed Structure for Loft Style Architectural Impact.

ELECTRICAL
The main base building electrical service consists of a 1,200 Amp, 480/277 Volt 3 Phase, 4 Wire Switch board identified as HSE located within an electrical room for house panels and core services

A separate 3,000 Amp, 480/277 Volt - 3 Phase - 4 wire Switchboard identified as “MSE” is also located within the electrical room for tenant distribution.

277v distribution, lighting panels, transformers and 120v convenience power panels shall be part of the Premise Improvements.

All electrical distribution shall be fully engineered in compliance with local building codes, the National Electric Code and California Title 24 and shall be subject to Landlords review and approval.

Tenant electrical drawings shall include a review of the base building electrical drawings to include all necessary metering, distribution and connections.

Tenant electrical design, fixtures and components shall be subject to certification by Landlord’s consultant.

LIGHT FIXTURES
a. Recessed Columbia 2x4 Direct/Indirect Fluorescent Fixture. (Verify and Match existing)
a. STR24-2326-MPO-EB8277
b. Micro Perforated Mesh Lamp Shield.
c. (2) T-8 lamps per fixture with electronic rapid start ballast
d. Lamps: Phillips 32 Watt
e. Color 3500K
b. Recessed Columbia 2x2 Direct/Indirect Fluorescent Fixture. (Verify and Match existing)
a. STR22-217G-MPO-EB8277
b. Micro Perforated Mesh Lamp Shield.
c. (2) T-8 lamps per fixture with electronic rapid start ballast
d. Lamps: (2) 17w WT8-82CRI
e. Color 3500K
c. Delray Rocket II Pendant Hung Compact Fluorescent Light Fixtures
d. Verve II Suspended Linear Indirect Fixture

Tenant may elect to use additional or alternate Architectural Lighting subject to Landlords Approval of Plans and Specs.

LIGHT CONTROLS
a. Novitas Sensors.
b. Wall - #01-DL401.
c. Ceiling: One Way 01-100.
d. Ceiling: Two Way 01-110

ELECTRICAL WALL OUTLET
a. Specification Grade, Leviton 15A, 125V, Decora/single switch.
b. Color - White.
c. Mounted vertically.
d. Outlet height at 15” above finish floor to centerline of outlet U.O.N. as required for ADA compliance.

TELEPHONE WALL OUTLET
a. Mud ring cut into wall - mounted vertically.
b. ¾” metal conduit stub above ceiling with 6” pigtail at top of wall.

c. Cover plate and wiring by Tenant's telephone vendor.

EXIT SIGN LIGHTS
a. Alkco Edge-Glo Exit /Directional signs, recessed ceiling mounted LED housing, green letters on a clear panel background or equivalent.
b. Provide exit lights with battery back up at all exits required by code.
c. All life safety items including horns & strobes and speaker shall have white covers.

AUTOMATIC FIRE SPRINKLERS
a. Fully fire sprinklered building with main and branch distribution lines available for tenant modification.
b. Reliable sprinkler model "G" pendant semi-recessed sprinkler with white sprinkler and escutcheon.
165 degree Fahrenheit temperature rating.
c. Reliable sprinkler model "G4" concealed sprinkler head with white cover plate. (To be used in all public areas).
165 degree Fahrenheit temperature rating.

HEATING AND AIR CONDITIONING DISTRIBUTION
All mechanical design shall be fully engineered in compliance with local building codes, the Uniform Mechanical Code and California Title 24.

All new mechanical fixtures and components shall be subject to certification by Landlord's consultant.

AIR DISTRIBUTION FOR TYPICAL FLOORS
Interior Zones shall be conditioned by Water Source Heat Pumps and installed as part of the tenant improvements. Water Source Heat Pumps shall be sized as required to meet ASHREA standards and equipped with Vibration Isolators, Balancing Valves, Strainers, Flow Controls and Shut Off Valves.

Condenser water is delivered to the individual floors by a condenser water loop that is sized as required and installed as a part of the shell construction.

Each zone shall be controlled by an electronic thermostats tied back to the base building energy management system.

Tenant may elect to design an open ceiling plan with existing exposed galvanized rigid ductwork configured as required for tenant distribution of conditioned air.

Air delivery above concealed ceiling spaces may be via low pressure, insulated ducting with air diffusers as described below. Diffusers may be any one of the following as selected by the tenant and tenant's Architect.

Lay-in tile ceiling diffusers.

Architectural air-bar linear diffusers.

Light troffer diffusers.

PLUMBING
All plumbing design shall be fully engineered in compliance with local building codes, the Uniform Plumbing Code and California Title 24.

All new plumbing fixtures shall be subject to certification by Landlord's consultant.

Approved plumbing fixtures include:
a. "Elkay" Pacemaker sink # PSR-1720 - stainless steel, two faucet holes, or equivalent.
b. Hi-Arc Dual Handle bar faucet by "Elkay" # LK-2437-BH or equivalent.
c. Undercounter Dishwasher: Asko model #D1706, suitable for ADA requirements.
d. Garbage Disposal: Insinkerator, Model #77, ¾ horsepower, stainless steel construction.

FINISHES

GLAZING / WINDOW FRAMES AT OFFICES & CONFERENCE ROOM:
a. Shall be Western Integrated aluminum, 3-3/4" or 4-7/8" throat, pre-finished satin aluminum w/ clear coat with squared edge- to match standard door frames style and color.
b. ¼" glazing, clear, tempered where required by code.
c. Side-lite glazing, size: 1'-6" wide by full height (inside window frame to window frame)
d. All private office shall have side-lites.

PAINT
a. Manufacturer: As approved Landlord.
b. Two coats minimum semi-gloss interior latex washable paint.
c. Include paint on tenant side of demising partition, both sides of interior partition, above and below exterior glazing as required and all column fur outs and perimeter walls.

FLOOR COVERING/LOBBY & COMMON AREAS
a. Carpet: Loop: 28 oz. or equal, Manufacture as approved Landlord.
b. Direct glue down installation for all carpet.
c. 12 x 12 Vinyl Tile shall be 'Armstrong' or approved equal.
d. Optional architectural flooring as approved by Landlord

TILE FLOORING
a. Ceramic tile or Natural stone as selected by tenant subject to Landlord's approval.

BASE
a. 2-1/2" Rubber Base by Roppe
b. 2 ½" tile base in tiled areas as approved by Landlord.

PLASTIC LAMINATE
a. Formica, Wilsonart or approved equal.

WINDOW COVERINGS
a. Exterior window covering to be PVC Perforated Vertical Blinds.
b. Blinds to be sized to fit inside window module.
c. MechoShade –With Landlord's prior approval, manually operated units are to receive ThermoVeil 0900 Series Privacy Weave ShadeCloth with an approximate openness factor of 0-1%. Color is to match (0910 Light Grey) the fabric used on the shades.

FIRE/LIFE SAFETY
Fire Life Safety components shall be furnished and installed as required by the City of San Diego Fire Marshall and installed by the Landlord's Building Life Safety contractor at the Tenant's sole cost and expense.

SCHEDULE 2 TO EXHIBIT B

NON-CONFORMING IMPROVEMENTS
CURRENTLY EXISTING IN EXISTING PREMISES

Remove compressed air, nitrogen, and vacuum lines throughout the building as well as the associated systems.

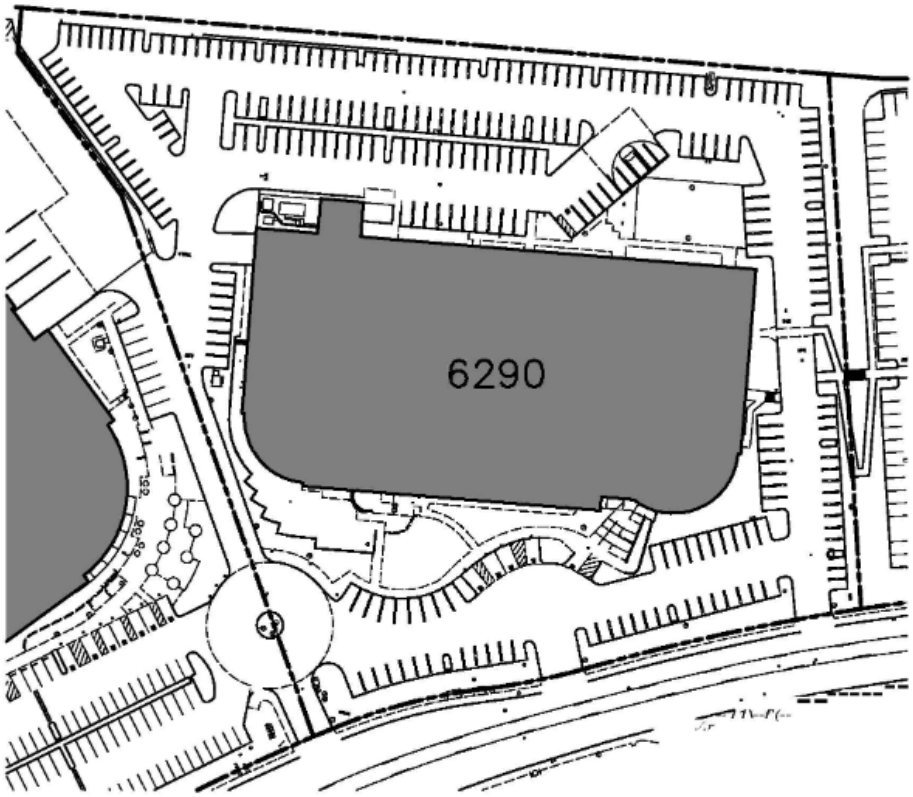
Remove ceiling receptacles throughout lab space.

Remove security systems including card access and cameras.

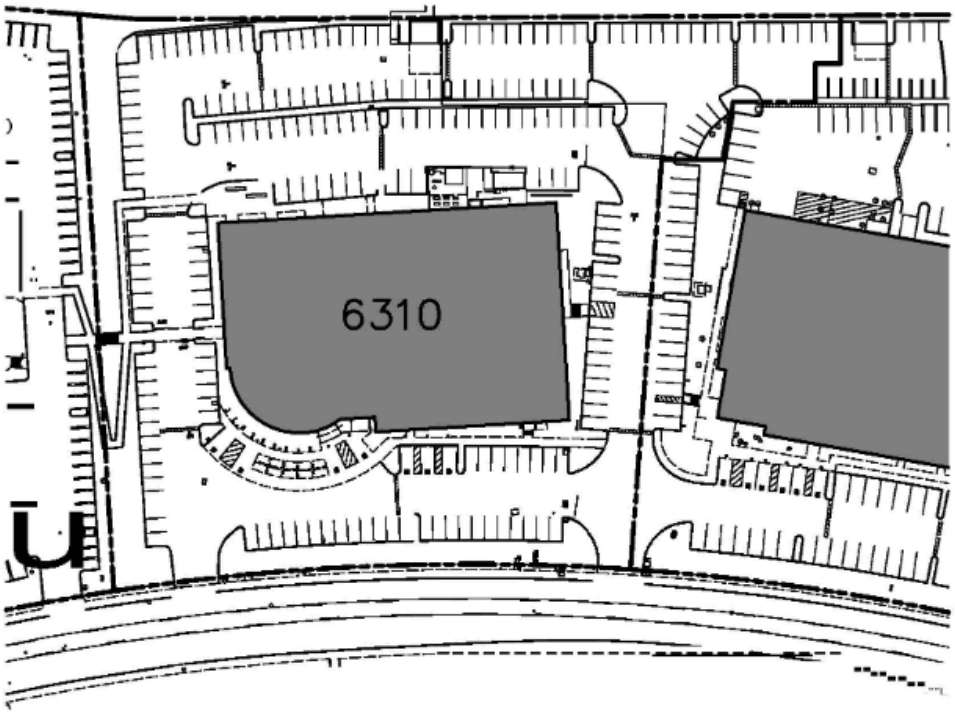
Remove supplemental HVAC systems that are not in good working order as of the New Expiration Date, as the same may be extended (but Tenant shall have no obligation to remove any of the associated steel roof supports).

EXHIBIT C

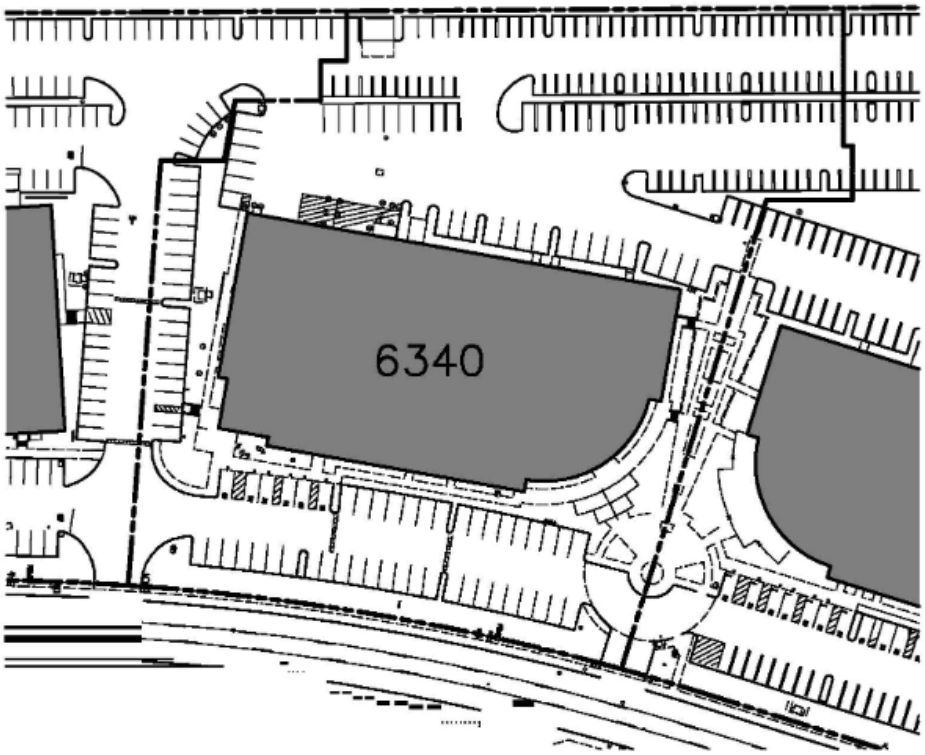
PARKING AREAS



6290 SEQUENCE DRIVE



6310 SEQUENCE DRIVE



6340 SEQUENCE DRIVE

EXHIBIT D

PRE-APPROVED LOGO

4811-3588-9950, v. 4

CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY [******], HAS BEEN OMITTED BECAUSE IT IS NOT MATERIAL AND IS THE TYPE THAT THE REGISTRANT TREATS AS PRIVATE AND CONFIDENTIAL.

Amendment Number One to Non-Exclusive Distribution Agreement

This Amendment Number One to the Non-Exclusive Distribution Agreement ("Amendment Number One") is made as of March 29, 2011, by and between DexCom, Inc., a Delaware corporation, with a principal place of business at 6340 Sequence Drive, San Diego, California 92121 (the "Company") and RGH Enterprises, Inc., an Ohio corporation with offices at 1810 Summit Commerce Park, Twinsburg, Ohio 44087 (the "Distributor").

WITNESSETH

WHEREAS, Company and Distributor previously entered into a Non-Exclusive Distribution Agreement, effective April 30, 2008 (the "Agreement").

WHEREAS, Company and Distributor wish to amend the Agreement as set forth herein in accordance with Section 6.1 and 16.9 of the Agreement.

THEREFORE, Company and Distributor agree as follows:

1. **Schedule 1.** Schedule 1 shall be replaced in its entirety as follows:

SCHEDULE 1

The Products and the Prices

Pricing set forth below was effective as of October 1, 2010 and shall be in effect for the period through March 31, 2012, notwithstanding Section 6.1 of this Agreement.

SEVEN PLUS

SKU	Product Description	Transfer Price
[******]	SEVEN PLUS Starter Kit*	[******]
[******]	SEVEN Sensors (package of four (4))*	[******]
[******]	SEVEN PLUS Replacement Receiver*	[******]
[******]	SEVEN PLUS Replacement Transmitter*	[******]

* The Products will be supplied FOB Shipping Point freight prepaid by Distributor and sales taxes to be paid by Distributor.

[******]

2. **Section 4**. A new section 4.1.29 shall be added as follows:

4.1.29. not to stock more than [******] of Sensor inventory; provided however that Company acknowledges that, from time to time, Distributor may stock an amount of Sensor inventory equal to more than [******] based on demand fluctuations. Distributor also agrees not to sell any Sensors where the shelf-life on the Sensors is less than the time of reasonable consumption by the Customer, and in no instance to ship Sensors with a shelf-life of less than [******].

3. **Section 4**. A new section 4.1.30 shall be added as follows:

4.1.30. in material respects, to ship Sensors to Customer within 3 business days of receiving prior authorization approval from the Customer's insurance company, or in the alternative, upon notice of a denial of a prior authorization request, to inform the Company within 24 hours of such denial.

4. **Section 4**. A new section 4.1.31 shall be added as follows:

4.1.31. to provide, within seven days of the end of each calendar month, a report detailing Distributor's month-end inventory balance of Sensors (which report Company shall retain the right to audit on a periodic basis with advance notice to Distributor).

5. **Section 4**. A new section 4.1.32 shall be added as follows:

4.1.32. To ensure that Company can provide adequate adverse event reporting or to ensure that Company can complete any required remedial action or product recall within timeframes required by law, Distributor agrees to provide device tracking reports in accordance with the applicable provisions of the Health Insurance Portability and Accountability Act Privacy and Security Standards (HIPAA). In furtherance of this purpose, Distributor agrees to provide, as soon as reasonably possible, but in no less than two business days from request by Company, all relevant patient information necessary to provide adequate service to a patient who presents issues requiring regulatory filings or response, or technical support.

6. **Section 4**. A new section 4.1.33 shall be added as follows:

4.1.33 to provide, within seven days of the end of each calendar month, a report containing the detail required under Schedule 4 hereof.

7. **Section 4**. A new section 4.1.34 shall be added as follows:

4.1.34. to comply with the requirements of the Quality Agreement set forth in Schedule 5 hereof.

8. **Section 4**. A new section 4.1.35 shall be added as follows:

4.1.35. For so long as the pricing set forth in Schedule 1 hereof does not increase with respect to the SEVEN PLUS Starter Kits and Sensors, Distributor agrees not to knowingly initiate any attempts or offers to switch any existing Distributor customer who use the Products to products of any other manufacturer without written consent from the Company. Absent medical or clinical necessity to do so, any such attempt or offer to switch existing Distributor customers who use the Products to any other manufacturer's products may render this Agreement immediately terminable by Company after discussions between the Company and Distributor to ascertain the root cause of such attempts.

9. **Section 4**. A new section 4.1.36 shall be added as follows:

4.1.36. to provide the Company with forecasts by Product in accordance with requirements set forth in Schedule 6.

10. **Section 5**. A new section 5.1.4 shall be added as follows:

5.1.4. to stock Sensors with Distributor based on purchase orders submitted by Distributor and to ship Sensors to Distributor consistent with Schedule 6.

11. **Section 11**. Sections 11.1 and 11.2 shall be amended and replaced in its entirety by the following:

Section 11.1. The term of this Agreement, as amended, shall extend for a period of twenty-four months from the date of this Amendment Number One, and shall automatically renew for successive one (1) year renewal periods (the “Term”), provided that either Party may elect not to renew the Agreement by providing not less than ninety (90) days prior written notice to that effect to the other Party. The Parties may at any time agree in writing to extend the Term or to renew this Agreement.

Section 11.2. Either party may terminate this Agreement immediately, by providing written notice to the other party in the event of any of the following events:

Section 11.2.1. the other party is in breach of this Agreement and has not remedied such breach within thirty (30) days of receiving written notice from the non-breaching party to do so, or within fifteen (15) days with respect to Section 4.1.33 of this Agreement regarding the provision of sales and warranty replacement reports;

Section 11.2.2. the effective control of the Distributor shall change, to the extent that such Distributor change of control would negatively impact its credit or would negatively impact its ability to service and market the Products; or

Section 11.2.3. the other party shall become insolvent or have a receiver appointed of its business or go into liquidation (except for the purposes of amalgamation or reorganization).

In addition, either party may terminate the Agreement in the event that, after good faith negotiations, the parties are unable to reform this Agreement as necessary to comply with applicable law, regulations, or governmental guidance (the “Law”). Before termination, the parties shall, in good faith, immediately renegotiate or reform this Agreement as necessary to comply with the Law and to preserve the intent of this Agreement consistent with the requirements of the Law.

12. Sections 16.1 shall be amended and replaced in its entirety by the following:

Section 16.1. Notice. Any notice or other communication required or permitted to be given under this Agreement shall be properly served only if it is in writing addressed as set out below. Notice may be sent by any of the following methods: (i) personal delivery; (ii) nationally recognized overnight courier service; (iii) U.S. Postal Service certified or registered mail, return receipt requested, postage prepaid. Service shall be deemed to have been duly given on the date of delivery. Either party may change the names, addresses and facsimile numbers for receipt of notice by complying with this Section 16.1.

If to the Company: DexCom, Inc.
6340 Sequence Drive
San Diego, CA 92121
Attn: President

With a copy to DexCom, Inc.
6340 Sequence Drive
San Diego, CA 92121
Attn: Legal Department
(858) 200-0200

If to the Distributor: RGH Enterprise, Inc.
1810 Summit Commerce Park
Twinsburg, Ohio 44087
Attn: President

with a copy to: Walter & Haverfield
The Tower at Erieview
1301 E. Ninth St, Ste 3500
Cleveland, Ohio 44114
Attn: Robert Crump

13. **Schedule 3**. Schedule 3 shall be amended and replaced in its entirety as follows:

SCHEDULE 3

Care Coordination Report Format

For first-time orders [******], Distributor shall provide the following information to Company for the purpose of coordinating set up, consulting with the prescribing physician as needed to recommend any changes, and providing patient and/or caregiver training on the safe and effective use of the Seven Plus continuous glucose monitoring system:

Distributor shall waive any and all fees in connection with providing the information required by this report to Company.

New Patient and Starter Kit [******]

Required Reporting Frequency: Daily

Required Reporting Method or Venue: Web-portal

File Type: csv

De-limiting character: “,” comma with values enclosed by Quotation Marks

Subject to compliance with the applicable provisions of HIPAA, the Care Coordination Reports should adhere to the following format & should not-deviate in order from one report to the next:

Status
Patient
Referral
MFG Acct #
Date Rec.
Contact Date
Touch Date
Comments
F/U Date
Ship Date
Cancel Date
Ins Name
Phys Name
Phys City
Phys State
Phys Zip
Phys Phone
Patient Address
Patient City
Patient State
Patient Zip
Patient Phone
Patient DOB
Serial No.
Part No.
Quantity

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

14. **Schedule 4**. A new Schedule 4 shall be added as follows:

Distributor Healthcare Operations Improvement Report

The parties shall share information for the purpose of conducting patient safety, quality assessment and improvement activities and evaluating the necessity of physician and health plan feedback. To the extent any of the information Distributor reports to Company is protected health information under HIPAA ("PHI"), Company will not use or further disclose the PHI, including re-identifying any individuals or contacting any individuals who are the subject of the PHI, other than as permitted or required by law and this Agreement.

Distributor shall provide to Company a report within seven business days after the end of each calendar month that details the following:

1. Limited Data Set that includes the following fields:
    a. ID
    b. Physician Name
    c. Physician Zip
    d. NPI
    e. Insurance
    f. Item
    g. Item Quantity
    h. Unit of Measure
    i. Insurance Name
    j. Date of Service

Distributor shall provide to Company a report within fifteen days after the end of each calendar quarter that details the following:

1. The twelve month rolling attrition rate with respect to Distributor's patients who have used the Products.
2. The twelve month rolling Sensor utilization rate with respect to Distributor's patients who have used the Products.

15. **Schedule 5**. A new Schedule 5 shall be added as follows:

Quality Agreement

1.0 SCOPE

1.1 This Quality Agreement (the "Quality Agreement") is incorporated within the Distribution Agreement that was effective April 30, 2008, as amended, between Distributor and Company pertaining to the distribution and sale of Products (the "Agreement"). Capitalized terms not otherwise defined herein shall have the meaning assigned to them in the Agreement. To the extent the terms of the Quality Agreement and the Agreement conflict, the terms set forth in the Quality Agreement shall supersede the Agreement.

1.2 This Quality Agreement shall be effective on the Effective Date and shall remain in effect until the Agreement expires, is terminated or the Quality Agreement is modified.

2.0 PROCESS CONTROLS

1.3 Distributor shall be responsible for supplier appropriate process control activities relative to the Products, including but not limited to, assurance of receipt, identification, traceability, storage, handling, inventory control and facility contamination control.

1.4 Company shall provide evidence that packaging containers maintain the integrity, quality, function, and sterility of the product for the entire shelf life, and not produce toxic residues during storage. Packaging must prevent or indicate the occurrence of tampering.

3.0 TRAINING AND DOCUMENT CHANGE CONTROL

1.5 Distributor must train its employees to perform their job function and to this Quality Agreement as required.

4.0 QUALIFICATION

1.6 Distributor shall be responsible for managing qualified processes and systems as required of suppliers (e.g. computer system) by law.

5.0 DISTRIBUTION AND HANDLING

1.7 Products shipped by the Distributor must be shipped using standard procedures for the handling, storage, packaging, preservation, and delivery of the Products.

1.8 Distributor shall deliver Products to its customers using standard procedures for handling, storage, packing, preservation, and delivery of the Products.

6.0 LOT TRACEABILITY

1.9 Distributor shall establish and maintain appropriate procedures for identifying the Products by suitable means from receipt and during all stages of delivery.

Lot traceability

Product	Description	Tracking Requirement
[******]	SEVEN PLUS System Kit	Lot Number identified on the box
[******]	SEVEN Sensors (package of four (4))	Lot Number identified on the box
[******]	SEVEN PLUS Replacement Receiver	Lot Number identified on the box
[******]	SEVEN PLUS Replacement Transmitter	Lot Number identified on the box

7.0 PACKAGING AND LABELING

1.10 Company shall provide packaging and labeling specifications that call out clear labeling requirements.

1.11 Company shall ensure that the labels, inserts and accompanying documentation satisfy the requirements of the applicable regulations.

8.0 COMPLAINT HANDLING AND REPORTING

1.12 Distributor shall be responsible for the establishment and maintenance of a system for handling complaints pertaining to the process of distributing Products under the Agreement pursuant to current Distributor policy. This system shall include receipt, review, corrective/preventative action and maintenance of files. Distributor will not knowingly perform any Device Complaint handling, as defined below.

1.13 Company shall be responsible for the establishment and maintenance of a system for handling Device Complaints pertaining to Products distributed under the Agreement. A “Device Complaint” includes complaints that pertain to Product functionality, trouble shooting, or adverse events. This system shall include receipt, review, investigation, corrective/preventative action and maintenance of files.

1.14 Company shall notify Distributor in writing of legal and regulatory matters relating to the Products, including:

1.1.1 Any regulatory actions by governmental authorities (e.g., inspection citations, warning letters, or other non-conformance notices).

1.1.2 Regulatory enforcement actions such as injunctions or seizures.

1.1.3 FDA registration activity (e.g., non-conformance notices, hold points).

1.1.4 Complaints received from Customers within the Territory that have not been processed through the Company’s complaint handling system.

1.1.5 Adverse incidents relating to Customers within the Territory (e.g., MDR’s.).

1.15 Distributor shall notify Company in writing of the following:

1.1.1 Any serious regulatory action relating to the Products that Distributor may become aware of.

1.1.2 Escalated Complaints regarding Products or Instruments. Distributor shall code, trend and report monthly Escalated Complaint data pertaining to Products, at Distributor’s request.

1.1.3 Distributor shall forward all complaints pertaining to Products and Instruments to Company no later than 10 working days following Distributor’s initial receipt of the complaint.

9.0 FIELD ACTIONS

1.16 The Company will be responsible for the initiation and cost of any recalls or other field actions related to the Products.

1.17 Both parties will comply with recalls or general corrective actions, provided such recalls or general corrective actions do not, in the opinion of Company violate or cause Company to violate the laws of any jurisdiction affected by the recalls or corrective action.

1.18 If Distributor and Company do not agree on a course of action, Company may initiate field actions related to the Products, but may not use field action to cause Distributor to lose Customers or violate the law.

10.0 AUDITS

1.19 Company shall have the right to conduct audits of Distributor's facilities and operations during normal business hours at its own expense and upon reasonable notice to Distributor in order to assess compliance with all applicable regulations, procedures and this Quality Agreement. Any such audits will be conducted by a national "big four" independent accounting firm (or other independent accounting firm whose audit department is a separate stand alone function of its business and which possesses liability insurance with coverage of at least $[******]), subject to such firm's execution of a confidentiality agreement in form reasonably acceptable to Distributor. Company shall be permitted to conduct one audit per calendar year.

11.0 RECORD RETENTION

1.20 Both parties shall retain all medical records as required by law.

12.0 REGULATORY AND REGISTRATION ADMINISTRATION

1.21 Company, at its expense, is responsible for registration responsibilities, and for agreed upon registration costs of Products in the Territory. Company shall provide sufficient data and information to support such registrations.

13.0 ADDITIONAL DISTRIBUTOR REQUIREMENTS

Records should be accurate, indelible and legible. Entries must be dated and the person performing a documented task must be identified. Records must provide a complete history of the work performed.

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16. **Schedule 6**. A new Schedule 6 shall be added as follows:

Schedule 6

Forecast, Ordering and Acceptance Requirements

I. Forecast. Distributor shall deliver to Company its non-binding forecast (the "Forecast") of the expected requirements for Products in the Territory for the [******] period following the Effective Date. Thereafter, Distributor shall update such Forecast on a monthly basis and provide it to Company at least five business days prior to the first of each month.

II. Orders, Shipping. Orders will be initiated by a written order, electronic equivalent or facsimile issued to DexCom (the "Order"). Each Order shall include information as set forth in Schedule 2, and shall identify the Distributor depot to which the Products shall be shipped. Products shall be shipped on [******], and shall be subject to a minimum of [******] lead time afforded to the Company, although the Company endeavors to ship Products within [******] after its receipt of an Order. In addition, Distributor may request that Company ship Products directly to end user customers, with costs of such shipments to be borne by Distributor. An Order shall be deemed to have been placed as of the date of receipt of the Order by Company. If Distributor requests Company to supply quantities in excess of quantity set forth in the Forecast, Company shall endeavor reasonably within the constraints of its production schedules and other commitments to meet all or part of such requests, but Company shall have no obligation to supply such quantities within the timeframes set forth herein. Where necessary, Company will advise Distributor of delivery dates and quantities for the portion of Order(s) in excess. All freight, insurance and other shipping expenses, as well as any special packing expenses, will be paid by Distributor.

III. Acceptance. Within ten (10) days following a receipt of a shipment, Distributor shall perform a visual inspection (in accordance with Distributor's standard procedures) of the Products received and shall inform Company in writing of any non-conformity of the supplied Products to the Order or other defect in the Products. In the absence of written notice to Company of a specified non-conformity within ten (10) business days of the end of such ten-day period, the Products shall be deemed to be accepted by Distributor.

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18. All other terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, authorized representatives of the parties have executed this Amendment Number One as of date first set out above.

Signed by: /s/ Jess Roper
Jess Roper

Title: V.P. and Chief Financial Officer

for and on behalf of
DexCom, Inc.

Signed by: /s/ Chris Lindroth
Name: Chris Lindroth
Title: Executive Vice President

for and on behalf of
RGH Enterprises, Inc.

CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY [******], HAS BEEN OMITTED BECAUSE IT IS NOT MATERIAL AND IS THE TYPE THAT THE REGISTRANT TREATS AS PRIVATE AND CONFIDENTIAL.

Amendment Number Two to Non-Exclusive Distribution Agreement

This Amendment Number Two to the Non-Exclusive Distribution Agreement ("Amendment Number Two") is made as of this 28th day of March, 2013, by and between DexCom, Inc., a Delaware corporation, with a principal place of business at 6340 Sequence Drive, San Diego, California 92121 (the "Company") and RGH Enterprises, Inc. d/b/a Edgepark Medical Supplies, an Ohio corporation with offices at 1810 Summit Commerce Park, Twinsburg, Ohio 44087 (the "Distributor").

WITNESSETH

WHEREAS, Company and Distributor previously entered into a Non-Exclusive Distribution Agreement, effective April 30, 2008, as amended on March 29, 2011 (the "Agreement").

WHEREAS, Company and Distributor wish to amend the Agreement as set forth herein in accordance with Section 2.2 and 17.10 of the Agreement.

THEREFORE, Company and Distributor agree as follows:

1. SECTION 4. Section 4.1.31 is amended and restated in its entirety as follows:

> 4.1.31 to provide, within five (5) business days of the end of each calendar month, a report detailing Distributor's month-end inventory balance of Products (which report Company shall retain the right to audit on a periodic basis with advance notice to Distributor).

2. SECTION 4. A new section 4.1.37 shall be added as follows:

> 4.1.37 to maintain a valid and current prescription on file for ongoing product orders.

3. SECTION 6. Section 6.4 shall be amended and restated as follows:

> 6.4 All invoices for Product submitted by DexCom, Inc. to the Distributor shall be payable within 30 (thirty) days after the date of such invoice unless disputed by Distributor to Company. If the Distributor fails to pay or procure payment of the full undisputed amount when due, and without in any manner excusing such violation, the Distributor agrees to pay the Company interest at the greater of: (i) a rate of 1.5% per month; or (ii) the highest rate legally permissible on the amount (including interest) due and owing to the Company, from the date the payment is due. The Distributor also agrees to pay all collection costs, expenses and reasonable attorney fees for collection of any amount due and unpaid. Without prejudice to any of its other rights, the Company may, upon seven (7) days prior written notice, withhold shipments of the Products if the Distributor has not paid an invoice that is not otherwise in dispute when due.

4. **SCHEDULE 1**. Schedule 1 is amended and restated in its entirety as follows:

Products –

Dexcom SEVEN PLUS

Product	Description	Transfer Price*
STS-7K-041	SEVEN Sensors (package of four (4))	$[*****]

Dexcom G4 Platinum

Product	Description	Transfer Price*
STS-GL-041	Dexcom G4 Platinum Sensor Kit (package of four (4))	$[*****]
STK-GL-001	Dexcom G4 Platinum Receiver Kit – BLK	$[*****]
STK-GL-PNK	Dexcom G4 Platinum Receiver Kit – PNK	$[*****]
STK-GL-BLU	Dexcom G4 Platinum Receiver Kit – BLU	$[*****]
STS-GL-003	Dexcom G4 Transmitter Kit	$[*****]

The Products will be supplied FOB Shipping Point freight prepaid by Distributor and sales taxes to be paid by Distributor. [*****]

5. **SCHEDULE 3**. Schedule 3 is amended and restated in its entirety as follows:

SCHEDULE 3

Sales Tracing Report Format

Required Reporting Frequency: Weekly
Format: .csv (comma-delimited file)
Delivery method: Dexcom controlled secure file transfer protocol site specific to the distributor

Sales tracings will include the following fields:

Field	Format	Comments
Customer ID Number	Text	A unique identifying number for each customer
Physician First Name	Text	
Physician Last Name	Text	
Physician ZIP Code	Text	53-character; text so leading zeros are included; no Zip + 4 numbers
Physician NPI	Text	
Insurance Name	Text	
Dexcom Item Number	Text	
Item Quantity	Text	Unit quantity - e.g. 1 box of sensors is '1', and not the number of individual sensors included
Date of Shipment	Text	MM/DD/YYYY
Shipper	Text	Dexcom or Distributor, where distributor provides tracings including shipments from both locations

6. **SCHEDULE 5**. Schedule 5 is amended and restated in its entirety as follows:

SCHEDULE 5

Quality Agreement

1.0 SCOPE

1.1 This Quality Agreement (the “Quality Agreement”) is incorporated within the Distribution Agreement dated April 30, 2008, as amended on March 29, 2011, between Distributor and Company pertaining to the distribution and sale of Products. Capitalized terms not otherwise defined herein shall have the meaning assigned to them in the Agreement.

1.2 This Quality Agreement shall be effective on the Effective Date and shall remain in effect until the Agreement expires, is terminated or the Quality Agreement is modified.

1.3 The obligations of Distributor under this Quality Agreement shall be equivalent to those imposed on distributors of disposable Class III medical devices.

2.0 DEFINITIONS / ACRONYMS

2.1“Applicable Documents”: Documents used to develop a specific document (i.e. standards, regulations) and documents referenced in the text of the specific document.

2.2"Government Agency" means any body which has the authority to act on behalf of the government of the Union or State to ensure that the requirements of all laws applicable to the Products and Distributor are carried out and adhered to in the State.

2.3"Customer Complaint" means any written, electronic or oral communication that alleges deficiencies related to the identity, quality, durability, reliability, safety or performance of a medical device that has been placed on the market.

2.4“CGM”: Continuous Glucose Monitoring.

2.5“Correction” means repair, modification, adjustment, relabeling, destruction, or inspection (including patient monitoring) of a product without its physical removal to some other location.

2.6“Document” means any information, either written or stored electronically, including specifications, procedures, standards, methods, instructions, plans, files, forms, notes, reviews, analyses, and reports.

2.7“Government Agency” means a federal (e.g. FDA) or state (Health and Human Services Food and Drug Branch) organization that has the power to provide services for conformity assessment on the conditions set out in the Federal Food, Drug, and Cosmetic Act (FD&C Act) and United States Code (U.S.C) as part for the sale of medical device products. This normally means assessing the manufacturers conformity to the essential requirements listed in each directive.

2.8“Lot” or “Batch” means one or more components or finished devices that consist of a single type, model, class, size, composition, or software version that are manufactured under essentially the same conditions and that are intended to have uniform characteristics and quality within specified limits.

2.9“Label” means a display of written, printed, or graphic matter upon the immediate container of any article. Any word, statement, or other information appearing on the immediate container must also appear “on the outside container or wrapper, if any there be, of the retain package of such article, or is easily legible through the outside container of wrapper.”

2.10“Labeling” means any Labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) displaying such article” at any time while a device is held for sale after shipment or delivery for shipment in interstate commerce.

2.11“Quality Records” means Documents containing recorded information, regardless of the medium or characteristic, which demonstrate the effectiveness of the quality management system and that provide evidence that products meet regulatory requirements and comply with specified product requirements.

2.12“Removal” means the physical removal of a device from its point of use to some other location for repair, modification, adjustment, relabeling, destruction, or inspection.

2.13“Stock Recovery” means the correction or removal of a device that has not been marketed or that has not left the direct control of the manufacturer, i.e., the device is located on the premises owned, or under the control of, the manufacturer, and no portion of the lot, model, code, or other relevant unit involved in the corrective or removal action has been released for sale or use.

2.14"Recall" means when there is a risk of death or serious deterioration to the state of health, the return of a medical device to the supplier, its modification by the supplier at the site of installation, its exchange or its destruction, in accordance with the instructions contained in the advisory notice.

2.15"Medical Device Reporting System" is a system of incident reporting to the Federal Food and Drug Administration (FDA), for all medical devices which are approved for inter-state commerce, where such incidents lead to corrective action relevant to medical devices. Medical Device Reporting Systems maintained by the Distributor shall comply with all applicable laws, the rules and regulations promulgated by the Federal or any State. This system is intended to allow data to be correlated between the FDA and manufactures to improve the protection of health and safety of patients, users and others by reducing the likelihood of the same type of adverse incident being repeated in different places at different times.

3.0 PROCESS CONTROLS

3.1 Both parties shall be responsible for all process control activities relative to the Products, including but not limited to, assurance of receipt, identification, traceability, storage, handling, inventory control, contamination control, complaint handling and trending and process validations, as required by Title 21 of United States Code of Federal Regulations, and other applicable regulations, and governmental laws.

3.2 Both parties shall maintain appropriate documented procedures.

3.3 Company shall provide evidence that packaging containers maintain the integrity, quality, function, and sterility of the product for the entire shelf life, and not produce toxic residues during storage. Packaging must prevent or indicate the occurrence of tampering.

4.0 TRAINING AND DOCUMENT CHANGE CONTROL

4.1 Distributor shall be responsible for managing an effective employee training program and document change control system relative to the receipt, identification, traceability, storage, handling, inventory control, contamination control and complaint handling and trending at the location of Distributor and its third party suppliers.

4.2 Distributor must train its employees to perform their job function and to this Quality Agreement as required.

5.0 VALIDATION

5.1 Distributor shall be responsible for managing qualified processes and systems as required of suppliers (e.g. computer system) by law.

5.2 Both parties shall be responsible for managing an effective product and process validation system relative to the distribution of the Products at the location of the Distributor and its third party suppliers.

5.3 Company shall be responsible for managing an effective product and process validation system relative to the manufacture of the Products at the location of the Company and its third party suppliers.

6.0 DISTRIBUTION AND HANDLING

6.1 Products shipped by the Distributor must be shipped using documented procedures for the handling, storage, packaging, preservation, and delivery of the Products.

6.2 Distributor shall deliver Products to its customers using documented procedures for handling, storage, packing, preservation, and delivery of the Products.

6.3 Disposables must have at least three months of expiration dating left, unless specific variance by lot number has been agreed to by both parties, before being shipped to any end-user customer.

6.4 The Distributor will not modify any product packaging that it receives from the Company. Shipping containers shall be validated to ensure that the safety and integrity of the Product is maintained during transit, including shipping methods that conform with the Product's acceptable temperature and humidity ranges.

6.5 Distributor must maintain storage & handling as follows:

Seven Plus Product

Product Name	Storage Temperature	Humidity
Sensor	2-25°C (36-77°F)	N/A
Transmitter	0-45°C (32-113°F)	Max 95% Relative
Receiver	0-45°C (32-113°F)	10-85% Relative

G4 Platinum Product

Product Name	Storage Temperature	Humidity
Sensor	2-25°C (36-77°F)	15-85% Relative
Transmitter	0-45°C (32-113°F)	10-95% Relative
Receiver	0-45°C (32-113°F)	10-95% Relative

7.0 LOT TRACEABILITY

7.1 Distributor shall establish and maintain procedures for identifying the Products by suitable means from receipt and during all stages of production and delivery. This shall include procedures to provide full lot traceability for each unit, lot, or batch of finished Products during all stages of production and delivery to the Distributor.

7.2 Distributor shall establish and maintain procedures to provide traceability to the first consignee.

7.3 Distributor shall establish and maintain procedures to provide traceability to the end user.

7.4 Both parties shall use reasonable efforts to assist the other in maintaining respective lot traceability.

7.5 Both parties are required to track the following information detailed in the table to the end user.

8.0 Seven Plus Product

Product	Description	Lot traceability Tracking Requirement
STK-7U-030	SEVEN PLUS System Kit	Lot Number identified on the box
STS-7K-041	SEVEN Sensors (package of one (1) or four (4))	Lot Number identified on the box
STR-7U- 030	SEVEN PLUS Replacement Receiver	Lot Number identified on the box
STT-7U- 030	SEVEN PLUS Replacement Transmitter	Lot Number identified on the box

9.0 G4 Platinum Product

Product	Description	Lot traceability Tracking Requirement
STK-GL-001	G4 Platinum Receiver Kit – BLK	Lot Number identified on the box
STK-GL-PNK	G4 Platinum Receiver Kit – PNK	Lot Number identified on the box
STK-GL-BLU	G4 Platinum Receiver Kit – BLU	Lot Number identified on the box
STT-GL-003	G4 Transmitter Kit	Lot Number identified on the box
STR-GL-001	G4 Platinum Replacement Receiver Kit – BLK	Lot Number identified on the box
STR-GL-PNK	G4 Platinum Replacement Receiver Kit – PNK	Lot Number identified on the box
STR-GL-BLU	G4 Platinum Replacement Receiver Kit – BLU	Lot Number identified on the box
STS-GL-011	G4 Platinum Sensors Kit (package of one (1))	Lot Number identified on the box
STS-GL-041	G4 Platinum Sensors Kit (package of four (4))	Lot Number identified on the box

10.0 PACKAGING AND LABELING

10.1 Company shall provide packaging and labeling specifications that call out clear labeling requirements.

10.2 Company shall ensure that the labels, inserts and accompanying documentation satisfy the requirements of the applicable regulations.

10.3 Distributor shall not modify the labels, primary or secondary packaging, inserts or accompanying documentation without the written approval of the Company.

11.0 FINISHED PRODUCT NON-CONFORMANCES

11.1 Any nonconforming finished product requires written approval from Company's Quality Assurance before shipment to any Customer by Distributor.

12.0 COMPLAINT HANDLING AND REPORTING

12.1 Distributor shall be responsible for the establishment and maintenance of a system for handling all Tier I Complaints pertaining to Products distributed under the Agreement. "Complaint" means any written, electronic, telephone call and/or oral communication that alleges deficiencies related to the identity, quality, durability, reliability, safety, effectiveness, or performance of a device after it is released to distribution. A complaint is any indication of the failure of a device to meet customer or user expectations for quality or to meet performance specifications. A "Tier I Complaint" includes complaints that pertain to the purchase, payment, billing, delivery, packaging and customer service. This system shall include receipt, review, corrective/preventative action and maintenance of files. Distributor will not perform any Tier II Complaint Handling, as defined below.

12.2 Company shall be responsible for the establishment and maintenance of a system for handling Tier II Complaints pertaining to Products distributed under the Agreement. A "Tier II Complaint" includes complaints that pertain to product functionality, trouble shooting, or adverse events. This system shall include receipt, review, investigation, corrective/preventative action and maintenance of files. It shall also include adverse event reporting to the appropriate governmental authorities as required by regulations in the applicable jurisdictions.

12.3 Company shall notify Distributor in writing of legal and regulatory matters relating to the Products, including:

12.3.1 Any regulatory actions by governmental authorities (e.g., inspection citations, warning letters, or other non-conformance notices).

12.3.2 Regulatory enforcement actions such as injunctions or seizures.

12.3.3 FDA registration activity (e.g., non-conformance notices, hold points).

12.3.4 Complaints received from Customers within the Territory that have not been processed through the Company's complaint handling system.

12.3.5 Adverse incidents relating to customers within the Territory (e.g., MDR's.).

12.4 Distributor shall notify Company in writing of the following:

12.4.1 Any serious regulatory action relating to the Products.

12.4.2 Tier I Complaints regarding Products or Instruments. Distributor shall code, trend and report monthly all phone call inquiries and Tier I Complaint data pertaining to Products.

12.4.3 If an adverse incident is received that may be subject to FDA's Medical Device Reporting regulation that pertain to Products and Instruments, then Distributor shall notify Company no later than 24 hours following Distributor's initial receipt of the adverse event.

12.4.4 Distributor shall forward all complaints pertaining to Products and Instruments to Company no later than 5 working days following Distributor's initial receipt of the complaint.

13.0 FIELD ACTIONS

13.1 The Company will be responsible for the initiation of any recalls or other field actions related to the Products.

13.2 Both parties will comply with recalls or general corrective actions, provided such recalls or general corrective actions do not, in the opinion of Company violate or cause Company to violate the laws of any jurisdiction affected by the recalls or corrective action.

13.3 If Distributor and Company do not agree on a course of action, Company may initiate field actions related to the Products, but may not use field action to cause Distributor to lose Customers.

14.0 AUDITS

14.1 Company shall have the right to conduct audits of Distributor's facilities and operations during normal business hours at its own expense and upon thirty (30) days notice to Distributor in order to assess compliance with all applicable regulations, procedures and this Quality Agreement. Any such audits will be conducted by a national "big four" independent accounting firm (or other independent accounting firm whose audit department is a separate stand alone function of its business and which possesses liability insurance with coverage of at least $3,000,000), subject to such firm's execution of a confidentiality agreement in form reasonably acceptable to Distributor. Company shall be permitted to conduct one audit per calendar year or more frequently in the instance there exists a material difference between the inventory records of Distributor and Company.

15.0 RECORD RETENTION

15.1 Both parties shall retain all sales and medical records as required by law.

15.2 Prior to any record destruction pertaining to Company Products and Instruments, the Distributor will notify the Company in writing. If the record destruction is not approved the Company will assume responsibility of the records.

16.0 REGULATORY AND REGISTRATION ADMINISTRATION

16.1 Distributor, at its expense, is responsible for registration responsibilities, and for agreed upon domestic registration costs in accordance with Federal and State regulations. Distributor shall provide sufficient data and information to support domestic registrations.

16.2 Company, at its expense, is responsible for registration responsibilities, and for agreed upon registration costs of Products in the Territory. Company shall provide sufficient data and information to support such registrations.

17.0 QUALITY SYSTEM COMPLIANCE

17.1 Distributor shall establish and maintain a quality system in compliance with Title 21, United States Code of Federal Regulations and other applicable regulations, and governmental laws. Distributor shall also ensure that its contract vendors maintain a quality system in compliance with current Title 21, United States Code of Federal Regulations and other applicable regulations, and governmental laws.

17.2 Distributor acknowledges that without registering as an out-of-state home medical device retail facility, an out-of-state home medical device retail facility shall not sell or distribute prescription devices in this state through any person or media other than a wholesaler who is licensed pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the California Business and Professions Code.

18.0 ADDITIONAL DISTRIBUTOR REQUIREMENTS

18.1 Distributor agrees to comply with all applicable laws and regulations. Distributor agrees to obtain the necessary licenses to meet its obligations under this agreement.

18.2 Records should be accurate, indelible and legible. Entries must be dated and the person performing a documented task must be identified. Records must provide a complete history of the work performed. Products identified in this Quality Agreement are not in conflict with the laws of the importing country.

6. All other terms and conditions of the Agreement that are not modified or amended pursuant to this Amendment Number Two shall remain in full force and effect and unaffected hereby. This Amendment Number Two may be executed in two (2) or more counterparts, each of which shall be deemed an original, but together shall constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, authorized representatives of the parties have executed this Amendment Number Two as of date first set out above.

Signed by:/s/ Jess Roper
Jess Roper
Title: V.P. and Chief Financial Officer

for and on behalf of
DexCom, Inc.

Signed by:/s/ Adam Graybill
Name: Adam Graybill
Title: Category Director

for and on behalf of
RGH Enterprises, Inc.

CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY [******], HAS BEEN OMITTED BECAUSE IT IS NOT MATERIAL AND IS THE TYPE THAT THE REGISTRANT TREATS AS PRIVATE AND CONFIDENTIAL.

Amendment Number Three to Non-Exclusive Distribution Agreement

This Amendment Number Three to the Non-Exclusive Distribution Agreement ("Amendment Number Two") is made as of this 4 day of December, 2013, by and between DexCom, Inc., a Delaware corporation, with a principal place of business at 6340 Sequence Drive, San Diego, California 92121 (the "Company") and RGH Enterprises, Inc. d/b/a Edgepark Medical Supplies, an Ohio corporation with offices located at 1810 Summit Commerce Park, Twinsburg, Ohio 44807 (the "Distributor").

WITNESSETH

WHEREAS, Company and Distributor previously entered into a Non-Exclusive Distribution Agreement, effective April 30, 2008, as amended on March 29, 2011 and March 28, 2013 (the "Agreement").

WHEREAS, Company and Distributor wish to amend the Agreement as set forth herein in accordance with Section 2.2 and 17.10 of the Agreement.

THEREFORE, Company and Distributor agree as follows:

1. **SECTION 2**. Section 2.2 is amended and restated in its entirety as follows:

> 2.2 New products may be added to Schedule 1 and included within the scope of the Agreement at the sole and exclusive discretion of the Company. Notice for new products shall be deemed duly given if sent by prepaid mail, addressed to the party at the address set forth at the beginning of this Agreement, or to such other address as the parties may have furnished each other in writing. In addition, the Company may amend the pricing set forth on Schedule 1 with [******] advance notice provided to Distributor.

REST OF PAGE INTENTIONALLY LEFT BLANK

2. SCHEDULE 1. Schedule 1 is amended to include the following Products:

Dexcom G4 Platinum - Pediatric

Product	Description	Transfer Price*
STK-KD-001	Dexcom G4 PLATINUM Pediatric Receiver Kit – BLK	[******]
STK-KD-PNK	Dexcom G4 PLATINUM Pediatric Receiver Kit – PNK	[******]
STK-KD-BLU	Dexcom G4 PLATINUM Pediatric Receiver Kit – BLU	[******]

3. SCHEDULE 5. Schedule 5 is amended and restated in its entirety as follows:

SCHEDULE 5

Quality Agreement

1.0 SCOPE

1.1 This Quality Agreement (the "Quality Agreement") is incorporated within the Distribution Agreement dated April 30, 2008, as amended on March 29, 2011 and March 28, 2013 between Distributor and Company pertaining to the distribution and sale of Products. Capitalized terms not otherwise defined herein shall have the meaning assigned to them in the Agreement.

1.2 This Quality Agreement shall be effective on the Effective Date and shall remain in effect until the Agreement expires, is terminated or the Quality Agreement is modified.

2.0 DEFINITIONS / ACRONYMS

2.1 "Applicable Documents": Documents used to develop a specific document (i.e. standards, regulations) and documents referenced in the text of the specific document.

2.2 "Government Agency" means any body which has the authority to act on behalf of the government of the Union or State to ensure that the requirements of all laws applicable to the Products and Distributor are carried out and adhered to in the State.

2.3 "Customer Complaint" means any written, electronic or oral communication that alleges deficiencies related to the identity, quality, durability, reliability, safety or performance of a medical device that has been placed on the market.

2.4 "CGM": Continuous Glucose Monitoring.

2.5 "Correction" means repair, modification, adjustment, relabeling, destruction, or inspection (including patient monitoring) of a product without its physical removal to some other location.

2.6 "Document" means any information, either written or stored electronically, including specifications, procedures, standards, methods, instructions, plans, files, forms, notes, reviews, analyses, and reports.

2.7 "Government Agency" means a federal (e.g. FDA) or state (Health and Human Services Food and Drug Branch) organization that has the power to provide services for conformity assessment on the conditions set out in the Federal Food, Drug, and Cosmetic Act (FD&C Act) and United States Code (U.S.C) as part for the sale of medical device products.

This normally means assessing the manufacturers conformity to the essential requirements listed in each directive.

2.8 “Lot” or “Batch” means one or more components or finished devices that consist of a single type, model, class, size, composition, or software version that are manufactured under essentially the same conditions and that are intended to have uniform characteristics and quality within specified limits.

2.9 “Label” means a display of written, printed, or graphic matter upon the immediate container of any article. Any word, statement, or other information appearing on the immediate container must also appear “on the outside container or wrapper, if any there be, of the retain package of such article, or is easily legible through the outside container of wrapper.”

2.10 “Labeling” means any Labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) displaying such article” at any time while a device is held for sale after shipment or delivery for shipment in interstate commerce.

2.11 “Quality Records” means Documents containing recorded information, regardless of the medium or characteristic, which demonstrate the effectiveness of the quality management system and that provide evidence that products meet regulatory requirements and comply with specified product requirements.

2.12 “Removal” means the physical removal of a device from its point of use to some other location for repair, modification, adjustment, relabeling, destruction, or inspection.

2.13 “Stock Recovery” means the correction or removal of a device that has not been marketed or that has not left the direct control of the manufacturer, i.e., the device is located on the premises owned, or under the control of, the manufacturer, and no portion of the lot, model, code, or other relevant unit involved in the corrective or removal action has been released for sale or use.

2.14 “Recall” means when there is a risk of death or serious deterioration to the state of health, the return of a medical device to the supplier, its modification by the supplier at the site of installation, its exchange or its destruction, in accordance with the instructions contained in the advisory notice.

2.15 “Medical Device Reporting System” is a system of incident reporting to the Federal Food and Drug Administration (FDA), for all medical devices which are approved for inter-state commerce, where such incidents lead to corrective action relevant to medical devices. Medical Device Reporting Systems maintained by the Distributor shall comply with all applicable laws, the rules and regulations promulgated by the Federal or any State. This system is intended to allow data to be correlated between the FDA and manufactures to improve the protection of health and safety of patients, users and others by reducing the likelihood of the same type of adverse incident being repeated in different places at different times.

3.0 PROCESS CONTROLS

3.1 Both parties shall be responsible for all process control activities relative to the Products, including but not limited to, assurance of receipt, identification, traceability, storage, handling, inventory control, contamination control, complaint handling and trending and process validations, as required by Title 21 of United States Code of Federal Regulations, and other applicable regulations, and governmental laws.

3.2 Both parties shall maintain appropriate documented procedures.

3.3 Company shall provide evidence that packaging containers maintain the integrity, quality, function, and sterility of the product for the entire shelf life, and not produce toxic residues during storage. Packaging must prevent or indicate the occurrence of tampering.

4.0 TRAINING AND DOCUMENT CHANGE CONTROL

4.1 Distributor shall be responsible for managing an effective employee training program and document change control system relative to the receipt, identification, traceability, storage, handling, inventory control, contamination control and complaint handling and trending at the location of Distributor and its third party suppliers.

4.2 Distributor must train its employees to perform their job function and to this Quality Agreement as required.

5.0 VALIDATION

5.1 Distributor shall be responsible for managing qualified processes and systems as required of suppliers (e.g. computer system) by law.

5.2 Both parties shall be responsible for managing an effective product and process validation system relative to the distribution of the Products at the location of the Distributor and its third party suppliers.

5.3 Both parties shall develop and implement validation or qualification protocols for significant processes, equipment, and computer systems.

5.4 Company shall be responsible for managing an effective product and process validation system relative to the manufacture of the Products at the location of the Company and its third party suppliers.

6.0 DISTRIBUTION AND HANDLING

6.1 Products shipped by the Distributor must be shipped using documented procedures for the handling, storage, packaging, preservation, and delivery of the Products.

6.2 Distributor shall deliver Products to its customers using documented procedures for handling, storage, packing, preservation, and delivery of the Products.

6.3 Disposables must have at least three months of expiration dating left, unless specific variance by lot number has been agreed to by both parties, before being shipped to any end-user customer.

6.4 The Distributor will not modify any product packaging that it receives from the Company. Shipping containers shall be validated to ensure that the safety and integrity of the Product is maintained during transit, including shipping methods that conform with the Product's acceptable temperature and humidity ranges.

6.5 Distributor must maintain storage & handling as follows:

Seven Plus Product

Product Name	Storage Temperature	Humidity
Sensor	2-25°C (36-77°F)	N/A
Transmitter	0-45°C (32-113°F)	Max 95% Relative
Receiver	0-45°C (32-113°F)	10-85% Relative

G4 Platinum Product

Product Name	Storage Temperature	Humidity
Sensor	2-25°C (36-77°F)	0-95% Relative
Transmitter	0-45°C (32-113°F)	10-95% Relative
Receiver	0-45°C (32-113°F)	10-95% Relative

G4 Platinum Product – Pediatric

Product Name	Storage Temperature	Humidity
Sensor	2-25°C (36-77°F)	0-95% Relative
Transmitter	0-45°C (32-113°F)	10-95% Relative
Receiver	0-45°C (32-113°F)	10-95% Relative

7.0 LOT TRACEABILITY

7.1 Distributor shall establish and maintain procedures for identifying the Products by suitable means from receipt and during all stages of production and delivery. This shall include procedures to provide full lot traceability for each unit, lot, or batch of finished Products during all stages of production and delivery to the Distributor.

7.2 Distributor shall establish and maintain procedures to provide traceability to the first consignee.

7.3 Distributor shall establish and maintain procedures to provide traceability to the end user.

7.4 Both parties shall use reasonable efforts to assist the other in maintaining respective lot traceability.

7.5 Both parties are required to track the following information detailed in the table to the end user.

8.0 Seven Plus Product

Product	Description	Lot traceability Tracking Requirement
STK-7U-030	SEVEN PLUS System Kit	Lot Number identified on the box
STS-7K-041	SEVEN Sensors (package of one (1) or four (4))	Lot Number identified on the box
STR-7U- 030	SEVEN PLUS Replacement Receiver	Lot Number identified on the box
STT-7U- 030	SEVEN PLUS Replacement Transmitter	Lot Number identified on the box

9.0 G4 Platinum Product

Product	Description	Lot traceability Tracking Requirement
STK-GL-001	G4 Platinum Receiver Kit – BLK	Lot Number identified on the box
STK-GL-PNK	G4 Platinum Receiver Kit – PNK	Lot Number identified on the box
STK-GL-BLU	G4 Platinum Receiver Kit – BLU	Lot Number identified on the box
STT-GL-003	G4 Transmitter Kit	Lot Number identified on the box
STR-GL-001	G4 Platinum Replacement Receiver Kit – BLK	Lot Number identified on the box
STR-GL-PNK	G4 Platinum Replacement Receiver Kit – PNK	Lot Number identified on the box
STR-GL-BLU	G4 Platinum Replacement Receiver Kit – BLU	Lot Number identified on the box
STS-GL-011	G4 Platinum Sensors Kit (package of one (1))	Lot Number identified on the box
STS-GL-041	G4 Platinum Sensors Kit (package of four (4))	Lot Number identified on the box

10.0 G4 Platinum Product – Pediatric

Product	Description	Lot traceability Tracking Requirement
STK-KD-001	G4 Platinum Pediatric Receiver Kit – BLK	Lot Number identified on the box
STK-KD-PNK	G4 Platinum Pediatric Receiver Kit – PNK	Lot Number identified on the box
STK-KD-BLU	G4 Platinum Pediatric Receiver Kit – BLU	Lot Number identified on the box
STT-GL-003	G4 Transmitter Kit	Lot Number identified on the box
STR-KD-001	G4 Platinum Replacement Receiver Kit – BLK	Lot Number identified on the box
STR-KD-PNK	G4 Platinum Replacement Receiver Kit – PNK	Lot Number identified on the box
STR-KD-BLU	G4 Platinum Replacement Receiver Kit – BLU	Lot Number identified on the box
STS-GL-011	G4 Platinum Sensors Kit (package of one (1))	Lot Number identified on the box
STS-GL-041	G4 Platinum Sensors Kit (package of four (4))	Lot Number identified on the box

11.0 PACKAGING AND LABELING

11.1 Company shall provide packaging and labeling specifications that call out clear labeling requirements.

11.2 Company shall ensure that the labels, inserts and accompanying documentation satisfy the requirements of the applicable regulations.

11.3 Distributor shall not modify the labels, primary or secondary packaging, inserts or accompanying documentation without the written approval of the Company.

12.0 FINISHED PRODUCT NON-CONFORMANCES

12.1 Any nonconforming finished product requires written approval from Company's Quality Assurance before shipment to any Customer by Distributor.

13.0 COMPLAINT HANDLING AND REPORTING

13.1 Distributor shall be responsible for the establishment and maintenance of a system for handling all Tier I Complaints pertaining to Products distributed under the Agreement. "Complaint" means any written, electronic, telephone call and/or oral communication that alleges deficiencies related to the identity, quality, durability, reliability, safety, effectiveness, or performance of a device after it is released to distribution. A complaint is any indication of the failure of a device to meet customer or user expectations for quality or to meet performance specifications. A "Tier I Complaint" includes complaints that pertain to the purchase, payment, billing, delivery, packaging and customer service. This system shall include receipt, review, corrective/preventative action and maintenance of files. Distributor will not perform any Tier II Complaint Handling, as defined below.

13.2 Company shall be responsible for the establishment and maintenance of a system for handling Tier II Complaints pertaining to Products distributed under the Agreement. A "Tier II Complaint" includes complaints that pertain to product functionality, trouble shooting, or adverse events. This system shall include receipt, review, investigation, corrective/preventative action and maintenance of files. It shall also include adverse event reporting to the appropriate governmental authorities as required by regulations in the applicable jurisdictions.

13.3 Company shall notify Distributor in writing of legal and regulatory matters relating to the Products, including:

13.3.1 Any regulatory actions by governmental authorities (e.g., inspection citations, warning letters, or other non-conformance notices).

13.3.2 Regulatory enforcement actions such as injunctions or seizures.

13.3.3 FDA registration activity (e.g., non-conformance notices, hold points).

13.3.4 Complaints received from Customers within the Territory that have not been processed through the Company's complaint handling system.

13.3.5 Adverse incidents relating to customers within the Territory (e.g., MDR's.).

13.4 Distributor shall notify Company in writing of the following:

13.4.1 Any serious regulatory action relating to the Products.

13.4.2 Tier I Complaints regarding Products or Instruments. Distributor shall code, trend and report monthly all phone call inquiries and Tier I Complaint data pertaining to Products.

13.4.3 If an adverse incident is received that may be subject to FDA's Medical Device Reporting regulation that pertain to Products and Instruments, then Distributor shall notify Company no later than 24 hours following Distributor's initial receipt of the adverse event.

13.4.4 Distributor shall forward all complaints pertaining to Products and Instruments to Company no later than 5 working days following Distributor's initial receipt of the complaint.

14.0 FIELD ACTIONS

14.1 The Company will be responsible for the initiation of any recalls or other field actions related to the Products.

14.2 Both parties will comply with recalls or general corrective actions, provided such recalls or general corrective actions do not, in the opinion of Company violate or cause Company to violate the laws of any jurisdiction affected by the recalls or corrective action.

14.3 If Distributor and Company do not agree on a course of action, Company may initiate field actions related to the Products, but may not use field action to cause Distributor to lose Customers.

15.0 AUDITS

15.1 Company shall have the right to conduct audits of Distributor's facilities and operations during normal business hours at its own expense and upon thirty (30) days notice to Distributor in order to assess compliance with all applicable regulations, procedures and this Quality Agreement. Any such audits will be conducted by a national "big four" independent accounting firm (or other independent accounting firm whose audit department is a separate stand alone function of its business and which possesses liability insurance with coverage of at least [******]), subject to such firm's execution of a confidentiality agreement in form reasonably acceptable to Distributor. Company shall be permitted to conduct one audit per calendar year or more frequently in the instance there exists a material difference between the inventory records of Distributor and Company.

16.0 RECORD RETENTION

16.1 Both parties shall retain all sales and medical records as required by law.

16.2 Prior to any record destruction pertaining to Company Products and Instruments, the Distributor will notify the Company in writing. If the record destruction is not approved the Company will assume responsibility of the records.

17.0 REGULATORY AND REGISTRATION ADMINISTRATION

17.1 Distributor, at its expense, is responsible for registration responsibilities, and for agreed upon domestic registration costs in accordance with Federal and State regulations. Distributor shall provide sufficient data and information to support domestic registrations.

17.2 Company, at its expense, is responsible for registration responsibilities, and for agreed upon registration costs of Products in the Territory. Company shall provide sufficient data and information to support such registrations.

18.0 QUALITY SYSTEM COMPLIANCE

18.1 Distributor shall establish and maintain a quality system in compliance with Title 21, United States Code of Federal Regulations and other applicable regulations, and governmental laws. Distributor shall also ensure that its contract vendors maintain a quality system in compliance with current Title 21, United States Code of Federal Regulations and other applicable regulations, and governmental laws.

18.2 Distributor acknowledges that without registering as an out-of-state home medical device retail facility, an out-of-state home medical device retail facility shall not sell or distribute prescription devices in this state through any person or media other than a wholesaler who is licensed pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the California Business and Professions Code.

19.0 ADDITIONAL DISTRIBUTOR REQUIREMENTS

19.1 Distributor agrees to comply with all applicable laws and regulations. Distributor agrees to obtain the necessary licenses to meet its obligations under this agreement.

19.2 Records should be accurate, indelible and legible. Entries must be dated and the person performing a documented task must be identified. Records must provide a complete history of the work performed. Products identified in this Quality Agreement are not in conflict with the laws of the importing country.

4. All other terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, authorized representatives of the parties have executed this Amendment Number Two as of date first set out above.

Signed by: /s/ Jess Roper
Jess Roper
Title: V.P. and Chief Financial Officer

for and on behalf of
DexCom, Inc.

Signed by: /s/ Adam Graybill
Name:
Title:

for and on behalf of
RGH Enterprises

CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY [***], HAS BEEN OMITTED BECAUSE IT IS NOT MATERIAL AND IS THE TYPE THAT THE REGISTRANT TREATS AS PRIVATE AND CONFIDENTIAL.

Amendment to Non-Exclusive Distribution Agreement

This Amendment to the Non-Exclusive Distribution Agreement ("**Amendment**") is made as of April 30, 2016, by and between DexCom, Inc., a Delaware corporation, with a principal place of business at 6340 Sequence Drive, San Diego, California 92121 ("**DexCom**") and RGH Enterprises, Inc., an Ohio corporation with offices at 1810 Summit Commerce Park, Twinsburg, Ohio 44087 (the "**Distributor**"). Each of DexCom and the Distributor are sometimes referred to individually herein as a "**Party**" and collectively as the "**Parties**." Capitalized terms not defined herein shall have the meanings set forth in the Agreement (as defined in the first recital below).

RECITALS

WHEREAS, DexCom and Distributor previously entered into a Non-Exclusive Distribution Agreement, effective April 30, 2008, as has been and may be amended from time to time, (collectively, the "Agreement").

WHEREAS, DexCom and Distributor wish to amend the Agreement as set forth herein in accordance with Section 6.1 and 16.9 of the Agreement.

NOW, THEREFORE, BE IT RESOLVED, that for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

A. Rebates

1. Sales Reports. Each week during the Term, Distributor agrees to provide DexCom with a weekly report identifying the volume of continuous glucose monitoring products that are listed on Schedule 1 to the Agreement (the "Products") purchased by Distributor from DexCom during the preceding 45 days.

2. Rebate. DexCom shall pay Distributor a monthly rebate equal to [***]% of Distributor's aggregate dollar value of purchases of Products from DexCom during the preceding month, net of any rebates or returns (the "Rebate"). The Rebate shall be payable by DexCom to Distributor in the form of a credit memo within thirty (30) days following the end of each month, commencing on the Effective Date. The credit memo shall fully and accurately describe the amount of the Rebate earned during the previous month. Should Distributor not receive the credit memo within this time period, Distributor may deduct the amount of the Rebate from any subsequent payment owed by Distributor to DexCom.

3. Term and Termination. The earning and calculation of the Rebate payable under this Amendment shall commence on July 1, 2016 (the "Effective Date") and shall continue each month thereafter until the [***]. The Agreement, except as amended by this Amendment, shall remain in full force and effect. The obligation to pay Rebates accrued during the Term shall survive any termination of the Agreement.

4. Compliance with Law. The prices provided for Products under the Agreement reflect discounts, and the Rebates constitute additional discounts. Each of the Parties shall comply with applicable provisions of 42 C.F.R. § 1001.952(h) (the Anti-Kickback Statute discount safe harbor regulations). Distributor shall fully and accurately reflect such discounts in submissions to federal healthcare programs (if any) and, upon request by the Secretary of the U.S. Department of Health and Human Services or a state agency, shall make available information provided to it by DexCom concerning the discounts.

Each of the Parties will act in compliance with all federal and state laws in the performance of their respective obligations under the Agreement as amended by this Amendment.

B. Sales Tracing Data

1. Schedule 3 to the Agreement, setting forth the Sales Tracing Report Format, is amended and restated in its entirety to be as set forth in Schedule 3 to this Amendment.

C. Stocking Requirement

1. Distributor shall stock not more than one (1) month of Product inventory at all times with the exact amount of inventory so stocked to vary based on demand fluctuations. Distributor agrees not to sell any sensors where the shelf-life on the sensors is less than the time of reasonable consumption by its Customers, and in no instance to ship sensors with a shelf-life of less than two (2) months.

2. Distributor shall use good faith efforts to provide, within five (5) business days of the end of each calendar month, a report detailing Distributor's month-end inventory balance of Products (which report shall be subject to the audit right in Section 6.1.9 of the Agreement).

[Signature Page Follows]

The Parties hereto have caused this Amendment to be duly executed on their behalf by the first date written above.

DEXCOM, INC.
/s/ Jess Roper
Print Name: Jess Roper
Title: CFO

RGH ENTERPRISES, INC. D/B/A CARDINAL HEALTH AT HOME
/s/ Steve Briggs
Print Name: Steve Briggs
Title: VP/ GM Category Management

SCHEDULE 3

Sales Tracing Report Format

Core Data Elements – Edgepark

Reporting Frequency	Daily
Reporting Period	Rolling 45 Days
File Format	Pipe Delimited CSV
Delivery Method	Dexcom Provided sFTP

Not required in tracing files, but provide to Dexcom to keep on file: Distributor Location NPI

Type	Field Name	Sample Value	Comments
[***]	[***]	[***]	[***]
	[***]	[***]	[***]
	[***]	[***]	[***]
[***]	[***]	[***]	[***]
	[***]	[***]	[***]
	[***]	[***]	[***]
	[***]	[***]	[***]
	[***]	[***]	[***]
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	[***]	[***]	[***]
	[***]	[***][***]	[***]
	[***]	[***]	[***]
	[***]	[***]	[***]

[1] [***]
[2] [***]

Exhibit 10.11

CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY [***], HAS BEEN OMITTED BECAUSE IT IS NOT MATERIAL AND IS THE TYPE THAT THE REGISTRANT TREATS AS PRIVATE AND CONFIDENTIAL.

AMENDED AND RESTATED NON-EXCLUSIVE DISTRIBUTION AGREEMENT

between

DEXCOM, INC.

and

DIABETES MANAGEMENT AND SUPPLIES, LLC

Dated August 10, 2015

AMENED AND RESTATED NON-EXCLUSIVE DISTRIBUTION AGREEMENT

THIS AMENDED AND RESTATED NON-EXCLUSIVE DISTRIBUTION AGREEMENT ("**Agreement**") is made August 10, 2015 by and between DexCom, Inc., a Delaware corporation, with a principal place of business at 6340 Sequence Drive, San Diego, California 92121 ("**DexCom**") and DIABETES MANAGEMENT AND SUPPLIES, LLC, a Louisiana LLC with a principal office at 10 Commerce Ct. New Orleans, LA 70123 (**Distributor**"). DexCom and the Distributor are referred to individually as a "**Party**" and collectively as the "**Parties**."

RECITALS

WHEREAS, DexCom and Distributor previously entered into a Non-Exclusive Distribution Agreement dated September 22, 2009 (the "**Original Agreement**"), as well as the amendments to such Original Agreement dated February 1, 2011, September 12, 2011, December 17, 2012, September 13, 2013, and February 10, 2014 (the "**Amendments**").

WHEREAS, pursuant to Section 17.10 of the Original Agreement, the Parties wish to amend and restated the Original Agreement and all Amendments as set forth herein.

NOW, THEREFORE, BE IT RESOLVED, that for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows

AGREEMENT

The Parties hereby agree as follows:

1. Definitions and Interpretation

1.1 Definitions

1.1.1 "**Customer**" means the end-user patient to which the Distributor sells the Products.

1.1.2 "**Effective Date**" means August 10, 2015, and is the date upon which this Agreement commences and becomes binding upon the Parties.

1.1.3 "**Governmental Authority**" means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of the government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of this organization or authority have the force of law), or any arbitrator, court or tribunal of competent jurisdiction.

1.1.4 "**Intellectual Property Rights**" means (collectively): copyright rights (including, without limitation, the exclusive right to use, reproduce, modify, distribute, publicly display and publicly perform the copyrighted work), trademark rights (including, without limitation trade names, trademarks, service marks, and trade dress), patent rights (including, without limitation, the exclusive right to make, have made, import, use, sell and offer to sell), know-how, trade secrets, rights of publicity, authors' and moral rights, goodwill and all other intellectual and industrial property

rights as may exist now and/or hereafter come into existence and all renewals, reissues and extensions thereof, regardless of whether such rights arise under the laws of the United States or any other U.S. state or other country or jurisdiction.

1.1.5 "**FOB Shipping Point**" means freight on board the place from which DexCom ships the Products to Distributor.

1.1.6 "**Order**" means an order to purchase Products initiated by Distributor which conforms to the requirements set forth in Schedules 3 and 5, as well as all other terms and conditions of this Agreement.

1.1.7 "**Price**" means the Price identified in Schedule 1, as amended from time to time in accordance with Section 2.2 below.

1.1.8 "**Products**" means the Products identified in Schedule 1, as amended from time to time in accordance with Section 2.2 below.

1.1.9 "**Territory**" means United States of America and its territories and possessions.

1.2 Interpretation

1.2.1 The words "include", "including" and "in particular" shall be construed as being by way of illustration only and shall not be construed as limiting the generality of any foregoing words.

1.2.2 Any references to Recitals, Section or Schedules are to provisions of and Schedules to this Agreement.

1.2.3 Section and paragraph headings are inserted for ease of reference only and shall not affect construction.

1.2.4 Words denoting one gender include all genders; words denoting individuals or persons include corporations and trusts and vice versa; words denoting the singular include the plural and vice versa; and words denoting the whole include a reference to any part thereof.

1.2.5 References to this Agreement mean this Agreement as the same may be amended, notated, modified or replaced from time to time with the agreement of the Parties.

2. Appointment of Distributor, Additional Products and Relationship.

2.1. DexCom appoints the Distributor to be its non-exclusive distributor in the Territory for the Products and the Distributor hereby accepts such appointment subject to the terms of this Agreement. Distributor agrees that it shall sell products only to end-user customers, and not to other distributors. Distributor also agrees it may market and promote Products to users for ambulatory (non-surgical) applications

only. Distributor shall not sell, market or promote Products for use in critical care, intensive care or surgical settings. DexCom reserves the right to appoint other non-exclusive distributors and agents in the Territory for the Products. DexCom also reserves the right to sell the Products directly to Customers in the Territory.

2.2. DexCom may from time to time at its discretion (a) offer additional products to the Distributor for inclusion in this Agreement, by providing written notice to the Distributor or (b) effect changes to any Products or parts/accessories thereto) and such products or changed Products shall become Products and incorporated into Schedule 1. In addition, DexCom may amend the pricing set forth on Schedule 1 by providing written notice to the Distributor provided that no such amendment shall have retrospective effect (i.e. change previously submitted Orders). In the event of any change to the Products or pricing, DexCom shall have no obligation to modify or change any Products previously delivered or to supply additional Products meeting earlier specifications.

3. Relationship of Independent Contractor, Expenses, No Agency or Authority.

3.1 The Distributor is and shall act as an independent contractor, and not as a partner, co-venturer, agent, employee, franchisee or representative of DexCom. No franchise, partnership, joint venture, agency relationship, or employment relationship is intended between DexCom and Distributor. If any provision of this Agreement is deemed to create any relationship other than that of independent contractor between the parties, then the Parties shall negotiate in good faith to modify this Agreement so as to effect the Parties' original intent as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as a distribution agreement and not such other agreement.

3.2 Except as may be specifically provided for in this Agreement, the Distributor shall be responsible for any and all expenses incurred by Distributor in the performance of Distributor's duties under this Agreement.

3.3 Nothing in this Agreement shall be construed as giving Distributor authority to enter into obligations on DexCom's behalf or to act as DexCom's agent for any purpose; nor shall the Distributor hold itself out as having any such authority.

4. Duties of Distributor:

4.1 The Distributor hereby agrees:

4.1.1 to use its best efforts to develop the market for the Products, promote the Products to Customers, physicians and certified diabetes educators, and to distribute and sell the Products to Customers throughout the Territory, in all cases consistent with good business practice;

4.1.2 to maintain a properly trained and equipped customer service team for the Products, including but not limited to making its customer service

personnel available to DexCom for training in the use and sale of the Products and coordination of sales efforts;

4.1.3 to maintain such ordering, billing and filling of customer orders, facilities and personnel as DexCom may reasonably specify;

4.1.4 to implement an active campaign to procure sensor reorders, maintain customer retention, and limit customer attrition;

4.1.5 to forward all technical and repair service inquiries to DexCom;

4.1.6 to implement and maintain a system, satisfactory to DexCom, to identify the Distributor's Customers to which each batch of Products have been delivered ("batch" being the lot number marked by DexCom on each unit container of the Products). Distributor shall maintain a tracking system sufficient to allow the Distributor the ability to take appropriate corrective action in the market if required;

4.1.7 to obtain a prescription from a qualified medical professional prior to the initial shipment of any Product to a new Customer and to only ship Products in accordance with such prescription (unless specified otherwise in the prescription, pediatric patients shall receive the pediatric Products);

4.1.8 to comply with such good manufacturing and other practices as DexCom may reasonably specify in respect of storage, handling, distribution and sale of the Products;

4.1.9 to leave in position and not cover, alter (unless authorized to do so in writing by DexCom), remove or erase any notices, warnings, instructions, marks (including without limitation, notices that a patent, trademark, design or copyright or other Intellectual Property Right relating to the Products is owned by DexCom or a third party) or any other writing which DexCom may place on or affix to the Products. To maintain the integrity of the Products, DexCom must approve in advance and in writing all repackaging configurations the Distributor may utilize in regard to the Products;

4.1.10 to not use any trade or service mark which is confusingly similar to any trade or service mark used by DexCom;

4.1.11 to not infringe upon or otherwise use any Intellectual Property Rights of DexCom;

4.1.12 not to do anything to bring DexCom or the Products into disrepute or to cause the Products to be misbranded;

4.1.13 engage in any unfair, competitive, misleading or deceptive practices respecting DexCom, the Products, or DexCom's Intellectual Property,

including any disparagement of other products or "bait-and-switch" practices.

4.1.14 to provide such information about sales of the Products, the markets for them and competitive market share activity as DexCom may reasonably request;

4.1.15 to promptly notify DexCom of all incidents, potential events or complaints relating to the Products, and to comply with all reasonable directions of DexCom, whether regarding the handling of specific incidents, events or complaints in the Territory, or regarding the continued sale of the Products in the Territory in the light of any other incident, event, complaint or information otherwise reported to DexCom;

4.1.16 to ensure that it and its employees conform(s) with all legislation, rules, regulations and statutory requirements existing in the Territory from time to time in connection with the Products;

4.1.17 to meet with representatives of DexCom at least quarterly, if so elected by DexCom, to discuss promotional programs and to implement such promotional programs as DexCom may reasonably specify;

4.1.18 not to provide any warranty with respect to the Products other than DexCom’s warranty;

4.1.19 to provide DexCom, from time to time upon request by DexCom, with documentation evidencing the Distributor’s current financial condition;

4.1.20 to obtain and maintain reasonable amounts of insurance with financially sound and reputable insurers to protect it and its employees and agents for loss or damage of inventory, property damage and other insurance which may be required in the Territory and to provide evidence of such insurance to DexCom from time to time at DexCom’s request;

4.1.21 to appoint any sub-distributor or sub-agent only with the prior written approval of DexCom;

4.1.22 to provide all reasonable assistance to DexCom to ensure the successful performance of this Agreement;

4.1.23 to establish and maintain a tracking system in compliance with the Safe Medical Device Act and the FDA Regulation (21 CFR 821) as amended to enable the Products to be promptly located within commercial distribution. The Distributor agrees to provide DexCom with device tracking information, at such times as DexCom may reasonably request, in order to demonstrate the effectiveness of the tracking systems. The device tracking records shall not be discarded or destroyed without prior written consent from DexCom;

4.1.24 to provide DexCom with daily, rolling, Product sales tracing reports consisting of transaction details for the previous sixty (60) days in the format set out on Schedule 3. A lag time of one business day is acceptable. For example, the sales tracing sent on the third business day of the month will consist of transaction details for the first business day of the month as well as the trailing fifty nine (59) calendar days;

4.1.25 not to alter or damage any Products;

4.1.26 not to sell any Products which are altered, damaged, or contaminated or which have been removed from their original packaging;

4.1.27 to the extent Distributor is stocking Products, not to stock more than one (1) month of Product inventory; provided however that DexCom acknowledges that, from time to time, Distributor may stock an amount of Product inventory equal to more than one (1) month based on demand fluctuations. Distributor also agrees not to sell any sensors where the shelf-life on the sensors is less than [***];

4.1.28 to the extent Distributor is stocking Products, to provide, within [***] of the end of each calendar month, a report detailing Distributor's month-end inventory balance of Products (which report shall be subject to the audit right in Section 6.1.9 below);

4.1.29 to maintain a valid and current prescription on file for ongoing Orders;

4.1.30 to adjudicate Product through the correct channel as determined by Product and benefit type. Distributor shall only adjudicate Retail Product (as defined in Schedule 1) via a Pharmacy Benefit (a healthcare benefit that allows for reimbursement for products and supplies that is submitted via retail and/or pharmacy channels). All other Product shall be adjudicated via a Medical Benefit (a healthcare benefit other than a Pharmacy Benefit); and

4.1.31 Not to dispense or adjudicate Products in any manner that might expose DexCom to financial risk via duplicate discounting of Product. Distributor shall only adjudicate Retail Products listed in Schedule 1 through the Pharmacy Benefit and acknowledges that adjudication of other Products (including without limitation, DME Products) in that manner would expose DexCom to financial risk. DexCom may validate managed care claim submissions to ensure that dispensed Retail Product utilization does not exceed Distributor’s purchased quantities of DexCom’s Retail Product as listed in Schedule 1 over the same period. If such excess is found, Distributor shall pay DexCom within thirty (30) days of request, the difference between current WAC for Retail Products at the time of the breach and Distributor’s DME contract price for the corresponding product plus a fifteen percent (15%) administration fee. The forgoing does not limit any other remedies that DexCom may have at law or in equity.

Furthermore, shipment of Product may be withheld until such time as Distributor has paid DexCom in full.

5. Duties of DexCom

5.1 DexCom hereby agrees:

5.1.1 to provide Distributor and Distributor's Customers technical assistance and support for the Products via access to DexCom's technical services telephone line at such times as DexCom shall determine in its sole discretion;

5.1.2 to provide training classes for the Distributor's sales and internal Product support personnel on the Products as requested by the Distributor and agreed to by DexCom; and

5.1.3 to stock Products with Distributor based on Orders submitted to, and accepted by, DexCom.

6. Restrictions on Distributor

6.1 The Distributor hereby agrees:

6.1.1 In relation to the Products, not to seek Customers outside the Territory or establish any branch or maintain any distribution depot outside the Territory.

6.1.2 It may market and promote Products to users for ambulatory (non-surgical) applications only. Distributor shall not sell, market or promote Products for use in critical care, intensive care or surgical settings.

6.1.3 It is responsible for all credit risks regarding, and for collecting payment for, all Products sold to third parties (including Customers), whether or not Distributor has made full payment to DexCom for the Products. The inability of Distributor to collect the purchase price for any Product does not affect Distributor's obligation to pay DexCom for any Product.

6.1.4 It unilaterally establishes its own resale prices and terms regarding Products it sells.

6.1.5 It shall not enter into any agreement with any other person related to the sale or distribution of other goods or products that are similar to or competitive with the Products.

6.1.6 It shall be responsible for all process control activities relative to the Products, including but not limited to, assurance of receipt, identification, traceability, storage, handling, inventory control, contamination control, complaint handling, control of nonconforming product, record retention,

training, distribution and trending and process validations, as required by DexCom and other applicable storage and labelling regulations and laws.

6.1.7 It shall retain all sales and medical records as required by law. Prior to any record destruction pertaining to DexCom Products, the Distributor will notify DexCom in writing. If the record destruction is not approved DexCom will assume responsibility of the records. Records should be accurate, indelible and legible. Entries must be dated and the person performing a documented task must be identified. Records must provide a complete history of the work performed.

6.1.8 It shall obtain the necessary licenses to meet its obligations under this Agreement;

6.1.9 DexCom shall have the right to conduct audits of Distributor's files, facilities and operations during normal business hours at its own expense and upon thirty (30) days notice to Distributor in order to assess compliance with this Agreement and all applicable regulations and procedures required hereby. Any such audits will be conducted by a national "big four" independent accounting firm (or other independent accounting firm whose audit department is a separate stand-alone function of its business and which possesses liability insurance with coverage of at least [***]), subject to such firm's execution of a confidentiality agreement in form reasonably acceptable to Distributor. DexCom shall be permitted to conduct up to four audits in any twelve month period or more frequently in instances where there exists a material difference between the inventory records of Distributor and DexCom and in such other instances in which DexCom has a reasonable and articulable suspicion of matters meriting an audit.

7. Prices and Terms

7.1 The Prices for the Products will be as set out on Schedule 1. Such Prices may be increased from time to time by DexCom in its sole and absolute discretion and with or without prior notice (provided that no such amendment shall have retrospective effect (i.e. change previously submitted Orders).

7.2 The Products will be supplied FOB Shipping Point (freight prepaid) at which time risk of loss and title shall pass to the Distributor. DexCom shall select the method of shipment of and the carrier for the Products.

7.3 All invoices submitted by DexCom to the Distributor shall be payable within [***] days after the date of such invoice. If the Distributor fails to pay or procure payment of the full amount when due, and without in any manner excusing such violation, the Distributor agrees to pay DexCom interest at the greater of: (i) a rate of [***] per month; or (ii) the highest rate legally permissible on the amount (including interest) due and owing to DexCom, from the date the payment is due. The Distributor also agrees to pay all collection costs, expenses and reasonable

attorney fees for collection of any amount due and unpaid. Without prejudice to any of its other rights, DexCom may withhold shipments of the Products if the Distributor has not paid an invoice when due.

7.4 The Distributor shall bear the cost of any sales, excise or other taxes imposed by any Governmental Authority unless appropriate tax exemption certificate or resale certificate is provided to DexCom prior to shipment.

7.5 The Distributor agrees to comply with DexCom's standard ordering procedures as set forth in Schedule 2 and Schedule 4.

7.6 Distributor shall establish and maintain creditworthiness with DexCom, which shall be established prior to the effective date of this Agreement in the sole judgment of DexCom, based on DexCom's review of Distributor's financial statements and credit references. Throughout the term, Distributor shall be in compliance with all loan covenants and other obligations to its lenders. Distributor shall notify DexCom immediately of any and all events that have had or may have a material adverse effect on Distributor's business or financial condition, including any change in management, sale, lease or exchange of a material portion of Distributor's assets, a change of control or ownership, or breach of any loan covenants or other material obligations of Distributor to its lenders. If, at any time, DexCom determines in its sole but reasonable discretion that Distributor's financial condition or creditworthiness is inadequate or unsatisfactory, then in addition to DexCom's other rights under this Agreement, at law or in equity, DexCom may without liability or penalty, take any of the following actions:

7.6.1. on five (5) days prior notice, modify the payment terms specified in Section 7 for outstanding and future Orders, including requiring Distributor to pay cash in advance or cash on delivery;

7.6.2. reject any Order received from Distributor;

7.6.3. cancel any previously accepted Orders;

7.6.4. delay any further shipment of Products to Distributor;

7.6.5. stop delivery of any Products in transit in the possession of a common carrier or bailee and cause the Products in transit to be returned to DexCom; or

7.6.6. accelerate the due date of all amounts owing by Distributor to DexCom.

7.7. Security Interest. To secure Distributor's prompt and complete payment and performance of any and all present and future indebtedness, obligations and liabilities of Distributor to DexCom under this Agreement, Distributor hereby grants DexCom a first-priority security interest, prior to all other liens and encumbrances, in all inventory of Products purchased under this Agreement,

wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. DexCom may file a financing statement for the security interest and Distributor shall execute any statements or other documentation necessary to perfect DexCom's security interest in the Products. Distributor also authorizes DexCom to execute, on Distributor's behalf, statements or other documentation necessary to perfect DexCom's security interest in the Products. DexCom is entitled to all applicable rights and remedies of a secured party under applicable law.

8. Supply of Products

8.1. Subject to availability, DexCom shall use its reasonable efforts to supply the Distributor's requirements for the Products. No Order shall be effective until approved and accepted by DexCom. DexCom may, in its sole discretion, reject or cancel any Order for any or no reason and DexCom shall incur no liability of any kind for such action or for any delay or failure of delivery or performance.

8.2. Nothing in this Agreement shall prevent DexCom from selling or supplying Products to third parties in or outside the Territory.

8.3. DexCom will provide free of charge Product literature as reasonably requested by Distributor. If DexCom determines that the Distributor's requests for Products literature are in excess of DexCom's reasonable capacity, then DexCom and the Distributor shall mutually agree upon a fee schedule for Product literature.

8.4. The Distributor hereby agrees that if it makes reference to or statements about the Products in the Distributor's own catalogues, promotional literature, advertisements or the like:

8.4.1 it will inform DexCom in advance and take such steps as DexCom may require to ensure the accuracy of any such references or statements; and

8.4.2 it will incorporate such references to DexCom and to DexCom's Intellectual Property Rights as DexCom may reasonably require.

8.5 Nothing in this Agreement shall require DexCom to give the Distributor any right of priority over DexCom's other distributors or customers.

8.6 Nothing in this Agreement shall prevent DexCom from ceasing to make or sell all or any of the Products at any time, or from modifying or replacing any of the Products at any time, or making or selling products which are competitive with the Products.

9. Confidentiality

9.1 "**Confidential Information**" shall mean all information, whether or not marked, designated or otherwise identified as confidential, supplied by, or on behalf of,

one Party to the other Party, or to which a Party has access including, but not limited to, all Intellectual Property Rights, written material, product samples, specifications, drawings, designs, plans, layouts, procedures, computer programs, models, prototypes, business plans, financial information, customer lists or other information of any description belonging to a Party or in the other Party's possession. Confidential Information may be oral, written, electronic, or other forms or media.

9.2 Each of the Parties shall keep in confidence and use only for the purposes of this Agreement all Confidential Information.

9.3 The obligations of confidentiality, non-disclosure and non-use shall expire five (5) years after the date of termination or expiration of this Agreement, and without prejudice to the generality of the foregoing, no obligation of confidentiality, non-disclosure or non-use shall apply at any time to information which:

9.3.1 is in the public domain at the time of first disclosure;

9.3.2 comes into the public domain after such first disclosure, other than by reason of the act or omission of the Party who receives the same (the "**Recipient**");

9.3.3 is supplied to the Recipient by a third party having a legal right to do so;

9.3.4 is independently developed by employees of the Recipient who did not have access to or use of, or made reference to or relied on, the Confidential Information, as evidenced by the Recipient's competent written records; or

9.3.5 which the Recipient is obligated to disclose by law or by any body having the force of law, provided, however, that before such legally required disclosure the Recipient shall, to the extent not prohibited by applicable law: (a) give prompt written notice of such required disclosure to the other Party; (b) cooperate with the other Party to obtain a protective order or similar confidential treatment; and (c) after complying with the other provisions of this Section 9.3.5 disclose, where disclosure is necessary and where a protective order or similar confidential treatment is not obtained by, or is waived by, the other Party, only the information legally required to be disclosed.

9.4 DexCom and the Distributor agree that it is for their mutual benefit for the other Party to receive the Confidential Information and accordingly the Parties agree that each of them shall:

9.4.1 maintain in confidence the Confidential Information and will only use the information as required under this Agreement;

9.4.2 not disclose such Confidential Information to any third party who is not bound by this Agreement without the other Party's prior written consent. The Recipient shall be permitted to provide the other Party's Confidential Information solely to those of its employees and consultants who (i) have a need to know and who require such access in order for the Recipient to perform its obligations under this Agreement, (ii) are bound by confidentiality, non-disclosure, non-use obligations with respect to the other Party's Confidential Information at least as strict as those set forth in this Section 9, prior to the receipt by any such employee or consultant of the other Party's Confidential Information, and (iii) agree not to use such Confidential Information except in compliance with the terms and conditions of this Agreement. The Recipient shall be responsible for the conduct of such persons with respect to their performance of Recipient's obligations under this Agreement and for any breach by such persons of this Section 9;

9.4.3 not copy or duplicate or in any way reproduce or replicate the Confidential Information except as needed to implement this Agreement; and

9.4.4 without prejudice to the generality of the foregoing, shall exercise an equivalent degree of care in protecting the Confidential Information as that which it uses to protect its own information of like sensitivity and importance which care shall not, in any event, be less than the degree of care utilized by businesses of similar size (including market capitalization if applicable) operating in the industries and territories in which the disclosing party operates.

10. Health Insurance Portability and Accountability Act (HIPAA) Compliance.

The Parties agree to comply with the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act and the regulations promulgated under such acts (as amended from time to time, and including all guidance from the Department of Health and Human Services, "HIPAA"). The Distributor agrees to keep, and shall require its business partners to keep, any protected health information including, but not limited to, the identity of the customers, their medical records and other related confidential medical information, in confidence. Distributor shall comply with all applicable federal, state and local laws and regulations, including without limitation those regarding the privacy of individually identifiable health information (including its collection, use, storage, and disclosure), including, but not limited to, HIPAA. If Distributor is deemed to be a "business associate" of DexCom pursuant to HIPAA, Distributor agrees that it will comply with all requirements of HIPAA binding on a business associate, and that this agreement is the written business associate agreement required by 45 CFR 162.502, and Distributor shall not be permitted to make any use or disclosure of protected health information except as required to perform its obligations to DexCom and only then as permitted under HIPAA and this Agreement.

11. Intellectual Property Rights

11.1. Nothing in this Agreement shall be construed as giving the Distributor any license or right to any Intellectual Property Rights belonging to DexCom.

11.2. The Distributor shall resell the Products only in the original packaging for the Products and shall not alter such packaging or labelling without DexCom's prior written consent.

11.3. The Distributor shall comply with all reasonable requests by DexCom with regard to identification of DexCom's Intellectual Property Rights and the like on any promotional material prepared by the Distributor in connection with the Products.

12. Duration of Agreement

12.1. Subject to the following provisions, this Agreement shall be deemed to commence on the Effective Date and remain in effect for an initial term of two (2) years thereafter and shall renew automatically for successive one (1) year periods thereafter until and unless either Party shall give written notice of termination to the other Party at least [***] prior to the end of the initial term or the end of any renewal term.

12.2. DexCom may terminate this Agreement immediately, by providing written notice to the Distributor, in the event of any of the following events:

12.1.1 the Distributor is in breach of or default under this Agreement and has not remedied such breach or default within [***] of receiving written notice from DexCom to do so;

12.1.2 the effective control of the Distributor shall change; or

12.1.3 if Distributor becomes insolvent or files, or has filed against it, a petition for voluntary or involuntary bankruptcy or under any other insolvency Law, makes or seeks to make a general assignment for the benefit of its creditors or applies for, or consents to, the appointment of a trustee, receiver or custodian for a substantial part of its property, or is generally unable to pay its debts as they become due.

13. Consequence of Termination

13.1. If for any reason this Agreement shall be terminated:

13.1.1 the Distributor will promptly pay all outstanding unpaid invoices rendered by DexCom in respect of the Products which shall become immediately due and payable by the Distributor, and in respect of Products for which an Order was submitted to DexCom and accepted prior to termination but for which an invoice has not been submitted, the Distributor shall pay immediately upon submission of the invoice;

13.1.2 except insofar as is reasonably necessary, the Distributor shall cease forthwith to use DexCom's remaining stocks of the Products for which the Distributor has paid in name or to promote or market the Products or to make any use of DexCom's Intellectual Property Rights;

13.1.3 termination or expiration of this Agreement for whatever reason shall not entitle the Distributor to any compensation or indemnity in respect of such termination or expiry except to the extent that the governing law of this Agreement provides for such compensation or indemnity; and

13.1.4 the Distributor will, free of charge, return to DexCom all tangible know-how and Confidential Information, promotional material, and all other literature and merchandise of any description relating to the Products or DexCom's business and shall cease to use any of DexCom's Intellectual Property Rights except as and to the extent necessary to sell any of the Products which the Distributor has in its inventory.

13.2 Termination of this Agreement shall not prejudice the rights and remedies of either Party against the other in respect of any antecedent claim or breach of this Agreement, except that neither Party shall be entitled to claim damages against the other for termination of this Agreement pursuant to Section 12. The provisions of Sections 1, 3, 7, 8, 9, 10, 11, 12, 13, 14, 16 and 17 shall survive the termination of this Agreement.

14. Indemnification

14.1. The Distributor shall indemnify, defend and hold harmless DexCom and its officers, directors, employees, agents, affiliates and permitted successors and assigns from and against all claims, demands, losses, expenses (including, but not limited to attorney fees) and liability from:

14.1.1 the liability of the Distributor as an employer for claims by the Distributor's employees or agents;

14.1.2 injury to persons or damage to property caused by the acts, omissions or negligence of the Distributor or its agents in the sale, promotion, transportation, possession or use of the Products;

14.1.3 any breach by Distributor of its representations, warranties or obligations under, or pursuant to, this Agreement;

14.1.4 Distributor's violation of any law applicable to it, the Products, the promotion, sale or distribution of the Products or DexCom; and

14.1.5 any claim arising from warranties made by the Distributor different from or in addition to those made in writing by DexCom.

15. Returned Products

Prior written authorization from DexCom is required before a return of any Product will be accepted and such returns shall be subject to Schedule 4 and the provisions of this Section 15. Contact DexCom's customer service at 877-339-2664. DexCom accepts no responsibility for Product returned without prior authorization. DexCom will provide full credit for Product shipped in error by DexCom, damaged or defective when shipped including applicable shipping charges. No partial case quantities will be accepted. Any unauthorized returned Product will be returned at the Distributor's expense. DexCom will also provide full credit for Product shipped in accordance with its standard thirty (30) day money back guarantee contained in the packaging insert for the applicable Product. The Distributor shall not under any circumstances receive returned Products for placement into its inventory.

16. Distributor's Representations And Warranties

16.1. Distributor hereby represents and warrants to DexCom that:

16.1.1 Distributor is in compliance with any and all laws and regulations governing the sale of the Products and has all licenses and permits necessary to represent the Products in the Territory. Distributor further represents and warrants that the solicitation and sale of DexCom's Products under this Agreement will not violate any law or regulation, including any law or regulation governing the sale of Products in the Territory.

16.1.2 Distributor, if other than an individual, is duly organized and existing and in good standing under the laws of the state and country of its organization and is entitled to own or lease its properties and to carry on its business as and in the places where such properties are now owned, leased or operated, or such business is now conducted. Distributor has full power and authority to provide the services specified herein and all corporate and other proceedings necessary to be taken by Distributor in connection with the transactions provided for by this Agreement and necessary to make the same effective have been duly and validly taken, and this Agreement has been duly and validly executed and delivered by Distributor and constitutes a valid and binding obligation of Distributor in accordance with their terms subject to the laws regarding creditor's rights, bankruptcy and general principles of equity.

16.1.3 The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby by Distributor will not (a) violate or breach Distributor's Articles of Incorporation or Organization or Bylaws (or similar constituent documents), as applicable, (b) result in a breach of any of the terms or conditions of, or constitute a default under, any mortgage, note, bond, indenture, agreement, license or other instrument or obligation to which Distributor is now a party or by which it or any of its properties or assets may be bound or affected, or (c) violate any order,

writ, injunction or decree of any Governmental Authority in any respect, the violation or breach of which would prevent the Distributor from consummating the transactions contemplated herein or have a material adverse effect on the business financial or otherwise of DexCom.

16.1.4 Distributor is not and will not be required to give any notice to or obtain any consent from any person in connection with the execution and delivery of this Agreement or the consummation or performance of any of the transactions contemplated hereby.

17. General Provisions

17.1. Notice. Any notice or other communication required or permitted to be given under this Agreement shall be properly served only if it is in writing addressed as set out below. Notice may be sent by any of the following methods: (i) personal delivery; (ii) nationally recognized overnight courier service; (iii) U.S. Postal Service certified or registered mail, return receipt requested, postage prepaid. Service shall be deemed to have been duly given on the date of delivery or on the date which is seven (7) days from the date of deposit in the U.S. Postal Service in the manner described above. Either party may change the names, addresses and facsimile numbers for receipt of notice by complying with this Section 17.1.

If to DexCom:	DexCom, Inc. 6340 Sequence Drive San Diego, CA 92121 Attn: Managed Care Contracting
With a copy to:	DexCom, Inc. 6340 Sequence Drive San Diego, CA 92121 Attn: Legal Department (858) 200-0200
If to the Distributor:	Diabetes Management & Supplies 10 Commerce Ct. New Orleans, LA 70123
With a copy to:	Milling, Benson, Woodward 68031 Capital Trace Row Mandeville, LA 70471 c/o Normand Pizza

17.2. Assignment. The Distributor may not assign this Agreement in whole or in part, either directly or indirectly, by merger, consolidation, other operation of law or otherwise.

17.3. Force Majeure. If either party to this Agreement is delayed or prevented from fulfilling any of its obligations under this Agreement (other than an obligation to pay money) by an event of force majeure, said party shall not be liable under this Agreement for said delay or failure. "**Force Majeure**" shall mean any cause beyond the reasonable control of a party including, but not limited to, acts of God, vandalism, wars, terrorism, civil unrest, blockades, strikes, lightning, fires, floods, explosions, hurricanes, and other causes not within the control of the party claiming a force majeure situation. The party claiming an event of force majeure shall promptly notify the other party by providing written notice of the reason for the delay, the anticipated length of time and alternate proposals, if any, which the party wishes to make to alleviate any difficulties or hardships which may be suffered as a result of the delay. The notification shall be by telephonic communications, confirmed by letter sent in accordance with Section 17.1. Neither party to this Agreement shall be deemed to be in default by reason of delay or failure due to force majeure.

17.4. Waiver.

17.4.1 No waiver under this Agreement is effective unless it is in writing, identified as a waiver to this Agreement and signed by the Party waiving its right.

17.4.2 Any waiver authorized on one occasion is effective only in that instance and only for the purpose stated, and does not operate as a waiver on any future occasion.

17.4.3 None of the following constitutes a waiver or estoppel of any right, remedy, power, privilege or condition arising from this Agreement:

17.4.3.1. any failure or delay in exercising any right, remedy, power or privilege or in enforcing any condition under this Agreement; or

17.4.3.2. any act, omission or course of dealing between the Parties.

17.5. Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of any other term or provision of this Agreement or invalidate or render unenforceable such invalid term or provision in any other jurisdiction; provided, however, that if any fundamental term or provision of this Agreement, as determined by DexCom in its sole and absolute discretion, is invalid, illegal or unenforceable, the remainder of this Agreement shall be unenforceable if so elected by DexCom's in its sole and absolute discretion. On a determination that any term or provision is invalid, illegal or unenforceable, and if DexCom has not elected to terminate this

Agreement as permitted by this Section 17.5, the Parties shall negotiate in commercially reasonable good faith to modify this Agreement to effect the original intent of the Parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

17.6. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original document, but all of which together shall constitute only one Agreement.

17.7 Applicable Law and Jurisdiction. This Agreement shall be governed by the laws of the State of California without regard to such State's conflict of laws principles applicable to contracts made and performed wholly with in such State. The Distributor hereby irrevocably agrees and consents to the exclusive jurisdiction of the federal and state courts located in the State of California and to accept service by pre-paid registered letter of any writ or summons in any such action notwithstanding that Distributor may otherwise be considered outside the jurisdiction of the California courts.

17.8. Authorization. Each of the persons executing this Agreement on behalf of a corporation or other legal entity personally warrants and represents that s/he has the requisite and necessary approval and authority to execute this Agreement on behalf of the corporation or other legal entity on whose behalf that person signed.

17.9 Entire Agreement. Upon the effectiveness of this Agreement, the Original Agreement and all Amendments (if any) and prior restatements of this Agreement shall be deemed amended and restated to read in their respective entireties as set forth in this Agreement. This Agreement, including amendment(s) if any, together with the Schedules identified herein, constitutes the complete understanding of the parties and supersedes any and all other agreements, ether oral or written, between the parties with respect to the subject matter hereof and no other agreement, statement or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding. The terms of this Agreement (including the Schedules identified herein) shall prevail over any terms or conditions contained in any other documentation related to the subject matter of this Agreement and expressly exclude any of Distributor's general terms and conditions contained in any purchase Order or other document issued by Distributor.

17.10 Amendments. Except for amendments to Schedule 1 regarding pricing and products offered, which DexCom may amend by providing written notice to Distributor, no modification, change or amendment to this Agreement shall be effective unless in writing signed by each of the Parties.

17.11 Further Assurances. On DexCom's request, Distributor shall, at its sole cost and expense, execute and deliver all such further documents and instruments, and take all such further acts, reasonably necessary to give full effect to this Agreement.

17.12 Interpretation. The Parties drafted this Agreement without regard to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted.

17.13 Cumulative Remedies. All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or later be available at law, in equity, by statute, in any other agreement between the Parties or otherwise.

17.14 No Third-Party Beneficiaries. This Agreement benefits solely the Parties and their respective permitted successors and assigns and nothing in this Agreement, express or implied, confers on any other person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, authorized representatives of the Parties have executed this Agreement as of date first set out above.

DIABETES MANAGEMENT AND SUPPLLIES, LLC		**DEXCOM, INC.**
By: /s/ Cynthia Pazos (Signature of authorized representative) **NAME:** Cynthia Pazos **TITLE:** CEO/President **DATE:** 8/10/15		By: /s/ Kevin Sun (Signature of authorized representative) Jess Roper Kevin Sun Senior Director of Finances and Chief Financial Officer Sr. Director of Finance **DATE:** August 17, 2015

SCHEDULE 1

The Products and the Prices

DME PRODUCT LISTING		
DexCom G4 Platinum with SHARE – DME		
Description	**SKU**	**Price**
DEXCOM G4 PLATINUM RECEIVER WITH SHARE - BLACK	STK-DR-001	[***]
DEXCOM G4 PLATINUM RECEIVER WITH SHARE - PINK	STK-DR-PNK	[***]
DEXCOM G4 PLATINUM RECEIVER WITH SHARE - BLUE	STK-DR-BLU	[***]
DEXCOM G4 PLATINUM (PEDIATRIC) RECEIVER WITH SHARE - BLACK	STK-PR-001	[***]
DEXCOM G4 PLATINUM (PEDIATRIC) RECEIVER WITH SHARE - PINK	STK-PR-PNK	[***]
DEXCOM G4 PLATINUM (PEDIATRIC) RECEIVER WITH SHARE - BLUE	STK-PR-BLU	[***]
DEXCOM G4 PLATINUM TRANSMITTER	STT-GL-003	[***]
DEXCOM G4 PLATINUM SENSOR 4 PACK	STS-GL-041	[***]
DexCom G5 – DME		
Description	**SKU**	**Price**
DEXCOM G5 RECEIVER KIT – BLACK	STK-GF-001	[***]
DEXCOM G5 RECEIVER KIT – BLUE	STK-GF-BLU	[***]
DEXCOM G5 RECEIVER KIT – PINK	STK-GF-PNK	[***]
DEXCOM G5 TRANSMITTER KIT	BUN-GF-003	[***]
DEXCOM G5 MOBILE / G4 PLATINUM SENSOR KIT 4 PACK	STS-GL-041	[***]
RETAIL PRODUCT LISTING		
DexCom G4 Platinum with SHARE - Retail		
Description	**NDC**	
DEXCOM G4 PLATINUM RECEIVER WITH SHARE - BLACK	08627-0050-11	[***]
DEXCOM G4 PLATINUM RECEIVER WITH SHARE - PINK	08627-0050-21	[***]
DEXCOM G4 PLATINUM RECEIVER WITH SHARE - BLUE	08627-0050-31	[***]
DEXCOM G4 PLATINUM (PEDIATRIC) RECEIVER WITH SHARE - BLACK	08627-0060-11	[***]
DEXCOM G4 PLATINUM (PEDIATRIC) RECEIVER WITH SHARE - PINK	08627-0060-21	[***]
DEXCOM G4 PLATINUM (PEDIATRIC) RECEIVER WITH SHARE - BLUE	08627-0060-31	[***]
DEXCOM G4 PLATINUM TRANSMITTER KIT	08627-0013-01	[***]
DEXCOM G4 PLATINUM SENSORS — 4 PACK	08627-0051-04	[***]
DexCom G5 – Retail		
Description	**NDC**	
DEXCOM G5 RECEIVER KIT – BLACK	08627-0080-11	[***]
DEXCOM G5 RECEIVER KIT – PINK	08627-0080-21	[***]
DEXCOM G5 RECEIVER KIT – BLUE	08627-0080-31	[***]
DEXCOM G5 TRANSMITTER KIT	08627-0014-01	[***]
DEXCOM G5 MOBILE / G4 PLATINUM SENSOR KIT 4 PACK	08627-0051-04	[***]

* There is no retail 1 pack. DexCom only sells sensors in 4 packs through retail.

- The Products will be supplied [***] and sales taxes to be paid by [***].

    - **Freight Payment Preference: Distributor FedEx Account Number or Invoice preference =**
    - **Default Shipping Methodology =**
        - *FedEx Options include*: First Overnight, Priority Overnight, Standard Overnight, 2-day, Express Saver, & ground

Note: An email alert specifying shipment tracking number and quantity of products shipped may be generated if a Shipment Confirmation alert email address is provided by Distributor to DexCom (i.e. DXCMShipmentAlert@[Distributor.Com])

SCHEDULE 2

Ordering Methods

Ordering:

Order merchandise by PRODUCT REORDER NUMBER.

Phone Orders:

Call Customer Service toll free at 1-877-339-2664 from 6:00 a.m. to 5:00 p.m. Pacific time. Orders requiring overnight delivery must be placed by 12:00 p.m. Pacific time.

Fax Orders:

Fax to Customer Service at 858-332-0237. Orders requiring overnight delivery must be received by 12:00 p.m. Pacific time.

E-mail Orders:

E-mail to DistributorPurchaseOrders@dexcom.com

Attach your purchase order form and utilize the following format when ordering via e-mail.

Distributor Account Number
Distributor Name
Distributor Bill to and ship to address
Purchase order number
Date Product is required
Ship via [***]
Product Reorder Number
Quantity
Unit Price
Total Price per Line
Contact name, phone, fax and e-mail for confirmation
Patient name, phone, address and email for training purposes
Notice if confirmation is required.

This e-mail address should be used for ORDERS ONLY.

SCHEDULE 3

Sales Tracing Report Format

Required Reporting Frequency:	Daily
Format:	.csv (comma-delimited file)
Delivery Method:	DexCom controlled secure file transfer protocol site specific to Distributor

DME and Pharmacy sales tracing files can be sent separately in different formats as long as all applicable data elements are present.

Sales Tracings Requirements

Field	Format	Desired State	Comments
[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]

SCHEDULE 4

Ordering and Acceptance Requirements

I. Orders, Shipping. Orders will be initiated by a written order, electronic equivalent or facsimile issued to DexCom (the "**Order**"). Each Order shall include information as set forth in Schedule 3. Products to be delivered per dates indicated on Orders shall be subject to a minimum of [***] lead time afforded to DexCom; provided if Distributor requests DexCom to supply quantities of Product in excess of [_____] in any single Order, DexCom will use commercially reasonable efforts within the constraints of its production schedules and other commitments to meet such quantities within such six (6) week lead time but shall not be in breach of this Agreement for any failure to deliver within such six (6) week period. An Order shall be deemed to have been placed as of the date of receipt of the Order by DexCom. DexCom shall promptly acknowledge receipt of each Order in writing, via fax or email and shall without undue delay confirm such Order. For any Order (or portion thereof) having a shorter lead time than the agreed-to lead time requirements set forth herein, DexCom shall use commercially reasonable efforts to accommodate such shorter lead time or fill such excess. [***]. Distributor shall be responsible for restocking fees to DexCom in the event that a shipment requested by Distributor to a Customer is returned for any reason.

II. Acceptance. Within [***] following a receipt of a shipment, Distributor shall perform a visual inspection (in accordance with Distributor's standard procedures) of the Products received and shall inform DexCom in writing of any non-conformity of the supplied Products to the specifications as shown in such inspection or other defect in the Products. In the absence of written notice to DexCom of a specified non-conformity within [***] of the end of such [***] period, the Products shall be deemed to be accepted by Distributor. If any latent defect in the Products is subsequently discovered that is not the result of Distributor's or its agents' handling, modification, or storage of the Products [***], Distributor shall promptly so inform DexCom together with all available details and information regarding the situation, including all records of Distributor's or its agents' handling, modification, and storage of the Products [***]. In case of a justifiable claim of non-conformity, DexCom shall either (at DexCom's option) replace the defective portion of the Products at no additional cost to Distributor or cancel the order and refund any portion of the price that may to that time have been paid to DexCom under this Agreement for the sale in question. If Distributor rejects any Products and DexCom does not agree that Distributor is justified in doing so, the parties will attempt to resolve the situation in good faith, and if necessary, an independent laboratory acceptable to both parties shall utilize agreed upon test methods to test the products in dispute and to audit Distributor's and its agents' handling and storage of the products [***]. The costs of such independent laboratory shall be borne by the parties equally; provided, however, that the party that is determined to have been incorrect in the dispute shall be responsible for all such costs and shall reimburse the correct party for its share of the costs incurred. The independent laboratory's findings shall be in writing and shall be binding on both parties.

AMENDMENT NUMBER SIX

TO AMENDED AND RESTATED NON-EXCLUSIVE DISTRIBUTION AGREEMENT

This Amendment to AMENDED AND RESTATED NON-EXCLUSIVE DISTRIBUTION AGREEMENT (this "**Amendment**") is made effective as of the date last signed below ("**Amendment Effective Date**") by and between Dexcom, Inc. ("**Dexcom**") and AdaptHealth, LLC ("**AdaptHealth**" or "**Assignee**" and, together with Dexcom, the "**Parties**"). Capitalized terms used herein and not defined in this Amendment shall have the meaning ascribed to it in the Agreement.

RECITALS

WHEREAS, Dexcom and Distributor have entered into that certain AMENDED AND RESTATED NON-EXCLUSIVE DISTRIBUTION AGREEMENT dated August 10, 2015 (as the same has been and may be amended from time to time, the "**Agreement**");

WHEREAS, Assignee was assigned to the Agreement as a permitted assign under the Agreement in Amendment Five, effective November 1, 2021;

WHEREAS, Dexcom and Assignee wish to update **Schedule 7, Covered Accounts**, as more fully defined herein;

WHEREAS, Dexcom and Assignee wish to update **Section 17.1 Notice**, as more fully defined herein;

AGREEMENT

NOW THEREFORE, the Parties agree as follows:

1. **Schedule 7, Covered Accounts**. As of the Amendment Effective Date, **Schedule 7, Covered Accounts**, is hereby deleted and replaced in its entirety and attached hereto. "**Covered Entity**" shall refer to any entity listed on **Schedule 7, Covered Accounts**. All existing distribution agreements between Dexcom and a Covered Entity shall be terminated upon the Amendment Effective Date. Any additional entities, as may be acquired from time to time by Assignee, may only be added as a Covered Entity under the Agreement by written approval from Dexcom.

2. **Section 17.1 Notice**. Section 17.1, a subsection of General Provisions, is hereby deleted and replaced in its entirety with the following:

   "17.1 Notice. Any notice or other communication required or permitted to be given under this Agreement shall be properly served only if it is in writing addressed as set out below. Notice may be sent by any of the following methods: (i) personal delivery; (ii) nationally recognized overnight courier service; (iii) U.S. Postal Service certified or registered mail, return receipt requested, postage prepaid. Service shall be deemed to have been duly given on the date of delivery or on the date which is seven (7) days from the date of deposit in the U.S. Postal Service in the manner described above. Either party may change the

names, addresses and facsimile numbers for receipt of notice by complying with this Section 17.1.

If to DexCom:	DexCom, Inc. 6340 Sequence Drive San Diego, CA 92121 Attn: Managed Care Contracting
With a copy to:	DexCom, Inc. 6340 Sequence Drive San Diego, CA 92121 Attn: Legal Department (858) 200-0200
If to Assignee:	Solara Medical Supplies 2084 Otay Lakes Rd, Suite 102 Chula Vista, CA 91913 Attn: President
With a copy to:	AdaptHealth, LLC 220 W Germantown Pike, Suite 250 Plymouth Meeting, PA 19462 Attn: General Counsel

3. **No Further Modification**. Except to the extent set forth in this Amendment, all other terms and conditions of the Agreement shall remain unmodified and in full force and effect.

[Remainder of Page Intentionally Blank;
Signature Page Follows]

IN WITNESS WHEREOF, Dexcom and Assignee have executed this Amendment as of the Amendment Effective Date.

	DEXCOM, INC.	**ADAPTHEALTH, LLC**
Authorized Signature:	/s/ Jason Scott	/s/ Josh Parnes
Name:	Jason Scott	Josh Parnes
Title:	Director – EMEA Legal	President
Effective Date:	4/7/2022	4/7/2022 | 08:44:42 EDT

SCHEDULE 7
COVERED ACCOUNTS

Solara Medical Supplies, LLC
AdaptHealth Patient Care Solutions LLC
Pinnacle Medical Solutions, LLC
Diabetes Supply Center of the Midlands, LLC
Diabetes Management & Supplies, LLC
New England Home Medical Equipment LLC
Huey's Home Medical, LLC
J.M.R. Medical, LLC
Pal-Med, LLC
Healthy Living Medical Supplies
Patient Care Solutions
Pumps It, Inc.

"**Covered Entity**" shall refer to any entity listed on this **Schedule 7, Covered Accounts** list.

All existing distribution agreements between Dexcom and a Covered Entity shall be terminated upon the Amendment Effective Date.

Any additional entities, as may be acquired from time to time by AdaptHealth, may only be added as a Covered Entity under the Agreement by prior written approval from Dexcom.

CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY [***], HAS BEEN OMITTED BECAUSE IT IS NOT MATERIAL AND IS THE TYPE THAT THE REGISTRANT TREATS AS PRIVATE AND CONFIDENTIAL

DISTRIBUTION SERVICES AGREEMENT

This Distribution Services Agreement ("Agreement") is made as of the 7th day of November, 2015, by and between AmerisourceBergen Drug Corporation, with an address at 1300 Morris Drive, Chesterbrook, PA 19087-5594 and DEXCOM Inc. with an address of 6340 Sequence Drive San Diego, CA 92121, ("Supplier").

NOW, THEREFORE, for and in consideration of the mutual promises and obligations contained in this Agreement, the parties agree as follows;

1. APPOINTMENT OF SUPPLIER

a. Engagement. ABC and Supplier agree to a nonexclusive arrangement where Supplier agrees to sell consumer products ("Products") to ABC on the terms and conditions set forth in this Agreement and any amendments or addendum thereto so that ABC may distribute the Product to customers. Supplier hereby appoints ABC (and all of its distribution centers) as an authorized distributor of record for all of its Products. Furthermore, Supplier will comply with all federal and state laws, requiring Supplier to publicly identify all of its authorized distributors.

b. Term. This Agreement is effective as of the date set forth above (the "Effective Date") and will continue in effect for two (2) years. Thereafter, this Agreement will automatically renew for subsequent terms of one (1) additional year, unless otherwise terminated by a party as allowed herein.

c. Breach and Termination. Either party may terminate this Agreement for cause, upon [***] written notice of a material default to the other party of the reason for termination, and failure of that party to cure the default within the [***] period. Either party may terminate this Agreement with or without cause upon [***] prior written notice.

2. PRICE AND PAYMENT

a. Prices. All prices and offers by Supplier will be available to ABC and all of its affiliates with similar classes of trade. The price for Products shall be [***].

b. Terms of Payment. Unless otherwise agreed, ABC will pay all Supplier invoices for undisputed orders in accordance with the due dates specified below; provided, however, that such payment terms are not less favorable to ABC than the payment terms offered to any other wholesale customer of Supplier and in no instances shall be less than: [***].

Under no circumstances shall Supplier make additions to any invoice amounts due to Supplier, unless a written memorandum from ABC authorizing such additions has been issued by ABC to Supplier.

ABC reserves the right, among other remedies, to suspend further purchases of Product(s) upon Supplier's continuing material non-compliance with this Agreement.

c. Debit Balance. Supplier shall immediately remit any monies due to ABC in the event of an ABC accounts payable debit balance situation with Supplier that persists for more than [***].

Debit balance is defined as the sum of all transactions in ABC's accounts payable system having due dates through, but not extending beyond, the then present date.

d. Electronic Payments: Supplier will receive payments for invoices by cheek. Without AmerisourceBergen's prior written consent, the Supplier shall not have the right to debit any AmerisourceBergen account electronically. If AmerisourceBergen and Supplier elect electronic payments, the parties agree to participate in an Automated Clearing House ("ACH") trade payments program within the operating guidelines of the National Automated Clearing House Association ("NACHA").

Supplier shall send any electronic payment made by AmerisourceBergen to a bank within the territorial jurisdiction of the United States and such payment shall not be subject to standing instructions to be transferred or forwarded to a foreign bank account or financial institution. In the event that Supplier elects, as part of a single payment transaction, to transfer or forward the entire amount of any electronic payment made by AmerisourceBergen to a bank account or financial institution located outside the territorial jurisdiction of the United States, Supplier will provide written notice to AmerisourceBergen.

(i) Remittance detail will accompany the actual funds transfer and be processed through the banking system in accordance with the provisions of NACHA's ACH Rules, Corporate Trade Exchange Format (CTX).

(ii) In addition to Supplier's standard non-ACH trade terms of [***], for ACH transactions, Supplier agrees to provide appropriate float to reflect the measured value of external and internal float days on all payment terms to AmerisourceBergen. The new base terms for payment via ACH will be current terms plus float days.

(iii) Supplier will include the additional appropriate float days referenced in the immediately preceding paragraph on all Supplier invoicing sent to AmerisourceBergen via EDI or hard copy. AmerisourceBergen will not be responsible for late ACII payments arising from any change to the transmission of float days unless AmerisourceBergen is provided with a [***] advance written notification of this change.

(iv) AmerisourceBergen will exercise its best efforts to ensure that all ACH payments are made in accordance with the terms set forth in paragraph (ii) above.

(v) Standard trade discounts are considered earned under the following circumstances:

a. The payment is generated properly and on time by AmerisourceBergen and good funds are available to Supplier on day [***] (plus float, if applicable) from the Supplier invoice date ("due date"). In the event that the due date is a Saturday, Sunday, or bank holiday, the due date will be the next business day.

b. The payment is generated properly and on time by AmerisourceBergen as evidenced by hard copy documentation, but availability to Supplier is delayed because of an infrequent system or procedural failure at AmerisourceBergen's bank.

c. The payment is generated properly and on time through AmerisourceBergen's bank so that it would normally be available in accordance with the terms agreed to herein, but availability to Supplier is delayed through no fault of AmerisourceBergen's bank.

e. Primary Distribution Services Fee. Supplier shall pay a Primary Distribution Services Fee to ABC for primary distribution services, which consist of the [***] (collectively referred to as "Primary Distribution Services"). The amount of the Primary Distribution Services Fee is [***] Wholesale Acquisition Cost ("WAC") and shall be invoiced monthly and payment shall be due within [***] of the date of the invoice. If the fees are not received within specified timeline, ABC reserves the right to deduct the amount due from payment to Supplier.

3. ABC OBLIGATIONS

a. Stock Product. ABC will make a good faith effort to maintain sufficient stock of Products to satisfactorily supply customer demand provided that such stock of products will not exceed [***] of inventory.

b. Legal Compliance. ABC will comply with federal, state and local laws governing the purchase, storage, handling, sale, and distribution of Products.

c. Drop Shipments. ABC will honor all invoices billed to ABC for drop shipments authorized by ABC, provided that the Product has been delivered and the invoice is not disputed by customer.

d. Storage Conditions. ABC will use reasonable commercial efforts to maintain Products under proper conditions, both in storage and in transit to ABC customers.

e. Short Dated Product. ABC will accept short dated Product (Product received with less than nine (9) months dating) in its sole discretion and on a case-by-case basis.

f. Inventory and Sales Reports. ABC shall prepare and provide to Supplier, for the duration of this Agreement, Inventory Reports (“852”) and Sales Reports (“867”) as provided herein (together 852 and 867 are referred to as “Data”). All reports shall be transmitted in EDI format and shall be in the form, for the fee(s) and in accordance with other terms in this Agreement and Exhibits B and C. EDI 852 transmissions shall be sent weekly. They shall be provided by the end of the first business day following the end of the chosen reporting period. Records will only be created for those items which are actively stocked in an ABC division. This does not include any re-packaged inventory that may be purchased from American Health Packaging. ABC’s Puerto Rico Division activity Is typically included unless otherwise specified. EDI 867 transmissions shalt be sent weekly. They shall be provided by the end of the first business day following the end of the chosen reporting period. ABC may, solely due to contractual requirements, be required to block certain or all fields related to the data that discloses the identity of a particular shipping (DEA) location. ABC will not be required to share 867 data that allows the Supplier to determine the actual identity and physical address, including the full zip code, of the non-consumer end purchaser of the Product. Sales of any repackaged inventory that may be purchased from American Health Packaging will not be reported through this process.

g. Grant of Limited License to Use Data. ABC hereby grants to Supplier a nonexclusive, assignable (in accordance with Section 12(b) of the Agreement) license to use the Data solely for Supplier’s Internal corporate purposes and in accordance with the confidentiality and other provisions of this Agreement. No Data may be sent to a third party unless Supplier receives prior written approval from ABC; provided, that, such Data may be provided to Supplier’s Affiliates and/or third parties that engaged by Supplier to perform internal business functions on Supplier’s behalf; provided, further, such Affiliates and/or third parties have agreed in writing to be bound by the provisions of this Agreement governing the use of, and restriction on, the Data.

h. AmerisourceBergen Ownership of Data. All Data provided by ABC to Supplier under this Agreement is confidential information (as discussed in Section 8) owned by ABC. ABC has granted a license to Supplier to use the Data internally and In accordance with this Agreement. Except for the license granted contained herein, this Agreement does not grant Supplier any title or right of ownership to the Data.

i. Limitations on Provision of Data. Notwithstanding any other provision of this Agreement, to the extent that, and only the extent that, ABC is prohibited from providing certain Data to Supplier by any agreement between (i) ABC or any of its affiliates and (ii) a third party, including a customer, then ABC shall provide all other Data but shall have no obligation to provide the Data that is so restricted,; provided, however, ABC shall use commercially reasonable efforts to provide the Data in a manner or file type that would not be in violation of the aforementioned agreements.

j. EDI Implementation. Within [***] after the execution of this Agreement, the parties shall examine and test the capability of their respective EDI systems and implement a mutually agreeable system whereby transfers of

information can be made effectively and on a consistent basis. In the event that critical internal support systems and electronic communication links, including EDI, are not available for [***], the parties will cooperate to promptly implement substitute procedures that may include excel files for 867 and 852 information. ABC reserves the right to change the frequency of 852 and 867 reports to monthly if sent in any format other than EDI. In the event that a disruption with the transmission occurs, ABC will have up to [***] following notification by Supplier to remedy the situation. ABC will exercise reasonable care to avoid material errors in gathering, processing and delivering data.

k. Products. ABC acknowledges that each Product contain valuable trade secret information of Supplier. ABC shall not, and shall not permit or assist others to, reverse compile, reverse assemble or reverse engineer the Product or the software embedded therein. ABC shall not, and shall not permit or assist others to, remove or modify any copyright, patent or other proprietary labels or markings on the Product or the packaging provided by Supplier

4. SUPPLIER OBLIGATIONS

a. Purchase Orders. ABC shall submit purchase orders via EDI in the industry standard format. For the first [***]from the start of the contract, ABC shall submit purchase orders through email or via Fax. All purchase orders shall be subject to Supplier's reasonable approval and acceptance. If ABC is requested to submit purchase orders other than via EDI in industry standard. Supplier agrees to accept purchase orders at the prices in effect on the day the order is transmitted. Supplier will notify ABC on the day the order is placed of any Product adjustments or purchase order delays. Purchase orders are valid for [***] and Product should not be shipped against a purchase order older than [***] without the ABC buyer's written agreement.

b. New Item Set-up. Supplier will provide ABC with completed New Item Set-up Sheets for all new items proposed to ABC for stocking through the Link item set-up process, and promotional fact sheets for all promotions.

c. Minimum Order Amounts. Supplier and ABC will set mutually agreeable minimum purchase order amounts, if applicable. The net amount of the original purchase order will determine if that minimum is met.

d. Delivery Times. Supplier will make commercially reasonable efforts to ship all ABC orders completely and to deliver them within a mutual agreeable schedule not to exceed four (4) business days of order placement. A complete order is defined as all products not currently designated as backordered, unavailable, or discontinued at time of delivery. A notification of all Products falling into one of these designated status groups must be provided to ABC, in writing, within twenty-four (24) hours of order placement. This notification shall include the reason for the delay and the expected availability date.

e. Inbound Fill Rate: Supplier agrees to maintain no less than a [***]raw fill rate measured monthly. The fill rate is defined as total quantity delivered within [***]of the -expected arrival date divided by the total quantity

ordered. If ABC attempts to purchase more than [***] of its prior ninety (90) day average or [***] of a forecast submitted at least thirty (30) days in advance, the Product(s), to the extent in excess of [***] of the prior average or forecast, will not be included in the applicable month's measurement. Products that are discontinued or unavailable will not be included after [***] upon written notification of such status.

f. Outbound Pill Rate. Supplier agrees to support a raw outbound fill rate of [***]. This fill rate is measured monthly and is defined as customer lines filled divided by customer lines ordered. Supplier shall not be obligated to meet outbound fill rate incurred from errors caused due to storage and handling by ABC.

g. Shipping. Labels. Supplier agrees to place a label on the package that states "REPACK" (this alerts the DCs that it contains multiple sku's and ensure the packing slip lists the items enclosed and either placed in the outside plastic sleeve on the outside of the box or enclosed within.

h. Drip Ship Orders. In the event ABC or Supplier elects to drop ship Product(s) to an ABC customer, all other provisions of the Agreement, including returns, remain in effect. To the extent that Supplier receives an order directly from one of ABC's retail customers, Supplier must verify in advance that customer is in good standing with the servicing ABC division.

i. Invoicing. The Supplier will not invoice orders until the Product has been shipped to ABC. Invoices and credit memos will be transmitted electronically in the industry standard format.

j. Shipment Champs, Title and. Risk of Loss. All orders are to be shipped by Supplier to ABC [***]. Supplier shall pay for [***]. Supplier is responsible for [***]. Title to and risk of loss of products sold hereunder will pass to ABC upon [***].

k. Short Dated Product. Supplier agrees to ship Products with not less than [***] months shelf life remaining, unless Product is manufactured with a limited shelf life less than the above, in which case such Product will be shipped with ABC's approval. At ABC's discretion, short dated Product may be accepted on a case-by-case basis in individual purchase situations, and such shipment must be approved in writing by the ABC buyer.

l. Notice of Promotional Activities/Buy-in Opportunities. Supplier agrees to provide ABC prior notice of marketing activities to ABC customers involving guaranteed sale provisions and/or other distribution and promotional activities.

m. Accounts Receivable Statement. Supplier agrees to provide ABC with a monthly accounts receivable electronic statement for all open transactions when capable In the interim Supplier will supply ABC with an excel spreadsheet of accounts receivable open transactions.

n. Date of Price. Supplier agrees to accept purchase orders at the prices in effect on the day of purchase. Supplier will notify ABC on the day the order

is placed of any Product adjustments or other delays from held purchase order delays,

o. Price Changes. Supplier agrees to electronically communicate all price changes to ABC no later than [***] prior to the effective date to: [***]. Supplier agrees to work with ABC to insure that adequate pre price increase inventory is available to ABC. In the event of a shortage, Supplier will back-order all inventory ordered on any dates prior to the effective date of the price increase. In some cases a mutually agreed to credit can be given in lieu of Product. If Supplier does not give notice in accordance with this section, Supplier agrees to compensate ABC for the dollar difference between the WAC in effect prior to the price change and the new WAC multiplied by the number of units sold between the effective date and the date and time ABC became aware of the price change and entered the pricing change into the system.

p. Price Protection. Supplier agrees to provide price protection to ABC and to adjust on-hand and in-transit inventory in the event of a product price reduction.

q. Credits. Supplier will pay ABC all compensation due (including without limitation, payments, credits, product allocations, and/or bill-back program amounts) within [***] of determination. Exceptions shall be resolved with ABC's Accounts Payable Department. ABC reserves the right to make deductions. With respect to correspondence relating to invoices or claims due to shortages and/or damages (concealed or otherwise), returns, or pricing — Supplier will respond with POD or disposition by contacting the assigned Accounts Payable Vendor Services Representative via email at [***]. If Credits no longer hold value to ABC, Supplier will issue cash in lieu of credit.

r. Product Recall Reimbursement. Supplier agrees to abide by all I-IDMA published guidelines for product recall reimbursement and will reimburse ABC in accordance with its standard rates. ABC will not be obligated to handle partial containers.

s. JAW Compliance. Supplier will comply with all applicable federal, state and local laws, and applicable government contracting requirements/regulations including but not limited to those laws, requirements and regulations governing the manufacture, purchase, handling, sale, marketing and distribution of Products purchased under this Agreement.

t. Supplier will work together with AmerisourceBergen to comply in all material respects with all applicable provisions of DSCSA, Title II of the Drug Quality and Security Act of 2013, as may be amended, with respect to the supply and distribution of the Products.

Supplier understands that all Products offered for sale to the United States Government under this Agreement must be compliant with the Trade Agreements Act (TAA) (19 U.S. C. 2501, et seq.). As such, Supplier certifies that all Products will be Country of Manufacture confirmed pursuant to the TAA requirements. If Supplier is not the actual manufacturer of the Products supplied to ABC, Supplier certifies that it has supporting information on file from the manufacturer of the Product. If any

information previously provided to ABC changes, Supplier shall provide thirty (30) days prior notice to ABC. Supplier understands that ABC is relying on Supplier's certification to meet its contractual obligations to the government. If any information regarding Supplier's compliance with the TAA that is provided by Supplier to ABC is inaccurate, Supplier shall be deemed to be in material breach of this Agreement.

Supplier agrees to comply with ABC's Code of Ethics and Business Conduct Policy ("Code of Conduct"), including, but not limited to, those sections on Fraud & Abuse Laws, Antitrust & Competition Laws and Anti-Bribery/Anti-Corruption Laws, and specially the Anti-Bribery/Anti-Corruption Compliance Policy No. 6, The Code of Conduct can be found at Investor Relations tab, Corporate Governance, of www.amerisourcebergen.com. In the event Supplier violates ABC's Code of Conduct, the Fraud & Abuse Laws, Antitrust & Competition Laws, or Anti-Bribery / Anti-Corruption Laws, Supplier shall be deemed to be in material breach of this Agreement.

The parties agree that, as applicable, they will abide by the requirements of 41 CFR 60-1.4(a), 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a) and that these laws are incorporated herein by reference. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. These regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. The parties also agree that, as applicable, they will abide by the requirements of Executive Order 13496 (29 CFR Part 471, Appendix A to Subpart A), relating to the notice of employee rights under federal labor laws.

u. Supporting information / Records. Each party shall provide any documentation, certification or instructions to the other party reasonably necessary for full compliance with federal, state and local laws with respect to the handling, storage, sale and distribution of the Products, including without limitation, any documentation, certification or instruction regarding the classification, handling and shipping of any hazardous materials and compliance with the TAA. Each party shall maintain federal, state and local registrations, licenses and permits necessary for the lawful handling or distribution of all Products and immediately notify the other party of any denial, revocation or suspension of any such registration or any changes in the Products subject to this Agreement. Supplier shall report any administrative, civil or criminal action currently pending or arising after the effective date of this Agreement by local, state or federal authorities against Supplier, its officers or employees, regarding alleged violations of the Controlled Substances Act of 1970, as amended, or other comparable legislation, and provide ABC with complete information concerning the disposition of such action. If Products include controlled substances, Supplier shall provide ABC with a copy of its DEA certificate.

v. Allocation. Supplier agrees to work with ABC to ensure that any allocation program not related to Product availability does not cause an out-of-stock situation. If ABC validates to Supplier a potential out-of-stock condition, Supplier will use commercially reasonable efforts to adjust ABC's allocation to meet demand. Supplier will use commercially reasonable efforts to provide ABC thirty (30) days (or such other period as is commercially feasible) advance notice of any changes in Supplier's credit line and allocation processes.

w. New Product Launches. Recognizing the uncertainty associated with new Product launches, the parties agree as follows: Prior to the delivery of the initial stocking order, ABC and Supplier will jointly determine the amount of the initial stocking order that will be sold to ABC.

x. Chargebacks. Supplier shall comply with ABC's Contracts and Chargeback Administration policy in effect from time to time.

5. RETURNS

In consideration of ABC agreeing not to return any Products (other than as expressly set forth or referenced in this Section 5), Supplier shall pay ABC a [***]. The returns allowance shall be invoiced monthly and payment shall be due within [***] of the date of the invoice, If the returns allowance is not received within specified timeline, ABC reserves the right to deduct the amount due from payments owing to Supplier. ABC shall be responsible for all third party returns that are initiated through, or by, or are within, or under, the control of, ABC ("ABC's Third Party Returns"), excluding (1) returns made by a customer of ABC to whom Supplier has drop shipped the Product that is sought to be returned, and (2) returns initiated by the ultimate end user of a Product pursuant to a valid Product warranty claim; provided, that, with respect to third party product return claims (other than ABC's Third Party Returns) that Supplier is responsible for resolving pursuant to the terms of this Agreement, the parties acknowledge and agree that: (A) Supplier shall be under no obligation to accept such returns, and (B) it shall be the sole decision of Supplier (in its sole and absolute discretion) as to whether, and in what manner, to accept any such returns.

The Returns Allowance shall not cover: (i) products needing to be returned because of recalls (ii) return of damaged products pursuant to and in accordance with Section 6 hereof; and (iii) Products with regard to which ABC notifies Suppler within [***] of physical delivery of such Products to the destination specified by ABC that such Products were received in quantities less than shown on Supplier's relevant shipping documents and ABC elects to return all Products received as opposed to having Supplier correct any shortfall (items (i) through (iii), are hereinafter referred to as "Permitted Returns"). With respect to Permitted Returns, the parties acknowledge and agree that; (A) Supplier shall be under no obligation to accept such returns, and (B) it shall be the sole decision of Supplier (in its sole and absolute discretion) as to whether, and in what manner, to accept any such returns. Supplier and ABC agree to review the Returns Allowance In [***] from effective date of this agreement, to the extent that, and only the extent that, the amount of Permitted Returns to Supplier and ABC's Third Party Returns during that [***] exceed the Returns Allowance.

6. DAMAGED PRODUCTS

Should Products sold to ABC be received in obvious damaged condition, ABC will note on the delivery slip the apparent damage and shall be entitled to promptly return the damaged Product to the Supplier. Damage will be reported promptly to Supplier's customer service department to determine the disposition instructions. ABC shall use commercially reasonable efforts to conduct a reasonable inspection of Products received by it pursuant to this Agreement to determine if there is any damage to such Products that was not apparent at the time of delivery. In the event of concealed damage that could not have been identified by ABC's inspection and is not caused by ABC's handling, storage or transportation of the applicable product, ABC shall report such concealed damage with [***] from discovery. ABC shall hold such damaged Products for inspection by the insurer, the carrier, or Supplier's designated representative for up to [***]. With respect to any Damaged Products that are not the result of ABC's handling, storage or transportation of the Product, then ABC, shall be entitled to deduct any payments made for the applicable Damaged Product from amounts owing to Supplier and return the Product at the Supplier's expense. Amounts deducted by, or credited back to, ABC for damaged products shall not be subject to the Primary Distribution Services Fee or the Return Allowance.

7. SHIPMENT ERRORS

In the event of an incomplete shipment, a shortage in shipment, the misdirection of any delivery, or any over shipment, the Supplier shall immediately contact the ABC purchasing department and shall comply with any reasonable directions provided by ABC. Supplier will be responsible for any related freight or accessorial charges caused by the error,

8. CONFIDENTIALITY

a. In order to facilitate this Agreement, either party ("Disclosing Party") may disclose to the other party ("Receiving Party") certain confidential or proprietary information subject to this Agreement. All documents and other information provided to Receiving Party by Disclosing Party pursuant to this Agreement, including any information concerning prices, quantities purchased by any customer, data or other terms and conditions, shall be held by Receiving Party in strict confidence and not disclosed either directly or indirectly to any third party and shall only be used for purposes of Receiving Party fulfilling its obligations under this Agreement. Receiving Party acknowledges that money damages alone would not be a sufficient remedy for any violation by it of the terms of this Agreement addressing use or disclosure of other confidential information of Disclosing Party and that Disclosing Party will be entitled (in addition to any other remedies which may be available to it at law or in equity) to specific performance and injunctive relief as remedies for any such violation. Each party shall keep the terms and conditions of this Agreement and any amendments or addenda thereto confidential. The provisions of this Section shall survive termination,

b. The obligations imposed by this Section 8 shall not apply to information which (i) at the time of disclosure is in the public domain; (ii) after disclosure becomes a part of the public domain by publication or otherwise, through no fault of the Receiving Party; (iii) at the time of disclosure is already in the Receiving Party's possession, except through prior disclosure by either party or an affiliate of either of them, and such

possession can be properly documented by the Receiving Party in its written records, and was not made available to the Receiving Party by anyone owing an obligation of confidentiality to the Disclosing Party; or (iv) is rightfully made available to the Receiving Party from sources independent of the Disclosing Party.

c. To the extent that Confidential Information of the Disclosing Party is legally required to be disclosed in the course of the litigation or other legal or administrative proceedings or otherwise as required by law, the Receiving Party shall, to the extent permitted, (1) give the other party prompt notice of the pending disclosure and shall cooperate in such other party's attempts, at such other party's sole expense, to seek an order maintaining the confidentiality of such information, (2) only disclose the minimum Confidential Information necessary with respect to the applicable litigation, legal administration proceeding or as required by applicable law.

d. The confidentiality provision of this Section 8 shall survive any termination or expiration of this Agreement.

9. INSPECTION OF RECORDS

Supplier and ABC agree to maintain complete and accurate records of all transactions related to the conduct of business under this Agreement. Both parties will permit reasonable audit and inspection of such records upon reasonable notice and during regular business hours for the limited purpose of resolving business disputes arising hereunder or in connection herewith or as necessary to respond to an audit or investigation by a government agency or other competent authority. If it is determined, based on any such inspection or audit, that either party has received excess credits, upon confirmation of such finding, such party shall immediately pay any excess amount to the other.

10. RELATION OF PARTIES

a. Except as otherwise specified, ABC is acting pursuant to this Agreement in the capacity of an independent contractor distributing the Products of Supplier as well as products of other manufacturers.

b. ABC shall have no authority to bind Supplier unless otherwise agreed to between Supplier and ABC.

c. Supplier shall not use ABC's name, trademarks or commercial symbols without the prior written consent of ABC.

d. Nothing contained in this Agreement shall be interpreted or construed so as to characterize the relationship between the parties as a joint venture, partnership, agency or franchise for any purposes whatsoever.

11. WARRANTY/INDEMNITY

a. Continuing Guaranty. As a condition precedent to ABC entering into this Agreement, Supplier shall execute the Continuing Guaranty and Indemnification Agreement set forth as Exhibit A.

b. Representations and Warranties. Supplier represents and warrants to ABC that (I) [***].

12. INDEMNIFICATION

a. In addition to any indemnities or remedies specifically set forth elsewhere in this Agreement, each party (the "Indemnifying Party") shall indemnify, defend and hold harmless the other, its agents, servants, employees, officers, directors, attorneys, subsidiaries, affiliates, parent and assigns from and against ail third party claims (including, but not limited to, product liability claims and claims relating to "class of trade" pricing), losses, damages, liabilities and expenses, including without limitation reasonable legal fees and court costs (collectively, "Indemnifiable Losses"), arising out of (i) the material breach by the Indemnifying Party of any obligation contained herein, or (ii) the fraud, intentional misconduct, negligent acts or omissions or wrongdoing of any kind alleged or actual on the part of the Indemnifying Party.

b. In the event that any party to this Agreement shall incur any Indemnifiable Losses in respect of which indemnity may be sought by such party pursuant to this Section 11 or any other provision of this Agreement, the party Indemnified hereunder (the "Indemnified Party") shall notify the Indemnifying Party promptly. Such notice shall in any event be given within a reasonable period of time of the filing or assertion or becoming aware of any claim against the Indemnified Party, stating the nature and basis of such claim; provided, however, that any delay or failure to notify the Indemnifying Party of any claim shall not relieve it from any liability except to the extent that the Indemnifying Party demonstrates that the defense of such action has been materially prejudiced by such delay or failure to notify. The Indemnifying Party shall, within a reasonable period of time of its receipt of notice of such claim or being made aware of such claim, notify the Indemnified Party of its intention to assume the defense of such claim. If the Indemnifying Party shall not assume the defense of any such claim or litigation resulting therefrom, the Indemnified Party may defend against any such claim or litigation in such manner as it may deem appropriate and the Indemnified Party may settle such claim or litigation on such terms as it may deem appropriate, and assert against the Indemnifying Party any rights or claims to which the Indemnified Party is entitled. Payment of Indemnifiable Losses shall be made within a reasonable time after a final determination of a claim. A. final determination of a disputed claim shall be (a) a judgment of any court determining the validity of disputed claim, if no appeal is pending from such judgment or if the time to appeal therefrom has elapsed, (b) an award of any arbitration determining the validity of such disputed claim, If there is not pending any motion to set aside such award or if the time within to move to set such award aside has elapsed, (c) a written termination of the dispute with respect to such claim signed by all of the parties thereto or their attorneys, (d) a written acknowledgment of the Indemnifying Party that it no longer disputes the validity of such claim, or (e) such other evidence of final determination of a disputed claim as shall be acceptable to the parties.

c. The indemnification provisions of this Section 11 shall survive any termination or expiration of this Agreement.

13. MISCELLANEOUS

a. Notice. Any notice required or permitted hereunder shall be in writing and shall be deemed given upon delivery, when delivered personally or by overnight courier, fax or email with confirmation of receipt, or forty-eight (48) hours after being deposited in the United States Mail, postage prepaid, registered or certified, return receipt requested, addressed to the receiving party at its address indicated on page 1 of this Agreement or to such other address as such party shall have indicated by written notice. A copy of any notice provided to ABC must also be sent to ABC's General Counsel at the ABC address listed on page 1.

b. Assignment. This Agreement may not be assigned by either party without the prior written consent of the other party. Notwithstanding the foregoing, either party may assign its rights and obligations hereunder without the consent of the other party to a subsidiary or affiliate or to an entity which purchases all or substantially all of the party's stock or assets or acquires control of the party, whether by merger, consolidation or any other means.

c. Governing Law/Interpretation. The Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware. The parties have jointly negotiated this Agreement and, thus, neither this Agreement nor any provision will be interpreted for or against any party on the basis that it or its attorney drafted the Agreement or the provision at issue. Headings of the various Sections are not part of the context of this Agreement, and are only labels to assist in locating those Sections, and will be ignored in construing this Agreement. When this Agreement requires approval of one or more parties, such approval may not be unreasonably withheld or delayed. Words, regardless of the number and gender specifically used, will be construed to include any other number, singular or plural, and any gender, masculine, feminine, or neuter, as the context requires. "And" includes "or." "Or" is disjunctive but not necessarily exclusive. "Including" means "including but not limited to."

d. Legal Compliance. It is the Intent of the parties to this Agreement to comply now, and hereafter during the term of this Agreement, with all federal; state, professional and other laws, statutes, regulations, rules, policies and protocols applicable to the subject matter of the Agreement and the relationship of the patties, including, without limitation, any reporting obligations (such as Average Selling Price) under any state or federal law. In the event there is any change in law, regulation or interpretation thereof that has the effect of prohibiting any right or obligation of a party under this Agreement or materially affects such right or obligation, then such party may upon notice to the other party immediately terminate this Agreement in whole or in part.

e. Force Majeure. Each party's obligation under this Agreement will be excused to the extent any delay is caused by strikes or other labor disturbance, acts of God, war, terrorism, shortage of materials or transportation, or other conditions beyond the reasonable control of that party, but only during the duration of such condition and provided such party gives prompt written notice thereof to the other party.

f. Benefits. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

g. Complete Agreement. Except for any Continuing Guaranty and Indemnification Agreement, this Agreement, together with the Exhibits hereto, contains the entire agreement between the parties and supersedes any prior agreement or understanding concerning the subject matter herein between the parties, including any and all return policy terms and conditions that may be presented to ABC.

h. Modification. This Agreement may be modified, or rights hereunder waived, only in a writing signed by both parties that expressly references this Agreement.

i. Publicity. Neither party shall have the right to issue a press release, statement or publication regarding the terms and conditions of or the existence of this Agreement.

j. Most Favored Nations Clause. Supplier agrees not to offer payment terms that are less favorable to ABC than the payment terms offered to any other wholesale customer of Supplier.

k. Survival. The representations and warranties under this Agreement which, by their terms and conditions, show the parties intended them to survive the termination of this Agreement for any reason, including provisions governing confidentiality, indemnification and liability, shall survive the expiration or earlier termination of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives.

DEXCOM INC.
By: s/ Jess Roper
Name: Jess Roper
Title: CFO
Date: November 4, 2015

AMERISOURCEBERGEN DRUG CORPORATION
By: s/ Timothy J. Baker
Name: Timothy J. Baker
Title: Vice President – Consumer Products
Date: November 5, 2015

EXHIBIT A
CONTINUING GUARANTY AND INDEMNIFICATION AGREEMENT

The undersigned guarantees to AmerisourceBergen Corporation and each of Its subsidiary companies and their successors that (i) any food, drugs, devices, cosmetics, or other merchandise ("Products") now or hereafter shipped or delivered by or on behalf of the undersigned and its affiliates ("Guarantors") to or on the order of AmerisourceBergen Corporation or any of its subsidiaries will not be, at the time of such shipment or delivery, adulterated, misbranded, or otherwise prohibited under applicable federal, state and local laws, Including applicable provisions of the Federal Food, Drug and Cosmetic Act, 21 U.S.G. §301 et seq. ("FDGA"), and Sections 351 and 361 of the Federal Public Health Service Act, 42 U.S.C. §§ 262 and 264, and their implementing regulations ("Applicable Laws"), each as amended and in effect at the time of shipment or delivery of such Products; (ii) Products are not, at the time of such shipment or delivery, merchandise that may not otherwise be Introduced or delivered for introduction Into interstate commerce under Applicable Laws, including FDCA section 301 (21 U.S.C. §33I); and (iii) Products are merchandise that may be legally transported or sold under the provisions of any other applicable federal, state or local law. Guarantors guarantee further that, in the case of food shipments, only those chemicals or sprays approved by federal, state or local authorities have been used, and any residue in excess of the amount allowed by any such authorities has been removed from Products.

Guarantors shall promptly defend, indemnify and hold AmerisourceBergen Corporation and each of its subsidiaries harmless against any and all claims, losses, damages, costs, liabilities and expenses, including attorneys' fees and expenses, arising as a result of (a) any actual or asserted violation of Applicable Laws or by virtue of which Products made, sold, supplied, or delivered by or on behalf of Guarantors may be alleged or determined to be adulterated, misbranded or otherwise not in full compliance with or in contravention of Applicable Laws, (b) the possession, distribution, sale and/or use of, or by reason of the seizure of, any Products of Guarantors, including any prosecution or action whatsoever by any governmental body or agency or by any private party, Including claims of bodily injury, death or property damage, (o) any actual or asserted claim that Guarantors' Products infringe any proprietary or intellectual property rights °fury person, including infringement of any trademarks or service names, trade names, trade secrets, inventions, patents or violation of any copyright laws or any other applicable federal, state or local laws, and (d) any actual or asserted claim of negligence, willful misconduct or breach of contract except to the extent arising from the negligence, willful misconduct or breach of contract of AmerisourceBergen or its affiliates.

Guarantors shall maintain primary, noncontributory product liability insurance of not less than [***] per occurrence for claims relating to Products. This insurance must include AmerisourceBergen Corporation, its subsidiaries and their successors as additional insureds for claims arising out of Products. Guarantor shall provide for at least thirty days' advance written notice to AmerisourceBergen Corporation of cancellation or material reduction of the required insurance. If the required insurance is underwritten on a "claims made" basis, the insurance must include a provision for an extended reporting period ("ERP") of not less than twenty-four months; Guarantors further agree to purchase the ERP If continuous claims made insurance, with a retroactive data not later than the date of this Agreement, is not continually maintained or is otherwise unavailable. This insurance shall be with an insurer and in a form acceptable to AmerisourceBergen Corporation, and any deductible or retained risk must be commercially and financially reasonable and acceptable to AmerisourceBergen Corporation. Guarantors warrant that they have sufficient assets to cover any self-

insurance or retained risk. Upon request, Guarantors will promptly provide satisfactory evidence of the required insurance.

Provisions in this Continuing Guaranty and Indemnification Agreement are in addition to, and not in lieu of, any terms set forth in any purchase orders accepted by Guarantors or any separate agreement entered into between AmerisourceBergen Corporation or any of its subsidiaries and Guarantors. If the language Agreement conflicts with the language in any other document, the language in this Agreement controls.

Dexcom, Inc. /s/ Jess Roper 11-4-2015

Guarantor's Company Name Signature of Authorized Officer Date

Jess Roper, CFO

Print Name and Title

_____

Address of Company

_____

Phone

_____

EXHIBIT B
EDI852 PRODUCT ACTIVITY DATA

EDI 852 transmissions will be sent weekly, They are typically provided by the end of the first business day following the end of the chosen reporting period.

Table 1: EDI 852 Transmission Format

Element	Comments
Date	Reporting Date.
Division DUNS + 4	ABC Corporate DUNS number plus four digit division identifier.
Division DEA Number	ABC division registered DEA number.
NDC or UPC	Contains the Item's NDC or UPC Identifier. Typically, the NDC number Is sent If a Material has both. In the event that an NDC or UPC Is not available, Manufacturer Product Code or other Identifier will be sent.
ABC Item Number	Represents ABC's Internal SAP Material Number.
4P	On Order Quantity—The amount of Inventory on-order with the manufacturer.
QA	On Hand Quantity—The saleable on-hand quantity at the time of the reporting snapshot.
QS	Sales Out Quantity— Represents the total invoice units for regular sales. It may also include Intercompany sales, or pm-book dock-to-dock sales If manufacturer does not separately receive one or more of those sales types. It does not Include drop-ship sales and Is not net of any customer returns. Credit/re-bill invoices are not Included,
40	Omit Quantity— Filtered for customer order errors and corporately discontinued Items. Intercompany omits are always excluded,
Q1	Inbound Transfer Quantify— Represents Inbound stock transfer order quantity In the receiving division, Works in conjunction with QZ.
QZ	Outbound Transfer Quantity— Represents the outbound stock transfer order quantity in shipping division, Works in conjunction with QI.
QD	Forecaster/ Unit Demand— ABC's 28-day unit forecast. A multiplying factor can be applied to represent data In a different time period upon request (i.e. 99 day forecast).
QR	Saleable Quantity Received— Purchase order quantities received from the manufacturer and from stock transfer orders. Pre-book purchase order quantities are Included.
QT	Inventory Adjustments (Positive)— Reports positive adjustments to saleable Inventory. Works In conjunction with QH.
QH	Inventory Adjustments (Negative)— Reports negative adjustments to saleable inventory. Works In conjunction with QT.
QU	Saleable Customer Return Quantity— Inventory units returned by the customer which Is deemed saleable and returned to stock.

Records will normally only be created for those Items which are actively stocked in an AmerisourceBergen division. This does not Include any re-packaged inventory that may

be purchased from AHP. Puerto Rico Division activity **Is** typically Included unless otherwise specified.

In the event that a disruption with the transmission occurs, AmerisourceBergen will have up to five (5) business days following notification by the supplier to remedy the situation. AmerisourceBergen will exercise reasonable care to avoid material errors In gathering, processing and delivering Data.

The parties will work together In good faith to establish EDI feeds. However, in the event that the supplier is unable to receive electronic EDI feeds, then a report in an alternate format will be provided.

EXHIBIT C
EDI867 SALES REPORTING DATA

EDI 867 transmissions will be sent weekly. They are typically provided by the end of the first business day following the end of the chosen reporting period.

Table 2: EDI 867 Transmission Format

Element	Comments
Date of Transmission	Date when EDI 867 transmission Is sent,
Date Range	Time period of events Included in the current transmission.
Division DEA Number	Contains the DEA number assigned to the division.
Division HIM Number	Contains the IIIN number assigned to the division.
Customer Name and DEA Number	Represents the customer's name and the DEA number assigned to them,
Customer Street Address	Represents the street address for the customer.
Customer City, State, and P	Represents the city, state, and ZIP of the customer's location.
Customer HIN Number	Contains the HIN number assigned to that customer.
NDC or UPC	Represents the NDC or UPC number assigned to the product Involved In the transaction. In the event that an NDC or UPC Is not available, Manufacturer Product Code or other Identifier will be sent.
Unit Cost	Represents the wholesale acquisition cost for the product.
Invoice/Credit Number and Invoice/Credit Date	Represents the Invoice/credit number and the time when the Invoice was issued.
380	Unit Quantity Sold or Returned.
782	Extended Wholesale Cost— Based upon the quantity sold/returned multiplied by the wholesale acquisition cost of the product.
SS	Regular sales Quantity— Includes regular trade sales.
BQ	Pre-took Dock-to-Dock Sales Quantity— Includes sales quantities reported from Invoices coded with pre-book special handling codes.
RV	Customer Quantity Retinal – Includes all quantity returned unless only saleable returns are specified.

AmerisourceBergen may, solely due to contractual requirements, be required to block all or certain fields related to the data that discloses the identity of a particular shipping (DEA) location. AmerisourceBergen will not be required to share 867 data that allows the Supplier to determine the actual identity and physical address, including the full zip code, of the non-consumer end purchaser of the product.

Sales of any re-packaged inventory that may be purchased from AHP will not be reported through this process.

In the event that a disruption with the transmission occurs, AmerisourceBergen will have up to five (5) business days following notification by the supplier to remedy the situation. AmerisourceBergen will exercise reasonable care to avoid material errors in gathering, processing and delivering Data.

CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY [***], HAS BEEN OMITTED BECAUSE IT IS NOT MATERIAL AND IS THE TYPE THAT THE REGISTRANT TREATS AS PRIVATE AND CONFIDENTIAL.

AMENDMENT TO THE DISTRIBUTION SERVICES AGREEMENT BETWEEN DEXCOM INC. & AMERISOURCEBERGEN DRUG CORPORATION

This Amendment (the "**Amendment**"), effective as of the 1st day of November, 2018 (the "**Amendment Effective Date**"), is entered into by and between DEXCOM Inc. ("**Supplier**") and AmerisourceBergen Drug Corporation ("**ABC**"), individually a "Party" and collectively the "Parties."

WHEREAS, the Parties have entered into a Distribution Services Agreement effective as of November 7, 2015 (as amended, the "**Agreement**"); and

WHEREAS, the Parties now desire to amend the Agreement as set forth below.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and agreements contained in the Agreement, and intending to be legally bound hereby, the Parties agree as follows:

1. *Definitions*. Capitalized words used but not defined herein shall have the meanings ascribed thereto in the Agreement.

2. *Amendments*.

2.1 The penultimate sentence of Section 2(f) of the Agreement shall be amended and restated in its entirety and shall read as follows:

"The amount of the [***] is [***] basis points times the amount of ABC's monthly gross purchases less damages at Wholesale Acquisition Cost ("WAC") and shall be invoiced monthly and payment shall be due within [***] days of the date of the invoice."

2.2 The first sentence of Section 5 of the Agreement shall be amended and restated in its entirety and shall read as follows:

"In consideration of ABC agreeing not to return any Products (other than as expressly set forth or referenced in this Section 5), Supplier shall pay ABC a "Returns Allowance" of [***] multiplied by the sum of (a) the amount of ABC's monthly gross purchases less (b) Products that are: (i) returned (including Permitted Returns (as defined below)), (ii) drop shipped by Supplier to customers or third parties, (iii) third party product return claims other than ABC's Third Party Returns, and (iv) damaged (as determined pursuant to Section 6 below), each at the applicable Wholesale Acquisition Costs."

3. *Miscellaneous*. Except as specifically amended herein, all other terms and conditions of the Agreement will remain in full force and effect. This Amendment, together with the Agreement and any exhibits thereto, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all other prior agreements and understandings, both written and oral, between the Parties with

respect to the subject matter hereof. In the event any provisions in this Amendment shall be inconsistent with the provisions of the Agreement, the provisions in this Amendment shall govern solely with respect to the subject matter herein. This Amendment may be executed in any number of counterparts, each of which is deemed an original but all of which constitute the same instrument.

[Signature Page Follows]

IN WITNESS WHEROF, the Parties have by their signatures of their duly authorized officers or representatives caused this Amendment to be executed and effective as of the Amendment Effective Date.

AMERISOURCEBERGEN DRUG CORPORATION
By: /s/ Doug Trueman
Name: Doug Trueman
Title: Vice President – Consumer Products
Date: November 5, 2018

DEXCOM INC.
By: s/ Brice Bobzien
Name: Brice Bobzien
Title: VP, Finance
Date: October 31, 2018

LOGISTICS SERVICES AGREEMENT

This Logistics Services Agreement (this "Agreement") is effective as of December 2, 2022 (the "Effective Date"), between Dexcom, Inc. (the "Company") and Integrated Commercialization Solutions, LLC. ("ICS").

Recitals

The Company is a manufacturer and supplier of medical device products (the "Products"). The Company has entered into an agreement with AmerisourceBergen Drug Corporation ("ABDC"), under which (i) ABDC purchases Products from the Company and (ii) the Company ships the Products directly to ABDC's various ship-to locations as indicated in ABDC's purchase orders.

ABDC and ICS are both subsidiaries of AmerisourceBergen Corporation ("ABC"), and ICS provides commercialization services, including warehousing and distribution services, to manufacturers for their products. The Company and ICS now desire to enter into an arrangement in which ICS will operate a national distribution center location for Products that will be received from the Company and distributed to ABDC's ship-to locations, on the terms and conditions set forth in this Agreement.

Agreement

The parties agree as follows:

1. Services. ICS will perform the following logistics services to the Company (collectively, the "Services"):

   l. ICS will accept from ABDC orders for Products from all of ABDC's ship-to locations, excluding Puerto Rico ("ABDC's Ship-To Locations");

   m. ICS will verify all required licenses to legally sell and ship Products to ABDC and its Ship-To Locations;

   n. ICS will consolidate all of ABDC's orders for Products and, on a mutually agreed upon basis, place orders with the Company on ABDC's behalf for all Products ordered by ABDC's Ship-To Locations; and

   o. After ICS receives Products that were shipped by the Company in accordance with Section 2, ICS will ship the Products from ICS's distribution center located at 6301 LaSalle Drive, Lockbourne Ohio 43137 (the "Distribution Center"), to ABDC's Ship-To Locations, and ICS will pay for all freight charges excluding any additional charges, penalties, or other fees incurred by ICS due to any delay on the part of Company.

   Notwithstanding the foregoing, the Company shall continue to accept orders directly from each ABDC Ship-To Location and ship Products directly to each ABDC Ship-To Location in the event of backorders, emergency orders, drop ship orders, and pre-book orders. In addition, Company shall continue to accept orders directly from ABC's Puerto Rico distribution center, and ship Products directly to Puerto Rico.

14. Company Obligations.

a. The Company will comply with the Performance Requirements set forth on Schedule 1.

3. Fees.

a. As consideration for the Services performed hereunder, the Company shall pay to ICS a fee equal to fifty (50 basis points (0.50%) of the Wholesale Acquisition Cost (WAC) for all purchased Products (the "Fee"). ICS will calculate the Fee on a monthly basis and will invoice the Company for the Fee within fifteen (15) days after the end of each month. The Company must pay such invoices within thirty (30) days of receipt of the invoice. The Company will notify ICS of any disputed charges within thirty (30) days of receipt of the invoice covering these charges. In the absence of any notice of dispute, all invoices will be deemed to be correct and due in full per the payment terms above. A late fee of 1.5% per month (or any portion thereof) will be charged as of the due date on all amounts not paid after thirty (30) days of receipt of the invoice, except any amount disputed by the Company in good faith.

b. The Fee represents fair market value for bona fide services that ICS provides to and on behalf of the Company.

c. The Parties acknowledge that material fluctuations in the cost of the materials and services required to provide the commercialization services contemplated under this Agreement are not factored into the Fee set forth above in section 3.a. In the event of a sustained increase or decrease in the cost of materials and services, the Parties will meet in good faith to negotiate a corresponding increase or decrease to the Fee to provide fair compensation to for the services provided hereunder. If after thirty (30) days of negotiations, the Parties have not agreed to a revised Fee, either Party may terminate this agreement as set forth herein.

4. Title and Risk of Loss. Title to and risk of loss of Products will pass from the Company to ABDC upon delivery to ABDC at the Company's designated distribution center. ICS does not take title to any Products under this Agreement. For purposes of clarity, all Products in transit on ICS trucks, as well as received and stored at the Distribution Center will be included on any inventory reports provided by ABDC to the Company.

5. Authorized Distributor of Record. Solely for the limited purpose of compliance with the pedigree requirements of the Prescription Drug Marketing Act, the Company appoints ICS an "Authorized Distributor of Record" for the Products. ICS is not permitted to distribute any Products to any person or entity other than ABDC in accordance with the terms of this Agreement.

6. Term. This Agreement is effective as of the Effective Date and will continue for two years (the "Term"), unless sooner terminated as provided in this Agreement. Thereafter, this Agreement will automatically renew for subsequent terms of one additional year, unless either party provides the other party with written notice of its intent not to renew this Agreement at least 60 days before expiration of the current Term.

7. Termination.

a. Either party may terminate this Agreement for any reason upon sixty (60) day's prior written notice.

b. Either party may terminate this Agreement upon a material breach by the other party of any of the terms of this Agreement that are not cured within thirty (30) days of written notification thereof by the non-breaching party.

c. Either party may terminate this Agreement immediately: (i) upon the institution (whether voluntarily or involuntarily) of bankruptcy, insolvency, liquidation or similar proceedings by or against either party; (ii) the assignment of either party's assets for the benefit of creditors; and/or (iii) if this Agreement, or any performance under it, fails to comply in all respects with applicable federal or state laws or regulations.

d. Sections 3.a, 7.d, 8, and 11 through 17, any payment obligations, and any other provision if its context shows that the Parties intend it to survive, will survive expiration or termination of this Agreement and, except as expressly provided, expiration or termination will not affect any obligations arising prior to the expiration or termination date.

8. Confidential Information.

a. Definition. As used in this Agreement, "Confidential Information" means any confidential or proprietary information that is disclosed by one party ("Disclosing Party") to the other party ("Recipient"), whether in writing or other tangible form, orally or otherwise. Confidential Information includes (I) information about processes, systems, strategic plans, business plans, operating data, financial information and other information and (II) any analysis, compilation, study or other material prepared by Recipient (regardless of the form in which it is maintained) that contains or otherwise reflects any information disclosed or made available by Disclosing Party to Recipient. Confidential Information does not include information that:

i. at the time of disclosure to Recipient, is generally available to the public;

ii. after disclosure to Recipient, becomes generally available to the public other than as a result of a breach of this Agreement by Recipient (including any of its affiliates);

iii. Recipient can establish was already in its possession at the time the information was received from Disclosing Party if its source was not known by Recipient to be bound to an obligation of confidentiality with respect to this information;

iv. Recipient receives from a third party if its source was not known by Recipient to be bound to an obligation of confidentiality with respect to the information; or

v. Recipient can establish was developed independently by Recipient without use, directly or indirectly, of any Confidential Information.

b. Limitations on Disclosure and Use. Confidential Information must be kept strictly confidential and may not be disclosed or used by Recipient except Recipient may use Confidential Information of the Disclosing Party in the performance of its

obligations or exercise of its rights under this Agreement or as specifically authorized in advance in writing by Disclosing Party. Recipient may not take any action that causes Confidential Information to lose its confidential and proprietary nature or fail to take any reasonable action necessary to prevent any Confidential Information from losing its confidential and proprietary nature. Recipient will limit access to Confidential Information to its employees, officers, directors or other authorized representatives (or those of its affiliates) and to those who (a) need to know the Confidential Information in connection with this Agreement and (b) are obligated to Recipient to maintain Confidential Information under terms and conditions at least as stringent as those under this Agreement. Recipient will inform all these persons of the confidential and proprietary nature of Confidential Information and will take all reasonable steps to ensure they do not breach their confidentiality obligations, including taking any steps Recipient would take to protect its own similarly confidential information. Recipient will be responsible for any breach of confidentiality obligations by these persons.

c. Equitable Relief. Each party acknowledges that, when it is Recipient, money damages would not be a sufficient remedy for Disclosing Party in the event of any breach of this Agreement and that Disclosing Party is entitled to seek specific performance and injunctive or other equitable relief as a remedy for any breach. Recipient further waives any requirement for the posting of any bond in connection with any remedy. This remedy will be in addition to any other available remedies at law or in equity.

d. Disclosures Required by Law. If Recipient is required by law to disclose any Confidential Information, Recipient will give Disclosing Party prompt notice and will use all reasonable means to obtain confidential treatment for any Confidential Information that it is required disclose before making any disclosure. If Recipient cannot assure confidential treatment and it has exhausted all reasonable efforts to do so, Recipient may disclose Confidential Information if it is required by law to disclose the information it discloses. Notwithstanding the foregoing, Disclosing Party may request Recipient to take additional steps to seek confidential treatment before Recipient discloses Confidential Information even though Recipient has otherwise exhausted all reasonable efforts to do so. In that event, Recipient will undertake additional steps at Disclosing Party's expense.

e. Effect of Termination. Promptly after the termination or expiration of this Agreement, each party will return to the other any Confidential Information of the other party and provide a written verification of the return or, at that disclosing party's request, destroy the Confidential Information and provide written notification of the destroyed Confidential Information. Notwithstanding the foregoing, each party may retain a copy of Confidential Information in its confidential legal files, and the obligation to destroy or return will not apply to Confidential Information that is stored on back-up tapes and similar media that are not readily accessible to Recipient. Each party's obligation to maintain the confidentiality of Confidential Information will survive for a period of five (5) years following termination of this Agreement.

9. Compliance with Laws. Each party will comply in all material respects with any and all applicable federal, state and local laws and regulations, rules and ordinances in the performance of its obligations under this Agreement.

10. Storage and Handling of Products. ICS will use commercially reasonable efforts to handle, maintain, store, transport, deliver and/or otherwise manage and distribute

Product in accordance with the handling and storage requirements applicable to each Product as contained in the package insert for the Product approved by the Food and Drug Administration and any other specific instructions provided by the Company in writing to ICS, and in accordance with federal and state laws, regulations, rules and practices applicable to the distribution of Products in the jurisdictions in which ICS operates.

11. Recordkeeping and Audits. The Company and ICS agree to maintain complete and accurate records of all transactions related to the conduct of business under this Agreement. Both parties will permit reasonable inspection of such records upon reasonable notice during regular business hours for the sole and limited purpose of resolving business disputes arising hereunder or in connection herewith.

12. Indemnification.

a. By the Company. The Company will defend, indemnify, and hold harmless ICS and its affiliates, directors, officers, employees and representatives from any claims, demands, costs, expenses (including reasonable attorneys' fees) and liabilities or losses ("Claims") that may be asserted against ICS or that person or entity by or on behalf of a third party to the extent that the Claims result from or arise out of the negligence or willful misconduct of the Company in connection with its manufacture or sale of the Product or the Company's breach of this Agreement.

b. By ICS. ICS will defend indemnify and hold harmless the Company and its affiliates, directors, officers, employees and representatives from any Claims that may be asserted against the Company or that person or entity by or on behalf of a third party to the extent that the Claims result from or arise out of the negligence or willful misconduct of ICS in connection with Services it provides under this Agreement or ICS's breach of this Agreement.

c. Indemnification Procedures. The obligations and liabilities of the parties with respect to claims subject to indemnification under this Agreement or the Continuing Guaranty and Indemnification Agreement (described below) ("Indemnified Claims") are subject to the following terms and conditions:

i. The party claiming a right to indemnification under this Agreement ("Indemnified Person") will give prompt written notice to the indemnifying party ("Indemnifying Person") of any Indemnified Claim, stating its nature, basis and amount, to the extent known. Each notice will be accompanied by copies of all relevant documentation, including any summons, complaint or other pleading that may have been served or any written demand or other document.

ii. With respect to any Indemnified Claim: (A) the Indemnifying Person will defend or settle the Indemnified Claim, subject to provisions of this subsection, (B) the Indemnified Person will, at the Indemnifying Person's sole cost and expense, cooperate in the defense by providing access to witnesses and evidence available to it, (C) the Indemnified Person will have the right to participate in any defense at its own cost and expense to the extent that, in its judgment, the Indemnified Person may otherwise be prejudiced thereby, (D) the Indemnified Person will not settle, offer to settle or admit liability as to any Indemnified Claim without the written consent of the Indemnifying Person, and (E) the Indemnifying Person will not settle, offer to settle or admit liability as to any Indemnified Claim in which it controls the defense if the settlement, offer or admission contains any

admission of fault or guilt on the part of the Indemnified Person, or would impose any liability or other restriction or encumbrance on the Indemnified Person, without the written consent of the Indemnified Person.

iii. Each party will cooperate with, and comply with all reasonable requests of, each other party and act in a reasonable and good faith manner to minimize the scope of any Indemnified Claim.

13. Continuing Guaranty and Indemnification Agreement. The Company has executed and delivered to AmerisourceBergen Corporation, the parent corporation of ABDC and ICS, a Continuing Guaranty and Indemnification Agreement. The representations, warranties and indemnification provisions contained in the Continuing Guaranty are in addition to those contained in this Agreement. The Company acknowledges that all Products supplied under this Agreement are subject to the Continuing Guaranty.

14. Liability; Force Majeure.

a. NO CONSEQUENTIAL DAMAGES. EXCEPT WITH RESPECT TO CLAIMS SUBJECT TO INDEMNIFICATION UNDER THIS AGREEMENT OR THE CONTINUING GUARANTY, NO PARTY WILL BE LIABLE TO ANY OTHER PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, OR OTHER SIMILAR DAMAGES ARISING OUT OF OR IN CONNECTION WITH A BREACH OF THIS AGREEMENT.

b. Force Majeure. If the performance of any part of this Agreement by any party will be affected for any length of time by fire or other casualty, government restrictions, war, terrorism, riots, strikes or labor disputes, lock out, transportation delays, electronic disruptions, internet, telecommunication or electrical system failures or interruptions, and acts of God, or any other cause which is beyond control of a party (financial inability excepted), the party will not be responsible for delay or failure of performance of this Agreement for this length of time.

15. Business Continuity Plan. In the event of a force majeure event or other disaster that impairs ICS' ability to perform the Services described herein, the Company will, for the period of such event of disaster, accept orders from each ABDC Ship-To Location and ship Product directly to each ABDC Ship-To Location, except as otherwise mutually agreed upon by the parties.

16. Notices. Any notice, request or other document to be given under this Agreement to a party will be effective when received and must be given in writing and delivered in person or sent by overnight courier or registered or certified mail, return receipt requested, as follows:

To Company: Dexcom, Inc.
Attn: Strategic Contracting & Operations
6340 Sequence Drive
San Diego, CA 92121

With copy to: Dexcom, Inc.
Attn: Legal Department
6340 Sequence Drive
San Diego, CA 92121

To ICS: Integrated Commercialization Solutions, LLC
Attn: President
5025 Plano Parkway
Carrollton, TX 75010

With copy to: AmerisourceBergen Specialty Group, Inc.
Attn: Group General Counsel
5025 Plano Parkway
Carrollton, TX 75010

17. Other Provisions.

a. Other Rights. No waiver of any breach of any one or more of the conditions or covenants of this Agreement by a party will be deemed to imply or constitute a waiver of a breach of the same condition or covenant in the future, or a waiver of a breach of any other condition or covenant of this Agreement.

b. Severability. If any provision or the scope of any provision of this Agreement is found to be unenforceable or too broad by judicial decree, the parties agree that the provisions will be curtailed only to the extent necessary to conform to law to permit enforcement of this Agreement to its full extent.

c. Entire Agreement; No Reliance. Each of the parties agrees and acknowledges that this Agreement, including the documents referred to in this Agreement, (i) constitutes the entire agreement and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, among the parties with respect to the subject matter of this Agreement, and (ii) is not intended to confer any rights or remedies, or impose any obligations, on any person other than the parties. Each of the parties expressly agrees and acknowledges that, other than those statements expressly set forth in this Agreement, it is not relying on any statement, whether oral or written, of any person or entity with respect to its entry into this Agreement or to the consummation of the transactions contemplated by this Agreement, and each of the parties further waives any claim against the other party that the other party has failed to disclose any fact, occurrence or other matter that relates in any way to its entry into this Agreement.

d. Amendments and Modifications. This Agreement may be modified only by a written agreement signed by both parties.

e. Assignment. This Agreement may not be assigned by either party without the prior written consent of the other, which will not be unreasonably withheld, and any attempted assignment will be without effect. ICS reserves the right to subcontract all or any portion of the Services to any of its affiliates. All subcontractors are subject to the terms and conditions of this Agreement.

f. Successors and Assigns. This Agreement will be binding on and will benefit any and all successors, trustees, permitted assigns and other successors in interest of the parties.

g. Applicable Law. This Agreement will be construed and enforced in accordance with the laws of the state that governs the agreement between ABDC and the Company.

h. Independent Contractor. ICS's relationship with the Company under this Agreement will be that of independent contractor, and neither party will be considered the agent of, partner of, employee or other member of the workforce of, or participant in a joint venture with, the other party, in its performance of all duties under this Agreement. Neither party will have authority to bind the other party unless otherwise agreed to in writing by the parties.

i. Publicity. Neither party will have the right to issue a press release, statement or publication regarding the terms and conditions of or the existence of this Agreement without the prior written consent of the other party.

j. Joint Preparation. Each party to this Agreement (i) has participated in the preparation of this Agreement, (ii) has read and understands this Agreement, and (iii) has been represented by counsel of its own choice in the negotiation and preparation of this Agreement. Each party represents that this Agreement is executed voluntarily and should not be construed against a party solely because it drafted all or a portion of this Agreement.

k. Counterparts. This Agreement may be executed in multiple counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. Facsimile execution and delivery of this Agreement are legal, valid and binding execution and delivery for all purposes.

The parties execute this Agreement as of the Effective Date.

INTEGRATED COMMERCIALIZATION SOLUTIONS, LLC	**DEXCOM, INC.**
By: /s/ Jessica Donati	By: /s/ Christophe Cantenot
Printed Name: Jessica Donati	Printed Name: Christophe Cantenot
Title: VP, Consumer Products	Title: VP, Finance and Corporate Controller
Date: 12/2/2022	Date: 12/2/2022

SCHEDULE 1

PERFORMANCE REQUIREMENTS

Business Continuity Plan

1) The Company has the capabilities to revert shipping all PO's direct to AmerisourceBergen Drug Corporation distribution centers or another licensed facility owned by AmerisourceBergen Corporation in the event of an issue that prevents receipt of product into National Distribution Center for more than 24 hours.
2) All PO's in transit to the National Distribution Center will be delivered to the National Distribution Center and held until outbound shipments can resume
3) In the event an alternate site is selected, additional inventory data (EDI 852) will be sent for the location serving as the alternate National Distribution Center.
    a) It is important to note that this second inventory file will be reported under the same DEA number as the primary distribution center for this location.
    b) This file should be accepted by the Company and not deleted as duplicate records.

Operational Requirements

1) Company will identify non-homogenous cases with placards indicating "mixed" product
2) Company will pick, pack, and ship products in full and in good condition.
3) Company will be responsible for all shortages, concealed damages, and any visible damage due to improper loading by Company not related to the shipping company consistent with the November 7, 2015 Distribution Services Agreement between ABDC and Company. Company will have all orders ready to ship at agreed upon pickup dates and times.
4) Company will maintain capability to ship the following PO's direct to all 26 DC's or Customers, as applicable:
    c) Backorders
    d) Emergency orders
    e) Drop ship orders
    f) Pre-book orders
5) Purchase Order Acknowledgement. Company agrees to provide AmerisourceBergen with an EDI 855 transactions (PO Acknowledgement).
6) It is requested that ASNs be generated for a full delivery and not individual Purchase Orders (POs).
7) Company shall provide contact information for National Distribution Center personnel for information regarding inbound deliveries, product information, logistics, etc. Company shall provide:
    g) Company
        i) Contact Name
        ii) Phone Number
        iii) Hours of Operation

iv) Email Address
v) After hours contact information

8) Pallet construction: All pallets should be in good, stable condition and should be the standard pallet dimensions (48 x 40 in.). Pallet height shall not exceed 6'-0" (including pallet). Product should not exceed pallet dimensions (i.e., falling off or hanging over the side) and shrink wrap should be intact. Any pallets shipped to the National Distribution Center from your organization or at your direction must be free of chemicals and chemical treatments, including halogenated phenols (2,4,6-tribromophenol (TBP) or 2,4,6-trichlorophenol (TCP)). Heavier pallets must be loaded on the bottom if pallets are double stacked.
9) All pallets should be PO specific. Like product should be grouped together as much as possible. For each shipment, Company will provide to ICS the POs included with each shipment.
10) A master packing list shall accompany each shipment.
11) Company approves product shipping on temperature-controlled trailers with temperature set-point between 2 and 8 degrees Celsius (35 to 46 degrees Fahrenheit). For clarity, ICS is not required to utilize temperature-controlled trailers for any shipments of products with no refrigeration requirement.
12) In the event Products shipped by the Company are concealed damaged, visible damage due to improper loading by the Company, or in error, ICS shall use the same process and terms that govern these conditions with AmerisourceBergen.
13) Company shall ship entire PO on a single truck. If the content of the PO is greater than the capacity of a truckload, ICS shall provide Company with the capability to have the content of the entire PO and the number of associated truckloads ready to be picked up within 30 minutes of each other, and Company shall comply.
14) Backorder Communication. Company must give ICS 36 hours advance written notice before any backorders are released, with a copy to the Company's assigned AmerisourceBergen buyer and Category Manager. For any Product coming off backorder and shipping to the Distribution Center, there may be circumstances requiring Company to ship such Products to ABC Ship-To Locations.
15) Order Communication. Any requests, issues or concerns of Company relating to orders, shipments or extra buys shall be communicated directly to the Company's assigned AmerisourceBergen buyer and Category Manager. For quarter-end buys, Company will communicate the details of such buys to the Company's assigned AmerisourceBergen buyer and category manager no less than two (2) weeks prior to the end of the respective quarter.

SCHEDULE 2

AmerisourceBergen Logistics Guide and Requirements

Please visit our Manufacturer and Replenishment Operations webpage for the latest packaging, logistics, DSCSA, and ASN specifications and information:
https://www.amerisourcebergen.com/manufacturer-operations-and-replenishment

AMENDMENT
NO.3 TO
DISTRIBUTION SERVICES AGREEMENT

THIS AMENDMENT (the "Amendment") dated this December 2, 2022 (the "Amendment Effective Date"), amends that certain Distribution Services Agreement and all amendments and/or addenda thereto by and between Dexcom, Inc. ("Supplier") and AmerisourceBergen Drug Corporation ("AmerisourceBergen" or "ABC") dated November 7, 2015 (the "Original Agreement").

WHEREAS, AmerisourceBergen entered into a Distribution Services Agreement with Supplier on November 7, 2015;

WHEREAS, the Parties amended the Original Agreement on November 1, 2018 ("Amendment No. 1") and October 20, 2021 ("Amendment No. 2");

WHEREAS, the Parties desire to amend the Agreement; and

WHEREAS, pursuant to 13(h) of the Agreement, all changes and amendments to the Agreement must be in writing and approved by both parties.

NOW, THEREFORE, in consideration of mutual promises and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree to the terms and conditions herein set forth:

1. All capitalized terms not defined in this Amendment shall have the meaning set forth in the Agreement.

2. A new Section 2(g) is hereby added to the Agreement as follows.

   Freight Allowance Rebate. In lieu of Supplier shipping Product to ABC, Supplier shall pay a Freight Allowance Rebate for ABC to collect freight at Supplier's identified location using ABC's carriers ("Freight Allowance"). The amount of the Freight Allowance is forty (40) basis points (0.40%) which will remain unchanged for two (2) years from the Amendment Effective Date (Initial Freight Allowance Term"). After the Initial Freight Allowance Term, the Freight Allowance may be revised on an annual basis in an amount to be negotiated between Supplier and ABC. The Freight Allowance shall be invoiced monthly separately from Supplier's Distribution Services Fee and will invoice the Supplier for the Freight Allowance within thirty (30) days after the end of each month. The Supplier must pay such invoices within thirty (30) days of the date of the invoice. The Supplier will notify ABC of any disputed charges within thirty (30) days of receipt of the invoice covering these charges. In the absence of any dispute, all invoices will be deemed to be correct and due in full per the payment terms above. If the fees are not received within specified timeline, ABC reserves the right to

deduct the amount due from payment to Supplier. ABC and Supplier reserve the right to terminate Section 2(g) at any time with thirty (30) days prior written notice to Supplier. If ABC or Supplier terminates Section 2(g), all Sections of the Agreement which have been modified because of the Freight Allowance will revert back to the original language.

The Parties acknowledge that the fee set forth in this section assumes a certain volume of Product as discussed by the Parties. In the event of a sustained increase or decrease in the total average volume of Product resulting in unforeseen additional or reduced services, the Parties will meet in good faith to negotiate a corresponding increase or decrease to the Fee to continue to provide fair compensation to for the services provided hereunder. If after thirty (30) days of negotiations, the Parties have not agreed to a revised Fee, either Party may terminate Section 2(g) with thirty (30) days' notice.

3. Section 4(a) of the Agreement is hereby deleted in its entirety and replaced as follows:

Purchase Orders. Supplier will accept ABC's purchase orders electronically in the industry standard format. If ABC is requested to submit purchase orders other than electronically, ABC may require that Supplier pay a handling fee. Supplier agrees to accept purchase orders at the prices in effect on the day the order is transmitted. Supplier will notify ABC on the day the order is placed of any Product adjustments or purchase order delays. Purchase orders are valid for thirty (30) days and Product should not be shipped against a purchase order older than thirty (30) days without the ABC buyer's written agreement. Notwithstanding anything to the contrary in this Agreement or any Supplier policy, if a shipment is incomplete, ABC will cancel any items remaining under that purchase order without penalty. By way of example, if ABC placed a purchase order for one hundred Products and received eighty, ABC will cancel the purchase order for the outstanding twenty Products without penalty.

4. Section 4(c) of the Agreement is hereby deleted in its entirety and replaced as follows:

Delivery Times. Supplier will make commercially reasonable efforts make all ABC orders ready for pick up completely within a mutually agreeable schedule not to exceed four (4) business days of order placement. A complete order is defined as all products not currently designated as backordered, unavailable, or discontinued at time of delivery. Supplier is responsible for all additional charges, penalties, or other fees incurred by ABC due to any delay on the part of Supplier. A notification of all Products falling into one of these designated status groups must be provided to ABC, in writing, within twenty-four (24) hours of order placement. This notification shall include the reason for the delay and the expected availability date.

5. Section 4(i) of the Agreement is hereby deleted in its entirety and replaced as follows:

Shipment Charges, Title and Risk of Loss. All orders are to be picked up by ABC's designated carrier from Supplier's designated distribution center. Title to and risk of loss of Products will pass from the Supplier to ABC upon delivery to ABC at the Supplier's designated distribution center.

6. Section 4(w) is hereby added to the Agreement as follows:

Shipping and Advanced Ship Notification. Supplier agrees to setup Advanced Ship Notification (ASN) to AmerisourceBergen's specifications, via EDI 856, and Purchase Order Acknowledgment, via EDI 855, prior to receiving purchase orders. Supplier agrees to provide an ASN upon every product shipment and provide the required data elements as specified in the ABC ASN specification. ABC will provide Supplier with EDI 754, Shipment Tender. If Supplier cannot send EDI 753 or receive EDI 754, AB will

provide training to Supplier (during the onboarding process) for manual entry of RTS information into the AB Supplier Portal. Supplier agrees to provide tracking number(s) to AB for any orders from Supplier, when requested.

7. Section 7 of the Agreement is hereby deleted in its entirety and replaced as follows:

SHIPMENT ERRORS

In the event of an incomplete shipment, a shortage in shipment, the misdirection of any delivery, or any over shipment, the Supplier shall immediately contact the ABC purchasing department and shall comply with any reasonable directions provided by ABC. Supplier will be responsible for any related freight or accessorial charges caused by the error. Shipment errors or discrepancies identified upon receipt by ABC at ABC's distribution center will be reported promptly to Supplier's customer service department to determine the disposition instructions. In the event of concealed shortage, ABC shall report such concealed shortage within thirty (30) days of discovery.

8. Except as specifically amended herein, all other provisions of the Agreement shall remain in full force and effect.

9. In the event that there is a conflict between the terms of the Agreement and this Amendment, the terms of this Amendment shall prevail. The Agreement, as amended, constitutes the entire agreement between AmerisourceBergen and Supplier and supersedes all prior or contemporaneous writings and understandings between the parties.

10. This Amendment may be executed simultaneously in any number of counterparts, any one of which need not contain the signature of more than one party, but all such counterparts taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the Amendment Effective Date.

DEXCOM, INC.

By: /s/ Christophe Cantenot

Name: Christophe Cantenot

Title: VP, Finance and Corporate Controller

Date: 12/2/2022

AMERISOURCEBERGEN DRUG CORPORATION

By: /s/ Jessica Donati

Name: Jessica Donati

Title: VP, Consumer Products

Date: 12/2/2022

Exhibit 10.13

CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY [***], HAS BEEN OMITTED BECAUSE IT IS NOT MATERIAL AND IS THE TYPE THAT THE REGISTRANT TREATS AS PRIVATE AND CONFIDENTIAL.

AMENDED AND RESTATED NON-EXCLUSIVE DISTRIBUTION AGREEMENT

between

DEXCOM, INC.

and

BYRAM HEALTHCARE

Dated February 1, 2016

AMENDED AND RESTATED NON-EXCLUSIVE DISTRIBUTION AGREEMENT

THIS AMENDED AND RESTATED NON-EXCLUSIVE DISTRIBUTION AGREEMENT ("**Agreement**") is made February 1, 2016 by and between DexCom, Inc., a Delaware corporation, with a principal place of business at 6340 Sequence Drive, San Diego, California 92121 ("**DexCom**") and BYRAM HEALTHCARE and all subsidiaries, a New Jersey corporation with a principal office at 120 Bloomingdale Road, Suite 301, White Plains, NJ ("**Distributor**"). DexCom and the Distributor are referred to individually as a "**Party**" and collectively as the "**Parties.**"

RECITALS

WHEREAS, DexCom and Distributor previously entered into a Non-Exclusive Distribution Agreement dated October 12, 2009 (the "**Original Agreement**"), as well as the amendments to such Original Agreement dated September 30, 2010, October 11, 2011, November 14, 2012, November 1, 2013, March 14, 2014, (the "**Amendments**") and pursuant to the consent to the assignment of the Non-Exclusive Distribution Agreement to Byram Healthcare dated May 2, 2012.

WHEREAS, pursuant to Section 17.10 of the Original Agreement, the Parties wish to amend and restated the Original Agreement and all Amendments as set forth herein.

NOW, THEREFORE, BE IT RESOLVED, that for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows

AGREEMENT

The Parties hereby agree as follows:

1. Definitions and Interpretation

1.1 Definitions

1.1.1 "**Customer**" means the end-user patient to which the Distributor sells the Products.

1.1.2 "**Effective Date**" means February 1, 2016, and is the date upon which this Agreement commences and becomes binding upon the Parties.

1.1.3 "**Governmental Authority**" means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of the government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of this organization or authority have the force of law), or any arbitrator, court or tribunal of competent jurisdiction.

1.1.4 "**Intellectual Property Rights**" means (collectively): copyright rights (including, without limitation, the exclusive right to use, reproduce, modify, distribute, publicly display and publicly perform the copyrighted work), trademark rights (including, without limitation trade names, trademarks, service marks, and trade dress), patent rights (including, without limitation, the exclusive right to make, have made, import, use, sell and offer to sell), know-how, trade secrets, rights of publicity, authors' and moral rights, goodwill and all other intellectual and industrial property rights as may exist now and/or hereafter come into existence and all renewals, reissues and extensions thereof, regardless of whether such

rights arise under the laws of the United States or any other U.S. state or other country or jurisdiction.

1.1.5 "**FOB Shipping Point**" means freight on board the place from which DexCom ships the Products to Distributor.

1.1.6 "**Order**" means an order to purchase Products initiated by Distributor which conforms to the requirements set forth in Schedules 3 and 5, as well as all other terms and conditions of this Agreement.

1.1.7 "**Price**" means the Price identified in Schedule 1, as amended from time to time in accordance with Section 2.2 below.

1.1.8 "**Products**" means the Products identified in Schedule 1, as amended from time to time in accordance with Section 2.2 below.

1.1.9 "**Territory**" means United States of America and its territories and possessions.

1.2 Interpretation

1.1.1 The words "include", "including" and "in particular" shall be construed as being by way of illustration only and shall not be construed as limiting the generality of any foregoing words.

1.1.2 Any references to Recitals, Section or Schedules are to provisions of and Schedules to this Agreement.

1.1.3 Section and paragraph headings are inserted for ease of reference only and shall not affect construction.

1.1.4 Words denoting one gender include all genders; words denoting individuals or persons include corporations and trusts and vice versa; words denoting the singular include the plural and vice versa; and words denoting the whole include a reference to any part thereof.

1.1.5 References to this Agreement mean this Agreement as the same may be amended, notated, modified or replaced from time to time with the agreement of the Parties.

2. Appointment of Distributor, Additional Products and Relationship.

1.1 DexCom appoints the Distributor to be its non-exclusive distributor in the Territory for the Products and the Distributor hereby accepts such appointment subject to the terms of this Agreement. Distributor agrees that it shall sell products only to end-user customers, and not to other distributors. Distributor also agrees it may market and promote Products to users for ambulatory (non-surgical) applications only. Distributor shall not sell, market or promote Products for use in critical care, intensive care or surgical settings. DexCom reserves the right to appoint other non-exclusive distributors and agents in the Territory for the Products. DexCom also reserves the right to sell the Products directly to Customers in the Territory.

1.2 DexCom may from time to time at its discretion (a) offer additional products to the Distributor for inclusion in this Agreement, by providing written notice to the Distributor or (b) effect changes to any Products or parts/accessories thereto) and such products or changed Products shall become Products and incorporated into Schedule 1. In addition, DexCom may amend the pricing set forth on

Schedule 1 by providing written notice to the Distributor provided that no such amendment shall have retrospective effect (i.e. change previously submitted Orders). In the event of any change to the Products or pricing, DexCom shall have no obligation to modify or change any Products previously delivered or to supply additional Products meeting earlier specifications.

3. Relationship of Independent Contractor, Expenses, No Agency or Authority.

1.1 The Distributor is and shall act as an independent contractor, and not as a partner, co-venturer, agent, employee, franchisee or representative of DexCom. No franchise, partnership, joint venture, agency relationship, or employment relationship is intended between DexCom and Distributor. If any provision of this Agreement is deemed to create any relationship other than that of independent contractor between the parties, then the Parties shall negotiate in good faith to modify this Agreement so as to effect the Parties' original intent as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as a distribution agreement and not such other agreement.

1.2 Except as may be specifically provided for in this Agreement, the Distributor shall be responsible for any and all expenses incurred by Distributor in the performance of Distributor's duties under this Agreement.

1.3 Nothing in this Agreement shall be construed as giving Distributor authority to enter into obligations on DexCom's behalf or to act as DexCom's agent for any purpose; nor shall the Distributor hold itself out as having any such authority.

4. Duties of Distributor:

1.1 The Distributor hereby agrees:

1.1.1 to use its reasonable best efforts to develop the market for the Products, promote the Products to Customers, physicians and certified diabetes educators, and to distribute and sell the Products to Customers throughout the Territory, in all cases consistent with good business practice;

1.1.2 to maintain a properly trained and equipped customer service team for the Products, including but not limited to making its customer service personnel available to DexCom for training in the use and sale of the Products and coordination of sales efforts;

1.1.3 to maintain such ordering, billing and filling of customer orders, facilities and personnel as DexCom may reasonably specify;

1.1.4 to forward all technical and repair service inquiries to DexCom;

1.1.5 to implement and maintain its current a system, which has been reviewed and is satisfactory to DexCom, to identify the Distributor's Customers to which each batch of Products have been delivered ("batch" being the lot number marked by DexCom on each unit container of the Products). Distributor shall continue to maintain its current tracking system sufficient to allow the Distributor the ability to take appropriate corrective action in the market if required;

1.1.6 to obtain and retain on file a prescription from a qualified medical professional prior to the initial shipment of any Product to a new Customer

and to only ship Products in accordance with such prescription (unless specified otherwise in the prescription, pediatric patients shall receive the pediatric Products);

1.1.7 to comply with such reasonable practices as DexCom may reasonably specify in respect of storage, handling, distribution and sale of the Products;

1.1.8 to leave in position and not cover, alter (unless authorized to do so in writing by DexCom), remove or erase any notices, warnings, instructions, marks (including without limitation, notices that a patent, trademark, design or copyright or other Intellectual Property Right relating to the Products is owned by DexCom or a third party) or any other writing which DexCom may place on or affix to the Products. To maintain the integrity of the Products, DexCom must approve in advance and in writing all repackaging configurations the Distributor may utilize in regard to the Products;

1.1.9 to not use any trade or service mark which is confusingly similar to any trade or service mark used by DexCom;

1.1.10 to not infringe upon or otherwise use any Intellectual Property Rights of DexCom;

1.1.11 not to do anything to cause the Products to be misbranded;

1.1.12 to provide such information about sales of the Products, the markets for them and competitive market share activity as DexCom may reasonably request, and which is permissible under the law;

1.1.13 to notify DexCom of all incidents, potential events or complaints relating to the Products, and to comply with all reasonable directions of DexCom, whether regarding the handling of specific incidents, events or complaints in the Territory, or regarding the continued sale of the Products in the Territory in the light of any other incident, event, complaint or information otherwise reported to DexCom, in all instances to permit DexCom to comply with its obligations under applicable law;

1.1.14 to maintain policies and procedures to ensure that it and its employees conform(s) with all legislation, rules, regulations and statutory requirements existing in the Territory from time to time in connection with the Products;

1.1.15 to confer with representatives of DexCom at least quarterly, if so elected by DexCom, to discuss promotional programs and to implement such promotional programs as DexCom may reasonably specify;

1.1.16 not to provide any warranty with respect to the Products other than DexCom's warranty;

1.1.17 to provide DexCom, from time to time upon request by DexCom, with appropriate credit references (other manufacturers, etc.) with whom the Distributor has credit relationships in excess of $200,000 of purchasing activity per month;

1.1.18 to obtain and maintain reasonable amounts of insurance with financially sound and reputable insurers to protect it and its employees and agents for loss or damage of inventory, property damage and other insurance which may be required in the Territory and to provide evidence of such insurance to DexCom from time to time at DexCom's request;

1.1.19 to appoint any sub-distributor or sub-agent only with the prior written approval of DexCom;

1.1.20 to provide reasonable assistance to DexCom to ensure the successful performance of this Agreement;

1.1.21 to provide DexCom with daily, rolling, Product sales tracing reports consisting of transaction details for the previous forty five (45) days in the format set out on Schedule 3. A lag time of one business day is acceptable. For example, the sales tracing sent on the third business day of the month will consist of transaction details for the first business day of the month as well as the trailing forty four (44) calendar days. Schedule 3 information shall be provided regardless of whether Product purchases are made directly through DexCom or, in the case of retail sales, through McKesson Corporation or a subsidiary thereof;

1.1.22 not to alter or damage any Products;

1.1.23 not to sell any Products which are altered, damaged, or contaminated or which have been removed from their original packaging;

1.1.24 to the extent Distributor is stocking Products, not to stock more than one (1) month of Product inventory; provided however that DexCom acknowledges that, from time to time, Distributor may stock an amount of Product inventory equal to more than one (1) month based on demand fluctuations. Distributor also agrees not to sell any sensors where the shelf-life on the sensors is less than [***];

1.1.25 to maintain a valid and current prescription on file for ongoing Orders;

1.1.26 to adjudicate Product through the correct channel as determined by Product and benefit type. Distributor shall only adjudicate Retail Product (as defined in Schedule 1) via a Pharmacy Benefit (a healthcare benefit that allows for reimbursement for products and supplies that is submitted via retail and/or pharmacy channels). All other Product shall be adjudicated via a Medical Benefit (a healthcare benefit other than a Pharmacy Benefit); and

1.1.27 Not to dispense or adjudicate Products in any manner that might expose DexCom to financial risk via duplicate discounting of Product. Distributor shall only adjudicate Retail Products listed in Schedule 1 through the Pharmacy Benefit and acknowledges that adjudication of other Products (including without limitation, DME Products) in that manner would expose DexCom to financial risk. DexCom may validate managed care claim submissions to ensure that dispensed Retail Product utilization does not exceed Distributor's purchased quantities of DexCom's Retail Product as listed in Schedule 1 over the same period. If such excess is found, Distributor shall pay DexCom within thirty (30) days of request, the difference between current WAC for Retail Products at the time of the breach and Distributor's DME contract price for the corresponding product plus a fifteen percent (15%) administration fee. The forgoing does not limit any other remedies that DexCom may have at law or in equity.

Furthermore, shipment of Product may be withheld until such time as Distributor has paid DexCom in full.

1.1.28 To the extent Distributor is stocking Products, to provide, within three [***] of the end of each calendar month, a report detailing Distributor's month-end inventory balance of Products (which report shall be subject to the audit right in Section 6.1.8 below).

5. Duties of DexCom

1.1 DexCom hereby agrees:

1.1.1 to provide Distributor and Distributor's Customers technical assistance and support for the Products via access to DexCom's technical services telephone line at such times as DexCom shall determine in its sole discretion;

1.1.2 to provide training classes for the Distributor's sales and internal Product support personnel on the Products as requested by the Distributor and agreed to by DexCom; and

1.1.3 to stock Products with Distributor based on Orders submitted to, and accepted by, DexCom.

6. Restrictions on Distributor

1.1 The Distributor hereby agrees:

1.1.1 In relation to the Products, not to seek Customers outside the Territory or establish any branch or maintain any distribution depot outside the Territory.

1.1.2 It may market and promote Products to users for ambulatory (non-surgical) applications only. Distributor shall not sell, market or promote Products for use in critical care, intensive care or surgical settings.

1.1.3 It is responsible for all credit risks regarding, and for collecting payment for, all Products sold to third parties (including Customers), whether or not Distributor has made full payment to DexCom for the Products. The inability of Distributor to collect the purchase price for any Product does not affect Distributor's obligation to pay DexCom for any Product.

1.1.4 It unilaterally establishes its own resale prices and terms regarding Products it sells.

1.1.5 It shall be responsible for all process control activities relative to the Products, including but not limited to, assurance of receipt, identification, traceability, storage, handling, inventory control, contamination control, complaint handling, control of nonconforming product, record retention, training, distribution and trending and process validations, as reasonably required by DexCom and other applicable storage and labelling regulations and laws.

1.1.6 It shall retain all sales and medical records as required by law. Prior to any record destruction pertaining to DexCom Products, the Distributor will notify DexCom in writing. If the record destruction is not approved DexCom will assume responsibility of the records. Records should be

accurate, indelible and legible. Entries must be dated and the person performing a documented task must be identified. Records must provide a complete history of the work performed.

1.1.7 It shall obtain the necessary licenses to meet its obligations under this Agreement.

1.1.8 DexCom shall have the right to conduct audits of Distributor's files, facilities and operations during normal business hours at its own expense and upon sixty (60) days notice to Distributor in order to assess compliance with this Agreement and all applicable regulations and procedures required hereby. Any such audits will be conducted by a national "big four" independent accounting firm (or other independent accounting firm whose audit department is a separate stand-alone function of its business and which possesses liability insurance with coverage of at least [***]), subject to such firm's execution of a confidentiality agreement in form reasonably acceptable to Distributor. DexCom shall be permitted to conduct up to two audits in any twelve month period or more frequently in instances where there exists a material difference between the inventory records of Distributor and DexCom and in such other instances in which DexCom has a reasonable and articulable suspicion of matters meriting an audit.

7. Prices and Terms

1.1 The Prices for the Products will be as set out on Schedule 1. Such Prices may be increased from time to time by DexCom in its sole and absolute discretion and with reasonable prior notice (provided that no such amendment shall have retrospective effect (i.e. change previously submitted Orders).

1.2 The Products will be supplied FOB Shipping Point (freight prepaid) at which time risk of loss and title shall pass to the Distributor. DexCom shall select the method of shipment of and the carrier for the Products.

1.3 All invoices submitted by DexCom to the Distributor shall be payable within [***] days after the date of such invoice. If the Distributor fails to pay or procure payment of the full amount when due, and without in any manner excusing such violation, the Distributor agrees to pay DexCom interest at the greater of: (i) a rate of [***] per month; or (ii) the highest rate legally permissible on the amount (including interest) due and owing to DexCom, from the date the payment is due. The Distributor also agrees to pay all collection costs, expenses and reasonable attorney fees for collection of any amount due and unpaid. Without prejudice to any of its other rights, DexCom may withhold shipments of the Products if the Distributor has not paid an invoice when due.

1.4 The Distributor shall bear the cost of any sales, excise or other taxes imposed by any Governmental Authority unless appropriate tax exemption certificate or resale certificate is provided to DexCom prior to shipment.

1.5 The Distributor agrees to comply with DexCom's standard ordering procedures as set forth in Schedule 2 and Schedule 4.

1.6 Distributor shall establish and maintain creditworthiness with DexCom, which shall be established prior to the effective date of this Agreement in the sole judgment of DexCom, based on DexCom's review of Distributor's credit references. Distributor shall notify DexCom immediately of any and all events that have had or may have a material adverse effect on Distributor's business or financial condition, including any sale, lease or exchange of a material portion of

Distributor's assets, or a change of control or ownership. If, at any time, DexCom determines in its sole but reasonable discretion that Distributor's financial condition or creditworthiness is inadequate or unsatisfactory, then in addition to DexCom's other rights under this Agreement, at law or in equity, DexCom may without liability or penalty, take any of the following actions:

1.1.1 reject any Order received from Distributor;

1.1.2 cancel any previously accepted Orders;

1.1.3 delay any further shipment of Products to Distributor;

1.1.4 stop delivery of any Products in transit in the possession of a common carrier or bailee and cause the Products in transit to be returned to DexCom; or

1.1.5 accelerate the due date of all amounts owing by Distributor to DexCom.

1.7 **Security Interest**. To secure Distributor's prompt and complete payment and performance of any and all present and future indebtedness, obligations and liabilities of Distributor to DexCom under this Agreement, Distributor hereby grants DexCom a first-priority security interest, prior to all other liens and encumbrances, in all inventory of Products purchased under this Agreement, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. DexCom may file a financing statement for the security interest and Distributor shall execute any statements or other documentation necessary to perfect DexCom's security interest in the Products. Distributor also authorizes DexCom to execute, on Distributor's behalf, statements or other documentation necessary to perfect DexCom's security interest in the Products. DexCom is entitled to all applicable rights and remedies of a secured party under applicable law.

8. **Supply of Products**

1.1 Subject to availability, DexCom shall use its reasonable efforts to supply the Distributor's requirements for the Products. No Order shall be effective until approved and accepted by DexCom. DexCom may, in its sole discretion, reject or cancel any Order for any or no reason and DexCom shall incur no liability of any kind for such action or for any delay or failure of delivery or performance.

1.2 Nothing in this Agreement shall prevent DexCom from selling or supplying Products to third parties in or outside the Territory.

1.3 DexCom will provide free of charge Product literature as reasonably requested by Distributor. If DexCom determines that the Distributor's requests for Products literature are in excess of DexCom's reasonable capacity, then DexCom and the Distributor shall mutually agree upon a fee schedule for Product literature.

1.4 The Distributor hereby agrees that if it makes reference to or statements about the Products in the Distributor's own catalogues, promotional literature, advertisements or the like:

1.1.1 it will inform DexCom in advance and take such steps as DexCom may require to ensure the accuracy of any such references or statements; and

1.1.2 it will incorporate such references to DexCom and to DexCom's Intellectual Property Rights as DexCom may reasonably require.

1.5 Nothing in this Agreement shall require DexCom to give the Distributor any right of priority over DexCom's other distributors or customers.

1.6 Nothing in this Agreement shall prevent DexCom from ceasing to make or sell all or any of the Products at any time, or from modifying or replacing any of the Products at any time, or making or selling products which are competitive with the Products.

9. Confidentiality

1.1 "**Confidential Information**" shall mean all information, whether or not marked, designated or otherwise identified as confidential, supplied by, or on behalf of, one Party to the other Party, or to which a Party has access including, but not limited to, all Intellectual Property Rights, written material, product samples, specifications, drawings, designs, plans, layouts, procedures, computer programs, models, prototypes, business plans, financial information, customer lists or other information of any description belonging to a Party or in the other Party's possession. Confidential Information may be oral, written, electronic, or other forms or media.

1.2 Each of the Parties shall keep in confidence and use only for the purposes of this Agreement all Confidential Information.

1.3 The obligations of confidentiality, non-disclosure and non-use shall expire five (5) years after the date of termination or expiration of this Agreement, and without prejudice to the generality of the foregoing, no obligation of confidentiality, non-disclosure or non-use shall apply at any time to information which:

1.1.1 is in the public domain at the time of first disclosure;

1.1.2 comes into the public domain after such first disclosure, other than by reason of the act or omission of the Party who receives the same (the "**Recipient**");

1.1.3 is supplied to the Recipient by a third party having a legal right to do so;

1.1.4 is independently developed by employees of the Recipient who did not have access to or use of, or made reference to or relied on, the Confidential Information, as evidenced by the Recipient's competent written records; or

1.1.5 which the Recipient is obligated to disclose by law or by any body having the force of law, provided, however, that before such legally required disclosure the Recipient shall, to the extent not prohibited by applicable law: (a) give prompt written notice of such required disclosure to the other Party; (b) cooperate with the other Party to obtain a protective order or similar confidential treatment; and (c) after complying with the other provisions of this Section 9.3.5 disclose, where disclosure is necessary and where a protective order or similar confidential treatment is not obtained by, or is waived by, the other Party, only the information legally required to be disclosed.

1.4 DexCom and the Distributor agree that it is for their mutual benefit for the other Party to receive the Confidential Information and accordingly the Parties agree that each of them shall:

1.1.1 maintain in confidence the Confidential Information and will only use the information as required under this Agreement;

1.1.2 not disclose such Confidential Information to any third party who is not bound by this Agreement without the other Party's prior written consent. The Recipient shall be permitted to provide the other Party's Confidential Information solely to those of its employees and consultants who (i) have a need to know and who require such access in order for the Recipient to perform its obligations under this Agreement, (ii) are bound by confidentiality, non-disclosure, non-use obligations with respect to the other Party's Confidential Information at least as strict as those set forth in this Section 9, prior to the receipt by any such employee or consultant of the other Party's Confidential Information, and (iii) agree not to use such Confidential Information except in compliance with the terms and conditions of this Agreement. The Recipient shall be responsible for the conduct of such persons with respect to their performance of Recipient's obligations under this Agreement and for any breach by such persons of this Section 9;

1.1.3 not copy or duplicate or in any way reproduce or replicate the Confidential Information except as needed to implement this Agreement; and

1.1.4 without prejudice to the generality of the foregoing, shall exercise an equivalent degree of care in protecting the Confidential Information as that which it uses to protect its own information of like sensitivity and importance which care shall not, in any event, be less than the degree of care utilized by businesses of similar size (including market capitalization if applicable) operating in the industries and territories in which the disclosing party operates.

10. Health Insurance Portability and Accountability Act (HIPAA) Compliance.

The Parties agree to comply with the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act and the regulations promulgated under such acts (as amended from time to time, and including all guidance from the Department of Health and Human Services, "HIPAA"). Each party represents and warrants that (i) it is acting as a "health care provider" (as defined by HIPAA) when it is providing support and guidance to Customers in connection with the Products; and (ii) it needs "protected health information" (PHI) (as defined by HIPAA) from the other party in order to provide that support and guidance. Each Party agrees and understands that a Party may disclose PHI to the other Party for purposes of "treatment" and "health care operations" (each as defined by HIPAA) while such Party is acting in the capacity of a "health care provider," as described above. Each Party further represents and warrants that the Products listed on Schedule 1 are regulated by the Food and Drug Administration ("FDA"); thus, DexCom may need to obtain certain PHI from Distributor in order to report an adverse event, to track the Products or for other purposes related to the quality, safety, or effectiveness of the Products. Each Party agrees to limit requests for PHI for such purposes to the minimum necessary to effectuate the intended purpose. Each Party agrees that it will not seek PHI from the other Party other than for purposes permitted under HIPAA, as described above.

11. Intellectual Property Rights

1.1 Nothing in this Agreement shall be construed as giving the Distributor any license or right to any Intellectual Property Rights belonging to DexCom.

1.2 The Distributor shall resell the Products only in the original packaging for the Products and shall not alter such packaging or labelling without DexCom's prior written consent.

1.3 The Distributor shall comply with all reasonable requests by DexCom with regard to identification of DexCom's Intellectual Property Rights and the like on any promotional material prepared by the Distributor in connection with the Products.

12. Duration of Agreement

1.1 Subject to the following provisions, this Agreement shall be deemed to commence on the Effective Date and remain in effect for an initial term of two (2) years thereafter and shall renew automatically for successive one (1) year periods thereafter until and unless either Party shall give written notice of termination to the other Party at least [***] prior to the end of the initial term or the end of any renewal term.

1.2 DexCom may terminate this Agreement immediately, by providing written notice to the Distributor, in the event of any of the following events:

1.1.1 the Distributor is in breach of or default under this Agreement and has not remedied such breach or default within [***] of receiving written notice from DexCom to do so;

1.1.2 if Distributor becomes insolvent or files, or has filed against it, a petition for voluntary or involuntary bankruptcy or under any other insolvency Law, makes or seeks to make a general assignment for the benefit of its creditors or applies for, or consents to, the appointment of a trustee, receiver or custodian for a substantial part of its property, or is generally unable to pay its debts as they become due.

13. Consequence of Termination

1.1 If for any reason this Agreement shall be terminated:

1.1.1 the Distributor will promptly pay all outstanding unpaid invoices rendered by DexCom in respect of the Products which shall become immediately due and payable by the Distributor, and in respect of Products for which an Order was submitted to DexCom and accepted prior to termination but for which an invoice has not been submitted, the Distributor shall pay immediately upon submission of the invoice;

1.1.2 except insofar as is reasonably necessary, the Distributor shall cease forthwith to use DexCom's remaining stocks of the Products for which the Distributor has paid in name or to promote or market the Products or to make any use of DexCom's Intellectual Property Rights;

1.1.3 termination or expiration of this Agreement for whatever reason shall not entitle the Distributor to any compensation or indemnity in respect of such termination or expiry except to the extent that the governing law of this Agreement provides for such compensation or indemnity; and

1.1.4 the Distributor will, free of charge, return to DexCom all tangible know-how and Confidential Information, promotional material, and all other

literature and merchandise of any description relating to the Products or DexCom's business and shall cease to use any of DexCom's Intellectual Property Rights except as and to the extent necessary to sell any of the Products which the Distributor has in its inventory.

1.2 Termination of this Agreement shall not prejudice the rights and remedies of either Party against the other in respect of any antecedent claim or breach of this Agreement, except that neither Party shall be entitled to claim damages against the other for termination of this Agreement pursuant to Section 12. The provisions of Sections 1, 3, 7, 8, 9, 10, 11, 12, 13, 14, 16 and 17 shall survive the termination of this Agreement.

14. Indemnification

1.1 Each party shall indemnify, defend and hold harmless the other party and its officers, directors, employees, agents, affiliates and permitted successors and assigns from and against all claims, demands, losses, expenses (including, but not limited to attorney fees) and liability arising from:

1.1.1 the liability of the other party as an employer for claims by the other party's employees or agents;

1.1.2 injury to persons or damage to property caused by the acts, omissions or negligence of the other party or its agents in the sale, promotion, transportation, possession or use of the Products;

1.1.3 any breach by a party of its representations, warranties or obligations under, or pursuant to, this Agreement;

1.2 The Distributor shall indemnify, defend and hold harmless DexCom and its officers, directors, employees, agents, affiliates and permitted successors and assigns from and against all claims, demands, losses, expenses (including, but not limited to attorney fees) and liability arising from any claim arising from warranties made by the Distributor different from or in addition to those made in writing by DexCom.

15. Returned Products

Prior written authorization from DexCom is required before a return of any Product will be accepted and such returns shall be subject to Schedule 4 and the provisions of this Section 15. Contact DexCom's customer service at 877-339-2664. DexCom accepts no responsibility for Product returned without prior authorization. DexCom will provide full credit for Product shipped in error by DexCom, damaged or defective when shipped including applicable shipping charges. No partial case quantities will be accepted. Any unauthorized returned Product will be returned at the Distributor's expense. DexCom will also provide full credit for Product shipped in accordance with its standard thirty (30) day money back guarantee contained in the packaging insert for the applicable Product. The Distributor shall not under any circumstances receive returned Products for placement into its inventory.

16. Representations And Warranties

1.1 The Parties hereby represent and warrant that:

1.1.1 Party is in compliance with any and all laws and regulations governing the applicable manufacture or sale of the Products and has all licenses and permits necessary to represent the Products in the Territory. The Parties

further represent and warrant that the solicitation and sale of DexCom's Products under this Agreement will not violate any law or regulation, including any law or regulation governing the sale of Products in the Territory.

1.1.2 The Parties, if other than an individual, are duly organized and existing and in good standing under the laws of the state and country of its organization and is entitled to own or lease its properties and to carry on its business as and in the places where such properties are now owned, leased or operated, or such business is now conducted. Each Party has full power and authority to provide the services specified herein and all corporate and other proceedings necessary to be taken by the Parties in connection with the transactions provided for by this Agreement and necessary to make the same effective have been duly and validly taken, and this Agreement has been duly and validly executed and delivered by the Parties and constitutes a valid and binding obligation of the Parties in accordance with their terms subject to the laws regarding creditor's rights, bankruptcy and general principles of equity.

1.1.3 The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby by will not (a) violate or breach either Party's Articles of Incorporation or Organization or Bylaws (or similar constituent documents), as applicable, (b) result in a breach of any of the terms or conditions of, or constitute a default under, any mortgage, note, bond, indenture, agreement, license or other instrument or obligation to which a Party is now a party or by which it or any of its properties or assets may be bound or affected, or (c) violate any order, writ, injunction or decree of any Governmental Authority in any respect, the violation or breach of which would prevent the Parties from consummating the transactions contemplated herein or have a material adverse effect on the business financial or otherwise of DexCom.

1.2 Neither Party is nor will be required to give any notice to or obtain any consent from any person in connection with the execution and delivery of this Agreement or the consummation or performance of any of the transactions contemplated hereby.

17. General Provisions

1.1 Notice. Any notice or other communication required or permitted to be given under this Agreement shall be properly served only if it is in writing addressed as set out below. Notice may be sent by any of the following methods: (i) personal delivery; (ii) nationally recognized overnight courier service; (iii) U.S. Postal Service certified or registered mail, return receipt requested, postage prepaid. Service shall be deemed to have been duly given on the date of delivery or on the date which is seven (7) days from the date of deposit in the U.S. Postal Service in the manner described above. Either party may change the names, addresses and facsimile numbers for receipt of notice by complying with this Section 17.1.

If to DexCom: DexCom, Inc.
6340 Sequence Drive
San Diego, CA 92121
Attn: Managed Care Contracting

With a copy to DexCom, Inc.
6340 Sequence Drive
San Diego, CA 92121

Attn: Legal Department

If to the Distributor: Byram Healthcare
120 Bloomingdale Road
Suite 301,
White Plains, NJ

with a copy to: Byram Healthcare
Attn: Legal Department
5302 Rancho Road
Huntington Beach, CA 92847

1.2 Assignment. The Distributor may not assign this Agreement in whole or in part, either directly or indirectly, by merger, consolidation, other operation of law or otherwise, without prior written consent, which will not be unreasonably withheld.

1.3 Force Majeure. If either party to this Agreement is delayed or prevented from fulfilling any of its obligations under this Agreement (other than an obligation to pay money) by an event of force majeure, said party shall not be liable under this Agreement for said delay or failure. "**Force Majeure**" shall mean any cause beyond the reasonable control of a party including, but not limited to, acts of God, vandalism, wars, terrorism, civil unrest, blockades, strikes, lightning, fires, floods, explosions, hurricanes, and other causes not within the control of the party claiming a force majeure situation. The party claiming an event of force majeure shall promptly notify the other party by providing written notice of the reason for the delay, the anticipated length of time and alternate proposals, if any, which the party wishes to make to alleviate any difficulties or hardships which may be suffered as a result of the delay. The notification shall be by telephonic communications, confirmed by letter sent in accordance with Section 17.1. Neither party to this Agreement shall be deemed to be in default by reason of delay or failure due to force majeure.

1.4 Waiver.

1.1.1 No waiver under this Agreement is effective unless it is in writing, identified as a waiver to this Agreement and signed by the Party waiving its right.

1.1.2 Any waiver authorized on one occasion is effective only in that instance and only for the purpose stated, and does not operate as a waiver on any future occasion.

1.1.3 None of the following constitutes a waiver or estoppel of any right, remedy, power, privilege or condition arising from this Agreement:

1.1.1.1 any failure or delay in exercising any right, remedy, power or privilege or in enforcing any condition under this Agreement; or

1.1.1.2 any act, omission or course of dealing between the Parties.

1.5 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of any other term or provision of this Agreement or invalidate or render unenforceable such invalid term or provision in any other jurisdiction; On a determination that any term or provision is invalid, illegal or unenforceable, the Parties shall negotiate in commercially reasonable good faith to modify this Agreement to effect the original intent of the

Parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

1.6 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original document, but all of which together shall constitute only one Agreement. Counterparts may be exchanged via email and considered original.

1.7 Applicable Law and Jurisdiction. This Agreement shall be governed by the laws of the State of California without regard to such State's conflict of laws principles applicable to contracts made and performed wholly with in such State. The Distributor hereby irrevocably agrees and consents to the exclusive jurisdiction of the federal and state courts located in the State of California and to accept service by pre-paid registered letter of any writ or summons in any such action notwithstanding that Distributor may otherwise be considered outside the jurisdiction of the California courts.

1.8 Authorization. Each of the persons executing this Agreement on behalf of a corporation or other legal entity personally warrants and represents that s/he has the requisite and necessary approval and authority to execute this Agreement on behalf of the corporation or other legal entity on whose behalf that person signed.

1.9 Entire Agreement. Upon the effectiveness of this Agreement, the Original Agreement and all Amendments (if any) and prior restatements of this Agreement shall be deemed amended and restated to read in their respective entireties as set forth in this Agreement. This Agreement, including amendment(s) if any, together with the Schedules identified herein, constitutes the complete understanding of the parties and supersedes any and all other agreements, ether oral or written, between the parties with respect to the subject matter hereof and no other agreement, statement or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding. The terms of this Agreement (including the Schedules identified herein) shall prevail over any terms or conditions contained in any other documentation related to the subject matter of this Agreement and expressly exclude any of Distributor's general terms and conditions contained in any purchase Order or other document issued by Distributor.

1.10 Amendments. Except for amendments to Schedule 1 regarding pricing and products offered, which DexCom may amend by providing written notice to Distributor, no modification, change or amendment to this Agreement shall be effective unless in writing signed by each of the Parties.

1.11 Further Assurances. On DexCom's request, Distributor shall, at its sole cost and expense, execute and deliver all such further documents and instruments, and take all such further acts, reasonably necessary to give full effect to this Agreement.

1.12 Interpretation. The Parties drafted this Agreement without regard to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted.

1.13 Cumulative Remedies. All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or later be available at law, in equity, by statute, in any other agreement between the Parties or otherwise.

1.14 No Third-Party Beneficiaries. This Agreement benefits solely the Parties and their respective permitted successors and assigns and nothing in this Agreement, express or implied, confers on any other person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, authorized representatives of the Parties have executed this Agreement as of date first set out above.

BYRAM HEALTHCARE	
By: /s/ Perry Bernochhi (Signature of authorized representative) NAME: Perry Bernocchi Chief Executive Officer DATE: 1/13/16	By: /s/ Jess Roper (Signature of authorized representative) Jess Roper Senior Vice President and Chief Financial Officer DATE: Jan. 25, 2016

SCHEDULE 1

The Products and the Prices

DME PRODUCT LISTING		
DexCom G4 Platinum with SHARE - DME		
Description	SKU	Price
DEXCOM G4 PLATINUM RECEIVER WITH SHARE - BLACK	STK-DR-001	[***]
DEXCOM G4 PLATINUM RECEIVER WITH SHARE - PINK	STK-DR-PNK	[***]
DEXCOM G4 PLATINUM RECEIVER WITH SHARE - BLUE	STK-DR-BLU	[***]
DEXCOM G4 PLATINUM (PEDIATRIC) RECEIVER WITH SHARE - BLACK	STK-PR-001	[***]
DEXCOM G4 PLATINUM (PEDIATRIC) RECEIVER WITH SHARE - PINK	STK-PR-PNK	[***]
DEXCOM G4 PLATINUM (PEDIATRIC) RECEIVER WITH SHARE - BLUE	STK-PR-BLU	[***]
DEXCOM G4 PLATINUM TRANSMITTER	STT-GL-003	[***]
DEXCOM G4 PLATINUM SENSOR 4 PACK	STS-GL-041	[***]
DexCom G5 - DME		
Description	SKU	Price
DEXCOM G5 RECEIVER KIT - BLACK	STK-GF-001	[***]
DEXCOM G5 RECEIVER KIT - BLUE	STK-GF-BLU	[***]
DEXCOM G5 RECEIVER KIT - PINK	STK-GF-PNK	[***]
DEXCOM G5 TRANSMITTER KIT	BUN-GF-003	[***]
DEXCOM G5 MOBILE / G4 PLATINUM SENSOR KIT 4 PACK	STS-GL-041	[***]

RETAIL PRODUCT LISTING		
DexCom G4 Platinum with SHARE - Retail		
Description	NDC	Price
DEXCOM G4 PLATINUM RECEIVER WITH SHARE - BLACK	08627-0050-11	[***]
DEXCOM G4 PLATINUM RECEIVER WITH SHARE - PINK	08627-0050-21	[***]
DEXCOM G4 PLATINUM RECEIVER WITH SHARE - BLUE	08627-0050-31	[***]
DEXCOM G4 PLATINUM (PEDIATRIC) RECEIVER WITH SHARE - BLACK	08627-0060-11	[***]
DEXCOM G4 PLATINUM (PEDIATRIC) RECEIVER WITH SHARE - PINK	08627-0060-21	[***]
DEXCOM G4 PLATINUM (PEDIATRIC) RECEIVER WITH SHARE - BLUE	08627-0060-31	[***]
DEXCOM G4 PLATINUM TRANSMITTER KIT	08627-0013-01	[***]
DEXCOM G4 PLATINUM SENSORS – 4 PACK	08627-0051-04	[***]
DexCom G5 - Retail		
Description	NDC	Price
DEXCOM G5 RECEIVER KIT - BLACK	08627-0080-11	[***]
DEXCOM G5 RECEIVER KIT - PINK	08627-0080-21	[***]
DEXCOM G5 RECEIVER KIT - BLUE	08627-0080-31	[***]
DEXCOM G5 TRANSMITTER KIT	08627-0014-01	[***]
DEXCOM G5 MOBILE / G4 PLATINUM SENSOR KIT 4 PACK	08627-0051-04	[***]

*There is no retail 1 pack. DexCom only sells sensors in 4 packs through retail.

- The Products will be supplied [***] and sales taxes to be paid by [***].
  - **Freight Payment Preference: Distributor FedEx Account Number or Invoice preference =**
  - **Default Shipping Methodology =**

    FedEx Options include: First Overnight, Priority Overnight, Standard Overnight, 2-day, Express Saver, & ground

Note: An email alert specifying shipment tracking number and quantity of products shipped may be generated if a Shipment Confirmation alert email address is provided by Distributor to DexCom (i.e. DXCMShipmentAlert@[Distributor.Com])

SCHEDULE 2

Ordering Methods

Ordering:
Order merchandise by PRODUCT REORDER NUMBER.

Phone Orders:

Call Customer Service toll free at 1-877-339-2664 from 6:00 a.m. to 5:00 p.m. Pacific time. Orders requiring overnight delivery must be placed by 12:00 p.m. Pacific time.

Fax Orders:

Fax to Customer Service at 858-332-0237. Orders requiring overnight delivery must be received by 12:00 p.m. Pacific time.

E-mail Orders:

E-mail to DistributorPurchaseOrders@dexcom.com

Attach your purchase order form and utilize the following format when ordering via e-mail.

Distributor Account Number
Distributor Name
Distributor Bill to and ship to address
Purchase order number
Date Product is required
Ship via [***]
Product Reorder Number
Quantity
Unit Price
Total Price per Line
Contact name, phone, fax and e-mail for confirmation
Patient name, phone, address and email for training purposes
Notice if confirmation is required.

This e-mail address should be used for ORDERS ONLY.

SCHEDULE 3

Sales Tracing Report Format

Required Reporting Frequency: Daily
Format: .csv (comma-delimited file)
Delivery Method:
DexCom controlled secure file transfer protocol site specific to Distributor
DME and Pharmacy sales tracing files can be sent separately in different formats as long as all applicable data elements are present.

Sales Tracings Requirements

Field	Format	Desired State	Comments
[***]	Text	[***]	[***]
[***]	Text	[***]	[***]
[***]	Text	[***]	[***]
[***]	Text	[***]	[***]
[***]	N/A	[***]	[***]
[***]	Text	[***]	[***]
[***]	Text	[***]	[***]
[***]	Text	[***]	[***]
[***]	Text	[***]	[***]
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[***]	Text	[***]	[***]
[***]	Text	[***]	[***]

SCHEDULE 4
Ordering and Acceptance Requirements

I. Orders, Shipping. Orders will be initiated by a written order, electronic equivalent or facsimile issued to DexCom (the "**Order**"). Each Order shall include information as set forth in Schedule 3. Products to be delivered per dates indicated on Orders shall be subject to a minimum of [***] lead time afforded to DexCom; provided if Distributor requests DexCom to supply quantities of Product in excess of 150% of the prior Order in any single Order, DexCom will use commercially reasonable efforts within the constraints of its production schedules and other commitments to meet such quantities within a six (6) week lead time but shall not be in breach of this Agreement for any failure to deliver within such six (6) week period. An Order shall be deemed to have been placed as of the date of receipt of the Order by DexCom. DexCom shall promptly acknowledge receipt of each Order in writing, via fax or email and shall without undue delay confirm such Order. For any Order (or portion thereof) having a shorter lead time than the agreed-to lead time requirements set forth herein, DexCom shall use commercially reasonable efforts to accommodate such shorter lead time or fill such excess. [***]. Distributor shall be responsible for restocking fees to DexCom in the event that a shipment requested by Distributor to a Customer is returned for any reason.

II. Acceptance. Within [***] following a receipt of a shipment, Distributor shall perform a visual inspection (in accordance with Distributor's standard procedures) of the Products received and shall inform DexCom in writing of any non-conformity of the supplied Products to the specifications as shown in such inspection or other defect in the Products. In the absence of written notice to DexCom of a specified non-conformity within [***] of the end of such [***] period, the Products shall be deemed to be accepted by Distributor. If any latent defect in the Products is subsequently discovered that is not the result of Distributor's or its agents' handling, modification, or storage of the Products [***], Distributor shall promptly so inform DexCom together with all available details and information regarding the situation, including all records of Distributor's or its agents' handling, modification, and storage of the Products [***]. In case of a justifiable claim of non-conformity, DexCom shall either (at DexCom's option) replace the defective portion of the Products at no additional cost to Distributor or cancel the order and refund any portion of the price that may to that time have been paid to DexCom under this Agreement for the sale in question. If Distributor rejects any Products and DexCom does not agree that Distributor is justified in doing so, the parties will attempt to resolve the situation in good faith, and if necessary, an independent laboratory acceptable to both parties shall utilize agreed upon test methods to test the products in dispute and to audit Distributor's and its agents' handling and storage of the products[***]. The costs of such independent laboratory shall be borne by the parties equally; provided, however, that the party that is determined to have been incorrect in the dispute shall be responsible for all such costs and shall reimburse the correct party for its share of the costs incurred. The independent laboratory's findings shall be in writing and shall be binding on both parties.

Exhibit 10.14

AIA® Document A102™- 2007

Standard Form of Agreement Between Owner and Contractor *where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price*

AGREEMENT made as of the 2nd day of May in the year 2016
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

DexCom, Inc.
6340 Sequence Drive
San Diego, CA 92121
Attn: James Gillard

and the Contractor:
(Name, legal status, address and other information)

Skanska USA Building Inc.

4742 N. 24th Street, Suite 165
Phoenix, AZ 85016
Attn: Ross Vroman

for the following Project:
(Name, location and detailed description)

Tenant Improvements at
232 South Dobson Road,
Mesa, AZ 85202 »

The Architect:
(Name, legal status, address and other information)

Mansour Architecture Corporation
6498 Weathers Place, Suite 100
San Diego, CA 92121
Attn: Anthony Mansour

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.
This document is not intended for use in competitive bidding.
AIA Document A201™-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.
Electronic copying of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

OF ARTICLES

ARTICLE 1. THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, as modified herein by the parties, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, the Exhibits to this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, then conflicts or discrepancies shall be resolved in the following descending order of priority: (i) approved revisions and addenda, including the GMP Amendment, of later date take precedence over those of earlier date or original documents; (ii) this Agreement (including the exhibits; (iii) modifications to the General Conditions; (iv) the General Conditions; and (v) Drawings and Specifications, where Drawings govern Specifications for quantity and location and Specifications govern Drawings for quality and performance. In the event of ambiguity in quantity or quality, the greater quantity and the better quality shall govern. Work not particularly detailed or specified shall be performed in the same manner as similar portions of the Work that are detailed or specified. Owner and Contractor entered into that certain Master Services Agreement dated as of January 12, 2016, which agreement concerns a different subject matter than this Agreement, remains in full force and effect and is not superseded by the Contract Documents.

ARTICLE 2. THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

§ 1.1 Contractor shall provide all general contractor services, and shall perform all the work required by the Contract Documents for the complete construction of the Project in accordance with the Contract Documents, which shall include, but not be limited to, relocation of existing utilities. Contractor shall provide and furnish all materials, supplies, equipment and tools, implements, and all other facilities, and all other labor, supervision, transportation, utilities, storage, services, sales taxes, appliances and all other services as and when required for or in connection with the complete construction of the Project, including any off site construction shown on the Contract Documents (hereinafter collectively referred to as the "Work"). The phrase "the complete construction of the Project" means to perform the totality of the obligations imposed upon Contractor by the Contract Documents or reasonably inferable therefrom as necessary to complete the Work and the Project and to provide a fully complete and operational construction solution, in Contractor's exercise of its best professional judgment, to the standards generally conveyed in the Contract Documents and customarily found in the construction industry for projects similar in size and scope to the Project.

ARTICLE 3. RELATIONSHIP OF THE PARTIES

The Contractor accepts the relationship of reliance and confidence established by this Agreement and covenants with the Owner to cooperate with Owner, Owner's project manager, Gary Ghio with G2 Facilities Management Consulting ("Project Manager") (provided, however, Owner may designate a different Project Manager by written notice to Contractor), and the Architect, and to exercise the Contractor's best skill, efforts and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents. Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering. Contractor shall not be responsible for the adequacy of the design criteria required by the Contract Documents.

ARTICLE 4. DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 1.1 The date for the commencement of the Work (the "Commencement Date") shall be set forth in a Notice to Proceed (NTP) issued by Owner concurrent with execution of this Agreement. However, the NTP shall not be effective, and Contractor shall have no obligation to commence its Work, until Owner has fulfilled the following conditions precedent and has delivered to Contractor copies of the building permit required to be obtained by the Owner for the commencement of the Work at the site, if any, and certificates of insurance for all insurance required to be provided by Owner, including the builder's risk insurance;

(2) evidence sufficient to reasonably satisfy Contractor of Owner's financing for the Project; and
(3) reasonable access to the site.

If Owner does not issue an effective NTP, Contractor shall have no obligation to commence the Work, or any part of the Work, until Owner satisfies the above conditions precedent to the effectiveness of the NTP.

(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.) (paragraph deleted)

§ 1.2 The Contract Time shall be measured from the Commencement Date, subject to adjustments in Contract Time as expressly provided in the Contract Documents.

§ 1.3 The Contractor shall diligently prosecute the Work and achieve Substantial Completion of the entire Work for the Project not later than the Substantial Completion date established in a written amendment to be signed by Owner and Contractor and delivered to each other setting forth the schedule for completion of each milestone of the Work, the deadline for Substantial Completion and the Guaranteed Maximum Price (the "GMP Amendment"), subject to adjustments of this Contract Time as provided in the Contract Documents (the "Substantial Completion Deadline"). Time is of the essence of this Agreement for meeting the milestones of Substantial and Final Completion.
(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

Portion of Work	**Substantial Completion date**

, subject to adjustments of this Contract Time as provided in the Contract Documents.

(*Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time, or for bonus payments for early completion of the Work.)*

Liquidated damages established as set forth in Section 4.5 below.

§ 1.4 The Contractor agrees to complete all of the Work in accordance with the Contractor's Schedule included in the GMP Amendment.

§ 1.5 Liquidated Damages. The Owner and the Contractor acknowledge and agree that if the Contractor does not timely achieve Substantial Completion by the Substantial Completion Deadline set forth in the GMP Amendment, (a) the Owner will suffer substantial loss of income and revenue and other damages and losses, including, without limitation, loss of business and loss or damage to reputation, business relationships, goodwill, and loss of use of the property, and (b) the actual amount of damages which the Owner would suffer would be extremely difficult and impracticable to ascertain. Accordingly, the Owner and the Contractor agree that:

§ 1.5.1.1 If the Contractor does not timely achieve Substantial Completion by the deadline set forth in the GMP Amendment, then the following sums shall constitute a reasonable estimate of the amount of damages for such delay, and the Contractor shall pay such sums to the Owner as liquidated damages for each day or portion of a day that Substantial Completion is delayed beyond the deadline within thirty (30) calendar days upon Owner's invoice to the Contractor:

One Thousand Dollars ($1,000.00) for each day of unexcused delay.

§ 1.5.1.2 In no event shall the liquidated damages, in the aggregate, exceed 10 percent (10%) of Contractors Fee. The liquidated damages set forth above are the sole and exclusive remedy for Contractor's failure to achieve Substantial Completion by the deadline set forth in the GMP Amendment.

Final completion shall occur no later than thirty (30) days after Substantial Completion. Failure to achieve Final Completion before the expiration of such thirty (30)-day period will result in liquidated damages of Five Hundred Dollars ($500.00) per day for each day in excess of thirty (30) days after Substantial Completion until Final Completion is achieved, subject to the cap set forth above.

ARTICLE 5. CONTRACT SUM

§ 1.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract, in accordance with, and subject to the terms of the conditions of the Contract Documents. The Contract Sum shall be the lesser of (a) Cost of the Work as defined in Article 7 plus the Contractor's Fee and (b) the Guaranteed Maximum Price. A Schedule of Billable Rates is attached hereto as Exhibit C and incorporated herein.

§ 1.1.1 The Contractor's Fee:
(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee.)

two and 65/100 percent (2.65%) of the Cost of Work.

§ 1.1.2 The method of adjustment of the Contractor's Fee for changes in the Work:

In connection with any changes in the Work which increase the Contract Sum, the Contractor's Fee shall be increased by an amount equal to two and 65/100 percent (2.65%) of that portion of the Cost of the Work incurred as a result of such changes in the Work, and in connection with any changes in the Work which decrease the Contract Sum, the Contractor's Fee shall be reduced by an amount equal to two and 65/100 percent (2.65%) of that portion of the Cost of the Work reduced as a result of such changes in the Work.

§ 1.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

Limitations, if any, will be agreed upon by Contractor and Owner on a trade-by-trade basis **(**and may be set forth in the amendment to this Agreement which documents, if applicable, the agreed-upon Guaranteed Maximum Price).

§ 1.1.4 Rental rates for Contractor-owned equipment shall not exceed the amounts set forth in Section 7.5.2 hereof.

§ 1.1.5 Unit prices, if any:

(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

Item	**Units and Limitations**	**Price Per Unit ($0.00)**

§ 1.2 GUARANTEED MAXIMUM PRICE

§ 1.2.1 The Contract Sum is guaranteed by the Contractor not to exceed a maximum amount (the "Guaranteed Maximum Price") established in the GMP Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner. Contractor acknowledges and agrees that the Guaranteed Maximum Price includes all inflationary costs and adjustments, and labor and material escalations, in connection with the performance of the Work so long as Owner satisfies its express obligations under the Schedule and timely issues the NTP . The Guaranteed Maximum Price shall not be adjusted due to any such inflationary costs and/or escalation events so long as Owner satisfies its express obligations under the Schedule and timely issues the NTP. There shall be no shared savings clause in this Agreement. All savings will accrue to the Owner.
(Insert specific provisions if the Contractor is to participate in any savings.)

§ 1.2.1.1 At a time to be mutually agreed upon by the Owner and the Contractor, the Contractor shall prepare a Guaranteed Maximum Price proposal for the Owner's review and written acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Contractor's reasonable estimate of the Cost of the Work, including contingencies described in Section 5.2.1.4, and the Contractor's Fee.

§ 1.2.1.2 To the extent that the Drawings and Specifications are anticipated to require further development, the Contractor shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 1.2.1.3 The Contractor shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

.1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
.2 A list of the clarifications and assumptions made by the Contractor in the preparation of the Guaranteed Maximum Price proposal, including assumptions to supplement the information provided by the Owner and contained in the Drawings and Specifications;
.3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Contractor's Fee;
.4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based (i.e., the proposed "Substantial Completion Deadline"); and
.5 A date by which the Owner must accept or reject the Guaranteed Maximum Price, which shall not be less than 30 days from the date of the Guaranteed Maximum Price proposal (it being agreed if Owner does not accept or reject the Guaranteed Maximum Price proposal in writing, it shall be deemed rejected).

§ 1.2.1.4 In preparing the Contractor's Guaranteed Maximum Price proposal, the Contractor shall include its contingency for the Contractor's exclusive use (hereinafter the "Construction Contingency") as necessary to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order, and to the extent not paid for by insurance, or Subcontractor defaults. Subject to the prior written consent of Owner, which consent shall not be unreasonably withheld, the Construction Contingency shall be available for the Contractor's exclusive use at any time to cover costs intended to be covered by the Contract Documents, including at the time of Final Payment, for reimbursement of costs and expenses (1) reasonably incurred by Contractor in performing the Work, (2) of a type that are reimbursable under this Agreement as a Cost of the Work, and (3) that are not otherwise the basis for a Change Order (it being understood that the Construction Contingency shall not be used to fund any Work which would otherwise be subject to a Change Order); including, by way of example, but not limited to, (a) Work items inadvertently omitted during the estimating and bidding process, (b) schedule recovery costs associated with normal weather, (c) cost increases due to unanticipated local labor and material market conditions, (d) interfacing omissions between and from the various categories of work; and (e) additional costs incurred due to the withdrawal or disqualification of a subcontractor bid forming the basis for the GMP prior to signing of a written subcontract, provided, however, Contractor shall not be entitled to reimbursement for any costs attributable to its negligence or willful misconduct or the failure of Contractor to perform its obligations under this Agreement. Contractor shall furnish the Owner with a monthly Contingency Log showing all reimbursements from the Construction Contingency. Costs and expenses reimbursable from the Construction Contingency shall not exceed the amount of the Construction Contingency identified as an element of the Guaranteed Maximum Price set forth in the GMP Amendment. When the Construction Contingency is exhausted, all costs and expenses that would qualify for reimbursement from the Construction Contingency shall be borne by Contractor unless such costs and expenses are otherwise compensable under the terms of this Agreement and do not cause the Guaranteed Maximum Price to be exceeded. Any amount remaining in the Construction Contingency at Final Payment shall be counted as savings that shall accrue solely to Owner.

§ 1.2.1.5 The Contractor shall meet with the Owner to review the Guaranteed Maximum Price proposal. In the event that the Owner discovers any inconsistencies or inaccuracies in the information presented, it shall notify the Contractor, who shall promptly make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both, as the case may be.

§ 1.2.1.6 If the Owner notifies the Contractor in writing that the Owner has accepted the Guaranteed Maximum Price proposal before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Contractor. Following acceptance of a Guaranteed Maximum Price, the Owner and Contractor shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 1.2.1.7 The Contractor shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner, in its sole and absolute discretion, provides prior written authorization for such costs "Initial Release Work.") Written authorization for Initial Release Work shall be provided by an Approval Letter in the form at **Exhibit A**. All Initial Release Work performed pursuant to the Approval Letters shall be performed in accordance with the Contract Documents unless otherwise specified in the Approval Letter. All Initial Release Work, if any, shall be deemed to be included in the scope of the Work pursuant to the Contract Documents. The Approval Letters constitute the basis upon which Initial Release Work shall be performed and upon which the Contractor shall be paid for the Initial Release Work and, unless and until the GMP is agreed to by the Owner, the Contractor shall not proceed with any other Work. The GMP shall include the cost of any Initial Release Work authorized pursuant to the Approval Letter issued prior to the establishment of the GMP.

§ 1.2.1.8 The Owner shall provide the revisions to the Drawings and Specifications to incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Contractor as they are revised and approved by Owner. The Contractor shall promptly notify the Owner of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

§ 1.2.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:
(*State the numbers or other identification of accepted alternates. If bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)*

To be set forth in GMP Amendment.

§ 1.2.3 Allowances included in the Guaranteed Maximum Price, if any:

(Identify allowance and state exclusions, if any, from the allowance price.)

Item	**Price**

To be set forth in GMP Amendment.

§ 1.2.4 Not used.

§ 1.2.5 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Contractor has provided in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

ARTICLE 6. CHANGES IN THE WORK

§ 1.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 1.2 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201–2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 and shall not be modified by Articles 5, 7 and 8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 1.3 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201–2007 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Contractor's Fee as defined in Section 5.1.1 of this Agreement.

§ 1.4 No change in the Work, whether by way of alteration or addition to the Work, shall be the basis of an addition to the Guaranteed Maximum Price or a change in the Contract Time unless and until such alteration or addition has been authorized by a written Change Order or Construction Change Directive executed and issued in accordance with and in strict compliance with the requirements of the Contract Documents. This requirement is of the essence of the Contract Documents. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by any alteration or addition to the Work, whether there is in fact any such unjust enrichment, shall be the basis for any claim to an increase in the Guaranteed Maximum Price or change in the Contract Time.

ARTICLE 7. COSTS TO BE REIMBURSED

§ 1.1 COST OF THE WORK

§ 1.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior written consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 7.

§ 1.1.2 The "Lump Sum General Conditions" shall include the following categories of Work as further described in **Exhibit C**:

- Wages or salaries of on-site personnel directly employed by the Contractor to supervise the Work at the site. Wages or salaries of supervisory and administrative personnel directly employed by the Contractor engaged in the performance of the Work and located at the Site or working off-Site but only for that portion of their time required for the Work
- Travel, accommodations and meals for Contractor's personnel necessarily and directly incurred in connection with the performance of the Work.
- Travel to Owners office and other ADC's sites as specifically described in **Exhibit C**.
- Expenses incurred in accordance with the Contractor's standard written personnel policy for relocation and temporary living allowance of the Contractor's personnel required for the Work.
- Reasonable costs of expenses incurred in operating, maintaining and demobilizing the Site office, including the cost of office furniture, telephones, internet, postage, express delivery charges, computing equipment, software, printing equipment, office supplies, photocopying and other miscellaneous expenses as detailed in **Exhibit C**.
- Accounting and data processing costs related to the Work, including the cost of information technologies support services, check processing charges and document archiving.
- On-site meeting expenses
- Preparation and management of the Contractor's loss prevention program including safety orientations for all site personnel and visitors, site safety signage, the cost for the Contractor's sponsored safety incentive program for all project participants, and any required drug testing.
- Personal protective equipment including, hardhats, safety glasses, safety vests, gloves for Contractor's employees and visitors to the Site.
- Preparation and management of the Contractor's quality control program.

- Preparation and periodic update of the construction master project schedule.
- Drug testing for Skanska employees
- Temporary jobsite signage
- Blue print reproduction

The Lump Sum General Conditions shall be adjusted as part of any adjustment of the Contract Sum due to changes, excused delays or other circumstances extending the Contract Time. In such event, the lump sum amount for General Conditions shall be increased or decreased, as the case may be, by the additional or decreased General Conditions Costs incurred or saved by Contractor during the extended period, with the Schedule of Billable Rates attached hereto as **Exhibit C** being used to determine the supervisory and administrative personnel costs associated with the adjustment.

Notwithstanding anything to the contrary in this Agreement, the Owner shall not be charged under any other provision of this Agreement for items covered under the Lump Sum General Conditions. Where any open cost is subject to the Owner's prior written approval, the Contractor shall obtain this approval prior to incurring the cost.

§ 1.2 LABOR COSTS

§ 1.2.1 Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's prior written approval, at off-site workshops are included in the Lump Sum General Conditions.

§ 1.2.2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site are included in the Lump Sum General Conditions.
(If it is intended that the wages or salaries of certain personnel stationed at the Contractor's principal or other offices shall be included in the Cost of the Work, identify in Article 15, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

§ 1.2.3 Wages and salaries of the Contractor's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work are included in the Lump Sum General Conditions.

§ 1.2.4 Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3 are included in the Lump Sum General Conditions.

§ 1.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Contractor or paid to any Subcontractor or vendor, with the Owner's prior written approval.

§ 1.3 SUBCONTRACT COSTS

Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts.

§ 1.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

§ 1.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 1.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 1.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

§ 1.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Contractor shall mean fair market value.

§ 1.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Contractor-owned item may not exceed the purchase price of any comparable item. Rates of Contractor-owned equipment and quantities of equipment shall be subject to the Owner's prior written approval.

§ 1.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 1.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office are included in the Lump Sum General Conditions.

§ 1.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior written approval.

§ 1.6 MISCELLANEOUS COSTS

§ 1.6.1 Contractor's Controlled Insurance Program shall be charged at 1.89–% of the Cost of Work(excluding the insurance and SubGuard costs set forth in this Section). Contractor's Builder's Risk Insurance shall be charged at 0.8% of the Cost of Work (excluding the insurance and SubGuard costs set forth in this Section). SubGuard shall be charged at 0.9% of the Cost of Work (excluding the (i) Cost of Work for each contract of $250,000.00 or less with any Subcontractor or supplier, and (ii) insurance and SubGuard costs set forth in this Section).

§ 1.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Contractor is liable.

§ 1.6.3 Fees and assessments for permits (other than the building permit which Owner will obtain), licenses and inspections for which the Contractor is required by the Contract Documents to pay.

§ 1.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201–2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 1.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Contractor's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201–2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 1.6.6 Intentionally Deleted.

§ 1.6.7 Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 1.6.8 Legal mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor after the execution of this Agreement in the performance of the Work with the Owner's prior approval, which shall not be unreasonably withheld.

§ 1.6.9 Subject to the Owner's prior written approval, reasonable, out-of-pocket expenses incurred in accordance with the Contractor's standard written personnel policy for relocation and temporary living allowances of the Contractor's personnel required for the Work.

§ 1.6.10 That portion of the reasonable, out-of-pocket expenses of the Contractor's supervisory or administrative personnel incurred while traveling in discharge of duties connected with, and necessary for, the Work. Such expenses shall be subject to Owner's prior written approval.

§ 1.7 OTHER COSTS AND EMERGENCIES

§ 1.7.1 Other reasonable, out-of-pocket costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 1.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2007 (not caused by the negligence or willful misconduct of Contractor and/or its Subcontractors of any tier).

§ 1.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Contractor or its Subcontractor and only to the extent that the cost of repair or correction is not recovered by the Contractor from insurance, sureties, Subcontractors, suppliers, or others.

§ 1.8 RELATED PARTY TRANSACTIONS

§ 1.8.1 For purposes of Section 7.8, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Contractor; any entity in which any stockholder in, or management employee of, the Contractor owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Contractor. The term "related party" includes any member of the immediate family of any person identified above.

§ 1.8.2 If any of the costs to be reimbursed arise from a transaction between the Contractor and a related party, the Contractor shall notify the Owner in writing of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such written notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Contractor shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Article 10. If the Owner fails to authorize the transaction, in writing, the Contractor shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Article 10.

ARTICLE 8. COSTS NOT TO BE REIMBURSED

§ 1.1 The Cost of the Work shall not include the items listed below:

.**1** Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Section 7.2. or as may be expressly provided in Article 15;
.**2** Expenses of the Contractor's principal office and offices other than the site office;
.**3** Overhead and general expenses, except as may be expressly included in Article 7;
.**4** The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work;
.**5** Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence or failure of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;

.6 Any cost not specifically and expressly described in Article 7;
.7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;
.8 Any cost that is counted more than once (e.g., an item that is part of the General Condition Items may not also be counted as part of the other Cost of Work);
.9 Amounts required to be paid by Contractor for federal, state or local income or franchise taxes;
.10 Unless otherwise agreed by Owner in writing, any acceleration costs, including any and all overtime wages, arising as a result of delay in carrying out the Work caused by Contractor or its Subcontractors of any tier;
.11 Any costs or expenses in connection with any indemnity provided by Contractor pursuant to the Contract Documents;
.12 Costs associated with Contractor's failure to obtain any and all applicable permits for which Contractor is responsible in a timely manner, as more fully described in the General Conditions; and
.13 The costs incurred by Contractor resulting from the failure of Contractor or its Subcontractors to coordinate their work with the work of Owner and its contractors, if any, or otherwise to fail to comply with written directives of Owner not in conflict with the Schedule.

ARTICLE 9. DISCOUNTS, REBATES AND REFUNDS
§ 1.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be obtained.

§ 1.2 Amounts that accrue to the Owner in accordance with the provisions of Section 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 10. SUBCONTRACTS AND OTHER AGREEMENTS
§ 1.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or by other appropriate agreements with the Contractor. The Owner may designate specific persons from whom, or entities from which, the Contractor shall obtain bids. For each trade, Contractor shall obtain at least three (3) bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Contractor and the Architect, which bids will be accepted. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

§ 1.2 When a specific bidder (1) is recommended to the Owner by the Contractor; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Contractor may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 1.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Contractor shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Contractor in Article 11, below.

ARTICLE 11. ACCOUNTING RECORDS
The Contractor shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Contractor's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract.

Owner agrees that the lump sum amounts, rates, multipliers and other fixed percentages and amounts to which it has agreed in writing that Contractor may charge as a Cost of the Work are subject to Owner's audit rights only for Owner to confirm that such rates, quantities, hours, multipliers, percentages or amounts have been charged by Contractor in accordance with this Agreement, and that the composition of such rates, multipliers, percentages or amounts are not subject to audit by the Owner. The Contractor shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 12. PAYMENTS
§ 1.1 PROGRESS PAYMENTS

§ 1.1.1 Based upon monthly Applications for Payment submitted to the Architect, Project Manager and Owner by the Contractor, including any supporting documentation reasonably required by Owner and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 1.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

On or before the twentieth (20th) day of the calendar month covered by an Application for Payment, the Owner (or its representative or Project Manager) and the Contractor shall meet to review a preliminary draft of the Application for Payment for such month (hereinafter referred to as a "Pencil Draw") prepared by the Contractor, which Pencil Draw shall be consistent with the requirements of the Contract Documents. The Contractor shall promptly revise the Pencil Draw in accordance with any objection or recommendation of the Owner that is consistent with the requirements of the Contract Documents. On or before the twenty-first (21st) day of such calendar month covered by an Application for Payment (or, if such day is not a business day, then the next succeeding business day), the Contractor and Owner shall walk the job to determine whether modification to the Pencil Draw should be made. A final Pencil Draw shall then be submitted by the Contractor to the Owner as the Application for Payment for such month, which is due by the first (1st) day of the month immediately following the month in which the Pencil Draw was first submitted.

§ 1.1.3 Provided that a complete Application for Payment is received by the Architect and the Owner, not later than the1st day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the1st day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Owner receives the Application for Payment, or such lesser time as is required by Arizona law.
(Federal, state or local laws may require payment within a certain period of time.)

§ 1.1.4 With each Application for Payment, the Contractor shall submit any evidence reasonably required by the Owner or Architect to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment. Further, with each Application for Payment, Contractor shall certify to Owner that except for claims previously submitted in writing, as of the date of each Application for Payment, Contractor has no claims for an increase in the Guaranteed Maximum Price.

§ 1.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Contractor's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner and Architect may require. This schedule, unless objected to by the Owner or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 1.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work for which the Contractor has made or intends to make actual payment prior to the next Application for Payment by (b)the share of the Guaranteed Maximum Price allocated to that portion of the Work. The

Contractor shall ensure that each Application for Payment is accompanied by the following items: (a) certification by the Contractor that the Work for which payment is being sought has been completed in accordance with the Contract Documents and all applicable permits; (b) a conditional waiver and release of lien upon progress payment that complies with the Arizona statutory waiver form, ARS § 33-1008, for the Contractor, each Subcontractor and each Sub-Subcontractor for which payment is being sought in the total amount of the progress payment being requested; (c) an unconditional waiver and release of lien upon progress payment that complies with the Arizona statutory waiver form, ARS § 33-1008 for the Contractor with respect to all Work previously billed and paid through the preceding Application for Payment; (d) an unconditional waiver and release of lien upon progress payment that complies with the Arizona statutory waiver form, ARS § 33-1008, for each Subcontractor and Sub-Subcontractor with respect to all Work previously billed and paid through the preceding Application for Payment; and (e) a log of all Change Orders and other Modifications issued through the date of the Application for Payment.

§ 1.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

.1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values, less retainage of ten percent (10%). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of the General Conditions;
.2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing, less retainage of five percent (5%);
.3Add the Contractor's Fee, less retainage of zero percent (0 %).The Contractor's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
.4 Subtract the aggregate of previous payments made by the Owner;
.5 Subtract the shortfall, if any, indicated by the Contractor in the documentation required by Section 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
.6 Subtract amounts, if any, for which the Architect (or Owner) has withheld or nullified a Certificate for Payment as provided in Section 9.5 of the General Conditions and as allowed by the Arizona Prompt Pay Act, § 32-1129.01 *et seq*., if applicable.

§ 1.1.8 The Owner and the Contractor shall agree upon a (1) mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements. At Substantial Completion all retainage shall be released to Contractor less fifty percent (50%) of such retainage.

§ 1.1.9 In taking action on the Contractor's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 12.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 1.2 FINAL PAYMENT

§ 1.2.6 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor within thirty (30) days or such lesser time as is required by Arizona law.

.1 the Contractor has fully performed the Contract (including all Punch List work) except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of the General Conditions, and to satisfy other requirements, if any, which extend beyond final payment;
.2 the Contractor has submitted a final accounting for the Cost of the Work and a final Application for Payment;
.3 a final Certificate for Payment has been issued by the Architect;
.4 a Temporary Certificate of Occupancy has been issued by the appropriate governmental agencies or all governmental sign-offs for Work; and
.5 a Conditional Waiver and Release of Lien Upon Final Payment has been issued by Contractor and all of its Subcontractors, materialmen, vendors and suppliers of all tiers.

Owner shall have no obligation to make final payment of the Contract Sum until Contractor has property served and recorded a Notice of Completion of all of the Work pursuant to applicable Arizona law.

§ 1.2.7 As a condition to Owner's obligation to pay Contractor the Final Payment, (a) final building inspections shall have been completed and sign-offs on building permits by the appropriate governmental agency shall have been delivered by Contractor to Owner, Architect and Project Manager, (b) the Project shall have been completed in accordance with the Contract Documents; (c) Contractor must have delivered to Owner and Project Manager a final certificate certifying Substantial Completion of the Project in accordance with the Contract Documents; and (d) as-built plans for the entire Project shall have been delivered to Owner in PDF and hard copy formats.

§ 1.2.8 If the Owner's auditors report the Cost of the Work as substantiated by the Contractor's final accounting to be less than claimed by the Contractor, the Contractor shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201–2007. A request for mediation shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Contractor. Pending a final resolution of the disputed amount, the Owner shall pay the Contractor the amount certified in the Architect's final Certificate for Payment.

§ 1.2.9 The Owner's final payment to the Contractor shall be made no later than thirty (30) days after the issuance of the Architect's final Certificate for Payment and satisfaction of all other requirements under Sections 12.2.1 and 12.2.2.

§ 1.2.10 If, subsequent to final payment and at the Owner's request, the Contractor incurs costs described in Article 7 and not excluded by Article 8 to correct defective or nonconforming Work, the Owner shall reimburse the Contractor such costs and the Contractor's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Contractor has participated in savings as provided in Section 5.2, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Contractor.

ARTICLE 13. DISPUTE RESOLUTION
§ 1.1 INITIAL DECISION MAKER

The Architect will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007, unless the parties appoint below another individual, not a party to the Agreement, to serve as Initial Decision Maker.
(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

§ 1.2 BINDING DISPUTE RESOLUTION

For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:
(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

[X] Arbitration pursuant to Section 15.4 of AIA Document A201–2007

[ ] Litigation in a court of competent jurisdiction

[ ] Other *(Specify)*

ARTICLE 14. TERMINATION OR SUSPENSION

§ 1.1 Subject to the provisions of Section 14.2 below, the Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2007.

§ 1.2 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2007, the amount, if any, to be paid to the Contractor under Section 14.2.4 of AIA Document A201–2007 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

.1 Take the Cost of the Work incurred by the Contractor to the date of termination;
.2 Add the Contractor's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
.3 Subtract the aggregate of previous payments made by the Owner.

§ 1.3 The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 14.2.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 14, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

§ 1.4 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term "profit" shall be understood to mean the Contractor's Fee as described in Sections 5.1.1 and Section 6.4 of this Agreement.

ARTICLE 15. MISCELLANEOUS PROVISIONS

§ 1.1 Where reference is made in this Agreement to a provision of AIA Document A201–2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 1.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

%

§ 1.3 The Owner's representative:
(Name, address and other information)

Gary Ghio

G2 Facilities Management Consulting

Telephone:
Email:

Unless and until Owner notifies Contractor to the contrary or otherwise provides Contractor with different instructions, Gary Ghio is hereby designated by Owner as its authorized representative to make decisions for, and receive information on behalf of, Owner in connection with the Work, provided, however, all written notices required to Owner under the Contract Documents shall also be given to Owner at its address on Page 1 of this Agreement and to the following: Dexcom, 6340 Sequence Drive, San Diego, CA 92121, Attn: Timothy F. O'Brien, Director Legal Affairs. In addition, all submissions or notices made by Contractor to the Architect shall simultaneously be made to Owner's representative.

§ 1.4 The Contractor's representative:
(Name, address and other information)

Kevin E. Devlin, Project Executive
Skanska USA Building Inc.
4742 N. 24th Street, Suite 165
Phoenix, AZ 85016
Mobile: 1 787 466 8204 Kevin.Devlin@skanska.com

§ 1.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days' written notice to the other party.

§ 1.6 Other provisions.

§ 1.6.11 Contractor covenants that all the Work shall be done in a good and workmanlike manner and that all materials furnished and used in connection therewith shall be new and meet the criteria provided in the Contract Documents. Contractor shall cause all materials and other parts of the Work to be readily available as and when required or needed for or in connection with the construction of the Project.

§ 1.6.12 In performing its obligations under this Agreement, the Contractor shall be deemed an independent contractor and not an agent or employee of the Owner.

§ 1.6.13 Contractor agrees to make such revisions to this Agreement as may be reasonably required by Owner's construction lender, if any, and Contractor agrees to comply with customary requirements of construction and permanent lenders which may be reasonably imposed as a condition to payments due under this Agreement. Contractor further agrees to execute a mutually agreed upon consent of the Owner's assignment of this Agreement to Owner's lender within ten (10) days following a request therefor on such form as the lender may reasonably require.

§ 1.6.14 If any term, covenant or condition of the Contract Documents, or the application thereof to any persons or circumstance shall to any extent be invalid or unenforceable, then the remainder of the Contract Documents or the application of the term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term, covenant and condition of the Contract Documents shall be valid and enforceable to the fullest extent permitted by law.

§ 1.6.15 Owner may designate from time to time by written notice to Contractor one or more Owner's representatives or other parties to deal with Contractor on matters pertaining to administration of the provisions of the Contract Documents. However, only those signatories designated in writing by Owner shall have the authority to approve Change Orders increasing or decreasing the Guaranteed Maximum Price or extending the Contract Time.

§ 1.6.16 The parties agree and declare that Contractor and Owner are separate and independent entities and that Contractor has full responsibility for performance of Work and direction of the work force, subject to and under the duty of Contractor to cooperate with Owner and other contractors. Contractor recognizes that in the

performance of its Work it will be required to work side by side with other contractors and representatives of Owner on the job site. Owner, Contractor and /or other contractors may or may not be signatory to collective bargaining agreements of the various labor organizations. Contractor agrees that should there be picketing or a threat of picketing by any labor organization at or near the site, (i) Contractor shall immediately notify Owner in writing of such circumstances and (ii) Owner may establish or require Contractor to establish a reserve gate system and may require Contractor's and Owner's employees, suppliers and subcontractors to use one or more designated gates. In that event, it shall be the affirmative obligation of Contractor as a material consideration of this Agreement to ensure that its employees, suppliers and Subcontractors use only the gate(s) or other entry way(s) so designated. Notwithstanding the establishment or non-establishment of a reserve gate system, it shall be the continuing obligation of Contractor (and its Subcontractors) to properly staff the job with qualified and skilled workmen and employees without interruption or delay and without any increase to the Guaranteed Maximum Price. Contractor agrees to cooperate fully and promptly with Owner and its representatives and attorneys with respect to any labor dispute that should arise on the site, including but not limited to the giving of testimony and evidence to the agent or judge of the National Labor Relations Board or in connection with proceedings in State or Federal court. Contractor agrees to undertake or cause to be undertaken in a prompt and expeditious manner, all action involved to resolve and/or minimize the consequences of any labor dispute that should arise on the site. Contractor hereby warrants that it is not now nor will Contractor be delinquent in the payment or reporting to any labor management benefit trust fund and further warrants that Contractor is not now nor will Contractor appear on any delinquency list published by any labor management benefit trust fund. Contractor indemnifies, defends and holds Owner entirely harmless from and against all costs, claims, liabilities, damages, delays, losses and expenses (including attorneys' fees and costs) arising directly or indirectly from Contractor's failure to comply with the provisions of this Section 15.6.6.

§ 1.6.17 The Contractor and Owner entered into that certain Nondisclosure Agreement dated as of November 19, 2015 ("NDA") in order to protect certain confidential information of Owner, as further set forth in the NDA. Contractor and Owner hereby incorporate the terms, provisions and obligations of the NDA in this Agreement.

ARTICLE 16. ENUMERATION OF CONTRACT DOCUMENTS

§ 1.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 1.1.1 The Agreement is this executed AIA Document A102–2007, Standard Form of Agreement Between Owner and Contractor.

§ 1.1.2 The General Conditions (as modified) are attached hereto as **Exhibit C**.

§ 1.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

§ 1.1.4 The Specifications:
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)
See list of Exhibits at 16.1.7.2.

Section	Title	Date	Pages

§ 1.1.5 The Drawings:
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)
See list of Exhibits at 16.1.7.2.

Number	Title	Date

§ 1.1.6 The Addenda, if any:

Number	Date	Pages

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 16.

§ 1.1.7 Additional documents, if any, forming part of the Contract Documents:

.1 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:
.2 Other documents, if any, listed below:

Exhibit A – Approval Letter
Exhibit B Clarifications and Assumptions to GMP
Exhibit C – Lump Sum General Conditions & Schedule of Billable Rates
Exhibit D – Drawings
Exhibit E – Specifications
Exhibit F – CCIP Insurance Exhibit

ARTICLE 17. INSURANCE AND BONDS

§ 17.1.1 **Contractor Controlled Insurance Program**. Contractor will satisfy the requirements of Section 11.1.1 of the General Conditions through a project specific Contractor Controlled Insurance Program ("CCIP") as described in **Exhibit F**, which will afford similar coverage for the Subcontractors, in the minimum coverage amounts set forth below in this Article 17, with insurance written on an occurrence basis purchased from and maintained in a company or companies which have a Best's Rating of "A/VIII" or above and which are lawfully authorized to do business in the State of Arizona. The program will be administered through the Contractor and will be billed at the value set forth in the A102 Agreement, and will be included on all change orders though Final Completion. The Contractor is responsible for all deductibles. The CCIP will include coverage for completed operations through the statute of repose for the State of Arizona. The Owner, Contractor and all tiers of Subcontractors that enter the Project site are expected to be covered, except structural demolition and abatement Subcontractors, if there are any. Any instances where work is contracted by the Owner directly (other than with Contractor) or with separate contractors are not covered by the CCIP. The Owner is required to obtain insurance from those parties, if any.

No cost saving have been guaranteed to Owner by Contractor and Contractor is not responsible for deducts in regard to any accounting for the CCIP.

§ 17.1.1.1 **Workers' Compensation**
Coverage A. Statutory Benefits
Coverage B. Employers Liability
Bodily injury by accident: $2,000,000 each accident
Bodily injury by disease: $2,000,000 policy limit
Bodily injury by disease: $2,000,000 each employee

§ 17.1.1.2 Commercial General Liability
Commercial General Liability coverage (equivalent in coverage to ISO Form CG 00 01 with an edition date of at least 11/88) of not less than:

Each Occurrence Limit: $2,000,000
Personal Advertising Injury Limit: $2,000,000
Products/Completed Operations Aggregate Limit: $4,000,000
General Aggregate Limit (other than Products/Completed Operations $4,000,000

§ 17.1.1.3 Excess Liability Umbrella
Excess Liability or Umbrella coverage of not less than and including all above liability policies in the underlying.
Each Occurrence $25,000,000
General Aggregate $25,000,000

ALL OF 17.1 SUBJECT TO SKANSKA RISK MANAGEMENT REVIEW
§ 1.1 INSURANCE REQUIRED OF THE OWNER
The Owner shall purchase and maintain liability insurance, including waivers of subrogation, as set forth in Sections 11.2 of the General Conditions.

This Agreement entered into as of the day and year first written above.

THE OWNER	**THE CONTRACTOR**
DexCom, Inc. a Delaware corporation	**Skanska USA Building Inc.**
s/ Jess Roper By: Jess Roper Its: CFO Date: 4/29/16	**s/ Ross A Vroman** By: Ross A. Vroman Its: Area General Manager, EVP Date: 5/2/16

EXHIBIT A

APPROVAL LETTER

SKANSKA

AWARD APPROVAL LETTER NO. 014

May 16, 2016

DexCom
6340 Sequence Drive
San Diego, CA 92121 m

Attention:	Gary Ghio
Project:	DexCom Phoenix – Phase One Phoenix, AZ

Subject: Subcontractor /Vendor Award Recommendation

Bid Package No.:	4415014-012
Trade:	Fire Sprinkler System
Subcontractor:	Fire Protection Systems
Award Amount:	$832,500

In accordance with the Agreement, we submit as follows our Bid Package Report and Award recommendation for the above Subcontract. We have included the final bid leveling sheet detailing the costs proposals provided. The award to Fire PS was based on the price, availability and schedule to complete the Fire Sprinkler scope items.

Note, as directed by DexCom, **this Approval Letter includes the design and installation** of the sprinkler system. If the supply of materials and install is wanted at a later date, an official AL will need to be signed.

Attached is the bid leveling sheet and proposals issued previously on January 08th, 2016 from the fire sprinkler bidders for your reference. Fire alarm, wiring of equipment, permits have been excluded. Also excluded are sprinklers under the equipment platform. Proposals are based off of the 10/22/15 drawings and specifications.

1.0 Bid Submission Results and Analysis:

Vendor:	Firetrol Protection Systems
Fire PS	$ 832,500
Olympic	$ 880,028
Aero	$ 954,650
American	$ 968,200

2.0 Pricing Details:

a) Included/Excluded in the amount of this award is ALLOWANCE/Alternates:

1. EXCLUDED ALLOWANCE – Fire/Jockey Pumps/Control Panel $205,000
2. EXCLUDED ALLOWANCE – Sprinkler System under Equipment Platform per Fire Marshall $140,000
3. EXCLUDED Alternate – Nitrogen Gen System $49,385 plus Skanska's Markups
4. EXCLUDED Alternate – Credit to not remove the underground ductile pipe noted on FP-101A and cap riser with blind flange at riser stub up. ($17,000)

Exhibit A - Approval Letter - Fire Sprinkler System 1

b) Recommended amount of this award. (Please refer to attached Bid Leveling Documentation for additional breakdown.)

As directed by DexCom, the price below only includes the design costs associated to the fire sprinkler system.

Fire PS (Design Only)		$	45,000
CCIP	1.88 %	$	846
Subguard	0.90 %	$	405
Builders Risk	1.25 %	$	563
Skanska - Fee	3.25 %	$	1,521
TAX			**EXCLUDED**
	Total:	$	48,335

As issued previously, the complete system for the fire sprinkler system for design, supply and install is as follows:

Fire PS		$	832,500
CCIP	1.88 %	$	15,651
Subguard	0.90 %	$	7,493
Builders Risk	1.25 %	$	10,406
Skanska - Fee	3.25 %	$	28,147
TAX			**EXCLUDED**
	Total:	$	894,197

** Note: Taxes have been excluded from this AL. A specific AL for taxes will be issued if taxes are ever to be included.
3.0 Alternates. The Award Recommendation amount includes the following alternates (as noted above):
x The Award Recommendation amount does not incorporate any alternates

OR

¨ The Award Recommendation amount includes the following alternates/allowances:
5. EXCLUDED ALLOWANCE – Fire/Jockey Pumps/Control Panel $205,000

Please refer to attached Bid Leveling Documentation for additional breakdown:

We have evaluated the Sub-contractors proposal, and have determined that the Sub-contractor has included the full scope of work. Any deviations from the original drawings, specifications, bid package documents or subcontract documents are clearly delineated in the revised scope of work which shall become part of the subcontract documents. The following documents shall be incorporated into the subcontract documents:

A	CM's standard form of subcontract agreement with no changes	
B	CM's project schedule dated	N/A
C	Site Logistics Plan dated	N/A
D	Issue for Construction specifications dated	10/22/2015
E	Pre-Bid Meeting Minutes dated	Dec. 2015
F	Meeting minutes from Scope review meeting dated	N/A
G	Bid Addendum (a) No(s). 2	Dated
H	Other items as appropriate	

Exhibit A - Approval Letter - Fire Sprinkler System 2

4.0 Schedule. We have reviewed the subcontractor's proposal, and proposed execution of the scope, and confirm that the subcontractor will work to the Project Schedule as defined in the Contract Documents. Please note key schedule dates/durations:

5.0 M/WBE Participation.

The recommended Contractor **is not** a M/WBE and has submitted a M/WBE utilization plan, which lists 0% Dollars ($**0**) of M/WBE participation.

We hereby recommend that the award of this sub-contract is made to Fire PS for the purchase order price of:

Forty Eight Thousand Three Hundred Thirty Five	**$**	**48,335**	Dollars

In making this recommendation, we have carried out certain checks and procedures to satisfy ourselves as to the present capability of (Firetrol) to perform the sub-contract work; details of these are given on the attached Bid Recording Sheet.

If you are in agreement with the above recommendation, please sign where indicated below and return one signed copy of this letter authorizing us to award the subcontract. Upon receipt of this signed approval letter we will incorporate the committed sub-contract price and pending items into our next Anticipated Cost Report.

Sincerely,

Todd Kadjan
Project Manager

Cc: Kevin Devlin, Skanska USA Building
Ian Miles, Aligned Energy

DexCom	
Approved By:	
Date:	

Exhibit A - Approval Letter - Fire Sprinkler System 3

EXHIBIT B

CLARIFICATIONS AND ASSUMPTIONS TO GMP

SKANSKA

Exhibit B
GMP Assumptions & Clarifications

- N/A – to be issued when GMP is established

EXHIBIT C

LUMP SUM GENERAL CONDITIONS & SCHEDULE OF BILLABLE RATES

SKANSKA

EXHIBIT "C"

SCHEDULE OF BILLABLE RATES

Project Executive	$	135/hr
Project Manager	$	100/hr
Superintendent	$	110/hr
Preconstruction Director	$	100/hr
MEP Coordinator	$	135/hr
Mechanical Estimator	$	100/hr
C/S/A Estimator	$	100/hr
Electrical Estimator	$	100/hr
Accounting	$	70/hr
Director of Accounting	$	80/hr

Alternates, Unit Prices, and Labor Rates
(05/2009 ed. Rev. 1)

SKANSKA

DEXCOM Preconstruction & Construction General Conditions, General Requirements & Closeout, Start-up & Commission Support

Description			2016														
			Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr
Preconstruction GC's	**Rate**	**Unit**																
Mechanical Estimator	$100	hour	70	40	40													
C/S/A Estimator	$100	hour	30	30	20													
Electrical Estimator	$100	hour	30	30	20													
Admin	$55																	
Accountant	$70	hour	8	8	8													
Director of accounting	$80	hour	4															
IT	$45	hour																
VDC Budget																		
VDC Director	$110	Hour	19	5	5													
VDC Manager	$75	Hour	20	20	20													
VDC travel	$1,100	Per Trip	1															
General travel to SAN (single day)	$600	Per Trip	10	5	5													

General travel to SAN (with overnight)	$1,100	Per Trip	7	5	5																			
Meeting Expenses	$750	ea	2	2	2																			
Blueprints	$250	per month	2	2	2																			
FEDEX	$175	per month	1	1	1																			
Project Management Software	$150	ea	2	2	2																			
Construction GC's																								
Project Executive	$135	hour				70	70	70	70	70	70	70	70	70	70	70	70							
Project Manager	$100	hour				175	175	175	175	175	175	175	175	175	175	175	175							
Project Engineer	$85	hour				175	175	175	175	175	175	175	175	175	175	175	175							
Superintendent	$110	hour				175	175	175	175	175	175	175	175	175	175	175	175							
Precon Dir/Coordination Specialist	$100	hour				40	40	40	40	40	40	40	40	40	40	40	40							
Safety	$75	hour				20	20	20	20	20	20	20	20	20	20	20	20							
QA/QC - TOP Manager	$75	hour				40	88	175	175	175	175	175	175	175	175	175	40							
Admin	$55	hour				175	175	175	175	175	175	175	175	175	175	155	20							
Accountant	$70	hour				15	15	15	15	15	15	15	15	15	15	15	15							
Director of accounting	$80	hour				5	5	5	5	5	5	5	5	5	5	5	5							
IT	$45	hour				8	8	8	8	8	8	8	8	8	8	8	8							

VDC Budget																
VDC Director	$110	Hour		8	8	8	8	8	8	8	8	8	8	8	8	
VDC Manager	$75	Hour		20	64	64	20	20	20	20	20	20	20	20	20	
VDC travel	$2,500	Per Trip		2												
Check Processing	$175	per million	29													
Archiving	$135	per million	29													
Meeting Expenses	$750	ea		1	1	1	1	1	1	1	1	1	1	1	1	
Legal Costs for Contract Nego	$5,000	LS														
Job Meetings	$150	per month		3	3	3	3	3	3	3	3	3	3	3	3	
Blueprints	$250	per month		1	1	1	1	1	1	1	1	1	1	1	1	
FEDEX	$175	per month		1	1	1	1	1	1	1	1	1	1	1	1	
Water	$200	per month		1	1	1	1	1	1	1	1	1	1	1	1	
VDC software license	$950	per month		1	1	1	1	1	1	1	1	1	1	1	1	
Project Management Software	$150	ea		3	3	3	3	3	3	3	3	3	3	3	3	
Office Supplies	$200	per month		1	1	1	1	1	1	1	1	1	1	1	1	
WIFI	$250	per month		1	1	1	1	1	1	1	1	1	1	1	1	
Computers/Printers	$5,000	LS	2													
Owner Connectivity	$5,000	Is	1													

Prolog for 5 users	$350		5													
Safety Orientation	$50	ea		1	1	1	1	1	1	1	1	1	1	1	1	
Hardhats	$50	ea		1	1	1	1	1	1	1	1	1	1	1	1	
Safety Glasses	$50	ea		1	1	1	1	1	1	1	1	1	1	1	1	
OSHA PPE	$250	ea		1												
Safety Equipment	$150	ea			1	1	1	1	1	1	1	1	1	1	1	
Fuel/Oil/Truck	$900	ea			2	2	2	2	2	2	2	2	2	2	2	
GR's - FROM GC's																
Jobsite signage	$3,000	LS	1													
Office Furniture (In Existing Facility)	$15,000	LS	1													
Field Toilets	$350	ea		2	4	4	4	4	4	4	4	4	4	4	4	
Temporary Fencing (access control)		LS														
Office Cleaning	$150	ea		2	4	4	4	4	4	4	4	4	4	4	4	
Permits	By Owner															
Subguard	0.90	%														
Dumpsters - Below																
Laborer - Below																
GR's - FROM Logistics																
General Conditions — Laborers	32.50	HR														

Cleanroom Protocol — Consumables	15,000.00	MO													
Final Clean — Cleanroom — 2ea	3.00	SF													
Final Clean — Site	25,000.00	LS													
HEPA Filter — Replacement	150.00	EA													
SuperClean — Certification															
General Requirements — Misc Equipment Dumpsters	650.00	EA	2	4	4	4	6	6	6	6	6	6	6	4	
Start-up & Commission - FROM Logistics															
Closeout, Start-up, Functional Testing & Commissioning Support	$1	LS													
TOTALS															

Description				Total MH	Cost										
				=SUM(D:P)	=T x B	Precon Allowance	GC-Original	Re-Allocation 1-28-16	4-19-16	Logistics - Original	Logistics - Revised	General Req. 1-28-16	General Req. 4-19-16
Preconstruction GC's		Rate	Unit										
Mechanical Estimator	$	100	hour	150	$ 15,000	$ 15,000							
C/S/A Estimator	$	100	hour	80	$ 8,000	$ 8,000							
Electrical Estimator	$	100	hour	80	$ 8,000	$ 8,000							
Admin	$	55		0	$ —	$ —							
Accountant	$	70	hour	24	$ 1,680	$ 1,680							
Director of accounting	$	80	hour	4	$ 320	$ 320							
IT	$	45	hour	0	$ —	$ —							
VDC Budget													
VDC Director	$	110	Hour	29	$ 3,190	$ 3,190							
VDC Manager	$	75	Hour	60	$ 4,500	$ 4,500							
VDC travel	$	1,100	Per Trip	1	$ 1,100	$ 1,100							
General travel to SAN (single day)	$	600	Per Trip	20	$ 12,000	$ 12,000							
General travel to SAN (with overnight)	$	1,100	Per Trip	17	$ 18,700	$ 18,700							
Meeting Expenses	$	750	ea	6	$ 4,500	$ 4,500							
Blueprints	$	250	per month	6	$ 1,500	$ 1,500							
FEDEX	$	175	per month	3	$ 525	$ 525							
Project Management Software	$	150	ea	6	$ 900	$ 900							

Construction GC's														
Project Executive	$	135	hour		840	$	113,400	$	68,040	$	68,040	$	113,400	$ —	$ —
Project Manager	$	100	hour		2,100	$	210,000	$	122,300	$	122,300	$	210,000	$ —	$ —
Project Engineer	$	85	hour		2,100	$	178,500	$	103,955	$	103,955	$	178,500	$ —	$ —
Superintendent	$	110	hour		2,100	$	231,000	$	134,530	$	134,530	$	231,000	$ —	$ —
Precon Dir/Coordination Specialist	$	100	hour		480	$	48,000	$	28,000	$	28,000	$	48,000	$ —	$ —
Safety	$	75	hour		240	$	18,000	$	11,100	$	11,100	$	18,000	$ —	$ —
QA/QC - TOP Manager	$	75	hour		1,743	$	130,725	$	65,100	$	65,100	$	130,725	$ —	$ —
Admin	$	55	hour		1,945	$	106,975	$	59,950	$	59,950	$	106,975	$ —	$ —
Accountant	*$*	*70*	hour		180	$	12,600	$	8,400	$	8,400	$	12,600	$ —	$ —
Director of accounting	$	80	hour		60	$	4,800	$	3,200	$	3,200	$	4,800	$ —	$ —
IT	$	45	hour		96	$	4,320	$	4,320	$	4,320	$	4,320	$ —	$ —
VDC Budget														
VDC Director	$	110	Hour		96	$	10,560	$	7,040	$	7,040	$	10,560	$ —	$ —
VDC Manager	$	75	Hour		328	$	24,600	$	18,600	$	18,600	$	24,600	$ —	$ —
VDC travel	$	2,500	Per Trip		2	$	5,000	$	5,000	$	5,000	$	5,000	$ —	$ —
Check Processing	$	175	per million	29	29	$	5,075	$	3,150	$	3,150	$	5,075		
Archiving	$	135	per million	29	29	$	3,915	$	2,430	$	2,430	$	3,915		
Meeting Expenses	$	750	ea		12	$	9,000	$	6,000	$	6,000	$	9,000		
Legal Costs for Contract Nego	$	5,000	LS		0	$	—	$	—	$	—	$	—		
Job Meetings	$	150	per month		36	$	5,400	$	3,150	$	3,150	$	5,400		

Blueprints	$ 250	per month		12	$ 3,000	$ 2,000	$ 2,000	$ 3,000								
FEDEX	$ 175	per month		12	$ 2,100	$ 1,400	$ 1,400	$ 2,100								
Water	$ 200	per month		12	$ 2,400	$ 1,600	$ 1,600	$ 2,400								
VDC software license	$ 950	per month		12	$ 11,400	$ 7,600	$ 7,600	$ 11,400								
Project Management Software	$ 150	ea		36	$ 5,400	$ 3,600	$ 3,600	$ 5,400								
Office Supplies	$ 200	per month		12	$ 2,400	$ 1,600	$ 1,600	$ 2,400								
WIFI	$ 250	per month	2	12	$ 3,000	$ 2,000	$ 2,000	$ 3,000								
Computers/Printers	$ 5,000	LS	1	2	$ 10,000	$ 5,000	$ 5,000	$ 10,000								
Owner Connectivity	$ 5,000	ls	5	1	$ 5,000	$ 5,000	$ 5,000	$ 5,000								
Prolog for 5 users	$ 350			5	$ 1,750	$ 1,750	$ 1,750	$ 1,750								
Safety Orientation	$ 50	ea		12	$ 600	$ 400	$ 400	$ 600								
Hardhats	$ 50	ea		12	$ 600	$ 400	$ 400	$ 600								
Safety Glasses	$ 50	ea		12	$ 600	$ 400	$ 400	$ 600								
OSHA PPE	$ 250	ea		1	$ 250	$ 250	$ 250	$ 250								
Safety Equipment	$ 150	ea		11	$ 1,650	$ 1,050	$ 1,050	$ 1,650								
Fuel/Oil/Truck	$ 900	ea		22	$ 19,800	$ 12,600	$ 12,600	$ 19,800								
GR's - FROM GC's																
Jobsite signage	$ 3,000	LS	1	1	$ 3,000	$ 3,000			$ —	$ —	$ 3,000	$ 3,000				
Office Furniture (In Existing Facility)	$ 15,000	LS	1	1	$ 15,000	$ 15,000			$ —	$ —	$ 15,000	$ 15,000				
Field Toilets	$ 350	ea		46	$ 16,100	$ 9,800			$ —	$ —	$ 9,800	$ 16,100				

Temporary Fencing (access control)		LS	0	$ —	$ —	$ —	$ —	$ —	$ —	$ —	$ —	$ —
Office Cleaning	$ 150	ea	46	$ 6,900	$ 4,200	$ —	$ —	$ —	$ 4,200	$ 6,900		
Permits	By Owner		0									
Subguard	0.90 %		0									
Dumpsters - Below			0									
Laborer - Below			0									
GR's - FROM Logistics												
General Conditions — Laborers	32.50	HR	4,160	$ 135,200		$ 270,400		$ 135,200	$ 135,200			
Cleanroom Protocol — Consumables	15,000.00	MO	6	$ 90,000		$ 90,000		$ 90,000	$ 90,000			
Final Clean — Cleanroom — 2ea	3.00	SF	28,000	$ 84,000		$ 84,000		$ 84,000	$ 84,000			
Final Clean — Site	25,000.00	LS	1	$ 25,000		$ 25,000		$ 25,000	$ 25,000			
HEPA Filter — Replacement	150.00	EA	351	$ 52,650		$ 52,650		$ 52,650	$ 52,650			
SuperClean — Certification			0			By Owner	By Owner	By Owner	$ —			
General Requirements — Misc Equipment Dumpsters	650.00	EA	60	$ 39,000		$ 50,000		$ 20,800	$ 39,000			
Start-up & Commission - FROM Logistics												
Closeout, Start-up, Functional Testing & Commissioning Support	$ 1	LS					$ 160,900					

TOTALS	**1,738,585**	**79,915**	**732,915**	**700,915**	**1,191,820**	**572,050**	**160,900**	**439,650**	**466,850**

EXHIBIT D

DRAWINGS

SKANSKA

Exhibit D – Drawings

N/A – Drawing List to be issued when GMP is established.

EXHIBIT F

CCIP INSURANCE EXHIBIT

FORMS

Forward the completed Enrollment Application to the Aon administrator identified at the bottom of page 2 of this form. The administrator prior to the start of your work on-site must receive this form.

EXHIBIT 1 – Sample Enrolled Off-Site Certificate of Insurance

ACORD© **CERTIFICATE OF INSURANCE**						**ISSUE DATE: CURRENT DATE**	
PRODUCER Insurance Agent's Name And Address **TELEPHONE #**					THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW **COMPANIES AFFORDING COVERAGE**	
INSURED Subcontractor's Name and Address **Sample Certificate for <u>Enrolled Parties</u>** Required Insurance					COMPANY $_{A}$ LETTER INSURANCE CARRIER COMPANY $_{B}$ LETTER COMPANY $_{C}$ LETTER COMPANY $_{D}$ LETTER		
COVERAGES							
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.							
CO LTR	**TYPE OF INSURANCE**	**POLICY NO.**	**POLICY EFF. DATE** MM/DD/YY	**POLICY EXP. DATE** MM/DD/YY	**ALL LIMITS**		
A	**GENERAL LIABILITY** x COMMERCIAL GEN. LIABILITY ¨ CLAIMS MADE x OCCUR. ¨ OWNER'S & CONTRACTOR'S PROT. x <u>PER PROJECT AGGREGATE ENDORSEMENT</u>	Policy Number			GENERAL AGGREGATE PRODUCTS-COMP/OPS AGGREGATE PERSONAL & ADVERTISING INJURY EACH OCCURRENCE FIRE DAMAGE (Any one fire) MEDICAL EXPENSE (Any one person)	$2,000,000 $2,000,000 $1,000,000 $1,000,000	

A	AUTOMOBILE LIABILITY x ANY AUTO ¨ ALL OWNED AUTOS ¨ SCHEDULED AUTOS x HIRED AUTOS x NON-OWNED AUTOS	Policy Number			COMBINED SINGLE LIMIT BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE	$1,000,000
A	EXCESS LIABILITY x UMBRELLA ¨ OTHER THAN UMBRELLA FORM	Policy Number			EACH OCCURRENCE AGGREGATE	$5,000,000 $5,000,000
A	WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY	Policy Number			STATUTORY LIMITS x Florida (Each accident) (Disease-policy limit) (Disease-each employee)	 $500,000 $500,000 $500,000
A	OTHER: EQUIPMENT FLOATER	Policy Number			Limit equal to Full Coverage of Subcontractor's owned or rented machinery, equipment, tools, & temporary structures not designed to become a permanent part of the Work	

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS: RE: Work performed at the Skanska USA Building ABC Project. Certificate Holders are Additional Insureds on a Primary and Non-contributing basis on the General Liability (ISO endorsement CG 20 10-11/85 or its equivalent), Automobile and Excess/Umbrella Liability Policies. Waiver of Subrogation in favor of Certificate Holders applies to all policies. GL and WC coverage apply off-site.

CERTIFICATE HOLDER

Skanska USA Building Inc., Skanska USA, Inc. Indemnified Parties, any other parties as required by the Owner contract, Skanska Inc., and their respective directors, officers, employees and affiliates and ALL ENROLLED PARTIES
c/o Aon Risk Services, Inc.
4 Overlook Point
Lincolnshire, IL 60069

Attention:

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ~~**ENDEAVOR TO**~~ MAIL **30** DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, ~~**BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES**~~.

AUTHORIZED REPRESENTATIVE

By: (original signature)

ACORD 25-S (3/93) **© ACORD CORPORATION 1993**

Skanska USA Building Inc. CCIP Insurance Manual – Exhibit G1

FORMS

EXHIBIT 2 – Sample Excluded On/Off-Site Certificate of Insurance

ACORD©	**CERTIFICATE OF INSURANCE**	**ISSUE DATE: CURRENT DATE**

PRODUCER Insurance Agent's Name and Address	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW
TELEPHONE #	**COMPANIES AFFORDING COVERAGE**
INSURED	COMPANY $_{A}$ LETTER INSURANCE CARRIER
Name and Address	COMPANY $_{B}$ LETTER
Sample Certificate for <u>Excluded Parties</u>	COMPANY $_{C}$ LETTER
Required Insurance	COMPANY $_{D}$ LETTER

COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NO.	POLICY EFF. DATE MM/DD/YY	POLICY EXP. DATE MM/DD/YY	ALL LIMITS	
A	GENERAL LIABILITY				GENERAL AGGREGATE	$2,000,000
	x COMMERCIAL GEN. LIABILITY				PRODUCTS-COMP/OPS AGGREGATE	$2,000,000
	¨ CLAIMS MADE x OCCUR.	Policy Number			PERSONAL & ADVERTISING INJURY	$1,000,000
	¨ OWNER'S & CONTRACTOR'S PROT.				EACH OCCURRENCE	$1,000,000
	x <u>PER PROJECT AGGREGATE ENDORSEMENT</u>				FIRE DAMAGE (Any one fire) MEDICAL EXPENSE (Any one person)	
A	AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT	$1,000,000
	x ANY AUTO				BODILY INJURY (Per person)	
	¨ ALL OWNED AUTOS	Policy Number			BODILY INJURY (Per accident)	
	¨ SCHEDULED AUTOS				PROPERTY DAMAGE	
	x HIRED AUTOS					
	x NON-OWNED AUTOS					
A	EXCESS LIABILITY				EACH OCCURRENCE	$5,000,000
	x UMBRELLA	Policy Number			AGGREGATE	$5,000,000
	¨ OTHER THAN UMBRELLA FORM					
A	WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY	Policy Number			STATUTORY LIMITS <u>x Florida</u>	
					(Each accident)	$500,000
					(Disease-policy limit)	$500,000
					(Disease-each employee)	$500,000

A	OTHER: EQUIPMENT FLOATER	Policy Number			Limit equal to Full Coverage of Subcontractor's owned or rented machinery, equipment, tools, & temporary structures not designed to become a permanent part of the Work

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS: RE: Work performed at the Skanska USA Building ABC Project. Certificate Holders are Additional Insureds on a Primary and Non-contributing basis on the General Liability (ISO endorsement CG 20 10-11/85 or its equivalent – attached a copy with this Certificate of Insurance), Automobile and Excess/Umbrella Liability Policies. Waiver of Subrogation in favor of Certificate Holders applies to all policies. **ALL COVERAGES LISTED APPLY ON AND OFF-SITE FOR ALL OPERATIONS OF THE INSURED.**

Skanska USA Building Inc., Skanska USA, Inc. Indemnified Parties, any other parties as required by the Owner contract, Skanska Inc., and their respective directors, officers, employees and affiliates and ALL ENROLLED PARTIES c/o Aon Risk Services, Inc. 4 Overlook Point Lincolnshire, IL 60069 Attention:	**CANCELLATION** SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ~~**ENDEAVOR TO**~~ MAIL **30** DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, ~~**BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES**~~. **AUTHORIZED REPRESENTATIVE** **By:** (original signature)
ACORD 25-S (3/93)	**© ACORD CORPORATION 1993**

AIA® Document A201™ - 2007

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Tenant Improvements at
232 South Dobson Road,
Mesa, AZ 85202

THE OWNER:

(Name, legal status and address)

DexCom, Inc.
6340 Sequence Drive
San Diego, CA 92121
Attn: James Gillard

THE CONTRACTOR:

(Name, legal status, address and other information)

Skanska USA Building Inc.
4742 N. 24th Street, Suite 165
Phoenix, AZ 85016
Attn: Ross Vroman

THE ARCHITECT:

(Name, legal status and address)

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

TABLE OF ARTICLES

13 MISCELLANEOUS PROVISIONS

14 TERMINATION OR SUSPENSION OF THE CONTRACT

15 CLAIMS AND DISPUTES

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(Topics and numbers in bold are section headings.)

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ARTICLE 1. GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Owner or Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. Except as set forth in Section 5.3 and 5.4, below, the Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.1.9 THE GUARANTEED MAXIMUM PRICE

The Guaranteed Maximum Price or "GMP" as used herein shall refer to the Contractor's Guaranteed Maximum Price as defined in Section 5.2 of the Agreement. Except for its use in Sections 9.1, 9.4.2 and 14.2.4, the term "Contract Sum" as used in this A201™–2007, as modified, refers to the Guaranteed Maximum Price as defined in Section 5.2 of the Agreement.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.11 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.12 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. Contractor represents that the Subcontractors, manufacturers and suppliers engaged or to be engaged by Contractor are and will be familiar with the requirements of the Contract Documents for performance by them of their obligations.

§ 1.2.13 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 INTERP2RETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.6 All Drawings, Specifications, and other documents prepared by the Architect are and shall remain the property of Owner, and Owner shall retain all common law, statutory and other reserved rights with respect thereto. They shall not be used by Contractor on any other project without the prior written consent of Owner, and Contractor shall take such action as may be necessary to prevent their use on any other project or for additions to the Project outside the scope of the Work by any Subcontractor, Sub-subcontractor, or material or equipment supplier. Contractor, Subcontractors, Subsubcontractors, and material and equipment suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications, and other documents prepared by Architect appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this license shall bear the statutory copyright notice, if any, shown on the originals. Submittals or distributions necessary to meet official regulatory requirements or for other purposes relating to completion of the Project are not to be construed as a publication in derogation of the Owner's copyright or other reserved rights.

§ 1.5.7 Contractor acknowledges that it has taken measures reasonably necessary to verify and ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to all general and local conditions that may affect the Work or its cost, including but not limited to: (a) conditions relating to transportation, handling, storage and disposal of materials and equipment; (b) availability of labor, power, water and other utilities, and roads; (c) uncertainties of weather, river stages, and similar physical characteristics of the site and its surroundings; and (d) character of equipment and other facilities required relative to the Work, both prior to commencement of the Work at the site and during the performance of the Work. Contractor further acknowledges that it has fully satisfied itself as to the nature, character, quality and quantity of surface conditions,

materials or obstacles to be encountered to the extent that such information is reasonably available from the local municipality and other public bodies, and from the Contract Documents.

§ 1.5.8 Owner assumes no responsibility for any conclusions or interpretations made by Contractor based on the information made available by Owner, unless such information is included in the Contract Documents.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents, and such protocols, when agreed, shall be incorporated into the Contract Documents by amendment.

ARTICLE 2. OWNER

§ 1.1 GENERAL

§ 1.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 1.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 1.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 1.2.14 Prior to and after commencement of the Work, but not more than once every three (3) months, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements or has the financial ability to fulfill the Owner's obligations under the Contract. The Owner shall furnish such evidence within fifteen (15) days after written request thereof from Contractor as a condition precedent to commencement of the Work. Thereafter, the furnishing of such evidence shall be a condition precedent to continuation of the Work if the request is made because (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially increases the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence or as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements, if applicable, without prior notice to the Contractor.

§ 1.2.15 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 1.2.16 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. Owner does not assume any responsibility whatsoever with respect to the sufficiency or accuracy of surveys or reports of borings made, or of the logs of test borings, or other investigations, or of the interpretations made thereof, and there is no warranty or guaranty, expressed or implied, that the conditions indicated by such investigations, borings, logs or information are representative of those existing throughout the Project site, or any part thereof, or the concealed conditions may be different from those described or may not have been identified.

§ 1.2.17 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the

Owner’s control and relevant to the Contractor’s performance of the Work with reasonable promptness after receiving the Contractor’s written request for such information or services.

§ 1.2.18 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 1.3 OWNER’S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may, after giving Contractor written notice and a reasonable opportunity to cure, but such notice shall only be required for the first such failure as to any particular issue or obligation, issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3. Owner's exercise of the right described in this Section 2.3 shall not give rise to any extension of the Contract Time nor shall the Contract Sum include any sums, costs, or charges directly attributable to Owner's exercise of this right.

§ 1.4 OWNER’S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner’s expenses and compensation for the Architect’s additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner, upon receipt of a written demand accompanied by documentation substantiating the amounts claimed.

§ 1.5 At all times prior to the completion of the Work, Owner, Architect, Project Manager, Owner's lender(s) (“Lender(s)”), if any, and all of their employees and agents, subject to Contractor’s reasonable requirements, shall have the right to have full access and use of the Work site. Owner's right hereunder shall include, without limitation, making inspections of the Work, including inspections carried out by Owner's agents (such as without limitation, Project Manager, Architect, engineers or other professional inspectors), stationing a Project director, a job supervisor and other personnel employed by Owner at the Work site, showing the Work to prospective concessionaires, tenants, lenders and other interested persons, and carrying out the work of fixturing the improvements comprising the Work for Owner's purposes in using the completed Work. Such use shall not constitute acceptance of the Work or any part thereof, or waive any of Owner's rights under the Contract Documents.

§ 1.6 Owner will not be responsible for and will not have control or charge over construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and Owner will not be responsible for Contractor's failure to carry out the Work in accordance with the Contract Documents and applicable laws, rules and regulations. Owner will not be responsible for or have control or charge over the acts or omissions of Contractor, Subcontractors, or any of their agents or employees, or any other person performing any of the Work.

§ 1.7 Owner has the authority to reject the Work which does not conform to the Contract Documents. Whenever, in its opinion, Owner considers it necessary or advisable for implementation of the intent of the Contract Documents, Owner will have the authority to require special inspection or testing of the Work in accordance with Section 13.5.2 whether or not such Work is then fabricated, installed or completed. However, neither Owner's authority to act under this Section 2.7, nor any decision made by Owner in good faith, either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of Owner to Contractor, any Subcontractor, any of their agents or employees, or any other person performing any of the Work.

§ 1.8 In the event Owner reasonably determines that the progress of Work affecting the critical path of construction is behind the progress anticipated in the schedule for the Work set forth in the GMP Amendment (the "Schedule") , and Contractor is not entitled to receive an extension of the Contract Time in accordance with Contract Documents, Contractor shall submit to Owner for its approval a "Recovery Plan" which will indicate the manner in which Contractor intends to get the Work back on schedule in accordance with the Schedule. The cost of preparing the Recovery Plan shall be borne solely by Contractor, and shall not be the subject of a Change Order or the use of any contingency funds. In addition, Owner may require Contractor to take such actions as Owner reasonably deems necessary to expedite progress of the Work in conformance with the progress anticipated by the Schedule, which actions may include, without limitation, increasing the number of workmen performing the Work, utilizing overtime work and requiring additional work shifts. Such action by Owner to place Contractor back on schedule shall not entitle Contractor to receive any additional compensation for these activities unless Contractor would be entitled to receive an extension of Contract Time and Contractor has made such a request, all in accordance with Section 8.3.1, below.

ARTICLE 3. CONTRACTOR
§ 1.1 GENERAL

§ 1.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 1.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 1.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor, unless the Contract Documents require the Contractor to rely upon such administration, tests, inspections or approvals.

§ 1.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 1.2.19 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including without limitation, (1) the location, condition, layout, nature of the Project site and surrounding areas, (2) generally prevailing climactic conditions, (3) anticipated labor supply and cost, (4) availability and costs of materials, tools and equipment and (5) other similar issues. Owner assumes no responsibility or liability for the safety of the Project site or any improvements located at the Project site. The Owner shall not be required to make any adjustment in either the Contract Sum or the Contract Time in connection with any failure by the Contractor or any Subcontractor to comply with the requirements of this Section 3.2.1. The Contract Sum includes provisions for all Work that may be performed by Contractor to overcome patent site and soil conditions and, except as expressly provided in Section 3.7.4, below, claims for additional compensation or extension of time because of the Contractor's failure to familiarize himself with such conditions will not be allowed.

§ 1.2.20 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. Contractor shall at once report to Architect, Project Manager and Owner errors, inconsistencies or omissions discovered. If Contractor fails to so report such discovered errors, inconsistencies or omissions, or those that it discovered in the exercise of reasonable care, it shall be responsible for the cost of correction or, at Owner's option, the reduction in value of any defective portion of the Work thereafter performed. Contractor further acknowledges that it has visited the site, examined all conditions affecting the Work, is fully familiar with all of the

conditions thereon and affecting the same, and having carefully examined all Drawings, Specifications, and documents. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 1.2.21 Except as otherwise provided in the Contract Documents, the Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Owner, Project Manager and Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 1.2.22 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, it shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 1.2.23 Any ambiguities, missing information, illegible words or numbers or discrepancies discovered by Contractor shall be promptly submitted to Owner, Project Manager and Architect for a recommendation before products are ordered or construction initiated for that portion of the Work. Contractor shall perform the Work reflecting the correction of such errors, inconsistencies, and omissions subject to Owner's execution of appropriate Change Orders.

§ 1.2.5.1 Work ordered, fabricated or constructed by Contractor, when the Contract Documents do not clearly specify in detail the Work to be done or where the Work conflicts with the Contract Documents without such Change Orders, shall be corrected by Contractor at its own expense.

§ 1.2.5.2 Recommendations of Architect with regard to such ambiguities or discrepancies shall not make Architect an arbitrator to establish responsibilities of Subcontractors to Contractor with regard to such portions of the Work.

§ 1.2.24 Contractor shall notify Architect, Project Manager and Owner in writing, of materials, systems, procedures or methods of construction either shown on the Drawings or specified in the Specifications which Contractor believes are incorrect or inappropriate for the purposes intended, or for which Contractor objects to furnishing the warranties required by the Contract Documents. Architect and Owner will make a determination of such matters in writing, Contractor shall be responsible for any additional costs resulting from its failure to so notify Architect, Project Manager and Owner that such materials, systems, procedures and methods, are incorrect or inappropriate.

§ 1.2.25 Dimensions indicated on the Drawings are required dimensions, regardless of measurement per given scale. Contractor shall verify at site necessary levels, measurements, etc., for complete fabrication, assembly and installation, fitting of equipment, fixtures and the Work. Where dimensions are not indicated and exact location is not apparent, Contractor shall promptly notify Architect, Project Manager and Owner's Representative, and Architect shall compute the required measurements.

§ 1.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 1.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures (excluding any

separate work performed by a third party under a separate contract directly with Owner). If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect, and the GMP or Contract Time or both shall be equitably adjusted. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

The Contractor shall engage workers who are skilled in performing the Work, and all Work shall be performed with care and skill and in a good workmanlike manner under the full-time supervision of an approved superintendent. The Contractor shall be liable for all property damage, including repairs and replacements of the Work, which proximately result from the breach of this duty. The Contractor shall advise the Owner:

a) if a specified product deviates from good construction practices.
b) If following the Specifications will affect any warranties; or
c) any objections which the Contractor may have to the Specifications.

§ 1.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 1.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 1.3.4 In addition to Section 10.2, below, Contractor shall institute and supervise reasonable precautions to prevent damage, injury or loss to (i) all employees involved with the Work and other persons who may be affected thereby, including, without limitation, invitees, licensees, trespassers and persons on adjacent properties, (ii) all the Work and all materials and equipment to be incorporated therein, including those in storage on or off site under the care, custody or control of Contractor or any Subcontractor, (iii) Owner's personal and real property and other property at the Work site or adjacent thereto, including without limitation, fixtures, carpets, and other related items, and (iv) all of Owner's employees, agents and representatives. Contractor shall at all times take such precautions as may be necessary to shore, brace, secure and protect the Work and shall protect such parts of the Work and shall provide and maintain such security, including, without limitation, rules, guards, fences, lights and signs, as may be necessary or required to comply with this Section 3.3.4. Contractor shall further post necessary danger signs and other warnings against hazards, promulgate and enforce safety codes, rules and regulations and notify owners, lessees and users of adjacent property. Contractor shall particularly ensure and be responsible for compliance with all applicable state and federal safety laws, ordinances, rules, regulations and lawful orders of all governmental authorities and other persons or entities having jurisdiction. In any emergency threatening the Work or adjoining property, Contractor may act pursuant to Section 10.4. Contractor shall not be responsible for the costs of such emergency work, unless the emergency was due to Contractor's own fault or neglect. The Contractor shall inspect all materials delivered to the Project and shall reject any materials that will not conform with the Contract Documents when properly installed.

§ 1.3.5 Contractor shall not cause or permit any disruption to the streets and utilities serving any occupied portion of the Project, the remainder of the Project, or other properties without Owner's prior consent, which may be conditioned upon restrictions in the time, place and manner of such disruption.

§ 1.4 LABOR AND MATERIALS

§ 1.4.3 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, and temporary water, heat, utilities (including connections), transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 1.4.4 Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 1.4.5 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 1.4.6 Where the Contract Documents refer to particular construction means, methods, techniques, sequences or procedures or indicate or imply that such are to be used on the Work, such mention is intended only to indicate that the operations of Contractor shall be such as to produce the quality of work implied by the operations described, but that the actual determination of whether the described operations may be safely or suitably employed on the Work shall be the responsibility of Contractor, who shall notify Architect, Project Manager and Owner in writing of the actual means, methods, techniques, sequences or procedures which will be employed on the Work, if these differ from those mentioned in the Contract Documents. All loss, damage, or liability, or cost of correcting defective work arising from the employment of any construction means, methods, techniques, sequences or procedures shall be borne by the Contractor, notwithstanding that such construction means, methods, techniques, sequences or procedures are referred to, indicated or implied by the Contract Documents.

§ 1.4.7 Any material specified by reference to the number, symbol, or title of a specific standard such as that of the American Society for Testing materials (ASTM), a Product or Commercial Standard, Federal Specification or other similar standards, shall comply with the requirements of the dated revisions stated in the Specifications, or where the Specifications contain no revision date, shall comply with the requirements of the latest revision thereof and any supplement or amendment thereto, in effect on the date of receipt of bids. The standards referred to, except as specifically modified in the Specifications, shall have the same force as if they were printed in full context within the Specifications.

§ 1.4.8 Contractor shall coordinate all Work of like material in order to produce harmony of matching finishes, textures, colors, etc., throughout the various components of the Project.

§ 1.4.9 Where it is required in the Specifications that materials, products, processes, equipment or the like be installed or applied in accord with manufacturer's instructions, directions, or specifications or words to this effect, it shall be construed to mean that said application or installation shall be in strict accord with current printed instructions furnished by the manufacturer of the material concerned for use under conditions similar to those at the job site. Unless otherwise stated, Contractor shall furnish one (1) copy of instructions to Owner and one (1) copy to Architect.

§ 1.5 WARRANTY

Subject to the provisions of Section 12.2 herein, the Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements shall be defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Contractor agrees to assign to Owner at the time of final completion of the Work, any and all manufacturer's warranties relating to material and labor used in the Work and further agrees to perform the Work in such a manner so as to preserve any and all such manufacturer's warranties. Contractor shall furnish seventy-two (72) hour callback service for the equipment provided by Contractor for a period of one (1) year after final payment and acceptance of the Work. Provided, however, Contractor shall provide twenty-four (24) hours emergency call back service for all pumping systems, emergency generator, electric switch gear, smoke exhaust fans, chillers and a domestic water heaters.

§ 1.5.9 During the warranty period, Owner shall (i) establish and conduct a reasonable maintenance and repair program in and around the property; (ii) comply in all respects with the requirements set forth in the manufacturers' warranties on all equipment, fixtures and systems; (iii) notify Contractor in writing within ten (10) business days after Owner has actual knowledge of any defect or deficiency which Owner believes is covered by Contractor's warranty; and (iv) provide to Contractor such reasonable access necessary to inspect the work during the warranty period and correct or replace any defect covered by Contractor's warranty. Contractor shall not be liable for any damages that could have been prevented but occurred as a result of Owner's failure to give Contractor such notice pursuant to this Section.

§ 1.6 TAXES

The Contractor shall pay, as a Cost of the Work, sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 1.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 1.7.4 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. Unless otherwise provided in the Contract Documents, the Owner shall secure and pay for all non-construction-related permits as well as any permits necessary for the operation of the facility post-completion.

§ 1.7.5 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders, and all other requirements of public authorities applicable to performance of the Work. If Contractor fails to give such notice, Contractor shall be liable for and shall indemnify and hold harmless Owner, Project Manager, and their respective employees, officers, and agents, against any resulting fines, penalties, liabilities, judgments or damages, including reasonable attorneys' fees, imposed on or incurred by the parties indemnified hereunder.

§ 1.7.6 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders or other requirements of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction, and shall, in addition to Owner's other remedies, pay all costs of correction, and reimburse Owner for any diminution in value of the Project and expenses incurred by Owner as a result of Contractor's actions. Contractor shall send all notices, make all necessary arrangements, and provide all labor and materials required to protect and maintain in operation of all public utilities within the Project site or affected by the Work.

§ 1.7.7 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor’s cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum, Guaranteed Maximum Price, Contract Time, or any of them. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect’s determination or recommendation, that party may proceed as provided in Article 15.

§ 1.7.8 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum, Guaranteed Maximum Price, and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 1.8 ALLOWANCES

§ 1.8.3 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 1.8.4 Unless otherwise provided in the Contract Documents,

.1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
.2 Contractor's and its Subcontractors' (of every tier), and suppliers' costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
.3 Whenever costs are more than or less than allowances, the Contract Sum and Guaranteed Maximum Price shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 1.8.5 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness so as not to delay the Work.

§ 1.9 SUPERINTENDENT

§ 1.9.1 The Contractor shall employ a competent superintendent approved in writing by Owner and necessary assistants who shall be in attendance at the Project site during performance of the Work. Contractor shall notify Owner in writing of any proposed change in such personnel, including the reason therefore, prior to making any change. Such personnel shall not be changed except with the consent of Owner, unless such personnel cease to be in the employ of Contractor. Ross Vroman and Kevin Devlin of Contractor shall, subject to change by prior written notice from Contractor to Owner, represent Contractor, and written communications given to them shall be binding on Contractor.

§ 1.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner, Project Manager and Architect the name and qualifications of a proposed superintendent. The Owner, Project Manager and Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner, Project Manager or the Architect have reasonable objection to the proposed superintendent or (2) that the Owner, Project Manager and Architect requires additional time to review. Failure of the Owner, Project Manager and Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 1.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner, Project Manager or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 1.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 1.10.1 The Contractor, promptly after the Agreement is executed by both Owner and Contractor, shall prepare and submit for the Owner's, Project Manager's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 1.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the submittal schedule for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 1.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 1.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Owner and Architect and shall be delivered to the

Owner upon completion of the Work as a record of the Work as constructed. The Contractor shall also maintain all approved permit drawings and other documents at the site, so as to make them accessible to inspectors and the Owner at all times that the Work is in progress. Such documents shall be delivered to the Owner before final payment.

§ 1.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 1.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 1.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 1.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 1.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 1.12.5 The Contractor shall review for compliance with the Contract Documents, and submit for approval to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ 1.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed them, and (2) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 1.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 1.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 1.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 1.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering including, but not limited to, seismic engineering design and/or structural design required as a result of construction sequences. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The

Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 1.13 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 1.14 CUTTING AND PATCHING

§ 1.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 1.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 1.14.3 The Contractor shall locate, protect, and save from injury utilities of all kinds, either above or below grade, (i) of which Contractor has actual knowledge, (ii) that are set forth in plans given to, or obtained by, Contractor or (iii) that are marked by Underground Service Alert, inside or outside of any structure, found in the areas affected by its work. Contractor shall be responsible for all damage caused to such utility by the operation of equipment or delivery of materials or as the direct or indirect result of any of its work and shall repair all such damage at its expense and as a part of the work included in the Contract Documents. The Contractor shall not be entitled to any increase in the Contract Sum or the Contract Time on account of such damage to any utility, so long as Contractor either had actual knowledge of such utility, such utility was set forth in plans given to, or obtained by, Contractor, or such utility was marked by Underground Service Alert.

§ 1.15 CLEANING UP

§ 1.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 1.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

§ 1.15.3 Contractor shall be responsible for broken glass, and at or before completion of the Work, as directed by Owner, shall replace such damaged or broken glass. After broken glass has been replaced, Contractor shall remove all labels, wash, and policy both sides of all glass. Further, in addition to general broom cleaning, Contractor shall perform the final cleaning for all trades immediately upon completion of the Work, which shall include, but not limited to, the following: (a) remove temporary protections; (b) remove marks, stains, fingerprints and other soil or dirt from painted, decorated, and natural finished woodwork and other Work; (c) remove spots, mortar, plaster, soil and paint from ceramic tile, marble, and other finish materials and wash or wipe clean; (d) clean fixtures, cabinet work and equipment, removing stains, paint, dirt, and dust and leave in undamaged, new condition; (e) clean aluminum in accordance with recommendations of the manufacturer; and (f)

clean resilient floors thoroughly with a well rinsed mop containing only enough moisture to clean off any surface dirt or dust and buff dry by machine to bring the surfaces to sheen.

§ 1.15.4 Costs incurred by Owner under this Section 3.15 shall be deducted from amounts otherwise due to Contractor, or at Owner's option, reimbursed by Contractor to Owner immediately following Owner's demand.

§ 1.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 1.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to know that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 1.18 INDEMNIFICATION

§ 1.18.1 To the fullest extent permitted by law the Contractor shall indemnify, defend and hold harmless the Owner, Project Manager, Owner’s Lender and agents and employees of any of them (collectively, the “Indemnitees”) from and against claims, damages, losses and expenses, including but not limited to attorneys’ fees, brought by or alleged by a third party arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 1.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers’ compensation acts, disability benefit acts or other employee benefit acts.

§ 1.18.3 Contractor shall include in all agreements with Subcontractors clauses substantially similar to Subparagraph 3.18.1 where the Subcontractor agrees to indemnify Contractor and Indemnitees.

§ 1.19 LENDER’S CERTIFICATE

§ 1.19.1 Within ten (10) days of Owner's request, Contractor shall execute and deliver to Owner and its lender(s) having an interest in the Project, a certificate addressed to Owner and such lender(s) concerning the compliance of the Work with the Contract Documents and applicable laws and regulations, the status of completion of the Work, the status of payments and defaults, and such other matters as such lender(s) may request. Such requests shall not be made an unreasonable number of times.

§ 1.20 REPRESENTATIONS AND WARRANTIES

§ 1.20.1 Contractor represents and warrants the following to Owner (in addition to the other representations and warranties contained in the Contract Documents), which representations and warranties shall survive any termination of the Owner-Contractor Agreement and the final completion of the Work:

§ 1.20.1.1 that it is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under Contract Documents;

§ 1.20.1.2 that it is able to furnish the tools, materials, supplies, equipment, and labor required to complete the Work and perform its obligations under the Contract Documents and has sufficient experience and competence to do so; and

§ 1.20.1.3 that it is authorized to do business in the State of Arizona and properly licensed by all necessary governmental authorities having jurisdiction over it and over the Work and the site of the Project.

§ 1.21 PUBLICITY

§ 1.21.1 The Contractor shall not divulge information concerning this Project to anyone (including, without limitation, information in applications for permits, variances, etc.) without the Owner's prior written consent. The Contractor shall obtain a similar agreement from firms, subcontractors, suppliers, and others employed by the Contractor. The Owner reserves the right to release all information as well as to time its release, form, and content. This requirement shall survive the expiration of the Contract. Contractor's ultimate parent company, Skanska AB, the shares of which are publicly traded on the NASDAQ OMX Stockholm, will be required by applicable securities laws and regulations to issue one or more press releases concerning this Agreement if the total amount of this Agreement exceeds $35,000,000.00. Attached hereto as Schedule 1 is a press release in form approved by Owner for such a press release in the event the total amount of this Agreement exceeds $35,000,000.00, provided, however, the Contractor shall give the Owner five (5) business days' prior written notice of issuance of it. Contractor shall give Owner any other press release(s) at least five (5) business days prior to issuance for Owner to review and approve by written notice to Contractor, provided that such approval shall not to be unreasonably withheld, conditioned or delayed.

§ 1.22 LENDER'S ARCHITECT

§ 1.22.1 If the Owner's lender requires the services of an inspecting architect or other representative, the Owner may require the concurrence of such inspecting architect or lender's representative in each instance where the approval of the Owner or the Architect herein is required by any provision of the Contract Documents. The Contractor shall fully cooperate with such inspecting architect or lender representative.

ARTICLE 4. ARCHITECT
§ 1.1 GENERAL

§ 1.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 1.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

§ 1.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 1.2 ADMINISTRATION OF THE CONTRACT

§ 1.2.26 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 1.2.27 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these

are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 1.2.28 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 1.2.29 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 1.2.30 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 1.2.31 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 1.2.32 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness so as not to delay the Work. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 1.2.33 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 1.2.34 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 1.2.35 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 1.2.36 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 1.2.37 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 1.2.38 [**Intentionally Deleted**.]

§ 1.2.39 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness so as not to delay the Progress of the Work. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5. SUBCONTRACTORS
§ 1.1 DEFINITIONS

§ 1.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 1.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 1.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 1.2.40 Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner, with copies to, Architect and Project Manager, the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner and Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect have reasonable objection to any such proposed person or entity or (2) that the Owner or Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 1.2.41 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 1.2.42 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum, Guaranteed Maximum Price or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 1.2.43 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 1.2.44 All portions of the Work that the Contractor's organization does not perform with its own personnel shall be performed under Subcontracts or by other appropriate agreements with Contractor. Prior to awarding a portion of the Work to any proposed Subcontractor, Contractor shall deliver to Owner a copy of any proposed Subcontractor's bid. All Subcontracts shall conform to the requirements of the Contract Documents. Contractor shall deliver to Owner copies of all Subcontracts both prior to and following their execution.

§ 1.3 SUBCONTRACTUAL RELATIONS

§ 1.3.6 By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 1.3.7 All Work performed for Contractor by a Subcontractor shall be pursuant to an appropriate written agreement between Contractor and the Subcontractor (and where appropriate between Subcontractors and Sub-subcontractors) which shall include a schedule of value approved by Owner, and which shall contain provisions that:

§ 1.3.2.1 provide that Owner is an express third party beneficiary of the subcontract, and preserve and protect the rights of Owner under the Contract with respect to the Work to be performed under the subcontract so that the subcontracting thereof will not prejudice such right;

§ 1.3.2.2 require such Work be performed in accordance with the requirements of the Contract Documents;

§ 1.3.2.3 include the Subcontractor's acknowledgment that Contractor has assigned its interest in the subcontract to Owner, which assignment shall become effective upon Contractor's default under the Contract Documents and Subcontractor's receipt of notification from Owner that (a) Contractor is in default under the Contract Documents or Owner has terminated the Contract; and (b) the assignment is effective;

§ 1.3.2.4 require submission to Contractor of applications for payment under each subcontract to which Contractor is a party, in reasonable time to enable the Contractor to apply for payment in accordance with Article 9 of the General Conditions and Article 12 of the Agreement;

§ 1.3.2.5 require that all claims for additional costs, extensions of time, damages for delays or otherwise with respect to subcontracted portions of the Work shall be submitted to Contractor (via any Subcontractor or Sub-subcontractor where appropriate) in sufficient time so that Contractor may comply in the manner provided in the Contract Documents for like claims by Contractor upon Owner; and

§ 1.3.2.6 waive all rights Contractor and Subcontractor may have against one another for damages caused by fire or other perils covered by property insurance.

§ 1.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 1.4.10 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

.1 assignment is effective only after termination of the Contract by the Owner pursuant to Article 14 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts in writing the assignment of a subcontract agreement, the Owner, on a going forward basis, assumes the Contractor's rights and obligations under the subcontract. In no event shall Owner have any obligation to cure the Contractor's breach of the subcontract.

§ 1.4.11 [**Intentionally Deleted**]

§ 1.4.12 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity.

§ 1.4.13 Upon such assignment, the Owner shall defend, indemnify and hold Contractor harmless against any and all claims of Subcontractors arising after the effective date of such assignment based on acts occurring thereafter whose Subcontracts have been assigned to the Owner.

ARTICLE 6. CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
§ 1.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 1.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 1.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 1.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement, and Contract Sum and Contract Time will be equitably adjusted as is appropriate. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 1.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 1.2 MUTUAL RESPONSIBILITY

§ 1.2.45 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 1.2.46 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 1.2.47 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 1.2.48 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 1.2.49 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 1.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate reasonably the cost among those responsible.

ARTICLE 7. CHANGES IN THE WORK
§ 1.1 GENERAL

§ 1.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 1.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 1.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 1.1.4 Owner shall order changes in the Work by giving Contractor a written change order request ("Change Order Request"), setting forth in detail the nature of the requested change. Contractor shall, as soon as reasonably possible, but not later than ten (10) days following receipt of a Change Order Request, furnish to Owner a statement setting forth in detail, with suitable breakdown by trades and work classifications, the changes, if any, in the Contract Sum attributable to the changes set forth in such Change Order Request, the proposed adjustment, if any, to the Contract Time resulting from such Change Order Request and any proposed adjustments of time and costs related to unchanged Work resulting from such Change Order Request. If Owner approves such changes in writing, a change order ("Change Order") shall be executed and the Contract Sum and Contract Time shall be adjusted as set forth in such Change Order. Failure to agree on the price of any Change Order shall not excuse Contractor from proceeding with the prosecution of the Work as changed (provided Owner issues a Construction Change Directive) for an amount equal to the amount undisputed by Owner for such a Change Order, with Contractor reserving its rights to claim additional compensation for the disputed portion of such Change Order work.

§ 1.1.5 Owner and Contractor shall be entitled to receive a Change Order equitably adjusting (either by decrease or increase) the Guaranteed Maximum Price or the Contract Time or both for adverse or beneficial cost and schedule impacts to the Work from the a change in any applicable law, including the interpretation or application thereof, after the date the GMP is established.

§ 1.2 CHANGE ORDERS

§ 1.2.50 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

.1 The change in the Work;
.2 The amount of the adjustment, if any, in the Contract Sum and Guaranteed Maximum Price; and
.3 The extent of the adjustment, if any, in the Contract Time.

§ 1.2.51 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the Contract Time. In the event a Change Order increases the Contract Sum, Contractor shall include the Work covered by such Change Orders in Applications for Payment as if such Work were originally part of the Contract Documents.

§ 1.3 CONSTRUCTION CHANGE DIRECTIVES

§ 1.3.8 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract

Sum, Guaranteed Maximum Price, or Contract Time, or any of them. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum, Guaranteed Maximum Price and Contract Time being adjusted accordingly.

§ 1.3.9 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 1.3.10 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

.**1** Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
.**2** Unit prices stated in the Contract Documents or subsequently agreed upon;
.**3** Cost to be determined in a manner agreed upon by the parties, plus the Contractor's Fee set forth in Section 5.1.1 of the Agreement; or
.**4** As provided in Section 7.3.7.

§ 1.3.11 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 1.3.12 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum, Guaranteed Maximum Price or Contract Time.

§ 1.3.13 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum, Guaranteed Maximum Price and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 1.3.14 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

.**1** Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
.**2** Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
.**3** Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
.**4** Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work;
.**5** Additional costs of supervision and field office personnel directly attributable to the change; and
.**6** Any additional costs allowed by Article 6 of the Agreement.

§ 1.3.15 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 1.3.16 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional

judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum and Guaranteed Maximum Price on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 1.3.17 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum, Guaranteed Maximum Price and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 1.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum, Guaranteed Maximum Price or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor, subject to the right of Contractor to reasonably disagree and assert a Claim in accordance with Article 15.

ARTICLE 8. TIME
§ 1.1 DEFINITIONS

§ 1.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 1.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 1.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 1.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 1.2 PROGRESS AND COMPLETION

§ 1.2.52 Time limits stated in the Contract Documents are of the essence of the Contract with respect to its obligation to achieve Substantial and Final Completion of the Work as adjusted by change order. By executing the Agreement the Contractor confirms that the Contract Time, subject to adjustments as provided for in the Contract Documents, is a reasonable period for performing the Work.

§ 1.2.53 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 1.2.54 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time, subject to adjustments as provided for in the Contract Documents.

§ 1.3 DELAYS AND EXTENSIONS OF TIME

§ 1.3.18 If Contractor is delayed in the performance of the Work by any act or neglect of Owner or Architect, or by an employee, agent or representative of Owner or by changes ordered in the Work, or by the combined action of workmen (either those employed on the Work or in any industry essential to the conduct of the Work) not caused by or resulting from default, negligence or collusion on the part of Contractor or its Subcontractors of every tier, or if Contractor is delayed by separate contractors, or by unusually severe weather conditions not reasonably anticipatable for the locale, or by fire, unavoidable casualty, acts of God, "Excusable Labor Disputes" or "Excusable Transportation Delays" (as those terms are defined below), or national emergency, then the Contract Time shall be extended by Change Order for a period equal to the length of such delay as measured on the critical path of the Schedule if, within fourteen (14) days after the commencement of any such delay, or fourteen (14) days after Contractor learned of the delay, whichever is later, Contractor delivers to Owner a written notice of such delay stating the nature thereof, and within fourteen (14) days following the expiration of any such delay, provides a written request for extension of the Contract Time by reason of such delay and such

extension is approved by Owner, which approval shall not be unreasonably withheld; provided, however, that no such extension shall be given unless the delay for which a request for extension is made is included in those items for which an extension of the Contract Time is appropriate pursuant to the provisions of this Subparagraph 8.3.1. As used herein, the term "Excusable Labor Dispute" shall be defined as any labor dispute directed against an entire industry, or any labor dispute that is not directed solely against the Project, the Contractor or any of its Subcontractors or suppliers, and which prevents Contractor from obtaining labor or materials necessary for performance of the Work and actually delays the performance of the Work; provided, however, that suitable substitute materials or labor are not reasonably obtainable. As used herein, the term "Excusable Transportation Delay" shall be defined as any labor dispute directed against an entire industry, or any labor dispute that is not directed solely against the Project, the Contractor or any of its Subcontractors or suppliers, or other delay not within the reasonable control of Contractor which prevents the transportation of necessary materials to the Project and actually delays the performance of the Work; provided, however, that suitable substitute transportation for such materials is not reasonably available. In the event Contractor fails to deliver to Owner either or both of the above-described written notices within the required fourteen (14) day period, then the extension of the Contract Time attributable to the delay for which such notices are required shall be decreased by one (1) day for each day (beyond the applicable fourteen (14) day period) Contractor fails to deliver any required notice to Owner. In the case of a continuing cause of delay of a particular nature, Contractor shall be required to make only one such request for extension with respect thereto. No delay of the Contract Time (or right on the part of Contractor to secure any such delay) pursuant to this Section 8.3.1 shall prejudice any right Owner may have under the Contract, or otherwise, to terminate the Contract.

§ 1.3.19 In addition to the increased time due to a delay set forth in Section 8.3.1, Contractor shall be entitled to a commensurate increase in the Contract Sum and Guaranteed Maximum Price for delays which impact the Schedule.

§ 1.3.20 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9. PAYMENTS AND COMPLETION
§ 1.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 1.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. The schedule of values shall not constitute, or be construed as, a line item Guaranteed Maximum Price.

§ 1.3 APPLICATIONS FOR PAYMENT

§ 1.3.21 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 1.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 1.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 1.3.22 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in writing and in advance by the Owner and Lender, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures reasonably satisfactory to the Owner and Lender to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and the Lender's security interest therein, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site in third party warehouses.

§ 1.3.23 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 1.4 CERTIFICATES FOR PAYMENT

§ 1.4.14 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 1.4.15 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 1.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 1.5.10 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

.**1** defective Work not remedied;
.**2** third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;

.3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
.5 damage to the Owner or a separate contractor;
.6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
.7 material failure to carry out the Work in accordance with the Contract Documents.

Notwithstanding the issuance of a Certificate for Payment, the Owner, may withhold payment for the reasons described in Sections 9.5.1.1 - 9.5.1.7, but shall make payment of amounts that are not in dispute.

§ 1.5.11 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld. All non-disputed amounts shall be paid to the Contractor within the time requirements of the

Contract Documents. In no event will Owner withhold more than 150% of any disputed amount or of the amount reasonably necessary to correct or address the reason for withholding. The Owner shall not be deemed to be in default of the Contract by reason of withholding payment while any of the grounds above in Section 9.5.1 remain uncured.

§ 1.5.12 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, and after providing five (5) days prior written notice to Contractor, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 1.6 PROGRESS PAYMENTS

§ 1.6.18 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 1.6.19 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 1.6.20 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 1.6.21 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 1.6.22 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 1.6.23 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 1.6.24 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall

create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 1.6.25 With each Application for Payment, Contractor shall furnish a conditional progress waiver and release of lien for itself, each Subcontractor who furnished labor, equipment, materials or services to the Project, and each materialman and vendor who furnished materials to the Project during the period covered by the Application for Payment. Upon each payment by Owner, Contractor shall execute, and cause all such materialman, vendors and Subcontractors to execute an unconditional progress waiver and release of lien acknowledging receipt of all payments due through the period covered by the previous Application for Payment for which payment was received by the Contractor. The conditional and unconditional lien releases shall be in statutory form, and provided Owner is making progress payments in accordance with the Contract Documents, Contractor shall deliver the executed unconditional releases to Owner with its next succeeding Application for Payment, including the Final Application for Payment to assure an effective waiver of mechanics' or materialmen's liens in compliance with the laws of the State of Arizona. In addition to providing lien releases, and provided Owner is making required progress payments in accordance with the Contract Documents, Contractor shall indemnify and hold Owner and Lender harmless from and against any and all liens and charges of every type, nature, kind or description which may at any time be filed or claimed against the Project, or any portion thereof, or the improvements situated thereon, including attorneys' fees, as a consequence, direct or indirect, of any act or omission of Contractor, its agents, servants, employees, suppliers, subcontractors, or any or all of them. Prior to commencement of Work as reasonably required by Owner or Lender, Contractor shall furnish to Owner and Lender an affidavit, subordination and lien waiver agreement executed by Contractor and each Subcontractor which has furnished and supplied or will furnish or supply materials and services in connection with the prosecution of the Work, which agreement shall be in a commercially reasonable form. To the extent not inconsistent with existing law, each party executing such agreement shall, prior to commencement of Work, agree to subordinate all of its liens for Work to be performed or materials to be furnished pursuant to the Contract Documents to the liens and security interests securing payment of any loan made for the Project by Lender, and shall furnish a release of all liens for Work performed and materials furnished up to the date of execution of such agreement to the extent such party has been paid. Further, each such party shall certify that all amounts owing to such party for the Work through the date of such agreement have been paid in full, or if not paid in full, such agreement shall set forth such amounts which have not been paid through the date of such agreement.

§ 1.6.26 If any lien, bonded stop notice or claim is recorded or served in connection with the Work for which the Contractor has been paid, Contractor shall, immediately and at its own expense, record or file, or cause to be recorded or filed, in the office of the county recorder in which the lien or claim was recorded, or with the person(s) on whom the bonded stop notice was served, a bond executed by a good and sufficient surety, and approved by Owner, in a sum equal to one hundred fifty percent (150%) of the amount of such lien, bonded stop notice or claim, which bond shall guarantee the payment of any amounts which the claimant may recover on the lien, bonded stop notice or claim, together with the claimant's costs of suit in the action if the claimant recovers therein.

§ 1.6.27 If Contractor fails to cause any lien to be removed in connection with the Work for which the Contractor has been paid (if payment is past due) from the Project or any bonded stop notices or other notices to be negated, Owner may employ whatever means it may, in its reasonable discretion, to cause the lien to be removed, and the effect of any bonded stop notices or other notices to be negated. Contractor shall, upon demand, reimburse Owner for all costs, including without limitation actual attorneys' fees incurred by Owner in connection with any suit, lien or bonded stop notice. Owner may offset any such costs against amounts otherwise owing to Contractor hereunder.

§ 1.7 FAILURE OF PAYMENT

§ 1.7.9 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor’s Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days’ written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor’s reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 1.7.10 If Owner is entitled to reimbursement or payment from Contractor under or pursuant to the Contract Documents, such payments shall be made within thirty (30) days after demand by Owner.

Notwithstanding anything contained in the Contract Documents to the contrary, if Contractor fails to promptly make any payment due Owner, or Owner incurs any costs and expenses to cure any default of Contractor or to correct defective Work, Owner shall have an absolute right to offset such amount against the Contract Sum and may, in Owner's sole discretion, elect either to: (1) deduct an amount equal to that which Owner is entitled from any payment then or thereafter due Contractor from Owner, or (2) issue a written notice to Contractor reducing the Contract Sum by an amount equal to that which Owner is entitled.

§ 1.8 SUBSTANTIAL COMPLETION

§ 1.8.6 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use and a temporary certificate of occupancy (or its functional equivalent) has been issued by the appropriate governmental agency.

§ 1.8.7 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 1.8.8 Upon receipt of the Contractor's list, the Owner and Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 1.8.9 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 1.8.10 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 1.9 PARTIAL OCCUPANCY OR USE

§ 1.9.4 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 1.9.5 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 1.9.6 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 1.10 FINAL COMPLETION AND FINAL PAYMENT

§ 1.10.4 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner and Architect will promptly (but in no event later than ten (10) days after receipt of said notice and final Application for Payment and Contractor's written request to Owner for final inspection) make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 1.10.5 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and Contractor shall not allow such insurance to be cancelled or to expire until it gives Owner at least 30 days' prior written notice thereof, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner, and (6) all warranties, guarantees, operating manuals and record drawings for the Project. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees. Contractor's obligations hereunder with respect to liens shall not apply to the extent the Owner's breach of any payment obligations under the Contract Documents has resulted in such lien.

§ 1.10.6 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Owner and Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Owner and Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 1.10.7 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

.1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
.2 failure of the Work to comply with the requirements of the Contract Documents; or
.3 terms of special warranties required by the Contract Documents.

§ 1.10.8 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10. PROTECTION OF PERSONS AND PROPERTY
§ 1.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 1.2 SAFETY OF PERSONS AND PROPERTY

§ 1.2.55 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

.1 employees on the Work and other persons who may be affected thereby;
.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 1.2.56 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss. If the Contractor fails to give such notices or fails to comply with such laws, ordinances, rules, regulations, and lawful orders, it shall to the extent due to such failures be liable for and shall indemnify, defend (at Contractor's sole cost, and with legal counsel reasonably approved by Owner) and hold harmless the Owner, Project Manager and their respective employees, officers, and agents, against any resulting fines, penalties, judgments, or damages, including reasonable attorneys' fees, imposed on or incurred by Owner.

§ 1.2.57 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities. The Contractor shall promptly report to the Owner in writing all accidents arising out of or in connection with the Work that cause death, personal injury, or property damage. The report shall give full details, including statements of witnesses, hospital reports, and other information in the possession of the Contractor. In addition, in the event of any serious injury or damage, the Contractor shall immediately notify the Owner by telephone of such accident.

§ 1.2.58 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 1.2.59 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to the extent of the negligence or willful misconduct of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 1.2.60 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 1.2.61 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 1.2.62 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 1.3 HAZARDOUS MATERIALS

§ 1.3.24 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 1.3.25 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum and Guaranteed Maximum Price shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 1.3.26 To the fullest extent permitted by law, the Owner shall defend, indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 1.3.27 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 1.3.28 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 1.3.29 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify and defend the Contractor for all cost and expense thereby incurred.

§ 1.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11. INSURANCE AND BONDS
§ 1.1 CONTRACTOR'S LIABILITY INSURANCE THIS ARTICLE 11 IS STILL SUBJECT TO REVIEW BY SKANSKA RISK MANAGEMENT

§ 1.1.1 The Contractor shall purchase from and maintain in a company or companies to which Owner has no reasonable objection, which have a Best's Rating of "A/VIII" or above and which are lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

.**1** Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
.**2** Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
.**3** Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
.**4** Claims for damages insured by usual personal injury liability coverage;
.**5** Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property;
.**6** Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
.**7** Claims for bodily injury or property damage arising out of completed operations; and
.**8** Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 1.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, shall be written on an occurrence basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 1.1.3 Certificates of insurance reasonably acceptable to the Owner, and copies of the insurance policies if requested in writing, shall be filed with the Owner and the additional insureds at least ten (10) days prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness upon Owner's written request. Upon receipt of any notice of cancellation or alteration, Contractor, within ten (10) days, shall procure other policies of insurance, similar in all material respects to the policy or policies, about to be canceled or altered; and, if Contractor fails to provide, procure and deliver acceptable policies of insurance or satisfactory evidence thereof, in accordance with the terms hereof, then at Owner 's option, Owner may obtain such insurance at the cost and expense of Contractor without the need of any notice to Contractor. The Contractor shall provide written notification to the Owner of the cancellation or expiration of any insurance required by Section 11.1. The Contractor shall provide such written notice within five (5) days of the date the Contractor is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

§ 1.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Lender, as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 1.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 1.3 PROPERTY INSURANCE

§ 1.3.30 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include the Owner, the Contractor, Subcontractors and Sub-subcontractors in as insured.

§ 1.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 1.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 1.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles, unless the loss was caused by Contractor and/or its Subcontractors of any tier, then Contractor shall be responsible for a deductible up to Ten Thousand Dollars and Zero Cents ($10,000.00).

§ 1.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 1.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 1.3.31 **BOILER AND MACHINERY INSURANCE** [Intentionally Deleted]

§ 1.3.32 **LOSS OF USE INSURANCE** [Intentionally Deleted]

§ 1.3.33 [**Intentionally Deleted**]

§ 1.3.34 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 1.3.35 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy, to the extent the issuing insurance company will so provide without additional material cost, shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§ 1.3.36 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered and paid by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 1.3.37 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 1.3.38 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7. Owner shall not have any responsibility to any party other than Contractor with respect to the proceeds of any insurance policy. After a loss, Owner may choose to terminate the Contract for convenience as described herein, or continue with the construction of the Project. If after such loss no other special agreement is made and unless Owner terminates the Contract for convenience, replacement of damaged property shall be performed by Contractor after notification of a change in the Work in accordance with Article 7.

§ 1.3.39 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

§ 1.4 PERFORMANCE BOND AND PAYMENT BOND

§ 1.4.16 The Owner, as an addition to the Cost of the Work and Guaranteed Maximum Price, shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

§ 1.4.17 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

ARTICLE 12. UNCOVERING AND CORRECTION OF WORK
§ 1.1 UNCOVERING OF WORK

§ 1.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 1.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 1.2 CORRECTION OF WORK

§ 1.2.63 BEFORE OR AFTER SUBSTANTIAL COMPLETION

§ 1.2.1.1 The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense, except as may be reimbursable from the Construction Contingency.

§ 1.2.64 AFTER SUBSTANTIAL COMPLETION

§ 1.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly at Contractor's sole expense after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails promptly to notify the Contractor in writing, as required under Section 3.5.2, and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.§

§ 1.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 1.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 1.2.65 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 1.2.66 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 1.2.67 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 1.2.68 Nothing contained in this Contract shall in any way limit the right of Owner to assert claims for damages resulting from patent or latent defects in the Work for the period of limitations prescribed by Arizona law, and the foregoing shall be in addition to any other rights and remedies Owner may have hereunder or at law or in equity.

§ 1.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13. MISCELLANEOUS PROVISIONS

§ 1.1 GOVERNING LAW

The Contract shall be governed by the law of the State of Arizona except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 1.2 SUCCESSORS AND ASSIGNS

§ 1.2.69 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Contractor may not assign, in whole or in part, the Contract without first obtaining the written consent of the Owner, which consent may be withheld in Owner's sole discretion.

§ 1.2.70 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 1.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 1.4 RIGHTS AND REMEDIES

§ 1.4.18 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 1.4.19 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

§ 1.4.20 Notwithstanding any other provision to the contrary contained in the Contract Documents, provided that Owner continues to make payments of amounts not in dispute in accordance with the provisions of the Contract Documents, during all disputes, actions or claims and other matters in question arising out of, or relating to, the Contract Documents or the breach thereof, Contractor shall carry on the Work and maintain the Schedule, unless otherwise agreed between Contractor and Owner in writing.

§ 1.5 TESTS AND INSPECTIONS

§ 1.5.13 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be

present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 1.5.14 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 1.5.15 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 1.5.16 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 1.5.17 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 1.5.18 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 1.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate of six percent (6%) per annum, not to exceed the maximum rate permitted by law.

§ 1.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

§ 1.8 CONFIDENTIALITY

§ 1.8.11 The Contractor and Owner entered into that certain Nondisclosure Agreement dated as of November 19, 2015 ("NDA") in order to protect certain confidential information of Owner, as further set forth in the NDA. Contractor and Owner hereby incorporate the terms, provisions and obligations of the NDA in these General Conditions.

ARTICLE 14. TERMINATION OR SUSPENSION OF THE CONTRACT
§ 1.1 TERMINATION BY THE CONTRACTOR

§ 1.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

.**1** Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
.**2** An act of government, such as a declaration of national emergency that requires all Work to be stopped;
.**3** Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or

.4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 1.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 1.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract (provided, however, if Owner commences the cure within such seven (7)-day period and thereafter diligently pursues such cure to completion, no default shall be deemed to have occurred) and recover from the Owner payment for Work executed, including Contractor's Fee and general conditions costs on such work, costs incurred by reason of such termination, and damages.

§ 1.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 1.2 TERMINATION BY THE OWNER FOR CAUSE

§ 1.2.71 The Owner may terminate the Contract if the Contractor

.1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
.2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
.3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
.4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 1.2.72 When any of the above reasons exist, the Owner may, by written notice, demand that the Contractor cure the default. If Contractor fails to commence and diligently pursue curing the default within seven (7) days after receipt of said written notice, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner, terminate employment of the Contractor and may, subject to any prior rights of the surety:

.1 Exclude the Contractor from the site and take possession of all materials, and equipment stored on the site that are intended to be incorporated into the Work;
.2 Accept assignment of subcontracts pursuant to Section 5.4; and
.3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 1.2.73 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 1.2.74 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and direct damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract. The costs of finishing the Work include, without limitation, all reasonable attorneys' fees, additional insurance premiums, additional interest because of any delay in completing the Work, and all other direct costs incurred by the Owner by reason of the termination of the Contractor as stated herein.

§ 1.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 1.3.40 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 1.3.41 The Contract Sum, Guaranteed Maximum Price and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum and Guaranteed Maximum Price shall include profit. No adjustment shall be made to the extent

.1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
.2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 1.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 1.4.21 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 1.4.22 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

.1 cease operations as directed by the Owner in the notice;
.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 1.4.23 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, including termination payments to subcontractors and demobilization costs, along with Contractor's Fee on the Work not executed.

ARTICLE 15. CLAIMS AND DISPUTES
§ 1.1 CLAIMS

§ 1.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 1.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 1.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 1.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum and/or the Guaranteed Maximum Price, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 1.1.5 CLAIMS FOR ADDITIONAL TIME

§ 1.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 1.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ 1.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive Claims against each other for consequential, indirect, special, punitive or exemplary damages arising out of or relating to this Contract. This mutual waiver includes, without limitation

> **.1** damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
> **.2** damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential, indirect, special, punitive or exemplary damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 1.2 INITIAL DECISION

§ 1.2.75 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 1.2.76 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 1.2.77 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 1.2.78 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 1.2.79 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 1.2.80 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 1.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 1.2.6.2 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 1.2.81 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 1.3 MEDIATION

§ 1.3.42 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution, excluding any equitable proceeding for emergency relief to prevent irreparable harm or the filing of any lawsuit or recording of any legal document that may be necessary to preserve a party's rights under applicable law..

§ 1.3.43 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 1.3.44 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the City of San Diego, California, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 1.4 ARBITRATION

§ 1.4.24 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in the City of San Diego, California, in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement, and venue for such proceedings shall be in the City of San Diego, California. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 1.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes,

receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 1.4.25 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 1.4.26 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 1.4.27 CONSOLIDATION OR JOINDER

§ 1.4.4.1 .4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 1.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 1.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

(1500995949)

Exhibit [ ]

AGREEMENT made as of the « 1st » day of « May » in the year «2017 »
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

DexCom, Inc.
6340 Sequence Drive
San Diego, CA 92121
Attn: James Gillard
« »

and the Contractor:
(Name, legal status, address and other information)

Skanska USA Building Inc.
4742 N. 24th Street, Suite 165
Phoenix, AZ 85016
Attn: Ross Vroman
« »

for the following Project:
(Name, location and detailed description)

«Phase 2 Tenant Improvements at »
«232 South Dobson Road,
Mesa, AZ 85202 »

The Architect:
(Name, legal status, address and other information)

Mansour Architecture Corporation
6498 Weathers Place, Suite 100
San Diego, CA 92121
Attn: Anthony Mansour
« »

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is not intended for use in competitive bidding.

AIA Document A201™-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Electronic copying of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

TABLE OF ARTICLES

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, as modified herein by the parties, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, the Exhibits to this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, then conflicts or discrepancies shall be resolved in the following descending order of priority: (i) approved revisions and addenda, including the GMP Amendment, of later date take precedence over those of earlier date or original documents; (ii) this Agreement (including the exhibits; (iii) modifications to the General Conditions; (iv) the General Conditions; and (v) Drawings and Specifications, where Drawings govern Specifications for quantity and location and Specifications govern Drawings for quality and performance. In the event of ambiguity in quantity or quality, the greater quantity and the better quality shall govern. Work not

particularly detailed or specified shall be performed in the same manner as similar portions of the Work that are detailed or specified. Owner and Contractor entered into that certain Master Services Agreement dated as of January 12, 2016, which agreement concerns a different subject matter than this Agreement, remains in full force and effect and is not superseded by the Contract Documents.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

§ 2.1 Contractor shall provide all general contractor services, and shall perform all the work required by the Contract Documents for the complete construction of the Project in accordance with the Contract Documents, which shall include, but not be limited to, relocation of existing utilities. Contractor shall provide and furnish all materials, supplies, equipment and tools, implements, and all other facilities, and all other labor, supervision, transportation, utilities, storage, services, sales taxes, appliances and all other services as and when required for or in connection with the complete construction of the Project, including any off site construction shown on the Contract Documents (hereinafter collectively referred to as the "Work"). The phrase "the complete construction of the Project" means to perform the totality of the obligations imposed upon Contractor by the Contract Documents or reasonably inferable therefrom as necessary to complete the Work and the Project and to provide a fully complete and operational construction solution, in Contractor's exercise of its best professional judgment, to the standards generally conveyed in the Contract Documents and customarily found in the construction industry for projects similar in size and scope to the Project.

ARTICLE 3 RELATIONSHIP OF THE PARTIES

The Contractor accepts the relationship of reliance and confidence established by this Agreement and covenants with the Owner to cooperate with Owner, Owner's project manager, Gary Ghio with G2 Facilities Management Consulting ("Project Manager") (provided, however, Owner may designate a different Project Manager by written notice to Contractor), and the Architect, and to exercise the Contractor's best skill, efforts and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents. Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering. Contractor shall not be responsible for the adequacy of the design criteria required by the Contract Documents.

ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 4.1 The date for the commencement of the Work (the "Commencement Date") shall be set forth in a Notice to Proceed (NTP) issued by Owner concurrent with execution of this Agreement. However, the NTP shall not be effective, and Contractor shall have no obligation to commence its Work, until Owner has fulfilled the following conditions precedent and has delivered to Contractor copies of the building permit required to be obtained by the Owner for the commencement of the Work at the site, if any, and certificates of insurance for all insurance required to be provided by Owner, including the builder's risk insurance;

(2) evidence sufficient to reasonably satisfy Contractor of Owner's financing for the Project; and

(3) reasonable access to the site.

If Owner does not issue an effective NTP, Contractor shall have no obligation to commence the Work, or any part of the Work, until Owner satisfies the above conditions precedent to the effectiveness of the NTP.

(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

« »
« »May 8, 2017

§ 4.2 The Contract Time shall be measured from the Commencement Date, subject to adjustments in Contract Time as expressly provided in the Contract Documents.

§ 4.3 The Contractor shall diligently prosecute the Work and achieve Substantial Completion of the entire Work for the Project not later than the Substantial Completion date established in a written amendment to be signed by Owner and Contractor and delivered to each other setting forth the schedule for completion of each milestone of the Work, the deadline for Substantial Completion and the Guaranteed Maximum Price (the "GMP Amendment"), subject to adjustments of this Contract Time as provided in the Contract Documents (the "Substantial Completion Deadline"). Time is of the essence of this Agreement for meeting the milestones of Substantial and Final Completion.

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

« »

Portion of Work	Substantial Completion date

, subject to adjustments of this Contract Time as provided in the Contract Documents.

(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time, or for bonus payments for early completion of the Work.)

«Liquidated damages established as set forth in Section 4.5 below. »

§ 4.4 The Contractor agrees to complete all of the Work in accordance with the Contractor's Schedule included in the GMP Amendment.

§ 4.5 Liquidated Damages. The Owner and the Contractor acknowledge and agree that if the Contractor does not timely achieve Substantial Completion by the Substantial Completion Deadline set forth in the GMP Amendment, (a) the Owner will suffer substantial loss of income and revenue and other damages and losses, including, without limitation, loss of business and loss or damage to reputation, business relationships, goodwill, and loss of use of the property, and (b) the actual amount of damages which the Owner would suffer would be extremely difficult and impracticable to ascertain. Accordingly, the Owner and the Contractor agree that:

(a) If the Contractor does not timely achieve Substantial Completion by the deadline set forth in the GMP Amendment, then the following sums shall constitute a reasonable

estimate of the amount of damages for such delay, and the Contractor shall pay such sums to the Owner as liquidated damages for each day or portion of a day that Substantial Completion is delayed beyond the deadline within thirty (30) calendar days upon Owner's invoice to the Contractor:

One Thousand Dollars ($1,000.00) for each day of unexcused delay.

(b) In no event shall the liquidated damages, in the aggregate, exceed 10 percent (10%) of Contractors Fee. The liquidated damages set forth above are the sole and exclusive remedy for Contractor's failure to achieve Substantial Completion by the deadline set forth in the GMP Amendment.

Final completion shall occur no later than thirty (30) days after Substantial Completion. Failure to achieve Final Completion before the expiration of such thirty (30)-day period will result in liquidated damages of Five Hundred Dollars ($500.00) per day for each day in excess of thirty (30) days after Substantial Completion until Final Completion is achieved, subject to the cap set forth above.

ARTICLE 5 CONTRACT SUM

§ 5.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract, in accordance with, and subject to the terms of the conditions of the Contract Documents. The Contract Sum shall be the lesser of (a) Cost of the Work as defined in Article 7 plus the Contractor's Fee and (b) the Guaranteed Maximum Price. A Schedule of Billable Rates is attached hereto as Exhibit C and incorporated herein.

§ 5.1.1 The Contractor's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee.)

«four and 00/100 percent (4.0%) of the Cost of Work.

§ 5.1.2 The method of adjustment of the Contractor's Fee for changes in the Work:

«In connection with any changes in the Work which increase the Contract Sum, the Contractor's Fee shall be increased by an amount equal to four and 00/100 percent (4.0%) of that portion of the Cost of the Work incurred as a result of such changes in the Work, and in connection with any changes in the Work which decrease the Contract Sum, the Contractor's Fee shall be reduced by an amount equal to four and 00/100 percent (4.0%) of that portion of the Cost of the Work reduced as a result of such changes in the Work. »

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

«Limitations, if any, will be agreed upon by Contractor and Owner on a trade-by-trade basis (and may be set forth in the amendment to this Agreement which documents, if applicable, the agreed-upon Guaranteed Maximum Price). »

§ 5.1.4 Rental rates for Contractor-owned equipment shall not exceed the amounts set forth in Section 7.5.2 hereof.

§ 5.1.5 Unit prices, if any:

(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price Per Unit ($0.00)

§ 5.2 GUARANTEED MAXIMUM PRICE

§ 5.2.1 The Contract Sum is guaranteed by the Contractor not to exceed a maximum amount (the "Guaranteed Maximum Price") established in the GMP Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner. Contractor acknowledges and agrees that the Guaranteed Maximum Price includes all inflationary costs and adjustments, and labor and material escalations, in connection with the performance of the Work so long as Owner satisfies its express obligations under the Schedule and timely issues the NTP . The Guaranteed Maximum Price shall not be adjusted due to any such inflationary costs and/or escalation events so long as Owner satisfies its express obligations under the Schedule and timely issues the NTP. There shall be no shared savings clause in this Agreement. All savings will accrue to the Owner.

(Insert specific provisions if the Contractor is to participate in any savings.)

« »

§ 5.2.1.1 At a time to be mutually agreed upon by the Owner and the Contractor, the Contractor shall prepare a Guaranteed Maximum Price proposal for the Owner's review and written acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Contractor's reasonable estimate of the Cost of the Work, including contingencies described in Section 5.2.1.4, and the Contractor's Fee.

§ 5.2.1.2 To the extent that the Drawings and Specifications are anticipated to require further development, the Contractor shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 5.2.1.3 The Contractor shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

.1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;

.2 A list of the clarifications and assumptions made by the Contractor in the preparation of the Guaranteed Maximum Price proposal, including assumptions to supplement the information provided by the Owner and contained in the Drawings and Specifications;

.3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Contractor's Fee;

.4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based (i.e., the proposed "Substantial Completion Deadline"); and

.5 A date by which the Owner must accept or reject the Guaranteed Maximum Price, which shall not be less than 30 days from the date of the Guaranteed Maximum Price proposal (it being agreed if Owner does not accept or reject the Guaranteed Maximum Price proposal in writing, it shall be deemed rejected).

§ 5.2.1.4 In preparing the Contractor's Guaranteed Maximum Price proposal, the Contractor shall include its contingency for the Contractor's exclusive use (hereinafter the "Construction Contingency") as necessary to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order, and to the extent not paid for by insurance, or Subcontractor defaults. Subject to the prior written consent of Owner, which consent shall not be unreasonably withheld, the Construction Contingency shall be available for the Contractor's exclusive use at any time to cover costs intended to be covered by the Contract Documents, including at the time of Final Payment, for reimbursement of costs and expenses (1) reasonably incurred by Contractor in performing the Work, (2) of a type that are reimbursable under this Agreement as a Cost of the Work, and (3) that are not otherwise the basis for a Change Order (it being understood that the Construction Contingency shall not be used to fund any Work which would otherwise be subject to a Change Order); including, by way of example, but not limited to, (a) Work items inadvertently omitted during the estimating and bidding process, (b) schedule recovery costs associated with normal weather, (c) cost increases due to unanticipated local labor and material market conditions, (d) interfacing omissions between and from the various categories of work; and (e) additional costs incurred due to the withdrawal or disqualification of a subcontractor bid forming the basis for the GMP prior to signing of a written subcontract, provided, however, Contractor shall not be entitled to reimbursement for any costs attributable to its negligence or willful misconduct or the failure of Contractor to perform its obligations under this Agreement. Contractor shall furnish the Owner with a monthly Contingency Log showing all reimbursements from the Construction Contingency. Costs and expenses reimbursable from the Construction Contingency shall not exceed the amount of the Construction Contingency identified as an element of the Guaranteed Maximum Price set forth in the GMP Amendment. When the Construction Contingency is exhausted, all costs and expenses that would qualify for reimbursement from the Construction Contingency shall be borne by Contractor unless such costs and expenses are otherwise compensable under the terms of this Agreement and do not cause the Guaranteed Maximum Price to be exceeded. Any amount remaining in the Construction Contingency at Final Payment shall be counted as savings that shall accrue solely to Owner.

§ 5.2.1.5 The Contractor shall meet with the Owner to review the Guaranteed Maximum Price proposal. In the event that the Owner discovers any inconsistencies or inaccuracies in the information presented, it shall notify the Contractor, who shall promptly make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both, as the case may be.

§ 5.2.1.6 If the Owner notifies the Contractor in writing that the Owner has accepted the Guaranteed Maximum Price proposal before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Contractor. Following acceptance of a Guaranteed Maximum Price, the Owner and Contractor shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 5.2.1.7 The Contractor shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner, in its sole and absolute discretion, provides prior written authorization for such costs "Initial Release Work.") Written authorization for Initial Release Work shall be provided by an Approval Letter in the form at Exhibit A. All Initial Release Work performed pursuant to the Approval Letters shall be performed in accordance with the Contract Documents unless otherwise specified in the Approval Letter. All Initial Release Work, if any, shall be

deemed to be included in the scope of the Work pursuant to the Contract Documents. The Approval Letters constitute the basis upon which Initial Release Work shall be performed and upon which the Contractor shall be paid for the Initial Release Work and, unless and until the GMP is agreed to by the Owner, the Contractor shall not proceed with any other Work. The GMP shall include the cost of any Initial Release Work authorized pursuant to the Approval Letter issued prior to the establishment of the GMP.

§ 5.2.1.8 The Owner shall provide the revisions to the Drawings and Specifications to incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Contractor as they are revised and approved by Owner. The Contractor shall promptly notify the Owner of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

§ 5.2.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)

«To be set forth in GMP Amendment. »

§ 5.2.3 Allowances included in the Guaranteed Maximum Price, if any:

(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price

To be set forth in GMP Amendment.

§ 5.2.4 Not used.

§ 5.2.5 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Contractor has provided in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 6.2 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201–2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 and shall not be modified by Articles 5,

7 and 8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201–2007 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Contractor's Fee as defined in Section 5.1.1 of this Agreement.

§ 6.4 No change in the Work, whether by way of alteration or addition to the Work, shall be the basis of an addition to the Guaranteed Maximum Price or a change in the Contract Time unless and until such alteration or addition has been authorized by a written Change Order or Construction Change Directive executed and issued in accordance with and in strict compliance with the requirements of the Contract Documents. This requirement is of the essence of the Contract Documents. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by any alteration or addition to the Work, whether there is in fact any such unjust enrichment, shall be the basis for any claim to an increase in the Guaranteed Maximum Price or change in the Contract Time.

ARTICLE 7 COSTS TO BE REIMBURSED

§ 7.1 COST OF THE WORK

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior written consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 7.

§ 7.1.2 The "Lump Sum General Conditions" shall include the following categories of Work as further described in Exhibit C:

- Wages or salaries of on-site personnel directly employed by the Contractor to supervise the Work at the site. Wages or salaries of supervisory and administrative personnel directly employed by the Contractor engaged in the performance of the Work and located at the Site or working off-Site but only for that portion of their time required for the Work

- Travel, accommodations and meals for Contractor's personnel necessarily and directly incurred in connection with the performance of the Work.
- Travel to Owners office and other ADC's sites as specifically described in **Exhibit C**.
- Expenses incurred in accordance with the Contractor's standard written personnel policy for relocation and temporary living allowance of the Contractor's personnel required for the Work.
- Reasonable costs of expenses incurred in operating, maintaining and demobilizing the Site office, including the cost of office furniture, telephones, internet, postage, express delivery charges, computing equipment, software, printing equipment, office supplies, photocopying and other miscellaneous expenses as detailed in **Exhibit C**.
- Accounting and data processing costs related to the Work, including the cost of information technologies support services, check processing charges and document archiving.
- On-site meeting expenses
- Preparation and management of the Contractor's loss prevention program including safety orientations for all site personnel and visitors, site safety signage, the cost for the

Contractor's sponsored safety incentive program for all project participants, and any required drug testing.
- Personal protective equipment including, hardhats, safety glasses, safety vests, gloves for Contractor's employees and visitors to the Site.
- Preparation and management of the Contractor's quality control program.
- Preparation and periodic update of the construction master project schedule.
- Drug testing for Skanska employees
- Temporary jobsite signage
- Blue print reproduction

The Lump Sum General Conditions shall be adjusted as part of any adjustment of the Contract Sum due to changes, excused delays or other circumstances extending the Contract Time. In such event, the lump sum amount for General Conditions shall be increased or decreased, as the case may be, by the additional or decreased General Conditions Costs incurred or saved by Contractor during the extended period, with the Schedule of Billable Rates attached hereto as **Exhibit C** being used to determine the supervisory and administrative personnel costs associated with the adjustment.

Notwithstanding anything to the contrary in this Agreement, the Owner shall not be charged under any other provision of this Agreement for items covered under the Lump Sum General Conditions. Where any open cost is subject to the Owner's prior written approval, the Contractor shall obtain this approval prior to incurring the cost.

§ 7.2 LABOR COSTS

§ 7.2.1 Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's prior written approval, at off-site workshops are included in the Lump Sum General Conditions.

§ 7.2.2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site are included in the Lump Sum General Conditions.

(If it is intended that the wages or salaries of certain personnel stationed at the Contractor's principal or other offices shall be included in the Cost of the Work, identify in Article 15, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

§ 7.2.3 Wages and salaries of the Contractor's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work are included in the Lump Sum General Conditions.

§ 7.2.4 Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3 are included in the Lump Sum General Conditions.

§ 7.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Contractor or paid to any Subcontractor or vendor, with the Owner's prior written approval.

§ 7.3 SUBCONTRACT COSTS

Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts.

§ 7.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

§ 7.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

§ 7.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Contractor shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Contractor-owned item may not exceed the purchase price of any comparable item. Rates of Contractor-owned equipment and quantities of equipment shall be subject to the Owner's prior written approval.

§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 7.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office are included in the Lump Sum General Conditions.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior written approval.

§ 7.6 MISCELLANEOUS COSTS

§ 7.6.1 Contractor's Controlled Insurance Program shall be charged at 1.89–% of the Cost of Work(excluding the insurance and SubGuard costs set forth in this Section). Contractor's Builder's Risk Insurance shall be charged at 0.8% of the Cost of Work (excluding the insurance and SubGuard costs set forth in this Section). SubGuard shall be charged at 0.9% of the Cost of Work (excluding the (i) Cost of Work for each contract of $250,000.00 or less with any Subcontractor or supplier, and (ii) insurance and SubGuard costs set forth in this Section).

§ 7.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Contractor is liable.

§ 7.6.3 Fees and assessments for permits (other than the building permit which Owner will obtain), licenses and inspections for which the Contractor is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201–2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Contractor's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201–2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 7.6.6 Intentionally Deleted.

§ 7.6.7 Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 7.6.8 Legal mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor after the execution of this Agreement in the performance of the Work with the Owner's prior approval, which shall not be unreasonably withheld.

§ 7.6.9 Subject to the Owner's prior written approval, reasonable, out-of-pocket expenses incurred in accordance with the Contractor's standard written personnel policy for relocation and temporary living allowances of the Contractor's personnel required for the Work.

§ 7.6.10 That portion of the reasonable, out-of-pocket expenses of the Contractor's supervisory or administrative personnel incurred while traveling in discharge of duties connected with, and necessary for, the Work. Such expenses shall be subject to Owner's prior written approval.

§ 7.7 OTHER COSTS AND EMERGENCIES

§ 7.7.1 Other reasonable, out-of-pocket costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2007 (not caused by the negligence or willful misconduct of Contractor and/or its Subcontractors of any tier).

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Contractor or its Subcontractor and only to the extent that the cost of repair or correction is not recovered by the Contractor from insurance, sureties, Subcontractors, suppliers, or others.

§ 7.8 RELATED PARTY TRANSACTIONS

§ 7.8.1 For purposes of Section 7.8, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Contractor; any entity in which any stockholder in, or management employee of, the Contractor owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Contractor. The term "related party" includes any member of the immediate family of any person identified above.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Contractor and a related party, the Contractor shall notify the Owner in writing of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such written notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Contractor shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Article 10. If the Owner fails to authorize the transaction, in writing, the Contractor shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Article 10.

ARTICLE 8 COSTS NOT TO BE REIMBURSED

§ 8.1 The Cost of the Work shall not include the items listed below:

.1Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Section 7.2. or as may be expressly provided in Article 15;

.2Expenses of the Contractor's principal office and offices other than the site office;

.3Overhead and general expenses, except as may be expressly included in Article 7;

.4The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work;

.5Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence or failure of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;

.6Any cost not specifically and expressly described in Article 7;

.7Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;

.8Any cost that is counted more than once (e.g., an item that is part of the General Condition Items may not also be counted as part of the other Cost of Work);

.9Amounts required to be paid by Contractor for federal, state or local income or franchise taxes;

.10 Unless otherwise agreed by Owner in writing, any acceleration costs, including any and all overtime wages, arising as a result of delay in carrying out the Work caused by Contractor or its Subcontractors of any tier;

.11 Any costs or expenses in connection with any indemnity provided by Contractor pursuant to the Contract Documents;

.12 Costs associated with Contractor's failure to obtain any and all applicable permits for which Contractor is responsible in a timely manner, as more fully described in the General Conditions; and

.13 The costs incurred by Contractor resulting from the failure of Contractor or its Subcontractors to coordinate their work with the work of Owner and its contractors, if any, or otherwise to fail to comply with written directives of Owner not in conflict with the Schedule.

ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS

§ 9.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be obtained.

§ 9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS

§ 10.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or by other appropriate agreements with the Contractor. The Owner may designate specific persons from whom, or entities from which, the Contractor shall obtain bids. For each trade, Contractor shall obtain at least three (3) bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Contractor and the Architect, which bids will be accepted. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

§ 10.2 When a specific bidder (1) is recommended to the Owner by the Contractor; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Contractor may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 10.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Contractor shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Contractor in Article 11, below.

ARTICLE 11 ACCOUNTING RECORDS

The Contractor shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Contractor's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. Owner agrees that the lump sum amounts, rates, multipliers and other fixed percentages and amounts to which it has agreed in writing that Contractor may charge as a Cost of the Work are subject to Owner's audit rights only for Owner to confirm that such rates, quantities, hours, multipliers, percentages or amounts have been charged by Contractor in accordance with this Agreement, and that the composition of such rates, multipliers, percentages or amounts are not subject to audit by the Owner. The Contractor shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 12 PAYMENTS

§ 12.1 PROGRESS PAYMENTS

§ 12.1.1 Based upon monthly Applications for Payment submitted to the Architect, Project Manager and Owner by the Contractor, including any supporting documentation reasonably required by Owner and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 12.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

«On or before the twentieth (20th) day of the calendar month covered by an Application for Payment, the Owner (or its representative or Project Manager) and the Contractor shall meet to review a preliminary draft of the Application for Payment for such month (hereinafter referred to as a "Pencil Draw") prepared by the Contractor, which Pencil Draw shall be consistent with the requirements of the Contract Documents. The Contractor shall promptly revise the Pencil Draw in accordance with any objection or recommendation of the Owner that is consistent with the requirements of the Contract Documents. On or before the twenty-first (21st) day of such calendar month covered by an Application for Payment (or, if such day is not a business day, then the next succeeding business day), the Contractor and Owner shall walk the job to determine whether modification to the Pencil Draw should be made. A final Pencil Draw shall then be submitted by the Contractor to the Owner as the Application for Payment for such month, which is due by the first (1st) day of the month immediately following the month in which the Pencil Draw was first submitted. »

§ 12.1.3 Provided that a complete Application for Payment is received by the Architect and the Owner, not later than the1st day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the 1st day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Owner receives the Application for Payment, or such lesser time as is required by Arizona law.

(Federal, state or local laws may require payment within a certain period of time.)

§ 12.1.4 With each Application for Payment, the Contractor shall submit any evidence reasonably required by the Owner or Architect to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment. Further, with each Application for Payment, Contractor shall certify to Owner that except for claims previously submitted in writing, as of the date of each Application for Payment, Contractor has no claims for an increase in the Guaranteed Maximum Price.

§ 12.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Contractor's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner and Architect may require. This schedule, unless objected to by the Owner or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 12.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work for which the Contractor has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work. The Contractor shall ensure that each Application for Payment is accompanied by the following items: (a) certification by the Contractor that the Work for which payment is being sought has been completed in accordance with the Contract Documents and all applicable permits; (b) a conditional waiver and release of lien upon progress payment that complies with the Arizona statutory waiver form, ARS § 33-1008, for the Contractor, each Subcontractor and each Sub-Subcontractor for which payment is being sought in the total amount of the progress payment being requested; (c) an unconditional waiver and release of lien upon progress payment that complies with the Arizona statutory waiver form, ARS § 33-1008 for the Contractor with respect to all Work previously billed and paid through the preceding Application for Payment; (d) an unconditional waiver and release of lien upon progress payment that complies with the Arizona statutory waiver form, ARS § 33-1008, for each Subcontractor and Sub-Subcontractor with respect to all Work previously billed and paid through the preceding Application for Payment; and (e) a log of all Change Orders and other Modifications issued through the date of the Application for Payment.

§ 12.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

.1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values, less retainage of ten percent (10%). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of the General Conditions;

.2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing, less retainage of five percent (5%);

.3Add the Contractor's Fee, less retainage of «zero » percent (« 0 » %).The Contractor's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;

.4Subtract the aggregate of previous payments made by the Owner;

.5Subtract the shortfall, if any, indicated by the Contractor in the documentation required by Section 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and

.6Subtract amounts, if any, for which the Architect (or Owner) has withheld or nullified a Certificate for Payment as provided in Section 9.5 of the General Conditions and as allowed by the Arizona Prompt Pay Act, § 32-1129.01 et seq., if applicable.

§ 12.1.8 The Owner and the Contractor shall agree upon a (1) mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements. At Substantial Completion all retainage shall be released to Contractor less fifty percent (50%) of such retainage.

§ 12.1.9 In taking action on the Contractor's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 12.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 12.2 FINAL PAYMENT

§ 12.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor within thirty (30) days or such lesser time as is required by Arizona law.

.1the Contractor has fully performed the Contract (including all Punch List work) except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of the General Conditions, and to satisfy other requirements, if any, which extend beyond final payment;

.2the Contractor has submitted a final accounting for the Cost of the Work and a final Application for Payment;

.3a final Certificate for Payment has been issued by the Architect;

.4a Temporary Certificate of Occupancy has been issued by the appropriate governmental agencies or all governmental sign-offs for Work; and

.5a Conditional Waiver and Release of Lien Upon Final Payment has been issued by Contractor and all of its Subcontractors, materialmen, vendors and suppliers of all tiers.

Owner shall have no obligation to make final payment of the Contract Sum until Contractor has property served and recorded a Notice of Completion of all of the Work pursuant to applicable Arizona law.

§ 12.2.2 As a condition to Owner's obligation to pay Contractor the Final Payment, (a) final building inspections shall have been completed and sign-offs on building permits by the appropriate governmental agency shall have been delivered by Contractor to Owner, Architect and Project Manager, (b) the Project shall have been completed in accordance with the Contract Documents; (c) Contractor must have delivered to Owner and Project Manager a final certificate certifying Substantial Completion of the Project in accordance with the Contract Documents; and (d) as-built plans for the entire Project shall have been delivered to Owner in PDF and hard copy formats.

§ 12.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Contractor's final accounting to be less than claimed by the Contractor, the Contractor shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201–2007. A request for mediation shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Contractor. Pending a final resolution of the disputed amount, the Owner shall pay the Contractor the amount certified in the Architect's final Certificate for Payment.

§ 12.2.4 The Owner's final payment to the Contractor shall be made no later than thirty (30) days after the issuance of the Architect's final Certificate for Payment and satisfaction of all other requirements under Sections 12.2.1 and 12.2.2.

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§ 12.2.5 If, subsequent to final payment and at the Owner's request, the Contractor incurs costs described in Article 7 and not excluded by Article 8 to correct defective or nonconforming Work, the Owner shall reimburse the Contractor such costs and the Contractor's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Contractor has participated in savings as provided in Section 5.2, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Contractor.

ARTICLE 13 DISPUTE RESOLUTION

§ 13.1 INITIAL DECISION MAKER

The Architect will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007, unless the parties appoint below another individual, not a party to the Agreement, to serve as Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

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§ 13.2 BINDING DISPUTE RESOLUTION

For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:

(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

[X] Arbitration pursuant to Section 15.4 of AIA Document A201-2007

[ ] Litigation in a court of competent jurisdiction

[ ] Other (specify)

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ARTICLE 14 TERMINATION OR SUSPENSION

§ 14.1 Subject to the provisions of Section 14.2 below, the Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2007.

§ 14.2 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2007, the amount, if any, to be paid to the Contractor under Section 14.2.4 of AIA Document A201–2007 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

.1 Take the Cost of the Work incurred by the Contractor to the date of termination;

.2 Add the Contractor's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and

.3 Subtract the aggregate of previous payments made by the Owner.

§ 14.3 The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 14.2.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 14, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

§ 14.4 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term "profit" shall be understood to mean the Contractor's Fee as described in Sections 5.1.1 and Section 6.4 of this Agreement.

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Where reference is made in this Agreement to a provision of AIA Document A201–2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 15.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

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§ 15.3 The Owner's representative:

(Name, address and other information)

Gary Ghio
G2 Facilities Management Consulting

Telephone:858-449-2301
Email:gary@gsquaredfmc.com

Unless and until Owner notifies Contractor to the contrary or otherwise provides Contractor with different instructions, Gary Ghio is hereby designated by Owner as its authorized representative to make decisions for, and receive information on behalf of, Owner in connection with the Work, provided, however, all written notices required to Owner under the Contract Documents shall also be given to Owner at its address on Page 1 of this Agreement and to the following: Dexcom, 6340 Sequence Drive, San Diego, CA 92121, Attn: Timothy F. O'Brien, Director Legal Affairs. In addition, all submissions or notices made by Contractor to the Architect shall simultaneously be made to Owner's representative.

§ 15.4 The Contractor's representative:

(Name, address and other information)

Kevin E. Devlin, Project Executive
Skanska USA Building Inc.
4742 N. 24th Street, Suite 165
Phoenix, AZ 85016
Mobile: 1 787 466 8204
Kevin.Devlin@skanska.com
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§ 15.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days' written notice to the other party.

§ 15.6 Other provisions.

§ 15.6.1 Contractor covenants that all the Work shall be done in a good and workmanlike manner and that all materials furnished and used in connection therewith shall be new and meet the criteria provided in the Contract Documents. Contractor shall cause all materials and other parts of the Work to

be readily available as and when required or needed for or in connection with the construction of the Project.

§ 15.6.2 In performing its obligations under this Agreement, the Contractor shall be deemed an independent contractor and not an agent or employee of the Owner.

§ 15.6.3 Contractor agrees to make such revisions to this Agreement as may be reasonably required by Owner's construction lender, if any, and Contractor agrees to comply with customary requirements of construction and permanent lenders which may be reasonably imposed as a condition to payments due under this Agreement. Contractor further agrees to execute a mutually agreed upon consent of the Owner's assignment of this Agreement to Owner's lender within ten (10) days following a request therefor on such form as the lender may reasonably require.

§ 15.6.4 If any term, covenant or condition of the Contract Documents, or the application thereof to any persons or circumstance shall to any extent be invalid or unenforceable, then the remainder of the Contract Documents or the application of the term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term, covenant and condition of the Contract Documents shall be valid and enforceable to the fullest extent permitted by law.

§ 15.6.5 Owner may designate from time to time by written notice to Contractor one or more Owner's representatives or other parties to deal with Contractor on matters pertaining to administration of the provisions of the Contract Documents. However, only those signatories designated in writing by Owner shall have the authority to approve Change Orders increasing or decreasing the Guaranteed Maximum Price or extending the Contract Time.

§ 15.6.6 The parties agree and declare that Contractor and Owner are separate and independent entities and that Contractor has full responsibility for performance of Work and direction of the work force, subject to and under the duty of Contractor to cooperate with Owner and other contractors. Contractor recognizes that in the performance of its Work it will be required to work side by side with other contractors and representatives of Owner on the job site. Owner, Contractor and /or other contractors may or may not be signatory to collective bargaining agreements of the various labor organizations. Contractor agrees that should there be picketing or a threat of picketing by any labor organization at or near the site, (i) Contractor shall immediately notify Owner in writing of such circumstances and (ii) Owner may establish or require Contractor to establish a reserve gate system and may require Contractor's and Owner's employees, suppliers and subcontractors to use one or more designated gates. In that event, it shall be the affirmative obligation of Contractor as a material consideration of this Agreement to ensure that its employees, suppliers and Subcontractors use only the gate(s) or other entry way(s) so designated. Notwithstanding the establishment or non-establishment of a reserve gate system, it shall be the continuing obligation of Contractor (and its Subcontractors) to properly staff the job with qualified and skilled workmen and employees without interruption or delay and without any increase to the Guaranteed Maximum Price. Contractor agrees to cooperate fully and promptly with Owner and its representatives and attorneys with respect to any labor dispute that should arise on the site, including but not limited to the giving of testimony and evidence to the agent or judge of the National Labor Relations Board or in connection with proceedings in State or Federal court. Contractor agrees to undertake or cause to be undertaken in a prompt and expeditious manner, all action involved to resolve and/or minimize the consequences of any labor dispute that should arise on the site. Contractor hereby warrants that it is not now nor will Contractor be delinquent in the payment or reporting to any labor management benefit trust fund and further warrants that Contractor is not now nor will Contractor appear on any delinquency list published by any labor management benefit trust fund. Contractor indemnifies, defends and holds Owner entirely harmless from and against all costs, claims, liabilities, damages, delays, losses and expenses (including attorneys' fees and costs) arising directly or indirectly from Contractor's failure to comply with the provisions of this Section 15.6.6.

§ 15.6.7 The Contractor and Owner entered into that certain Nondisclosure Agreement dated as of November 19, 2015 ("NDA") in order to protect certain confidential information of Owner, as further set forth in the NDA. Contractor and Owner hereby incorporate the terms, provisions and obligations of the NDA in this Agreement.

ARTICLE 16 ENUMERATION OF CONTRACT DOCUMENTS

§ 16.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 16.1.1 The Agreement is this executed AIA Document A102–2007, Standard Form of Agreement Between Owner and Contractor.

§ 16.1.2 The General Conditions (as modified) are attached hereto as Exhibit C.

§ 16.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

§ 16.1.4 The Specifications:

(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

«See list of Exhibits at 16.1.7.2. »

Section	Title	Date	Pages

§ 16.1.5 The Drawings:

(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

« See list of Exhibits at 16.1.7.2. »

Number	Title	Date

§ 16.1.6 The Addenda, if any:

Number	Date	Pages

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 16.

§ 16.1.7 Additional documents, if any, forming part of the Contract Documents:

.1AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:

« »

.2Other documents, if any, listed below:

Exhibit A – Approval Letter
Exhibit B Clarifications and Assumptions to GMP
Exhibit C – Lump Sum General Conditions & Schedule of Billable Rates
Exhibit D – Drawings
Exhibit E – Specifications
Exhibit F – CCIP Insurance Exhibit

ARTICLE 17 INSURANCE AND BONDS

§ 17.1.1 Contractor Controlled Insurance Program. Contractor will satisfy the requirements of Section 11.1.1 of the General Conditions through a project specific Contractor Controlled Insurance Program ("CCIP") as described in **Exhibit F**, which will afford similar coverage for the Subcontractors, in the minimum coverage amounts set forth below in this Article 17, with insurance written on an occurrence basis purchased from and maintained in a company or companies which have a Best's Rating of "A/VIII" or above and which are lawfully authorized to do business in the State of Arizona. The program will be administered through the Contractor and will be billed at the value set forth in the A102 Agreement, and will be included on all change orders though Final Completion. The Contractor is responsible for all deductibles. The CCIP will include coverage for completed operations through the statute of repose for the State of Arizona. The Owner, Contractor and all tiers of Subcontractors that enter the Project site are expected to be covered, except structural demolition and abatement Subcontractors, if there are any. Any instances where work is contracted by the Owner directly (other than with Contractor) or with separate contractors are not covered by the CCIP. The Owner is required to obtain insurance from those parties, if any.

No cost saving have been guaranteed to Owner by Contractor and Contractor is not responsible for deducts in regard to any accounting for the CCIP.

§ 17.1.1.1 Workers' Compensation
Coverage A. Statutory Benefits
Coverage B. Employers Liability

Bodily injury by accident: $2,000,000 each accident
Bodily injury by disease: $2,000,000 policy limit
Bodily injury by disease: $2,000,000 each employee

§ 17.1.1.2 Commercial General Liability
Commercial General Liability coverage (equivalent in coverage to ISO Form CG 00 01 with an edition date of at least 11/88) of not less than:

Each Occurrence Limit: $2,000,000

Personal Advertising Injury Limit: $2,000,000
Products/Completed Operations Aggregate Limit: $4,000,000
General Aggregate Limit (other than Products/Completed Operations $4,000,000

§ 17.1.1.3 Excess Liability Umbrella
Excess Liability or Umbrella coverage of not less than and including all above liability policies in the underlying.

Each Occurrence $25,000,000
General Aggregate $25,000,000

ALL OF 17.1 SUBJECT TO SKANSKA RISK MANAGEMENT REVIEW

§ 17.2 INSURANCE REQUIRED OF THE OWNER

The Owner shall purchase and maintain liability insurance, including waivers of subrogation, as set forth in Sections 11.2 of the General Conditions.

This Agreement entered into as of the day and year first written above.

THE OWNER

DexCom, Inc.
a Delaware corporation

s/ Thomas Mead

By: Thomas Mead
Its: Controller
Date: May 22, 2017

THE CONTRACTOR

Skanska USA Building Inc.

s/ Ross A. Vroman

By: Ross A. Vroman
Its: Area General Manager, EVP
Date: May 23, 2017

EXHIBIT A

EXAMPLE APPROVAL LETTER

May 16, 2016 **AWARD APPROVAL LETTER NO. 014**

DexCom
6340 Sequence Drive
San Diego, CA 92121 m

Attention:	Gary Ghio
Project:	DexCom Phoenix – Phase One/ Phoenix, AZ
Subject:	Subcontractor/Vendor Award Recommendation Bid Package No.: 4415014-012 Trade: Fire Sprinkler System Subcontractor: Fire Protection Systems Award Amount: $832,500

In accordance with the Agreement, we submit as follows our Bid Package Report and Award recommendation for the above Subcontract. We have included the final bid leveling sheet detailing the costs proposals provided. The award to Fire PS was based on the price, availability and schedule to complete the Fire Sprinkler scope items.

Note, as directed by DexCom, **this Approval Letter includes the design and installation** of the sprinkler system. If the supply of materials and install is wanted at a later date, an official AL will need to be signed.

Attached is the bid leveling sheet and proposals issued previously on January 08th, 2016 from the fire sprinkler bidders for your reference. Fire alarm, wiring of equipment, permits have been excluded. Also excluded are sprinklers under the equipment platform. Proposals are based off of the 10/22/15 drawings and specifications.

1.0 Bid Submission Results and Analysis:

Vendor:	**Firetrol Protection Systems**
Fire PS	$832,500
Olympic	$880,028
Aero	$954,650
American	$968,200

2.0 Pricing Details:

a) Included/Excluded in the amount of this award is ALLOWANCE/Alternates:

1. EXCLUDED ALLOWANCE – Fire/Jockey Pumps/Control Panel $205,000
2. EXCLUDED ALLOWANCE – Sprinkler System under Equipment Platform per Fire Marshall $140,000
3. EXCLUDED Alternate – Nitrogen Gen System $49,385 plus Skanska's Markups
4. EXCLUDED Alternate – Credit to not remove the underground ductile pipe noted on FP-101A and cap riser with blindflange at riser stub up. ($17,000)

b) Recommended amount of this award. (Please refer to attached Bid Leveling Documentation for additional breakdown.)

As directed by DexCom, the price below only includes the design costs associated to the fire sprinkler system.

Fire PS (Design Only)		$45,000
CCIP	1.88%	$ 846.00
Subguard	0.90%	$ 405.00
Builders Risk	1.25%	$ 563.00
Skanska – Fee	3.25%	$ 1,521.00
TAX		**EXCLUDED**
	Total:	$ 48,335.00

As issued previously, the complete system for the fire sprinkler system for design, supply and install is as follows:

Fire PS		$ 832,500
CCIP	1.88%	$ 15,651.00
Subguard	0.90%	$ 7,493.00
Builders Risk	1.25%	$ 10,406.00
Skanska – Fee	3.25%	$ 28,147.00
TAX		**EXCLUDED**
	Total:	$ 894,197.00

**Note: Taxes have been excluded from this AL. A specific AL for taxes will be issued if taxes are ever to be included.

3.0 Alternates. The Award Recommendation amount includes the following alternates (as noted above):

☒ The Award Recommendation amount does not incorporate any alternates

OR

☐ The Award Recommendation amount includes the following alternates/allowances:

5. EXCLUDED ALLOWANCE – Fire/Jockey Pumps/Control Panel $205,000

We have evaluated the Sub-contractors proposal, and have determined that the Sub-contractor has included the full scope of work. Any deviations from the original drawings, specifications, bid package documents or subcontract documents are clearly delineated in the revised scope of work which shall become part of the subcontract documents. The following documents shall be incorporated into the subcontract documents:

A CM's standard form of subcontract agreement with no changes
B CM's project schedule dated N/A
C Site Logistics Plan dated N/A
D Issue for Construction specifications dated 10/22/2015
E Pre-Bid Meeting Minutes dated Dec. 2015

F Meeting minutes from Scope review meeting dated N/A
G Bid Addendum (a) No(s). 2 Dated
H Other items as appropriate

Exhibit A - Approval Letter - Fire Sprinkler System 2

4.0 Schedule. We have reviewed the subcontractor's proposal, and proposed execution of the scope, and confirm that the subcontractor will work to the Project Schedule as defined in the Contract Documents. Please note key schedule dates/durations:

5.0 M/WBE Participation.

We hereby recommend that the award of this sub-contract is made to Fire PS for the purchase order price of:

The recommended Contractor is not a M/WBE and has submitted a M/WBE utilization plan, which lists 0% Dollars ($ **0**) of M/WBE participation.

Forty Eight Thousand Three Hundred Thirty Five **$48,335.00** Dollars

In making this recommendation, we have carried out certain checks and procedures to satisfy ourselves as to the present capability of (Firetrol) to perform the sub-contract work; details of these are given on the attached Bid Recording Sheet.

If you are in agreement with the above recommendation, please sign where indicated below and return one signed copy of this letter authorizing us to award the subcontract. Upon receipt of this signed approval letter we will incorporate the committed sub-contract price and pending items into our next Anticipated Cost Report.

Sincerely,

Todd Kadjan
Project Manager

DexCom

Approved By: __

Date:__

Cc: Kevin Devlin, Skanska USA Building
Ian Miles, Aligned Energy

Exhibit A - Approval Letter - Fire Sprinkler System 3

Exhibit A

EXHIBIT B

CLARIFICATIONS AND ASSUMPTIONS TO GMP

Exhibit B
GMP Assumptions & Clarifications

- N/A – to be issued when GMP is established

EXHIBIT C

LUMP SUM GENERAL CONDITIONS & SCHEDULE OF BILLABLE RATES

EXHIBIT "C"

SCHEDULE OF BILLABLE RATES

Project Executive	$135/hr
Projects Manager	$100/hr
Superintendent	$125/hr
Preconstruction Director	$100/hr
MEP Coordinator	$135/hr
Mechanical Estimator	$100/hr
C/S/A Estimator	$100/hr
Electrical Estimator	$100/hr
Accounting	$70/hr
Director of Accounting	$80/hr

Alternates, Unit Prices, and Labor Rates
(05/2009 ed. Rev. 1)

Project: DEXCOM - PHASE 2

Location: Phoenix

Est Type: DD Estimate / GMP Estimate

EXHIBIT C - PRECONSTRUCTION, GENERAL CONDITIONS, GENERAL REQUIREMENTS & LOGISTICS

				2017												Total MH	Cost	4/21/2017 ESTIMATE			
	Rate	Unit		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total	4/21/2017	Preconstruction	General Conditions	Logistics	General Req.
Preconstruction GC's																					
Mechanical Estimator	$ 100.00	hour					40	40	40	40	40	40					240	$ 24,000.00	$ 24,000.00			
C/S/A Estimator	$ 100.00	hour					40	40	40	40	40	40					240	$ 24,000.00	$ 24,000.00			
Electrical Estimator	$ 100.00	hour					40	40	40	40	40	40					240	$ 24,000.00	$ 24,000.00			
Admin	$ 55.00	hour															0	$ -	$ -			
Accountant	$ 70.00	hour															0	$ -	$ -			
Director of accounting	$ 80.00	hour															0	$ -	$ -			
IT	$ 48.00	hour															0	$ -	$ -			
VDC Budget																					
VDC Director	$ 110.00	Hour					5	5	5	5	5	5					30	$ 3,300.00	$ 3,300.00			
VDC Manager	$ 75.00	Hour					20	20	20	20	20	20					120	$ 9,000.00	$ 9,000.00			
VDC travel	$ 1,100.00	Per Trip															0	$ -	$ -			
General travel to SAN (single day)	$ 600.00	Per Trip						3	3	3							9	$ 5,400.00	$ 5,400.00			
General travel to SAN (with overnight)	$ 1,100.00	Per Trip						1									1	$ 1,100.00	$ 1,100.00			
Blueprints	$ 250.00	per month							2	2	2	2					8	$ 2,000.00	$ 2,000.00			
FEDEX	$ 175.00	per month					1	1	1	1	1	1					6	$ 1,050.00	$ 1,050.00			
Project Management Software	$ 150.00	ea					3	3									6	$ 900.00	$ 900.00			
Construction GC's																					
Project Executive	$ 135.00	hour							60	60	60	60	60	60	60	60	480	$ 64,800.00		$ 64,800.00	$ -	
Project Manager	$ 100.00	hour							175	175	175	175	175	175	175	175	1,400	$ 140,000.00		$ 140,000.00	$ -	
Project Engineer	$ 85.00	hour							175	175	175	175	175	175	175	175	1,400	$ 119,000.00		$ 119,000.00	$ -	
Superintendent	$ 125.00	hour							175	175	175	175	175	175	175	175	1,400	$ 175,000.00		$ 175,000.00	$ -	
MEP Manager	$ 100.00	hour															0	$ -		$ -	$ -	
MEP Superintendent	$ 125.00	hour															0	$ -		$ -	$ -	
Precon Dir/Coordination Specialist	$ 100.00	hour					40	40	40	40	40	40	40	40	40	40	400	$ 40,000.00		$ 40,000.00	$ -	
Safety	$ 75.00	hour							20	175	175	175	175	175	175	20	1,090	$ 81,750.00		$ 81,750.00	$ -	
QA/QC - TOP Manager	$ 75.00	hour															0	$ -		$ -	$ -	
Admin	$ 55.00	hour							175	175	175	175	175	175	175	175	1,400	$ 77,000.00		$ 77,000.00	$ -	
Accountant	$ 70.00	hour							15	15	15	15	15	15	15	15	120	$ 8,400.00		$ 8,400.00	$ -	
Director of accounting	$ 80.00	hour							5	5	5	5	5	5	5	5	40	$ 3,200.00		$ 3,200.00	$ -	
IT	$ 48.00	hour							8	8	8	8	8	8	8	8	64	$ 2,880.00		$ 2,880.00	$ -	
VDC Budget																					
VDC Director	$ 110.00	Hour										8	8	8	8	32	$ 3,520.00		$ 3,520.00	$ -	
VDC Manager	$ 75.00	Hour										20	20	20	20	80	$ 6,000.00		$ 6,000.00	$ -	
VDC travel	$ 2,900.00	Per Trip							1						1	2	$ 5,800.00		$ 5,800.00	$ -	
Check Processing	$ 175.00	per million	12													12	$ 2,100.00		$ 2,100.00		
Archiving	$ 135.00	per million	12													12	$ 1,620.00		$ 1,620.00		
Meeting Expenses	$ 750.00	ea							1	1	1	1	1	1	1	1	8	$ 6,000.00		$ 6,000.00		
Job Meetings	$ 150.00	per month							1	1	1	1	1	1	1	1	8	$ 1,200.00		$ 1,200.00		
Blueprints	$ 250.00	per month							1	1	1	1	1	1	1	1	8	$ 2,000.00		$ 2,000.00		
FEDEX	$ 175.00	per month							1	1	1	1	1	1	1	1	8	$ 1,400.00		$ 1,400.00		
Water	$ 200.00	per month							1	1	1	1	1	1	1	1	8	$ 1,600.00		$ 1,600.00		
VDC software license	$ 1,175.00	per month							1	1	1	1	1	1	1	1	8	$ 9,400.00		$ 9,400.00		
Project Management Software	$ 150.00	ea							4	4	4	4	4	4	4	4	32	$ 4,800.00		$ 4,800.00		
Staff Training	$ 650.00	ea							4	4	4	4	4	4	4	4	32	$ 20,800.00		$ 20,800.00		
Office Supplies	$ 250.00	per month							1	1	1	1	1	1	1	1	8	$ 2,000.00		$ 2,000.00		
WIFI	$ 300.00	per month							1	1	1	1	1	1	1	1	8	$ 2,400.00		$ 2,400.00		
Computers/Printers	$ 5,000.00	LS	1													1	$ 5,000.00		$ 5,000.00		
Owner Connectivity	$ 2,000.00	LS	0													0	$ -		$ -		
PE Scheduling / Plangrid	$ 350.00	ea	1						1	1	1	1	1	1	1	1	9	$ 3,150.00		$ 3,150.00		
Sharepoint Project Software	$ 3,000.00	LS	1													1	$ 3,000.00		$ 3,000.00		
Safety Orientation	$ 50.00	ea								1	1	1	1	1	1	7	$ 350.00		$ 350.00		
Hardhats	$ 50.00	ea								1	1	1	1	1	1	7	$ 350.00		$ 350.00		
Safety Glasses	$ 50.00	ea								1	1	1	1	1	1	7	$ 350.00		$ 350.00		
OSHA PPE	$ 250.00	ea								1	1	1	1	1	1	7	$ 1,750.00		$ 1,750.00		
Safety Equipment	$ 150.00	ea								1	1	1	1	1	1	7	$ 1,050.00		$ 1,050.00		
Fuel/Oil/Truck	$ 900.00	ea							2	2	2	2	2	2	2	16	$ 14,400.00		$ 14,400.00		
GR's - FROM GC's																					

Project: DEICOM - PHASE 2

Location: Phoenix

Est Type: DD Estimate / GMP Estimate

EXHIBIT C - PRECONSTRUCTION, GENERAL CONDITIONS, GENERAL REQUIREMENTS & LOGISTICS

				2017												Total NBV	Cost	4/21/2017 ESTIMATE			
				Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total	4/21/2017	Preconstruction	General Conditions	Logistics	General Req
Jobsite Signage	$ 1,000.00	LS	1													1	$ 1,000.00			$ -	$ 1,000.00
Office Furniture (At Existing Facility)	$ 3,000.00	LS	1													1	$ 3,000.00			$ -	$ 3,000.00
Owner Trailer	$ 700.00	ea						1	1	1	1	1	1	1	1	8	$ 5,600.00			$ -	$ 5,600.00
Conference Trailer	$ 700.00	ea						1	1	1	1	1	1	1	1	8	$ 5,600.00			$ -	$ 5,600.00
GC Trailer	$ 700.00	ea						1	1	1	1	1	1	1	1	8	$ 5,600.00			$ -	$ 5,600.00
Remediation Trailers	$ 4,000.00	LS													1	1	$ 4,000.00			$ -	$ 4,000.00
Mobile Security	$ -	LS														0	$ -			$ -	$ -
Field Toilets	$ 345.00	ea						2	2	2	2	2	2	2	2	16	$ 7,360.00			$ -	$ 7,360.00
Office Cleaning	$ 150.00	ea						2	2	2	2	2	2	2	2	16	$ 2,400.00			$ -	$ 2,400.00
GRs - FROM Logistics																					
General Conditions - Carpenters / Laborers	32.48	HR						340	340	340	340	340	340	340	340	2,720	$ 84,000.00				$ 84,000.00
Cost of the work Consumables	-	MO														0	$ -				$ -
Final Clean – Call Center	1.00	LS														10,000	$ 10,000.00				$ 10,000.00
Final Clean – Site	1.00	LS														10,000	$ 10,000.00				$ 10,000.00
HEPA Filter – Replacement	-	EA														0	$ -				$ -
SuperClean – Certification																0				By Owner	$ -
General Requirements - Dumpsters	650.00	EA							4	4	4	6	6	6	6	36	$ 23,400.00				$ 23,400.00
Start-up & Commission - FROM Logistics																					
Closeout, Start-up, Functional Testing & Commissioning Support	$ 1.00	LS															$ -			$ -	
TOTALS																	1,075,970	$ 94,750	811,270	0	169,950

EXHIBIT D

DRAWINGS

Exhibit D – Drawings
N/A – Drawing List to be issued when GMP is established.

EXHIBIT E

SPECIFICATIONS

Exhibit E – Specifications
N/A – no final specifications have been issued on the project to date.

EXHIBIT E

SPECIFICATIONS

SKANSKA

Exhibit E – Specifications

N/A – no final specifications have been issued on the project to date.

EXHIBIT F

CCIP INSURANCE EXHIBIT

F O R M S

Forward the completed Enrollment Application to the Aon administrator identified at the bottom of page 2 of this form. The administrator prior to the start of your work on-site must receive this form.

EXHIBIT 1 – Sample Enrolled Off-Site Certificate of Insurance

ACORD© **CERTIFICATE OF INSURANCE**	**ISSUE DATE: CURRENT DATE**	
PRODUCER Insurance Agent's Name And Address **TELEPHONE #**	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND. EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW	
	COMPANIES AFFORDING COVERAGE	
INSURED; Subcontractor's Name and Address Sample Certificate for Enrolled Parties Required Insurance		
	COMPANY A LETTER	INSURANCE CARRIER
	COMPANY B LETTER	
	COMPANY C LETTER	
	COMPANY D LETTER	

COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NO.	POLICY EFF. DATE MM/DD/YY	POLICY EXP. DATE MM/DD/YY	ALL LIMITS	CO LTR

A	GENERAL LIABILITY ☒ COMMERCIAL GEN. LIABILITY ☐ CLAIMS MADE ☒ OCCUR. ☐OWNER'S & CONTRACTOR'S PROT. ☒ PER PROJECT AGGREGATE ENDORSEMENT	**Policy Number**			GENERAL AGGREGATE PRODUCTS-COMP/OPS AGGREGATE PERSONAL & ADVERTISING INJURY EACH OCCURRENCE FIRE DAMAGE (Any one fire) MEDICAL EXPENSE (Any one person)	$2,000,000 $2,000,000 $1,000,000 $1,000,000
A	AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ALL OWNED AUTOS ☐SCHEDULED AUTOS ☒ HIRED AUTOS ☒ NON-OWNED AUTOS	**Policy Number**			COMBINED SINGLE LIMIT BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE	$1,000,000
A	EXCESS LIABILITY ☒ UMBRELLA ☐ OTHER THAN UMBRELLA FORM	**Policy Number**			EACH OCCURRENCE AGGREGATE	$5,000,000 $5,000,000
A	WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY	**Policy Number**			STATUTORY LIMITS ☒ Florida (Each accident) (Disease-policy limit) (Disease-each employee)	$500,000 $500,000 $500,000
A	OTHER: EQUIPMENT FLOATER	**Policy Number**				Limit equal to Full Coverage of Subcontractor's owned or rented machinery, equipment, tools, & temporary structures not designed to become a permanent part of the Work
DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS: RE: Work performed at the Skanska USA Building ABC Project. Certificate Holders are Additional Insureds on a Primary and Non-contributing basis on the General Liability (ISO endorsement CG 20 10-11/85 or its equivalent), Automobile and Excess/Umbrella Liability Policies. Waiver of Subrogation in favor of Certificate Holders applies to all policies. GL and WC coverage apply off-site.						

CERTIFICATE HOLDER	CANCELLATION
Skanska USA Building Inc., Skanska USA, Inc. Indemnified Parties, any other parties as required by the Owner contract, Skanska Inc., and their respective directors, officers, employees and affiliates and ALL ENROLLED PARTIES **c/o Aon Risk Services, Inc.** **4 Overlook Point** Lincolnshire, IL 60069 Attention:	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ~~**ENDEAVOR TO**~~ MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, ~~**BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES**~~. AUTHORIZED REPRESENTATIVE By: (original signature)
ACORD 25-S (3/93)	© ACORD CORPORATION 199

Skanska USA Building Inc. CCIP Insurance Manual – Exhibit G1

F O R M S

EXHIBIT 2 – Sample Excluded On/Off-Site Certificate of Insurance

ACORD© CERTIFICATE OF INSURANCE			ISSUE DATE: CURRENT DATE			
PRODUCER Insurance Agent's Name And Address TELEPHONE #			THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND. EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW			
			COMPANIES AFFORDING COVERAGE			
INSURED; Subcontractor's Name and Address						
Sample Certificate for Enrolled Parties			COMPANY A LETTER	INSURANCE CARRIER		
Required Insurance			COMPANY B LETTER			
			COMPANY C LETTER			
			COMPANY D LETTER			
COVERAGES						
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.						
CO LTR	TYPE OF INSURANCE	POLICY NO.	POLICY EFF. DATE MM/DD/YY	POLICY EXP. DATE MM/DD/YY	ALL LIMITS	CO LTR
A	GENERAL LIABILITY ☒ COMMERCIAL GEN. LIABILITY ☐CLAIMS MADE ☒ OCCUR. ☐OWNER'S & CONTRACTOR'S PROT. ☒ PER PROJECT AGGREGATE ENDORSEMENT	Policy Number			GENERAL AGGREGATE PRODUCTS-COMP/OPS AGGREGATE PERSONAL & ADVERTISING INJURY EACH OCCURRENCE FIRE DAMAGE (Any one fire) MEDICAL EXPENSE (Any one person)	$2,000,000 $2,000,000 $1,000,000 $1,000,000

A	AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ALL OWNED AUTOS ☐SCHEDULED AUTOS ☒ HIRED AUTOS ☒ NON-OWNED AUTOS	Policy Number			COMBINED SINGLE LIMIT BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE	$1,000,000
A	EXCESS LIABILITY ☒ UMBRELLA ☐ OTHER THAN UMBRELLA FORM	Policy Number			EACH OCCURRENCE AGGREGATE	$5,000,000 $5,000,000
A	WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY	Policy Number			STATUTORY LIMITS ☒ Florida (Each accident) (Disease-policy limit) (Disease-each employee)	$500,000 $500,000 $500,000
A	OTHER: EQUIPMENT FLOATER	Policy Number			Limit equal to Full Coverage of Subcontractor's owned or rented machinery, equipment, tools, & temporary structures not designed to become a permanent part of the Work	
DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS: RE: Work performed at the Skanska USA Building ABC Project. Certificate Holders are Additional Insureds on a Primary and Non-contributing basis on the General Liability (ISO endorsement CG 20 10-11/85 or its equivalent - attached a copy with this Certificate of Insurance), Automobile and Excess/Umbrella Liability Policies. Waiver of Subrogation in favor of Certificate Holders applies to all policies. ALL COVERAGES LISTED APPLY ON AND OFF-SITE FOR ALL OPERATIONS OF THE INSURED.						
				CANCELLATION		

Skanska USA Building Inc., Skanska USA, Inc. Indemnified Parties, any other parties as required by the Owner contract, Skanska Inc., and their respective directors, officers, employees and affiliates and ALL ENROLLED PARTIES c/o Aon Risk Services, Inc. 4 Overlook Point Lincolnshire, IL 60069 Attention:	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ~~**ENDEAVOR TO**~~ MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, ~~**BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES**~~. AUTHORIZED REPRESENTATIVE By: (original signature)
ACORD 25-S (3/93)	© ACORD CORPORATION 199

Skanska USA Building Inc. CCIP Insurance Manual – Exhibit G1

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA® Document A201TM – 2007

General Conditions of the Contract for Construction

for the following PROJECT:
(Name and location or address)
«Tenant Improvements at »
«232 South Dobson Road,
Mesa, AZ 85202 »

THE OWNER:
(Name, legal status and address)
« DexCom, Inc. »
« 6340 Sequence Drive
San Diego, CA 92121
Attn: James Gillard »

THE CONTRACTOR:
(Name, legal status, address and other information)

Skanska USA Building Inc.
4742 N. 24th Street, Suite 165
Phoenix, AZ 85016
Attn: Ross Vroman

THE ARCHITECT:
(Name, legal status and address)
« »« »
« »

TABLE OF ARTICLES

INDEX
(Topics and numbers in bold are section headings.)

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Owner or Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. Except as set forth in Section 5.3 and 5.4, below, the Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.1.9 THE GUARANTEED MAXIMUM PRICE

The Guaranteed Maximum Price or "GMP" as used herein shall refer to the Contractor's Guaranteed Maximum Price as defined in Section 5.2 of the Agreement. Except for its use in Sections 9.1, 9.4.2 and 14.2.4, the term "Contract Sum" as used in this A201™–2007, as modified, refers to the Guaranteed Maximum Price as defined in Section 5.2 of the Agreement.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. Contractor represents that the Subcontractors, manufacturers and suppliers engaged or to be engaged by Contractor are and will be familiar with the requirements of the Contract Documents for performance by them of their obligations.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 All Drawings, Specifications, and other documents prepared by the Architect are and shall remain the property of Owner, and Owner shall retain all common law, statutory and other reserved rights with respect thereto. They shall not be used by Contractor on any other project without the prior written consent of Owner, and Contractor shall take such action as may be necessary to prevent their use on any

other project or for additions to the Project outside the scope of the Work by any Subcontractor, Sub-subcontractor, or material or equipment supplier. Contractor, Subcontractors, Subsubcontractors, and material and equipment suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications, and other documents prepared by Architect appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this license shall bear the statutory copyright notice, if any, shown on the originals. Submittals or distributions necessary to meet official regulatory requirements or for other purposes relating to completion of the Project are not to be construed as a publication in derogation of the Owner's copyright or other reserved rights.

§ 1.5.2 Contractor acknowledges that it has taken measures reasonably necessary to verify and ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to all general and local conditions that may affect the Work or its cost, including but not limited to: (a) conditions relating to transportation, handling, storage and disposal of materials and equipment; (b) availability of labor, power, water and other utilities, and roads; (c) uncertainties of weather, river stages, and similar physical characteristics of the site and its surroundings; and (d) character of equipment and other facilities required relative to the Work, both prior to commencement of the Work at the site and during the performance of the Work. Contractor further acknowledges that it has fully satisfied itself as to the nature, character, quality and quantity of surface conditions, materials or obstacles to be encountered to the extent that such information is reasonably available from the local municipality and other public bodies, and from the Contract Documents.

§ 1.5.3 Owner assumes no responsibility for any conclusions or interpretations made by Contractor based on the information made available by Owner, unless such information is included in the Contract Documents.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents, and such protocols, when agreed, shall be incorporated into the Contract Documents by amendment.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to and after commencement of the Work, but not more than once every three (3) months, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements or has the financial ability to fulfill the Owner's obligations under the Contract. The Owner shall furnish such evidence within fifteen (15) days after written request thereof from Contractor as a condition precedent to commencement of the Work. Thereafter, the furnishing of such evidence shall be a condition precedent to continuation of the Work if the request is made because (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially increases the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such

evidence or as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements, if applicable, without prior notice to the Contractor.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. Owner does not assume any responsibility whatsoever with respect to the sufficiency or accuracy of surveys or reports of borings made, or of the logs of test borings, or other investigations, or of the interpretations made thereof, and there is no warranty or guaranty, expressed or implied, that the conditions indicated by such investigations, borings, logs or information are representative of those existing throughout the Project site, or any part thereof, or the concealed conditions may be different from those described or may not have been identified.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may, after giving Contractor written notice and a reasonable opportunity to cure, but such notice shall only be required for the first such failure as to any particular issue or obligation, issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3. Owner's exercise of the right described in this Section 2.3 shall not give rise to any extension of the Contract Time nor shall the Contract Sum include any sums, costs, or charges directly attributable to Owner's exercise of this right.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner, upon receipt of a written demand accompanied by documentation substantiating the amounts claimed.

§ 2.5 At all times prior to the completion of the Work, Owner, Architect, Project Manager, Owner's lender(s) ("Lender(s)"), if any, and all of their employees and agents, subject to Contractor's reasonable requirements, shall have the right to have full access and use of the Work site. Owner's right hereunder shall include, without limitation, making inspections of the Work, including inspections carried out by

Owner's agents (such as without limitation, Project Manager, Architect, engineers or other professional inspectors), stationing a Project director, a job supervisor and other personnel employed by Owner at the Work site, showing the Work to prospective concessionaires, tenants, lenders and other interested persons, and carrying out the work of fixturing the improvements comprising the Work for Owner's purposes in using the completed Work. Such use shall not constitute acceptance of the Work or any part thereof, or waive any of Owner's rights under the Contract Documents.

§ 2.6 Owner will not be responsible for and will not have control or charge over construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and Owner will not be responsible for Contractor's failure to carry out the Work in accordance with the Contract Documents and applicable laws, rules and regulations. Owner will not be responsible for or have control or charge over the acts or omissions of Contractor, Subcontractors, or any of their agents or employees, or any other person performing any of the Work.

§ 2.7 Owner has the authority to reject the Work which does not conform to the Contract Documents. Whenever, in its opinion, Owner considers it necessary or advisable for implementation of the intent of the Contract Documents, Owner will have the authority to require special inspection or testing of the Work in accordance with Section 13.5.2 whether or not such Work is then fabricated, installed or completed. However, neither Owner's authority to act under this Section 2.7, nor any decision made by Owner in good faith, either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of Owner to Contractor, any Subcontractor, any of their agents or employees, or any other person performing any of the Work.

§ 2.8 In the event Owner reasonably determines that the progress of Work affecting the critical path of construction is behind the progress anticipated in the schedule for the Work set forth in the GMP Amendment (the "Schedule") , and Contractor is not entitled to receive an extension of the Contract Time in accordance with Contract Documents, Contractor shall submit to Owner for its approval a "Recovery Plan" which will indicate the manner in which Contractor intends to get the Work back on schedule in accordance with the Schedule. The cost of preparing the Recovery Plan shall be borne solely by Contractor, and shall not be the subject of a Change Order or the use of any contingency funds. In addition, Owner may require Contractor to take such actions as Owner reasonably deems necessary to expedite progress of the Work in conformance with the progress anticipated by the Schedule, which actions may include, without limitation, increasing the number of workmen performing the Work, utilizing overtime work and requiring additional work shifts. Such action by Owner to place Contractor back on schedule shall not entitle Contractor to receive any additional compensation for these activities unless Contractor would be entitled to receive an extension of Contract Time and Contractor has made such a request, all in accordance with Section 8.3.1, below.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor, unless the Contract Documents require the Contractor to rely upon such administration, tests, inspections or approvals.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including without limitation, (1) the location, condition, layout, nature of the Project site and surrounding areas, (2) generally prevailing climactic conditions, (3) anticipated labor supply and cost, (4) availability and costs of materials, tools and equipment and (5) other similar issues. Owner assumes no responsibility or liability for the safety of the Project site or any improvements located at the Project site. The Owner shall not be required to make any adjustment in either the Contract Sum or the Contract Time in connection with any failure by the Contractor or any Subcontractor to comply with the requirements of this Section 3.2.1. The Contract Sum includes provisions for all Work that may be performed by Contractor to overcome patent site and soil conditions and, except as expressly provided in Section 3.7.4, below, claims for additional compensation or extension of time because of the Contractor's failure to familiarize himself with such conditions will not be allowed.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. Contractor shall at once report to Architect, Project Manager and Owner errors, inconsistencies or omissions discovered. If Contractor fails to so report such discovered errors, inconsistencies or omissions, or those that it discovered in the exercise of reasonable care, it shall be responsible for the cost of correction or, at Owner's option, the reduction in value of any defective portion of the Work thereafter performed. Contractor further acknowledges that it has visited the site, examined all conditions affecting the Work, is fully familiar with all of the conditions thereon and affecting the same, and having carefully examined all Drawings, Specifications, and documents. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 Except as otherwise provided in the Contract Documents, the Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Owner, Project Manager and Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, it shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.2.5 Any ambiguities, missing information, illegible words or numbers or discrepancies discovered by Contractor shall be promptly submitted to Owner, Project Manager and Architect for a recommendation before products are ordered or construction initiated for that portion of the Work. Contractor shall perform the Work reflecting the correction of such errors, inconsistencies, and omissions subject to Owner's execution of appropriate Change Orders.

§ 3.2.5.1 Work ordered, fabricated or constructed by Contractor, when the Contract Documents do not clearly specify in detail the Work to be done or where the Work conflicts with the Contract Documents without such Change Orders, shall be corrected by Contractor at its own expense.

§ 3.2.5.2 Recommendations of Architect with regard to such ambiguities or discrepancies shall not make Architect an arbitrator to establish responsibilities of Subcontractors to Contractor with regard to such portions of the Work.

§ 3.2.6 Contractor shall notify Architect, Project Manager and Owner in writing, of materials, systems, procedures or methods of construction either shown on the Drawings or specified in the Specifications which Contractor believes are incorrect or inappropriate for the purposes intended, or for which Contractor objects to furnishing the warranties required by the Contract Documents. Architect and Owner will make a determination of such matters in writing, Contractor shall be responsible for any additional costs resulting from its failure to so notify Architect, Project Manager and Owner that such materials, systems, procedures and methods, are incorrect or inappropriate.

§ 3.2.7 Dimensions indicated on the Drawings are required dimensions, regardless of measurement per given scale. Contractor shall verify at site necessary levels, measurements, etc., for complete fabrication, assembly and installation, fitting of equipment, fixtures and the Work. Where dimensions are not indicated and exact location is not apparent, Contractor shall promptly notify Architect, Project Manager and Owner's Representative, and Architect shall compute the required measurements.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures (excluding any separate work performed by a third party under a separate contract directly with Owner). If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect, and the GMP or Contract Time or both shall be equitably adjusted. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

The Contractor shall engage workers who are skilled in performing the Work, and all Work shall be performed with care and skill and in a good workmanlike manner under the full-time supervision of an approved superintendent. The Contractor shall be liable for all property damage, including repairs and replacements of the Work, which proximately result from the breach of this duty. The Contractor shall advise the Owner:

a) if a specified product deviates from good construction practices.

b) If following the Specifications will affect any warranties; or

c) any objections which the Contractor may have to the Specifications.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.3.4 In addition to Section 10.2, below, Contractor shall institute and supervise reasonable precautions to prevent damage, injury or loss to (i) all employees involved with the Work and other persons who may be affected thereby, including, without limitation, invitees, licensees, trespassers and persons on adjacent properties, (ii) all the Work and all materials and equipment to be incorporated therein, including those in storage on or off site under the care, custody or control of Contractor or any Subcontractor, (iii) Owner's personal and real property and other property at the Work site or adjacent thereto, including without limitation, fixtures, carpets, and other related items, and (iv) all of Owner's employees, agents and representatives. Contractor shall at all times take such precautions as may be necessary to shore, brace, secure and protect the Work and shall protect such parts of the Work and shall provide and maintain such security, including, without limitation, rules, guards, fences, lights and signs, as may be necessary or required to comply with this Section 3.3.4. Contractor shall further post necessary danger signs and other warnings against hazards, promulgate and enforce safety codes, rules and regulations and notify owners, lessees and users of adjacent property. Contractor shall particularly ensure and be responsible for compliance with all applicable state and federal safety laws, ordinances, rules, regulations and lawful orders of all governmental authorities and other persons or entities having jurisdiction. In any emergency threatening the Work or adjoining property, Contractor may act pursuant to Section 10.4. Contractor shall not be responsible for the costs of such emergency work, unless the emergency was due to Contractor's own fault or neglect. The Contractor shall inspect all materials delivered to the Project and shall reject any materials that will not conform with the Contract Documents when properly installed.

§ 3.3.5 Contractor shall not cause or permit any disruption to the streets and utilities serving any occupied portion of the Project, the remainder of the Project, or other properties without Owner's prior consent, which may be conditioned upon restrictions in the time, place and manner of such disruption.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, and temporary water, heat, utilities (including connections), transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.4.4 Where the Contract Documents refer to particular construction means, methods, techniques, sequences or procedures or indicate or imply that such are to be used on the Work, such mention is intended only to indicate that the operations of Contractor shall be such as to produce the quality of work implied by the operations described, but that the actual determination of whether the described operations may be safely or suitably employed on the Work shall be the responsibility of Contractor, who shall notify Architect, Project Manager and Owner in writing of the actual means, methods, techniques, sequences or procedures which will be employed on the Work, if these differ from those mentioned in the Contract Documents. All loss, damage, or liability, or cost of correcting defective work arising from the employment of any construction means, methods, techniques, sequences or procedures shall be borne by the Contractor, notwithstanding that such construction means, methods, techniques, sequences or procedures are referred to, indicated or implied by the Contract Documents.

§ 3.4.5 Any material specified by reference to the number, symbol, or title of a specific standard such as that of the American Society for Testing materials (ASTM), a Product or Commercial Standard, Federal Specification or other similar standards, shall comply with the requirements of the dated revisions

stated in the Specifications, or where the Specifications contain no revision date, shall comply with the requirements of the latest revision thereof and any supplement or amendment thereto, in effect on the date of receipt of bids. The standards referred to, except as specifically modified in the Specifications, shall have the same force as if they were printed in full context within the Specifications.

§ 3.4.6 Contractor shall coordinate all Work of like material in order to produce harmony of matching finishes, textures, colors, etc., throughout the various components of the Project.

§ 3.4.7 Where it is required in the Specifications that materials, products, processes, equipment or the like be installed or applied in accord with manufacturer's instructions, directions, or specifications or words to this effect, it shall be construed to mean that said application or installation shall be in strict accord with current printed instructions furnished by the manufacturer of the material concerned for use under conditions similar to those at the job site. Unless otherwise stated, Contractor shall furnish one (1) copy of instructions to Owner and one (1) copy to Architect.

§ 3.5 WARRANTY

Subject to the provisions of Section 12.2 herein, the Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements shall be defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Contractor agrees to assign to Owner at the time of final completion of the Work, any and all manufacturer's warranties relating to material and labor used in the Work and further agrees to perform the Work in such a manner so as to preserve any and all such manufacturer's warranties. Contractor shall furnish seventy-two (72) hour callback service for the equipment provided by Contractor for a period of one (1) year after final payment and acceptance of the Work. Provided, however, Contractor shall provide twenty-four (24) hours emergency call back service for all pumping systems, emergency generator, electric switch gear, smoke exhaust fans, chillers and a domestic water heaters.

§ 3.5.2 During the warranty period, Owner shall (i) establish and conduct a reasonable maintenance and repair program in and around the property; (ii) comply in all respects with the requirements set forth in the manufacturers' warranties on all equipment, fixtures and systems; (iii) notify Contractor in writing within ten (10) business days after Owner has actual knowledge of any defect or deficiency which Owner believes is covered by Contractor's warranty; and (iv) provide to Contractor such reasonable access necessary to inspect the work during the warranty period and correct or replace any defect covered by Contractor's warranty. Contractor shall not be liable for any damages that could have been prevented but occurred as a result of Owner's failure to give Contractor such notice pursuant to this Section.

§ 3.6 TAXES

The Contractor shall pay, as a Cost of the Work, sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. The Owner is responsible to provide the Contractor with all necessary information in order to obtain all reasonable exemptions or deductions of sales, consumer, use and similar taxes that are legally available. In the event taxes were charged by Contractor that are later determined to be exempt or nontaxable, Contractor will exhaust all commercially reasonable options to obtain a refund of such taxes from taxing authorities. Such overpaid taxes charged to the Owner shall be reflected as either a refund or a reduction of charges on future invoices after such refunds are received by Contractor. If the Owner provides the necessary information to the Contractor or the process to obtain overpaid taxes is after the completion of the Project, then the

Owner will reimburse the Contractor for all reasonable labor and material expensed to obtain overpaid taxes.

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. Unless otherwise provided in the Contract Documents, the Owner shall secure and pay for all non-construction-related permits as well as any permits necessary for the operation of the facility post-completion.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders, and all other requirements of public authorities applicable to performance of the Work. If Contractor fails to give such notice, Contractor shall be liable for and shall indemnify and hold harmless Owner, Project Manager, and their respective employees, officers, and agents, against any resulting fines, penalties, liabilities, judgments or damages, including reasonable attorneys' fees, imposed on or incurred by the parties indemnified hereunder.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders or other requirements of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction, and shall, in addition to Owner's other remedies, pay all costs of correction, and reimburse Owner for any diminution in value of the Project and expenses incurred by Owner as a result of Contractor's actions. Contractor shall send all notices, make all necessary arrangements, and provide all labor and materials required to protect and maintain in operation of all public utilities within the Project site or affected by the Work.

§ 3.7.4 Concealed or Unknown Conditions. If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum, Guaranteed Maximum Price, Contract Time, or any of them. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum, Guaranteed Maximum Price, and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or

entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

.1Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

.2Contractor's and its Subcontractors' (of every tier), and suppliers' costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and

.3Whenever costs are more than or less than allowances, the Contract Sum and Guaranteed Maximum Price shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness so as not to delay the Work.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent approved in writing by Owner and necessary assistants who shall be in attendance at the Project site during performance of the Work. Contractor shall notify Owner in writing of any proposed change in such personnel, including the reason therefore, prior to making any change. Such personnel shall not be changed except with the consent of Owner, unless such personnel cease to be in the employ of Contractor. Ross Vroman and Kevin Devlin of Contractor shall, subject to change by prior written notice from Contractor to Owner, represent Contractor, and written communications given to them shall be binding on Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner, Project Manager and Architect the name and qualifications of a proposed superintendent. The Owner, Project Manager and Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner, Project Manager or the Architect have reasonable objection to the proposed superintendent or (2) that the Owner, Project Manager and Architect requires additional time to review. Failure of the Owner, Project Manager and Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner, Project Manager or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after the Agreement is executed by both Owner and Contractor, shall prepare and submit for the Owner's, Project Manager's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the submittal schedule for the Architect's approval. The Architect's approval shall not unreasonably be

delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Owner and Architect and shall be delivered to the Owner upon completion of the Work as a record of the Work as constructed. The Contractor shall also maintain all approved permit drawings and other documents at the site, so as to make them accessible to inspectors and the Owner at all times that the Work is in progress. Such documents shall be delivered to the Owner before final payment.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, and submit for approval to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed them, and (2) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the

Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering including, but not limited to, seismic engineering design and/or structural design required as a result of construction sequences. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.14.3 The Contractor shall locate, protect, and save from injury utilities of all kinds, either above or below grade, (i) of which Contractor has actual knowledge, (ii) that are set forth in plans given to, or obtained by, Contractor or (iii) that are marked by Underground Service Alert, inside or outside of any structure, found in the areas affected by its work. Contractor shall be responsible for all damage caused to such utility by the operation of equipment or delivery of materials or as the direct or indirect

result of any of its work and shall repair all such damage at its expense and as a part of the work included in the Contract Documents. The Contractor shall not be entitled to any increase in the Contract Sum or the Contract Time on account of such damage to any utility, so long as Contractor either had actual knowledge of such utility, such utility was set forth in plans given to, or obtained by, Contractor, or such utility was marked by Underground Service Alert.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

§ 3.15.3 Contractor shall be responsible for broken glass, and at or before completion of the Work, as directed by Owner, shall replace such damaged or broken glass. After broken glass has been replaced, Contractor shall remove all labels, wash, and policy both sides of all glass. Further, in addition to general broom cleaning, Contractor shall perform the final cleaning for all trades immediately upon completion of the Work, which shall include, but not limited to, the following: (a) remove temporary protections; (b) remove marks, stains, fingerprints and other soil or dirt from painted, decorated, and natural finished woodwork and other Work; (c) remove spots, mortar, plaster, soil and paint from ceramic tile, marble, and other finish materials and wash or wipe clean; (d) clean fixtures, cabinet work and equipment, removing stains, paint, dirt, and dust and leave in undamaged, new condition; (e) clean aluminum in accordance with recommendations of the manufacturer; and (f) clean resilient floors thoroughly with a well rinsed mop containing only enough moisture to clean off any surface dirt or dust and buff dry by machine to bring the surfaces to sheen.

§ 3.15.4 Costs incurred by Owner under this Section 3.15 shall be deducted from amounts otherwise due to Contractor, or at Owner's option, reimbursed by Contractor to Owner immediately following Owner's demand.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to know that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify, defend and hold harmless the Owner, Project Manager, Owner's Lender and agents and employees of any of them (collectively, the "Indemnitees") from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, brought by or alleged by a third party arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor,

anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.18.3 Contractor shall include in all agreements with Subcontractors clauses substantially similar to Subparagraph 3.18.1 where the Subcontractor agrees to indemnify Contractor and Indemnitees.

§ 3.19 LENDER'S CERTIFICATE

§ 3.19.1 Within ten (10) days of Owner's request, Contractor shall execute and deliver to Owner and its lender(s) having an interest in the Project, a certificate addressed to Owner and such lender(s) concerning the compliance of the Work with the Contract Documents and applicable laws and regulations, the status of completion of the Work, the status of payments and defaults, and such other matters as such lender(s) may request. Such requests shall not be made an unreasonable number of times.

§ 3.20 REPRESENTATIONS AND WARRANTIES

§ 3.20.1 Contractor represents and warrants the following to Owner (in addition to the other representations and warranties contained in the Contract Documents), which representations and warranties shall survive any termination of the Owner-Contractor Agreement and the final completion of the Work:

§ 3.20.1.1 that it is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under Contract Documents;

§ 3.20.1.2 that it is able to furnish the tools, materials, supplies, equipment, and labor required to complete the Work and perform its obligations under the Contract Documents and has sufficient experience and competence to do so; and

§ 3.20.1.3 that it is authorized to do business in the State of Arizona and properly licensed by all necessary governmental authorities having jurisdiction over it and over the Work and the site of the Project.

§ 3.21 PUBLICITY

§ 3.21.1 The Contractor shall not divulge information concerning this Project to anyone (including, without limitation, information in applications for permits, variances, etc.) without the Owner's prior written consent. The Contractor shall obtain a similar agreement from firms, subcontractors, suppliers, and others employed by the Contractor. The Owner reserves the right to release all information as well as to time its release, form, and content. This requirement shall survive the expiration of the Contract. Contractor's ultimate parent company, Skanska AB, the shares of which are publicly traded on the NASDAQ OMX Stockholm, will be required by applicable securities laws and regulations to issue one or more press releases concerning this Agreement if the total amount of this Agreement exceeds $35,000,000.00. Attached hereto as Schedule 1 is a press release in form approved by Owner for such a press release in the event the total amount of this Agreement exceeds $35,000,000.00, provided, however, the Contractor shall give the Owner five (5) business days' prior written notice of issuance of it. Contractor shall give Owner any other press release(s) at least five (5) business days prior to issuance for Owner to review and approve by written notice to Contractor, provided that such approval shall not to be unreasonably withheld, conditioned or delayed.

§ 3.22 LENDER'S ARCHITECT

§ 3.22.1 If the Owner's lender requires the services of an inspecting architect or other representative, the Owner may require the concurrence of such inspecting architect or lender's representative in each instance where the approval of the Owner or the Architect herein is required by any provision of the Contract Documents. The Contractor shall fully cooperate with such inspecting architect or lender representative.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors

and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness so as not to delay the Work. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 [Intentionally Deleted.]

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness so as not to delay the Progress of the Work. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner, with copies to, Architect and Project Manager, the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner and Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect have reasonable objection to any such proposed person or entity or (2) that the Owner or Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum, Guaranteed Maximum Price or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.2.5 All portions of the Work that the Contractor's organization does not perform with its own personnel shall be performed under Subcontracts or by other appropriate agreements with Contractor. Prior to awarding a portion of the Work to any proposed Subcontractor, Contractor shall deliver to Owner a copy of any proposed Subcontractor's bid. All Subcontracts shall conform to the requirements of the Contract Documents. Contractor shall deliver to Owner copies of all Subcontracts both prior to and following their execution.

§ 5.3 SUBCONTRACTUAL RELATIONS

§ 5.3.1 By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3.2 All Work performed for Contractor by a Subcontractor shall be pursuant to an appropriate written agreement between Contractor and the Subcontractor (and where appropriate between Subcontractors and Sub-subcontractors) which shall include a schedule of value approved by Owner, and which shall contain provisions that:

§ 5.3.2.1 provide that Owner is an express third party beneficiary of the subcontract, and preserve and protect the rights of Owner under the Contract with respect to the Work to be performed under the subcontract so that the subcontracting thereof will not prejudice such right;

§ 5.3.2.2 require such Work be performed in accordance with the requirements of the Contract Documents;

§ 5.3.2.3 include the Subcontractor's acknowledgment that Contractor has assigned its interest in the subcontract to Owner, which assignment shall become effective upon Contractor's default under the Contract Documents and Subcontractor's receipt of notification from Owner that (a) Contractor is in default under the Contract Documents or Owner has terminated the Contract; and (b) the assignment is effective;

§ 5.3.2.4 require submission to Contractor of applications for payment under each subcontract to which Contractor is a party, in reasonable time to enable the Contractor to apply for payment in accordance with Article 9 of the General Conditions and Article 12 of the Agreement;

§ 5.3.2.5 require that all claims for additional costs, extensions of time, damages for delays or otherwise with respect to subcontracted portions of the Work shall be submitted to Contractor (via any Subcontractor or Sub-subcontractor where appropriate) in sufficient time so that Contractor may comply in the manner provided in the Contract Documents for like claims by Contractor upon Owner; and

§ 5.3.2.6 waive all rights Contractor and Subcontractor may have against one another for damages caused by fire or other perils covered by property insurance.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

.1 assignment is effective only after termination of the Contract by the Owner pursuant to Article 14 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and

.2assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts in writing the assignment of a subcontract agreement, the Owner, on a going forward basis, assumes the Contractor's rights and obligations under the subcontract. In no event shall Owner have any obligation to cure the Contractor's breach of the subcontract.

§ 5.4.2 [Intentionally Deleted]

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity.

§ 5.4.4 Upon such assignment, the Owner shall defend, indemnify and hold Contractor harmless against any and all claims of Subcontractors arising after the effective date of such assignment based on acts occurring thereafter whose Subcontracts have been assigned to the Owner.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement, and Contract Sum and Contract Time will be equitably adjusted as is appropriate. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's

completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate reasonably the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 7.1.4 Owner shall order changes in the Work by giving Contractor a written change order request ("Change Order Request"), setting forth in detail the nature of the requested change. Contractor shall, as soon as reasonably possible, but not later than ten (10) days following receipt of a Change Order Request, furnish to Owner a statement setting forth in detail, with suitable breakdown by trades and work classifications, the changes, if any, in the Contract Sum attributable to the changes set forth in such Change Order Request, the proposed adjustment, if any, to the Contract Time resulting from such Change Order Request and any proposed adjustments of time and costs related to unchanged Work resulting from such Change Order Request. If Owner approves such changes in writing, a change order ("Change Order") shall be executed and the Contract Sum and Contract Time shall be adjusted as set forth in such Change Order. Failure to agree on the price of any Change Order shall not excuse Contractor from proceeding with the prosecution of the Work as changed (provided Owner issues a Construction Change Directive) for an amount equal to the amount undisputed by Owner for such a Change Order, with Contractor reserving its rights to claim additional compensation for the disputed portion of such Change Order work.

§ 7.1.5 Owner and Contractor shall be entitled to receive a Change Order equitably adjusting (either by decrease or increase) the Guaranteed Maximum Price or the Contract Time or both for adverse

or beneficial cost and schedule impacts to the Work from the a change in any applicable law, including the interpretation or application thereof, after the date the GMP is established.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

.1 The change in the Work;

.2 The amount of the adjustment, if any, in the Contract Sum and Guaranteed Maximum Price; and

.3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the Contract Time. In the event a Change Order increases the Contract Sum, Contractor shall include the Work covered by such Change Orders in Applications for Payment as if such Work were originally part of the Contract Documents.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum, Guaranteed Maximum Price, or Contract Time, or any of them. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum, Guaranteed Maximum Price and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

.1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

.2 Unit prices stated in the Contract Documents or subsequently agreed upon;

.3 Cost to be determined in a manner agreed upon by the parties, plus the Contractor's Fee set forth in Section 5.1.1 of the Agreement; or

.4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum, Guaranteed Maximum Price or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum, Guaranteed Maximum Price and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

.1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;

.2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

.3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

.4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work;

.5 Additional costs of supervision and field office personnel directly attributable to the change; and

.6 Any additional costs allowed by Article 6 of the Agreement.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum and Guaranteed Maximum Price on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum, Guaranteed Maximum Price and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum, Guaranteed Maximum Price or extension of the Contract Time and not inconsistent with

the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor, subject to the right of Contractor to reasonably disagree and assert a Claim in accordance with Article 15.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term “day” as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract with respect to its obligation to achieve Substantial and Final Completion of the Work as adjusted by change order. By executing the Agreement the Contractor confirms that the Contract Time, subject to adjustments as provided for in the Contract Documents, is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time, subject to adjustments as provided for in the Contract Documents.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If Contractor is delayed in the performance of the Work by any act or neglect of Owner or Architect, or by an employee, agent or representative of Owner or by changes ordered in the Work, or by the combined action of workmen (either those employed on the Work or in any industry essential to the conduct of the Work) not caused by or resulting from default, negligence or collusion on the part of Contractor or its Subcontractors of every tier, or if Contractor is delayed by separate contractors, or by unusually severe weather conditions not reasonably anticipatable for the locale, or by fire, unavoidable casualty, acts of God, “Excusable Labor Disputes” or “Excusable Transportation Delays” (as those terms are defined below), or national emergency, then the Contract Time shall be extended by Change Order for a period equal to the length of such delay as measured on the critical path of the Schedule if, within fourteen (14) days after the commencement of any such delay, or fourteen (14) days after Contractor learned of the delay, whichever is later, Contractor delivers to Owner a written notice of such delay stating the nature thereof, and within fourteen (14) days following the expiration of any such delay, provides a written request for extension of the Contract Time by reason of such delay and such extension is approved by Owner, which approval shall not be unreasonably withheld; provided, however, that no such extension shall be given unless the delay for which a request for extension is made is included in those items for which an extension of the Contract Time is appropriate pursuant to the provisions of this Subparagraph 8.3.1. As used herein, the term “Excusable Labor Dispute” shall be defined as any labor dispute directed against an entire industry, or any labor dispute that is not directed solely against the Project, the Contractor or any of its Subcontractors or suppliers, and which prevents Contractor from obtaining labor or materials necessary for performance of the Work and actually delays the performance

of the Work; provided, however, that suitable substitute materials or labor are not reasonably obtainable. As used herein, the term "Excusable Transportation Delay" shall be defined as any labor dispute directed against an entire industry, or any labor dispute that is not directed solely against the Project, the Contractor or any of its Subcontractors or suppliers, or other delay not within the reasonable control of Contractor which prevents the transportation of necessary materials to the Project and actually delays the performance of the Work; provided, however, that suitable substitute transportation for such materials is not reasonably available. In the event Contractor fails to deliver to Owner either or both of the above-described written notices within the required fourteen (14) day period, then the extension of the Contract Time attributable to the delay for which such notices are required shall be decreased by one (1) day for each day (beyond the applicable fourteen (14) day period) Contractor fails to deliver any required notice to Owner. In the case of a continuing cause of delay of a particular nature, Contractor shall be required to make only one such request for extension with respect thereto. No delay of the Contract Time (or right on the part of Contractor to secure any such delay) pursuant to this Section 8.3.1 shall prejudice any right Owner may have under the Contract, or otherwise, to terminate the Contract.

§ 8.3.2 In addition to the increased time due to a delay set forth in Section 8.3.1, Contractor shall be entitled to a commensurate increase in the Contract Sum and Guaranteed Maximum Price for delays which impact the Schedule.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. The schedule of values shall not constitute, or be construed as, a line item Guaranteed Maximum Price.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in writing and in advance by the Owner and Lender, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures reasonably satisfactory to the Owner and Lender to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and the Lender's security interest therein, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site in third party warehouses.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

.1 defective Work not remedied;

.2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;

.3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;

.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

.5 damage to the Owner or a separate contractor;

.6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or

.7 material failure to carry out the Work in accordance with the Contract Documents.

Notwithstanding the issuance of a Certificate for Payment, the Owner, may withhold payment for the reasons described in Sections 9.5.1.1 - 9.5.1.7, but shall make payment of amounts that are not in dispute.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld. All non-disputed amounts shall be paid to the Contractor within the time requirements of the Contract Documents. In no event will Owner withhold more than 150% of any disputed amount or of the amount reasonably necessary to correct or address the reason for withholding. The Owner shall not be deemed to be in default of the Contract by reason of withholding payment while any of the grounds above in Section 9.5.1 remain uncured.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, and after providing five (5) days prior written notice to Contractor, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 With each Application for Payment, Contractor shall furnish a conditional progress waiver and release of lien for itself, each Subcontractor who furnished labor, equipment, materials or services to the Project, and each materialman and vendor who furnished materials to the Project during the period covered by the Application for Payment. Upon each payment by Owner, Contractor shall execute, and cause all such materialman, vendors and Subcontractors to execute an unconditional progress waiver and release of lien acknowledging receipt of all payments due through the period covered by the previous Application for Payment for which payment was received by the Contractor. The conditional and unconditional lien releases shall be in statutory form, and provided Owner is making progress payments in accordance with the Contract Documents, Contractor shall deliver the executed unconditional releases to Owner with its next succeeding Application for Payment, including the Final Application for Payment to assure an effective waiver of mechanics' or materialmen's liens in compliance with the laws of the State of Arizona. In addition to providing lien releases, and provided Owner is making required progress payments in accordance with the Contract Documents, Contractor shall indemnify and hold Owner and Lender harmless from and against any and all liens and charges of every type, nature, kind or description which may at any time be filed or claimed against the Project, or any portion thereof, or the improvements situated thereon, including attorneys' fees, as a consequence, direct or indirect, of any act or omission of Contractor, its agents, servants, employees, suppliers, subcontractors, or any or all of them. Prior to commencement of Work as reasonably required by Owner or Lender, Contractor shall furnish to Owner and Lender an affidavit, subordination and lien waiver agreement executed by Contractor and each Subcontractor which has furnished and supplied or will furnish or supply materials and services in connection with the prosecution of the Work, which agreement shall be in a commercially reasonable form. To the extent not inconsistent with existing law, each party executing such agreement shall, prior to commencement of Work, agree to subordinate all of its liens for Work to be performed or materials to be furnished pursuant to the Contract Documents to the liens and security interests securing payment of any loan made for the Project by Lender, and shall furnish a release of all liens for Work performed and materials furnished up to the date of execution of such agreement to the extent such party has been paid. Further, each such party shall certify that all amounts owing to such party for the Work through the date of such agreement have been paid in full, or if not paid in full, such agreement shall set forth such amounts which have not been paid through the date of such agreement.

§ 9.6.9 If any lien, bonded stop notice or claim is recorded or served in connection with the Work for which the Contractor has been paid, Contractor shall, immediately and at its own expense, record or file, or cause to be recorded or filed, in the office of the county recorder in which the lien or claim was recorded, or with the person(s) on whom the bonded stop notice was served, a bond executed by a good and sufficient surety, and approved by Owner, in a sum equal to one hundred fifty percent (150%) of the amount of such lien, bonded stop notice or claim, which bond shall guarantee the payment of any amounts which the claimant may recover on the lien, bonded stop notice or claim, together with the claimant's costs of suit in the action if the claimant recovers therein.

§ 9.6.10 If Contractor fails to cause any lien to be removed in connection with the Work for which the Contractor has been paid (if payment is past due) from the Project or any bonded stop notices or other notices to be negated, Owner may employ whatever means it may, in its reasonable discretion, to cause the lien to be removed, and the effect of any bonded stop notices or other notices to be negated. Contractor shall, upon demand, reimburse Owner for all costs, including without limitation actual attorneys' fees incurred by Owner in connection with any suit, lien or bonded stop notice. Owner may offset any such costs against amounts otherwise owing to Contractor hereunder.

§ 9.7 FAILURE OF PAYMENT

§ 9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.7.2 If Owner is entitled to reimbursement or payment from Contractor under or pursuant to the Contract Documents, such payments shall be made within thirty (30) days after demand by Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if Contractor fails to promptly make any payment due Owner, or Owner incurs any costs and expenses to cure any default of Contractor or to correct defective Work, Owner shall have an absolute right to offset such amount against the Contract Sum and may, in Owner's sole discretion, elect either to: (1) deduct an amount equal to that which Owner is entitled from any payment then or thereafter due Contractor from Owner, or (2) issue a written notice to Contractor reducing the Contract Sum by an amount equal to that which Owner is entitled.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use and a temporary certificate of occupancy (or its functional equivalent) has been issued by the appropriate governmental agency.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Owner and Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner and Architect will promptly (but in no event later than ten (10) days after receipt of said notice and final Application for Payment and Contractor's written request to Owner for final inspection) make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and Contractor shall not allow such insurance to be cancelled or to expire until it gives Owner at least 30 days' prior written notice thereof, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner, and (6) all warranties, guarantees, operating manuals and record drawings for the Project. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees. Contractor's obligations hereunder with respect to liens shall not apply to the extent the Owner's breach of any payment obligations under the Contract Documents has resulted in such lien.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Owner and Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Owner and Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

.1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;

.2 failure of the Work to comply with the requirements of the Contract Documents; or

.3 terms of special warranties required by the Contract Documents.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

.1 employees on the Work and other persons who may be affected thereby;

.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and

.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss. If the Contractor fails to give such notices or fails to comply with such laws, ordinances, rules, regulations, and lawful orders, it shall to the extent due to such failures be liable for and shall indemnify, defend (at Contractor's sole cost, and with legal counsel reasonably approved by Owner) and hold harmless the Owner, Project Manager and their respective employees, officers, and agents, against any resulting fines, penalties, judgments, or damages, including reasonable attorneys' fees, imposed on or incurred by Owner.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities. The Contractor shall promptly report to the Owner in writing all accidents arising out of or in connection with the Work that cause death, personal injury, or property damage. The report shall give full details, including statements of witnesses, hospital reports, and other information in the possession of the Contractor. In addition, in the event of any serious injury or damage, the Contractor shall immediately notify the Owner by telephone of such accident.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to the extent of the negligence or willful misconduct of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have

no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum and Guaranteed Maximum Price shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall defend, indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify and defend the Contractor for all cost and expense thereby incurred.

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE THIS ARTICLE 11 IS STILL SUBJECT TO REVIEW BY SKANSKA RISK MANAGEMENT

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies to which Owner has no reasonable objection, which have a Best's Rating of "A/VIII" or above and which are lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

.1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;

.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;

.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;

.4 Claims for damages insured by usual personal injury liability coverage;

.5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property;

.6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;

.7 Claims for bodily injury or property damage arising out of completed operations; and

.8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, shall be written on an occurrence basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance reasonably acceptable to the Owner, and copies of the insurance policies if requested in writing, shall be filed with the Owner and the additional insureds at least ten (10) days prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness upon Owner's written request. Upon receipt of any notice of cancellation or alteration, Contractor, within ten (10) days, shall procure other policies of insurance, similar in all material respects to the policy or policies, about to be canceled or altered; and, if Contractor fails to provide, procure and deliver acceptable policies of insurance or satisfactory evidence thereof, in accordance with the terms hereof, then at Owner 's option, Owner may obtain such insurance at the cost and expense of Contractor without the need of any notice to Contractor. The Contractor shall provide written notification to the Owner of the cancellation or expiration of any insurance required by Section 11.1. The Contractor shall provide such written notice within five (5) days of the date the Contractor is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Lender, as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include the Owner, the Contractor, Subcontractors and Sub-subcontractors in as insured.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles, unless the loss was caused by Contractor and/or its Subcontractors of any tier, then Contractor shall be responsible for a deductible up to Ten Thousand Dollars and Zero Cents ($10,000.00).

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE [Intentionally Deleted]

§ 11.3.3 LOSS OF USE INSURANCE [Intentionally Deleted]

§ 11.3.4 [Intentionally Deleted]

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy, to the extent the issuing insurance company will so provide without additional material cost, shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§ 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered and paid by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7. Owner shall not have any responsibility to any party other than Contractor with respect to the proceeds of any insurance policy. After a loss, Owner may choose to terminate the Contract for convenience as described herein, or continue with the construction of the Project. If after such loss no other special agreement is made and unless Owner terminates the Contract for convenience, replacement of damaged property shall be performed by Contractor after notification of a change in the Work in accordance with Article 7.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Owner, as an addition to the Cost of the Work and Guaranteed Maximum Price, shall have the right to require the Contractor to furnish bonds covering faithful performance of the

Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense, except as may be reimbursable from the Construction Contingency.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly at Contractor's sole expense after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails promptly to notify the Contractor in writing, as required under Section 3.5.2, and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.2.6 Nothing contained in this Contract shall in any way limit the right of Owner to assert claims for damages resulting from patent or latent defects in the Work for the period of limitations prescribed by Arizona law, and the foregoing shall be in addition to any other rights and remedies Owner may have hereunder or at law or in equity.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the State of Arizona except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Contractor may not assign, in whole or in part, the Contract without first obtaining the written consent of the Owner, which consent may be withheld in Owner's sole discretion.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

§ 13.4.3 Notwithstanding any other provision to the contrary contained in the Contract Documents, provided that Owner continues to make payments of amounts not in dispute in accordance with the provisions of the Contract Documents, during all disputes, actions or claims and other matters in question arising out of, or relating to, the Contract Documents or the breach thereof, Contractor shall carry on the Work and maintain the Schedule, unless otherwise agreed between Contractor and Owner in writing.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate of six percent (6%) per annum, not to exceed the maximum rate permitted by law.

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

§ 13.8 CONFIDENTIALITY

§13.8.1 The Contractor and Owner entered into that certain Nondisclosure Agreement dated as of November 19, 2015 ("NDA") in order to protect certain confidential information of Owner, as further set forth in the NDA. Contractor and Owner hereby incorporate the terms, provisions and obligations of the NDA in these General Conditions.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

.1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;

.2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;

.3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or

.4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract (provided, however, if Owner commences the cure within such seven (7)-day period and thereafter diligently pursues such cure to completion, no default shall be deemed to have occurred) and recover from the Owner payment for Work executed, including Contractor's Fee and general conditions costs on such work, costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's

obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

.1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

.2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;

.3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or

.4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner may, by written notice, demand that the Contractor cure the default. If Contractor fails to commence and diligently pursue curing the default within seven (7) days after receipt of said written notice, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner, terminate employment of the Contractor and may, subject to any prior rights of the surety:

.1

Exclude the Contractor from the site and take possession of all materials, and equipment stored on the site that are intended to be incorporated into the Work;

.2

Accept assignment of subcontracts pursuant to Section 5.4; and

.3

Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and direct damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract. The costs of finishing the Work include, without limitation, all reasonable attorneys' fees, additional insurance premiums, additional interest because of any delay in completing the Work, and all other direct costs incurred by the Owner by reason of the termination of the Contractor as stated herein.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum, Guaranteed Maximum Price and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum and Guaranteed Maximum Price shall include profit. No adjustment shall be made to the extent

.1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or

.2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

.1 cease operations as directed by the Owner in the notice;

.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, including termination payments to subcontractors and demobilization costs, along with Contractor's Fee on the Work not executed.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event

giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum and/or the Guaranteed Maximum Price, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive Claims against each other for consequential, indirect, special, punitive or exemplary damages arising out of or relating to this Contract. This mutual waiver includes, without limitation

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential, indirect, special, punitive or exemplary damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and

all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution, excluding any equitable proceeding for emergency relief to prevent irreparable harm or the filing of any lawsuit or recording of any legal document that may be necessary to preserve a party's rights under applicable law.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person

or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the City of San Diego, California, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 ARBITRATION

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in the City of San Diego, California, in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement, and venue for such proceedings shall be in the City of San Diego, California. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

SCHEDULE 1

APPROVED PRESS RELEASE

SKANSKA

Press Release

November 4, 2015

Skanska awarded $55.9 million contract to build new Hilton-affiliated boutique hotel in downtown Portland

PORTLAND, Ore. – Skanska USA, one of the world's leading construction and development firms, announced it has been awarded a $55.9 million contract by The Widewaters Group to construct the Porter Hotel in downtown Portland.

The full value of the contract will be included in Skanska USA Building's Q4 2015 order bookings. The architect of record is HC Architecture of Atlanta.

Construction will begin this fall with completion in fall 2017.

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For further information, please contact:
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Dianne Danowski Smith, Publix NW for Skanska, 503.201.7019, dianne@publixnw.com

This and previous releases can also be found at www.usa.skanska.com

Skanska USA is one of the largest, most financially sound construction and development companies in the U.S., serving a broad range of clients including those in transportation, power, industrial, water/wastewater, healthcare, education, sports, data centers, government, aviation and commercial. Headquartered in New York with offices in 34 metro areas, we have more than 10,000 employees committed to being leaders in safety, project execution, sustainability, ethics and people development. In 2014, our work in building construction, civil and power/industrial construction, commercial development and infrastructure development (public-private partnerships) generated $7.3 billion in revenue. Global revenue of parent company Skanska AB, headquartered in Stockholm and listed on the Stockholm Stock Exchange, totaled $21 billion in 2014. Skanska shares are publicly traded in the U.S. on the OTC market under the symbol SKBSY through a Level I American Depository Receipt program.

Exhibit 10.15

CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY [***], HAS BEEN OMITTED BECAUSE IT IS NOT MATERIAL AND IS THE TYPE THAT THE REGISTRANT TREATS AS PRIVATE AND CONFIDENTIAL.

Execution Version - CONFIDENTIAL

AMENDMENT NO. 1 TO COLLABORATION AND LICENSE AGREEMENT between DEXCOM, INC. and VERILY LIFE SCIENCES LLC (FORMERLY GOOGLE LIFE SCIENCES LLC)

THIS AMENDMENT NO. 1 TO COLLABORATION AND LICENSE AGREEMENT ("**First Amendment**") to the Collaboration Agreement (as defined below) is made effective as of October 25, 2016 (the "**First Amendment Effective Date**") by and between DexCom, Inc. (hereinafter referred to as "**DexCom**"), having its principal place of business at 6340 Sequence Drive, San Diego, California 92121, and Verily Life Sciences LLC (formerly Google Life Sciences LLC) ("**Verily**") having its principal place of business at 1600 Amphitheatre Parkway, Mountain View, CA 94043. DexCom and Verily are each referred to herein by name or, individually, as a "**Party**" or, collectively, as "**Parties**."

WHEREAS, DexCom and Verily are parties to a Collaboration and License Agreement effective August 10, 2015 (the "**Collaboration Agreement**"); and

WHEREAS, the Parties desire to amend the Collaboration Agreement in accordance with the provisions of this Amendment;

NOW, THEREFORE, as of the First Amendment Effective Date, in consideration of the mutual covenants and promises herein contained, the Parties agree as follows:

1. Amendment to the defined term "GLS". In each instance that the defined term "GLS" is used, including as part of other defined terms, it is hereby amended and replaced with the defined term "Verily".

2. Amendment of Section 1.13. A new Section 1.13 of the Collaboration Agreement is hereby inserted to read entirely as follows, and the remainder of Section 1 is hereby renumbered accordingly:

""**Collaboration Copyright**" means any copyright in Collaboration IP. Copyrights shall be considered "conceived" when such copyrights are first fixed in a tangible medium."

3. Amendment of Section 1.14. Section 1.14 (as renumbered pursuant to the above) of the Collaboration Agreement is hereby amended to read entirely as follows:

""**Collaboration IP**" means subject matter first conceived by or on behalf of a Party's employees or Third Parties acting on such Party's behalf, in each case in the course of activities conducted pursuant to the [***] and Commercialization Plan (whether alone or jointly with others), excluding any such subject matter [***]."

4. Amendment of Section 1.17. The last sentence of Section 1.17 (as renumbered pursuant to the above) of the Collaboration Agreement is hereby amended to read entirely as follows:

"Notwithstanding the foregoing, a Continuous Interstitial Glucose Monitoring Product excludes systems and components thereof to the extent specific or intended specifically for [***]."

5. Amendment of Section 1.27. Section 1.27 (as renumbered pursuant to the above) of the Collaboration Agreement is hereby amended to read entirely as follows:

""**Verily Know-How**" means any and all Know-How (a) incorporated by Verily into the First Product or Second Product or (b) otherwise used by Verily for its performance of the Development Program (or provided by Verily to DexCom in connection with the Development Program) and reasonably necessary for the Development, Manufacture or Commercialization of the First Product or Second Product within the Field in the Territory. The foregoing definition shall exclude any and all Know-How directed to [***] but include Know-How related to (i) [***] and (ii) [***]."

6. Amendment of Section 1.28. Section 1.28 (as renumbered pursuant to the above) of the Collaboration Agreement is hereby amended to insert the following at the end of the definition:

", but in each case of (a) through (d), excluding any and all Patents directed to [***] to the extent the Patents do not cover (i) [***], or (ii) [***]."

7. Amendment of Section 1.29. Section 1.29 (as renumbered pursuant to the above) of the Collaboration Agreement is hereby amended to read entirely as follows:

""**Verily IP**" means the Verily Licensed Patents, Verily Collaboration Copyrights and Verily Know-How."

8. Amendment of Sections 1.33, 1.34, 1.45 and 1.7. Each of Sections 1.33, 1.34 1.45 and 1.57 (as renumbered pursuant to the above) of the Collaboration Agreement are hereby amended to read entirely as follows:

"[intentionally omitted]"

9. Amendment of Section 1.58. Section 1.58 (as renumbered pursuant to the above) of the Collaboration Agreement is hereby amended to read entirely as follows:

""**Sensor Technology**" means (a) [***], (b) [***], (c) [***], (d) [***], and (e) the [***]."

10. Amendment of Section 3.1.1(b). Section 3.1.1(b) of the Collaboration Agreement is hereby amended to update the cross reference to the definition of Product from 1.49 to 1.50, consistent with the renumbering in Section 1.

11. Amendment of Section 4.1. Section 4.1 of the Collaboration Agreement is hereby amended such that the last reference to "Dexcom" is replaced with "DexCom."

12. Amendment of Section 7.1.1. Section 7.1.1 of the Collaboration Agreement is hereby amended such that the references to the defined term "Products" are replaced with the defined term "[***]".

13. Amendment of Section 7.1.3. Section 7.1.3 of the Collaboration Agreement is hereby amended to read entirely as follows:

"License to [***]. Verily hereby grants to DexCom a [***], sublicensable (through multiple tiers), [***] license under any [***] for all purposes and applications [***]. For clarity, to the extent the foregoing license overlaps with the licenses granted in Section 7.1.1, (a) the foregoing license shall not limit the [***] granted to DexCom in such licenses granted under Section 7.1.1 and (b) the [***] nature of the foregoing license does not limit DexCom's payment obligations under Article 8."

14. Amendment of Section 7.1.4. Section 7.1.4 of the Collaboration Agreement is hereby amended such that the reference to the defined term "Products" is replaced with the defined term "[***]".

15. Amendment of Section 7.2. Section 7.2 of the Collaboration Agreement is hereby amended to read entirely as follows:

"7.2 License to Verily.

7.2.1 License to Perform Development. Subject to the terms and conditions of this Agreement, DexCom hereby grants to Verily [***] sublicensable (subject to Section 7.1.4), [***] license to make, use and otherwise exploit Know-How and Patents controlled by DexCom and its Affiliates to perform its obligations under the [***].

7.2.2 [intentionally omitted]"

16. Insertion of Section 7.6. A new Section 7.6 of the Collaboration Agreement is hereby inserted to read entirely as follows:

"IC Supply. Verily shall notify DexCom of one or more [***] that are authorized to [***] and set forth in the [***] or Commercialization Plan (the "**Integrated Circuits**"). DexCom shall have the right to [***] ("**Supply Agreement**"). Verily will use Commercially Reasonable Efforts to help DexCom obtain [***]. Verily shall provide each [***] that has entered into [***] with DexCom all rights, licenses, information and know-how necessary for the [***]. DexCom shall have the right to [***] in the exercise of the rights granted to DexCom under this Agreement."

17. Amendment of Section 9.1.1. Section 9.1.1 of the Collaboration Agreement is hereby amended to read entirely as follows:

"General. As between the Parties, all right, title and interest to Collaboration IP first conceived (a) (i) solely by or on behalf of DexCom in the course of activities conducted pursuant to the [***] or Commercialization Plan ("**DexCom Collaboration IP**") and all intellectual property rights therein shall be solely owned by DexCom, (b) solely by or on behalf of Verily in the course of activities conducted pursuant to the [***] or Commercialization Plan ("**Verily Collaboration IP**") and all intellectual property rights therein shall be solely owned by Verily and (c) jointly by or on behalf of each Party in the course of activities conducted pursuant to the [***] or Commercialization Plan ("**Joint Collaboration IP**"), and all intellectual property rights therein shall be jointly owned by DexCom and Verily. Subject to the licenses and other rights granted to the other Party herein (including in Article 7), (i) each Party reserves the right to use, practice or otherwise exploit any and all sole inventions (DexCom Collaboration IP with respect to DexCom and Verily Collaboration IP with respect to Verily) and Joint Collaboration IP; and (ii) neither Party shall have any obligation to account to the other Party for profits, or to obtain any approval of the other Party to license, assign or otherwise exploit any Joint Collaboration IP or intellectual property with respect thereto, by reason of joint

ownership thereof, and each Party hereby waives any right it may have under the applicable Law of any jurisdiction to require any such approval or accounting."

18. Amendment of Sections 9.1.2 and 9.1.3. Each of Sections 9.1.2 and 9.1.3 of the Collaboration Agreement are hereby amended to read entirely as follows:

"[intentionally omitted]"

19. Amendment of Section 12.4. Section 12.4 of the Collaboration Agreement is hereby amended to read entirely as follows:

"Termination after Expiration of [***]. DexCom shall have the right to terminate this Agreement upon the expiration of the last to expire Patent within the [***]."

20. Amendment of Section 12.5.3. Section 12.5.3 of the Collaboration Agreement is hereby amended to read entirely as follows:

"General Survival. Sections 7.1.3 and this Section 12.5, and Article 1, Article 10, Article 13, and Article 14, shall survive expiration or termination of this Agreement for any reason. Except as otherwise provided in this Section 12.5, all rights and obligations of the Parties under this Agreement shall terminate upon expiration or termination of this Agreement for any reason."

21. Amendment of Section 12.5.4(b). Section 12.5.4(b) of the Collaboration Agreement is hereby amended to read entirely as follows:

"In the event of a termination by DexCom pursuant to Section 12.2 after Launch of the First Product (or if the First Product is never Launched, then the Launch of the Second Product), (i) the Term shall continue only for a period of [***] subsequent to the termination date and all of the Parties' rights and obligations under this Agreement shall continue for such [***] period, provided that (x) the product fee rates set forth in Section 8.3 shall be reduced by [***]% and (y) [***] after the termination date, each Party's obligations under [***] shall terminate, [***] and (ii) after such [***] period, only those rights and obligations set forth in Section 12.5.3 shall survive, and in addition, (1) the [***] referenced in [***] shall be [***], and (2) the [***] in [***]."

22. Amendment of Section 12.5.4(c). Section 12.5.4(c) of the Collaboration Agreement is hereby amended to read entirely as follows:

"In the event of a termination by Verily pursuant to Section 12.2after Launch of the First Product (or if the First Product is never Launched, then the Launch of the Second Product) or by either Party pursuant to Sections 12.3.1 (if a Product has been Launched pursuant to this Agreement) or 12.3.2, subject to Section 12.5.4(d) below, (i) the Term shall continue only for a period of [***] subsequent to the termination date and all of the Parties' rights and obligations under this Agreement shall continue for such [***] period, provided that [***] after the termination date (x) the product fee rates set forth in Section 8.3 shall be reduced by [***]% and (y) each Party's obligations under [***] shall terminate, [***] and (ii) [***]."

23. Insertion of Section 12.5.4(d). A new Section 12.5.4(d) of the Collaboration Agreement is hereby inserted to read entirely as follows:

"In the event of a termination by DexCom pursuant to Section 12.2 or Verily pursuant to Sections 12.3.1 (if a Product has been Launched pursuant to this

Agreement) or 12.3.2, with written notice to Verily within thirty (30) days of such termination, DexCom shall have the right to extend the provisions of Section 12.5.4(b) or (c), as applicable, by an additional period of [***], such that: (i) the Term shall continue only for a period of [***] subsequent to the termination date and all of the Parties' rights and obligations under this Agreement shall continue for such [***] period, provided that [***] after the termination date (x) the product fee rates set forth in Section 8.3 shall be reduced by [***]% and (y) each Party's obligations under [***] shall terminate, [***] (ii) [***]."

IN WITNESS WHEREOF, the Parties have executed this First Amendment in duplicate originals by their duly authorized representatives as of the Effective Date.

VERILY LIFE SCIENCES LLC **DEXCOM, INC.**

By: /s/ Andrew Conrad By: /s/ Jess Roper

Name: Andrew Conrad Name: Jess Roper

Title: Authorized Signatory Title: CFO

CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY [***], HAS BEEN OMITTED BECAUSE IT IS NOT MATERIAL AND IS THE TYPE THAT THE REGISTRANT TREATS AS PRIVATE AND CONFIDENTIAL.

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AMENDED AND RESTATED COLLABORATION AND LICENSE AGREEMENT

This AMENDED AND RESTATED COLLABORATION AND LICENSE AGREEMENT (the "**Agreement**") is executed on November 20, 2018 (the "**Effective Date**") (as defined below) by and between DexCom, Inc., ("**DexCom**") having its principal place of business at 6340 Sequence Drive, San Diego, California 92121, Verily Ireland Limited ("**VIL**") having its principal place of business at 70 Sir John Rogerson's Quay, Dublin 2, Ireland and Verily Life Sciences LLC (formerly Google Life Sciences LLC) ("**VLS**" and together with VIL, "**Verily**"), having its principal place of business at 1600 Amphitheatre Parkway, Mountain View, California 94043, and amends and restates in its entirety that certain Collaboration and License Agreement dated as of August 10, 2015 ("**Original Effective Date**") by and between DexCom and Verily (as amended by Amendment No. 1 thereto effective as of October 25, 2016, the "**Original Agreement**"). DexCom and Verily are each referred to herein by name or, individually, as a "**Party**" or, collectively, as "**Parties**."

BACKGROUND

A. Verily has rights to certain proprietary technologies related to electronic devices and assemblies for glucose monitoring, including receiving and transmitting electronic signals in connection therewith.

B. DexCom develops, manufactures and distributes continuous glucose monitoring systems and components of such systems, and has rights to certain proprietary technologies relating to such systems.

C. Verily and DexCom wish to collaboratively develop Future Products (as defined below) and for DexCom to commercialize such Future Products, all on the terms and conditions set forth herein.

D. In order to better align the goals and interests of the parties, Verily and DexCom wish to amend certain terms of the Original Agreement, and to restate the Original Agreement, as so amended, in its entirety in this Agreement, all on the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the mutual covenants and agreements provided herein below and other consideration, the receipt and sufficiency of which is hereby acknowledged, DexCom and Verily hereby agree as follows:

Article 1.
DEFINITIONS

The following capitalized terms shall have the meanings given in this Article 1 when used in this Agreement:

1.1 "**510(k)**" means a pre-market notification submitted to the FDA for clearance under Section 510(k) of the FD&C Act, 21 U.S.C. § 360(k), and 21 C.F.R. Part 807, Subpart E.

1.2 "**Acceptance Submission Notice**" has the meaning set forth in Section 3.9.1.

1.3 "**Acquirer**" means a Third Party with whom DexCom enters into a definitive agreement pursuant to which a Change of Control is effected.

1.4 "**Additional Product**" means any [***] that the Parties agree to [***] hereunder in accordance with Section 4.3, as such [***] may be updated or upgraded pursuant to the Final Additional Product Supplement.

1.5 "**Adverse Event**" means, with respect to a Product, any reportable event, as defined in the United States under 21 C.F.R. § 803.3 (or other applicable Law in the Territory) or pursuant to Good Clinical Practice.

1.6 "**Affiliate**" means (a) with respect to Verily, the subsidiaries of Verily, and (b) with respect to DexCom, any Person directly or indirectly controlling, controlled by or under common control with DexCom. For purposes of this Section 1.5 only, "control" means (a) direct or indirect ownership of more than fifty percent (50%) (or, if less than fifty percent (50%), the maximum ownership interest permitted by applicable Law) of the stock or shares having the right to vote for the election of directors of such corporate entity or (b) the possession, directly or indirectly, of the power to direct, or cause the direction of, the management or policies of such entity, whether through the ownership of voting securities, by contract or otherwise. For the avoidance of doubt, the following shall not be Affiliates of Verily for purposes of this Agreement: (i) Alphabet Inc. or any subsidiaries of Alphabet Inc. other than Verily and its subsidiaries; (ii) Google LLC or any subsidiaries of Google LLC; (iii) Calico LLC, (iv) all portfolio companies of GV Management Company, L.L.C., CapitalG Management Company LLC or any other investment arm of Verily or Google Inc.; (v) all portfolio companies of Verily or Google Inc. or its subsidiaries in which such entity or entities hold securities primarily for investment purposes, and (vi) any joint venture entity formed by Verily or its subsidiaries together with one or more Third Parties unless Verily possesses the power to wholly-control such joint venture entity, whether through the ownership of voting securities, by contract, or otherwise.

1.7 "**Agreement**" has the meaning set forth in the Preamble.

1.8 "**Alliance Manager**" means the individual appointed by a Party to act as alliance manager for that Party.

1.9 "**Alphabet**" means Alphabet Inc. having its principal place of business at 1600 Amphitheatre Parkway, Mountain View, CA 94043.

1.10 "**Alternative Product**" means (a) any [***], or (b) if [***] elects not to submit [***] with respect to the applicable [***], then any [***], provided, however, that if [***], it being understood that in no event shall [***]. [***] shall be deemed to have occurred if either of the following occurs: [***]; or (ii) [***]. Notwithstanding the foregoing, with respect to any [***]. A [***] shall be subject to this Section 1.9 only if [***]. For purposes of this definition:

(a) "[***]" means a [***] that (in each case as compared to the [***] (1) comprises or utilizes (a) [***], (b) [***], (c) [***], (d) [***], (e) [***], (f) [***], and/or (g) [***], and (2) [***];

(b) "**Sublicensee**" means a Third Party that has [***]; and

(c) "[***]" means that [***].

1.11 "**Antitrust Clearance Date**" has the meaning set forth in the Stock Purchase Agreement.

1.12 "**Antitrust Law**" has the meaning set forth in the Stock Purchase Agreement.

1.13 "**Assigned Software**" means any [***] which (a) is [***] and/or (b) [***].

1.14 "**Bankruptcy Code**" has the meaning set forth in Section 14.12.

1.15 "[***]" has the meaning set forth in Section 7.1.2(b).

1.16 "**Business Day**" means any day other than a Saturday, Sunday or any other day on which commercial banks in the State of California, U.S.A. are authorized or required by Law to remain closed.

1.17 "[***]" means any of the following [***]: (a) [***]; and/or (b) [***].

1.18 "[***]" means any and all [***], (i) whether on a standalone basis or as integrated into, or connected with, other products, systems ([***]), or components (including but not limited to the Products), whether or not such products, systems, or components [***], and (ii) whether or not such [***]. [***] may include the following to the extent used or incorporated in such [***]: (a) [***]. [***] exclude [***]. If there is another method for [***] and the Parties agree in writing [***], then this definition will be expanded to include that method.

1.19 "**Change of Control**" means any merger, consolidation, sale of substantially all of the assets to which this Agreement relates, or similar transaction or series of transactions in which DexCom is the entity being acquired or selling such assets.

1.20 "**Chief Executive**" means the Chief Executive Officer of DexCom and/or the Chief Executive Officer of Verily, as applicable.

1.21 "**Collaboration**" means any and all activities performed by or on behalf of each Party under this Agreement.

1.22 "**Collaboration IP**" means any and all IP in subject matter conceived, developed or (in the case of IP in Software) authored by or on behalf of a Party and/or its Affiliates, and/or any Third Party acting on such Party's behalf (or employees of the foregoing), in each case in the course of performing activities under the [***], and/or activities that have been or will be conducted under this Agreement, [***], at any time during the period from the Original Effective Date through the end of the Term of this Agreement (including, for the sake of clarity, the period beginning as of the Original Effective Date and ended on the Effective Date).

1.23 "**Collaboration Patent**" means any Patent that claims Collaboration IP.

1.24 "**Commercialization**" means, with respect to a [***] in connection with or support of any of the foregoing. Commercialization also includes activities with respect to [***]. "**Commercialize**" and "**Commercializing**" have their correlative meanings.

1.25 "**Commercialization Plan**" means a [***].

1.26 "**Commercially Reasonable Efforts**" means, with respect to a Party, the efforts and resources normally applied by such Party to its other programs and products of similar commercial potential at a similar stage in its product life, but no less than a sustained, continued and active commitment of efforts and resources (financial and otherwise) consistent with those normally applied in the medical device industry for novel, high-priority programs and products of similar commercial potential, provided that the determination of efforts and resources applied (or to be applied) by DexCom shall not take into consideration any of the payments made or to be made (including the possibility thereof) by DexCom to Verily under this Agreement. Without limiting the foregoing, Commercially Reasonable Efforts shall require the applicable Party to: (a) promptly assign responsibilities for activities for which it is responsible to specific employee(s) who are held accountable for the progress, monitoring and completion of such activities, (b) set and consistently seek to achieve meaningful objectives for carrying out such activities, and (c) consistently make and implement decisions and allocate the full complement of resources necessary or appropriate to advance progress with respect to and complete such objectives in an expeditious manner.

1.27 "**Communication IP**" means Collaboration IP in subject matter consisting of [***].

1.28 "**Competing Program**" means a [***].

1.29 "**Completed Deliverables**" has the meaning set forth in Section 3.9.1.

1.30 "**Confidential Information**" has the meaning set forth in Section 10.1.

1.31 "**Controlled**" means, with respect to any item of IP, the possession (whether by ownership or license, other than a license granted by one Party to the other pursuant to this Agreement), by a Party (or its Affiliates) of the ability to grant to the other Party an assignment, exclusivity, access, a license or a sublicense (as applicable), or a covenant, or to extend other rights as provided in this Agreement, to such IP, without violating the terms of any agreement or other arrangements with any Affiliate or Third Party existing at the time such Party (or its Affiliates) would be first required to grant any such assignment, exclusivity, access, license, sublicense, covenant, or any other right under this Agreement. For clarity, in the event an item of IP is "Controlled" by a Party as of the Original Effective Date or thereafter during the term of the Original Agreement and/or the Term, and is subsequently transferred to an Affiliate of such Party or a Third Party, such item shall continue to be covered by the licenses granted under this Agreement following such transfer (to the same extent, if any, that it was covered prior to such transfer).

1.32 "[***]" means, [***].

1.33 "**Defending Party**" has the meaning set forth in Section 9.4.

1.34 "**DexCom Indemnitees**" has the meaning set forth in Section 11.4.1.

1.35 "**Development**" means, with respect to a product, any and all development activities, including, to the extent applicable, use, electrical and mechanical design, chemistry and materials development, software and firmware development, [***] development and scale-

up, design and process verification and validation, test method development, biocompatibility and toxicology, quality assurance/quality control development, statistical analysis, primary packaging development, [***] in support of Regulatory Approvals, [***] for the purposes of obtaining Regulatory Approvals, and development and implementation of (a) [***], (b) [***] and (c) [***]. "**Develop**" and "**Developed**" have their correlative meaning.

1.36 "**Development Completion**" means, with respect to a [***] completion of its obligations [***].

1.37 "**DexCom [***]**" has the meaning set forth in Section 7.1.5.

1.38 "**DexCom Deliverable**" has the meaning set forth in Section 11.4.3.

1.39 "**Development Plan**" means (a) [***] and (b) [***], the terms of which are incorporated by reference herein, as such plans may be amended or updated as provided in this Agreement (including any amendments [***]). The Parties acknowledge and agree that the [***], in effect as of the Effective Date, have been exchanged between the Parties in (or as one or more attachments to) a signed letter on the date hereof; provided, however, that the [***] is, as of the Effective Date, tentative and will be effective only upon mutual agreement of the Parties within ninety (90) days after the Effective Date.

1.40 "[***]" has the meaning set forth in Section 3.1.

1.41 "**DexCom**" has the meaning set forth in the Preamble.

1.42 "**DexCom Background IP**" means any and all IP (other than Collaboration IP) Controlled by DexCom and its Affiliates as of the Effective Date and/or at any time between the Effective Date and the end of the Term.

1.43 "**DexCom [***]**" means any present or future (a) [***], or (b) [***].

1.44 "**DexCom Collaboration IP**" has the meaning set forth in Section 9.1.1.

1.45 "**DexCom Collaboration Patents**" means any Collaboration Patents solely owned by DexCom and/or its Affiliates.

1.46 "**DexCom Common Stock**" means shares of common stock of DexCom.

1.47 "**DexCom Delay**" has the meaning set forth in Section 3.8.1.

1.48 "**DexCom IP**" means DexCom Collaboration IP and DexCom Background IP.

1.49 "**DexCom Other Collaboration IP**" means Collaboration IP in subject matter consisting of (i) [***] and/or (ii) [***], in each case (i) and (ii) where such Collaboration IP is conceived, developed, and/or authored solely by or on behalf of DexCom, and/or its Affiliates, and/or a Third Party acting on DexCom's behalf (or employees of the foregoing).

1.50 "**DexCom Programs**" means DexCom's programs [***].

1.51 "**Dispute**" has the meaning set forth in Section 13.1.

1.52 "**Enforcement Action**" has the meaning set forth in Section 9.5.2.

1.53 "**Enforcing Party**" has the meaning set forth in Section 9.5.4.

1.54 "**Effective Date**" has the meaning set forth in the preamble.

1.55 "[***]" means [***].

1.56 "[***]" means [***].

1.57 **Executive Sponsor**" has the meaning set forth in Section 2.1.

1.58 "**Existing Distribution Agreement**" means that certain [***].

1.59 "**FDA**" means the United States Food and Drug Administration, or any successor agency thereto.

1.60 1.60 "**Final Additional Product Supplement**" has the meaning set forth in Section 4.3.

1.61 "**First Product**" means the [***].

1.62 "**Force Majeure Event**" has the meaning set forth in Section 14.9.

1.63 "**Future Products**" means the Products other than the First Product.

1.64 "**Good Clinical Practice**" means generally accepted standards for design, conduct, performance, monitoring, auditing, analysis and reporting of clinical trials.

1.65 "[***].

1.66 "**HSR Act**" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

1.67 "**Incentive Milestone Event**" has the meaning set forth in Section 8.2.3.

1.68 "**Indemnify**" has the meaning set forth in Section 11.4.1.

1.69 "**Initial VWAP**" means (i) if the Agreement is announced by press release prior to the open of trading on the Nasdaq Stock Market on the Effective Date, the VWAP of DexCom Common Stock on the day prior to the Effective Date, or (ii) if the Agreement is announced by press release after the close of trading on the Nasdaq Stock Market on the Effective Date, the VWAP of DexCom Common Stock on the Effective Date.

1.70 "[***]" has the meaning set forth in Section 7.6.1(a).

1.71 "[***]" has the meaning set forth in Section 7.6.3(e).

1.72 "**Infringing Product**" has the meaning set forth in Section 9.5.1.

1.73 "**IP**" means any and all intellectual property rights of every kind throughout the world, including any and all: (a) Patents, (b) rights in Software, (c) rights in Know-How, (d) copyrights, and registrations and applications for copyrights, and (e) rights and remedies against past, present and future infringement, misappropriation, or other violation thereof with respect to any of the foregoing**.**

1.74 "**Joint Collaboration IP**" means any and all Collaboration IP (other than the DexCom Collaboration IP and the Verily Collaboration IP). For clarity, Joint Collaboration IP shall include any and all Communication IP.

1.75 "**Joint Collaboration Know-How**" has the meaning set forth in Section 10.2.

1.76 "**Joint Collaboration Patent**" any Collaboration Patent jointly owned by Verily and DexCom.

1.77 "**Know-How**" means any proprietary data, results, material(s), technology, and nonpublic information of any type whatsoever, in any tangible or intangible form, including information, techniques, technology, prototypes, practices, commercial models (including product pricing and/or reimbursement models or strategies), trade secrets, software, algorithms, discoveries, developments, inventions (whether patentable or not), methods, knowledge, know-how, skill, experience, chemical, pharmacological, toxicological and clinical test data and results, protocols and process for the conduct of pre-clinical and clinical studies, analytical and quality control results or descriptions, software and algorithms, reports and study reports.

1.78 "**Launch**" means the first bona fide, arm's length commercial sale of a Product that makes such Product generally commercially available in any country following receipt of Marketing Approval for such Product in such country. "**Launched**" has its correlative meaning.

1.79 "**Law**" means, individually and collectively, any and all laws, ordinances, orders, rules, rulings, directives and regulations of any kind whatsoever of any governmental authority or Regulatory Authority within the applicable jurisdiction.

1.80 "**Losses**" has the meaning set forth in Section 11.4.1.

1.81 "**Manufacture**" means all activities involved in manufacturing, preparing, quality control, testing, packaging and storing any of the products. "**Manufacturing**" has its correlative meaning.

1.82 "**Marketing Approval**" means, with respect to a Product in a particular jurisdiction, all clearances, approvals, licenses, registrations or authorizations necessary for the Commercialization of such Product in such jurisdiction in the indication(s) specified in the Specifications, including, only where mandatory for Commercialization of such Product, approval of labeling, price or reimbursement.

1.83 "**Milestone Date VWAP**" means, with respect to a Milestone Event, the VWAP of DexCom Common Stock as determined on the date that such Milestone Event is first achieved, as equitably adjusted to reflect any stock split, stock dividend, combination, reclassification, recapitalization or other similar event involving DexCom Common Stock.

1.84 "**Milestone Event**" has the meaning set forth in Section 8.2.1.

1.85 "**Milestone Payment**" has the meaning set forth in Section 8.2.1.

1.86 "**Onduo**" means Onduo, LLC, having its principal place of business at 55 Chapel Street Suite 10, Newton, Massachusetts 02458.

1.87 "**Original Agreement**" has the meaning set forth in the Preamble.

1.88 "**Original [***]**" means the [***] as defined under the Original Agreement as in effect at any relevant time during the term of the Original Agreement.

1.89 "**Outside Software**" has the meaning set forth in Section 2.3.2.

1.90 "**Party**" has the meaning set forth in the Preamble.

1.91 "**Patent**" means any of the following, whether existing now or in the future anywhere in the world: (a) any issued patent, including inventor's certificates, substitutions, extensions, confirmations, reissues, reexamination, renewal or any like governmental grant for protection of inventions; and (b) any pending application for any of the foregoing, including any continuation, divisional, substitution, continuations-in-part, provisional and converted provisional applications.

1.92 "**Permitted Encumbrances**" means the agreements between Verily and/or its Affiliates, Alphabet, or Alphabet Affiliates and a Third Party with respect to the Verily IP in the [***], as set out at Exhibit 1.92.

1.93 "**Person**" means any individual, corporation, partnership, association, joint-stock company, trust, unincorporated organization or government or political subdivision thereof.

1.94 "**Phase Gate IV**" means the date of completion of the design validation, clinical pivotal trial (if applicable), and process validation for the applicable Product, in accordance with DexCom's standard operating procedures [***].

1.95 "**PMA**" means a pre-market approval application submitted to the FDA for approval in accordance with 21 U.S.C. § 360(e) and 21 C.F.R. Part 814.

1.96 "**Pricing Assumptions**" means that (a) [***]; (b) [***]; (c) [***]; (d) [***], (e) [***], and (f) [***].

1.97 "**Pricing Expectations**" has the meaning set forth in Section 7.6.5(a).

1.98 "[***]" means a [***]. For clarity, [***].

1.99 "**Prior Agreements**" has the meaning set forth in Section 10.5.

1.100 "**Product**" means the First Product, Second Product, the Third Product (if agreed by DexCom pursuant to Section 3.1.1), and/or any Additional Product (if agreed by the Parties pursuant to Section 4.3).

1.101 "**Product Deadlines**" means the deadlines for the completion of Development, Regulatory Filing in the U.S. and EU and Launch in the U.S. and EU for the [***]. The Product Deadlines for such Development, Regulatory Filing(s) [***] are also referred to as "**Product Development Deadlines**." The Product Deadlines for such Launch in the U.S. and EU are also referred to as "**Product Launch Deadlines**."

1.102 "**Product Development Obligations**" means the development, clinical and regulatory obligations of [***].

1.103 "**Proposed Additional Product Supplement**" has the meaning set forth in Section 4.3.

1.104 "**Proposed Third Product Supplement**" has the meaning set forth in Section 3.1.1.

1.105 "**Prosecution and Maintenance**" means, with respect to a Patent, the preparing, filing, prosecuting and maintenance of such Patent, as well as reexaminations, reissues, requests for Patent term extensions and the like with respect to such Patent, together with the conduct of interferences, the defense of post-grant reviews, *inter partes* reviews, oppositions and other similar proceedings with respect to the particular Patent; and "**Prosecute and Maintain**" shall have the correlative meaning.

1.106 "**Regulatory Approval**" means, with respect to a Product in a particular jurisdiction, any Marketing Approval and all clearances, approvals, licenses, registrations or authorizations necessary for the Development or Manufacture of such Product in such jurisdiction.

1.107 "**Regulatory Authority**" means any federal, national, multinational, state, provincial or local regulatory agency, department, bureau or other governmental entity, agency or other organization (e.g., notified bodies) with authority over the Development, Manufacture, Commercialization or other use or exploitation (including the granting of Marketing Approvals) of any Product in any jurisdiction, including the FDA.

1.108 "**Regulatory Filing**" means any filing, application or submission for Regulatory Approval, and any notification and other correspondence made to or with a Regulatory Authority in connection with a Regulatory Approval, in each case that are necessary or reasonably desirable in Development, Manufacture or Commercialization in a particular country, whether submitted before or after a Marketing Approval in the country, including a PMA, a 510(k), or any other pre-market notification of intent, including any Regulatory Approvals, in each case with respect to a Product.

1.109 "**Required Party**" has the meaning set forth in Section 10.4.

1.110 "**Second Product**" means the [***].

1.111 "**[***]**" means [***] in subject matter consisting of: (a) [***], (b) [***], (c) [***], (d) [***], (e) [***], or (f) any combination thereof.

1.112 "**Software**" means software source code, object code, and any associated technical documentation, including, if applicable, the associated graphical interface, images, design materials, and schema design.

1.113 "**Specifications**" means, with respect to a Product or component, written functional, performance, form and configuration specifications, cost objectives and technical designs, and proposed indications for use, of or for such Product or component that are consistent with the technological capabilities of such Product or component and are intended to support the market requirements for such Product, together with the acceptance criteria for such Product or component, [***].

1.114 "**Standalone Product Limitation**" has the meaning set forth in Section 7.1.2(b).

1.115 "**Statement of Work**" means a writing executed by the Parties that sets forth the services to be rendered by Verily and any terms and conditions related to such services.

1.116 "**Stock Purchase Agreement**" has the meaning set forth in Section 8.6.

1.117 "**Suppliers**" has the meaning set forth in Section 7.6.1(a).

1.118 "**Supply Agreements**" has the meaning set forth in Section 7.6.1(a).

1.119 "**Technical Lead**" has the meaning set forth in Section 2.1.4.

1.120 "**Term**" has the meaning set forth in Section 12.1.

1.121 "**Territory**" means [***].

1.122 "**Third Party**" means any Person other than DexCom, Verily or their respective Affiliates.

1.123 "**Third Party Claim**" has the meaning set forth in Section 11.4.1.

1.124 "**Third Product**" means the [***], if any, developed pursuant to Section 3.1.1, as such [***] may be updated or upgraded. For the avoidance of doubt, all references to Third Product in this Agreement, except for the restrictive covenant set forth in Section 3.1.1, shall apply if and only if DexCom elects to proceed with Third Product development as set forth in Section 3.1.1 and shall otherwise have no effect in this Agreement.

1.125 "**Third Product Negotiation Period**" has the meaning set forth in Section 3.1.1.

1.126 "**Third Product Supplement**" has the meaning set forth in Section 3.1.1.

1.127 "**Total Product Revenue**" means total net revenue attributable to the sale by DexCom and/or its Affiliates of the First Product, Second Product, Third Product, and/or any Alternative Product, as calculated in accordance with GAAP, consistent with DexCom's revenue disclosed in DexCom's financial statements filed with the SEC in its periodic (quarterly and annual) reports. If a Product (or Alternative Product) is Commercialized, directly or indirectly, in a manner that is combined or integrated with any product or service that is not a Product ("**Combination Product**"), the portion of the total net revenue attributable to the Product (or Alternative Product) shall be calculated by [***].

1.128 "**Trademark**" means any trademark, trade name, service mark, service name, brand, domain name, trade dress, logo, slogan or other indicia of origin or ownership, including registrations and applications therefor and the goodwill and activities associated with each of the foregoing.

1.129 "**Upfront Payment Amount**" has the meaning set forth in Section 8.1.

1.130 "**Upfront Shares**" has the meaning set forth in Section 8.1.

1.131 "**Verily**" has the meaning set forth in the Preamble.

1.132 "**Verily Background IP**" means any and all IP (other than Collaboration IP) Controlled by Verily and/or its Affiliates as of the Effective Date and/or at any time during the Term.

1.133 "**Verily [***]**" has the meaning set forth in Section 4.3.

1.134 "**Verily Collaboration IP**" means Verily Software IP and Verily Retained Know-How.

1.135 "**Verily Delay**" has the meaning set forth in Section 3.1.2.

1.136 "**Verily Deliverable**" has the meaning set forth in Section 11.4.1.

1.137 "**Verily Development Services**" means [***] to support the [***].

1.138 "**Verily Indemnitees**" has the meaning set forth in Section 11.4.3.

1.139 "**Verily Infrastructure Services**" means [***].

1.140 "**Verily I**P" means, collectively, (i) Verily Collaboration IP, (ii) Verily Licensed Patents, and (iii) Verily Know-How.

1.141 "**Verily Know-How**" means any and all Know-How (a) incorporated by Verily into the First Product, Second Product, Third Product and/or any Additional Product or (b) otherwise used by Verily for its performance of [***].

1.142 "**Verily Licensed Patents**" means (a) (i) the [***], (ii) any Patents that are entitled to claim priority to the foregoing Patents, and (iii) any Patents hereafter issuing on any of the Patents described in clause (i) or (ii) above, (b) [***], and/or (c) any other Patents that are

Controlled by Verily (and/or its Affiliates) as of the Effective Date and/or at any time between the Effective Date and the end of the Term (excluding any Patents that are Verily Software IP), which Patents under (c) claim or cover the First Product, Second Product, Third Product and/or any Additional Product.

1.143 "**[***]**" means the Patents listed in Exhibit 1.143.

1.144 "**[***]**" means the Patents listed in Exhibit 1.144.

1.145 "**Verily Milestone Shares**" has the meaning set forth in Section 8.2.1.

1.146 "**Verily Platform**" means the [***] platform developed by or on behalf of [***], which platform (a) [***] and (b) [***].

1.147 "**Verily Programs**" means Verily's programs for [***].

1.148 "**Verily Program Notice**" has the meaning set forth in Section 4.2.

1.149 "**Verily Program [***]**" has the meaning set forth in Section 4.2.

1.150 "**Verily Retained Know-How**" has the meaning set forth in Section 9.1.4.

1.151 "**Verily Services**" means, collectively, the [***].

1.152 "**Verily Software IP**" means [***].

1.153 "**Verily Trademarks**" means the Trademarks set forth on Exhibit 1.153 or such replacements therefor as may be designated by Verily from time to time.

1.154 "**Verily Upfront Shares**" has the meaning set forth in Section 8.1.

1.155 "**VWAP**" means, with respect to a publicly traded stock and a specified end date, the volume weighted average trading price of such stock during a period of fifteen (15) consecutive trading days ending on the specified end date, calculated utilizing "VWAP" in the Bloomberg function VAP.

1.156 Interpretation. The captions and headings to this Agreement are for convenience only, and are to be of no force or effect in construing or interpreting any of the provisions of this Agreement. Unless specified to the contrary, references to Articles, Sections or Exhibits mean the particular Articles, Sections or Exhibits to this Agreement and references to this Agreement include all Exhibits hereto. Unless context otherwise clearly requires, whenever used in this Agreement: (a) the words "include" or "including" shall be construed as incorporating, also, "but not limited to" or "without limitation;" (b) the word "day" or "year" means a calendar day or year unless otherwise specified; (c) the word "notice" means notice in writing (whether or not specifically stated) and shall include notices, consents, approvals and other communications contemplated under this Agreement; (d) the words "hereof," "herein," "hereby" and derivative or similar words refer to this Agreement (including any Exhibits); (e) the word "or" shall be construed as the inclusive meaning identified with the phrase "and/or;" (f) provisions that require that a Party, the Parties or the Executive Sponsors "agree," "consent" or "approve" or the like

shall require that such agreement, consent or approval be specific and in writing, whether by written agreement, letter, approved minutes or otherwise; (g) words of any gender include the other gender; (h) words using the singular or plural number also include the plural or singular number, respectively; (i) references to any specific law, rule or regulation, or article, section or other division thereof, shall be deemed to include the then-current amendments thereto or any replacement law, rule or regulation thereof; and (j) neither Party nor its Affiliates shall be deemed to be acting "on behalf of" or "under authority of" the other Party hereunder. This Agreement has been prepared jointly and shall not be strictly construed against either Party. Ambiguities, if any, in this Agreement shall not be construed against any Party, irrespective of which Party may be deemed to have authored the ambiguous provision.

Article 2.
GOVERNANCE

2.1 Executive Sponsors. The Parties will each appoint an individual to act as executive sponsor for that Party (each, an "**Executive Sponsor**"). The Executive Sponsors shall provide oversight with respect to the Development of the Products and the Parties' respective activities to be conducted under this Agreement. The initial Executive Sponsor for DexCom shall be [***] and for Verily shall be [***]. The name and contact information for any replacement Executive Sponsor(s) chosen by a Party in its sole discretion from time to time, shall be promptly provided to the other Party in writing.

2.1.1 Meetings. The Executive Sponsors will meet [***], and more or less frequently as the Parties mutually deem appropriate, on such dates, and at such places and times, as provided herein or as the Parties shall agree. Meetings of the Executive Sponsors may occur [***]; provided, that at least [***] of the Executive Sponsor meetings per calendar year shall be held in person. [***]. As appropriate, other employee representatives of the Parties may attend meetings of the Executive Sponsors as nonvoting observers, but no personnel of a Party's Affiliates or of a Third Party may attend unless otherwise mutually agreed to by the Parties. Each Party may also call for special meetings to resolve particular matters requested by such Party.

2.1.2 Decision Making. Decisions of the Executive Sponsors shall be made [***]. Each Party shall work in good faith to [***] and act in the general spirit of cooperation (taking into consideration the scope of the Executive Sponsors' authority and the principles set forth in Sections 2.2.1 and 2.2.2) and in no event shall either Party unreasonably withhold, condition or delay any approval or other decision of the Executive Sponsors. Except as set forth in Section 3.3, in the event that the Executive Sponsors fail [***] with respect to a particular matter within its authority, then either Party may, by notice to the other Party, have such matter referred to [***] for resolution by good faith discussions for a period of at least fifteen (15) Business Days. In the event that [***] are unable to reach agreement with respect to such matter within such fifteen (15) Business Days, then the dispute shall be resolved pursuant to Article 13, provided that each Party shall retain final decision-making authority with respect to [***] (so long as in compliance with this Agreement).

2.1.3 Alliance Managers. Each Party shall appoint an Alliance Manager, who will serve as a primary point of contact between the Parties, and who shall be responsible for communicating the status of activities under this Agreement to its Executive Sponsor and to the other Party's Alliance Manager. The initial Alliance Manager for DexCom shall be [***] and for Verily shall be [***]. The Alliance Managers shall be the primary point of contact for the Parties

with respect to the activities to be conducted under this Agreement. The name and contact information for the Alliance Managers, as well as any replacement(s) chosen by either Party in their sole discretion from time to time, shall be promptly provided to the other Party in writing.

2.1.4 Technical Leads. The Parties will each appoint an individual to act as a technical lead for that Party (each, a "**Technical Lead**"). The initial Technical Lead for DexCom shall be [***], and for Verily shall be [***] and [***]. The name and contact information for the Technical Leads, as well as any replacement(s) chosen by either Party in their sole discretion from time to time, shall be promptly provided to the other Party in writing. The Technical Leads shall be responsible for (i) communicating on day-to-day implementation [***] with the other Technical Lead, and (ii) proposing updates or amendments [***] to the Executive Sponsors in accordance with Section 3.3.

2.2 Authority.

2.2.1 General. Notwithstanding the appointment of the Executive Sponsors, each Party shall retain the rights, powers and discretion granted to it hereunder, and the Executive Sponsors shall not be delegated or vested with rights, powers or discretion unless such delegation or vesting is expressly provided herein, or the Parties expressly so agree in writing. The Executive Sponsors shall not have the power to (i) amend, modify or waive compliance with this Agreement, (ii) to determine whether or not a Party has met its diligence or other obligations under the Agreement, or (iii) to determine whether or not a breach of this Agreement has occurred, and no decision of the Executive Sponsors shall be in contravention of any terms and conditions of this Agreement.

2.2.2 Guiding Principles. The Executive Sponsors shall perform their responsibilities under this Agreement based on the principles of prompt and diligent Development and Commercialization of Future Products in [***] throughout the Territory, consistent with Commercially Reasonable Efforts.

2.3 Day-to-Day Responsibilities.

2.3.1 Each Party shall: (a) be responsible for its day-to-day activities hereunder, provided that such activities are consistent with the express terms of this Agreement or the decisions of the Executive Sponsors within the scope of their authority specified herein; and (b) keep the other Party informed as to the progress of such activities as reasonably requested by the other Party and as otherwise determined by the Executive Sponsors. Without limiting the foregoing, (i) the Executive Sponsor of each Party shall promptly notify the Executive Sponsor of the other Party after becoming aware of circumstances that are reasonably likely to result in a delay in achieving a Product Deadline, achieving Phase Gate IV, or providing a Verily Service (as the case may be); [***].

2.3.2 The Parties' Technical Leads shall discuss use of Third Party Software or Software developed [***] ("**Outside Software**") as proposed to be incorporated into or relied on by any Assigned Software, in advance of delivery of such Assigned Software. If such use of Outside Software adversely impacts DexCom's IP rights in such Assigned Software or the licensing terms for such Outside Software would impose restrictions or obligations on DexCom as a result of such use, then Verily will not use such Outside Software in or with the Assigned Software without first obtaining approval from DexCom, such approval not to be unreasonably withheld. For clarity, DexCom's approval of a whitelisted open source license constitutes an

approval of the use of any Outside Software under such whitelisted open source license for purposes of the foregoing.

Article 3.
DEVELOPMENT; DILIGENCE

3.1 General. Subject to oversight and review of the Executive Sponsors, Verily and DexCom shall conduct a program to Develop the Second Product and, at DexCom's option in accordance with Section 3.1.1, the Third Product, in each case, on a collaborative basis and in accordance with the [***] (the "[***]"). Each Party shall use [***]. In addition, Verily shall, at its own cost, use [***], until Verily's Development Completion of such Verily Services or the end date specified for such Verily Services [***], whichever is earlier. In accordance with Section 8.11, each Party will bear its own costs in performing its obligations [***] except as otherwise expressly provided herein or otherwise agreed by the Parties. Notwithstanding anything to the contrary in this Agreement, as of the Effective Date, neither Party shall have any Development, Commercialization, support, manufacturing, or other performance obligations with respect to the First Product or otherwise [***].

3.1.1 Third Product. Commencing on the Effective Date, DexCom shall cooperate with Verily in good faith, and shall make its personnel available for discussion with Verily upon Verily's reasonable request, for purposes of evaluating and drafting Third Product requirements. [***]. The Parties shall [***]. Product deadlines in the Third Product Supplement shall be deemed Product Deadlines under this Agreement. Notwithstanding the foregoing, the Parties acknowledge and agree that (i) [***], (ii) [***]. In the event the Parties [***].

3.2 [***]. The Development of the Future Products shall be carried out in accordance [***], which may be updated or amended as set forth in Section 3.3.

3.2.1 Content [***]. The [***] will set forth the Development activities to be undertaken by each Party with respect to the Future Products, including: (1) up to date Specifications for the Second Product and, if applicable, Third Product or any Additional Product, (2) each Party's Product Development Obligations, (3) the Verily Services, (4) the acceptance criteria for the deliverables contemplated in the [***] and the Verily Services, and (5) the party responsible for performing each obligation and the deadline for such performance, consistent with the Product Development Deadlines. [***] will include the [***]. [***] will at all times contain terms that reflect the use of Commercially Reasonable Efforts to Develop the Second Product and, if applicable, Third Product or any Additional Product, provide the Verily Services and obtain Marketing Approval for the Second Product and, if applicable, Third Product or any Additional Product, in a timely manner; provided that no action shall be required to be taken with respect to the Third Product or any Additional Product unless the Parties agree on a final Third Product Supplement in accordance with Section 3.1.1, or such Additional Product in accordance with Section 4.4, as applicable.

3.3 Updates or Amendments [***] shall be reviewed by the Executive Sponsors on a quarterly basis (or more frequently if appropriate). The Technical Leads shall be responsible for proposing updates and/or amendments [***] for approval. The Executive Sponsors shall propose that their respective Party approve [***], which will become effective and supersede [***] as of the date of such written approval signed by authorized signatories of the Parties. In the event of a disagreement regarding a proposed update or amendment [***] that (a) cannot be resolved by the Executive Sponsors, and (b) will result in a delay (or is reasonably likely to result

in a delay) of [***] or more in any material aspect [***], the matter will be escalated to the Chief Executives. If the Chief Executives are unable to reach an agreement to amend or update [***] within thirty (30) days, [***]

3.4 Verily Services. Verily will provide to DexCom the [***], in each case [***], in accordance with this Agreement [***]. As part of the Verily Services, Verily will provide to DexCom [***], provided however, that, except for [***], Verily shall not be obligated to provide such assistance with respect to [***] Competing Programs. For the avoidance of doubt, [***] Verily Services do not include services in connection with [***]; if the Parties wish to contract for such services, the Parties will do so, subject to mutual agreement, in a separate agreement or Statement of Work.

3.5 Verily Additional Services. Upon DexCom's request in each case, the Parties will discuss in good faith entering into one or more Statement(s) of Work for the provision by Verily of services (other than the Verily Services) [***]. Each such Statement of Work shall describe, among other things, Verily's responsibilities, deliverables, and timelines, rights and obligations with respect to the services, as well as commercially reasonable fees payable by DexCom. Neither Party shall have any obligation to enter into such Statement of Work, and the terms discussed by the Parties shall not be binding unless set forth in a writing signed by both Parties.

3.6 DexCom Cooperation. At Verily's request, DexCom will promptly provide Verily with access and any licenses to any DexCom Software as reasonably necessary (a) to provide the Verily Services, (b) to facilitate interoperation of the Products with the Verily Platform, and (c) to fulfill Verily obligations [***], provided that Verily agrees not to use, copy or distribute DexCom Software, or disclose DexCom Software or related DexCom IP to Third Parties except as approved by DexCom in writing.

3.7 Resource Commitments. In conducting the activities assigned to it under the [***], each Party agrees to use scientific, technical and other personnel who are sufficiently qualified and have the requisite skills to perform such activities.

3.8 Product Deadlines.

3.8.1 DexCom Diligence Obligations. Without limiting DexCom's obligations under this Agreement, DexCom shall use Commercially Reasonable Efforts to achieve the Product Deadlines and perform its obligations [***] and [***]; provided that if DexCom fails to achieve a Product Deadline within the timeframe specified due to any causes such as unforeseen technical delays, regulatory or clinical process or delays, or delays caused by Verily's failure to perform the Verily Services or Verily's failure to perform its obligations [***] or the Commercialization Plan, in each case to the extent beyond the reasonable control of DexCom, and despite DexCom's Commercially Reasonable Efforts to achieve such Product Deadline, then DexCom shall not be deemed in default or breach of this Section 3.8.1 on account of such failure to achieve the Product Deadline, and the timeframe for achieving such Product Deadline will be extended by the time of the delay reasonably attributable to the causes that were beyond the reasonable control of DexCom. Subject to this Section 3.8.1, if there is a delay in achieving a Product Deadline for which DexCom is responsible under this Section 3.8.1 and such delay exceeds [***] beyond the later of (a) the applicable Product Deadline and (b) the deadline mutually agreed upon by the Executive Sponsors in a modification to [***] as set forth in Section 3.3 (a "**DexCom Delay**"), DexCom will pay to Verily [***], which payment shall be made on a quarterly basis, within thirty (30) days of the end of the applicable calendar quarter.

The Parties acknowledge and agree that the remedy set out in this Section 3.8.1 shall be Verily's sole and exclusive remedy for a DexCom Delay and is a reasonable estimate of the damages suffered by Verily in the event of DexCom's failure to meet a Product Deadline, and is not intended to be, nor will be construed as, a penalty.

3.8.2 Verily Diligence Obligations. Without limiting Verily's obligations under this Agreement, Verily shall use Commercially Reasonable Efforts to achieve the Product Deadlines and perform its obligations under the [***], including the Verily Services, and Commercialization Plan; provided that if Verily fails to achieve a Product Deadline within the timeframe specified due to any causes such as unforeseen technical delays, regulatory or clinical process or delays, or delays caused by DexCom's failure to perform its obligations under the [***] or the Commercialization Plan, in each case to the extent beyond the reasonable control of Verily, and despite Verily's Commercially Reasonable Efforts to achieve such Product Deadline, then Verily shall not be deemed in default or breach of this Section 3.8.2 on account of such failure to achieve the Product Deadline and the timeframe for achieving such Product Deadline will be extended by the time of the delay reasonably attributable to the causes that were beyond the reasonable control of Verily. Subject to this Section 3.8.2, if there is a delay in achieving a Product Deadline for which Verily is responsible under this Section 3.8.2 and such delay exceeds [***] (a "**Verily Delay**"), Verily will pay to DexCom [***], which payment shall be made on a quarterly basis, within thirty (30) days of the end of the applicable calendar quarter. The Parties acknowledge and agree that the remedies set out in this Section 3.8.2 (in addition to the adjustments to the [***] in Section 1.9) are DexCom's sole and exclusive remedies for a Verily Delay, are a reasonable estimate of the damages suffered by DexCom in the event of Verily's failure to meet a Product Deadline, and are not intended to be, nor will be construed as, a penalty. In addition, with respect to the Second Product, in the event Verily fails to meet a Product Deadline by [***] or more but less than [***], the Parties agree that if a Milestone Payment for the First Marketing Approval becomes due, such Milestone Payment for the first Marketing Approval of the Second Product shall be reduced by one divided by three hundred sixty five ($1/365^{th}$) of the total of such Milestone Payment for each day after the [***] period following the expiration of such timeframe specified in the [***] for such Verily Service. In the event Verily fails to meet a Product Deadline by [***] or more, the Parties agree that DexCom shall not be obligated to (i) pay Verily any Milestone Payment for the first Marketing Approval of the Second Product, or (ii) Launch the Second Product.

3.8.3 Excused Delays. In order for a Party to be excused from its payment obligations under Section 3.8.1 or 3.8.2 (as applicable) for a delay in achieving a Product Deadline, such Party (after becoming aware of circumstances likely to result in a delay in the performance of its obligations) must notify the other Party's Executive Sponsor and (i) propose, timely implement, and adhere to a mitigation plan approved by the other Party in the exercise of its reasonable discretion or (ii) provide reasonable substantiating evidence that such delay was caused by the other Party or by a Force Majeure Event.

3.9 Acceptance Process.

3.9.1 Verily may, at any time, request DexCom's acceptance that it has achieved Development Completion with respect to any deliverable, Product, or Verily Service, or any component thereof that is subject to a Product Development Deadline (the "**Completed Deliverables**") by providing written or email notification to DexCom's Technical Lead of such request ("**Acceptance Submission Notice**"). Verily shall provide DexCom's Technical Lead with access to review and evaluate the Completed Deliverables. The Technical Leads shall

promptly review the Completed Deliverables and confer on whether the Completed Deliverables meet the applicable Specifications [***], and shall, no later than ten (10) calendar days after the date of the Acceptance Submission Notice, make a single (unanimous) or separate (split) recommendation(s) to the Executive Sponsors as to whether the Completed Deliverables should be accepted and be deemed to have achieved Development Completion.

3.9.2 If the Technical Leads unanimously agree to reject the Completed Deliverables, then the Presenting Party may rescind such Acceptance Submission Notice and resubmit such Completed Deliverable using the process set forth in Section 3.9.1.

3.9.3 If the Technical Leads make a single (unanimous) recommendation that a Party has achieved such Development Completion with respect to such Completed Deliverable, then, no later than twenty (20) calendar days after the date of the Acceptance Submission Notice, the Executive Sponsors shall review the recommendation(s) of the Technical Leads and determine whether to accept the Completed Deliverables as meeting the Specifications or reject the Completed Deliverables as not meeting the Specifications, which acceptance or rejection shall be made by a unanimous decision of the Executive Sponsors. If the Executive Sponsors unanimously agree to accept a Completed Deliverable, then Verily will be deemed to have achieved Development Completion with respect to such Completed Deliverable. If the Executive Sponsors unanimously agree to reject a Completed Deliverable, then the Completed Deliverable shall be referred back to the Technical Leads for review and remediation, and Verily may resubmit such Completed Deliverable using the process set forth in Section 3.9.1.

3.9.4 If the Technical Leads make a separate (split) recommendation regarding whether Verily has achieved Development Completion with respect to such Completed Deliverable, then, no later than twenty (20) calendar days after the date of the Acceptance Submission Notice, the Executive Sponsors shall review the recommendation(s) of the Technical Leads and attempt to resolve the differences in the recommendations. If the Executive Sponsors are unable to reach a unanimous decision in such time, then the matter shall be referred to the Chief Executives of DexCom and Verily for resolution by good faith discussions for a period of at least fifteen (15) Business Days. In the event that the Chief Executives are unable to reach agreement with respect to such matter within such fifteen (15) Business Days, then the dispute shall be resolved pursuant to Article 13, provided that each Party shall retain final decision-making authority with respect to the implementation of its own responsibilities under the [***] (so long as in compliance with this Agreement).

3.10 Reporting. Without limiting any other provisions of this Agreement, each Party shall keep the other reasonably informed through the Executive Sponsors as to the progress of its activities [***] or otherwise under this Article 3 and provide such reports and information with respect thereto as designated by the Executive Sponsors or as may be reasonably requested by the other Party. Also, each Party shall promptly notify the other Party if it anticipates, or there are, material deviations from the [***] and shall discuss in good faith, and keep such other Party reasonably informed, as to any corrective actions that it intends to take, or is taking, to address such deviations.

Article 4.
SUPPLY; ADDITIONAL PRODUCTS; PROGRAMS

4.1 Amended and Restated Supply Agreement. In order to enable DexCom to become the preferred provider of [***] to Onduo, the Existing Distribution Agreement will be

amended and restated in its entirety by DexCom and Onduo concurrently with the execution of this Agreement.

4.2 Supply ROFN. The Parties acknowledge and agree that Verily, whether by itself or in collaboration with others, is, or may be, working to develop one or more Verily Programs. During the Term, if Verily, whether by itself or in collaboration with others, Develops a Verily Program [***], Verily shall provide notice to DexCom of such Verily Program ("**Verily Program Notice**"), and DexCom shall have a first right of negotiation, as set forth in this Section 4.2, to be the preferred supplier [***]. Such right of first negotiation shall be exercisable by DexCom by notice given to Verily within [***] of the date of the Verily Program Notice. In the event that DexCom exercises its right of first negotiation pursuant to this Section 4.2, the Parties shall promptly begin to negotiate in good faith on an exclusive basis with respect to the foregoing. If the Parties are unable to reach such agreement within [***] following DexCom's receipt of the Verily Program Notice, Verily shall not be prevented by this Section 4.2 or Section 7.5 from purchasing the applicable [***] from a Third Party, provided that in no event shall Verily, for [***] from the earlier of DexCom's decision to pass on the preferred supplier opportunity and the expiration of such [***], enter into any agreement with such Third Party on terms that are more favorable to the Third Party than those last offered to DexCom.

4.3 Additional Products ROFN. During the Term, if Verily desires to Develop any [***] other than the First Product, Second Product, and Third Product), then, before commencing [***], Verily shall notify DexCom in writing and shall include with such notice [***] which shall set forth the Parties' respective roles and responsibilities with respect to the Development of such [***] ("**Proposed Additional Product Supplement**"). Thereafter, the Parties shall have [***] following the receipt of the Proposed Additional Product Supplement to negotiate, in good faith, a final Additional Product Supplement for the development of such [***] (the "**Final Additional Product Supplement**") and, upon the Parties' mutual written agreement on the Final Additional Product Supplement, the [***] subject to the Final Additional Product Supplement shall become an Additional Product [***]. Notwithstanding the foregoing, the Parties acknowledge and agree that (i) neither Party shall be obligated to assume any of the costs and expenses of the Development and Commercialization of any Additional Product, and (ii) the Development and Commercialization of the Second Product and, if applicable, Third Product, shall be the initial priority of the Collaboration, and the Development and Commercialization of any Additional Product shall not materially impact the Product Deadlines for the Second Product and, if applicable, Third Product, unless revised Product Deadlines for such Products are mutually agreed upon by the Parties. If the Parties are unable to reach written agreement on the Final Additional Product Supplement within [***] following DexCom's receipt of the Proposed Additional Product Supplement, Verily shall not be prevented by this Section 4.3 or Section 7.5 from independently developing the [***] that was the subject of the Final Additional Product Supplement ("[***]"), *provided, however,* that (a) as between the Products and [***], the Development and Commercialization of the Products shall continue to be Verily's priority, and the development and commercialization, if any, of the [***] shall in no event impact the Product Deadlines for the Products, and (b) in no event shall Verily be granted or otherwise have any right to exploit any IP owned or Controlled by DexCom or its Affiliates or exclusively licensed to DexCom hereunder (other than the Verily Licensed Patents), or use any of DexCom's Confidential Information, whether to develop, manufacture and/or commercialize the [***] or otherwise.

4.4 Preferred Provider [***]. Verily will use [***] to facilitate discussions with Alphabet to enable DexCom to become the preferred provider of [***].

Article 5.

COMMERCIALIZATION

5.1 General. Subject to the terms and conditions of this Agreement and the oversight of the Executive Sponsors, as between the Parties, DexCom shall have the exclusive right to Commercialize the Products in [***] in the Territory. DexCom shall, [***] be responsible for all Commercialization efforts for the Products in the Exclusive CGM Field in the Territory, including the [***] to support such Commercialization, in accordance with the Commercialization Plan. Verily shall, [***] use Commercially Reasonable Efforts to assist with DexCom's [***]; provided that Verily shall have the right to approve or reject in writing any such assistance that exceeds a *de minimis* effort or contribution.

5.2 Commercialization Plans. The Commercialization of each Future Product will be carried out in accordance with a Commercialization Plan. Each such Commercialization Plan will set forth: (1) the timing for Launch of the applicable Products consistent with the Product Launch Deadlines, (2) the obligations required for the Commercialization of the applicable Products, and (3) the Party responsible for performing each obligation.

5.2.1 Second Product. DexCom shall propose and submit to the Executive Sponsors an initial Commercialization Plan for the Second Product at least nine (9) months prior to the Product Deadline for Launch of such Product in the United States.

5.2.2 Third Product and Additional Products. At least nine (9) months in advance of the Launch of the Third Product and each Additional Product, DexCom shall propose and submit to the Executive Sponsors an initial Commercialization Plan for such Product in the Territory.

5.2.3 Updates. Until such time as DexCom has paid to Verily all of the Milestone Payments set forth in Section 8.2.1, each Commercialization Plan will be updated at least annually. DexCom shall provide each Commercialization Plan and any material modification or addition thereto to the Executive Sponsors for its review and comment. The Parties acknowledge that the comments of the Executive Sponsors with respect to any Commercialization Plan and any material modification or addition thereto are [***] with respect thereto. For the avoidance of doubt, the Commercialization Plan and any updates thereto shall not amend or modify the terms of this Agreement.

5.3 Diligence Obligations. DexCom shall use Commercially Reasonable Efforts to: (a) Launch each Product by the applicable Product Launch Deadlines and (b) Commercialize Products so as to achieve each of the Milestone Events set forth in Section 8.2.1.

5.4 Trademarks.

5.4.1 Ownership of Marks. DexCom will be responsible for the selection, registration, maintenance and defense of, and will solely own all right, title and interest in, all Trademarks (except the Verily Trademarks) for use in connection with the Commercialization of the Products, as well as all expenses associated therewith.

5.4.2 Branding of Products. DexCom will have the right to implement a branding strategy for the Products, as outlined in the Commercialization Plan; provided, however, that if requested by Verily, and to the extent allowed by the applicable Regulatory Authority, DexCom will include on all labels, packaging, inserts and promotional materials for each Product a designation that each Product incorporates Verily technology, provided that such designation may be subordinate to any Trademark selected by DexCom for a Product and any Trademark used by DexCom; provided that size and placement of the designation shall be consistent with DexCom's practices with respect to other Third Party Trademarks. Such designation will include at least one of the Verily Trademarks as agreed by the Parties.

5.4.3 Use of Verily Trademarks. In advance of each separate use of a Verily Trademark for a Product, DexCom shall notify Verily in writing and obtain Verily' prior written approval on the final selection, placement, look and feel of the Verily Trademark. DexCom recognizes the reputation of Verily as a provider of high quality products and services and agrees to continue to maintain, and to require its sublicensees to continue to maintain, the same high standard of quality for the Commercialization of the Products. DexCom will not, without Verily's prior written consent, use any other Trademarks of Verily, or Trademarks confusingly similar thereto, in connection with its marketing or promotion of the Products. DexCom acknowledges that it obtains no ownership interest in, or to, the Verily Trademarks under this Agreement. DexCom will at any time, whether during or after the Term, execute any documents that are reasonably required by Verily to confirm Verily's ownership of the Verily Trademarks. DexCom agrees that it will do nothing inconsistent with Verily's ownership of the Verily Trademarks.

5.5 Reporting. Without limiting any other provisions of this Agreement, until such time as DexCom has paid to Verily all of the Milestone Payments set forth in Section 8.2.1, DexCom shall keep Verily reasonably informed through the Executive Sponsors as to the progress of its activities with respect to the Commercialization of Products or otherwise under this Article 5 and provide Product sales forecasts, Total Product Revenue estimates, and such other reports and information with respect to Commercialization of Products as designated by the Executive Sponsors or as may be reasonably requested by Verily, except as prohibited by Law.

Article 6.
REGULATORY MATTERS

6.1 General. As between the Parties, [***] shall, [***], be the manufacturer of record with respect thereto and take the lead and be responsible for (in each case with respect to Products): (a) conducting any clinical trials or clinical studies required for any Regulatory Filings and/or Regulatory Approvals; (b) filing, obtaining and maintaining Regulatory Filings and Regulatory Approvals for Development, Manufacture and Commercialization of the Products in the Territory; (c) communicating with Regulatory Authorities; (d) preparing and submitting supplements, communications, annual reports, Adverse Event reports, manufacturing changes, supplier designations and all other Regulatory Filings; and (e) all costs and expenses associated with the foregoing, except to the extent otherwise provided herein, and provided that [***] shall, at its own cost, provide to [***] any documentation or other assistance reasonably required to support the foregoing activities [***]. [***] will keep [***] or its designee reasonably informed regarding the status and progress of such activity, including (i) providing [***] or its designee with advance notice of all meetings scheduled with a Regulatory Authority involving a Regulatory Filing; and (ii) providing [***] a copy of each Regulatory Approval for each Product.

6.2 Safety Reporting. With respect to any Adverse Event, any safety monitoring and any obligation to report to any Regulatory Authority relating to any safety issue with respect to Products or any component thereof, [***] shall be responsible for, and shall establish (subject to the oversight and comment of the Executive Sponsors as described below) operating procedures to report to the appropriate Regulatory Authority(ies), all such matters in accordance with applicable Law. Such activities and operating procedures by [***] shall include any measures necessary for [***] to fully comply with such Laws and, if necessary, allow [***] to comply with its requirements for Adverse Event reporting under applicable Laws. Such activities and operating procedures, and any material revisions to them, shall be provided to the Executive Sponsors for review and comment. To the extent requested by [***], [***] shall provide [***] any information or regular updates on Adverse Events, safety monitoring and/or any interaction with Regulatory Authorities relating to safety issues with respect to the Products or any component thereof.

6.3 Quality Agreement. The Parties will enter into a mutually agreed-upon Quality Agreement in connection with the Commercialization Plan.

Article 7.
LICENSES AND EXCLUSIVITY

7.1 Licenses to DexCom.

7.1.1 License to Verily Collaboration IP.

(a) As of the Original Effective Date, Verily hereby grants to DexCom, [***] under any Verily Collaboration IP and Verily's interest in any Joint Collaboration IP (in each case other than Verily Software IP) to (either by itself or in collaboration with a Third Party) Develop, Manufacture and Commercialize [***]. The Parties acknowledge and agree that the [***] nature of the license granted under this Section 7.1.1(a) shall not be construed to limit Verily's or its Affiliates' ability to develop, manufacture or commercialize Software that [***].

(b) As of the Original Effective Date, Verily hereby grants to DexCom, a [***] license under any Verily Software IP to (either by itself or in collaboration with a Third Party) Develop, Manufacture and Commercialize [***]; provided that DexCom may not use any Software covered by Verily Software IP, which Software was delivered to DexCom by Verily [***] (or which constitutes a derivative work of the foregoing Software), to co-develop, co-brand or white-label with a Third Party a Competing Program.

(c) Verily hereby grants to DexCom, a [***] license under any Verily Software IP covering or claiming the Assigned Software to use, reproduce, modify, distribute, publicly display and publicly perform and otherwise exploit such Assigned Software for any purpose.

7.1.2 Licenses to Verily Background IP and for [***].

(a) As of the Original Effective Date, Verily hereby grants to DexCom, a [***] license, under any Verily Background IP (other than the Verily Licensed Patents) [***]. For the avoidance of doubt, any Verily Background IP that covers, claims, is used in, or is used to make a [***] shall be deemed to be "necessary" for purposes of the foregoing license.

(b) As of the Original Effective Date, Verily hereby grants to DexCom, a [***] license, under any Verily Licensed Patents and other Verily Background IP and Verily Collaboration IP (including Verily Software IP) as necessary to Develop, Manufacture, or Commercialize [***] for purposes of Developing, Manufacturing and Commercializing [***], to the extent that such [***] is commercialized (or, if not yet commercialized, designed) as part of a standalone [***], regardless of whether (i) reimbursement is for the standalone [***] or for a bundle of products or services offered by a Third Party that includes the [***], or (ii) DexCom re-sells [***] (the "**Standalone Product Limitation**"). For the avoidance of doubt, any Verily Background IP that covers, claims, is used in, or is used to make [***] that is commercialized by DexCom as part of a standalone [***] shall be deemed to be "necessary" for purposes of the foregoing license. A "[***]" means a medical device, [***].

(c) As of the Original Effective Date, Verily hereby grants to DexCom, a [***] license, under any Verily Licensed Patents and other Verily Background IP covering or claiming the Assigned Software, in each case to use, reproduce, modify, distribute, publicly display and publicly perform and otherwise exploit the Assigned Software for any purpose.

7.1.3 Sublicensing. The licenses contained in Sections 7.1.1(b) and (c) and 7.1.2(a), (b) and (c) shall be sublicensable (through multiple tiers) in connection with the Development, Manufacturing and/or Commercialization of any [***] (subject to the Standalone Product Limitation), and Assigned Software, as applicable, provided that (i) material DexCom Background IP and/or [***] is included in such sublicense, and (ii) DexCom retains a material involvement in the Development, Manufacturing and/or Commercialization of such [***], as applicable, which sublicense shall not be effective until DexCom delivers to Verily an executed copy of any such sublicense agreement, provided that DexCom may reasonably redact from any such sublicense agreement any confidential information of DexCom or the applicable sublicensee, and further provided that upon such delivery to Verily, the sublicense will be deemed effective as of the date specified in the applicable sublicense agreement. Delivery to Verily of a standard sublicense template used by DexCom with multiple customers, resellers, or distributors in the ordinary course of its business will be sufficient for purposes of the delivery condition set forth in the preceding sentence. Without limiting the foregoing, the Parties will use good faith efforts to implement shared procedures to limit the administrative burdens associated with complying with the foregoing delivery obligation.

7.1.4 License to Verily Licensed Patents. As of the Original Effective Date, Verily hereby grants to DexCom, an [***] license under the Verily Licensed Patents to (either by itself or in collaboration with a Third Party) Develop, Manufacture and Commercialize [***]. The Parties acknowledge and agree that the [***] nature of the license granted under this Section 7.1.4 shall not be construed to limit Verily's or its Affiliates' ability to develop, manufacture or commercialize Software [***].

7.1.5 Covenant Not to Sue for DexCom [***]. For a period of [***] from the Effective Date, Verily on behalf of itself and its Affiliates, covenants that Verily and its Affiliates will not initiate or continue any judicial or administrative proceeding (e.g., before the U.S. International Trade Commission) anywhere in the world against DexCom, its Affiliates, or any of its or their customers or direct distributors, based upon any claim that the manufacture, use, sale, license, distribution, offer for sale, offer for license, import, export, or other exploitation of a DexCom [***]constitutes infringement or misappropriation (including direct, contributory or inducement of infringement) of any [***] Controlled by Verily as necessary to manufacture, use, distribute, sell, license, offer for sale, offer for license, import, export, or otherwise exploit such

DexCom [***]. For the avoidance of doubt, any such Patent rights or Verily Know-How that covers, claims, or is used in or to make a DexCom [***] shall be deemed to be "necessary" for purposes of the foregoing covenant. "**DexCom [***]**" means [***] Commercialized by DexCom or (subject to Section 7.1.7) any of its Affiliates [***]. This covenant is personal to DexCom, not transferable or assignable to a Third Party. If DexCom or its Affiliates, customers, or direct distributors commences or participates in a legal proceeding in the same or similar technical subject matter covered under this covenant not to sue against Verily, its Affiliates, or Onduo LLC or its Affiliates, then Verily may, at its sole discretion, suspend or terminate the covenant not to sue provided under this Agreement upon providing written notice to DexCom.

7.1.6 License to Verily Trademarks. Subject to Section 5.4.3, Verily hereby grants to DexCom a [***] license to use the Verily Trademarks solely as provided for under Section 5.4 in connection with the Commercialization of Products. The ownership and all goodwill accruing to the Verily Trademarks arising directly from use of the Verily Trademarks will vest in and inure to the benefit of Verily.

7.1.7 DexCom Affiliates. DexCom shall have the right to exercise the licenses granted under Sections 7.1.1, 7.1.2, and 7.1.4 through its Affiliates as of the Effective Date, solely for as long as such entity remains an Affiliate of DexCom, and DexCom shall remain responsible for the compliance of such Affiliate with all terms of this Agreement. Furthermore, DexCom shall have the right to exercise the licenses granted under Sections 7.1.1, 7.1.2 and 7.1.4 through its future Affiliates in connection with restructuring or tax matters, subject to Verily's prior written consent, not to be unreasonably withheld, conditioned or delayed. For clarity, DexCom's ability to grant sublicenses to future Affiliates under the licenses granted under Sections 7.1.1, 7.1.2 and 7.1.4 shall be subject to the terms set forth therein and in Section 7.1.3 with respect to Third Parties, excluding the condition set forth therein regarding delivery of an executed copy of the sublicense agreement to Verily. Notwithstanding anything to the contrary in this Agreement, the non-transferable licenses in Section 7.1.2 and Section 7.1.4 may not be transferred to a Third Party or Affiliate in connection with a permitted assignment of this Agreement under Section 14.2 (unless such transfer is otherwise expressly authorized under the preceding provisions of this Section 7.1.7).

7.2 Licenses to Verily.

7.2.1 License to Perform Obligations. Subject to the terms and conditions of this Agreement, DexCom hereby grants to Verily a [***] license under any DexCom IP, during the Term, solely to perform Verily's service and development and commercialization obligations to DexCom under the [***], Commercialization Plan, and/or otherwise under this Agreement.

7.2.2 License to [***]. DexCom hereby grants to Verily a [***] license under (i) any [***] jointly developed by the Parties or solely developed by Verily, solely for use outside of the [***] and (ii) any [***] solely developed by DexCom in subject matter consisting of [***], in each case under (i) and (ii) solely for use [***].

7.3 No Other Rights. Each Party acknowledges that the rights and licenses granted under this Article 7 and elsewhere in this Agreement are limited to the scope expressly granted. Accordingly, except for the rights expressly granted under this Agreement, no right, title, or interest of any nature whatsoever is granted whether by implication, estoppel, reliance, or otherwise, by either Party to the other Party. All rights with respect to Know-How, Patent,

Trademarks or other IP rights that are not specifically granted herein are reserved to the owner thereof.

7.4 Other Licenses. No license to Collaboration IP owned by Verily shall be granted by Verily or its Affiliates to [***] of the foregoing unless Verily (a) [***], and (b) [***]. Notwithstanding the foregoing, any license granted by [***], or any subsidiary of the foregoing under the Collaboration IP shall be subject to the exclusive and non-exclusive rights granted by Verily to DexCom pursuant to this Agreement and the foregoing shall not be construed to allow or authorize any grant of a license under the Collaboration IP that is in conflict with any such exclusive or non-exclusive license granted to DexCom.

7.5 [***]. During the Term, Verily and DexCom will collaborate on [***] on the Development of the Products, and DexCom will have the [***], in each case subject to Section 4.3 of this Agreement, and in accordance with the terms and conditions of this Agreement. Subject to Section 4.3 of this Agreement, Verily and its Affiliates shall not, during the Term, Develop, Manufacture or Commercialize [***], except as necessary to fulfill its obligations under this Agreement or to allow any [***]. Subject to Section 4.3, during the Term, Verily and its Affiliates shall not [***] except (i) solely to the extent necessary to [***], and/or (ii) in an open source license accompanying distributable source code (for each case (i) and (ii), solely with respect to communication software and/or other similar software) hosted by or on behalf of Verily. For clarity, [***] granted under this Section 7.5 shall not be construed [***], provided that in no event shall [***].

7.6 [***] Supply.

7.6.1 Support for [***] Supply.

(a) Verily will use Commercially Reasonable Efforts to enter into an agreement with [***] (the "**Suppliers**") (the two principal suppliers for [***]) on terms that would (a) allow DexCom, or a vendor identified by DexCom and reasonably acceptable to Verily, to have [***] and (b) specify [***]. For clarity, [***].

(b) To facilitate manufacturing of [***], Verily will provide to DexCom [***].

7.6.2 [***] Application Engineer Support Services. During development of the [***], Verily will use Commercially Reasonable Efforts to provide reasonable and customary application engineer support services relating to use of [***] in a Future Product. This support will include providing updates to [***] as necessary and in response inquiries from the DexCom technical team. This support obligation does not include design changes, new features, or integrations [***].

7.6.3 Support for [***].

(a) If DexCom reasonably believes that a Future Product unit has failed or has been returned due to a defect in [***], then, upon DexCom's reasonable request and delivery of the defective [***] to Verily, Verily will use Commercially Reasonable Efforts to [***].

(b) Verily's Technical Lead will notify DexCom's Technical Lead of the determination of any design or manufacturing defect in [***] pursuant to the foregoing section (which notice may be provided by email). DexCom's technical lead shall notify Verily if DexCom wishes for Verily to present a Defect Notification Plan (the date of such notice, the "Defect Notification Date").

(c) If such failure is determined to be due to a design defect, and DexCom demonstrates with reasonably detailed, objective evidence that such design defect is caused primarily by [***], then, notwithstanding DexCom's prior acceptance of such Deliverable pursuant to Section 3.9 of the Agreement, [***]. All other services, and any services [***], and any related capital expenditures, will be subject to a separate Statement of Work negotiated between the Parties.

(d) If, (a) by [***] Business Days after the Defect Notification Date, Verily does not deliver to DexCom a plan for addressing a design defect, or (b) by [***] days after the Defect Notification Date, the Parties are unable to reach terms on which Verily will provide design modifications to address a design defect in [***], then such matter shall be referred to the Executive Sponsors for resolution. If the Executive Sponsors are unable to reach resolution on commercially reasonable terms within [***] Business Days of such referral, then Verily will, at DexCom's request, provide the [***] to DexCom for purposes of addressing design defects in [***]; provided, however, that the foregoing obligation shall not apply if Verily offers commercially reasonable terms in good faith and DexCom does not accept such terms.

(e) On and after the third anniversary of Launch, Verily may, in lieu of providing any support for design defects in [***] for a Future Product, provide to DexCom (i) the [***].

7.6.4 Services After Completion of Verily's Deliverables. After completion of Verily's Deliverables, any additional design or test changes requested by DexCom will be negotiated under a Statement of Work on terms to be mutually agreed upon by the Parties.

7.6.5 [***] Pricing.

(a) Verily anticipates that if the Pricing Assumptions set forth below are satisfied, then the [***] for the Second Product will be available under the Supply Agreements at the following purchase prices (which prices reflect the cost per unit excluding taxes, duties, shipping, and other fees) (the "**Pricing Expectations**"):

(i) For volume commitments greater than [***] units per year, the purchase price under the Supply Agreements is expected to be [***] per unit;

(ii) For volume commitments greater than [***] units per year and less than [***] units per year, the purchase price under the Supply Agreements is expected to be [***] per unit;

(iii) No pricing commitment is provided for volume commitments below [***] units per year.

(b) If, notwithstanding satisfaction of the Pricing Assumptions, the actual [***] cost upon completion of Phase Gate IV is higher than the Pricing Expectations (based on [***] through the Phase Gate IV completion date and a complete set of quoted supplier costs for a volume of [***]), then Verily shall pay to DexCom a fee of [***], such fee not to exceed [***] in total.

(c) If the actual [***] cost upon completion of Phase Gate IV is lower than the Pricing Expectations (based on [***] through the Phase Gate IV completion date and a complete set of quoted supplier costs for a volume of [***] units purchased per year), then DexCom shall pay to Verily a fee of [***], such fee not to exceed [***] in total.

(d) The fees set forth in this Section 7.6.5 are the Parties sole and exclusive remedies for any deviations from the Pricing Expectations.

Article 8.
PAYMENTS

8.1 Second Upfront Fee. The Parties acknowledge and agree that DexCom has paid to Verily the upfront fee set forth in Section 8.1 of the Original Agreement. Within ten (10) Business Days following the Antitrust Clearance Date, in consideration of (a) Verily's performance of its obligations under the Development Plan, (b) the licenses granted to DexCom under Section 7.1, and (c) the Parties' agreement to amend and restate the Original Agreement, DexCom shall pay a second upfront payment of $250 million (the "**Upfront Payment Amount**"), or, at DexCom's election, an equivalent number of shares of DexCom Common Stock as determined by dividing the Upfront Payment Amount by the Initial VWAP (the "**Upfront Shares**"). The Upfront Payment Amount shall be paid as follows, at the direction of Verily: (1) $15 million (or six percent (6%) of Upfront Shares, which shall be "**Verily Upfront Shares**"), to Verily and (2) $235 million (or ninety four percent (94%) of Upfront Shares) to Onduo and shall be issued pursuant to the Stock Purchase Agreement (as defined below). The Upfront Payment Amount (or the Upfront Shares in lieu of the Upfront Payment Amount, if applicable) shall be non-refundable and shall not be creditable. The Parties acknowledge and agree that the $15 million paid to Verily or Verily Upfront Shares issued directly to Verily under this Section 8.1 are attributable to a buyout of the First Product milestone described in Section 8.2.1 of the Original Agreement.

8.2 Milestone Payments.

8.2.1 Milestones. Subject to DexCom's right to pay in cash pursuant to and subject to the calculation methodology set forth in Section 8.2.2, DexCom shall pay the DexCom Common Stock as set forth in the following table (each such payment, a "**Milestone Payment**") upon the first achievement of the corresponding milestone event for the applicable Product (each such event, a "**Milestone Event**"), it being understood that, at Verily's direction, part of such Milestone Payment shall be paid to Onduo, as set forth below:

Milestone Event	Milestone Payment
The earlier of (i) [***] or (ii) [***]	DexCom Common Stock equal to $100 million divided by the Initial VWAP (half issued to Verily (the "**Verily Milestone Shares**") half issued to Onduo)
First time Total Product Revenue exceeds [***]	DexCom Common Stock equal to $125 million divided by the Initial VWAP, issued to Onduo
First time Total Product Revenue exceeds [***]	DexCom Common Stock equal to $50 million divided by the Initial VWAP, issued to Onduo

The Parties acknowledge and agree that the Verily Milestone Shares issued directly to Verily, or the equivalent amount in cash upon DexCom's election to pay in cash subject to the calculation methodology set forth in Section 8.2.2, under this Section 8.2.1 are attributable to a milestone buyout of the Second Product milestone described in Section 8.2.1 of the Original Agreement.

8.2.2 For clarity, it is understood that each Milestone Payment shall be payable only once upon the first achievement of the applicable Milestone Event and, if paid in DexCom Common Stock, shall be issued pursuant to the Stock Purchase Agreement. At DexCom's option, DexCom may pay cash to Verily and Onduo in lieu of delivering any DexCom Common Stock required to be paid pursuant to Section 8.2.1, which cash payment amount shall be the applicable number of shares of DexCom Common Stock set forth in Section 8.2.1 multiplied by Milestone Date VWAP for such Milestone Event.

8.2.3 Incentive Payment. With respect to the Second Product, if Verily completes its Product Development Obligations, as determined by the Parties in accordance with Section 3.9 at least [***] prior to Verily's Product Development Deadline (the "**Incentive Milestone Event**"), then Verily shall be entitled to receive an incentive payment of [***]. The date on which Verily will be deemed to have completed its Product Development Obligations will be the date on which Verily last submitted for acceptance or approval (pursuant to Section 3.9) the Product Development Obligations that were ultimately approved or accepted pursuant to Section 3.9 without an intervening notice of rejection from DexCom.

8.2.4 Payment Terms. The Milestone Payments set forth in this Section 8.2 shall each be payable in, at DexCom's sole election, cash or in shares of DexCom Common Stock, and due to Verily or Onduo, as applicable, within thirty (30) days of the achievement of the corresponding Milestone Event or completion of the Product Development Obligations, as applicable, except to the extent set forth in the Stock Purchase Agreement (as defined below).

8.2.5 Notice. DexCom agrees to promptly notify Verily of its achievement of each Milestone Event.

8.3 No Royalties, Milestones or Other Amounts. Except for the amounts payable to Verily by DexCom under Sections 8.1 and 8.2 above, no other amounts shall be payable to Verily in connection with the First Product, Second Product, Third Product, any Additional Product, or the Verily Services. For clarity, the foregoing payments replace in their entirety any and all payment obligations of DexCom under the Original Agreement, including any and all royalty and/or milestone payments.

8.4 First Product Purchase. Verily agrees to purchase [***] units of First Product [***], and prepay for that Product within 14 days after [***], where the prices shall be no higher than [***].

8.5 Payment Terms. All cash payments due under this Agreement shall be made by bank wire transfer in immediately available funds to an account designated by the receiving Party. All payments hereunder shall be made in the legal currency of the United States of America, and all references to "$" or "Dollars" shall refer to United States dollars. Except as otherwise provided herein, all payments due to a Party hereunder shall be due and payable within thirty (30) days of achievement of the applicable milestone event as set forth herein, subject to receipt of a proper invoice from the other Party. If any withholding taxes, levies or similar taxes is due with respect to such a payment, such amounts shall be payable by the paying Party to the applicable taxing authority, including any tax or withholding levied by a foreign taxing authority in respect of the payment or accrual of any product fee. Each Party agrees to assist the other Party as reasonably requested by the other Party in claiming exemption from or otherwise reducing such deductions or withholdings under any taxation or similar agreement or treaty from time to time in force.

8.6 Stock Purchase Agreement. DexCom shall issue any DexCom Common Stock to be issued to Verily or Onduo as described in this Agreement pursuant to the stock purchase agreement attached hereto as Exhibit 8.6 (the "**Stock Purchase Agreement**"); *provided* that if DexCom is unable to deliver the shares under the Stock Purchase Agreement in accordance with the terms of the Stock Purchase Agreement, DexCom shall make the applicable payment in cash at the scheduled time for such Closing (as defined in the Stock Purchase Agreement).

8.7 Reports. Until such time as DexCom has paid all of the Milestone Payments set forth in Section 8.2.1, DexCom shall provide to Verily, within forty-five (45) days of the end of each calendar quarter, a reasonably detailed report setting forth worldwide Total Product Revenue broken down by Product and territory, together with such substantiating information reasonably requested by Verily for purposes of confirming the accuracy of the Total Product Revenue calculation (which information may be redacted with respect to information unrelated to the calculation of Total Product Revenue).

8.8 Inspection of Records. This Section 8.8 shall be in effect until such time as DexCom has paid to Verily all of the Milestone Payments set forth in Section 8.2.1. DexCom shall, and shall cause its Affiliates and Third Parties acting on their behalf or under their authority, to keep full and accurate books and records regarding the sales of the First Product, Second Product, Third Product and any Additional Products and/or Alternative Product. DexCom shall permit Verily, by independent qualified public accountants engaged by Verily and reasonably acceptable to DexCom, to examine such books and records for the sole purposes of verifying the accuracy of the reports provided pursuant to Section 8.7. Such examination may be conducted at any reasonable time, but not later than three (3) years following the rendering of any corresponding reports, accountings and payments pursuant to Section 8.7. Such

inspections may be made no more than once each calendar year, at reasonable times and on reasonable prior written notice. The records for any particular calendar quarter shall be subject to no more than one inspection. The accountant shall be obligated to execute a reasonable confidentiality agreement prior to commencing any such inspection. Any inspection conducted under this Section 8.8 shall be at the expense of Verily, unless such inspection reveals that a Milestone Event had been achieved and DexCom did not provide the applicable notice to Verily pursuant to Section 8.2.5 in which case such inspection shall be at the expense of DexCom. Any underpayment shall be paid within fifteen (15) Business Days with interest on the underpayment at the rate specified in Section 8.9 from the date such payment was originally due; and any overpayment may be credited against future payments hereunder without interest or if there will be no future payments by DexCom, then reimbursed within fifteen (15) Business Days. Any disputes arising under this Section 8.8 regarding any discrepancy identified by the accountant shall be subject to resolution under Article 13.

8.9 Late Payment. Any payments or portions thereof due hereunder which are not paid when due shall bear interest at the rate of one and a half percent (1.5%) per month from the payment due date until paid in full. This Section 8.9 shall in no way limit any other remedies available to either Party.

8.10 Currency Conversion. With respect to sales invoiced and received in a currency other than U.S. Dollars, such sales shall be converted into the U.S. Dollar equivalent in accordance with DexCom's standard practices used in preparing its audited financial statements for the applicable calendar quarter and DexCom shall provide Verily the basis for such conversion.

8.11 Collaboration Costs. Except as otherwise expressly provided herein or otherwise agreed by the Parties, each Party shall bear all of its own costs and costs of any Third Party acting on its behalf in carrying out those activities assigned to it under the Collaboration.

8.12 Stock Splits. The number of shares of DexCom Common Stock issuable hereunder shall be adjusted for any stock dividend, stock split, combination of shares, reorganization, recapitalization, reclassification or other similar event with respect to DexCom Common Stock after the date of this Agreement.

Article 9.
INTELLECTUAL PROPERTY

9.1 Ownership.

9.1.1 DexCom Collaboration IP. As between the Parties, DexCom shall solely own all right, title and interest to any and all:

(a) Collaboration IP that is [***], whether developed solely by a Party or jointly by the Parties. For purposes of clarity, DexCom shall own any [***] in the First Product, Second Product, Third Product and/or any Additional Product (in each case, whether such Products are Launched or not);

(b) Collaboration IP that is copyright in or that is Assigned Software.

(c) Collaboration IP that is DexCom Other Collaboration IP.

The foregoing under (a), (b) and (c), collectively, the "**DexCom Collaboration IP**".

Subject to Section 9.1.4, to the extent Verily and/or its Affiliates has or acquires any right, title or interest (including any IP) in or to any DexCom Collaboration IP, Verily shall assign, and does hereby assign to DexCom (and shall cause its Affiliates to assign), any such right, title and/or interest (including any IP).

9.1.2 Verily Collaboration IP. As between the Parties, Verily shall solely own all right, title and interest to any and all Verily Collaboration IP.

9.1.3 Joint Collaboration IP. All right, title and interest to any and all Joint Collaboration IP shall be jointly owned by DexCom and Verily. Each Party shall assign, and does hereby assign to the other Party an undivided joint interest in the Joint Collaboration IP. Subject to the licenses and other rights or exclusivities granted to the other Party herein (including in Article 7), (i) each Party reserves the right to use, practice or otherwise exploit its solely owned Collaboration IP (DexCom Collaboration IP with respect to DexCom and Verily Collaboration IP with respect to Verily) and the Joint Collaboration IP; and (ii) neither Party shall have any obligation to account to the other Party for profits, or to obtain any approval of the other Party to license, assign, enforce (subject to Section 9.5) or otherwise exploit any Joint Collaboration IP or intellectual property with respect thereto, by reason of joint ownership thereof, and each Party hereby waives any right it may have under the applicable Law of any jurisdiction to require any such approval or accounting.

9.1.4 Retained Know-How. Notwithstanding Section 9.1.1, Verily shall have no obligation to assign to DexCom any Know-How developed by Verily and included in DexCom Collaboration IP, except to the extent such Know-How (i) consists of subject matter that is patentable, copyrightable or otherwise registrable, or is otherwise claimed or included in a Patent, copyright registration or other statutory registration owned by DexCom under Section 9.1.1 (it being understood that the IP assigned to DexCom under Section 9.1.1 includes the right to seek patent, copyright or any other available statutory protection) or (ii) is expressly identified as DexCom-owned Know-How in [***]. Any Know-How developed by Verily and included in DexCom Collaboration IP, which Know-How is not assigned to DexCom under this Section 9.1.4 ("**Verily Retained Know-How**") shall be deemed part of Verily Collaboration IP and, without limiting the foregoing, shall be licensed to DexCom under Section 7.1.1(a) and 7.1.2(b) and subject to use and disclosure restrictions in Section 11.2.

9.1.5 Each Party shall disclose under the coordination of the Executive Sponsors to the other Party all Collaboration IP first conceived in the course of its performance of the [***] (or in the course of the Parties' activities [***], to the extent not disclosed previously) or required for the other Party to perform the activities assigned to it [***], and the Parties shall work in good faith, together with their respective counsel, to jointly identify respective lists of [***], Verily Software IP, or other Collaboration IP. Notwithstanding anything to the contrary, DexCom will have no obligation to share information with Verily regarding [***] and Verily will have no obligation to share information with DexCom regarding patenting Verily Software IP. The Parties will form a Patent Review Committee with equal representation. The composition, rules, and roles of the Patent Review Committee shall be defined under the Patent Committee Rules, which have been exchanged between the Parties in as of the Effective Date can be

amended by consensus of the Patent Review Committee from time to time without amending this Agreement. If there is a conflict between the Patent Committee Rules and the Agreement, the Agreement shall govern. The representative(s) of each Party in the Patent Review Committee will consult with each other on patent claiming strategy for the Collaboration Patents in furtherance of [***].

9.1.6 The Parties acknowledge and agree that (i) DexCom has developed and will continue to develop [***] other than the Products outside the scope of the Collaboration, and (ii) to the extent DexCom uses in the Collaboration components or other technology from such [***], in no event shall such components or technology be deemed part of Joint Collaboration IP or licensed to Verily other than as expressly set forth in Section 7.2.1.

9.2 Joint Research Agreement**.** The Parties hereby acknowledge that this Agreement qualifies as a "joint research agreement" as defined in 35 U.S.C. § 100(h) and agree that the Parties will cooperate to take advantage of the "joint research agreement" provisions of 35 U.S.C. § 102(c), including by the filing of a terminal disclaimer as provided for in Manual of Patent Examining Procedure Section 717.02(c), if reasonably prudent or necessary during the filing and/or prosecution of a patent application that is subject to a license grant or assignment under this Agreement.

9.3 Patent Prosecution.

9.3.1 Verily Patents. As between the Parties, Verily shall have the right to control the Prosecution and Maintenance of the Verily Licensed Patents and Joint Collaboration Patents with at least one Verily inventor using counsel of its choice. Verily agrees to: (a) keep DexCom reasonably informed with respect to such activities; and (b) consult in good faith with DexCom regarding such matters, including notice prior to the abandonment of any claims thereof covering the Products and in the [***]. If Verily does not want to Prosecute and Maintain any of the Joint Collaboration Patents, then Verily shall give DexCom sufficient notice (i.e. in order to avoid any adverse events such as missing a filing deadline) and DexCom shall have the right to control the Prosecution and Maintenance of such Joint Collaboration Patents.

9.3.2 DexCom Patents. As between the Parties, DexCom shall have the right to control the Prosecution and Maintenance of the DexCom Collaboration Patents and Joint Collaboration Patents without any Verily inventors using counsel of its choice. DexCom agrees to: (i) keep Verily reasonably informed with respect to such activities; and (ii) consult in good faith with Verily regarding such matters, including notice prior the abandonment of any claims thereof covering the Products.

9.3.3 Filing Notice. Each Party agrees to give notice to the other Party at least four weeks prior to filing of any new patent application that constitutes Collaboration IP and highlight any proposed inclusion of the other Party's Confidential Information in such new patent application. Such Party will consult with the other Party in good faith to resolve any objections to inventorship (under applicable law) and/or content of the patent application.

9.4 Defense of Third Party Infringement Claims. During the Term, if any Product that is Commercialized by DexCom or its Affiliates becomes the subject of a Third Party's claim or assertion of infringement of a Patent relating to the manufacture, use, sale, offer for sale or importation of such Product, the Party first having notice of the claim or assertion shall promptly notify the other Party, and the Parties shall promptly confer to consider the claim or assertion

and the appropriate course of action. Except as provided in Section 11.4, or by separate written agreement of the Parties, each Party shall have the right to defend itself against a suit that names it as a defendant (the "**Defending Party**"). Except as provided in Section 11.4, neither Party shall enter into any settlement of any claim described in this Section 9.4 that adversely affects the other Party's rights or interests without such other Party's written consent, which consent shall not be unreasonably conditioned, withheld or delayed. In any event, the other Party shall reasonably assist the Defending Party and cooperate in any such litigation at the Defending Party's request and expense.

9.5 Enforcement.

9.5.1 Notice. Subject to the provisions of this Section 9.5 and during the Term, in the event that either Party reasonably believes that any Verily Licensed Patent (a) is being infringed by a Third Party or (b) is or will become subject to a declaratory judgment action arising from such infringement, in each case, (a) and (b), which infringement arises from the manufacture, sale, use or import of a [***] in the Territory (an "**Infringing Product**") such Party shall promptly notify the other Party.

9.5.2 Enforcement in the [***]. During the Term, DexCom shall have the initial right (but not the obligation), at its expense, to enforce the Verily Licensed Patents in the [***] or to defend any declaratory judgment action with respect thereto in the Territory (each, an "**Enforcement Action**"). Prior to the commencement of any activity by DexCom with respect to an Enforcement Action, (a) DexCom shall provide thirty (30) days advance written notice to Verily and (b) if requested by Verily, DexCom shall consult in good faith with respect to such Enforcement Action and consider in good faith Verily's input, including to prevent any Verily Licensed Patent to be subject to undue risk of invalidation. DexCom agrees not to settle any Enforcement Action, or intentionally make any admissions or assert any position in such Enforcement Action, in a manner that would materially adversely affect the validity, enforceability or scope of any Verily Licensed Patent in or outside the Territory, without the prior written consent of Verily, which shall not be unreasonably withheld, conditioned or delayed. In the event that DexCom or its designee fails to commence or defend an Enforcement Action with respect to Infringing Products in the Territory within [***] of a request by Verily to do so (or such shorter period as is necessary to bring and maintain such action), Verily or its designee may commence an Enforcement Action with respect to such Infringing Products at its own expense. In such case, Verily agrees not to settle any Enforcement Action, or intentionally make any admissions or assert any position in such Enforcement Action, in a manner that would materially adversely affect DexCom's rights or interests in [***] in the Territory, without the prior written consent of DexCom, which shall not be unreasonably withheld, conditioned or delayed.

9.5.3 Enforcement Outside of the [***]. As between the Parties, Verily shall have the sole right (but not the obligation), at its expense, to enforce the Verily Licensed Patents outside of the [***].

9.5.4 Cooperation. The Party commencing, controlling or defending any action under Section 9.5.2 (such Party, the "**Enforcing Party**") shall keep the other Party reasonably informed of the progress of any such Enforcement Action, and such other Party shall have the right to participate with counsel of its own choice at its own expense. The non-Enforcing Party hereby gives the Enforcing Party the right to name the non- Enforcing Party in any Enforcement Action if required for standing. In any event, the other Party shall reasonably cooperate with the Enforcing Party, including providing information and materials, at the Enforcing Party's request

and expense. The Enforcing Party shall also have the right to control settlement of such Enforcement Action; *provided, however*, no settlement shall be entered into without the consent of the other Party, which consent not to be unreasonably withheld, conditioned or delayed, if such settlement would materially and adversely affect the interests of the other Party.

9.5.5 Recoveries. Any recovery received as a result of any Enforcement Action to enforce a Patent pursuant to Section 9.5.2 shall be used first to reimburse the Parties for the costs and expenses (including attorneys' and professional fees) incurred in connection with such Enforcement Action (and not previously reimbursed), and the remainder of the recovery shall be shared (a) for any Enforcement Action in the [***] and (b) for any Enforcement Action [***].

Article 10..
CONFIDENTIALITY

10.1 Confidentiality; Exceptions. Except to the extent expressly authorized by this Agreement or otherwise agreed by the Parties in writing, the Parties agree that the receiving Party shall keep confidential and shall not publish or otherwise disclose or use for any purpose other than as provided for in this Agreement any confidential or proprietary information or materials or Know-How furnished to it by the other Party pursuant to this Agreement and the terms and conditions of this Agreement (collectively, "**Confidential Information**"). Notwithstanding the foregoing, Confidential Information shall not be deemed to include information or materials to the extent that it can be established by the receiving Party that such information or material:

10.1.1 was already known to or possessed by the receiving Party, other than under an obligation of confidentiality (except to the extent such obligation has expired or an exception is applicable under the relevant agreement pursuant to which such obligation established), at the time of disclosure;

10.1.2 was generally available to the public or otherwise part of the public domain at the time of its disclosure to the receiving Party;

10.1.3 became generally available to the public or otherwise part of the public domain after its disclosure and other than through any act or omission of the receiving Party in breach of this Agreement;

10.1.4 was independently developed by the receiving Party without use of or reference to the disclosing Party's Confidential Information as demonstrated by documented evidence prepared contemporaneously with such independent development; or

10.1.5 was disclosed to the receiving Party on a non-confidential basis by a Third Party having the right to make such non-confidential disclosure.

10.2 Authorized Use and Disclosure. Each Party may use and disclose Confidential Information of the other Party as follows: (a) under appropriate confidentiality provisions substantially equivalent to those in this Agreement in connection with the performance of its obligations or exercise of rights granted to such Party in this Agreement; (b) to the extent such disclosure is reasonably necessary for the Prosecution and Maintenance of Patents (including

applications therefor) in accordance with Section 9.3, prosecuting or defending litigation, filing for and conducting preclinical or clinical trials, obtaining and maintaining Regulatory Approvals for Products; (c) in communication with existing and potential acquirers, investors, strategic partners, licensees, distributors, consultants, advisors (including financial advisors, lawyers and accountants) and others on a need to know basis, in each case, under appropriate confidentiality provisions substantially equivalent to those of this Agreement; (d) for the purposes of the performance of this Agreement and exercising any rights of a Party pursuant to this Agreement and in connection with the grant of any license pursuant to Article 7 of this Agreement; or (e) to the extent mutually agreed to by the Parties. Notwithstanding the foregoing, and without limiting Section 9.1.4, to the extent any Verily Retained Know-How is Confidential Information, (i) such Verily Retained Know-How shall not be used by Verily or its Affiliates in the [***] except to perform the activities contemplated in the Agreement, (ii) Verily and its Affiliates shall not disclose to any Third Party in the [***] any such Verily Retained Know-How without DexCom's prior written consent except where such disclosure is for purposes of performing activities under this Agreement, and (iii) without limiting the foregoing, any disclosure of Verily Retained Know-How to any Third Party shall be under a use restriction limiting such use of such Verily Retained Know-How to be outside of [***]. In addition, to the extent any Know-How is assigned to DexCom under this Agreement, such Know-How shall be protected as DexCom's Confidential Information under this Article 7. Furthermore, during the Term, to the extent any proprietary, non-public Know-How is included in Joint Collaboration IP ("**Joint Collaboration Know-How**"), then (i) such Joint Collaboration Know-How shall not be used by Verily or its Affiliates in [***] except to perform the activities contemplated in the Agreement, (ii) Verily and its Affiliates shall not disclose to any Third Party for use in [***] any such Joint Collaboration Know-How without DexCom's prior written consent, and (iii) without limiting the foregoing, any disclosure of Joint Collaboration Know-How to any Third Party shall be under a use restriction limiting such use of such Joint Collaboration Know-How to be outside of [***].

10.3 Methods Marking Requirement. Any non-public algorithm or other method shared by a Party under this Agreement that is outside of the scope of [***] and is not marked or identified by such Party as confidential or proprietary will not be considered Confidential Information.

10.4 Required Disclosures. Notwithstanding anything to the contrary in this Agreement, each Party may make any disclosures required of it by applicable Law or the rules of a stock exchange upon which a Party's capital stock is listed, provided that (a) the Party required to make such disclosure (the "**Required Party**") shall notify the other Party in writing of the proposed content of the required disclosures at least five (5) Business Days prior to the date on which the disclosure is to be made, except with respect to the current report on Form 8-K to be filed by DexCom immediately following the execution of this Agreement regarding its entry into this Agreement, and the non-Required Party shall be entitled to reasonably comment with respect to the form and content of such required disclosure, which the Required Party shall consider in good faith; (b) if so requested by the non-Required Party in the case of disclosures required by applicable Law, the Required Party shall use reasonable efforts to obtain an order protecting to the maximum extent possible the confidentiality of the provisions of this Agreement and the non-Required Party's Confidential Information as reasonably requested by the non-Required Party; and (c) if the Parties are unable to agree on the form or content of any required disclosure, such disclosure shall be limited to the minimum required as determined by the Required Party in consultation with its legal counsel. Without limiting the foregoing, the Required Party shall provide the non-Required Party with a draft of the proposed redactions to the provisions of this Agreement, together with exhibits or other attachments hereto, to be filed

by Verily or DexCom with the Securities and Exchange Commission (or other applicable regulatory body) or as otherwise required by Law, and the non-Required Party shall be entitled to reasonably comment with respect to the content of the redactions, which the Required Party shall consider in good faith.

10.5 Prior Agreements. This Agreement supersedes (a) the Non-binding Term Sheet between DexCom and Verily exchanged by the Parties in August and September, 2018, (b) the Collaboration and License Agreement between DexCom and Google Life Sciences LLC, dated August 10, 2015, as amended, (c) the and Non-binding Term Sheet for Collaboration and License Agreement between DexCom and Google Inc. dated June 29, 2015, and, (d) solely with regard to the subject matter of this Agreement and the information disclosed pursuant hereto, the Non-Disclosure Agreement dated April 6, 2015 between DexCom and Google Inc., acting on its behalf and on behalf of its affiliates (collectively, the "**Prior Agreements**"). All Confidential Information disclosed by a Party under the Prior Agreements shall be deemed Confidential Information of such disclosing Party under this Agreement and shall be subject to the terms of this Article 10.

10.6 Publications. Each Party shall submit to the other Party any proposed publication or public disclosure containing clinical or scientific results for the Products at least thirty (30) days in advance to allow that Party to review such proposed publication or disclosure. The reviewing Party will promptly review such proposed publication or disclosure and make any objections or comments that it may have thereto, and the Parties shall discuss the advantages and disadvantages of publishing or disclosing such results. If the Parties are unable to agree on whether to publish or disclose the same, the matter shall be referred to the Executive Sponsors for review and comment. In resolving whether to publish or disclose the same, DexCom shall consider the good faith comments of Verily with respect thereto. This Section 10.6 shall not be deemed to limit the Parties' obligations under Section 10.1 above.

10.7 Press Release. Neither Party shall issue any press release or other public statement, whether oral or written, disclosing the existence of this Agreement, the terms hereof or any information relating to this Agreement without the prior written consent of the other Party.

Article 11.
REPRESENTATIONS, WARRANTIES AND COVENANTS; INDEMNIFICATION

11.1 General Representations and Warranties. Each Party represents and warrants to the other that:

11.1.1 it is duly organized and validly existing under the Laws of the jurisdiction of its incorporation, and has full corporate power and authority to enter into this Agreement and to carry out the provisions hereof;

11.1.2 it is duly authorized to execute and deliver this Agreement and to perform its obligations hereunder, and the person executing this Agreement on its behalf has been duly authorized to do so by all requisite corporate action;

11.1.3 this Agreement is legally binding upon it and enforceable in accordance with its terms. The execution, delivery and performance of this Agreement by it does not conflict

with any agreement, instrument or understanding, oral or written, to which it is a party or by which it may be bound, nor violate any material applicable Law;

11.1.4 except for the Permitted Encumbrances, it has not granted, and shall not grant during the Term, any right to any Third Party which would conflict with the IP rights granted to the other Party hereunder;

11.1.5 it is not aware of any action, suit or inquiry or investigation instituted by any Person which questions or threatens the validity of this Agreement;

11.1.6 with respect to Verily only,

(a) Verily, together with its Affiliates, is the sole owner of the [***] and the [***] and has the exclusive right to such Patents to grant the licenses granted to DexCom hereunder;

(b) Verily will not assign or transfer any rights in the Verily Licensed Patents in a manner that would cause a license to be granted to a Third Party pursuant to [***];

(c) none of the agreements identified in Exhibit 1.63 grant any Third Party (i) any exclusive rights with respect to any of the Verily Licensed Patents in [***], (ii) any right to Verily Know-How in [***], (iii) any right to file applications for, prosecute, maintain, enforce or defend any of the Verily Licensed Patents in [***], or (iv) rights necessary to Develop, Manufacture and Commercialize [***];

(d) without limiting the foregoing, Verily has not, prior to the Effective Date, and will not have, as of the Effective Date, (i) assigned to any Third Party any Verily IP for which Verily granted any license or other rights to DexCom under the Original Agreement, or (ii) otherwise granted to any Third Party any rights to such Verily IP that, in each case (i) and (ii), adversely affect Verily's ability to grant rights to or in such Verily IP to the same extent that Verily granted such rights in the Original Agreement; and

(e) it will conduct its obligations under [***] and Commercialization Plan, including the Development of Products thereunder, using its employees or contractors that are obligated to assign to Verily and/or its Affiliates all rights in and to any Collaboration IP and associated intellectual property rights and to maintain in confidence all of the other Party's Confidential Information, and will not use any employee of an Affiliate in the conduct of such [***] and Commercialization Plan unless such employee is under such obligations of assignment and confidentiality.

11.1.7 DexCom Antitrust Representation. DexCom represents and warrants to Verily that DexCom, or if different its ultimate parent entity under the HSR Act, has determined that the value of the non-exempt assets it will acquire from Verily under this Agreement (including U.S. patent rights), as determined under the HSR Act (including 16 C.F.R. Section 801.10), is less than $84.4 million and has therefore concluded, taking into account the aggregation rules under the HSR Act, that the HSR Act's size of transaction test will not be satisfied, with respect to the non-exempt assets DexCom will acquire under this Agreement.

11.1.8 Verily Service Covenants. Verily covenants that the Verily Services provided by it hereunder will be provided by qualified professionals conforming to Verily's standard practices (in no event less than industry standard practices) governing the design and development of application software of the same general nature and complexity.

11.2 Disclaimer of Warranties. EXCEPT AS SET FORTH IN THIS ARTICLE 11, VERILY AND DEXCOM EXPRESSLY DISCLAIM ANY WARRANTIES OR CONDITIONS, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT (INCLUDING THE VERILY IP, VERILY BACKGROUND IP, JOINT COLLABORATION IP, OR COLLABORATION IP ASSIGNED TO DEXCOM FROM VERILY), INCLUDING ANY WARRANTY OF MERCHANTABILITY, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES.

11.3 Limitation of Liability. WITHOUT LIMITING EITHER PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 11.4 BELOW, NEITHER PARTY SHALL BE LIABLE TO THE OTHER UNDER THIS AGREEMENT FOR ANY LOSS OF PROFITS, LOSS OF BUSINESS, INTERRUPTION OF BUSINESS, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND SUFFERED BY SUCH OTHER PARTY FOR BREACH HEREOF, WHETHER BASED ON CONTRACT OR TORT CLAIMS OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS; PROVIDED, HOWEVER, THAT THE FOREGOING SHALL NOT APPLY TO ANY MATERIAL WILLFUL BREACH OF THIS AGREEMENT BY A PARTY OR A BREACH OF A PARTY'S CONFIDENTIALITY OBLIGATIONS UNDER ARTICLE 10.

11.4 Indemnification.

11.4.1 Indemnification by Verily. Verily hereby agrees to defend, hold harmless and indemnify (collectively, "**Indemnify**") DexCom and its Affiliates, and its and their agents, directors, officers and employees (the "**DexCom Indemnitees**") from and against any liability or expense (including reasonable legal expenses and attorneys' fees) (collectively, "**Losses**"), resulting from suits, claims, actions and demands, in each case brought by a Third Party (each, a "**Third-Party Claim**") arising out of (a) a breach of any of Verily's covenants, representations or warranties hereunder, (b) the gross negligence or willful misconduct or omission of Verily or its Affiliates under this Agreement, (c) actual or alleged infringement of the intellectual property rights of a Third Party by a Verily Service or deliverable of Verily under the Development Plan ("**Verily Deliverable**"), except to the extent that such infringement results from a modification, enhancement or improvement made or implemented by DexCom to the Verily Deliverable, or combination of the Verily Deliverable with materials not furnished by Verily. Verily's obligation to Indemnify the DexCom Indemnitees pursuant to this Section 11.4.1 shall not apply to the extent that any such Losses arise from the gross negligence or intentional misconduct of any DexCom Indemnitee, arise from any material breach by DexCom of this Agreement; or are Losses for which DexCom is obligated to Indemnify the Verily Indemnitees pursuant to Section 11.4.3. Verily may, at Verily's option, (i) obtain, at its expense, a license from such Third Party for the benefit of DexCom and its customers, and/or (ii) replace or modify the deliverable in question so that it is no longer infringing but provides comparable functionality. Verily's obligation to indemnify under this Section 11.4.1 shall not extend to use of its deliverable or Verily Service after Verily has offered or implemented a technically reasonable non-infringing alternative design with comparable functionality.

11.4.2 Indemnification by Verily for [***]. Verily hereby agrees to Indemnify the DexCom Indemnitees from and against any and all Losses resulting from a claim by [***].

11.4.3 Indemnification by DexCom. DexCom hereby agrees to Indemnify Verily and its Affiliates, and its and their agents, directors, officers and employees (the "**Verily Indemnitees**") from and against any and all Losses resulting from Third-Party Claims arising out of: (a) a breach of any of DexCom's covenants, representations or warranties hereunder, (b) the gross negligence or willful misconduct or omission of DexCom or its Affiliates under this Agreement, (c) actual or alleged infringement of the intellectual property rights of a Third Party by a deliverable of DexCom under the Development Plan ("**DexCom Deliverable**"), except to the extent that such infringement results from a modification, enhancement or improvement made or implemented by Verily to the DexCom Deliverable, or combination of the DexCom Deliverable with materials not furnished by DexCom. DexCom's obligation to Indemnify the Verily Indemnitees pursuant to this Section 11.4.3 shall not apply to the extent that any such Losses arise from the gross negligence or intentional misconduct of any Verily Indemnitee, arise from any material breach by Verily of this Agreement or are Losses for which Verily is obligated to Indemnify the DexCom Indemnitees pursuant to Section 11.4.1.

11.4.4 Procedure. The indemnified Party shall provide the indemnifying Party with prompt notice of the Third-Party Claim or [***] giving rise to the indemnification obligation pursuant to this Section 11.4 and, to be eligible to be Indemnified hereunder, the exclusive ability to defend (with the reasonable cooperation of the indemnified Party) or settle any such claim; provided, however, that the indemnifying Party shall not enter into any settlement that admits fault, wrongdoing or damages without the indemnified Party's written consent, such consent not to be unreasonably withheld or delayed. The indemnified Party shall have the right to participate, at its own expense and with counsel of its choice, in the defense of any claim or suit that has been assumed by the indemnifying Party.

11.5 Insurance. Each Party shall obtain and maintain, during the term of this Agreement and for six (6) years thereafter, comprehensive general liability insurance, including products liability insurance and coverage for clinical trials. Such insurance shall be with reputable and financially secure insurance carriers, or self-insurance in a form and at levels consistent with industry standards based upon such Party's activities hereunder and indemnification obligations hereunder, and shall name the other Party as an additional insured. Such liability insurance or self-insurance shall be maintained on an occurrence basis to provide such protection after expiration or termination of the policy itself or this Agreement.

Article 12.
TERM AND TERMINATION

12.1 Term. This Agreement shall become effective as of the Effective Date and continue in full force and effect, unless earlier terminated pursuant to the other provisions of this Article 12, until December 31, 2028, *provided* that upon achievement of the first revenue-related Milestone Event and the payment of the Milestone Payment related thereto (or corresponding cash amount calculated pursuant to Section 8.2.2) the term shall be extended until December 31, 2033 (the "**Term**").

12.2 Termination for Breach. Either Party may terminate this Agreement in the event the other Party materially breaches this Agreement, and such material breach shall have continued for [***] days after written notice thereof was provided to the breaching Party by the

other Party. Any such termination shall become effective at the end of such [***] day period unless the breaching Party has cured any such material breach prior to the expiration of the [***] day period, provided, however, in the event that, following the Launch of the first Product, a good faith dispute arises with respect to the existence of any material breach of a Party's obligations to use Commercially Reasonable Efforts to Develop, Manufacture, Launch, or Commercialize (which material breach, if existing, would give the other Party the right to terminate this Agreement as set forth herein), such termination right shall be tolled commencing on the date of receipt of written notice of such good faith dispute until such time as the dispute is resolved pursuant to Article 13. If this Agreement is terminated following a tolling period as described in this Section 12.2, then, for purposes of determining what constitutes Verily Background IP, the "Term" shall be deemed to end on the date on which such termination would otherwise have been effective in the absence of such tolling.

12.3 General Effects of Expiration or Termination.

12.3.1 Accrued Obligations. Expiration or termination of this Agreement for any reason shall not release either Party of any obligation or liability which, at the time of such expiration or termination, has already accrued to the other Party or which is attributable to a period prior to such expiration or termination.

12.3.2 Non-Exclusive Remedy. Notwithstanding anything herein to the contrary, termination of this Agreement by a Party shall be without prejudice to other remedies such Party may have at Law or equity.

12.3.3 Licenses. Section 7.1 (Licenses to DexCom) (except for Section 7.1.6 (License to Verily Trademarks)) and Section 7.2.2 (License to [***]) shall survive any expiration or termination of Agreement, *provided however,* that: (i) each of the licenses granted to DexCom pursuant to Section 7.1.1(a) and Section 7.1.4 shall (upon such expiration or termination) become non-exclusive (but shall otherwise be subject to the terms set forth therein); and (ii) for clarity, Section 7.1.5 (Covenant Not to Sue for DexCom [***]) will not apply beyond the limited period specified therein.

12.3.4 General Survival. In addition to the surviving provisions identified in Section 12.3.3. above, Article 1 (Definitions), Section 5.5 (Reporting), Section 7.3 (No Other Rights), Section 7.4 (Other Licenses), Article 8 (Payments) (except for Section 8.1 (Second Upfront Fee) unless such payment is due prior such termination or expiration and Section 8.2.3 (Incentive Payment) unless such payment is due before such termination or expiration, and provided that Section 8.7 (Reports) and Section 8.8 (Inspection of Records) survive only as long as DexCom or its Affiliates are Commercializing any Products), Section 9.1 (Ownership) (except for Section 9.1.5), Section 9.3 (Patent Prosecution), Section 9.5.3 (Enforcement Outside of [***]), Article 10 (Confidentiality) (except for the last sentence of 10.2 with respect to Joint Collaboration Know-How), Section 11.2 (Disclaimer of Warranties), Section 11.3 (Limitation of Liability), Section 11.4 (Indemnification), Section 11.5 (Insurance), Section 12.3 (General Effects of Expiration or Termination), Article 13 (Dispute Resolution), and Article 14 (Miscellaneous) shall survive expiration or termination of this Agreement for any reason, *provided however*, that: (i) if this Agreement terminates for Verily's breach or bankruptcy, then in addition to the foregoing, Section 7.6 ([***] Supply) shall survive for 2 years after such termination; and (ii) for clarity, Section 11.5 (Insurance) will not apply beyond the limited period specified therein. Except as otherwise provided in this Section 12.3.4, all rights and obligations of the Parties

under this Agreement shall terminate upon expiration or termination of this Agreement for any reason.

Article 13.
DISPUTE RESOLUTION

13.1 Dispute Resolution. The Parties agree that any dispute, controversy or claim arising from or in connection with (a) the interpretation, enforcement, termination or invalidity of this Agreement, (b) the failure of the Executive Sponsors to reach unanimous agreement on any issue within their authority under this Agreement, (c) any alleged failure to perform, or breach of, this Agreement, (d) or claim relating to the ownership, scope, validity, enforceability or infringement of any Patent rights covering the manufacture, use or sale of any Product or of any Trademark rights relating to any Product, or (e) any issue relating to the interpretation or application of this Agreement (each, a "**Dispute**"), shall be first referred to the Chief Executives of DexCom and Verily for resolution in accordance with Section 2.1.2. In the event that the Chief Executives are unable to reach agreement with respect to such Dispute in accordance with Section 2.1.2, such Dispute shall be resolved through the procedures set forth in this Article 13.

13.2 Jurisdiction; Venue. Other than those Disputes resolved as described in Section 13.3 all Disputes shall be subject to the exclusive jurisdiction and venue of the federal courts within the State of California. Each Party hereto waives and covenants not to assert or plead any objection that such Party might otherwise have to such jurisdiction and venue. Except as set forth herein, each Party hereto hereby agrees not to commence any legal proceedings relating to or arising out of this Agreement or the transactions contemplated hereby in any jurisdiction or courts.

13.3 Executive Sponsor Disputes. Disputes as to matters within the authority of the Executive Sponsors will be resolved as set forth in Section 2.1.2 and shall not otherwise be subject to the provisions of this Article 13; provided that any Dispute as to the application of such Section 2.1.2 shall be subject to the provisions of this Article 13.

Article 14.
MISCELLANEOUS

14.1 Governing Law. This Agreement and any dispute arising from the performance or breach hereof shall be governed by and construed and enforced in accordance with the Law of the State of California, without reference to conflicts of laws principles.

14.2 Assignment. This Agreement shall not be assignable by either Party to any Third Party without the written consent of the other Party and any such attempted assignment shall be void. Notwithstanding the foregoing, either Party may assign this Agreement, without the written consent of the other Party, to an Affiliate or to an entity that acquires all or substantially all of the business or assets of such Party to which this Agreement pertains (whether by merger, reorganization, acquisition, sale or otherwise), and agrees in writing to be bound by the terms and conditions of this Agreement. No assignment or transfer of this Agreement shall be valid and effective unless and until the assignee/transferee agrees in writing to be bound by the provisions of this Agreement. The terms and conditions of this Agreement shall be binding on and inure to the benefit of the permitted successors and assigns of the Parties. Notwithstanding Section 8.5, in the event any withholding or similar tax is levied by or due to an assignment of

this Agreement or any obligation by a Party to an Affiliate or any Third Party, then such Party (itself or its successor) shall bear the full cost of such tax. Except as expressly provided in this Section 14.2, any attempted assignment or transfer of this Agreement shall be null and void.

14.3 Notices. Any notice, request, delivery, approval or consent required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been sufficiently given if delivered in person, transmitted via electronic mail or by express courier service (signature required) or five (5) days after it was sent by registered letter, return receipt requested (or its equivalent), provided that no postal strike or other disruption is then in effect or comes into effect within two (2) days after such mailing, to the Party to which it is directed at its physical or email address shown below or such other address. Notices sent by electronic means shall be effective upon confirmation of receipt, notices sent by mail or overnight delivery service shall be effective upon receipt, and notices given personally shall be effective when delivered.

If to Verily, addressed to: Verily Life Sciences LLC
269 East Grand Avenue
South San Francisco, CA 94080
Attention: Andy Conrad
Email: [***]

With a copy to (which shall not constitute notice): Verily Life Sciences LLC
269 East Grand Avenue
South San Francisco, CA 94080
Attention: General Counsel
Email: [***]
with a copy to verily-counsel@google.com

If to DexCom, addressed to: DexCom, Inc.
6340 Sequence Drive
San Diego, CA 92121
Attention: Kevin Sayer,
President and Chief Executive Officer
Email: [***]

With a copy (which shall not constitute notice) to: Fenwick & West LLP
801 California Street
Mountain View, CA 94041
Attention: Stefano Quintini and Michael Brown
Email: [***]

14.4 Waiver. Neither Party may waive or release any of its rights or interests in this Agreement except in writing. The failure of either Party to assert a right hereunder or to insist upon compliance with any term or condition of this Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition. No waiver by either Party of any condition or term in any one or more instances shall be construed as a continuing waiver of such condition or term or of another condition or term.

14.5 Severability. If any provision hereof should be held invalid, illegal or unenforceable in any jurisdiction, the Parties shall negotiate in good faith a valid, legal and enforceable substitute provision that most nearly reflects the original intent of the Parties and all other provisions hereof shall remain in full force and effect in such jurisdiction and shall be liberally construed in order to carry out the intentions of the Parties as nearly as may be possible. Such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of such provision in any other jurisdiction. If a Party seeks to avoid a provision of this Agreement by asserting that such provision is invalid, illegal or otherwise unenforceable, such action shall be deemed to be a material breach of this Agreement.

14.6 No Third Party Beneficiaries. Except for the rights to indemnification provided for certain Third Parties as specified in Section 11.4 and as otherwise specified in this Section 14.6, all rights, benefits and remedies under this Agreement are solely intended for the benefit of DexCom and its Affiliates and Verily and its Affiliates, and except for such rights to indemnification expressly provided pursuant to Section 11.4, no Third Party shall have any rights whatsoever to (a) enforce any obligation contained in this Agreement (b) seek a benefit or remedy for any breach of this Agreement, or (c) take any other action relating to this Agreement under any legal theory, including, actions in contract, tort (including but not limited to, negligence, gross negligence and strict liability), or as a defense, setoff or counterclaim to any action or claim brought or made by either Party. Notwithstanding the foregoing, Onduo shall be a Third Party beneficiary with respect to the obligations to make payments or transfer shares to Onduo under this Agreement, which payments shall be “Product Fee Payments” as referenced in the Contribution Agreement between Verily Life Sciences LLC and Onduo LLC.

14.7 Entire Agreement/Modification. This Agreement, including its Exhibits, sets forth all the covenants, promises, agreements, warranties, representations, conditions and understandings between the Parties and supersedes and terminates all prior agreements and understandings between the Parties including the Original Agreement and the Prior Agreements. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the Parties unless reduced to writing and signed by the respective authorized officers of the Parties. All references to the Original Agreement in any other agreement or other document between the Parties that pre-dates the Effective Date shall, on and after the Effective Date, be deemed to refer to this Agreement (except to the extent, if any, that such interpretation would conflict with the terms of this Agreement as they refer or pertain to the Original Agreement).

14.8 Relationship of the Parties. The Parties agree that the relationship of Verily and DexCom established by this Agreement is that of independent contractors. Furthermore, the Parties agree that this Agreement does not, is not intended to, and shall not be construed to, establish an employment, agency or any other relationship. Except as may be specifically provided herein, neither Party shall have any right, power or authority, nor shall they represent themselves as having any authority to assume, create or incur any expense, liability or obligation, express or implied, on behalf of the other Party, or otherwise act as an agent for the other Party for any purpose.

14.9 Force Majeure. Except with respect to payment of money, neither Party shall be liable to the other for failure or delay in the performance of any of its obligations under this Agreement for the time and to the extent such failure or delay is caused by earthquake, riot, civil commotion, war, terrorist acts, strike, flood, or governmental acts or restriction or other cause, in each case to the extent beyond the reasonable control of the respective Party (any of the foregoing, “**Force Majeure Event**”). The Party affected by such force majeure will provide the

other Party with full particulars thereof as soon as it becomes aware of the same (including its best estimate of the likely extent and duration of the interference with its activities), and will use Commercially Reasonable Efforts to overcome the difficulties created thereby and to resume performance of its obligations as soon as practicable. If the performance of any such obligation under this Agreement is delayed owing to such a force majeure for any continuous period of more than [***] days, the Parties will consult with respect to an equitable solution.

14.10 Compliance with Laws/Other. Notwithstanding anything to the contrary contained herein, all rights and obligations of Verily and DexCom are subject to prior compliance with, and each Party shall comply with, all applicable Laws, including obtaining all necessary approvals required by the applicable agencies of the governments of the United States and foreign jurisdictions. In addition, each Party shall conduct its activities under the Collaboration in accordance with good scientific and business practices.

14.11 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together, shall constitute one and the same instrument.

14.12 Bankruptcy Matters. All licenses granted under this Agreement are deemed to be, for purposes of Section 365(n) of the United States Bankruptcy Code (the "**Bankruptcy Code**"), licenses of rights to "intellectual property" as defined in Section 101 of the Bankruptcy Code. The Parties agree that each Party may fully exercise all of its rights and elections under the Bankruptcy Code.

[The remainder of this page intentionally left blank; the signature page follows.]

IN WITNESS WHEREOF, the Parties have executed this Agreement in duplicate originals by their duly authorized representatives as of the Effective Date, with effect as of Effective Date.

VERILY LIFE SCIENCES LLC **VERILY IRELAND**

By: /s/ Andrew Conrad By: /s/ Kristian Marthinsen

Name: Andrew Conrad Name: Kristian Marthinsen

Title: Chief Operating Officer Title: Director

Date: Date: 11/19/2018

DEXCOM, INC.

By: /s/ Quentin Blackford

Name: Quentin Blackford

Title: Chief Financial Officer

Date: 11/20/18

List of Exhibits

Exhibit 1.92 – Permitted Encumbrances
Exhibit 1.143 – [***]
Exhibit 1.144 – [***]
Exhibit 1.153 – [***]

EXHIBIT 1.92
PERMITTED ENCUMBRANCES

[***]

EXHIBIT 1.143

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EXHIBIT 1.153

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EXHIBIT 8.6

STOCK PURCHASE AGREEMENT

[Previously Filed]

Severance and Change in Control Plan

This Severance and Change in Control Plan (this "**Plan**") was adopted by the Board of Directors of DexCom, Inc., a Delaware corporation (the "**Company**") on June 1, 2017 (the "**Effective Date**"). Each executive that is provided benefits under this Plan ("**Executive**") shall be eligible to receive payments from the Plan only if he or she has signed the Participation Agreement in the form attached as Exhibit A to this Plan (a "**Participation Agreement**"). References to this Plan shall include any individual's Participation Agreement, as applicable.

1. Term of Agreement.

Except to the extent renewed as set forth in this Section 1, this Plan, and each Participation Agreement, shall terminate upon the three year anniversary of the Effective Date (as amended or extended, the "**Expiration Date**") and any individual Participation Agreement shall terminate upon the earlier of (i) the date the Executive's employment with the Company terminates for a reason other than a Qualifying Termination as described below or (ii) the date the Company has met all of its obligations under this Plan following a Qualifying Termination of the Executive's employment; provided, that, if there occurs a Potential Change in Control on or before the Expiration Date, then this Plan shall remain in effect until any benefits under this Plan are no longer capable of being earned as a result of a Qualifying Termination as described below. This Plan shall expire on the initial Expiration Date, unless renewed by the Board.

2. Severance Benefit.

Any other provision of this Plan notwithstanding, Executive's receipt of any payments or benefits under this Section 2 is subject to Executive's delivery to the Company of a general release (in a form prescribed by the Company) of all known and unknown claims that he or she may then have against the Company or persons affiliated with the Company (the "**Release**"), and satisfaction of all conditions to make the Release effective, within sixty (60) days following Executive's Qualifying Termination (such sixty (60) day period, the "**Release Period**"). In no event will any payment or benefits under this Plan be paid or provided until the Release becomes effective and irrevocable.

Payment of the severance and/or bonus payment, if any, payable pursuant to Section 2(a)(i) and Section 2(b)(i) and (ii)(II), as applicable, shall be made in a single lump sum payment, within thirty (30) days following expiration of the Release Period. Payment of the bonus amount, if any, payable pursuant to Section 2(a)(ii) or 2(b)(ii)(I) shall be payable on the first payroll date following the final determination of such bonus amount for other bonus recipients generally, but not later than March 15th of the year following such Qualifying Termination.

(a) **Other than During a Change in Control Period**. If the Executive is subject to a Qualifying Termination other than during a Change in Control Period, the Executive shall be entitled to the following:

(i) Severance Payments. The Company shall pay the Executive the Severance Multiple (Other than During a Change in Control Period) as defined in the Executive's Participation Agreement. To the extent the foregoing amount is payable under Section 2(b), it will not be paid under this Section 2(a).

(ii) Bonus Payments. The Company shall pay the Executive the Bonus Amount (Other than During a Change in Control Period) as defined in the Participation Agreement. To the extent the foregoing amount is payable under Section 2(b), it will not be paid under this Section 2(a).

(iii) Health Care Benefit. If the Executive elects to continue his or her health insurance coverage under the Consolidated Omnibus Budget Reconciliation Act ("**COBRA**") following the termination of his or her employment, then the Company shall pay the Executive's

monthly premium under COBRA until the earliest of (A) the COBRA Continuation Period (Other than During a Change in Control Period) as defined in the Participation Agreement, (B) the date when the Executive receives similar coverage with a new employer or (C) the expiration of the Executive's continuation coverage under COBRA.

(b) **During a Change in Control Period.** If the Executive is subject to a Qualifying Termination during a Change in Control Period, the Executive shall be entitled to the following:

(i) Severance Payments. The Company shall pay the Executive the Severance Multiple (During a Change in Control Period) as defined in the Participation Agreement. To the extent the foregoing amount is payable under Section 2(a), it will not be paid under this Section 2(b).

(ii) Bonus Payments. The Company shall pay the Executive the greater of (I) the Pro Rata Bonus Amount (During a Change in Control Period) and (II) the Target Bonus Amount (During a Change in Control Period), in each case as defined in the Participation Agreement. To the extent the foregoing amount is payable under Section 2(a), it will not be paid under this Section 2(b).

(iii) Health Care Benefit. If the Executive elects to continue his or her health insurance coverage under COBRA following the termination of his or her employment, then the Company shall pay the Executive's monthly premium under COBRA until the earliest of (1) the COBRA Continuation Period (During a Change in Control Period) as defined in the Participation Agreement, (2) the date when the Executive receives similar coverage with a new employer or (3) the expiration of the Executive's continuation coverage under COBRA.

(iv) Equity.

(1) Each of Executive's then-outstanding unvested Equity Awards, other than Performance Awards (as defined below), shall accelerate and become vested and exercisable or settled with respect to the Acceleration Percentage (During a Change in Control Period). With respect to awards that would otherwise vest only upon satisfaction of performance criteria ("**Performance Awards**"), the vesting will accelerate as set forth in the terms of the applicable Performance Award agreement. Subject to Section 2(d), the accelerated vesting described above shall be effective as of the Qualifying Termination; provided, that, if the Qualified Termination during a Change in Control Period occurs prior to the Change in Control, then any unvested portion of the terminated Executive's Equity Awards will remain outstanding for three (3) months following the Qualifying Termination (provided that in no event will the terminated Executive's Equity Awards remain outstanding beyond the expiration of the Equity Award's maximum term). In the event that the proposed Change in Control is terminated without having been completed, any unvested portion of the terminated Executive's Equity Awards automatically will be forfeited.

(2) Notwithstanding anything to the contrary, if the successor or acquiring corporation (if any) of the Company refuses to assume, convert, replace or substitute Executive's unvested Equity Awards, as provided in Section 21.1 of the Company's 2015 Equity Incentive Plan (the "**2015 Plan**"), in connection with a Corporate Transaction (as defined in the Plan), or as provided in the comparable section of a similar equity compensation plan of the Company (and together with the 2015 Plan, the "**Equity Plans**") then notwithstanding any other provision in this Plan, the Equity Plans or any Equity Award Agreement to the contrary, each of Executive's then-outstanding and unvested Equity Awards, other than Performance Awards, that are not assumed, converted, replaced or substituted, shall accelerate and become vested and exercisable as to 100% of the then-unvested shares subject to the Equity Awards effective immediately prior to the Change in Control, as applicable and terminate to the extent not exercised (as applicable) upon the Change in Control. With respect to Performance Awards, the vesting for such Performance Awards will accelerate only as set forth in the terms of the applicable Performance Award agreement.

(c) **Special Cash Payments in Lieu of COBRA Premiums**. Notwithstanding Section 2(a)(iii) or Section 2(b)(iii) above, if the Executive is eligible for, and the Company determines, in its sole discretion, that it cannot pay, the COBRA premiums without a substantial risk of violating applicable law (including Section 2716 of the Public Health Service Act), the Company instead shall pay to the Executive a fully taxable cash payment equal to the applicable COBRA premiums (including premiums for the Executive and the Executive's eligible dependents who have elected and remain enrolled in such COBRA coverage), subject to applicable tax withholdings (such amount, the "**Special Cash Payment**"), for the remainder of the period the Executive remains eligible for the benefit under Section 2(a)(iii) or Section 2(b)(iii) above. The Executive may, but is not obligated to, use such Special Cash Payments toward the cost of COBRA premiums. Notwithstanding the foregoing, the number of months included in the Special Cash Payment to be paid, in any case, shall be reduced by the number of months of COBRA premiums previously paid by the Company.

(d) **Accrued Compensation and Benefits**. In connection with any termination of employment prior to, upon or following a Change in Control (whether or not a Qualifying Termination), the Company shall pay Executive's earned but unpaid base salary and other vested but unpaid cash entitlements for the period through and including the termination of employment, including unused earned vacation pay and unreimbursed documented business expenses incurred by Executive through and including the date of termination (collectively "**Accrued Compensation and Expenses**"), as required by law and the applicable Company plan or policy. In addition, Executive shall be entitled to any other vested benefits earned by Executive for the period through and including the termination date of Executive's employment under any other employee benefit plans and arrangements maintained by the Company, in accordance with the terms of such plans and arrangements, except as modified herein (collectively "**Accrued Benefits**"). Any Accrued Compensation and Expenses to which the Executive is entitled shall be paid to the Executive in cash as soon as administratively practicable after the termination, and, in any event, no later than two and one-half (2-1/2) months after the end of the taxable year of the Executive in which the termination occurs. Any Accrued Benefits to which the Executive is entitled shall be paid to the Executive as provided in the relevant plans and arrangement.

3. Covenants.

(a) **Non-Competition**. The Executive agrees that, during his or her employment with the Company, he or she shall not engage in any other employment, consulting or other business activity (whether full-time or part-time) that would create a conflict of interest with the Company.

(b) **Non-Solicitation**. The Executive agrees that, during his or her employment with the Company and for a one (1) year period thereafter, her or she will not directly or indirectly solicit away employees or consultants of the Company for his or her own benefit or for the benefit of any other person or entity, nor will the Executive encourage or assist others to do so.

(c) **Cooperation and Non-Disparagement**. The Executive agrees that, during the twelve (12) month period following his or her cessation of employment, he or she shall cooperate with the Company in every reasonable respect and shall use his or her best efforts to assist the Company with the transition of Executive's duties to his or her successor. The Executive further agrees that, during this twelve (12) month period, he or she shall not in any way or by any means disparage the Company, the members of the Board or the Company's officers and employees.

This Section 3 shall in no manner limit obligations of the Executive under any other agreement, including the Employee Proprietary Information and Inventions Agreement (which shall remain in full effect pursuant to its terms following Executive's termination, between the Company and the Executive in any manner); provided, that, to the extent the terms of this Section 3 directly conflict with the terms of any such agreement, the agreement containing the most Company-favorable terms that are enforceable shall govern.

4. Definitions.

(a) "**Board**" means the Company's Board of Directors.

(b) "**Cause**" means (i) the Executive has been convicted of, or has pleaded guilty or nolo contendere to, any felony or crime involving moral turpitude, (ii) the Executive has engaged in willful misconduct which is injurious to the Company or materially failed or refused to perform the material duties lawfully and reasonably assigned to the Executive or has performed such material duties with gross negligence or has breached any material term or condition of this Plan, the Executive's Employee Proprietary Information and Inventions Agreement with the Company or any other material agreement with the Company, in any case after written notice by the Company of such misconduct, performance issue, gross negligence or breach of terms or conditions and an opportunity to cure within thirty (30) days of such written notice thereof from the Company, unless such misconduct, performance issue, gross negligence or breach is, by its nature, not curable, or (iii) the Executive has committed any act of fraud, theft, embezzlement, misappropriation of funds, breach of fiduciary duty or other willful act of material dishonesty against the Company that results in material harm to the Company.

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

(d) "**Change in Control**" means the occurrence of any of the following events: (i) any "person" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) becomes the "beneficial owner" (as defined in Rule 13d-3 of the Exchange Act), directly or indirectly, of securities of the Company representing more than fifty percent (50%) of the total voting power represented by the Company's then outstanding voting securities; or (ii) the consummation of the sale or disposition by the Company of all or substantially all of the Company's assets; or (iii) the consummation of a merger or consolidation of the Company with any other corporation, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or its parent) at least fifty percent (50%) of the total voting power represented by the voting securities of the Company or such surviving entity or its parent outstanding immediately after such merger or consolidation.

(e) "**Change in Control Period**" means the period commencing three (3) months prior to a Change in Control (only if after a Potential Change in Control) and ending twelve (12) months following a Change in Control.

(f) "**Disability**" has the meaning set forth in Section 22(e)(3) of the Code.

(g) "**Equity Awards**" means all options to purchase shares of Company common stock as well as any and all other stock-based awards granted to the Executive, including but not limited to stock bonus awards, restricted stock, restricted stock units or stock appreciation rights.

(h) "**Exchange Act**" means the Securities Exchange Act of 1934, as amended.

(i) "**Good Reason**" has the meaning identified in the applicable Participation Agreement.

(j) "**Potential Change in Control**" means the date of execution of a definitive agreement providing for a Change in Control if such transaction is consummated.

(k) "**Qualifying Termination**" means a termination of employment resulting from (i) a termination by the Company of the Executive's employment for any reason other than Cause, death or Disability, or (ii) if within (12) months following a Change in Control, a voluntary resignation by the Executive of his or her employment for Good Reason (as defined in the Participation Agreement, if any such definition exists; provided that if such definition of Good

Reason does not exist in such Participation Agreement for such Executive, then part (ii) of this definition shall be disregarded). Termination due to Executive's death or Executive's Disability will in no event constitute a Qualifying Termination.

5. Successors.

(a) **Company's Successors**. The Company shall require any successor (whether direct or indirect and whether by purchase, merger, consolidation, liquidation or otherwise) to all or substantially all of the Company's business and/or assets, by an agreement in substance and form satisfactory to the Executive, to assume this Plan and to agree expressly to perform this Plan in the same manner and to the same extent as the Company would be required to perform it in the absence of a succession. For all purposes under this Plan, the term "**Company**" shall include any successor to the Company's business and/or assets or which becomes bound by this Plan by operation of law.

(b) **Executive's Successors**. This Plan and all rights of the Executive hereunder shall inure to the benefit of, and be enforceable by, the Executive's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees.

6. Golden Parachute Taxes.

(a) **Best After-Tax Result**. In the event that any payment or benefit received or to be received by Executive pursuant to this Plan or otherwise ("**Payments**") would (i) constitute a "parachute payment" within the meaning of Section 280G of the Code and (ii) but for this subsection (a), be subject to the excise tax imposed by Section 4999 of the Code, any successor provisions, or any comparable federal, state, local or foreign excise tax ("**Excise Tax**"), then, subject to the provisions of Section 6(b) hereof, such Payments shall be either (A) provided in full pursuant to the terms of this Plan or any other applicable agreement, or (B) provided as to such lesser extent which would result in no portion of such Payments being subject to the Excise Tax ("**Reduced Amount**"), whichever of the foregoing amounts, taking into account the applicable federal, state, local and foreign income, employment and other taxes and the Excise Tax (including, without limitation, any interest or penalties on such taxes), results in the receipt by Executive, on an after-tax basis, of the greatest amount of payments and benefits provided for hereunder or otherwise, notwithstanding that all or some portion of such Payments may be subject to the Excise Tax. Unless the Company and Executive otherwise agree in writing, any determination required under this Section shall be made by independent tax counsel designated by the Company and reasonably acceptable to Executive ("**Independent Tax Counsel**"), whose determination shall be conclusive and binding upon Executive and the Company for all purposes. For purposes of making the calculations required under this Section 6(a), Independent Tax Counsel may make reasonable assumptions and approximations concerning applicable taxes and may rely on reasonable, good faith interpretations concerning the application of Sections 280G and 4999 of the Code; provided that Independent Tax Counsel shall assume that Executive pays all taxes at the highest marginal rate. The Company and Executive shall furnish to Independent Tax Counsel such information and documents as Independent Tax Counsel may reasonably request in order to make a determination under this Section. The Company shall bear all costs that Independent Tax Counsel may reasonably incur in connection with any calculations contemplated by this Section. In the event that Section 6(a)(ii)(B) above applies, then based on the information provided to Executive and the Company by Independent Tax Counsel, Executive may, in Executive's sole discretion and within 30 days of the date on which Executive is provided with the information prepared by Independent Tax Counsel, determine which and how much of the Payments (including the accelerated vesting of equity compensation awards) to be otherwise received by Executive shall be eliminated or reduced (as long as after such determination the value (as calculated by Independent Tax Counsel in accordance with the provisions of Sections 280G and 4999 of the Code) of the amounts payable or distributable to Executive equals the Reduced Amount). If the Internal Revenue Service (the "**IRS**") determines that any Payment is subject to the Excise Tax,

then Section 6(b) hereof shall apply, and the enforcement of Section 6(b) shall be the exclusive remedy to the Company.

(b) **Adjustments**. If, notwithstanding any reduction described in Section 6(a) hereof (or in the absence of any such reduction), the IRS determines that Executive is liable for the Excise Tax as a result of the receipt of one or more Payments, then Executive shall be obligated to surrender or pay back to the Company, within 120 days after a final IRS determination, an amount of such payments or benefits equal to the "**Repayment Amount**." The Repayment Amount with respect to such Payments shall be the smallest such amount, if any, as shall be required to be surrendered or paid to the Company so that Executive's net proceeds with respect to such Payments (after taking into account the payment of the Excise Tax imposed on such Payments) shall be maximized. Notwithstanding the foregoing, the Repayment Amount with respect to such Payments shall be zero if a Repayment Amount of more than zero would not eliminate the Excise Tax imposed on such Payments or if a Repayment Amount of more than zero would not maximize the net amount received by Executive from the Payments. If the Excise Tax is not eliminated pursuant to this Section 6(b), Executive shall pay the Excise Tax.

7. Miscellaneous Provisions.

(a) **Section 409A**. For purposes of Section 409A of the Code, if the Company determines that Executive is a "*specified employee*" under Code Section 409A(a)(2)(B)(i) at the time of a separation from service, then (i) the severance benefits under Section 2, to the extent subject to Code Section 409A, will commence during the seventh month after the Executive's separation from service and (ii) will be paid in a lump sum on the earliest practicable date permitted by Section 409A(a)(2) of the Code. Any termination of Executive's employment is intended to constitute a separation from service and will be determined consistent with the rules relating to a "*separation from service*" as such term is defined in Treasury Regulation Section 1.409A-1. It is intended that each installment of the payments provided hereunder constitute separate "payments" for purposes of Treasury Regulation Section 1.409A-2(b)(2)(i). It is further intended that payments hereunder satisfy, to the greatest extent possible, the exemption from the application of Section 409A of the Code (and any state law of similar effect) provided under Treasury Regulation Section 1.409A-1(b)(4) (as a "**short-term deferral**"). To the extent that any provision of this Plan is ambiguous as to its compliance with Section 409A of the Code, the provision will be read in such a manner so that all payments hereunder comply with Section 409A of the Code. Except as otherwise expressly provided herein, to the extent any expense reimbursement or the provision of any in-kind benefit under this Plan is determined to be subject to Section 409A of the Code, the amount of any such expenses eligible for reimbursement, or the provision of any in-kind benefit, in one calendar year shall not affect the expenses eligible for reimbursement in any other taxable year (except for any lifetime or other aggregate limitation applicable to medical expenses), in no event shall any expenses be reimbursed after the last day of the calendar year following the calendar year in which Executive incurred such expenses, and in no event shall any right to reimbursement or the provision of any in-kind benefit be subject to liquidation or exchange for another benefit.

(b) **Other Severance Arrangements**. The Company may have previously provided Executive with certain change of control (including "single-trigger" and/or "double-trigger" acceleration) and/or severance arrangements prior to the Effective Date (the "**Prior Severance Arrangements**"); provided, however, that the assumption by the Company of any change of control and/or severance arrangements for an Executive in connection with the acquisition of another company by the Company shall not be considered Prior Severance Arrangements. Upon the earlier of (i) 10 days following a Qualifying Termination under this Plan and (ii) within 30 days of a Company request if requested by the Company during a Change in Control Period (and provided that in all cases Executive has not previously earned and received any payments and/or acceleration under the Prior Severance Arrangements), an Executive shall be entitled to elect to receive (a) the benefits provided for under this Plan subject to the applicable terms and conditions of this Plan **or** (b) the benefits provided for under the Prior Severance Arrangements subject to the terms and conditions of the Prior Severance Arrangements (such election shall be exclusive as to either this Plan or the Prior Severance Arrangements, irrevocable and final);

provided that if Executive elects to receive the benefits under the Prior Severance Arrangements, then Executive shall be entitled to any larger cash severance, bonus, benefit continuation and equity acceleration, in the aggregate (taking into account the value of any "single-trigger" acceleration triggered by a Change in Control as if such acceleration occurred on such Qualifying Termination), pursuant to and consistent with this Plan; provided that the Executive provides a Release consistent with Section 2 of this Plan (collectively, the "**Severance Election**"). Except as otherwise specified herein (including the Prior Severance Arrangements and the Severance Election), this Plan represents the entire agreement between Executive and the Company with respect to any and all severance arrangements, vesting acceleration arrangements and post-termination stock option exercise period arrangements, and supersedes and replaces any and all prior verbal or written discussions, negotiations and/or agreements between the Executive and the Company relating to the subject matter hereof, including but not limited to, any and all prior agreements governing any Equity Award, severance and salary continuation arrangements, programs and plans which were previously offered by the Company to the Executive, and change in control and severance arrangements pursuant to an employment agreement or offer letter, and Executive hereby waives Executive's rights to any and all such other severance or acceleration payments or benefits, as applicable.

(c) **Dispute Resolution**. To ensure rapid and economical resolution of any and all disputes that might arise in connection with this Plan, Executive and the Company agree that any and all disputes, claims, and causes of action, in law or equity, arising from or relating to this Plan or its enforcement, performance, breach, or interpretation, will be resolved solely and exclusively by final, binding, and confidential arbitration, by a single arbitrator, in San Diego, California, and conducted by the American Arbitration Association under its then-existing employment rules and procedures. Nothing in this section, however, is intended to prevent either party from obtaining injunctive relief in court to prevent irreparable harm pending the conclusion of any such arbitration. Each party to an arbitration or litigation hereunder shall be responsible for the payment of its own attorneys' fees.

(d) **Notice**. Notices and all other communications contemplated by this Plan shall be in writing and shall be deemed to have been duly given when personally delivered or when mailed by U.S. registered or certified mail, return receipt requested and postage prepaid or deposited with Federal Express Corporation, with shipping charges prepaid. In the case of the Executive, mailed notices shall be addressed to him or her at the home address which he or she most recently communicated to the Company in writing. In the case of the Company, mailed notices shall be addressed to its corporate headquarters, and all notices shall be directed to the attention of its Secretary.

(e) **Administration and Interpretation.** This Plan will be administered by the Board of Directors of the Company (the "**Board**"), or a committee designated by the Board. Subject to the general purposes, terms and conditions of this Plan, and to the direction of the Board, or the committee, the Board will have full power to implement and carry out this Plan, including but not limited to the ability to (i) construe and interpret this Plan, any Participation Agreement and any other agreement or document executed pursuant to this Plan, (ii) prescribe, amend and rescind rules and regulations relating to this Plan or any Participation Agreement, (iii) select persons to receive and execute Participation Agreements, (iv) make all other determinations necessary or advisable for the administration of this Plan; and (v) delegate any of the foregoing to a subcommittee consisting of one or more executive officers pursuant to a specific delegation as permitted by applicable law. Any determination made by the Board with respect to this Plan or any Participation Agreement shall be made in its sole discretion, and such determination shall be final and binding on the Company and all persons having an interest in any Participation Agreement under this Plan. Any dispute regarding the interpretation of this Plan or any Participation Agreement shall be submitted by the Executive or Company to the Board, or committee, for review. The resolution of such a dispute by the Board, or committee, shall be final and binding on the Company and the Executive. The Board, or committee, shall review and resolve disputes with respect to this Plan or Participation Agreements with Executives, and such resolution shall be final and binding and conclusive.

(f) **Amendment; Waiver**. This Plan may not be amended or waived except by a writing signed by Executive and by a duly authorized representative of the Company other than Executive. No provision of this Plan shall be modified, waived, superseded or discharged unless the modification, waiver or discharge is agreed to in writing and signed by the Executive and by an authorized officer of the Company (other than the Executive) and, to the extent it supersedes this Plan, that this Plan is referred to by date. No waiver by either party of any breach of, or of compliance with, any condition or provision of this Plan by the other party shall be considered a waiver of any other condition or provision or of the same condition or provision at another time.

(g) **Withholding Taxes**. All payments made under this Plan shall be subject to reduction to reflect taxes or other charges required to be withheld by law.

(h) **Severability**. The invalidity or unenforceability of any provision or provisions of this Plan shall not affect the validity or enforceability of any other provision hereof, which shall remain in full force and effect.

(i) **No Retention Rights**. Nothing in this Plan shall confer upon the Executive any right to continue in service for any period of specific duration or interfere with or otherwise restrict in any way the rights of the Company or any subsidiary of the Company or of the Executive, which rights are hereby expressly reserved by each, to terminate his or her service at any time and for any reason, with or without Cause.

(j) **Choice of Law**. The validity, interpretation, construction and performance of this Plan shall be governed by the laws of the State of California (other than their choice-of-law provisions).

Participation Agreement to the
Severance and Change in Control Plan

This Participation Agreement by and between [ ] (the "**Executive**") incorporates by reference and is governed by the Severance and Change in Control Plan and DexCom, Inc., a Delaware corporation (the "**Company**"). The Executive hereby consents to the terms and conditions of the Severance and Change in Control Plan and the following additional terms.

Qualifying Termination Other than During a Change in Control Period

Severance Multiple (Other than During a Change in Control Period)

As used in Section 2(a)(i) of the Plan, the "**Severance Multiple (Other than During a Change in Control Period)**" shall mean: [ ] months of the Executive's base salary at the rate in effect when the Qualifying Termination occurred (or immediately prior to a reduction in the base salary that gave rise to Good Reason).

Bonus Amount (Other than During a Change in Control Period)

As used in Section 2(a)(ii) of the Plan, the "**Bonus Amount (Other than During a Change in Control Period)**" shall mean: The pro-rata portion (determined based on the number of days the Executive is employed by the Company during the bonus performance period) of the Executive's annual bonus that the Company determines was actually earned at the conclusion of the bonus performance period.

COBRA Continuation Period (Other than During a Change in Control Period)

As used in Section 2(a)(iii) of the Plan, the "**COBRA Continuation Period (Other than During a Change in Control Period)**" shall mean: [ ] months.

Qualifying Termination During a Change in Control Period

Severance Multiple (During a Change in Control Period)

As used in Section 2(b)(i) of the Plan, the "**Severance Multiple (During a Change in Control Period)**" shall mean: [ ] months of the Executive's base salary at the rate in effect when the Qualifying Termination (or immediately prior to a reduction in the base salary that gave rise to Good Reason) occurred or when the Change in Control occurred, whichever is greater.

Pro Rata Bonus Amount (During a Change in Control Period)

As used in Section 2(b)(ii) of the Plan, the "**Pro Rata Bonus Amount (During a Change in Control Period)**" shall mean: The pro-rata portion (determined based on the number of days the Executive is employed by the Company during the bonus performance period) of the Executive's annual bonus that the Company determines was actually earned at the conclusion of the bonus performance period.

Target Bonus Amount (During a Change in Control Period)

As used in Section 2(b)(ii) of the Plan, the "**Target Amount (During a Change in Control Period)**" shall mean: [ ]% of Executive's "target" annual bonus at the rate in effect when the Qualifying Termination occurred.

COBRA Continuation Period (During a Change in Control Period)

As used in Section 2(b)(iii) of the Plan, the "**COBRA Continuation Period (During a Change in Control Period)**" shall mean: [ ] months.

Acceleration Percentage (During a Change in Control Period)

As used in Section 2(b)(iv) of the Plan, the "**Acceleration Percentage (During a Change in Control Period)**" shall mean: [100]% the then-unvested shares subject thereto.

["**Good Reason**" means the occurrence of any of the following events or conditions, without Executive's express written consent:

(i) a material reduction in Executive's base salary as an employee of the Company;

(ii) a material reduction in the Executive's duties, responsibilities or authority at the Company [including, without limitation, changes in Executive reporting structure resulting from a Change in Control transaction];

(iii) a change in the geographic location at which Executive must perform services that results in an increase in the one-way commute of Executive by more than 50 miles; or

(iv) a successor of the Company as set forth in Section 5(a) hereof does not assume this Plan.

With respect to each of subsection (i), (ii), (iii) and (iv) above, Executive must provide notice to the Company of the condition giving rise to "Good Reason" within one hundred twenty (120) days of their knowledge of the existence of such condition, and the Company will have thirty (30) days following such notice to remedy such condition. Executive must resign Executive's employment no later than thirty (30) days following expiration of the Company's thirty (30) day cure period.]

[NTD: Company to craft appropriate Good Reason definition for each executive.]

[**Signature Page Follows**]

IN WITNESS WHEREOF, each of the parties has executed this Participation Agreement to the **Severance and Change in Control Plan**, in the case of the Company by its duly authorized officer, as of the day and year first above written.

Dexcom, Inc.

[_____]

By:
Title:

[SIGNATURE PAGE TO THE PARTICIPATION AGREEMENT TO THE SEVERANCE AND CHANGE IN CONTROL PLAN]

Exhibit 10.17

DEXCOM, INC.

AMENDED AND RESTATED 2015 EQUITY INCENTIVE PLAN

(Adopted by the Board on April 18, 2019)

1. PURPOSE. The purpose of this Plan is to provide incentives to attract, retain and motivate eligible persons whose present and potential contributions are important to the success of the Company, and any Parents and Subsidiaries that exist now or in the future, by offering them an opportunity to participate in the Company's future performance through the grant of Awards. Capitalized terms not defined elsewhere in the text are defined in Section 28.

2. SHARES SUBJECT TO THE PLAN.

2.1. Number of Shares Available. Subject to Sections 2.5, and 21 and any other applicable provisions hereof, the total number of Shares reserved and available for grant and issuance pursuant to this Plan as of the date of adoption of this Plan by the Board, is 9,800,000 Shares, plus (i) Shares that are subject to stock options or other awards granted under the Company's 2005 Equity Incentive Plan (the "***Prior Plan***") on the Effective Date (as defined below), that cease to be subject to such stock options or other awards by forfeiture or otherwise after the Effective Date for any reason other than the exercise of a stock option or SAR, (ii) Shares issued under the Prior Plan that are repurchased by the Company at the original issue price; or (iii) Shares that are subject to stock options or other awards granted under the Prior Plan that otherwise terminate without Shares being issued.

2.2. Lapsed, Returned Awards. Shares subject to Awards, and Shares issued under this Plan under any Award, will again be available for grant and issuance in connection with subsequent Awards under this Plan to the extent such Shares: (a) are subject to issuance upon exercise of an Option or SAR granted under this Plan but which cease to be subject to the Option or SAR for any reason other than exercise of the Option or SAR; (b) are subject to Awards granted under this Plan that are forfeited or are repurchased by the Company at the original issue price; (c) are subject to Awards granted under this Plan that otherwise terminate without such Shares being issued; or (d) are surrendered pursuant to an Exchange Program. To the extent an Award under this Plan is paid out in cash rather than Shares, such cash payment will not result in reducing the number of Shares available for issuance under this Plan. Shares used to pay the exercise price of an Award, Shares withheld to satisfy the tax withholding obligations related to an Award or Shares repurchased by the Company for any reason other than Shares repurchased at their original issue price, in each case will not become available for future grant or sale under this Plan. Except as set forth above, any Awards granted including but not limited to Awards granted as SARs shall reduce the number of shares granted on a one-for-one Share for Share basis and any Shares withheld shall not again be made available for Awards under the Plan. To the extent that any Award is forfeited, repurchased or terminates without Shares being issued, Shares may again be available for issuance under this Plan. For the avoidance of doubt, Shares that otherwise become available for grant and issuance because of the provisions of this Section 2.2 shall not include Shares subject to Awards that initially became available because of the substitution clause in Section 21.2 hereof.

2.3. Minimum Share Reserve. At all times the Company shall reserve and keep available a sufficient number of Shares as shall be required to satisfy the requirements of all outstanding Awards granted under this Plan.

2.4. Limitations. No more than 9,800,000 Shares shall be issued pursuant to the exercise of ISOs.

2.5. Adjustment of Shares. If the number of outstanding Shares is changed by an extraordinary cash dividend, a stock dividend, recapitalization, spin-off, stock split, reverse stock split, subdivision, combination, reclassification or similar change in the capital structure of the Company, without consideration, then (a) the number of Shares reserved for issuance and

future grant under this Plan set forth in Sections 2.1 and 2.2, (b) the Exercise Prices of and number of Shares subject to outstanding Options and SARs, (c) the number of Shares subject to other outstanding Awards, (d) the maximum number of Shares that may be issued as ISOs set forth in Section 2.4, and (e) the maximum number of Shares that may be issued to an individual or to a new Employee in any one calendar year set forth in Section 3 or to a Non-Employee Director in Section 12 shall be proportionately adjusted, subject to any required action by the Board or the stockholders of the Company and in compliance with applicable securities laws; provided that fractions of a Share will not be issued but will either be replaced by a cash payment equal to the Fair Market Value of such fraction of a Share or will be rounded up (down in the case of ISOs) to the nearest whole Share, as determined by the Committee; and provided further that the Exercise Price of any Option may not be decreased to below the par value of the Shares.

2.6. Vesting / Acceleration Restriction. Awards shall not provide for any vesting prior to at least twelve (12) months from grant. In addition, the Committee will not permit the discretionary acceleration of vesting of Awards. Notwithstanding the foregoing, the Committee may permit (i) acceleration of vesting of Awards in the event of the Participant's death or Disability, or Change of Control and (ii) the vesting of Awards on any basis prior to twelve (12) months from grant or any acceleration of vesting of Awards representing up to an aggregate of five percent (5%) of the Shares reserved and available for grant under the Plan.

3. ELIGIBILITY. ISOs may be granted only to an eligible Employee. All other Awards may be granted to an eligible Employee, Consultant, Director or Non-Employee Director; provided such Consultant, Director or Non-Employee Director renders bona fide services not in connection with the offer and sale of securities in a capital-raising transaction. No Participant will be eligible to be granted more than 1,000,000 Shares in any calendar year under this Plan pursuant to the grant of Awards except that a new Employee (including a new Employee who is also an officer or director of the Company or any Parent, Subsidiary or Affiliate) is eligible to be granted up to a maximum of 2,000,000 Shares in the calendar year in which such Employee commences employment.

4. ADMINISTRATION.

4.1. Committee Composition; Authority. This Plan will be administered by the Committee or by the Board acting as the Committee. Subject to the general purposes, terms and conditions of this Plan, and to the direction of the Board, the Committee will have full power to implement and carry out this Plan, except, however, the Board shall establish the terms for the grant of an Award to Non-Employee Directors. The Committee will have the authority to:

(a) construe and interpret this Plan, any Award Agreement and any other agreement or document executed pursuant to this Plan;

(b) prescribe, amend and rescind rules and regulations relating to this Plan or any Award;

(c) select persons to receive Awards;

(d) determine the form and terms and conditions, not inconsistent with the terms of this Plan, of any Award granted hereunder. Such terms and conditions include, but are not limited to, the exercise price, subject to Section 2.6, the time or times when Awards may vest and be exercised (which may be based on performance criteria) or settled, subject to Section 2.6, any vesting acceleration or waiver of forfeiture restrictions, the method to satisfy tax withholding obligations or any other tax liability legally due, and any restriction or limitation regarding any Award or the Shares relating thereto, based in each case on such factors as the Committee will determine;

(e) determine the number of Shares or other consideration subject to Awards;

(f) determine the Fair Market Value and interpret the applicable provisions of this Plan and the definition of Fair Market Value in connection with circumstances that impact the Fair Market Value, if necessary;

(g) determine whether Awards will be granted singly, in combination with, in tandem with, in replacement of, or as alternatives to, other Awards under this Plan or any other incentive or compensation plan of the Company or any Parent or Subsidiary of the Company;

(h) grant waivers of Plan or Award conditions;

(i) determine the vesting, exercisability and payment of Awards;

(j) correct any defect, supply any omission or reconcile any inconsistency in this Plan, any Award or any Award Agreement;

(k) determine whether an Award has been earned;

(l) determine the terms and conditions of any, and to institute any Exchange Program approved by stockholders;

(m) reduce or waive any criteria with respect to Performance Factors;

(n) adjust Performance Factors to take into account changes in law and accounting or tax rules as the Committee deems necessary or appropriate to reflect the impact of extraordinary or unusual items, events or circumstances to avoid windfalls or hardships, including without limitation (i) restructurings, discontinued operations, extraordinary items, and other unusual or non-recurring charges, (ii) an event either not directly related to the operations of the Company or not within the reasonable control of the Company's management, or (iii) a change in accounting standards required by generally accepted accounting principles;

(o) adopt terms and conditions, rules and/or procedures (including the adoption of any subplan under this Plan and any country addenda to the Award Agreements) relating to the operation and administration of this Plan to accommodate grants to participants residing outside of the United States and comply with the requirements of local law and procedures;

(p) make all other determinations necessary or advisable for the administration of this Plan; and

(q) delegate any of the foregoing to a subcommittee consisting of one or more executive officers pursuant to a specific delegation as permitted by applicable law, including Section 157(c) of the Delaware General Corporation Law.

4.2. Committee Interpretation and Discretion. Any determination made by the Committee with respect to any Award shall be made in its sole discretion at the time of grant of the Award or, unless in contravention of any express term of this Plan or Award, at any later time, and such determination shall be final and binding on the Company and all persons having an interest in any Award under this Plan. Any dispute regarding the interpretation of this Plan or any Award Agreement shall be submitted by the Participant or Company to the Committee for review. The resolution of such a dispute by the Committee shall be final and binding on the Company and the Participant. The Committee may delegate to one or more executive officers the authority to review and resolve disputes with respect to Awards held by Participants who are not Insiders, and such resolution shall be final and binding on the Company and the Participant.

4.3. Section 16 of the Exchange Act. Awards granted to Participants who are subject to Section 16 of the Exchange Act must be approved by two or more "non-employee directors" (as defined in the regulations promulgated under Section 16 of the Exchange Act).

4.4. Documentation. The Award Agreement for a given Award, this Plan and any other documents may be delivered to, and accepted by, a Participant or any other person in any manner (including electronic distribution or posting) that meets applicable legal requirements.

4.5. Foreign Award Recipients. Notwithstanding any provision of this Plan to the contrary, in order to comply with the laws and practices in countries other than the United States in which the Company and its Subsidiaries and Affiliates operate or have employees or other individuals eligible for Awards, the Committee, in its sole discretion, shall have the power and authority to: (i) determine which Subsidiaries and Affiliates shall be covered by this Plan; (ii) determine which individuals outside the United States are eligible to participate in this Plan, which may include individuals who provide services to the Company, Subsidiary or Affiliate under an agreement with a foreign nation or agency; (iii) modify the terms and conditions of any Award granted to individuals who are located outside the United States or who are foreign nationals to comply with applicable foreign laws, policies, customs and practices; (iv) establish subplans and modify exercise procedures and other terms and procedures, to the extent determined necessary or advisable by the Committee and provided that (a) no such subplans and/or modifications shall increase the share limitations contained in Section 2.1 hereof and (b) in such instance, such subplans and/or modifications shall be attached to this Plan as appendices; and (v) take any action, before or after an Award is made, that the Committee determines to be necessary or advisable to obtain approval or comply with any local governmental regulatory exemptions or approvals. Notwithstanding the foregoing, the Committee may not take any actions hereunder, and no Award shall be granted, that would violate the Exchange Act or any other applicable United States securities law, the Code or any other applicable United States governing statute or law.

5. OPTIONS. An Option is the right but not the obligation to purchase a Share, subject to certain conditions, if applicable, granted to an eligible Employee, Consultant or Director. All Options shall be granted pursuant to an Award Agreement.

5.1. Terms of Options. Each Option granted under this Plan will be identified as an Incentive Stock Options within the meaning of the Code ("***ISO***") or a Nonqualified Stock Option ("***NSO***"). Applicable conditions may be based on completion of a specified number of years of service with the Company or upon satisfaction of performance goals based on Performance Factors during a Performance Period as set out in advance in the Award Agreement. Prior to the grant of an Option that is being earned upon satisfaction of performance goals based on Performance Factors, the Committee shall: (a) determine the nature, length and starting date of any Performance Period for the Option; (b) select from among the Performance Factors to be used to measure performance goals, if any; and (c) determine the number of Shares that may be earned by the Participant. Performance Periods may overlap and a Participant may participate simultaneously with respect to Options that are subject to different Performance Periods and having performance goals based on different Performance Factors and other criteria.

5.2. Date of Grant. An Option's date of grant will be that date on which the Committee makes the determination to grant such Option, or any such future date specified by the Committee. The Award Agreement will be delivered to the Participant within a reasonable time after the date of grant.

5.3. Exercise Period. Subject to Section 2.6, Options will vest and be exercisable within the times or upon the conditions as set forth in the Award Agreement; provided, however, that no Option will be exercisable after the expiration of ten (10) years from the date of grant; and provided further that no ISO granted to a person who, at the time the ISO is granted, directly or by attribution owns more than ten percent (10%) of the total combined voting power of all classes of stock of the Company or of any Parent or Subsidiary of the Company ("***Ten Percent Stockholder***") will be exercisable after the expiration of five (5) years from the date the ISO is granted. The Committee also may provide for Options to vest and be exercisable at one time or from time to time, periodically or otherwise (including, without limitation, upon the

attainment during a Performance Period of performance goals based on Performance Factors), in such number of Shares or percentage of Shares as the Committee determines.

5.4. Exercise Price. The Exercise Price of an Option will be determined by the Committee when the Option is granted; provided that: (i) the Exercise Price of an Option will be not less than one hundred percent (100%) of the Fair Market Value of the Shares on the date of grant and (ii) the Exercise Price of any ISO granted to a Ten Percent Stockholder will be not less than one hundred ten percent (110%) of the Fair Market Value of the Shares on the date of grant. Payment for the Shares purchased must be made in accordance with Section 11 of this Plan, the Award Agreement and any procedures established by the Company.

5.5. Method of Exercise. Any Option granted hereunder will vest and be exercisable at such times and under such conditions as determined by the Committee and set forth in the Award Agreement, subject to the terms and conditions of this Plan. An Option may not be exercised for a fraction of a Share. An Option will be deemed exercised when the Company receives: (i) notice of exercise (in such form as the Committee may specify from time to time) from the person entitled to exercise the Option, and (ii) full payment for the Shares with respect to which the Option is exercised plus payment or provision for applicable withholding taxes. Shares issued upon exercise of an Option will be issued in the name of the Participant. Notwithstanding the exercise of the Option, until such time as the Shares are issued (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), no right to vote or receive dividends or any other rights as a stockholder will exist with respect to the Shares. The Company will issue (or cause to be issued) such Shares promptly after the Option is exercised. No adjustment will be made for a dividend or other right for which the record date is prior to the date the Shares are issued, except as provided in Section 2.5 of this Plan. Exercising an Option in any manner will decrease the number of Shares thereafter available, both for purposes of this Plan and for sale under the Option, by the number of Shares as to which the Option is exercised.

(a) Termination of Service. If the Participant's Service terminates for any reason except a termination by the Company for Cause or because of the Participant's death or Disability, then the Participant may exercise such Participant's Options only to the extent that such Options would have been exercisable by the Participant on the date Participant's Service terminates, no later than three (3) months after the date Participant's Service terminates (or such shorter or longer time period as may be determined by the Committee, with any exercise beyond three (3) months after the date Participant's Service terminates deemed to be the exercise of an NSO), but in any event no later than the expiration date of the Options.

(b) Death. If the Participant's Service terminates because of the Participant's death (or the Participant dies within three (3) months after Participant's Service terminates for any reason except a termination by the Company for Cause or because of the Participant's Disability), then the Participant's Options may be exercised only to the extent that such Options would have been exercisable by the Participant on the date Participant's Service terminates and must be exercised by the Participant's legal representative, or authorized assignee, no later than twelve (12) months after the date Participant's Service terminates (or such shorter or longer time period as may be determined by the Committee), but in any event no later than the expiration date of the Options.

(c) Disability. If the Participant's Service terminates because of the Participant's Disability, then the Participant's Options may be exercised only to the extent that such Options would have been exercisable by the Participant on the date Participant's Service terminates and must be exercised by the Participant (or the Participant's legal representative or authorized assignee) no later than twelve (12) months after the date Participant's Service terminates (with any exercise beyond (a) three (3) months after the date Participant's employment terminates when the termination of Service is for a Disability that is not a "permanent and total disability" as defined in Section 22(e)(3) of the Code, or (b) twelve (12) months after the date Participant's employment terminates when the termination of Service is for a Disability that is a "permanent and total disability" as defined in Section 22(e)(3) of the Code,

deemed to be exercise of an NSO), but in any event no later than the expiration date of the Options.

(d) Cause. If the Participant is terminated by the Company for Cause, then Participant's Options shall expire on the date Service terminates, or at such later time and on such conditions as are determined by the Committee, but in any event no later than the expiration date of the Options. Unless otherwise provided in the Award Agreement, Cause shall have the meaning set forth in this Plan.

5.6. Limitations on Exercise. The Committee may specify a minimum number of Shares that may be purchased on any exercise of an Option, provided that such minimum number will not prevent a Participant from exercising the Option for the full number of Shares for which it is then exercisable.

5.7. Limitations on ISOs. With respect to Awards granted as ISOs, to the extent that the aggregate Fair Market Value of the Shares with respect to which such ISOs are exercisable for the first time by the Participant during any calendar year (under all plans of the Company and any Parent or Subsidiary) exceeds one hundred thousand dollars ($100,000), such Options will be treated as NSOs. For purposes of this Section 5.7, ISOs will be so evaluated in the order in which they were granted, beginning with the grant first in time. The Fair Market Value of the Shares will be determined as of the Option's date of grant. In the event that the Code or the regulations promulgated thereunder are amended after the Effective Date to provide for a different limit on the Fair Market Value of Shares permitted to be subject to ISOs, such different limit will be automatically incorporated herein and will apply to any Options granted after the effective date of such amendment.

5.8. Modification, Extension or Renewal. The Committee may modify, extend or renew outstanding Options and authorize the grant of new Options in substitution therefor, provided that any such action may not, without the written consent of a Participant, impair any of such Participant's rights under any Option previously granted. Subject to Section 18, the Committee may (a) reduce the Exercise Price of outstanding Options or (b) grant Options in substitution for cancelled options or other Awards authorized under the Plan. Any outstanding ISO that is modified, extended, renewed or otherwise altered will be treated in accordance with Section 424(h) of the Code.

5.9. Notice of Disqualifying Dispositions of Shares Acquired on Exercise of an ISO. If a Participant sells or otherwise disposes of any Shares acquired pursuant to the exercise of an ISO on or before the later of (a) the date two years after the Date of Grant, and (b) the date one year after the exercise of the ISO (in either case, a "***Disqualifying Disposition***"), the Company may require the Participant to immediately notify the Company in writing of such Disqualifying Disposition.

5.10. No Disqualification. Notwithstanding any other provision in this Plan, no term of this Plan relating to ISOs will be interpreted, amended or altered, nor will any discretion or authority granted under this Plan be exercised, so as to disqualify this Plan under Section 422 of the Code or, without the consent of the Participant affected, to disqualify any ISO under Section 422 of the Code

5.11. Termination of Service. Except as otherwise set forth in the Award Agreement or as otherwise determined by the Committee, vesting ceases on the date Participant's Service terminates.

6. RESTRICTED STOCK AWARDS. A Restricted Stock Award is an offer by the Company to sell Shares subject to restrictions ("***Restricted Stock***") to an eligible Employee, Consultant, or Director. The Committee will determine to whom an offer will be made, the number of Shares the Participant may purchase, the Purchase Price, the restrictions applicable to the Shares and all other terms and conditions of the Restricted Stock Award, subject to this Plan.

6.1. Restricted Stock Purchase Agreement. All purchases under a Restricted Stock Award will be evidenced by an Award Agreement. Except as may otherwise be provided in an Award Agreement, a Participant accepts a Restricted Stock Award by signing and delivering to the Company an Award Agreement with full payment of the Purchase Price plus payment or provision for applicable withholding taxes, within thirty (30) days from the date the Award Agreement was delivered to the Participant. If the Participant does not accept such Award within thirty (30) days, then such Restricted Stock Award will terminate, unless the Committee determines otherwise.

6.2. Purchase Price. The Purchase Price for a Restricted Stock Award will be determined by the Committee and may be less than Fair Market Value but not less than the par value of the Shares on the date the Restricted Stock Award is granted. Payment of the Purchase Price must be made in accordance with Section 11 of this Plan, and the Award Agreement and in accordance with any procedures established by the Company.

6.3. Terms of Restricted Stock Awards. Subject to Section 2.6, Restricted Stock Awards will be subject to such restrictions as the Committee may impose or are required by law. Applicable restrictions may be based on completion of a specified number of years of service with the Company or upon satisfaction of performance goals based on Performance Factors during a Performance Period as set out in advance in the Award Agreement. Prior to the grant of a Restricted Stock Award that is being earned upon satisfaction of performance goals based on Performance Factors, the Committee shall: (a) determine the nature, length and starting date of any Performance Period for the Restricted Stock Award; (b) select from among the Performance Factors to be used to measure performance goals, if any; and (c) determine the number of Shares that may be earned by the Participant. Performance Periods may overlap and a Participant may participate simultaneously with respect to Restricted Stock Awards that are subject to different Performance Periods and having performance goals based on different Performance Factors and other criteria.

6.4. Termination of Service. Except as otherwise set forth in the Award Agreement or as otherwise determined by the Committee, vesting ceases on the date Participant's Service terminates.

7. STOCK BONUS AWARDS. A Stock Bonus Award is an award of Shares made to an eligible Employee, Consultant, or Director in consideration for Services to be rendered or for past Services already rendered to the Company or any Parent or Subsidiary, as permitted by law. All Stock Bonus Awards shall be made pursuant to an Award Agreement. No payment from the Participant will be required for Shares awarded pursuant to a Stock Bonus Award.

7.1. Terms of Stock Bonus Awards. Subject to Section 2.6, the Committee will determine to whom a Stock Bonus Award will be made, the number of Shares under the Stock Bonus Award, the restrictions, if any, applicable to such Shares and all other terms and conditions of the Stock Bonus Award, subject to this Plan. Applicable restrictions may be based upon completion of a specified number of years of service with the Company or upon satisfaction of performance goals based on Performance Factors during a Performance Period as set out in advance in the Award Agreement. Prior to the grant of any Stock Bonus Award that is being earned upon satisfaction of performance goals, the Committee shall: (a) determine the nature, length and starting date of any Performance Period for the Stock Bonus Award; (b) select from among the Performance Factors to be used to measure performance goals; and (c) determine the number of Shares that may be awarded to the Participant. Performance Periods may overlap and a Participant may participate simultaneously with respect to Stock Bonus Awards that are subject to different Performance Periods and performance goals based on different Performance Factors and other criteria.

7.2. Form of Payment to Participant. As determined in the sole discretion of the Committee, a Stock Bonus Award may be paid in the form of cash, whole Shares, or a combination thereof, based on the Fair Market Value (as of the date of payment) of the Shares earned under such Stock Bonus Award.

7.3. Termination of Service. Except as otherwise set forth in the Award Agreement or as otherwise determined by the Committee, vesting ceases on the date Participant's Service terminates.

8. STOCK APPRECIATION RIGHTS. A Stock Appreciation Right ("***SAR***") is an award to an eligible Employee, Consultant, or Director that may be settled in cash, or Shares (which may consist of Restricted Stock), having a value equal to (a) the difference between the Fair Market Value on the date of exercise over the Exercise Price multiplied by (b) the number of Shares with respect to which the SAR is being settled (subject to any maximum number of Shares that may be issuable as specified in an Award Agreement). All SARs shall be made pursuant to an Award Agreement.

8.1. Terms of SARs. The Committee will determine the terms of each SAR including, without limitation: (a) the number of Shares subject to the SAR; (b) the Exercise Price and the time or times during which the SAR may be settled; (c) the consideration to be distributed on settlement of the SAR; and (d) the effect of the Participant's termination of Service on each SAR. The Exercise Price of the SAR will be determined by the Committee when the SAR is granted, and may be not less than Fair Market Value or the par value of the Shares. A SAR may be awarded upon satisfaction of Performance Factors, if any, during any Performance Period as are set out in advance in the Award Agreement. Prior to the grant of any SAR that is being earned upon satisfaction of performance goals, then the Committee will: (x) determine the nature, length and starting date of any Performance Period for each SAR; and (y) select from among the Performance Factors to be used to measure the performance, if any. Performance Periods may overlap and Participants may participate simultaneously with respect to SARs that are subject to different Performance Periods and performance goals based on different Performance Factors and other criteria.

8.2. Exercise Period and Expiration Date. Subject to Section 2.6, a SAR will be exercisable within the times or upon the occurrence of events determined by the Committee and set forth in the Award Agreement. The SAR Agreement shall set forth the expiration date; provided that no SAR will be exercisable after the expiration of ten (10) years from the date the SAR is granted. The Committee may also provide for SARs to become exercisable at one time or from time to time, periodically or otherwise (including, without limitation, upon the attainment during a Performance Period of performance goals based on Performance Factors), in such number of Shares or percentage of the Shares subject to the SAR as the Committee determines. Notwithstanding the foregoing, the rules of Section 5.6 also will apply to SARs.

8.3. Form of Settlement. Upon exercise of a SAR, a Participant will be entitled to receive payment from the Company in an amount determined by multiplying (i) the difference between the Fair Market Value of a Share on the date of exercise over the Exercise Price; times (ii) the number of Shares with respect to which the SAR is exercised (subject to any maximum number of Shares that may be issuable as specified in an Award Agreement). At the discretion of the Committee, the payment from the Company for the SAR exercise may be in cash, in Shares of equivalent value, or in some combination thereof. The portion of a SAR being settled may be paid currently or on a deferred basis with such interest or dividend equivalent, if any, as the Committee determines, provided that the terms of the SAR and any deferral satisfy the requirements of Section 409A of the Code.

8.4. Termination of Service. Except as otherwise set forth in the Award Agreement or as otherwise determined by the Committee, vesting ceases on the date Participant's Service terminates.

9. RESTRICTED STOCK UNITS. A Restricted Stock Unit ("***RSU***") is an award to an eligible Employee, Consultant, or Director covering a number of Shares that may be settled in cash, or by issuance of those Shares (which may consist of Restricted Stock). All RSUs shall be made pursuant to an Award Agreement.

9.1. Terms of RSUs. Subject to Section 2.6, the Committee will determine the terms of an RSU including, without limitation: (a) the number of Shares subject to the RSU; (b) the time or times during which the RSU may be settled; (c) the consideration to be distributed on settlement; and (d) the effect of the Participant's termination of Service on each RSU. An RSU may be awarded upon satisfaction of such performance goals based on Performance Factors during any Performance Period as are set out in advance in the Award Agreement. Prior to the grant of any RSU that is being earned upon satisfaction of performance goals, the Committee will: (x) determine the nature, length and starting date of any Performance Period for the RSU; (y) select from among the Performance Factors to be used to measure the performance, if any; and (z) determine the number of Shares deemed subject to the RSU. Performance Periods may overlap and participants may participate simultaneously with respect to RSUs that are subject to different Performance Periods and performance goals based on different Performance Factors and other criteria.

9.2. Form and Timing of Settlement. Payment of earned RSUs shall be made as soon as practicable after the date(s) determined by the Committee and set forth in the Award Agreement. The Committee, in its sole discretion, may settle earned RSUs in cash, Shares, or a combination of both. The Committee may also permit a Participant to defer payment under a RSU to a date or dates after the RSU is earned provided that the terms of the RSU and any deferral satisfy the requirements of Section 409A of the Code.

9.3. Termination of Service. Except as otherwise set forth in the Award Agreement or as otherwise determined by the Committee, vesting ceases on the date Participant's Service terminates.

10. PERFORMANCE AWARDS. A Performance Award is an award to an eligible Employee, Consultant, or Director of Performance Shares or a cash bonus denominated in Shares that may be settled in cash, or by issuance of those Shares (which may consist of Restricted Stock). Grants of Performance Awards shall be made pursuant to an Award Agreement.

10.1. Terms of Performance Awards. Subject to Section 2.6, the Committee will determine the terms of a Performance Award including, without limitation: (a) the number of Shares or amount of cash subject to the Performance Award; (b) the time or times during which the Performance Award may be settled; and (c) the consideration to be distributed on settlement, and the effect of the Participant's termination of Service on each Performance Award. A Performance Award may be awarded upon satisfaction of performance goals based on Performance Factors during any Performance Period as set out in advance in the Award Agreement. Prior to the grant of any Performance Award that is being earned upon satisfaction of performance goals, the Committee will: (x) determine the nature, length and starting date of any Performance Period for the Performance Award; (y) select from among the Performance Factors to be used to measure such performance goals, if any; and (z) determine the number of Shares deemed subject to the Performance Award. Performance Periods may overlap and participants may participate simultaneously with respect to Performance Awards that are subject to different Performance Periods and performance goals based on different Performance Factors and other criteria.

10.2. Termination of Service. Except as otherwise set forth in the Award Agreement or as otherwise determined by the Committee, vesting ceases on the date Participant's Service terminates.

11. PAYMENT FOR SHARE PURCHASES. Payment from a Participant for Shares purchased pursuant to this Plan may be made in cash or by check or, where approved for the Participant by the Committee and where permitted by law (and to the extent not otherwise set forth or prohibited in the applicable Award Agreement):

(a) by cancellation of indebtedness of the Company to the Participant;

(b) by surrender of Shares held by the Participant that have a Fair Market Value on the date of surrender equal to the aggregate exercise price of the Shares as to which said Award will be exercised or settled;

(c) by waiver of compensation due or accrued to the Participant for services rendered or to be rendered to the Company or a Parent or Subsidiary of the Company;

(d) by consideration received by the Company pursuant to a broker-assisted or other form of cashless exercise program implemented by the Company in connection with this Plan;

(e) by any combination of the foregoing; or

(f) by any other method of payment as is permitted by applicable law.

Unless determined otherwise by the Committee, all payments under any of the methods indicated above shall be made in United States dollars.

12. GRANTS TO NON-EMPLOYEE DIRECTORS. Non-Employee Directors are eligible to receive any type of Award offered under this Plan except ISOs. Awards pursuant to this Section 12 may be automatically made pursuant to policy adopted by the Board, or made from time to time as determined in the discretion of the Board. The aggregate number of Shares subject to Awards granted under this Section 12 to a Non-Employee Director in any calendar year shall not exceed 30,000 Shares.

12.1. Eligibility. Awards pursuant to this Section 12 shall be granted only to Non-Employee Directors. A Non-Employee Director who is elected or re-elected as a member of the Board will be eligible to receive an Award under this Section 12.

12.2. Vesting, Exercisability and Settlement. Except as set forth in Section 6 and 21, Awards shall vest, be exercisable and be settled as determined by the Board. With respect to Options and SARs, the exercise price granted to Non-Employee Directors shall be not less than the Fair Market Value of the Shares at the time that such Option or SAR is granted.

12.3. Election to receive Awards in Lieu of Cash. A Non-Employee Director may elect to receive his or her annual retainer payments and/or meeting fees from the Company in the form of cash or Awards or in a combination thereof, as determined by the Board. Such Awards shall be issued under this Plan. An election under this Section 12.3 shall be filed with the Company on the form prescribed by the Company.

13. WITHHOLDING TAXES.

13.1. Withholding Generally. Whenever Shares are to be issued in satisfaction of Awards granted under this Plan or the applicable tax event occurs, the Company may require the Participant to remit to the Company, or to the Parent, Subsidiary or Affiliate employing the Participant, an amount sufficient to satisfy applicable U.S. federal, state, local and international withholding tax requirements or any other tax or social insurance liability legally due from the Participant prior to the delivery of Shares pursuant to exercise or settlement of any Award. Whenever payments in satisfaction of Awards granted under this Plan are to be made in cash, such payment will be net of an amount sufficient to satisfy applicable U.S. federal, state, local and international withholding tax and social insurance requirements or any other tax liability legally due from the Participant.

13.2. Stock Withholding. The Committee, or its delegate(s), as permitted by applicable law, in its sole discretion and pursuant to such procedures as it may specify from time to time and to limitations of local law, may require or permit a Participant to satisfy such tax withholding obligation or any other tax liability legally due from the Participant, in whole or in part by (without

limitation) (i) paying cash, (ii) electing to have the Company withhold otherwise deliverable cash or Shares having a Fair Market Value equal to up to the maximum statutory amount permitted to be withheld, (iii) delivering to the Company Shares having a Fair Market Value equal to up to the maximum amount permitted to be withheld or (iv) withholding from the proceeds of the sale of otherwise deliverable Shares acquired pursuant to an Award either through a voluntary sale or through a mandatory sale arranged by the Company. The Fair Market Value of the Shares to be withheld or delivered will be determined as of the date that the taxes are required to be withheld.

14. TRANSFERABILITY.

14.1. Transfer Generally. Unless determined otherwise by the Committee or pursuant to Section 14.2, an Award may not be sold, pledged, assigned, hypothecated, transferred, or disposed of in any manner other than by will or by the laws of descent and distribution. If the Committee makes an Award transferable, including, without limitation, by instrument to an inter vivos or testamentary trust in which the Awards are to be passed to beneficiaries upon the death of the trustor (settlor) or by gift or by domestic relations order to a Permitted Transferee, such Award will contain such additional terms and conditions as the Committee deems appropriate. All Awards shall be exercisable: (i) during the Participant's lifetime only by (A) the Participant, or (B) the Participant's guardian or legal representative; (ii) after the Participant's death, by the legal representative of the Participant's heirs or legatees; and (iii) in the case of all awards except ISOs, by a Permitted Transferee.

14.2. Beneficiaries. Each Participant under this Plan may, from time to time, name any beneficiary or beneficiaries (who may be named contingently or successively) to whom any benefit under this Plan is to be paid in case of such Participant's death before he or she receives any or all of such benefit. Each such designation shall revoke all prior designations by the same Participant, shall be in a form prescribed by the Committee, and will be effective only when filed by such Participant in writing with the Company during such Participant's lifetime. In the absence of any such beneficiary designation, benefits remaining unpaid or rights remaining unexercised at such Participant's death shall be paid to or exercised by such Participant's executor, administrator, or legal representative.

15. PRIVILEGES OF STOCK OWNERSHIP; RESTRICTIONS ON SHARES.

15.1. Voting and Dividends. No Participant will have any of the rights of a stockholder with respect to any Shares until the Shares are issued to the Participant, except for any Dividend Equivalent Rights permitted by an applicable Award Agreement. After Shares are issued to the Participant, the Participant will be a stockholder and have all the rights of a stockholder with respect to such Shares, including the right to vote and receive all dividends or other distributions made or paid with respect to such Shares; provided, that if such Shares are Restricted Stock, then any new, additional or different securities the Participant may become entitled to receive with respect to such Shares by virtue of a stock dividend, stock split or any other change in the corporate or capital structure of the Company will be subject to the same restrictions as the Restricted Stock; provided, further, that the Participant will have no right to such stock dividends or stock distributions with respect to Unvested Shares, and any such dividends or stock distributions shall be accrued and paid only at such time if any, as such Unvested Shares become vested Shares. The Committee, in its discretion, may provide in the Award Agreement evidencing any Award that the Participant shall be entitled to Dividend Equivalent Rights with respect to the payment of cash dividends on Shares subject to such Award during the period beginning on the date the Award is granted and ending, with respect to each Share subject to the Award, on the earlier of the date on which the Award is exercised or settled or the date on which they are forfeited; provided, that under no circumstances may Dividend Equivalent Rights be granted for any Option or SAR and provided, further, that no Dividend Equivalent Right shall be paid with respect to Unvested Shares, and any such dividends or stock distributions shall be accrued and paid only at such time, if any, as such Unvested Shares become vested Shares. Such Dividend Equivalent Rights, if any, shall be credited to the Participant in the form of additional whole Shares as of the date of payment of such cash dividends on Shares.

15.2. Restrictions on Shares. At the discretion of the Committee, the Company may reserve to itself and/or its assignee(s) a right to repurchase (a "***Right of Repurchase***") a portion of any or all Unvested Shares held by a Participant following such Participant's termination of Service at any time within ninety (90) days after the later of the date Participant's Service terminates and the date the Participant purchases Shares under this Plan, for cash and/or cancellation of purchase money indebtedness, at the Participant's Purchase Price or Exercise Price, as the case may be.

16. CERTIFICATES. All Shares or other securities whether or not certificated, delivered under this Plan will be subject to such stock transfer orders, legends and other restrictions as the Committee may deem necessary or advisable, including restrictions under any applicable U.S. federal, state or foreign securities law, or any rules, regulations and other requirements of the SEC or any stock exchange or automated quotation system upon which the Shares may be listed or quoted and any non-U.S. exchange controls or securities law restrictions to which the Shares are subject.

17. ESCROW; PLEDGE OF SHARES. To enforce any restrictions on a Participant's Shares, the Committee may require the Participant to deposit all certificates representing Shares, together with stock powers or other instruments of transfer approved by the Committee, appropriately endorsed in blank, with the Company or an agent designated by the Company to hold in escrow until such restrictions have lapsed or terminated, and the Committee may cause a legend or legends referencing such restrictions to be placed on the certificates. Any Participant who is permitted to execute a promissory note as partial or full consideration for the purchase of Shares under this Plan will be required to pledge and deposit with the Company all or part of the Shares so purchased as collateral to secure the payment of the Participant's obligation to the Company under the promissory note; provided, however, that the Committee may require or accept other or additional forms of collateral to secure the payment of such obligation and, in any event, the Company will have full recourse against the Participant under the promissory note notwithstanding any pledge of the Participant's Shares or other collateral. In connection with any pledge of the Shares, the Participant will be required to execute and deliver a written pledge agreement in such form as the Committee will from time to time approve. The Shares purchased with the promissory note may be released from the pledge on a pro rata basis as the promissory note is paid.

18. EXCHANGE AND BUYOUT OF AWARDS. An Exchange Program, including but not limited to any repricing of Options or SARs is not permitted without prior stockholder approval.

19. SECURITIES LAW AND OTHER REGULATORY COMPLIANCE. An Award will not be effective unless such Award is in compliance with all applicable U.S. and foreign federal and state securities and exchange control laws, rules and regulations of any governmental body, and the requirements of any stock exchange or automated quotation system upon which the Shares may then be listed or quoted, as they are in effect on the date of grant of the Award and also on the date of exercise or other issuance. Notwithstanding any other provision in this Plan, the Company will have no obligation to issue or deliver certificates for Shares under this Plan prior to: (a) obtaining any approvals from governmental agencies that the Company determines are necessary or advisable; and/or (b) completion of any registration or other qualification of such Shares under any state or federal or foreign law or ruling of any governmental body that the Company determines to be necessary or advisable. The Company will be under no obligation to register the Shares with the SEC or to effect compliance with the registration, qualification or listing requirements of any foreign or state securities laws, exchange control laws, stock exchange or automated quotation system, and the Company will have no liability for any inability or failure to do so.

20. NO OBLIGATION TO EMPLOY. Nothing in this Plan or any Award granted under this Plan will confer or be deemed to confer on any Participant any right to continue in the employ of, or to continue any other relationship with, the Company or any Parent, Subsidiary or Affiliate or limit in any way the right of the Company or any Parent, Subsidiary or Affiliate to terminate Participant's employment or other relationship at any time.

21. CORPORATE TRANSACTIONS.

21.1. Assumption or Replacement of Awards by Successor. In the event that the Company is subject to a Corporate Transaction, outstanding Awards acquired under this Plan shall be subject to the documentation evidencing the Corporate Transaction, which need not treat all outstanding Awards in an identical manner. Such agreement, without the Participant's consent, shall provide for one or more of the following with respect to all outstanding Awards as of the effective date of such Corporate Transaction.

(a) The continuation of an outstanding Award by the Company (if the Company is the successor entity).

(b) The assumption of an outstanding Award by the successor or acquiring entity (if any) of such Corporate Transaction (or by its parents, if any), which assumption, will be binding on all selected Participants; provided that the exercise price and the number and nature of shares issuable upon exercise of any such option or stock appreciation right, or any award that is subject to Section 409A of the Code, will be adjusted appropriately pursuant to Section 424(a) of the Code.

(c) The substitution by the successor or acquiring entity in such Corporate Transaction (or by its parents, if any) of an equivalent award with substantially the same terms for such outstanding Award (except that the exercise price and the number and nature of shares issuable upon exercise of any such option or stock appreciation right, or any award that is subject to Section 409A of the Code, will be adjusted appropriately pursuant to Section 424(a) of the Code).

(d) A payment to the Participant equal to the excess of (i) the Fair Market Value of the Shares subject to the Award as of the effective date of such Corporate Transaction over (ii) the Exercise Price or Purchase Price of Shares, as the case may be, subject to the Award in connection with the cancellation of the Award. Such payment will be made in the form of cash, cash equivalents, or securities of the surviving corporation or its parent with a Fair Market Value equal to the required amount. The successor corporation may provide substantially similar consideration to Participants as was provided to stockholders (after taking into account the existing provisions of the Awards). Subject to Section 409A of the Code, such payment may be made in installments, may be deferred until the date or dates when the Award would have become exercisable or such Shares would have vested, and such payment may be subject to vesting based on the Participant's continuing such payment initially will be calculated without regard to whether or not the Award is then exercisable or such Shares are then vested. In addition, any escrow, holdback, earnout or similar provisions in the agreement for such Corporate Transaction may apply to such payment to the same extent and in the same manner as such provisions apply to the holders of Shares. If the Exercise Price of the Shares subject to an Option exceeds the Fair Market Value of such Shares, then the Option may be cancelled without making a payment to the Participant. For purposes of this subsection, the Fair Market Value of any security will be determined without regard to any vesting conditions that may apply to such security.

The Board shall have full power and authority to assign the Company's right to repurchase or re-acquire or forfeiture rights to such successor or acquiring corporation. Notwithstanding the foregoing, solely upon a Corporate Transaction in which the successor or acquiring corporation refuses to assume, convert, replace or substitute Awards, as provided above, pursuant to a Corporate Transaction notwithstanding any other provision in this Plan to the contrary, and unless otherwise determined by the Committee, all Awards granted under this Plan shall accelerate in full as of the time of consummation of the Corporate Transaction. In such event, the Committee will notify the Participant in writing or electronically that such Award will be exercisable for a period of time determined by the Committee in its sole discretion, and such Award will terminate upon the expiration of such period. Awards need not be treated similarly in a Corporate Transaction.

21.2. Assumption of Awards by the Company. The Company, from time to time, also may substitute or assume outstanding awards granted by another company, whether in connection with an acquisition of such other company or otherwise, by either; (a) granting an Award under this Plan in substitution of such other company's award; or (b) assuming such award as if it had been granted under this Plan if the terms of such assumed award could be applied to an Award granted under this Plan. Such substitution or assumption will be permissible if the holder of the substituted or assumed award would have been eligible to be granted an Award under this Plan if the other company had applied the rules of this Plan to such grant. In the event the Company assumes an award granted by another company, the terms and conditions of such award will remain unchanged (except that the Purchase Price or the Exercise Price, as the case may be, and the number and nature of Shares issuable upon exercise or settlement of any such Award will be adjusted appropriately pursuant to Section 424(a) of the Code). In the event the Company elects to grant a new Option in substitution rather than assuming an existing option, such new Option may be granted with a similarly adjusted Exercise Price. Substitute Awards shall not reduce the number of Shares authorized for grant under this Plan or authorized for grant to a Participant in a calendar year.

21.3. Non-Employee Directors' Awards. Notwithstanding any provision to the contrary herein, in the event of a Corporate Transaction, the vesting of all Awards granted to Non-Employee Directors shall accelerate and such Awards shall become exercisable (as applicable) in full prior to the consummation of such event at such times and on such conditions as the Committee determines.

22. ADOPTION AND STOCKHOLDER APPROVAL. This Plan shall be submitted for the approval of the Company's stockholders, consistent with applicable laws, within twelve (12) months before or after the date this Plan is adopted by the Board.

23. TERM OF PLAN/GOVERNING LAW. Unless earlier terminated as provided herein, this Plan will become effective on the Effective Date and will terminate ten (10) years from the date this Plan is adopted by the Board. After this Plan is terminated or expires, no Awards may be granted but Awards previously granted shall remain outstanding in accordance with their applicable terms and conditions and this Plan's terms and conditions. This Plan and all Awards granted hereunder shall be governed by and construed in accordance with the laws of the State of Delaware (excluding its conflict of laws rules).

24. AMENDMENT OR TERMINATION OF PLAN. The Board may at any time terminate or amend this Plan in any respect, including, without limitation, amendment of any form of Award Agreement or instrument to be executed pursuant to this Plan; provided, however, that the Board will not, without the approval of the stockholders of the Company, amend this Plan in any manner that requires such stockholder approval; provided further, that a Participant's Award shall be governed by the version of this Plan then in effect at the time such Award was granted.

25. NONEXCLUSIVITY OF THE PLAN; UNFUNDED PLAN. Neither the adoption of this Plan by the Board, the submission of this Plan to the stockholders of the Company for approval, nor any provision of this Plan will be construed as creating any limitations on the power of the Board to adopt such additional compensation arrangements as it may deem desirable, including, without limitation, the granting of stock awards and bonuses otherwise than under this Plan, and such arrangements may be either generally applicable or applicable only in specific cases.

26. INSIDER TRADING POLICY. Each Participant who receives an Award shall comply with any policy adopted by the Company from time to time covering transactions in the Company's securities by Employees, officers and/or directors of the Company.

27. ALL AWARDS SUBJECT TO COMPANY CLAWBACK OR RECOUPMENT POLICY. All Awards held by an executive officer shall be subject to clawback, recoupment or forfeiture (i) to the extent that such executive officer is determined to have engaged in fraud or intentional illegal conduct materially contributing to a financial restatement, as determined by the Board in

its sole discretion, (ii) as provided under any clawback, recoupment or forfeiture policy adopted by the Board or (iii) required by law. Such clawback, recoupment or forfeiture policy, in addition to any other remedies available under applicable law, may require the cancellation of outstanding Awards and the recoupment of any gains realized with respect to Awards.

28. DEFINITIONS. As used in this Plan, and except as elsewhere defined herein, the following terms will have the following meanings:

28.1. "***Affiliate***" means (i) any entity that, directly or indirectly, is controlled by, controls or is under common control with, the Company and (ii) any entity in which the Company has a significant equity interest, in either case as determined by the Committee, whether now or hereafter existing.

28.2. "***Award***" means any award under this Plan, including any Option, Restricted Stock, Stock Bonus, Stock Appreciation Right, Restricted Stock Unit or award of Performance Shares.

28.3. "***Award Agreement***" means, with respect to each Award, the written or electronic agreement between the Company and the Participant setting forth the terms and conditions of the Award and country-specific appendix thereto for grants to non-U.S. Participants, which shall be in substantially a form (which need not be the same for each Participant) that the Committee (or in the case of Award agreements that are not used for Insiders, the Committee's delegate(s)) has from time to time approved, and will comply with and be subject to the terms and conditions of this Plan.

28.4. "***Board***" means the Board of Directors of the Company.

28.5. "***Cause***" means termination of the Participant's Service on the basis of the Participant's conviction (or a plea of *nolo contendere*) of fraud, misappropriation, embezzlement or any other act or acts of dishonesty constituting a felony and resulting or intended to result directly or indirectly in a substantial gain or personal enrichment to the Participant at the expense of the Company or any Subsidiary.

28.6. "***Code***" means the United States Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

28.7. "***Committee***" means the Compensation Committee of the Board or those persons to whom administration of this Plan, or part of this Plan, has been delegated as permitted by law.

28.8. "***Common Stock***" means the common stock of the Company.

28.9. "***Company***" means Dexcom, Inc., or any successor corporation.

28.10. "***Consultant***" means any person, including an advisor or independent contractor, engaged by the Company or a Parent, Subsidiary or Affiliate to render services to such entity.

28.11. "***Corporate Transaction***" means the occurrence of any of the following events: (i) any "person" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) becomes the "beneficial owner" (as defined in Rule 13d-3 of the Exchange Act), directly or indirectly, of securities of the Company representing more than fifty percent (50%) of the total voting power represented by the Company's then-outstanding voting securities; provided, however, that for purposes of this subclause (i) the acquisition of additional securities by any one Person who is considered to own more than fifty percent (50%) of the total voting power of the securities of the Company will not be considered a Corporate Transaction; (ii) the consummation of the sale, transfer or disposition by the Company of all or substantially all of the Company's assets; (iii) the consummation of a merger or consolidation of the Company with any

other corporation, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or its parent) more than fifty percent (50%) of the total voting power represented by the voting securities of the Company or such surviving entity or its parent outstanding immediately after such merger or consolidation; (iv) any other transaction which qualifies as a "corporate transaction" under Section 424(a) of the Code wherein the stockholders of the Company give up all of their equity interest in the Company (except for the acquisition, sale or transfer of all or substantially all of the outstanding shares of the Company) or (v) a change in the effective control of the Company that occurs on the date that a majority of members of the Board is replaced during any twelve (12) month period by members of the Board whose appointment or election is not endorsed by a majority of the members of the Board prior to the date of the appointment or election. For purpose of this subclause (v), if any Person is considered to be in effective control of the Company, the acquisition of additional control of the Company by the same Person will not be considered a Corporate Transaction. For purposes of this definition, Persons will be considered to be acting as a group if they are owners of a corporation that enters into a merger, consolidation, purchase or acquisition of stock, or similar business transaction with the Company. Notwithstanding the foregoing, to the extent that any amount constituting deferred compensation (as defined in Section 409A of the Code) would become payable under this Plan by reason of a Corporate Transaction, such amount shall become payable only if the event constituting a Corporate Transaction would also qualify as a change in ownership or effective control of the Company or a change in the ownership of a substantial portion of the assets of the Company, each as defined within the meaning of Code Section 409A, as it has been and may be amended from time to time, and any proposed or final Treasury Regulations and IRS guidance that has been promulgated or may be promulgated thereunder from time to time.

Notwithstanding the foregoing, a Corporate Transaction shall not be deemed to result from any transaction precipitated by the Company's insolvency, appointment of a conservator, or determination by a regulatory agency that the Company is insolvent, nor from any transaction the sole purpose of which is to change the state of the Company's incorporation or to create a holding company that will be owned in substantially the same proportions by the persons who held the Company's securities immediately before such transaction.

28.12. "***Director***" means a member of the Board.

28.13. "***Disability***" means in the case of ISOs, total and permanent disability as defined in Section 22(e)(3) of the Code and in the case of other Awards, that the Participant is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than 12 months.

28.14. "***Dividend Equivalent Right***" means the right of a Participant, granted at the discretion of the Committee or as otherwise provided by the Plan, to receive a credit for the account of such Participant in an amount equal to the cash dividends paid on one Share for each Share represented by an Award held by such Participant.

28.15. "***Effective Date***" means the date the Plan is approved by the stockholders of the Company which shall be within twelve (12) months of the approval of the Plan by the Board.

28.16. "***Employee***" means any person, including officers and Directors, providing services as an employee to the Company or any Parent, Subsidiary or Affiliate. Neither service as a Director nor payment of a director's fee by the Company will be sufficient to constitute "employment" by the Company.

28.17. "***Exchange Act***" means the United States Securities Exchange Act of 1934, as amended.

28.18. "***Exchange Program***" means a program pursuant to which (i) outstanding Awards are surrendered, cancelled or exchanged for cash, the same type of Award or a different Award (or combination thereof) or (ii) the exercise price of an outstanding Award is increased or reduced.

28.19. "***Exercise Price***" means, with respect to an Option, the price at which a holder may purchase the Shares issuable upon exercise of an Option and with respect to a SAR, the price at which the SAR is granted to the holder thereof.

28.20. "***Fair Market Value***" means, as of any date, the value of a Share determined as follows:

(a) if such Common Stock is publicly traded and is then listed on a national securities exchange, its closing price on the date of determination on the principal national securities exchange on which the Common Stock is listed or admitted to trading as reported in *The Wall Street* Journal or such other source as the Committee deems reliable;

(b) if such Common Stock is publicly traded but is neither listed nor admitted to trading on a national securities exchange, the average of the closing bid and asked prices on the date of determination as reported in *The Wall Street Journal* or such other source as the Committee deems reliable; or

(c) if none of the foregoing is applicable, by the Board or the Committee in good faith.

28.21. "***Insider***" means an officer or director of the Company or any other person whose transactions in the Company's Common Stock are subject to Section 16 of the Exchange Act.

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

28.23. "***Non-Employee Director***" means a Director who is not an Employee of the Company or any Parent or Subsidiary.

28.24. "***Option***" means an award of an option to purchase Shares pursuant to Section 5.

28.25. "***Parent***" means any corporation (other than the Company) in an unbroken chain of corporations ending with the Company if each of such corporations other than the Company owns stock possessing fifty percent (50%) or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

28.26. "***Participant***" means a person who holds an Award under this Plan.

28.27. "***Performance Award***" means cash or stock granted pursuant to Section 10 or Section 12 of this Plan.

28.28. "***Performance Factors***" means any of the factors selected by the Committee and specified in an Award Agreement, from among the following objective measures, either individually, alternatively or in any combination, applied to the Company as a whole or any business unit or Subsidiary, either individually, alternatively, or in any combination, on a GAAP or non-GAAP basis, and measured, to the extent applicable on an absolute basis or relative to a pre-established target, to determine whether the performance goals established by the Committee with respect to applicable Awards have been satisfied:

(a) Profit Before Tax;

(b) Billings;

(c) Revenue;

(d) Net revenue;

(e) Earnings (which may include earnings before interest and taxes, earnings before taxes, and net earnings, or as otherwise adjusted);

(f) Operating income;

(g) Operating margin;

(h) Operating profit;

(i) Controllable operating profit, or net operating profit;

(j) Net Profit;

(k) Gross margin;

(l) Operating expenses or operating expenses as a percentage of revenue;

(m) Net income;

(n) Earnings per share;

(o) Total stockholder return;

(p) Market share;

(q) Return on assets or net assets;

(r) The Company's stock price;

(s) Growth in stockholder value relative to a pre-determined index;

(t) Return on equity;

(u) Return on invested capital;

(v) Cash Flow (including free cash flow or operating cash flows)

(w) Cash conversion cycle;

(x) Economic value added;

(y) Individual confidential business objectives;

(z) Contract awards or backlog;

(aa) Overhead or other expense reduction;

(bb) Credit rating;

(cc) Strategic plan development and implementation;

(dd) Succession plan development and implementation;

(ee) Improvement in workforce diversity;

(ff) Customer indicators;

(gg) New product invention or innovation;

(hh) Attainment of research and development milestones;

(ii) Improvements in productivity;

(jj) Bookings;

(kk) Attainment of objective operating goals and employee metrics; and

(ll) Any other metric that is capable of measurement as determined by the Committee.

28.29. "***Performance Period***" means the period of service determined by the Committee, not to exceed five (5) years, during which years of service or performance is to be measured for the Award.

28.30. "***Performance Share***" means an Award granted pursuant to Section 10 or Section 12 of this Plan.

28.31. "***Permitted Transferee***" means any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, former spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law (including adoptive relationships) of the Employee, any person sharing the Employee's household (other than a tenant or employee), a trust in which these persons (or the Employee) have more than 50% of the beneficial interest, a foundation in which these persons (or the Employee) control the management of assets, and any other entity in which these persons (or the Employee) own more than 50% of the voting interests.

28.32. "***Person***" shall have the meaning as such term is used in Sections 13(d) and 14(d) of the Exchange Act.

28.33. "***Plan***" means this DexCom, Inc. 2015 Equity Incentive Plan, as amended.

28.34. "***Purchase Price***" means the price to be paid for Shares acquired under this Plan, other than Shares acquired upon exercise of an Option or SAR.

28.35. "***Restricted Stock Award***" means an award of Shares pursuant to Section 6 or Section 12 of this Plan, or issued pursuant to the early exercise of an Option.

28.36. "***Restricted Stock Unit***" means an Award granted pursuant to Section 9 or Section 12 of this Plan.

28.37. "***SEC***" means the United States Securities and Exchange Commission.

28.38. "***Securities Act***" means the United States Securities Act of 1933, as amended.

28.39. "***Service***" shall mean service as an Employee, Consultant, Director or Non-Employee Director, to the Company or a Parent, Subsidiary or Affiliate of the Company, subject to such further limitations as may be set forth in this Plan or the applicable Award Agreement. An Employee will not be deemed to have ceased to provide Service in the case of (i) medical leave, (ii) military leave, or (iii) any other leave of absence approved by the Company. In the case of any Employee on an approved leave of absence, Awards shall not vest during such leave of

absence, except as (A) may be required by applicable Law, or (B) as otherwise provided by the Committee or the Company in writing. At such time as such Employee returns to regular and continuous service with the Company following the leave of absence, the vesting schedule applicable to the Awards shall recommence, and, if applicable, the total period of the vesting schedule will be extended by a number of days equal to the total number of days of Employee's leave of absence, except that in no event may an Award be exercised after the expiration term set forth in the Award Agreement. Similarly, if Employee's schedule reduces to a less than a full-time service arrangement, except as otherwise provided by the Committee or the Company in writing, Awards shall vest on a proportionately and commensurately slower schedule, except that in no event may an Award be exercised after the expiration term set forth in the Award Agreement. No fractional shares may be issued. In the event of military leave, if required by applicable laws, vesting shall continue for not less than the longest period that vesting continues under any other statutory or Company approved leave of absence and, upon a Participant's returning from military leave (under conditions that would entitle him or her to protection upon such return under the Uniform Services Employment and Reemployment Rights Act), he or she shall be given vesting credit with respect to Awards to the same extent as would have applied had the Participant continued to provide services to the Company throughout the leave on the same terms as he or she was providing services immediately prior to such leave. Except as set forth in this Section 28.39, an employee shall have terminated employment as of the date he or she ceases to provide Services (regardless of whether the termination is in breach of local employment laws or is later found to be invalid) and employment shall not be extended by any notice period or garden leave mandated by local law, provided however, that a change in status from an employee to a consultant or advisor shall not terminate the service provider's Service, unless determined by the Committee, in its discretion. The Committee will have sole discretion to determine whether a Participant has ceased to provide Services and the effective date on which the Participant ceased to provide Services.

28.40. "***Shares***" means shares of the Company's Common Stock and the common stock of any successor security.

28.41. "***Stock Appreciation Right***" means an Award granted pursuant to Section 8 or Section 12 of this Plan.

28.42. "***Stock Bonus***" means an Award granted pursuant to Section 7 or Section 12 of this Plan.

28.43. "***Subsidiary***" means any corporation (other than the Company) in an unbroken chain of corporations beginning with the Company if each of the corporations other than the last corporation in the unbroken chain owns stock possessing fifty percent (50%) or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

28.44. "***Treasury Regulations***" means regulations promulgated by the United States Treasury Department.

28.45. "***Unvested Shares***" means Shares that have not yet vested or are subject to a right of repurchase in favor of the Company (or any successor thereto).

Global – Form of RSU Grant Agreement – Double Trigger

DEXCOM, INC.
AMENDED AND RESTATED 2015 EQUITY INCENTIVE PLAN
NOTICE OF RESTRICTED STOCK UNIT AWARD
GRANT NUMBER: _____

Unless otherwise defined herein, the terms defined in the DexCom, Inc. (the "***Company***") Amended and Restated 2015 Equity Incentive Plan (the "***Plan***") shall have the same meanings in this Notice of Restricted Stock Unit Award (the "***Notice***").

Name: _____

Address: _____

You ("***Participant***") have been granted an award of Restricted Stock Units ("***RSUs***") under the Plan subject to the terms and conditions of the Plan, this Notice and the attached Award Agreement (Restricted Stock Units) (hereinafter "***RSU Agreement***").

Number of RSUs: _____

Date of Grant: _____

Vesting Commencement Date: _____

Expiration Date: The date on which settlement of all RSUs granted hereunder occurs, with earlier expiration upon Termination.

Vesting Schedule: Subject to the limitations set forth in this Notice, the Plan and the RSU Agreement, the RSUs will vest in accordance with the following schedule:

Shares Vest Date/Performance Conditions

Corporate Transaction: If a Corporate Transaction (as defined below) occurs and either (x) your continuous service to the Company or your employer is involuntarily terminated without Cause (as defined below) by the Company or your employer within twelve (12) months after the effective date of such Corporate Transaction or (y) your continuous service is Constructively Terminated (as defined below) by the Company or your employer within twelve (12) months after the effective date of such Corporate Transaction, then the vesting and exercisability of the shares of Common Stock subject to the RSU shall be accelerated in full and any reacquisition or repurchase rights held by the Company with respect to the shares of Common Stock subject to such acceleration shall lapse in full, as appropriate at the time of such termination.

"***Cause***" means termination of the Participant's continuous service on the basis of the Participant's conviction (or a plea of nolo contendere or the local equivalent thereof) of fraud, misappropriation, embezzlement or any other act or acts of dishonesty constituting a felony or serious crime and resulting or intended to result directly or indirectly in a substantial gain or personal enrichment to the Participant at the expense of the Company, your employer, any Subsidiary or its or their business.

"***Corporate Transaction***" means the occurrence of any of the following events: (i) any "person" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) becomes the "beneficial owner" (as defined in Rule 13d-3 of the Exchange Act), directly or indirectly, of securities of the Company representing more than fifty percent (50%) of the total voting power represented by the Company's then-outstanding voting securities; provided, however, that for purposes of this subclause (i) the acquisition of additional securities by any one Person who is considered to own more than fifty percent (50%) of the total voting power of the securities of the Company will not be considered a Corporate Transaction; (ii) the consummation of the sale, transfer or disposition by the Company of all or substantially all of the Company's assets; (iii) the consummation of a merger or consolidation of the Company with any other corporation, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or its parent) more than fifty percent (50%) of the total voting power represented by the voting securities of the Company or such surviving entity or its parent outstanding immediately after such merger or consolidation; (iv) any other transaction which qualifies as a "corporate transaction" under Section 424(a) of the Code wherein the stockholders of the Company give up all of their equity interest in the Company (except for the acquisition, sale or transfer of all or substantially all of the outstanding shares of the Company) or (v) a change in the effective control of the Company that occurs on the date that a majority of members of the Board is replaced during any twelve (12) month period by members of the Board whose appointment or election is not endorsed by a majority of the members of the Board prior to the date of the appointment or election. For purpose of this subclause (v), if any Person is considered to be in effective control of the Company, the acquisition of additional control of the Company by the same Person will not be considered a Corporate Transaction. For purposes of this definition, Persons will be considered to be acting as a group if they are owners of a corporation that enters into a merger, consolidation, purchase or acquisition of stock, or similar business transaction with the Company. Notwithstanding the foregoing, to the extent that any amount constituting deferred compensation (as defined in Section 409A of the Code) would become payable under this Plan by reason of a Corporate Transaction, such amount shall become payable only if the event constituting a Corporate Transaction would also qualify as a change in ownership or effective control of the Company or a change in the ownership of a substantial portion of the assets of the Company, each as defined within the meaning of Code Section 409A, as it has been and may be amended from time to time, and any proposed or final Treasury Regulations and IRS guidance that has been promulgated or may be promulgated thereunder from time to time.

Notwithstanding the foregoing, a Corporate Transaction shall not be deemed to result from any transaction precipitated by the Company's insolvency, appointment of a conservator, or determination by a regulatory agency that the Company is insolvent, nor from any transaction the sole purpose of which is to change the state of the Company's incorporation or to create a holding company that will be owned in substantially the same proportions by the persons who held the Company's securities immediately before such transaction.

"***Constructively Terminated***" means that you voluntarily terminate your employment with the Company or your employer because (i) your title and responsibilities or your annual salary and bonus potential are materially reduced or (ii) you worked at the Company's headquarters, a Subsidiary's or your employer's normal place of business immediately prior to the Corporate Transaction, and the headquarters of the Company or the relevant Subsidiary's or employer's normal place of business (as applicable) is subsequently moved more than 50 miles from its present location within twelve (12) months of the Corporate Transaction or (iii) your employer has committed a repudiatory breach of your contract of employment.

You understand that your employment or consulting relationship or service with the Company or the relevant Subsidiary is for an unspecified duration, can be terminated at any time (i.e., is "at-will") other than as required by applicable local law, and that nothing in this Notice, the RSU Agreement or the Plan changes the nature of that relationship nor shall create an employment or consulting relationship with the Company by virtue of this Notice or your participation in the Plan.

You acknowledge that the vesting of the RSUs pursuant to this Notice is earned only by continuing service as an Employee, Director or Consultant of the Company or the relevant Subsidiary (as applicable). You also understand that this Notice is subject to the terms and conditions of both the RSU Agreement and the Plan, both of which are incorporated herein by reference.

Data Privacy Statement:

By signing below you confirm that you have read this Notice, the RSU Agreement and the Plan, you agree to be bound by them and you freely and unambiguously consent to the collection, use and transfer, in electronic or other form, of your personal data as described in this Notice, the RSU Agreement and any other Restricted Stock Unit Award grant materials by the Company, its affiliates and Subsidiaries (including your employer), and any third parties assisting in the implementation, administration and management of the Plan, for the exclusive purpose of implementing, administering and managing your participation in the Plan.

You understand that the Company, its Subsidiaries (including your employer) may collect, hold, process, disclose and transfer certain personal data about you. For the purposes of this Notice and the RSU Agreement, the term "**Data"** means certain personal and/or sensitive information about you, including, but not limited to, your name, home address and telephone/fax number, date of birth, social insurance number or other identification number, family size, marital status, gender, beneficiary information, emergency contacts, passport/visa information, salary and benefit information, personal bank account number, tax related information, tax identification number, nationality, job title, any Shares or directorships held in the Company, details of all RSUs or any other entitlement to Shares awarded, canceled, exercised, vested, unvested or outstanding in your favor and any other information required by providers for the purpose of implementing, administering and managing the Plan.

You understand that Data will be transferred to E*TRADE Financial ("E*TRADE") or such other stock plan service provider as may be selected by the Company in the future, which is assisting the Company with the implementation, administration and management of the Plan. You understand that the recipients of Data may be located in the United States or elsewhere, where you may not have the same rights under applicable data protection and privacy law as in your home jurisdiction. You authorize the Company, E*TRADE and any other possible recipients that may assist the Company (presently or in the future) with implementing, administering and managing the Plan to receive, possess, use, retain and transfer data, in electronic or other form, for the sole purpose of implementing, administering and managing your participation in the plan.

PARTICIPANT **DEXCOM, INC.**

Signature: _____ By: _____

Print Name: _____ Its: _____

DEXCOM, INC.
AWARD AGREEMENT (RESTRICTED STOCK UNITS) TO THE
DEXCOM, INC. AMENDED AND RESTATED 2015 EQUITY INCENTIVE PLAN

Unless otherwise defined herein, the terms defined in the DexCom, Inc. (the "***Company***") Amended and Restated 2015 Equity Incentive Plan (the "***Plan***") shall have the same defined meanings in this Award Agreement (Restricted Stock Units) (the "***Agreement***").

You ("***Participant***") have been granted Restricted Stock Units ("***RSUs***") subject to the terms, restrictions and conditions of the Plan, the Notice of Restricted Stock Unit Award (the "***Notice***") and this Agreement.

1. **Settlement**. Settlement of RSUs shall be made within the earlier of (i) 90 days following the applicable date of vesting under the vesting schedule or (ii) March 15 of the year following the year of vesting as set forth in the Notice. Settlement of RSUs shall be in Shares.

2. **Withholding Taxes**. Regardless of any action the Company and/or Participant's employer(s) (the "***Employer***") take with respect to any foreign, federal, state, or local income tax, social insurance (including if permissible under local law, any statutory employer's contribution to social insurance), national insurance contributions, payroll tax, payment on account, or other tax-related withholding with respect to this Agreement, as a result of Participant's participation in the Plan and/or any aspect of the RSUs ("***Tax-Related Items***"), Participant agrees and acknowledges that the ultimate liability for all Tax-Related Items is the responsibility of Participant and that the Company and/or the Employer:

- are not making any representations and are not committing to take any actions regarding any Tax-Related Items, including, but not limited to, the grant of the RSUs, the vesting of the RSUs, the delivery of Shares upon vesting of the RSUs, the subsequent sale of Shares acquired upon vesting of the RSUs, and the receipt of any dividends; and

- do not commit to structure the terms of the grant or any aspect of the RSUs to reduce or eliminate your liability for Tax-Related Items.

Before any Tax-Related Items become due, Participant will pay or make adequate arrangements satisfactory to the Company and/or the Employer to satisfy those Tax-Related Items. If permissible under local law, Participant authorizes the Company and/or the Employer to withhold all applicable Tax-Related Items legally payable by or due with respect to and/or on behalf of Participant by one or a combination of the following:

(a) withholding from the Shares to be issued, the number of Shares having a fair market value (determined on the date that the amount of tax to be withheld is determined) equal to the amount required to be withheld for Tax-Related Items, or

(b) arranging to have sold on Participant's behalf through such means as the Company may determine in its sole discretion (whether through a broker or otherwise) a sufficient number of Shares that is equal to the amount required to be withheld for Tax-Related Items. The Company shall arrange to sell or withhold a whole number of shares to satisfy the minimum tax withholding obligation, and to the extent that any tax obligation balance remains, such amount shall be withheld from your following payroll cycle.

If the obligation for Tax-Related Items is satisfied by withholding a number of Shares as described herein, Participant will be deemed to have been issued the full number of Shares to which Participant is entitled pursuant to the vesting of the RSUs even though a portion of those Shares will be withheld for the purpose of satisfying the Tax-Related Items.

Further, if Participant has relocated to a different jurisdiction between the date of grant and the date of any taxable event, Participant acknowledges that the Company and/or the Employer (or former employer, as applicable) may be required to withhold or account for Tax-Related Items in more than one jurisdiction.

Finally, Participant will pay to the Company or the Employer any amount of Tax-Related Items that the Company or the Employer may be required to withhold or account for as a result of Participant's participation in the Plan or any aspect of the RSUs that cannot be satisfied by any of the means described in the preceding paragraph. The Company may refuse to deliver Shares to Participant if Participant fails to meet his/her obligations for the Tax-Related Items, as described herein.

3. **No Stockholder Rights**. Unless and until such time as Shares are issued in settlement of vested RSUs, Participant shall have no ownership of the Shares allocated to the RSUs and shall have no right to dividends or to vote from such Shares.

4. **Dividend Equivalents**. If dividends are declared and paid on Shares, dividend equivalent payments, if any (whether in cash or Shares), shall be credited to Participant at such time as Shares as issued in settlement of vested RSUs. Such dividend equivalent payments shall have the same vesting requirements as the underlying RSUs.

5. **No Transfer**. The RSUs and any interest therein shall not be sold, assigned, transferred, pledged, hypothecated, or otherwise disposed of.

6. **Termination**. Subject to the terms of the Notice, if Participant's service terminates for any reason, all unvested RSUs shall be forfeited to the Company forthwith, and all rights of Participant to such RSUs shall immediately terminate. For the avoidance of doubt, Participant shall not be entitled to any compensation for the loss of any rights or opportunities under the Plan other than as provided for herein. In case of any dispute as to whether Termination has occurred, the Committee shall have sole discretion to determine whether such Termination has occurred and the effective date of such Termination.

7. **Tax Consequences**. Participant acknowledges that there will be tax consequences upon settlement of the RSUs or disposition of the Shares, if any, received in connection therewith, and Participant should consult a tax adviser regarding Participant's tax obligations prior to such settlement or disposition. You should consult your personal tax advisor for information on the actual and potential tax consequences of this RSU.

8. **Acknowledgement**. The Company and Participant agree that the RSUs are granted under and governed by the Notice, this Agreement and the provisions of the Plan. Participant: (i) acknowledges receipt of a copy of the Plan and the Plan prospectus, (ii) represents that Participant has carefully read and is familiar with their provisions, and (iii) hereby accepts the RSUs subject to all of the terms and conditions set forth herein and those set forth in the Plan and the Notice.

9. **Country-Specific Terms and Conditions**. Participant's participation in the Plan will be subject to any special terms and conditions set forth in Appendix A to this Agreement ("***Appendix A***") for Participant's country of residence, if any. Appendix A constitutes part of this Agreement.

Moreover, if Participant relocates to another country, any special terms and conditions applicable to RSUs granted in such country may apply to Participant to the extent the Company determines that the application of such terms and conditions is necessary or advisable in order to comply with local law or facilitate the administration of the Plan.

In addition, the Company reserves the right to impose other requirements on the RSUs and any Shares acquired under the Plan, to the extent the Company determines it is necessary or advisable in order to comply with local law or facilitate the administration of the Plan, and to

require Participant to sign any additional agreements or undertakings that may be necessary to accomplish the foregoing.

10. **Entire Agreement; Enforcement of Rights**. This Agreement, the Plan and the Notice constitute the entire agreement and understanding of the parties relating to the subject matter herein and supersede all prior discussions between them. Any prior agreements, commitments or negotiations concerning the purchase of the Shares hereunder are superseded. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, shall be effective unless in writing and signed by the parties to this Agreement. The failure by either party to enforce any rights under this Agreement shall not be construed as a waiver of any rights of such party.

11. **Compliance with Laws and Regulations**. The issuance of Shares will be subject to and conditioned upon compliance by the Company and Participant with all applicable state and federal laws and regulations and with all applicable requirements of any stock exchange or automated quotation system on which the Company's Shares may be listed or quoted at the time of such issuance or transfer.

12. **Governing Law Severability**. If one or more provisions of this Agreement (including the Appendix) are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this Agreement, (ii) the balance of this Agreement shall be interpreted as if such provision were so excluded and (iii) the balance of this Agreement shall be enforceable in accordance with its terms. This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of California, U.S.A, without giving effect to principles of conflicts of law.

13. **No Rights as Employee, Director or Consultant**. Nothing in this Agreement shall affect in any manner whatsoever the right or power of the Company, or a Parent or Subsidiary of the Company, to terminate Participant's service, for any reason, with or without cause, subject to compliance with applicable local laws.

14. **Recipient Data Privacy**. Through Participant's acceptance of this grant, Participant hereby explicitly and unambiguously consents to the collection, use and transfer, in electronic or other form, of his or her personal and/or sensitive data as described in this document by and among, as applicable, the Company, its affiliates and its subsidiaries for the exclusive purpose of implementing, administering and managing Participant's participation in the Plan. Participant understands that the Company holds certain personal and/or sensitive information about him or her, including, but not limited to, his or her name, home address and telephone/fax number, date of birth, social insurance number or other identification number, family size, marital status, gender, beneficiary information, emergency contacts, passport/visa information, salary and benefit information, personal bank account number, tax related information, tax identification number, nationality, job title, any Shares or directorships held in the Company, details of all RSUs or any other entitlement to Shares awarded, canceled, exercised, vested, unvested or outstanding in Participant's favor and any other information required by providers for the purpose of implementing, administering and managing the Plan ("**Data**"). Participant also understands and unambiguously consents to the fact that Data may be transferred to any third parties assisting in the implementation, administration and management of the Plan, that these recipients may be located in Participant's country or elsewhere, and that Participant's country may have different data privacy laws and protections than the laws in the recipient's country. Participant understands that he or she may request a list with the names and addresses of any potential recipients of the Data by contacting his or her local human resources representative. Participant authorizes the recipients to receive, possess, use, retain and transfer the Data, in electronic or other form, for the purposes of implementing, administering and managing my participation in the Plan, including any requisite transfer of such Data as may be required to a broker or other third party with whom Participant may elect to deposit any Shares acquired.

Participant understands that Data will be held only as long as is necessary to implement, administer and manage his or her participation in the Plan. Participant understands that he or she may, at any time, view Data, request additional information about the storage and processing of Data, require any necessary amendments to Data or refuse or withdraw the consents herein, in any case without cost, by contacting in writing his or her local human resources representative. Participant understands, however, that refusing or withdrawing his or her consent may affect his or her ability to participate in the Plan. For more information on the consequences of Participant's refusal to consent or withdrawal of consent, Participant understands that he or she may contact his or her local human resources representative.

15. **Nature of Grant**.

(a) By acknowledging and accepting this RSU grant, Participant agrees that the granting of this RSU is completely at the discretion of the Committee pursuant to the Plan, that Participant does not expect that future awards will be granted under the Plan, or any other plan, and that Participant waives any claim for losses under the Agreement of the Plan in connection with termination of employment.

(b) The RSU grant is non-transferrable and non-assignable.

i. The Plan is established voluntarily by the Company, it is discretionary in nature and may be modified, amended, suspended or terminated by the Board at any time.

ii. The grant of this award is voluntary and occasional and does not create any contractual or other right to receive future grants of awards, or benefits in lieu of awards, even if awards have been granted repeatedly in the past.

iii. Participant is voluntarily participating in the Plan.

iv. This RSU grant is an extraordinary item that does not constitute compensation of any kind for services of any kind rendered to the Company or its affiliates (including, as applicable, Participant's employer) and which is outside the scope of Participant's employment contract, if any.

v. This RSU grant is not part of normal or expected compensation or salary for any purpose, including, but not limited to, calculating any severance, resignation, termination, redundancy, end of service payments, bonuses, long-service awards, pension or retirement benefits or similar payments.

vi. The future value of the underlying Shares is unknown and cannot be predicted with certainty.

vii. For the purposes of this Agreement, termination of service shall be the last day of active service provided by Participant to the Company or one of its affiliates and such period shall not be extended by any notice of termination or similar period including any period of garden leave.

16. **Translations**. If Participant receives this Agreement or any other document or communication related to the Plan or this grant in a language other than English and the meaning in the translation is different than in the English version, the terms expressed in the English version will govern.

17. **Imposition of Other Requirements**. The Company reserves the right to impose other requirements on Participant's participation in the Plan, on the RSUs and on any Shares acquired under the Plan, to the extent the Company determines it is necessary or advisable in

order to comply with any applicable law or facilitate the administration of the Plan. Participant agrees to sign any additional agreements or undertakings that may be necessary to accomplish the foregoing. Furthermore, Participant acknowledges that the laws of the country in which Participant is working at the time of grant, vesting or the sale of Shares received pursuant to this RSU grant (including any rules or regulations governing securities, foreign exchange, tax, labor, or other matters) may subject Participant to additional procedural or regulatory requirements that Participant is and will be solely responsible for and must fulfill.

By your signature and the signature of the Company's representative on the Notice, Participant and the Company agree that this RSU is granted under and governed by the terms and conditions of the Plan, the Notice and this Agreement. Participant has reviewed the Plan, the Notice and this Agreement in their entirety, has had an opportunity to obtain the advice of counsel prior to executing this Agreement, and fully understands all provisions of the Plan, the Notice and this Agreement. Participant hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the Committee upon any questions relating to the Plan, the Notice and this Agreement. Participant further agrees to notify the Company upon any change in Participant's residence address.

APPENDIX A

ADDITIONAL COUNTRY-SPECIFIC TERMS AND CONDITIONS OF THE DEXCOM, INC. AMENDED AND RESTATED 2015 EQUITY INCENTIVE PLAN (RESTRICTED STOCK UNITS)

Terms and Conditions

This Appendix A includes additional terms and conditions that govern the RSUs granted to you under the Plan if you reside in one of the countries listed below. Capitalized terms used but not defined in this Appendix A are defined in the Plan and/or the Agreement, and have the meanings set forth therein.

Notifications

This Appendix A also includes information regarding exchange controls and certain other issues of which you should be aware with respect to your participation in the Plan. The information is based on the securities, exchange control and other laws in effect in the respective countries as of August 2017. Such laws are often complex and change frequently. As a result, the Company strongly recommends that you not rely on the information noted in this Appendix A as the only source of information relating to the consequences of your participation in the Plan because the information may be out of date at the time that you vest in the RSUs or sell Shares acquired under the Plan.

In addition, the information contained herein is general in nature and may not apply to your particular situation, and the Company is not in a position to assure you of a particular result. Accordingly, you are advised to seek appropriate professional advice as to how the relevant laws in your country may apply to your situation.

Finally, if you are a citizen or resident of a country other than the one in which you are currently working, transfer employment after the grant date, or are considered a resident of another country for local law purposes, the information contained herein may not be applicable to you, and the Company shall, in its discretion, determine to what extent the terms and conditions contained herein shall apply.

CANADA

Terms and Conditions

RSUs Settled in Shares Only

Notwithstanding any discretion contained in the Plan, or any provision in the Agreement to the contrary, RSUs shall be paid in Shares only and do not provide any right for Participant to receive a cash payment.

The following provisions shall apply if Participant is a resident of Quebec:

Language Consent

The Parties acknowledge that it is their express wish that the Agreement, as well as all documents, notices and legal proceedings entered into, given or instituted pursuant hereto or relating directly or indirectly hereto, be drawn up in English.

Les Parties reconnaissent avoir exigé la rédaction en anglais de cette convention, ainsi que de tous documents, avis et procédures judiciaires, exécutés, donnés ou intentés en vertu de, ou liés directement ou indirectement à la présente convention.

Data Privacy Notice and Consent
This provision supplements the Data Privacy section of the Agreement:

Participant hereby authorizes the Company and the Company's representatives to discuss with and obtain all relevant information from all personnel, professional or not, involved in the administration and operation of the Plan. Participant further authorizes the Company and the Employer to disclose and discuss his or her participation in the Plan with their advisors. Finally, Participant authorizes the Company and the Employer to record such information and to keep such information in his or her employee file.

GERMANY

Notifications

Exchange Control Information

Cross-border payments in excess of €12,500 must be reported monthly to the German Federal Bank. If Participant uses a German bank to transfer a cross-border payment in excess of €12,500 in connection with the sale of Shares acquired under the Plan, the bank will make the report for him or her. In addition, Participant must report any receivables, payables, or debts in foreign currency exceeding an amount of €5,000,000 on a monthly basis.

NETHERLANDS

Notifications

Insider-Trading Notification

Participant should be aware of the Dutch insider-trading rules, which may impact the sale of Shares issued to Participant at vesting and settlement of the RSUs. In particular, Participant may be prohibited from effectuating certain transactions involving Shares if Participant has inside information about the Company. If Participant is uncertain whether the insider-trading rules apply to Participant, Participant should consult his or her personal legal advisor.

SWEDEN

There are no country-specific provisions.

SWITZERLAND

There are no country-specific provisions.

UNITED KINGDOM

Terms and Conditions

Withholding Taxes

This provision supplements the Withholding Taxes section of the Agreement:

If payment or withholding of the Tax-Related Items (including the Employer's Liability, as defined below) is not made within 90 days of the end of the UK tax year in which vesting occurs (the "***Due Date***") or such other period specified in Section 222(1)(c) of the U.K. Income Tax (Earnings and Pensions) Act 2003, the amount of any uncollected Tax-Related Items will constitute a loan owed by Participant to the Employer, effective on the Due Date. Participant agrees that the loan will bear interest at the then-current Official Rate of Her Majesty's Revenue and Customs ("***HMRC***"), it will be immediately due and repayable, and the Company or the

Employer may recover it at any time thereafter by any of the means referred to in the Withholding Taxes section of the Agreement. Participant also authorizes the Company to delay the issuance of Shares to Participant unless and until the loan is repaid.

Notwithstanding the foregoing, if Participant is a director or executive officer of the Company (within the meaning of Section 13(k) of the U.S. Securities and Exchange Act of 1934, as amended), Participant will not be eligible for such a loan to cover the Tax-Related Items. In the event that Participant is a director or executive officer and the Tax-Related Items are not collected from or paid by Participant by the Due Date, the amount of any uncollected Tax-Related Items will constitute a benefit to Participant on which additional income tax and national insurance contributions (including the Employer's Liability, as defined below) will be payable. Participant will be responsible for reporting and paying any income tax and national insurance contributions (including the Employer's Liability, as defined below) due on this additional benefit directly to HMRC under the self-assessment regime.

Joint Election/recoverability of employer national insurance contributions

As a condition of Participant's participation in the Plan and the vesting of the RSUs (, Participant agrees to accept any liability for secondary Class 1 national insurance contributions (the "***Employer's Liability***") which may be payable by the Company and/or the Employer in connection with the RSUs and any event giving rise to Tax-Related Items. To accomplish the foregoing, Participant agrees to execute a joint election with the Company and/or the Employer (the "***Election***"), the form of such Election being formally approved by HMRC, and/or any other agreements, consents or elections required to accomplish the transfer of the Employer's Liability to Participant. Participant further agrees to execute such other joint elections, other agreements, consents or elections (the "***Other Agreement(s)***") as may be required by the Company and/or the Employer between Participant and the Company, any successor to the Company and/or the Employer in order to transfer the Employer's Liability to Participant or in order to provide for the reimbursement of the Employer's Liability by Participant to the Company and/or the Employer.

If Participant does not enter into the Election when Participant accepts the Agreement, if the Election is revoked and/or abolished at any time by HMRC or if Participant fails to enter into any Other Agreement as required by the Company, any successor to the Company and/or the Employer, the Company may choose, in its sole discretion, not to allow Participant to vest in the RSUs and they will cease to vest, become null and void, and no Shares will be acquired under the Plan, without any liability to the Company, the Employer and/or any Affiliate. Participant further agrees that the Company and/or the Employer may collect the Employer's Liability by any of the means set forth in the Withholding Taxes section of the Agreement.

For the avoidance of doubt, this requirement will apply to all Participants that work in the U.K. during any period from grant through the vesting date of the RSUs regardless of whether Participant was in the U.K. at the time of grant.

UNITED STATES

Terms and Conditions

This provision supplements the Tax Consequences provision of the Agreement:

Upon vesting of the RSU, Participant will include in income the fair market value of the Shares subject to the RSU. The included amount will be treated as ordinary income by Participant and will be subject to withholding by the Company when required by applicable law. Upon disposition of the Shares, any subsequent increase or decrease in value will be treated as short-term or long-term capital gain or loss, depending on whether the Shares are held for more than one year from the date of settlement. Further, an RSU may be considered a deferral of compensation that may be subject to Section 409A of the Code. Section 409A of the Code imposes special rules to the timing of making and effecting certain amendments of this RSU

with respect to distribution of any deferred compensation. You should consult your personal tax advisor for information on the actual and potential tax consequences of this RSU.

Global – Form of RSU Grant Agreement – General

DEXCOM, INC.
AMENDED AND RESTATED 2015 EQUITY INCENTIVE PLAN
NOTICE OF RESTRICTED STOCK UNIT AWARD
GRANT NUMBER: _____

Unless otherwise defined herein, the terms defined in the DexCom, Inc. (the "***Company***") Amended and Restated 2015 Equity Incentive Plan (the "***Plan***") shall have the same meanings in this Notice of Restricted Stock Unit Award (the "***Notice***").

Name: _____

Address: _____

You ("***Participant***") have been granted an award of Restricted Stock Units ("***RSUs***") under the Plan subject to the terms and conditions of the Plan, this Notice and the attached Award Agreement (Restricted Stock Units) (hereinafter "***RSU Agreement***").

Number of RSUs: _____

Date of Grant: _____

Vesting Commencement Date: _____

Expiration Date: The date on which settlement of all RSUs granted hereunder occurs, with earlier expiration upon Termination.

Vesting Schedule: Subject to the limitations set forth in this Notice, the Plan and the RSU Agreement, the RSUs will vest in accordance with the following schedule:

Shares Vest Date/Performance Conditions

You understand that your employment or consulting relationship or service with the Company or the relevant Subsidiary is for an unspecified duration, can be terminated at any time (i.e., is "at-will") other than as required by applicable local law, and that nothing in this Notice, the RSU Agreement or the Plan changes the nature of that relationship nor shall create an employment or consulting relationship with the Company by virtue of this Notice or your participation in the Plan.

You acknowledge that the vesting of the RSUs pursuant to this Notice is earned only by continuing service as an Employee, Director or Consultant of the Company or the relevant Subsidiary (as applicable). You also understand that this Notice is subject to the terms and conditions of both the RSU Agreement and the Plan, both of which are incorporated herein by reference.

Data Privacy Statement:

By signing below you confirm that you have read this Notice, the RSU Agreement and the Plan, you agree to be bound by them and you freely and unambiguously consent to the collection, use and transfer, in electronic or other form, of your personal data as described in this Notice, the RSU Agreement and any other Restricted Stock Unit Award grant materials by the Company, its affiliates and Subsidiaries (including your employer), and any third parties assisting in the implementation, administration and management of the Plan, for the exclusive purpose of implementing, administering and managing your participation in the Plan.

You understand that the Company, its Subsidiaries (including your employer) may collect, hold, process, disclose and transfer certain personal data about you. For the purposes of this Notice and the RSU Agreement, the term "**Data"** means certain personal and/or sensitive information about you, including, but not limited to, your name, home address and telephone/fax number, date of birth, social insurance number or other identification number, family size, marital status, gender, beneficiary information, emergency contacts, passport/visa information, salary and benefit information, personal bank account number, tax related information, tax identification number, nationality, job title, any Shares or directorships held in the Company, details of all RSUs or any other entitlement to Shares awarded, canceled, exercised, vested, unvested or outstanding in your favor and any other information required by providers for the purpose of implementing, administering and managing the Plan .

You understand that Data will be transferred to E*TRADE Financial ("E*TRADE") or such other stock plan service provider as may be selected by the Company in the future, which is assisting the Company with the implementation, administration and management of the Plan. You understand that the recipients of Data may be located in the United States or elsewhere, where you may not have the same rights under applicable data protection and privacy law as in your home jurisdiction. You authorize the Company, E*TRADE and any other possible recipients that may assist the Company (presently or in the future) with implementing, administering and managing the Plan to receive, possess, use, retain and transfer data, in electronic or other form, for the sole purpose of implementing, administering and managing your participation in the plan.

PARTICIPANT **DEXCOM, INC.**

Signature: _____ By: _____

Print Name: _____ Its: _____

DEXCOM, INC.
AWARD AGREEMENT (RESTRICTED STOCK UNITS) TO THE
DEXCOM, INC. AMENDED AND RESTATED 2015 EQUITY INCENTIVE PLAN

Unless otherwise defined herein, the terms defined in the DexCom, Inc. (the "***Company***") Amended and Restated 2015 Equity Incentive Plan (the "***Plan***") shall have the same defined meanings in this Award Agreement (Restricted Stock Units) (the "***Agreement***").

You ("***Participant***") have been granted Restricted Stock Units ("***RSUs***") subject to the terms, restrictions and conditions of the Plan, the Notice of Restricted Stock Unit Award (the "***Notice***") and this Agreement.

1. **Settlement**. Settlement of RSUs shall be made within the earlier of (i) 90 days following the applicable date of vesting under the vesting schedule or (ii) March 15 of the year following the year of vesting as set forth in the Notice. Settlement of RSUs shall be in Shares.

2. **Withholding Taxes**. Regardless of any action the Company and/or Participant's employer(s) (the "***Employer***") take with respect to any foreign, federal, state, or local income tax, social insurance (including if permissible under local law, any statutory employer's contribution to social insurance), national insurance contributions, payroll tax, payment on account, or other tax-related withholding with respect to this Agreement, as a result of Participant's participation in the Plan and/or any aspect of the RSUs ("***Tax-Related Items***"), Participant agrees and acknowledges that the ultimate liability for all Tax-Related Items is the responsibility of Participant and that the Company and/or the Employer:

- are not making any representations and are not committing to take any actions regarding any Tax-Related Items, including, but not limited to, the grant of the RSUs, the vesting of the RSUs, the delivery of Shares upon vesting of the RSUs, the subsequent sale of Shares acquired upon vesting of the RSUs, and the receipt of any dividends; and

- do not commit to structure the terms of the grant or any aspect of the RSUs to reduce or eliminate your liability for Tax-Related Items.

Before any Tax-Related Items become due, Participant will pay or make adequate arrangements satisfactory to the Company and/or the Employer to satisfy those Tax-Related Items. If permissible under local law, Participant authorizes the Company and/or the Employer to withhold all applicable Tax-Related Items legally payable by or due with respect to and/or on behalf of Participant by one or a combination of the following:

(a) withholding from the Shares to be issued, the number of Shares having a fair market value (determined on the date that the amount of tax to be withheld is determined) equal to the amount required to be withheld for Tax-Related Items, or

(b) arranging to have sold on Participant's behalf through such means as the Company may determine in its sole discretion (whether through a broker or otherwise) a sufficient number of Shares that is equal to the amount required to be withheld for Tax-Related Items. The Company shall arrange to sell or withhold a whole number of shares to satisfy the minimum tax withholding obligation, and to the extent that any tax obligation balance remains, such amount shall be withheld from your following payroll cycle.

If the obligation for Tax-Related Items is satisfied by withholding a number of Shares as described herein, Participant will be deemed to have been issued the full number of Shares to which Participant is entitled pursuant to the vesting of the RSUs even though a portion of those Shares will be withheld for the purpose of satisfying the Tax-Related Items.

Further, if Participant has relocated to a different jurisdiction between the date of grant and the date of any taxable event, Participant acknowledges that the Company and/or the Employer (or former employer, as applicable) may be required to withhold or account for Tax-Related Items in more than one jurisdiction.

Finally, Participant will pay to the Company or the Employer any amount of Tax-Related Items that the Company or the Employer may be required to withhold or account for as a result of Participant's participation in the Plan or any aspect of the RSUs that cannot be satisfied by any of the means described in the preceding paragraph. The Company may refuse to deliver Shares to Participant if Participant fails to meet his/her obligations for the Tax-Related Items, as described herein.

3. **No Stockholder Rights**. Unless and until such time as Shares are issued in settlement of vested RSUs, Participant shall have no ownership of the Shares allocated to the RSUs and shall have no right to dividends or to vote from such Shares.

4. **Dividend Equivalents**. If dividends are declared and paid on Shares, dividend equivalent payments, if any (whether in cash or Shares), shall be credited to Participant at such time as Shares as issued in settlement of vested RSUs. Such dividend equivalent payments shall have the same vesting requirements as the underlying RSUs.

5. **No Transfer**. The RSUs and any interest therein shall not be sold, assigned, transferred, pledged, hypothecated, or otherwise disposed of.

6. **Termination**. Subject to the terms of the Notice, if Participant's service terminates for any reason, all unvested RSUs shall be forfeited to the Company forthwith, and all rights of Participant to such RSUs shall immediately terminate. For the avoidance of doubt, Participant shall not be entitled to any compensation for the loss of any rights or opportunities under the Plan other than as provided for herein. In case of any dispute as to whether Termination has occurred, the Committee shall have sole discretion to determine whether such Termination has occurred and the effective date of such Termination.

7. **Tax Consequences**. Participant acknowledges that there will be tax consequences upon settlement of the RSUs or disposition of the Shares, if any, received in connection therewith, and Participant should consult a tax adviser regarding Participant's tax obligations prior to such settlement or disposition. You should consult your personal tax advisor for information on the actual and potential tax consequences of this RSU.

8. **Acknowledgement**. The Company and Participant agree that the RSUs are granted under and governed by the Notice, this Agreement and the provisions of the Plan. Participant: (i) acknowledges receipt of a copy of the Plan and the Plan prospectus, (ii) represents that Participant has carefully read and is familiar with their provisions, and (iii) hereby accepts the RSUs subject to all of the terms and conditions set forth herein and those set forth in the Plan and the Notice.

9. **Country-Specific Terms and Conditions.** Participant's participation in the Plan will be subject to any special terms and conditions set forth in Appendix A to this Agreement ("***Appendix A***") for Participant's country of residence, if any. Appendix A constitutes part of this Agreement.

Moreover, if Participant relocates to another country, any special terms and conditions applicable to RSUs granted in such country may apply to Participant to the extent the Company determines that the application of such terms and conditions is necessary or advisable in order to comply with local law or facilitate the administration of the Plan.

In addition, the Company reserves the right to impose other requirements on the RSUs and any Shares acquired under the Plan, to the extent the Company determines it is necessary or advisable in order to comply with local law or facilitate the administration of the Plan, and to

require Participant to sign any additional agreements or undertakings that may be necessary to accomplish the foregoing.

10. **Entire Agreement; Enforcement of Rights**. This Agreement, the Plan and the Notice constitute the entire agreement and understanding of the parties relating to the subject matter herein and supersede all prior discussions between them. Any prior agreements, commitments or negotiations concerning the purchase of the Shares hereunder are superseded. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, shall be effective unless in writing and signed by the parties to this Agreement. The failure by either party to enforce any rights under this Agreement shall not be construed as a waiver of any rights of such party.

11. **Compliance with Laws and Regulations**. The issuance of Shares will be subject to and conditioned upon compliance by the Company and Participant with all applicable state and federal laws and regulations and with all applicable requirements of any stock exchange or automated quotation system on which the Company's Shares may be listed or quoted at the time of such issuance or transfer.

12. **Governing Law Severability**. If one or more provisions of this Agreement (including the Appendix) are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this Agreement, (ii) the balance of this Agreement shall be interpreted as if such provision were so excluded and (iii) the balance of this Agreement shall be enforceable in accordance with its terms. This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of California, U.S.A, without giving effect to principles of conflicts of law.

13. **No Rights as Employee, Director or Consultant**. Nothing in this Agreement shall affect in any manner whatsoever the right or power of the Company, or a Parent or Subsidiary of the Company, to terminate Participant's service, for any reason, with or without cause, subject to compliance with applicable local laws.

14. **Recipient Data Privacy**. Through Participant's acceptance of this grant, Participant hereby explicitly and unambiguously consents to the collection, use and transfer, in electronic or other form, of his or her personal and/or sensitive data as described in this document by and among, as applicable, the Company, its affiliates and its subsidiaries for the exclusive purpose of implementing, administering and managing Participant's participation in the Plan. Participant understands that the Company holds certain personal and/or sensitive information about him or her, including, but not limited to, his or her name, home address and telephone/fax number, date of birth, social insurance number or other identification number, family size, marital status, gender, beneficiary information, emergency contacts, passport/visa information, salary and benefit information, personal bank account number, tax related information, tax identification number, nationality, job title, any Shares or directorships held in the Company, details of all RSUs or any other entitlement to Shares awarded, canceled, exercised, vested, unvested or outstanding in Participant's favor and any other information required by providers for the purpose of implementing, administering and managing the Plan ("**Data**"). Participant also understands and unambiguously consents to the fact that Data may be transferred to any third parties assisting in the implementation, administration and management of the Plan, that these recipients may be located in Participant's country or elsewhere, and that Participant's country may have different data privacy laws and protections than the laws in the recipient's country. Participant understands that he or she may request a list with the names and addresses of any potential recipients of the Data by contacting his or her local human resources representative. Participant authorizes the recipients to receive, possess, use, retain and transfer the Data, in electronic or other form, for the purposes of implementing, administering and managing my participation in the Plan, including any requisite transfer of such Data as may be required to a broker or other third party with whom Participant may elect to deposit any Shares acquired.

Participant understands that Data will be held only as long as is necessary to implement, administer and manage his or her participation in the Plan. Participant understands that he or she may, at any time, view Data, request additional information about the storage and processing of Data, require any necessary amendments to Data or refuse or withdraw the consents herein, in any case without cost, by contacting in writing his or her local human resources representative. Participant understands, however, that refusing or withdrawing his or her consent may affect his or her ability to participate in the Plan. For more information on the consequences of Participant's refusal to consent or withdrawal of consent, Participant understands that he or she may contact his or her local human resources representative.

15. **Nature of Grant**.

(a) By acknowledging and accepting this RSU grant, Participant agrees that the granting of this RSU is completely at the discretion of the Committee pursuant to the Plan, that Participant does not expect that future awards will be granted under the Plan, or any other plan, and that Participant waives any claim for losses under the Agreement of the Plan in connection with termination of employment.

(b) The RSU grant is non-transferrable and non-assignable.

i. The Plan is established voluntarily by the Company, it is discretionary in nature and may be modified, amended, suspended or terminated by the Board at any time.

ii. The grant of this award is voluntary and occasional and does not create any contractual or other right to receive future grants of awards, or benefits in lieu of awards, even if awards have been granted repeatedly in the past.

iii. Participant is voluntarily participating in the Plan.

iv. This RSU grant is an extraordinary item that does not constitute compensation of any kind for services of any kind rendered to the Company or its affiliates (including, as applicable, Participant's employer) and which is outside the scope of Participant's employment contract, if any.

v. This RSU grant is not part of normal or expected compensation or salary for any purpose, including, but not limited to, calculating any severance, resignation, termination, redundancy, end of service payments, bonuses, long-service awards, pension or retirement benefits or similar payments.

vi. The future value of the underlying Shares is unknown and cannot be predicted with certainty.

vii. For the purposes of this Agreement, termination of service shall be the last day of active service provided by Participant to the Company or one of its affiliates and such period shall not be extended by any notice of termination or similar period including any period of garden leave.

16. **Translations**. If Participant receives this Agreement or any other document or communication related to the Plan or this grant in a language other than English and the meaning in the translation is different than in the English version, the terms expressed in the English version will govern.

17. **Imposition of Other Requirements**. The Company reserves the right to impose other requirements on Participant's participation in the Plan, on the RSUs and on any Shares acquired under the Plan, to the extent the Company determines it is necessary or advisable in

order to comply with any applicable law or facilitate the administration of the Plan. Participant agrees to sign any additional agreements or undertakings that may be necessary to accomplish the foregoing. Furthermore, Participant acknowledges that the laws of the country in which Participant is working at the time of grant, vesting or the sale of Shares received pursuant to this RSU grant (including any rules or regulations governing securities, foreign exchange, tax, labor, or other matters) may subject Participant to additional procedural or regulatory requirements that Participant is and will be solely responsible for and must fulfill.

By your signature and the signature of the Company's representative on the Notice, Participant and the Company agree that this RSU is granted under and governed by the terms and conditions of the Plan, the Notice and this Agreement. Participant has reviewed the Plan, the Notice and this Agreement in their entirety, has had an opportunity to obtain the advice of counsel prior to executing this Agreement, and fully understands all provisions of the Plan, the Notice and this Agreement. Participant hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the Committee upon any questions relating to the Plan, the Notice and this Agreement. Participant further agrees to notify the Company upon any change in Participant's residence address.

APPENDIX A

ADDITIONAL COUNTRY-SPECIFIC TERMS AND CONDITIONS OF THE DEXCOM, INC. AMENDED AND RESTATED 2015 EQUITY INCENTIVE PLAN (RESTRICTED STOCK UNITS)

Terms and Conditions

This Appendix A includes additional terms and conditions that govern the RSUs granted to you under the Plan if you reside in one of the countries listed below. Capitalized terms used but not defined in this Appendix A are defined in the Plan and/or the Agreement, and have the meanings set forth therein.

Notifications

This Appendix A also includes information regarding exchange controls and certain other issues of which you should be aware with respect to your participation in the Plan. The information is based on the securities, exchange control and other laws in effect in the respective countries as of August 2017. Such laws are often complex and change frequently. As a result, the Company strongly recommends that you not rely on the information noted in this Appendix A as the only source of information relating to the consequences of your participation in the Plan because the information may be out of date at the time that you vest in the RSUs or sell Shares acquired under the Plan.

In addition, the information contained herein is general in nature and may not apply to your particular situation, and the Company is not in a position to assure you of a particular result. Accordingly, you are advised to seek appropriate professional advice as to how the relevant laws in your country may apply to your situation.

Finally, if you are a citizen or resident of a country other than the one in which you are currently working, transfer employment after the grant date, or are considered a resident of another country for local law purposes, the information contained herein may not be applicable to you, and the Company shall, in its discretion, determine to what extent the terms and conditions contained herein shall apply.

CANADA

Terms and Conditions

RSUs Settled in Shares Only

Notwithstanding any discretion contained in the Plan, or any provision in the Agreement to the contrary, RSUs shall be paid in Shares only and do not provide any right for Participant to receive a cash payment.

The following provisions shall apply if Participant is a resident of Quebec:

Language Consent

The Parties acknowledge that it is their express wish that the Agreement, as well as all documents, notices and legal proceedings entered into, given or instituted pursuant hereto or relating directly or indirectly hereto, be drawn up in English.

Les Parties reconnaissent avoir exigé la rédaction en anglais de cette convention, ainsi que de tous documents, avis et procédures judiciaires, exécutés, donnés ou intentés en vertu de, ou liés directement ou indirectement à la présente convention.

Data Privacy Notice and Consent

This provision supplements the Data Privacy section of the Agreement:

Participant hereby authorizes the Company and the Company's representatives to discuss with and obtain all relevant information from all personnel, professional or not, involved in the administration and operation of the Plan. Participant further authorizes the Company and the Employer to disclose and discuss his or her participation in the Plan with their advisors. Finally, Participant authorizes the Company and the Employer to record such information and to keep such information in his or her employee file.

GERMANY

Notifications

Exchange Control Information

Cross-border payments in excess of €12,500 must be reported monthly to the German Federal Bank. If Participant uses a German bank to transfer a cross-border payment in excess of €12,500 in connection with the sale of Shares acquired under the Plan, the bank will make the report for him or her. In addition, Participant must report any receivables, payables, or debts in foreign currency exceeding an amount of €5,000,000 on a monthly basis.

NETHERLANDS

Notifications

Insider-Trading Notification

Participant should be aware of the Dutch insider-trading rules, which may impact the sale of Shares issued to Participant at vesting and settlement of the RSUs. In particular, Participant may be prohibited from effectuating certain transactions involving Shares if Participant has inside information about the Company. If Participant is uncertain whether the insider-trading rules apply to Participant, Participant should consult his or her personal legal advisor.

SWEDEN

There are no country-specific provisions.

SWITZERLAND

There are no country-specific provisions.

UNITED KINGDOM

Terms and Conditions

Withholding Taxes

This provision supplements the Withholding Taxes section of the Agreement:

If payment or withholding of the Tax-Related Items (including the Employer's Liability, as defined below) is not made within 90 days of the end of the UK tax year in which vesting occurs (the "***Due Date***") or such other period specified in Section 222(1)(c) of the U.K. Income Tax (Earnings and Pensions) Act 2003, the amount of any uncollected Tax-Related Items will constitute a loan owed by Participant to the Employer, effective on the Due Date. Participant agrees that the loan will bear interest at the then-current Official Rate of Her Majesty's Revenue

and Customs ("***HMRC***"), it will be immediately due and repayable, and the Company or the Employer may recover it at any time thereafter by any of the means referred to in the Withholding Taxes section of the Agreement. Participant also authorizes the Company to delay the issuance of Shares to Participant unless and until the loan is repaid.

Notwithstanding the foregoing, if Participant is a director or executive officer of the Company (within the meaning of Section 13(k) of the U.S. Securities and Exchange Act of 1934, as amended), Participant will not be eligible for such a loan to cover the Tax-Related Items. In the event that Participant is a director or executive officer and the Tax-Related Items are not collected from or paid by Participant by the Due Date, the amount of any uncollected Tax-Related Items will constitute a benefit to Participant on which additional income tax and national insurance contributions (including the Employer's Liability, as defined below) will be payable. Participant will be responsible for reporting and paying any income tax and national insurance contributions (including the Employer's Liability, as defined below) due on this additional benefit directly to HMRC under the self-assessment regime.

Joint Election/recoverability of employer national insurance contributions

As a condition of Participant's participation in the Plan and the vesting of the RSUs (, Participant agrees to accept any liability for secondary Class 1 national insurance contributions (the "***Employer's Liability***") which may be payable by the Company and/or the Employer in connection with the RSUs and any event giving rise to Tax-Related Items. To accomplish the foregoing, Participant agrees to execute a joint election with the Company and/or the Employer (the "***Election***"), the form of such Election being formally approved by HMRC, and/or any other agreements, consents or elections required to accomplish the transfer of the Employer's Liability to Participant. Participant further agrees to execute such other joint elections, other agreements, consents or elections (the "***Other Agreement(s)***") as may be required by the Company and/or the Employer between Participant and the Company, any successor to the Company and/or the Employer in order to transfer the Employer's Liability to Participant or in order to provide for the reimbursement of the Employer's Liability by Participant to the Company and/or the Employer.

If Participant does not enter into the Election when Participant accepts the Agreement, if the Election is revoked and/or abolished at any time by HMRC or if Participant fails to enter into any Other Agreement as required by the Company, any successor to the Company and/or the Employer, the Company may choose, in its sole discretion, not to allow Participant to vest in the RSUs and they will cease to vest, become null and void, and no Shares will be acquired under the Plan, without any liability to the Company, the Employer and/or any Affiliate. Participant further agrees that the Company and/or the Employer may collect the Employer's Liability by any of the means set forth in the Withholding Taxes section of the Agreement.

For the avoidance of doubt, this requirement will apply to all Participants that work in the U.K. during any period from grant through the vesting date of the RSUs regardless of whether Participant was in the U.K. at the time of grant.

UNITED STATES

Terms and Conditions

This provision supplements the Tax Consequences provision of the Agreement:

Upon vesting of the RSU, Participant will include in income the fair market value of the Shares subject to the RSU. The included amount will be treated as ordinary income by Participant and will be subject to withholding by the Company when required by applicable law. Upon disposition of the Shares, any subsequent increase or decrease in value will be treated as short-term or long-term capital gain or loss, depending on whether the Shares are held for more than one year from the date of settlement. Further, an RSU may be considered a deferral of compensation that may be subject to Section 409A of the Code. Section 409A of the Code

imposes special rules to the timing of making and effecting certain amendments of this RSU with respect to distribution of any deferred compensation. You should consult your personal tax advisor for information on the actual and potential tax consequences of this RSU.

DEXCOM, INC.
AMENDED AND RESTATED 2015 EQUITY INCENTIVE PLAN
NOTICE OF RESTRICTED STOCK UNIT AWARD
GRANT NUMBER: _____

Unless otherwise defined herein, the terms defined in the DexCom, Inc. (the "***Company***") Amended and Restated 2015 Equity Incentive Plan (the "***Plan***") shall have the same meanings in this Notice of Restricted Stock Unit Award (the "***Notice***").

Name: _____
Address: _____
Address 2: _____
City, State Zip: _____

You ("***Participant***") have been granted an award of Restricted Stock Units ("***RSUs***") under the Plan subject to the terms and conditions of the Plan, this Notice and the attached Award Agreement (Restricted Stock Units) (hereinafter "***RSU Agreement***").

Number of RSUs: _____

Date of Grant: _____

Vesting Commencement Date:
_____

Expiration Date:	The date on which settlement of all RSUs granted hereunder occurs, with earlier expiration upon the Termination Date.
Vesting Schedule:	Subject to the limitations set forth in this Notice, the Plan and the RSU Agreement, the RSUs will vest in accordance with the following schedule:

Shares	**Vest Date/Performance Conditions**

Vesting Acceleration: Notwithstanding the foregoing Vesting Schedule, the RSUs are eligible for vesting acceleration under the Company's Severance and Change in Control Plan, subject to the terms and conditions thereof.

You understand that your employment or consulting relationship or service with the Company or the relevant Subsidiary is for an unspecified duration, can be terminated at any time (i.e., is "at-will") other than as required by applicable local law, and that nothing in this Notice, the RSU Agreement or the Plan changes the nature of that relationship nor shall create an employment or consulting relationship with the Company by virtue of this Notice or your participation in the Plan.

You acknowledge that the vesting of the RSUs pursuant to this Notice is earned only by continuing service as an Employee, Director or Consultant of the Company or the relevant Subsidiary (as applicable).

You also understand that this Notice is subject to the terms and conditions of both the RSU Agreement and the Plan, both of which are incorporated herein by reference.

Data Privacy Statement:

By signing below you confirm that you have read this Notice, the RSU Agreement and the Plan, you agree to be bound by them and you freely and unambiguously consent to the collection, use and transfer, in electronic or other form, of your personal data as described in this Notice, the RSU Agreement and any other Restricted Stock Unit Award grant materials by the Company, its affiliates and Subsidiaries (including your employer), and any third parties assisting in the implementation, administration and management of the Plan, for the exclusive purpose of implementing, administering and managing your participation in the Plan.

You understand that the Company, its Subsidiaries (including your employer) may collect, hold, process, disclose and transfer certain personal data about you. For the purposes of this Notice and the RSU Agreement, the term "***Data***" means certain personal and/or sensitive information about you, including, but not limited to, your name, home address and telephone/fax number, date of birth, social insurance number or other identification number, family size, marital status, gender, beneficiary information, emergency contacts, passport/visa information, salary and benefit information, personal bank account number, tax related information, tax identification number, nationality, job title, any Shares or directorships held in the Company, details of all RSUs or any other entitlement to Shares awarded, canceled, exercised, vested, unvested or outstanding in your favor and any other information required by providers for the purpose of implementing, administering and managing the Plan.

You understand that Data will be transferred to E*TRADE Financial ("***E*TRADE***") or such other stock plan service provider as may be selected by the Company in the future, which is assisting the Company with the implementation, administration and management of the Plan. You understand that the recipients of Data may be located in the United States or elsewhere, where you may not have the same rights under applicable data protection and privacy law as in your home jurisdiction. You authorize the Company, E*TRADE and any other possible recipients that may assist the Company (presently or in the future) with implementing, administering and managing the Plan to receive, possess, use, retain and transfer data, in electronic or other form, for the sole purpose of implementing, administering and managing your participation in the plan.

DEXCOM, INC.

By:
Jeremé Sylvain

EVP and Chief Financial Officer

DEXCOM, INC.
AWARD AGREEMENT (RESTRICTED STOCK UNITS) TO THE
DEXCOM, INC. AMENDED AND RESTATED 2015 EQUITY INCENTIVE PLAN

Unless otherwise defined herein, the terms defined in the DexCom, Inc. (the "***Company***") Amended and Restated 2015 Equity Incentive Plan (the "***Plan***") shall have the same defined meanings in this Award Agreement (Restricted Stock Units) (the "***Agreement***").

You ("***Participant***") have been granted Restricted Stock Units ("***RSUs***") subject to the terms, restrictions and conditions of the Plan, the Notice of Restricted Stock Unit Award (the "***Notice***") and this Agreement.

1. Settlement. Settlement of RSUs shall be made within the earlier of (i) 90 days following the applicable date of vesting under the vesting schedule or (ii) March 15 of the year following the year of vesting as set forth in the Notice. Settlement of RSUs shall be in Shares.

2. Withholding Taxes. Regardless of any action the Company and/or Participant's employer(s) (the "***Employer***") take with respect to any foreign, federal, state, or local income tax, social insurance (including if permissible under local law, any statutory employer's contribution to social insurance), national insurance contributions, payroll tax, payment on account, or other tax-related withholding with respect to this Agreement, as a result of Participant's participation in the Plan and/or any aspect of the RSUs ("***Tax-Related Items***"), Participant agrees and acknowledges that the ultimate liability for all Tax-Related Items is the responsibility of Participant and that the Company and/or the Employer:

- are not making any representations and are not committing to take any actions regarding any Tax- Related Items, including, but not limited to, the grant of the RSUs, the vesting of the RSUs, the delivery of Shares upon vesting of the RSUs, the subsequent sale of Shares acquired upon vesting of the RSUs, and the receipt of any dividends; and

- do not commit to structure the terms of the grant or any aspect of the RSUs to reduce or eliminate your liability for Tax-Related Items.

Before any Tax-Related Items become due, Participant will pay or make adequate arrangements satisfactory to the Company and/or the Employer to satisfy those Tax-Related Items. If permissible under local law, Participant authorizes the Company and/or the Employer to withhold all applicable Tax-Related Items legally payable by or due with respect to and/or on behalf of Participant by one or a combination of the following:

(a) withholding from the Shares to be issued, the number of Shares having a fair market value (determined on the date that the amount of tax to be withheld is determined) equal to the amount required to be withheld for Tax-Related Items, or

(b) arranging to have sold on Participant's behalf through such means as the Company may determine in its sole discretion (whether through a broker or otherwise) a sufficient number of Shares that is equal to the amount required to be withheld for Tax-Related Items. The Company shall arrange to sell or withhold a whole number of shares to satisfy the minimum tax withholding obligation, and to the extent that any tax obligation balance remains, such amount shall be withheld from your following payroll cycle.

If the obligation for Tax-Related Items is satisfied by withholding a number of Shares as described herein, Participant will be deemed to have been issued the full number of Shares to which Participant is entitled pursuant to the vesting of the RSUs even though a portion of those Shares will be withheld for the purpose of satisfying the Tax-Related Items.

Further, if Participant has relocated to a different jurisdiction between the date of grant and the date of any taxable event, Participant acknowledges that the Company and/or the

Employer (or former employer, as applicable) may be required to withhold or account for Tax-Related Items in more than one jurisdiction.

Finally, Participant will pay to the Company or the Employer any amount of Tax-Related Items that the Company or the Employer may be required to withhold or account for as a result of Participant's participation in the Plan or any aspect of the RSUs that cannot be satisfied by any of the means described in the preceding paragraph. The Company may refuse to deliver Shares to Participant if Participant fails to meet his/her obligations for the Tax-Related Items, as described herein.

3. No Stockholder Rights. Unless and until such time as Shares are issued in settlement of vested RSUs, Participant shall have no ownership of the Shares allocated to the RSUs and shall have no right to dividends or to vote from such Shares.

4. Dividend Equivalents. If dividends are declared and paid on Shares, dividend equivalent payments, if any (whether in cash or Shares), shall be credited to Participant at such time as Shares as issued in settlement of vested RSUs. Such dividend equivalent payments shall have the same vesting requirements as the underlying RSUs.

5. No Transfer. The RSUs and any interest therein shall not be sold, assigned, transferred, pledged, hypothecated, or otherwise disposed of.

6. Termination. Subject to the terms of the Notice, if Participant's service terminates for any reason, all unvested RSUs shall be forfeited to the Company forthwith, and all rights of Participant to such RSUs shall immediately terminate. For the avoidance of doubt, Participant shall not be entitled to any compensation for the loss of any rights or opportunities under the Plan other than as provided for herein. In case of any dispute as to whether Termination has occurred, the Committee shall have sole discretion to determine whether such Termination has occurred and the effective date of such Termination.

7. Tax Consequences. Participant acknowledges that there will be tax consequences upon settlement of the RSUs or disposition of the Shares, if any, received in connection therewith, and Participant should consult a tax adviser regarding Participant's tax obligations prior to such settlement or disposition. You should consult your personal tax advisor for information on the actual and potential tax consequences of this RSU.

8. Acknowledgement. The Company and Participant agree that the RSUs are granted under and governed by the Notice, this Agreement and the provisions of the Plan. Participant: (i) acknowledges receipt of a copy of the Plan and the Plan prospectus, (ii) represents that Participant has carefully read and is familiar with their provisions, and (iii) hereby accepts the RSUs subject to all of the terms and conditions set forth herein and those set forth in the Plan and the Notice.

9. Country-Specific Terms and Conditions. Participant's participation in the Plan will be subject to any special terms and conditions set forth in Appendix A to this Agreement ("***Appendix A***") for Participant's country of residence, if any. Appendix A constitutes part of this Agreement.

Moreover, if Participant relocates to another country, any special terms and conditions applicable to RSUs granted in such country may apply to Participant to the extent the Company determines that the application of such terms and conditions is necessary or advisable in order to comply with local law or facilitate the administration of the Plan.

In addition, the Company reserves the right to impose other requirements on the RSUs and any Shares acquired under the Plan, to the extent the Company determines it is necessary or advisable in order to comply with local law or facilitate the administration of the Plan, and to require Participant to sign any additional agreements or undertakings that may be necessary to accomplish the foregoing.

10. Entire Agreement; Enforcement of Rights. This Agreement, the Plan and the Notice constitute the entire agreement and understanding of the parties relating to the subject matter herein and supersede all prior discussions between them. Any prior agreements, commitments or negotiations concerning the purchase of the Shares hereunder are superseded. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, shall be effective unless in writing and signed by the parties to this Agreement. The failure by either party to enforce any rights under this Agreement shall not be construed as a waiver of any rights of such party.

11. Compliance with Laws and Regulations. The issuance of Shares will be subject to and conditioned upon compliance by the Company and Participant with all applicable state and federal laws and regulations and with all applicable requirements of any stock exchange or automated quotation system on which the Company's Shares may be listed or quoted at the time of such issuance or transfer.

12. Governing Law Severability. If one or more provisions of this Agreement (including the Appendix) are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this Agreement, (ii) the balance of this Agreement shall be interpreted as if such provision were so excluded and (iii) the balance of this Agreement shall be enforceable in accordance with its terms. This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of California, U.S.A, without giving effect to principles of conflicts of law.

13. No Rights as Employee, Director or Consultant. Nothing in this Agreement shall affect in any manner whatsoever the right or power of the Company, or a Parent or Subsidiary of the Company, to terminate Participant's service, for any reason, with or without cause, subject to compliance with applicable local laws.

14. Recipient Data Privacy. Through Participant's acceptance of this grant, Participant hereby explicitly and unambiguously consents to the collection, use and transfer, in electronic or other form, of his or her personal and/or sensitive data as described in this document by and among, as applicable, the Company, its affiliates and its subsidiaries for the exclusive purpose of implementing, administering and managing Participant's participation in the Plan. Participant understands that the Company holds certain personal and/or sensitive information about him or her, including, but not limited to, his or her name, home address and telephone/fax number, date of birth, social insurance number or other identification number, family size, marital status, gender, beneficiary information, emergency contacts, passport/visa information, salary and benefit information, personal bank account number, tax related information, tax identification number, nationality, job title, any Shares or directorships held in the Company, details of all RSUs or any other entitlement to Shares awarded, canceled, exercised, vested, unvested or outstanding in Participant's favor and any other information required by providers for the purpose of implementing, administering and managing the Plan ("***Data***"). Participant also understands and unambiguously consents to the fact that Data may be transferred to any third parties assisting in the implementation, administration and management of the Plan, that these recipients may be located in Participant's country or elsewhere, and that Participant's country may have different data privacy laws and protections than the laws in the recipient's country. Participant understands that he or she may request a list with the names and addresses of any potential recipients of the Data by contacting his or her local human resources representative. Participant authorizes the recipients to receive, possess, use, retain and transfer the Data, in electronic or other form, for the purposes of implementing, administering and managing my participation in the Plan, including any requisite transfer of such Data as may be required to a broker or other third party with whom Participant may elect to deposit any Shares acquired. Participant understands that Data will be held only as long as is necessary to implement, administer and manage his or her participation in the Plan. Participant understands that he or she may, at any time, view Data, request additional information about the storage and

processing of Data, require any necessary amendments to Data or refuse or withdraw the consents herein, in any case without cost, by contacting in writing his or her local human resources representative. Participant understands, however, that refusing or withdrawing his or her consent may affect his or her ability to participate in the Plan. For more information on the consequences of Participant's refusal to consent or withdrawal of consent, Participant understands that he or she may contact his or her local human resources representative.

15. Nature of Grant.

(a) By acknowledging and accepting this RSU grant, Participant agrees that the granting of this RSU is completely at the discretion of the Committee pursuant to the Plan, that Participant does not expect that future awards will be granted under the Plan, or any other plan, and that Participant waives any claim for losses under the Agreement of the Plan in connection with termination of employment.

(b) The RSU grant is non-transferrable and non-assignable.

(c) The Plan is established voluntarily by the Company, it is discretionary in nature and may be modified, amended, suspended or terminated by the Board at any time.

(d) The grant of this award is voluntary and occasional and does not create any contractual or other right to receive future grants of awards, or benefits in lieu of awards, even if awards have been granted repeatedly in the past.

(e) Participant is voluntarily participating in the Plan.

(f) This RSU grant is an extraordinary item that does not constitute compensation of any kind for services of any kind rendered to the Company or its affiliates (including, as applicable, Participant's employer) and which is outside the scope of Participant's employment contract, if any.

(g) This RSU grant is not part of normal or expected compensation or salary for any purpose, including, but not limited to, calculating any severance, resignation, termination, redundancy, end of service payments, bonuses, long-service awards, pension or retirement benefits or similar payments.

(h) The future value of the underlying Shares is unknown and cannot be predicted with certainty.

(i) For the purposes of this Agreement, termination of service shall be the last day of active service provided by Participant to the Company or one of its affiliates and such period shall not be extended by any notice of termination or similar period including any period of garden leave.

16. Translations. If Participant receives this Agreement or any other document or communication related to the Plan or this grant in a language other than English and the meaning in the translation is different than in the English version, the terms expressed in the English version will govern.

17. Imposition of Other Requirements. The Company reserves the right to impose other requirements on Participant's participation in the Plan, on the RSUs and on any Shares acquired under the Plan, to the extent the Company determines it is necessary or advisable in order to comply with any applicable law or facilitate the administration of the Plan. Participant agrees to sign any additional agreements or undertakings that may be necessary to accomplish the foregoing. Furthermore, Participant acknowledges that the laws of the country in which Participant is working at the time of grant, vesting or the sale of Shares received pursuant to this RSU grant (including any rules or regulations governing securities, foreign exchange, tax, labor,

or other matters) may subject Participant to additional procedural or regulatory requirements that Participant is and will be solely responsible for and must fulfill.

By your signature and the signature of the Company's representative on the Notice, Participant and the Company agree that this RSU is granted under and governed by the terms and conditions of the Plan, the Notice and this Agreement. Participant has reviewed the Plan, the Notice and this Agreement in their entirety, has had an opportunity to obtain the advice of counsel prior to executing this Agreement, and fully understands all provisions of the Plan, the Notice and this Agreement. Participant hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the Committee upon any questions relating to the Plan, the Notice and this Agreement. Participant further agrees to notify the Company upon any change in Participant's residence address.

18. Code Section 409A. For purposes of this Agreement, a termination of employment will be determined consistent with the rules relating to a "separation from service" as defined in Section 409A of the Internal Revenue Code and the regulations thereunder ("*Section 409A*"). Notwithstanding anything else provided herein, to the extent any payments provided under this RSU Agreement in connection with Participant's termination of employment constitute deferred compensation subject to Section 409A, and Participant is deemed at the time of such termination of employment to be a "specified employee" under Section 409A, then such payment shall not be made or commence until the earlier of (i) the expiration of the six-month period measured from Participant's separation from service from the Company or (ii) the date of Participant's death following such a separation from service; provided, however, that such deferral shall only be effected to the extent required to avoid adverse tax treatment to Participant including, without limitation, the additional tax for which Participant would otherwise be liable under Section 409A(a)(1)(B) in the absence of such a deferral. To the extent any payment under this RSU Agreement may be classified as a "short-term deferral" within the meaning of Section 409A, such payment shall be deemed a short-term deferral, even if it may also qualify for an exemption from Section 409A under another provision of Section 409A. Payments pursuant to this section are intended to constitute separate payments for purposes of Section 1.409A-2(b)(2) of the Treasury Regulations.

APPENDIX A

ADDITIONAL COUNTRY-SPECIFIC TERMS AND CONDITIONS OF THE DEXCOM, INC. AMENDED AND RESTATED 2015 EQUITY INCENTIVE PLAN (RESTRICTED STOCK UNITS)

Terms and Conditions

This Appendix A includes additional terms and conditions that govern the RSUs granted to you under the Plan if you reside in one of the countries listed below. Capitalized terms used but not defined in this Appendix A are defined in the Plan and/or the Agreement, and have the meanings set forth therein.

Notifications

This Appendix A also includes information regarding exchange controls and certain other issues of which you should be aware with respect to your participation in the Plan. The information is based on the securities, exchange control and other laws in effect in the respective countries as of August 2017. Such laws are often complex and change frequently. As a result, the Company strongly recommends that you not rely on the information noted in this Appendix A as the only source of information relating to the consequences of your participation in the Plan because the information may be out of date at the time that you vest in the RSUs or sell Shares acquired under the Plan.

In addition, the information contained herein is general in nature and may not apply to your particular situation, and the Company is not in a position to assure you of a particular result. Accordingly, you are advised to seek appropriate professional advice as to how the relevant laws in your country may apply to your situation.

Finally, if you are a citizen or resident of a country other than the one in which you are currently working, transfer employment after the grant date, or are considered a resident of another country for local law purposes, the information contained herein may not be applicable to you, and the Company shall, in its discretion, determine to what extent the terms and conditions contained herein shall apply.

CANADA

Terms and Conditions

RSUs Settled in Shares Only

Notwithstanding any discretion contained in the Plan, or any provision in the Agreement to the contrary, RSUs shall be paid in Shares only and do not provide any right for Participant to receive a cash payment.

The following provisions shall apply if Participant is a resident of Quebec:

Language Consent

The Parties acknowledge that it is their express wish that the Agreement, as well as all documents, notices and legal proceedings entered into, given or instituted pursuant hereto or relating directly or indirectly hereto, be drawn up in English.

Les Parties reconnaissent avoir exigé la rédaction en anglais de cette convention, ainsi que de tous documents, avis et procédures judiciaires, exécutés, donnés ou intentés en vertu de, ou liés directement ou indirectement à la présente convention.

Data Privacy Notice and Consent

This provision supplements the Data Privacy section of the Agreement:

Participant hereby authorizes the Company and the Company's representatives to discuss with and obtain all relevant information from all personnel, professional or not, involved in the administration and operation of the Plan. Participant further authorizes the Company and the Employer to disclose and discuss his or her participation in the Plan with their advisors. Finally, Participant authorizes the Company and the Employer to record such information and to keep such information in his or her employee file.

GERMANY

Notifications

Exchange Control Information

Cross-border payments in excess of €12,500 must be reported monthly to the German Federal Bank. If Participant uses a German bank to transfer a cross-border payment in excess of €12,500 in connection with the sale of Shares acquired under the Plan, the bank will make the report for him or her. In addition, Participant must report any receivables, payables, or debts in foreign currency exceeding an amount of €5,000,000 on a monthly basis.

NETHERLANDS

Notifications

Insider-Trading Notification

Participant should be aware of the Dutch insider-trading rules, which may impact the sale of Shares issued to Participant at vesting and settlement of the RSUs. In particular, Participant may be prohibited from effectuating certain transactions involving Shares if Participant has inside information about the Company. If Participant is uncertain whether the insider-trading rules apply to Participant, Participant should consult his or her personal legal advisor.

SWEDEN

There are no country-specific provisions.

SWITZERLAND

There are no country-specific provisions.

UNITED KINGDOM

Terms and Conditions

Withholding Taxes

This provision supplements the Withholding Taxes section of the Agreement:

If payment or withholding of the Tax-Related Items (including the Employer's Liability, as defined below) is not made within 90 days of the end of the UK tax year in which vesting occurs (the "***Due Date***") or such other period specified in Section 222(1)(c) of the U.K. Income Tax (Earnings and Pensions) Act 2003, the amount of any uncollected Tax-Related Items will constitute a loan owed by Participant to the Employer, effective on the Due Date. Participant agrees that the loan will bear interest at the then-current Official Rate of Her Majesty's Revenue

and Customs ("***HMRC***"), it will be immediately due and repayable, and the Company or the Employer may recover it at any time thereafter by any of the means referred to in the Withholding Taxes section of the Agreement. Participant also authorizes the Company to delay the issuance of Shares to Participant unless and until the loan is repaid.

Notwithstanding the foregoing, if Participant is a director or executive officer of the Company (within the meaning of Section 13(k) of the U.S. Securities and Exchange Act of 1934, as amended), Participant will not be eligible for such a loan to cover the Tax-Related Items. In the event that Participant is a director or executive officer and the Tax-Related Items are not collected from or paid by Participant by the Due Date, the amount of any uncollected Tax-Related Items will constitute a benefit to Participant on which additional income tax and national insurance contributions (including the Employer's Liability, as defined below) will be payable. Participant will be responsible for reporting and paying any income tax and national insurance contributions (including the Employer's Liability, as defined below) due on this additional benefit directly to HMRC under the self-assessment regime.

Joint Election/recoverability of employer national insurance contributions

As a condition of Participant's participation in the Plan and the vesting of the RSUs (, Participant agrees to accept any liability for secondary Class 1 national insurance contributions (the "***Employer's Liability***") which may be payable by the Company and/or the Employer in connection with the RSUs and any event giving rise to Tax- Related Items. To accomplish the foregoing, Participant agrees to execute a joint election with the Company and/or the Employer (the "***Election***"), the form of such Election being formally approved by HMRC, and/or any other agreements, consents or elections required to accomplish the transfer of the Employer's Liability to Participant. Participant further agrees to execute such other joint elections, other agreements, consents or elections (the "***Other Agreement(s)***") as may be required by the Company and/or the Employer between Participant and the Company, any successor to the Company and/or the Employer in order to transfer the Employer's Liability to Participant or in order to provide for the reimbursement of the Employer's Liability by Participant to the Company and/or the Employer.

If Participant does not enter into the Election when Participant accepts the Agreement, if the Election is revoked and/or abolished at any time by HMRC or if Participant fails to enter into any Other Agreement as required by the Company, any successor to the Company and/or the Employer, the Company may choose, in its sole discretion, not to allow Participant to vest in the RSUs and they will cease to vest, become null and void, and no Shares will be acquired under the Plan, without any liability to the Company, the Employer and/or any Affiliate. Participant further agrees that the Company and/or the Employer may collect the Employer's Liability by any of the means set forth in the Withholding Taxes section of the Agreement.

For the avoidance of doubt, this requirement will apply to all Participants that work in the U.K. during any period from grant through the vesting date of the RSUs regardless of whether Participant was in the U.K. at the time of grant.

UNITED STATES

Terms and Conditions

This provision supplements the Tax Consequences provision of the Agreement:

Upon vesting of the RSU, Participant will include in income the fair market value of the Shares subject to the RSU. The included amount will be treated as ordinary income by Participant and will be subject to withholding by the Company when required by applicable law. Upon disposition of the Shares, any subsequent increase or decrease in value will be treated as short-term or long-term capital gain or loss, depending on whether the Shares are held for more than one year from the date of settlement. Further, an RSU may be considered a deferral of compensation that may be subject to Section 409A of the Code. Section 409A of the Code imposes special rules to the timing of making and effecting certain amendments of this RSU

with respect to distribution of any deferred compensation. You should consult your personal tax advisor for information on the actual and potential tax consequences of this RSU.

DEXCOM, INC.
AMENDED AND RESTATED 2015 EQUITY INCENTIVE PLAN
NOTICE OF RESTRICTED STOCK UNIT AWARD
GRANT NUMBER: _____

Unless otherwise defined herein, the terms defined in the DexCom, Inc. (the "***Company***") Amended and Restated 2015 Equity Incentive Plan (the "***Plan***") shall have the same meanings in this Notice of Restricted Stock Unit Award (the "***Notice***").

Name: _____
Address: _____
Address 2: _____
City, State Zip: _____

You ("***Participant***") have been granted an award of Restricted Stock Units ("***RSUs***") under the Plan subject to the terms and conditions of the Plan, this Notice and the attached Award Agreement (Restricted Stock Units) (hereinafter "***RSU Agreement***").

Number of RSUs: _____

Date of Grant: _____

Vesting Commencement Date:
_____

Expiration Date:	The date on which settlement of all RSUs granted hereunder occurs, with earlier expiration upon the Termination Date.
Vesting Schedule:	Subject to the limitations set forth in this Notice, the Plan and the RSU Agreement, the RSUs will vest in accordance with the following schedule:

Shares	**Vest Date/Performance Conditions**

Vesting Acceleration: Notwithstanding the foregoing Vesting Schedule, if the Participant is subject to a Qualifying Termination (as defined below) during a Change in Control Period (as defined below), then, subject to Participant's delivery to the Company of a general release (in a form prescribed by the Company) of all known and unknown claims that Participant may then have against the Company or persons affiliated with the Company (the "***Release***"), and satisfaction of all conditions to make the Release effective, within sixty (60) days following Participant's Qualifying Termination (such sixty (60) day period, the "***Release Period***"), the then-unvested RSUs shall accelerate and become vested and settled with respect to 100% of the shares subject thereto.

The accelerated vesting described above shall be effective as of the Qualifying Termination, subject to delivery of the effective Release; provided, that, if the Qualified Termination occurs prior to the Change in Control (as defined below), then any unvested portion of Participant's RSUs will remain outstanding for three (3) months following the Qualifying Termination (provided that in no event will the RSUs remain outstanding beyond the tenth anniversary of the Date of Grant). In the event that the proposed Change in Control is terminated without having been completed, any unvested portion of Participant's RSUs automatically will be forfeited.

Notwithstanding any other provision in the Plan, the Notice or this Agreement to the contrary, if the successor or acquiring corporation (if any) of the Company refuses to assume, convert, replace or substitute the unvested RSUs in connection with a Corporate Transaction (as defined in the Plan) as provided in Section 21.1 of the Plan, then such RSUs shall accelerate and become vested and settled with respect to 100% of the shares subject thereto effective immediately prior to the Change in Control.

"***Cause***" means (i) the Participant has been convicted of, or has pleaded guilty or nolo contendere to, any felony or crime involving moral turpitude, (ii) the Participant has engaged in willful misconduct which is injurious to the Company or materially failed or refused to perform the material duties lawfully and reasonably assigned to the Participant or has performed such material duties with gross negligence or has breached any material term or condition of this Plan, the Participant's Employee Proprietary Information and Inventions Agreement with the Company or any other material agreement with the Company, in any case after written notice by the Company of such misconduct, performance issue, gross negligence or breach of terms or conditions and an opportunity to cure within thirty (30) days of such written notice thereof from the Company, unless such misconduct, performance issue, gross negligence or breach is, by its nature, not curable, or (iii) the Participant has committed any act of fraud, theft, embezzlement, misappropriation of funds, breach of fiduciary duty or other willful act of material dishonesty against the Company that results in material harm to the Company.

"***Change in Control***" means the occurrence of any of the following events: (i) any "person" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) becomes the "beneficial

owner" (as defined in Rule 13d-3 of the Exchange Act), directly or indirectly, of securities of the Company representing more than fifty percent (50%) of the total voting power represented by the Company's then outstanding voting securities; or (ii) the consummation of the sale or disposition by the Company of all or substantially all of the Company's assets; or (iii) the consummation of a merger or consolidation of the Company with any other corporation, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or its parent) at least fifty percent (50%) of the total voting power represented by the voting securities of the Company or such surviving entity or its parent outstanding immediately after such merger or consolidation.

"***Change in Control Period***" means the period commencing three (3) months prior to a Change in Control (only if after a Potential Change in Control) and ending twelve (12) months following a Change in Control.

"***Disability***" has the meaning set forth in Section 22(e)(3) of the Code.

"***Good Reason***" means the occurrence of any of the following events or conditions, without Participant's express written consent:

(1) a material reduction in Participant's base salary as an employee of the Company;

(2) a material reduction in the Participant's duties, responsibilities or authority at the Company including, without limitation, changes in Participant reporting structure resulting from a Change in Control transaction; or

(3) a change in the geographic location at which Participant must perform services that results in an increase in the one-way commute of Participant by more than 50 miles.

With respect to each of subsection (i), (ii), and (iii) above, Participant must provide notice to the Company of the condition giving rise to "Good Reason" within one hundred twenty (120) days of Participant's knowledge of the existence of such condition, and the Company will have thirty (30) days following such notice to remedy such condition. Participant must resign Participant's employment no later than thirty (30) days following expiration of the Company's thirty (30) day cure period.

"***Potential Change in Control***" means the date of execution of a definitive agreement providing for a Change in Control if such transaction is consummated.

"***Qualifying Termination***" means a termination of employment resulting from (i) a termination by the Company of the Participant's employment for any reason other than Cause, death or Disability, or (ii) if within (12) months following a Change in Control, a voluntary resignation by the Participant of his or her employment for Good Reason. Termination due to Participant's death or

Participant's Disability will in no event constitute a Qualifying Termination.

You understand that your employment or consulting relationship or service with the Company or the relevant Subsidiary is for an unspecified duration, can be terminated at any time (i.e., is "at-will") other than as required by applicable local law, and that nothing in this Notice, the RSU Agreement or the Plan changes the nature of that relationship nor shall create an employment or consulting relationship with the Company by virtue of this Notice or your participation in the Plan.

You acknowledge that the vesting of the RSUs pursuant to this Notice is earned only by continuing service as an Employee, Director or Consultant of the Company or the relevant Subsidiary (as applicable).

You also understand that this Notice is subject to the terms and conditions of both the RSU Agreement and the Plan, both of which are incorporated herein by reference.

Data Privacy Statement:

By signing below you confirm that you have read this Notice, the RSU Agreement and the Plan, you agree to be bound by them and you freely and unambiguously consent to the collection, use and transfer, in electronic or other form, of your personal data as described in this Notice, the RSU Agreement and any other Restricted Stock Unit Award grant materials by the Company, its affiliates and Subsidiaries (including your employer), and any third parties assisting in the implementation, administration and management of the Plan, for the exclusive purpose of implementing, administering and managing your participation in the Plan.

You understand that the Company, its Subsidiaries (including your employer) may collect, hold, process, disclose and transfer certain personal data about you. For the purposes of this Notice and the RSU Agreement, the term "**Data**" means certain personal and/or sensitive information about you, including, but not limited to, your name, home address and telephone/fax number, date of birth, social insurance number or other identification number, family size, marital status, gender, beneficiary information, emergency contacts, passport/visa information, salary and benefit information, personal bank account number, tax related information, tax identification number, nationality, job title, any Shares or directorships held in the Company, details of all RSUs or any other entitlement to Shares awarded, canceled, exercised, vested, unvested or outstanding in your favor and any other information required by providers for the purpose of implementing, administering and managing the Plan .

You understand that Data will be transferred to E*TRADE Financial ("***E*TRADE***") or such other stock plan service provider as may be selected by the Company in the future, which is assisting the Company with the implementation, administration and management of the Plan. You understand that the recipients of Data may be located in the United States or elsewhere, where you may not have the same rights under applicable data protection and privacy law as in your home jurisdiction. You authorize the Company, E*TRADE and any other possible recipients that may assist the Company (presently or in the future) with implementing, administering and managing the Plan to receive, possess, use, retain and transfer data, in electronic or other form, for the sole purpose of implementing, administering and managing your participation in the plan.

DEXCOM, INC.

By:
Jereme Sylvain
EVP and Chief Financial Officer

DEXCOM, INC.
AWARD AGREEMENT (RESTRICTED STOCK UNITS) TO THE
DEXCOM, INC. AMENDED AND RESTATED 2015 EQUITY INCENTIVE PLAN

Unless otherwise defined herein, the terms defined in the DexCom, Inc. (the "***Company***") Amended and Restated 2015 Equity Incentive Plan (the "***Plan***") shall have the same defined meanings in this Award Agreement (Restricted Stock Units) (the "***Agreement***").

You ("***Participant***") have been granted Restricted Stock Units ("***RSUs***") subject to the terms, restrictions and conditions of the Plan, the Notice of Restricted Stock Unit Award (the "***Notice***") and this Agreement.

1. Settlement. Settlement of RSUs shall be made within the earlier of (i) 90 days following the applicable date of vesting under the vesting schedule or (ii) March 15 of the year following the year of vesting as set forth in the Notice. Settlement of RSUs shall be in Shares.

2. Withholding Taxes. Regardless of any action the Company and/or Participant's employer(s) (the "***Employer***") take with respect to any foreign, federal, state, or local income tax, social insurance (including if permissible under local law, any statutory employer's contribution to social insurance), national insurance contributions, payroll tax, payment on account, or other tax-related withholding with respect to this Agreement, as a result of Participant's participation in the Plan and/or any aspect of the RSUs ("***Tax-Related Items***"), Participant agrees and acknowledges that the ultimate liability for all Tax-Related Items is the responsibility of Participant and that the Company and/or the Employer:

- are not making any representations and are not committing to take any actions regarding any Tax- Related Items, including, but not limited to, the grant of the RSUs, the vesting of the RSUs, the delivery of Shares upon vesting of the RSUs, the subsequent sale of Shares acquired upon vesting of the RSUs, and the receipt of any dividends; and

- do not commit to structure the terms of the grant or any aspect of the RSUs to reduce or eliminate your liability for Tax-Related Items.

Before any Tax-Related Items become due, Participant will pay or make adequate arrangements satisfactory to the Company and/or the Employer to satisfy those Tax-Related Items. If permissible under local law, Participant authorizes the Company and/or the Employer to withhold all applicable Tax-Related Items legally payable by or due with respect to and/or on behalf of Participant by one or a combination of the following:

(a) withholding from the Shares to be issued, the number of Shares having a fair market value (determined on the date that the amount of tax to be withheld is determined) equal to the amount required to be withheld for Tax-Related Items, or

(b) arranging to have sold on Participant's behalf through such means as the Company may determine in its sole discretion (whether through a broker or otherwise) a sufficient number of Shares that is equal to the amount required to be withheld for Tax-Related Items. The Company shall arrange to sell or withhold a whole number of shares to satisfy the minimum tax withholding obligation, and to the extent that any tax obligation balance remains, such amount shall be withheld from your following payroll cycle.

If the obligation for Tax-Related Items is satisfied by withholding a number of Shares as described herein, Participant will be deemed to have been issued the full number of Shares to which Participant is entitled pursuant to the vesting of the RSUs even though a portion of those Shares will be withheld for the purpose of satisfying the Tax-Related Items.

Further, if Participant has relocated to a different jurisdiction between the date of grant and the date of any taxable event, Participant acknowledges that the Company and/or the

Employer (or former employer, as applicable) may be required to withhold or account for Tax-Related Items in more than one jurisdiction.

Finally, Participant will pay to the Company or the Employer any amount of Tax-Related Items that the Company or the Employer may be required to withhold or account for as a result of Participant's participation in the Plan or any aspect of the RSUs that cannot be satisfied by any of the means described in the preceding paragraph. The Company may refuse to deliver Shares to Participant if Participant fails to meet his/her obligations for the Tax-Related Items, as described herein.

3. No Stockholder Rights. Unless and until such time as Shares are issued in settlement of vested RSUs, Participant shall have no ownership of the Shares allocated to the RSUs and shall have no right to dividends or to vote from such Shares.

4. Dividend Equivalents. If dividends are declared and paid on Shares, dividend equivalent payments, if any (whether in cash or Shares), shall be credited to Participant at such time as Shares as issued in settlement of vested RSUs. Such dividend equivalent payments shall have the same vesting requirements as the underlying RSUs.

5. No Transfer. The RSUs and any interest therein shall not be sold, assigned, transferred, pledged, hypothecated, or otherwise disposed of.

6. Termination. Subject to the terms of the Notice, if Participant's service terminates for any reason, all unvested RSUs shall be forfeited to the Company forthwith, and all rights of Participant to such RSUs shall immediately terminate. For the avoidance of doubt, Participant shall not be entitled to any compensation for the loss of any rights or opportunities under the Plan other than as provided for herein. In case of any dispute as to whether Termination has occurred, the Committee shall have sole discretion to determine whether such Termination has occurred and the effective date of such Termination.

7. Tax Consequences. Participant acknowledges that there will be tax consequences upon settlement of the RSUs or disposition of the Shares, if any, received in connection therewith, and Participant should consult a tax adviser regarding Participant's tax obligations prior to such settlement or disposition. You should consult your personal tax advisor for information on the actual and potential tax consequences of this RSU.

8. Acknowledgement. The Company and Participant agree that the RSUs are granted under and governed by the Notice, this Agreement and the provisions of the Plan. Participant: (i) acknowledges receipt of a copy of the Plan and the Plan prospectus, (ii) represents that Participant has carefully read and is familiar with their provisions, and (iii) hereby accepts the RSUs subject to all of the terms and conditions set forth herein and those set forth in the Plan and the Notice.

9. Country-Specific Terms and Conditions. Participant's participation in the Plan will be subject to any special terms and conditions set forth in Appendix A to this Agreement ("***Appendix A***") for Participant's country of residence, if any. Appendix A constitutes part of this Agreement.

Moreover, if Participant relocates to another country, any special terms and conditions applicable to RSUs granted in such country may apply to Participant to the extent the Company determines that the application of such terms and conditions is necessary or advisable in order to comply with local law or facilitate the administration of the Plan.

In addition, the Company reserves the right to impose other requirements on the RSUs and any Shares acquired under the Plan, to the extent the Company determines it is necessary or advisable in order to comply with local law or facilitate the administration of the Plan, and to require Participant to sign any additional agreements or undertakings that may be necessary to accomplish the foregoing.

10. Entire Agreement; Enforcement of Rights. This Agreement, the Plan and the Notice constitute the entire agreement and understanding of the parties relating to the subject matter herein and supersede all prior discussions between them. Any prior agreements, commitments or negotiations concerning the purchase of the Shares hereunder are superseded. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, shall be effective unless in writing and signed by the parties to this Agreement. The failure by either party to enforce any rights under this Agreement shall not be construed as a waiver of any rights of such party.

11. Compliance with Laws and Regulations. The issuance of Shares will be subject to and conditioned upon compliance by the Company and Participant with all applicable state and federal laws and regulations and with all applicable requirements of any stock exchange or automated quotation system on which the Company's Shares may be listed or quoted at the time of such issuance or transfer.

12. Governing Law Severability. If one or more provisions of this Agreement (including the Appendix) are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this Agreement, (ii) the balance of this Agreement shall be interpreted as if such provision were so excluded and (iii) the balance of this Agreement shall be enforceable in accordance with its terms. This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of California, U.S.A, without giving effect to principles of conflicts of law.

13. No Rights as Employee, Director or Consultant. Nothing in this Agreement shall affect in any manner whatsoever the right or power of the Company, or a Parent or Subsidiary of the Company, to terminate Participant's service, for any reason, with or without cause, subject to compliance with applicable local laws.

14. Recipient Data Privacy. Through Participant's acceptance of this grant, Participant hereby explicitly and unambiguously consents to the collection, use and transfer, in electronic or other form, of his or her personal and/or sensitive data as described in this document by and among, as applicable, the Company, its affiliates and its subsidiaries for the exclusive purpose of implementing, administering and managing Participant's participation in the Plan. Participant understands that the Company holds certain personal and/or sensitive information about him or her, including, but not limited to, his or her name, home address and telephone/fax number, date of birth, social insurance number or other identification number, family size, marital status, gender, beneficiary information, emergency contacts, passport/visa information, salary and benefit information, personal bank account number, tax related information, tax identification number, nationality, job title, any Shares or directorships held in the Company, details of all RSUs or any other entitlement to Shares awarded, canceled, exercised, vested, unvested or outstanding in Participant's favor and any other information required by providers for the purpose of implementing, administering and managing the Plan ("***Data***"). Participant also understands and unambiguously consents to the fact that Data may be transferred to any third parties assisting in the implementation, administration and management of the Plan, that these recipients may be located in Participant's country or elsewhere, and that Participant's country may have different data privacy laws and protections than the laws in the recipient's country. Participant understands that he or she may request a list with the names and addresses of any potential recipients of the Data by contacting his or her local human resources representative. Participant authorizes the recipients to receive, possess, use, retain and transfer the Data, in electronic or other form, for the purposes of implementing, administering and managing my participation in the Plan, including any requisite transfer of such Data as may be required to a broker or other third party with whom Participant may elect to deposit any Shares acquired. Participant understands that Data will be held only as long as is necessary to implement, administer and manage his or her participation in the Plan. Participant understands that he or she may, at any time, view Data, request additional information about the storage and

processing of Data, require any necessary amendments to Data or refuse or withdraw the consents herein, in any case without cost, by contacting in writing his or her local human resources representative. Participant understands, however, that refusing or withdrawing his or her consent may affect his or her ability to participate in the Plan. For more information on the consequences of Participant's refusal to consent or withdrawal of consent, Participant understands that he or she may contact his or her local human resources representative.

15. Nature of Grant.

(a) By acknowledging and accepting this RSU grant, Participant agrees that the granting of this RSU is completely at the discretion of the Committee pursuant to the Plan, that Participant does not expect that future awards will be granted under the Plan, or any other plan, and that Participant waives any claim for losses under the Agreement of the Plan in connection with termination of employment.

(b) The RSU grant is non-transferrable and non-assignable.

(c) The Plan is established voluntarily by the Company, it is discretionary in nature and may be modified, amended, suspended or terminated by the Board at any time.

(d) The grant of this award is voluntary and occasional and does not create any contractual or other right to receive future grants of awards, or benefits in lieu of awards, even if awards have been granted repeatedly in the past.

(e) Participant is voluntarily participating in the Plan.

(f) This RSU grant is an extraordinary item that does not constitute compensation of any kind for services of any kind rendered to the Company or its affiliates (including, as applicable, Participant's employer) and which is outside the scope of Participant's employment contract, if any.

(g) This RSU grant is not part of normal or expected compensation or salary for any purpose, including, but not limited to, calculating any severance, resignation, termination, redundancy, end of service payments, bonuses, long-service awards, pension or retirement benefits or similar payments.

(h) The future value of the underlying Shares is unknown and cannot be predicted with certainty.

(i) For the purposes of this Agreement, termination of service shall be the last day of active service provided by Participant to the Company or one of its affiliates and such period shall not be extended by any notice of termination or similar period including any period of garden leave.

16. Translations. If Participant receives this Agreement or any other document or communication related to the Plan or this grant in a language other than English and the meaning in the translation is different than in the English version, the terms expressed in the English version will govern.

17. Imposition of Other Requirements. The Company reserves the right to impose other requirements on Participant's participation in the Plan, on the RSUs and on any Shares acquired under the Plan, to the extent the Company determines it is necessary or advisable in order to comply with any applicable law or facilitate the administration of the Plan. Participant agrees to sign any additional agreements or undertakings that may be necessary to accomplish the foregoing. Furthermore, Participant acknowledges that the laws of the country in which Participant is working at the time of grant, vesting or the sale of Shares received pursuant to this RSU grant (including any rules or regulations governing securities, foreign exchange, tax, labor,

or other matters) may subject Participant to additional procedural or regulatory requirements that Participant is and will be solely responsible for and must fulfill.

By your signature and the signature of the Company's representative on the Notice, Participant and the Company agree that this RSU is granted under and governed by the terms and conditions of the Plan, the Notice and this Agreement. Participant has reviewed the Plan, the Notice and this Agreement in their entirety, has had an opportunity to obtain the advice of counsel prior to executing this Agreement, and fully understands all provisions of the Plan, the Notice and this Agreement. Participant hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the Committee upon any questions relating to the Plan, the Notice and this Agreement. Participant further agrees to notify the Company upon any change in Participant's residence address.

18. Code Section 409A. For purposes of this Agreement, a termination of employment will be determined consistent with the rules relating to a "separation from service" as defined in Section 409A of the Internal Revenue Code and the regulations thereunder ("*Section 409A*"). Notwithstanding anything else provided herein, to the extent any payments provided under this RSU Agreement in connection with Participant's termination of employment constitute deferred compensation subject to Section 409A, and Participant is deemed at the time of such termination of employment to be a "specified employee" under Section 409A, then such payment shall not be made or commence until the earlier of (i) the expiration of the six-month period measured from Participant's separation from service from the Company or (ii) the date of Participant's death following such a separation from service; provided, however, that such deferral shall only be effected to the extent required to avoid adverse tax treatment to Participant including, without limitation, the additional tax for which Participant would otherwise be liable under Section 409A(a)(1)(B) in the absence of such a deferral. To the extent any payment under this RSU Agreement may be classified as a "short-term deferral" within the meaning of Section 409A, such payment shall be deemed a short-term deferral, even if it may also qualify for an exemption from Section 409A under another provision of Section 409A. Payments pursuant to this section are intended to constitute separate payments for purposes of Section 1.409A-2(b)(2) of the Treasury Regulations.

APPENDIX A

ADDITIONAL COUNTRY-SPECIFIC TERMS AND CONDITIONS OF THE DEXCOM, INC. AMENDED AND RESTATED 2015 EQUITY INCENTIVE PLAN (RESTRICTED STOCK UNITS)

Terms and Conditions

This Appendix A includes additional terms and conditions that govern the RSUs granted to you under the Plan if you reside in one of the countries listed below. Capitalized terms used but not defined in this Appendix A are defined in the Plan and/or the Agreement, and have the meanings set forth therein.

Notifications

This Appendix A also includes information regarding exchange controls and certain other issues of which you should be aware with respect to your participation in the Plan. The information is based on the securities, exchange control and other laws in effect in the respective countries as of August 2017. Such laws are often complex and change frequently. As a result, the Company strongly recommends that you not rely on the information noted in this Appendix A as the only source of information relating to the consequences of your participation in the Plan because the information may be out of date at the time that you vest in the RSUs or sell Shares acquired under the Plan.

In addition, the information contained herein is general in nature and may not apply to your particular situation, and the Company is not in a position to assure you of a particular result. Accordingly, you are advised to seek appropriate professional advice as to how the relevant laws in your country may apply to your situation.

Finally, if you are a citizen or resident of a country other than the one in which you are currently working, transfer employment after the grant date, or are considered a resident of another country for local law purposes, the information contained herein may not be applicable to you, and the Company shall, in its discretion, determine to what extent the terms and conditions contained herein shall apply.

CANADA

Terms and Conditions

RSUs Settled in Shares Only

Notwithstanding any discretion contained in the Plan, or any provision in the Agreement to the contrary, RSUs shall be paid in Shares only and do not provide any right for Participant to receive a cash payment.

The following provisions shall apply if Participant is a resident of Quebec:

Language Consent

The Parties acknowledge that it is their express wish that the Agreement, as well as all documents, notices and legal proceedings entered into, given or instituted pursuant hereto or relating directly or indirectly hereto, be drawn up in English.

Les Parties reconnaissent avoir exigé la rédaction en anglais de cette convention, ainsi que de tous documents, avis et procédures judiciaires, exécutés, donnés ou intentés en vertu de, ou liés directement ou indirectement à la présente convention.

Data Privacy Notice and Consent

This provision supplements the Data Privacy section of the Agreement:

Participant hereby authorizes the Company and the Company's representatives to discuss with and obtain all relevant information from all personnel, professional or not, involved in the administration and operation of the Plan. Participant further authorizes the Company and the Employer to disclose and discuss his or her participation in the Plan with their advisors. Finally, Participant authorizes the Company and the Employer to record such information and to keep such information in his or her employee file.

GERMANY

Notifications

Exchange Control Information

Cross-border payments in excess of €12,500 must be reported monthly to the German Federal Bank. If Participant uses a German bank to transfer a cross-border payment in excess of €12,500 in connection with the sale of Shares acquired under the Plan, the bank will make the report for him or her. In addition, Participant must report any receivables, payables, or debts in foreign currency exceeding an amount of €5,000,000 on a monthly basis.

NETHERLANDS

Notifications

Insider-Trading Notification

Participant should be aware of the Dutch insider-trading rules, which may impact the sale of Shares issued to Participant at vesting and settlement of the RSUs. In particular, Participant may be prohibited from effectuating certain transactions involving Shares if Participant has inside information about the Company. If Participant is uncertain whether the insider-trading rules apply to Participant, Participant should consult his or her personal legal advisor.

SWEDEN

There are no country-specific provisions.

SWITZERLAND

There are no country-specific provisions.

UNITED KINGDOM

Terms and Conditions

Withholding Taxes

This provision supplements the Withholding Taxes section of the Agreement:

If payment or withholding of the Tax-Related Items (including the Employer's Liability, as defined below) is not made within 90 days of the end of the UK tax year in which vesting occurs (the "***Due Date***") or such other period specified in Section 222(1)(c) of the U.K. Income Tax (Earnings and Pensions) Act 2003, the amount of any uncollected Tax-Related Items will constitute a loan owed by Participant to the Employer, effective on the Due Date. Participant agrees that the loan will bear interest at the then-current Official Rate of Her Majesty's Revenue

and Customs ("***HMRC***"), it will be immediately due and repayable, and the Company or the Employer may recover it at any time thereafter by any of the means referred to in the Withholding Taxes section of the Agreement. Participant also authorizes the Company to delay the issuance of Shares to Participant unless and until the loan is repaid.

Notwithstanding the foregoing, if Participant is a director or executive officer of the Company (within the meaning of Section 13(k) of the U.S. Securities and Exchange Act of 1934, as amended), Participant will not be eligible for such a loan to cover the Tax-Related Items. In the event that Participant is a director or executive officer and the Tax-Related Items are not collected from or paid by Participant by the Due Date, the amount of any uncollected Tax-Related Items will constitute a benefit to Participant on which additional income tax and national insurance contributions (including the Employer's Liability, as defined below) will be payable. Participant will be responsible for reporting and paying any income tax and national insurance contributions (including the Employer's Liability, as defined below) due on this additional benefit directly to HMRC under the self-assessment regime.

Joint Election/recoverability of employer national insurance contributions

As a condition of Participant's participation in the Plan and the vesting of the RSUs (, Participant agrees to accept any liability for secondary Class 1 national insurance contributions (the "***Employer's Liability***") which may be payable by the Company and/or the Employer in connection with the RSUs and any event giving rise to Tax- Related Items. To accomplish the foregoing, Participant agrees to execute a joint election with the Company and/or the Employer (the "***Election***"), the form of such Election being formally approved by HMRC, and/or any other agreements, consents or elections required to accomplish the transfer of the Employer's Liability to Participant. Participant further agrees to execute such other joint elections, other agreements, consents or elections (the "***Other Agreement(s)***") as may be required by the Company and/or the Employer between Participant and the Company, any successor to the Company and/or the Employer in order to transfer the Employer's Liability to Participant or in order to provide for the reimbursement of the Employer's Liability by Participant to the Company and/or the Employer.

If Participant does not enter into the Election when Participant accepts the Agreement, if the Election is revoked and/or abolished at any time by HMRC or if Participant fails to enter into any Other Agreement as required by the Company, any successor to the Company and/or the Employer, the Company may choose, in its sole discretion, not to allow Participant to vest in the RSUs and they will cease to vest, become null and void, and no Shares will be acquired under the Plan, without any liability to the Company, the Employer and/or any Affiliate. Participant further agrees that the Company and/or the Employer may collect the Employer's Liability by any of the means set forth in the Withholding Taxes section of the Agreement.

For the avoidance of doubt, this requirement will apply to all Participants that work in the U.K. during any period from grant through the vesting date of the RSUs regardless of whether Participant was in the U.K. at the time of grant.

UNITED STATES

Terms and Conditions

This provision supplements the Tax Consequences provision of the Agreement:

Upon vesting of the RSU, Participant will include in income the fair market value of the Shares subject to the RSU. The included amount will be treated as ordinary income by Participant and will be subject to withholding by the Company when required by applicable law. Upon disposition of the Shares, any subsequent increase or decrease in value will be treated as short-term or long-term capital gain or loss, depending on whether the Shares are held for more than one year from the date of settlement. Further, an RSU may be considered a deferral of compensation that may be subject to Section 409A of the Code. Section 409A of the Code imposes special rules to the timing of making and effecting certain amendments of this RSU

with respect to distribution of any deferred compensation. You should consult your personal tax advisor for information on the actual and potential tax consequences of this RSU.

Form of RSU Grant Agreement – Board Members – Annual Grant

DEXCOM, INC.
AMENDED AND RESTATED 2015 EQUITY INCENTIVE PLAN
NOTICE OF RESTRICTED STOCK UNIT AWARD
GRANT NUMBER: _____

Unless otherwise defined herein, the terms defined in the DexCom, Inc. (the "***Company***") 2015 Equity Incentive Plan (the "***Plan***") shall have the same meanings in this Notice of Restricted Stock Unit Award (the "***Notice***").

Name: _____

Address: _____

You ("***Participant***") have been granted an award of Restricted Stock Units ("***RSUs***") under the Plan subject to the terms and conditions of the Plan, this Notice and the attached Award Agreement (Restricted Stock Units) (hereinafter "***RSU Agreement***").

Number of RSUs: _____

Date of Grant: _____

Vesting Commencement Date: _____

Expiration Date: The date on which settlement of all RSUs granted hereunder occurs, with earlier expiration upon the Termination Date

Vesting Schedule: Subject to the limitations set forth in this Notice, the Plan and the RSU Agreement, the RSUs will vest in accordance with the following schedule: **in one annual installment (i.e., 100% of the RSUs subject to this Notice will vest upon the first anniversary of the Date of Grant).**

Corporate Transaction: If a Corporate Transaction occurs then the vesting and (if applicable) exercisability of the RSUs shall be accelerated in full and any reacquisition or repurchase rights held by the Company with respect to the shares of Common Stock subject to such acceleration shall lapse in full, as appropriate.

"***Corporate Transaction***" means the occurrence of any of the following events: (i) any "person" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) becomes the "beneficial owner" (as defined in Rule 13d-3 of the Exchange Act), directly or indirectly, of securities of the Company representing more than fifty percent (50%) of the total voting power represented by the Company's then-outstanding voting securities; provided, however, that for purposes of this subclause (i) the acquisition of additional securities by any one Person who is considered to own more than fifty percent (50%) of the total voting power of the securities of the Company will not be considered a Corporate Transaction; (ii) the consummation of the sale, transfer or disposition by the Company of all or substantially all of the Company's assets; (iii) the

consummation of a merger or consolidation of the Company with any other corporation, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or its parent) more than fifty percent (50%) of the total voting power represented by the voting securities of the Company or such surviving entity or its parent outstanding immediately after such merger or consolidation; (iv) any other transaction which qualifies as a "corporate transaction" under Section 424(a) of the Code wherein the stockholders of the Company give up all of their equity interest in the Company (except for the acquisition, sale or transfer of all or substantially all of the outstanding shares of the Company) or (v) a change in the effective control of the Company that occurs on the date that a majority of members of the Board is replaced during any twelve (12) month period by members of the Board whose appointment or election is not endorsed by a majority of the members of the Board prior to the date of the appointment or election. For purpose of this subclause (v), if any Person is considered to be in effective control of the Company, the acquisition of additional control of the Company by the same Person will not be considered a Corporate Transaction. For purposes of this definition, Persons will be considered to be acting as a group if they are owners of a corporation that enters into a merger, consolidation, purchase or acquisition of stock, or similar business transaction with the Company. Notwithstanding the foregoing, to the extent that any amount constituting deferred compensation (as defined in Section 409A of the Code) would become payable under this Plan by reason of a Corporate Transaction, such amount shall become payable only if the event constituting a Corporate Transaction would also qualify as a change in ownership or effective control of the Company or a change in the ownership of a substantial portion of the assets of the Company, each as defined within the meaning of Code Section 409A, as it has been and may be amended from time to time, and any proposed or final Treasury Regulations and IRS guidance that has been promulgated or may be promulgated thereunder from time to time.

Notwithstanding the foregoing, a Corporate Transaction shall not be deemed to result from any transaction precipitated by the Company's insolvency, appointment of a conservator, or determination by a regulatory agency that the Company is insolvent, nor from any transaction the sole purpose of which is to change the state of the Company's incorporation or to create a holding company that will be owned in substantially the same proportions by the persons who held the Company's securities immediately before such transaction.

You understand that your relationship or service with the Company is for an unspecified duration, and that nothing in this Notice, the RSU Agreement or the Plan changes the at-will nature of that relationship. You acknowledge that the vesting of the RSUs pursuant to this Notice

is earned only by continuing service as an Employee, Director or Consultant of the Company. You also understand that this Notice is subject to the terms and conditions of both the RSU Agreement and the Plan, both of which are incorporated herein by reference. Participant has read both the RSU Agreement and the Plan.

PARTICIPANT	**DEXCOM, INC.**
Signature: _____	By: _____
Print Name: _____	Its: _____

Form of RSU Grant Agreement – Board Members – Incoming Grant

DEXCOM, INC.
AMENDED AND RESTATED 2015 EQUITY INCENTIVE PLAN
NOTICE OF RESTRICTED STOCK UNIT AWARD
GRANT NUMBER: _____

Unless otherwise defined herein, the terms defined in the DexCom, Inc. (the "***Company***") 2015 Equity Incentive Plan (the "***Plan***") shall have the same meanings in this Notice of Restricted Stock Unit Award (the "***Notice***").

Name: _____

Address: _____

You ("***Participant***") have been granted an award of Restricted Stock Units ("***RSUs***") under the Plan subject to the terms and conditions of the Plan, this Notice and the attached Award Agreement (Restricted Stock Units) (hereinafter "***RSU Agreement***").

Number of RSUs: _____

Date of Grant: _____

Vesting Commencement Date: _____

Expiration Date: The date on which settlement of all RSUs granted hereunder occurs, with earlier expiration upon the Termination Date

Vesting Schedule: Subject to the limitations set forth in this Notice, the Plan and the RSU Agreement, the RSUs will vest in accordance with the following schedule: **in three annual installments (i.e., 33.3% of the RSUs subject to this Notice will vest upon the first anniversary of the Date of Grant; 33.3% of the RSUs subject to this Notice will vest upon the second anniversary of the Date of Grant; and 33.3% of the RSUs subject to this Notice will vest upon the third anniversary of the Date of Grant)**

Corporate Transaction: If a Corporate Transaction occurs then the vesting and (if applicable) exercisability of the RSUs shall be accelerated in full and any reacquisition or repurchase rights held by the Company with respect to the shares of Common Stock subject to such acceleration shall lapse in full, as appropriate.

"***Corporate Transaction***" means the occurrence of any of the following events: (i) any "person" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) becomes the "beneficial owner" (as defined in Rule 13d-3 of the Exchange Act), directly or indirectly, of securities of the Company representing more than fifty percent (50%) of the total voting power represented by the Company's then-outstanding voting securities; provided, however, that for purposes of this subclause (i) the acquisition of additional securities by any one Person who is considered to own more than fifty percent (50%) of the total voting power of the securities of the Company will not be considered a

Corporate Transaction; (ii) the consummation of the sale, transfer or disposition by the Company of all or substantially all of the Company's assets; (iii) the consummation of a merger or consolidation of the Company with any other corporation, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or its parent) more than fifty percent (50%) of the total voting power represented by the voting securities of the Company or such surviving entity or its parent outstanding immediately after such merger or consolidation; (iv) any other transaction which qualifies as a "corporate transaction" under Section 424(a) of the Code wherein the stockholders of the Company give up all of their equity interest in the Company (except for the acquisition, sale or transfer of all or substantially all of the outstanding shares of the Company) or (v) a change in the effective control of the Company that occurs on the date that a majority of members of the Board is replaced during any twelve (12) month period by members of the Board whose appointment or election is not endorsed by a majority of the members of the Board prior to the date of the appointment or election. For purpose of this subclause (v), if any Person is considered to be in effective control of the Company, the acquisition of additional control of the Company by the same Person will not be considered a Corporate Transaction. For purposes of this definition, Persons will be considered to be acting as a group if they are owners of a corporation that enters into a merger, consolidation, purchase or acquisition of stock, or similar business transaction with the Company. Notwithstanding the foregoing, to the extent that any amount constituting deferred compensation (as defined in Section 409A of the Code) would become payable under this Plan by reason of a Corporate Transaction, such amount shall become payable only if the event constituting a Corporate Transaction would also qualify as a change in ownership or effective control of the Company or a change in the ownership of a substantial portion of the assets of the Company, each as defined within the meaning of Code Section 409A, as it has been and may be amended from time to time, and any proposed or final Treasury Regulations and IRS guidance that has been promulgated or may be promulgated thereunder from time to time.

Notwithstanding the foregoing, a Corporate Transaction shall not be deemed to result from any transaction precipitated by the Company's insolvency, appointment of a conservator, or determination by a regulatory agency that the Company is insolvent, nor from any transaction the sole purpose of which is to change the state of the Company's incorporation or to create a holding company that will be owned in substantially the same proportions by the persons who held the Company's securities immediately before such transaction.

You understand that your relationship or service with the Company is for an unspecified duration, and that nothing in this Notice, the RSU Agreement or the Plan changes the at-will nature of that relationship. You acknowledge that the vesting of the RSUs pursuant to this Notice is earned only by continuing service as an Employee, Director or Consultant of the Company. You also understand that this Notice is subject to the terms and conditions of both the RSU Agreement and the Plan, both of which are incorporated herein by reference. Participant has read both the RSU Agreement and the Plan.

PARTICIPANT
Signature: _____

Print Name: _____

DEXCOM, INC.
By: _____

Its: _____

Exhibit 10.18

CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY [***], HAS BEEN OMITTED BECAUSE IT IS NOT MATERIAL AND IS THE TYPE THAT THE REGISTRANT TREATS AS PRIVATE AND CONFIDENTIAL.

FOURTH AMENDMENT TO OFFICE LEASE

This FOURTH AMENDMENT TO OFFICE LEASE ("**Fourth Amendment**") is made and entered into as of the 9th day of September, 2019 ("**Effective Date**"), by and between SEQUENCE TECH. CENTER CA LLC, a Delaware limited liability company ("**Landlord**"), and DEXCOM, INC., a Delaware corporation ("**Tenant**").

R E C I T A L S

A. Kilroy Realty, L.P., a Delaware limited partnership ("**Original Landlord**") and Tenant entered into that certain Office Lease dated March 31, 2006 (the "**Original Lease**"), as amended by (i) that certain First Amendment to Office Lease dated August 18, 2010 by and between Original Landlord and Tenant ("**First Amendment**"), (ii) that certain Second Amendment to Office Lease dated October 1, 2014 by and between Original Landlord and Tenant ("**Second Amendment**"), and (iii) that certain Third Amendment to Office Lease dated February 7, 2019 by and between John Hancock Life Insurance Company (U.S.A.), a wholly owned subsidiary of Manulife Financial Corporation, a Michigan corporation ("**Second Landlord**") ("**Third Amendment**"), whereby Landlord leases to Tenant and Tenant leases from Landlord those certain premises (collectively, the "**Existing Premises**") located in the following buildings: (i) that certain office building located at 6340 Sequence Drive, San Diego, California ("**6340 Building**") containing approximately 66,400 rentable square feet, (ii) that certain office building located at 6310 Sequence Drive, San Diego, California ("**6310 Building**") containing approximately 62,415 rentable square feet and (iii) that certain office building located at 6290 Sequence Drive, San Diego, California ("**6290 Building**") containing approximately 90,000 rentable square feet (collectively, the "**Buildings**"), which buildings are located in the Project (as defined in the Lease). The Original Lease, as amended by the First Amendment, the Second Amendment and the Third Amendment, may be referred to herein as the "**Lease**". Landlord is the successor-in-interest in the Lease to second Landlord, successor-in-interest in the Lease to Original Landlord.

B. Tenant desires to expand the Existing Premises to include a total of 132,600 rentable square feet of space ("**6350 Expansion Premises**") comprising the entirety of that certain office building located at 6350 Sequence Drive, San Diego, California (the "**6350 Building**"), and to make other modifications to the Lease.

C. Landlord and Tenant acknowledge and agree that the 6350 Building is, as of the date hereof, subject to a lease (the "**6350 Building Lease**") between Landlord and Entropic Communications, LLC, a Delaware limited liability company (the "**6350 Building Tenant**") and that certain sublease between the 6350 Building Tenant (as sublandlord) and Tenant (as subtenant) (the "**6350 Building Sublease**"), and that Tenant is currently in possession of the 6350 Expansion Premises pursuant to the 6350 Building Sublease.

A G R E E M E N T :

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Capitalized Terms**. All capitalized terms when used herein shall have the same meaning as is given such terms in the Lease unless expressly superseded by the terms of this Fourth Amendment.

2. **Expansion of Premises**.

2.1 **6350 Expansion Premises**. Effective as of the later of (i) the Effective Date or (ii) the date the Contingency (as defined in Section 10 below) is satisfied (the "**Expansion Commencement Date**"), Tenant shall lease from Landlord and Landlord shall lease to Tenant the 6350 Expansion Premises. Consequently, effective upon the Expansion Commencement Date, the Existing Premises shall be deemed expanded to include the 6350 Expansion Premises (the Existing Premises together with the 6350 Expansion Premises are sometimes collectively referred to herein as the "**Premises**"). Landlord and Tenant hereby acknowledge that the Premises shall, effective as of the Expansion Commencement Date, contain a total of approximately 351,415 rentable square feet. The actual Expansion Commencement Date shall be memorialized in a confirmation amendment to be prepared by Landlord, which agreement Tenant shall promptly execute.

2.2 **No-Remeasurement of 6350 Expansion Premises**. For purposes of the Lease (as hereby amended), "rentable square feet" of the Premises shall be deemed as set forth in **Recital A** and **Recital B** of this Fourth Amendment, and therefore neither Landlord nor Tenant shall have the right to re-measure the Premises at any time.

3. **Term**.

3.1 **Extension of Existing Premises Lease Term**. Landlord and Tenant acknowledge that Tenant's lease of the Existing Premises is scheduled to expire on February 28, 2022, pursuant to the terms of the Lease. Notwithstanding anything to the contrary in the Lease, the term of Tenant's lease of the Existing Premises shall be extended to expire coterminously with the term of Tenant's lease of the 6350 Expansion Premises on the New Expiration Date, unless sooner terminated as provided in the Lease, as hereby amended. The "**New Expiration Date**" shall be December 31, 2023. The period commencing on the Expansion Commencement Date and terminating on the New Expiration Date shall be referred to herein as the "**New Expansion Term**."

3.2 **Option Terms**. Section 3.4 of the Second Amendment is deemed modified to provide that Tenant's two (2) separate Option Terms to extend the Lease Term also apply to all of the 6350 Building, all of the 6340 Building, all of the 6310 Building and/or all of the 6290 Building (but not for just a portion of any building). Tenant may elect to extend the Lease Term for any or all of the 6350 Building, the 6340 Building, the 6310 Building or the 6290 Building, but in no event may Tenant exercise the second (2nd) Option Term to extend for any such building for which the New Expansion Term was not extended for the first Option Term. Notwithstanding anything above to the contrary, in the event Tenant elects to extend the Lease Term with respect to less than all of the Buildings leased by Tenant, then all Buildings for which Tenant

exercised an Option Term to extend must be for Buildings which are contiguous. For example, Tenant may not elect to exercise an Option Term to extend for all Buildings except the 6310 Building.

3.3 **No Termination Option**. Effective as of the Effective Date, Section 3.5 of the Second Amendment (Termination Option) is hereby deemed null and void and is of no further force or effect.

4. **Base Rent**.

4.1 **Existing Premises Base Rent**. Base Rent for the Existing Premises shall continue to be paid pursuant to the Base Rent Schedule set forth in Section 4.1 of the Second Amendment through February 28, 2022. Commencing as of March 1, 2022 and continuing through the New Expiration Date, Base Rent shall be payable for the Existing Premises as follows:

Period	Annualized Base Rent	Monthly Installment of Base Rent	Approximate Monthly Rental Rate per Rentable Square Foot
03/01/22 – 02/28/23	$5,908,005.00	$492,333.75	$2.25
03/01/23 – 12/31/23	$6,083,932.20	$506,994.35	$2.317

4.2 **6350 Expansion Premises Base Rent**. Commencing on the Expansion Commencement Date and continuing throughout the New Expansion Term, Tenant shall pay to Landlord monthly installments of Base Rent for the 6350 Expansion Premises as follows:

Period	Annualized Base Rent	Monthly Installment of Base Rent	Approximate Monthly Rental Rate per Rentable Square Foot
*Effective Date – 01/31/20	$3,286,689.48	$273,890.79	$2.07
02/01/20 – 01/31/21	$3,401,723.61	$283,476.97	$2.14
02/01/21 – 01/31/22	$3,520,783.94	$293,398.66	$2.21
02/01/22 – 02/28/22	$3,421,080.00	$285,090.00	$2.15
03/01/22 – 02/28/23	$3,580,200.00	$298,350.00	$2.25
03/01/23 – 12/31/23	$3,686,810.40	$307,234.20	$2.317

* If the Expansion Commencement Date falls on a day of the month which is not the first day of such month, the Base Rent for such fractional month shall accrue on a daily basis and shall total an amount equal to the product of (i) a fraction, the numerator of which is the number of days in such fractional month and the denominator of which is the actual number of days occurring in such calendar month, and (ii) the then-applicable monthly installment of Base Rent. Such fractional month shall be added to the first year of the New Expansion Term.

5. **Direct Expenses**.

5.1 **Tenant's Share**. Tenant's Share with respect to the Existing Premises shall continue to be 100%. Tenant's Share with respect to the 6350 Building shall, effective as of the Expansion Commencement Date, be 100%.

5.2 **"Project" Definition**. Landlord and Tenant hereby expressly acknowledge and agree that the definition of the "**Project**" shall be revised to mean (i) the 6340 Building and its Common Areas, (ii) the land (which is improved with landscaping, parking facilities and other improvements) upon which the 6340 Building and its Common Areas are located, (iii) the 6310 Building and its Common Areas, (iv) the land (which is improved with landscaping, parking facilities and other improvements) upon which the 6310 Building and its Common Areas are located, (v) the 6290 Building and its Common Areas, (vi) the land (which is comprised with landscaping, parking facilities and other improvements) upon which the 6290 Building and its Common Areas are located, (vii) the 6350 Building and its Common Areas, and (viii) the land (which is improved with landscaping, parking facilities and other improvements) upon which the 6350 Building and its Common Areas are located. As the Project contains more than one (1) building, the parties acknowledge that the costs and expenses incurred in connection with the Project (i.e. the Direct Expenses) should be shared among the 6340 Building, the 6310 Building, the 6290 Building and the 6350 Building. Accordingly, as set forth in Section 4.2 of the Lease, Direct Expenses are determined annually for the Project as a whole, and a portion of the Direct Expenses, which portion shall be determined by Landlord on an equitable basis, shall be allocated to the 6340 Building, the 6310 Building, the 6290 Building or the 6350 Building (as the case may be) and such portion shall be the Direct Expenses for purposes of the Lease (as amended). Such portion of Direct Expenses allocated to the 6310 Building shall include all Direct Expenses attributable solely to the 6310 Building and an equitable portion of the Direct Expenses attributable to the Project as a whole. Such portion of

Direct Expenses allocated to the 6340 Building shall include all Direct Expenses attributable solely to the 6340 Building and an equitable portion of the Direct Expenses attributable to the Project as a whole. Such portion of Direct Expenses allocated to the 6290 Building shall include all Direct Expenses attributable solely to the 6290 Building and an equitable portion of the Direct Expenses attributable to the Project as a whole. Such portion of Direct Expenses allocated to the 6350 Building shall include all Direct Expenses attributable solely to the 6350 Building and an equitable portion of the Direct Expenses attributable to the Project as a whole.

6. **Condition of 6350 Expansion Premises**. Landlord shall not be obligated to provide or pay for any improvement work or services related to the improvement of the 6350 Expansion Premises, and Tenant shall accept the 6350 Expansion Premises in its presently existing, "as-is" condition.

7. **Broker**. Landlord and Tenant hereby warrant to each other that they have had no dealings with any real estate broker or agent in connection with the negotiation of this Fourth Amendment other than Cushman & Wakefield of San Diego, Inc. (the "**Broker**"), and that they know of no other real estate broker or agent who is entitled to a commission in connection with this Fourth Amendment. Each party agrees to indemnify and defend the other party against and hold the other party harmless from any and all claims, demands, losses, liabilities, lawsuits, judgments, and costs and expenses (including, without limitation, reasonable attorneys' fees) with respect to any leasing commission or equivalent compensation alleged to be owing on account of the indemnifying party's dealings with any real estate broker or agent, other than the Broker, occurring by, through, or under the indemnifying party. The terms of this Section 7 shall survive the expiration or earlier termination of this Fourth Amendment.

8. **Signage**. Effective upon the Expansion Commencement Date, all signage rights and responsibilities set forth in Article 23 of the Original Lease in connection with the Existing Premises shall additionally apply with respect to the 6350 Expansion Premises.

9. **Security Deposit/Letter of Credit**. Landlord shall continue to hold the Security Deposit pursuant to the terms and conditions of Article 21 of the Original Lease and the L-C in accordance with the terms and provisions of Article 22 of the Original Lease throughout the New Expansion Term, as may be extended.

10. **Contingency**. Landlord and Tenant acknowledge and agree that this Fourth Amendment is contingent upon the full execution and delivery of a lease termination agreement between Landlord and the 6350 Building Tenant pertaining to the 6350 Building Lease ("**Lease Termination Agreement**"), which Lease Termination Agreement shall be on terms and conditions acceptable to Landlord in Landlord's sole discretion and which, upon execution, shall also serve to concurrently terminate the 6350 Building Sublease (the "**Contingency**"). Tenant, as the subtenant under the 6350 Building Sublease, hereby acknowledges and consents to the termination of the 6350 Building Lease and the concurrent termination of the 6350 Building Sublease, subject to this Fourth Amendment becoming effective on or before such termination of the 6350 Building Lease and the 6350 Building Sublease, such that Tenant's current possession of the 6350 Expansion Premises in not interrupted.

11. **Parking**. Tenant shall be entitled to utilize, at no additional cost, the parking area serving the 6350 Building as designated by Landlord. Tenant's rights to utilize such parking shall be otherwise subject to all of the terms and conditions of the Lease.

12. **Multiple Buildings**. Landlord and Tenant acknowledge that it is Landlord's current intention to cause the ownership of all of the Buildings to be held by the same entity. If, however, at any time during the New Expansion Term or any Option Term, Landlord determines to separate ownership of the Buildings or to separately finance the Buildings (where the lender requires separate documentation), Tenant agrees to promptly after request from Landlord, execute commercially reasonable documents in order to separate Tenant's lease of such building(s) of the Premises from the remaining building(s) of the Premises. Any such documentation shall be on the exact same terms as specified in the Lease (as amended) but as applicable to the relevant portion of the Premises.

13. **Certified Access Specialist Inspection**. For purposes of Section 1938 of the California Civil Code, Landlord hereby discloses to Tenant, and Tenant hereby acknowledges, that the 6350 Expansion Premises have not undergone inspection by a Certified Access Specialist (CASp). As required by Section 1938(e) of the California Civil Code, Landlord hereby states as follows: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises." In furtherance of the foregoing, Landlord and Tenant hereby agree that, in the event Tenant desires, in its sole discretion, to have the 6350 Expansion Premises undergo a CASp inspection, such, CASp inspection requested by Tenant shall be conducted, at Tenant's sole cost and expense, by a CASp designated by Tenant, and reasonably approved by Landlord, subject to Landlord's reasonable rules and requirements.

14. **Perimeter Fencing**. Subject to Landlord's prior approval of all plans and specifications, which approval shall not be unreasonably withheld or delayed, Landlord shall permit Tenant to install and maintain, at Tenant's sole cost and expense, perimeter fencing within the Project. At Tenant's election, such fencing may be installed around the perimeter of the entire Project and/or around the perimeter of any of the Buildings and/or group of contiguous Buildings within the Project. Landlord's approval of Tenant's proposed fencing may be conditioned upon Tenant complying with such reasonable requirements imposed by Landlord based upon the advice of Landlord's structural and mechanical engineers, so that the Project's systems and equipment are not adversely affected. The installation of such fencing shall be done in compliance with Applicable Laws. Any repairs and maintenance of such fencing shall be the sole responsibility of Tenant. Unless Landlord otherwise notifies Tenant in writing that Landlord will not require Tenant to remove such fencing upon the expiration or earlier termination of the Lease, such fencing shall be removed by Tenant upon the expiration or earlier termination of the Lease, and Tenant shall repair damage resulting from such removal as necessary to restore the affected portions of the Project to substantially the same condition as existed prior to Tenant's installation of the fencing.

15. **Alterations**.

15.1 In the event Tenant, after the Effective Date of this Fourth Amendment, elects to construct Landlord approved Alterations and improvements in the

Premises, Tenant shall have no obligation to remove the same, nor to restore the Premises to the condition that existed prior to such Alterations or improvements being made, unless Landlord provides written notice to Tenant at the time Landlord approves such proposed Alterations and improvements, with such written notice to Tenant specifying that Tenant shall be responsible for the removal of such proposed Alterations or improvements upon the expiration or earlier termination of the Lease.

15.2 Landlord and Tenant hereby knowledge and agree that Section 2.4 of Exhibit B to the Second Amendment, and the Schedule 2 referenced therein (collectively, the "**Prior Non-Confirming Improvements Provisions**"), are both hereby deleted. In place of the Prior Non-Confirming Improvements Provisions, Landlord and Tenant hereby acknowledge and agree that, as to all Alterations and improvements existing in the Premises as of the Effective Date of this Fourth Amendment, Tenant shall have no obligation to remove any such Alterations or improvements, nor to restore the Premises to the condition that existed prior such Alterations or improvements being made, with the exception of those certain items identified on the **Replacement Schedule 2** attached hereto (the "**Non-Conforming Improvements**").

15.3 Additionally, as set forth on **Replacement Schedule 2**, to Non-Conforming Improvements are divided into two (2) categories: the "**Tier One Non-Conforming Improvements**", and the "**Tier Two Non-Conforming Improvements**". Landlord and Tenant hereby acknowledge and agree that, in the event Tenant exercises at least the first Option Term or otherwise enters into an amendment to the Lease to further extend the term of the Lease beyond the New Expiration Date for a period of thirty-six (36) months or longer, and such extension of the term of the Lease applies to at least fifty percent (50%) of the rentable square feet in the Buildings, then upon the expiration or earlier termination of the Lease, Tenant shall (a) no longer be obligated to remove any of the Tier Two Non-Conforming Improvements, and (b) only be obligated to remove the Tier One Non-Conforming Improvements, with such removal of the Tier One Non-Conforming Improvements to occur upon the expiration of the Lease as to any Building not leased by Tenant. In contrast, if Tenant declines to exercise the first Option Term, and otherwise fails to enter into an amendment to extend the term of the Lease beyond the New Expiration Date for a period of thirty-six (36) months or longer (and for at least fifty percent (50%) of the rentable square feet in the Buildings), then Tenant shall remain obligated to remove the Tier One and Tier Two Non-Conforming Improvements upon the expiration or earlier termination of the Lease.

16. **California Energy Disclosures**. Tenant acknowledges that Landlord has complied with Cal. Pub. Res. Code § 25402.10 and the disclosure regulations issued in connection therewith (e.g., California Code of Regulations, Title 20, Sections 1680 — 1684) by, among other things, delivering to Tenant the Disclosure Summary Sheet, Statement of Energy Performance, Data Checklist and Facility Summary (as such terms are defined in California Code of Regulations, Title 20, Section 1681) for the 6350 Expansion Premises (collectively, the "**Energy Information**") prior to the date hereof. Tenant acknowledges and agrees that (i) Landlord makes no representation or warranty regarding the energy performance of the 6350 Expansion Premises or the accuracy or completeness of the Energy Information, (ii) the Energy Information is for the current occupancy and use of the 6350 Expansion Premises and that the energy performance of the 6350 Expansion Premises may vary, and (iii) Landlord shall have no liability for any errors or omissions in the Energy Information.

17. **No Further Modification**. Except as set forth in this Fourth Amendment, all of the terms and provisions of the Lease shall apply with respect to the 6350 Expansion Premises and the Lease shall remain unmodified and in full force and effect.

[Signatures follow on next page]

IN WITNESS WHEREOF, this Fourth Amendment has been executed as of the day and year first above written.

"**LANDLORD**":

SEQUENCE TECH. CENTER CA LLC,
a Delaware limited liability company

By: /s/ Ray Rothfelder
Its: Managing Director, Western U.S.

Dated: October 4, 2019

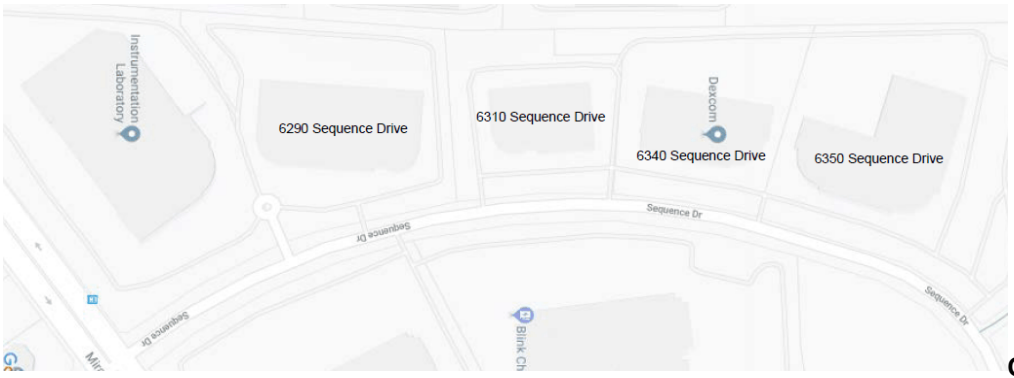
"**TENANT**":

DEXCOM, INC.,
a Delaware corporation

By: /s/ Jereme Sylvain
Its: VP, Finance

By: /s/ Brice Bobzien
Its: VP, Finance

EXHIBIT A



OUTLINE OF 6350 EXPANSION PREMISES

REPLACEMENT SCHEDULE 2

NON-CONFORMING IMPROVEMENTS

Non-Conforming Improvements	6290 Building	6310 Building	6340 Building	6350 Building
Tier One Non-Conforming Improvements				
[***]	Not applicable	Not applicable	Applicable	Applicable
[***]	Applicable	Applicable	Applicable	Applicable
[***]	Not applicable	Not applicable	Applicable	Applicable
Remove security systems including card access and cameras	Applicable	Applicable	Applicable	Applicable
Tier Two Non-Conforming Improvements				
Server/MDF/IDF and all associated equipment, including ladder racks, cabling and raised flooring.	Applicable	Applicable	Applicable	Applicable
Roof cable satellites	Applicable	Applicable	Applicable	Applicable
Storage sheds, storage racks and storage shelves.	Not applicable	Not applicable	Applicable	Not Applicable
Generators not part of original building shell.	Applicable	Not applicable	Applicable	Applicable
Parking lot signs, reserved spots etc.	Applicable	Applicable	Applicable	Applicable
Added trash compactors or bailers and associated equipment must be restored to original condition.	Not applicable	Not applicable	Applicable	Applicable

FIFTH AMENDMENT TO LEASE

THIS FIFTH AMENDMENT TO LEASE ("**Fifth Amendment"**) is made as of October 21, 2019, by and between SEQUENCE TECH. CENTER CA LLC, a Delaware limited liability company ("**Landlord**") and DEXCOM, INC., a Delaware corporation ("**Tenant**").

Recitals:

A. Kilroy Realty, L.P., a Delaware limited partnership ("**Original Landlord**") and Tenant entered into that certain Office Lease dated March 31, 2006 (the "**Original Lease**"), as amended by (i) that certain First Amendment to Office Lease dated August 18, 2010 by and between Original Landlord and Tenant ("**First Amendment**"), (ii) that certain Second Amendment to Office Lease dated October 1, 2014 by and between Original Landlord and Tenant ("**Second Amendment**"), (iii) that certain Third Amendment to Office Lease dated February 7, 2019 by and between John Hancock Life Insurance Company (U.S.A.), a wholly owned subsidiary of Manulife Financial Corporation, a Michigan corporation ("**Second Landlord**") ("**Third Amendment**"), and (iv) that certain Fourth Amendment to Office Lease dated as of September 9, 2019 by and between Landlord and Tenant ("**Fourth Amendment**"), whereby Landlord leases to Tenant and Tenant leases from Landlord those certain premises (collectively, the "**Existing Premises**") located in the following buildings: (i) that certain building located at 6340 Sequence Drive, San Diego, California ("**6340 Building**") containing approximately 66,400 rentable square feet, (ii) that certain building located at 6310 Sequence Drive, San Diego, California ("**6310 Building**") containing approximately 62,415 rentable square feet, (iii) that certain building located at 6290 Sequence Drive, San Diego, California ("**6290 Building**") containing approximately 90,000 rentable square feet and (iv) that certain building located at 6350 Sequence Drive, San Diego, California ("**6350 Building**") containing approximately 132,600 rentable square feet (collectively, the "**Buildings**"), which buildings are located in the Project (as defined in the Lease). The Original Lease, as amended by the First Amendment, the Second Amendment, the Third Amendment and the Fourth Amendment, may be referred to herein as the "**Lease**". Landlord is the successor-in-interest in the Lease to second Landlord, successor-in-interest in the Lease to Original Landlord.

B. Landlord and Tenant desire to enter into this Fifth Amendment confirming the Expansion Commencement Date and other matters under the Lease.

NOW, THEREFORE, Landlord and Tenant agree as follows:

1. The actual Expansion Commencement Date is October 1, 2019.

2. The New Expiration Date is December 31, 2023.

3. Section 4.2 of the Fifth Amendment is deleted in its entirety and the following is substituted therefor:

Period	Annualized Base Rent	Monthly Installment of Base Rent	Approximate Monthly Rental Rate per Rentable Square Foot
*11/01/19 – 01/31/20	$3,286,689.48	$273,890.79	$2.07
02/01/20 – 01/31/21	$3,401,723.61	$283,476.97	$2.14
02/01/21 – 01/31/22	$3,520,783.94	$293,398.66	$2.21
02/01/22 – 02/28/22	$3,421,080.00	$285,090.00	$2.15
03/01/22 – 02/28/23	$3,580,200.00	$298,350.00	$2.25
03/01/23 – 12/31/23	$3,686,810.40	$307,234.20	$2.317

*Landlord and Tenant acknowledge and agree that the prior tenant of the Expansion Space referenced in the Fourth Amendment, Entropic Communications, LLC ("**Entropic**") paid to Landlord the Base Rent for the month of October, 2019 and that Tenant has reimbursed Entropic for such payment.

4. Capitalized terms not defined herein shall have the same meaning as set forth in the Lease.

5. Except as set forth in this Fifth Amendment, all of the terms and provisions of the Lease shall remain unmodified and in full force and effect.

IN WITNESS WHEREOF, this Fifth Amendment has been executed as of the date last set forth below.

"**LANDLORD**":

SEQUENCE TECH. CENTER CA LLC,
a Delaware limited liability company

By: /s/ Ray Rothfelder
Its: Managing Director, Western U.S.

Dated: October 29, 2019

"**TENANT**":

DEXCOM, INC.,
a Delaware corporation

By: /s/ Brice Bobzien
Its: VP, Finance

Dated: October 24, 2019

By: /s/ Jereme Sylvain
Its: VP, Finance

Dated: October 24, 2019

SIXTH AMENDMENT TO OFFICE LEASE

This SIXTH AMENDMENT TO OFFICE LEASE ("**Sixth Amendment**") is made and entered into as of the 25th day of May, 2021, by and between SEQUENCE TECH. CENTER CA LLC, a Delaware limited liability company ("**Landlord**"), and DEXCOM, INC., a Delaware corporation ("**Tenant**").

R E C I T A L S :

A. Landlord's predecessor-in-interest, JOHN HANCOCK LIFE INSURANCE COMPANY (U.S.A.), a wholly owned subsidiary of Manulife Financial Corporation, a Michigan corporation, in turn the predecessor-in-interest to Kilroy Realty, L.P., a Delaware limited partnership ("**Original Landlord**"), and Tenant entered into that certain Office Lease dated March 31, 2006 (the "**Lease**"), as amended by (i) that certain First Amendment to Office Lease dated August 18, 2010 ("**First Amendment**"), (ii) that certain Second Amendment to Office Lease dated October 1, 2014 ("**Second Amendment**"), (iii) that certain Third Amendment to Office Lease dated as of February 7, 2019 by and between Landlord and Tenant ("**Third Amendment**") (iv) that certain Fourth Amendment to Lease dated as of September 9, 2019 by and between Landlord and Tenant ("**Fourth Amendment**"), and (v) that certain Fifth Amendment to Lease dated as of October 28, 2019 by and between Landlord and Tenant ("**Fifth Amendment**"), whereby Landlord leases to Tenant and Tenant leases from Landlord those certain premises (collectively, the "**Premises**") located in the following buildings: (i) that certain office building located at 6340 Sequence Drive, San Diego, California ("**6340 Building**"), (ii) that certain office building located at 6310 Sequence Drive, San Diego, California ("**6310 Building**"), (iii) that certain office building located at 6290 Sequence Drive, San Diego, California ("**6290 Building**") and (iv) that certain office building located at 6350 Sequence Drive, San Diego, California ("**6350 Building**") (collectively, the "**Buildings**"), which buildings are located in the Project (as defined in the Lease). The Original Lease, as amended by the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment and the Fifth Amendment, may be referred to herein as the "**Lease**". Landlord is the successor-in-interest in the Lease to Original Landlord.

B. Tenant desires, as part of its plan to renovate material potions of the interior of the 6350 Building, to perform sprinkler renovation work in the 6350 Building and Landlord has agreed to provide Tenant with an improvement allowance in connection with such work.

C. In connection with the foregoing, Landlord and Tenant desire to amend the Lease as hereinafter provided.

A G R E E M E N T :

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Capitalized Terms**. All capitalized terms when used herein shall have the same meaning as is given such terms in the Lease unless expressly superseded by the terms of this Sixth Amendment.

2. **Sprinkler Renovation**. Subject to the full execution and delivery of this Sixth Amendment by Landlord and Tenant, Tenant shall commence performing the Sprinkler Renovation Work (as defined the Tenant Work Letter attached hereto as **Exhibit "A"**) in the 6350 Building pursuant to the terms and conditions of the Tenant Work Letter attached hereto as **Exhibit "A"**.

3. **No Further Modification**. Except as set forth in this Sixth Amendment, all of the terms and provisions of the Lease shall remain unmodified and in full force and effect.

IN WITNESS WHEREOF, this Sixth Amendment has been executed as of the day and year first above written.

"**LANDLORD**"**:**

SEQUENCE TECH. CENTER CA LLC,
a Delaware limited liability company

By: /s/ Ryan Lewis
Name: Ryan Lewis
Title: Director, Western US
Date: 6/2/2021

By: /s/ Erik T. Gustafson
Name: Erik T. Gustafson
Title: Senior Managing Director
Date: 6/2/2021

"**TENANT**"**:**

DEXCOM, INC.,
a Delaware corporation

By: /s/ Jereme Sylvain
Name: Jereme Sylvain
Its: EVP, Chief Financial Officer

EXHIBIT A

TENANT WORK LETTER

This Tenant Work Letter ("**Tenant Work Letter**") shall set forth the terms and conditions relating to the Sprinkler Renovation Work described below.

SECTION 1

GENERAL

Except for the Improvement Allowance set forth below and as otherwise set forth in the Lease, Landlord shall not be obligated to make or pay for any alterations or improvements to the Buildings or the Project.

SECTION 2

IMPROVEMENT ALLOWANCE AND SPRINKLER RENOVATION WORK

2.1 Improvement Allowance. Tenant shall be entitled to an improvement allowance (the "**Improvement Allowance**") in the amount of up to, but not exceeding, One Million Six Hundred Thirty-Three Thousand Dollars ($1,633,000.00), to help Tenant pay for the costs of the design, permitting and construction of the sprinkler renovation work in the 6350 Building (collectively, the "**Sprinkler Renovation Work**"); provided, however, that Landlord shall have no obligation to disburse all or any portion of the Improvement Allowance to Tenant unless Tenant makes a request for disbursement pursuant to the terms and conditions of Section 2.2 below prior to April 30, 2022. Landlord shall not be obligated to disburse any portion of the Improvement Allowance for disbursement requests beyond April 30, 2022. In no event shall Landlord be obligated to make disbursements pursuant to this Tenant Work Letter in a total amount which exceeds the Improvement Allowance. Tenant shall not be entitled to receive any cash payment or credit against Rent or otherwise for any unused portion of the Improvement Allowance which is not used to pay for the Improvement Allowance Items (as defined below).

2.2 Disbursement of the Improvement Allowance.

2.2.1 Improvement Allowance Items. Except as otherwise set forth in this Tenant Work Letter, the Improvement Allowance shall be disbursed by Landlord only for the following items and costs (collectively, the "**Improvement Allowance Items**"):

2.2.1.1 Payment of (i) the fees of the Architect and the Engineers (as such terms are defined below), and (ii) the fees incurred by, and the cost of documents and materials supplied by, Landlord and Landlord's consultants in connection with the preparation and review of the Construction Drawings (as defined below);

2.2.1.2 The payment of plan check, permit and license fees relating to construction of the Sprinkler Renovation Work;

2.2.1.3 The cost of construction of the Sprinkler Renovation Work, including, without limitation, contractors' fees and general conditions, testing and inspection costs, costs of utilities, trash removal, parking and hoists, and the costs of after-hours freight elevator usage.

2.2.1.4 The cost of any changes to the Construction Drawings or Sprinkler Renovation Work required by applicable laws;

2.2.1.5 Sales and use taxes and Title 24 fees; and

2.2.1.6 All other costs to be expended by Landlord or Tenant in connection with the design, permitting and construction of the Sprinkler Renovation Work.

2.2.2 Disbursement of Improvement Allowance. Subject to Section 2.1 above, during and after the construction of the Sprinkler Renovation Work, Landlord shall make monthly disbursements of the Improvement Allowance for Improvement Allowance Items for the benefit of Tenant and shall authorize the release of monies for the benefit of Tenant as follows:

2.2.2.1 Monthly Disbursements. From time to time during and after the construction of the Sprinkler Renovation Work (but in no event sooner than August 1, 2021 and no more frequently than monthly), Tenant shall deliver to Landlord: (i) a request for payment by Tenant, in a form to be provided by Landlord, showing the schedule, by trade, of percentage of completion of the Sprinkler Renovation Work, detailing the portion of the work completed and the portion not completed, and demonstrating that the relationship between the cost of the work completed and the cost of the work to be completed complies with the terms of the budget included in the Contract (as defined below); (ii) paid invoices from all of Tenant's Agents (as defined below), for labor rendered and materials delivered to the 6350 Building; (iii) executed mechanic's lien releases from all of Tenant's Agents which shall comply with the appropriate provisions, as reasonably determined by Landlord, of California Civil Code Section 8138; and (iv) each of the general disbursement items referenced in Section 2.2.2.2 below, and all other information reasonably requested by Landlord. Following Landlord's receipt of a completed disbursement request submission, Landlord shall deliver a check to Tenant made payable to Tenant in payment of the lesser of (A) the amounts so requested by Tenant, as set forth in this Section 2.2.2.1, above, less a ten percent (10%) retention (the aggregate amount of such retentions to be known as the "**Final Retention**") and (B) the balance of any remaining available portion of the Improvement Allowance (not including the Final Retention), provided that Landlord does not reasonably dispute any request for payment based on non-compliance of any work with the Approved Working Drawings (as defined below) or due to any substandard work. Landlord's payment of such amounts shall not be deemed Landlord's approval or acceptance of the work furnished or materials supplied as set forth in Tenant's payment request.

2.2.2.2 Final Retention. Subject to the provisions of this Tenant Work Letter, a check for the Final Retention payable to Tenant shall be delivered by Landlord to Tenant following the completion of construction of the Sprinkler Renovation Work, provided that (i) Landlord has determined that no substandard work exists which adversely affects the mechanical, electrical, plumbing, HVAC, life-safety or other systems of the 6350 Building, the curtain wall of the 6350 Building, or the structure or exterior appearance of the 6350 Building; and (ii) Tenant has delivered to Landlord: (A) properly executed and final unconditional mechanics lien releases in compliance with applicable California law; (B) if applicable, permit cards signed off by the City of San Diego (the "**City**") with respect to the Sprinkler Renovation Work; (C) as-built plans and City-permitted plans for the Sprinkler Renovation Work; (D) operation manuals and warranties for equipment included within the Sprinkler Renovation Work, if applicable; (E) copy of the contract with the Contractor (if not previously delivered to Landlord); (F) copy of the Contractor's certificate of insurance, including Additional Insured endorsement naming Landlord (and any other party requested by Landlord) as additional insureds; and (G) the Contractor's schedule of values, showing total contract value.

2.2.2.3 Other Terms. Landlord shall only be obligated to make disbursements from the Improvement Allowance to the extent costs are incurred by Tenant for Improvement Allowance Items.

SECTION 3

CONSTRUCTION DRAWINGS

3.1 Selection of Architect/Construction Drawings. Tenant shall retain the architect/space planner (the "**Architect**") and engineering consultants ("**Engineers**") approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed, to prepare the Construction Drawings. The plans and drawings to be prepared by Architect and the Engineers hereunder shall be known collectively as the "**Construction Drawings.**" All Construction Drawings shall comply with the drawing format and specifications reasonably determined by Landlord, and shall be subject to Landlord's reasonable approval. Tenant and Architect shall verify, in the field, the dimensions and conditions as shown on the relevant portions of the base building plans, and Tenant and Architect shall be solely responsible for the same, and Landlord shall have no responsibility in connection therewith. Landlord's review of the Construction Drawings as set forth in this Section 3, shall be for its sole purpose and shall not imply Landlord's review of the same, or obligate Landlord to review the same, for quality, design, code compliance or other like matters. Accordingly, notwithstanding that any Construction Drawings are reviewed by Landlord or its space planner, architect, engineers and consultants, and notwithstanding any advice or assistance which may be rendered to Tenant by Landlord or Landlord's space planner, architect, engineers, and consultants, Landlord shall have no liability whatsoever in connection therewith and shall not be responsible for any omissions or errors contained in the Construction Drawings.

3.2 Final Working Drawings. As soon as reasonably possible after the date hereof, Tenant shall cause the Architect and the Engineers to complete the architectural and engineering drawings for the Sprinkler Renovation Work, and cause the Architect to compile a fully coordinated set of architectural, structural, mechanical, electrical and plumbing working drawings in a form which is complete to obtain all applicable permits for the Sprinkler Renovation Work (collectively, the "**Final Working Drawings**"), and shall submit the same to Landlord for Landlord's approval. Tenant shall supply Landlord with four (4) copies signed by Tenant of such Final Working Drawings. Landlord shall advise Tenant within five (5) business days after Landlord's receipt of the Final Working Drawings for the Sprinkler Renovation Work if the same is unsatisfactory or incomplete in any respect. If Tenant is so advised, Tenant shall promptly (i) revise the Final Working Drawings in accordance with such review and any disapproval of Landlord in connection therewith, and (ii) deliver such revised Final Working Drawings to Landlord.

3.4 Approved Working Drawings. The Final Working Drawings shall be approved by Landlord (the "**Approved Working Drawings**") prior to the commencement of the Sprinkler Renovation Work. After approval by Landlord of the Final Working Drawings, Tenant shall promptly submit the same to the appropriate governmental authorities for all applicable building permits. Tenant hereby agrees that neither Landlord nor Landlord's consultants shall be responsible for obtaining any building permit and that obtaining the same shall be Tenant's responsibility; provided, however, that Landlord shall cooperate with Tenant in executing permit applications and performing other ministerial acts reasonably necessary to enable Tenant to obtain any such permit. No material changes, modifications or alterations in the Approved Working Drawings may be made without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed.

3.5 Electronic Approvals. Notwithstanding any provision to the contrary contained in the Lease or this Tenant Work Letter Agreement, Landlord may, in Landlord's sole and absolute discretion, transmit or otherwise deliver any of the approvals from Landlord required under this Tenant Work Letter via electronic mail to Tenant's representative identified in Section 5.1 of this Tenant Work Letter, or by any of the other means identified in Section 29.18 of the Lease.

SECTION 4

CONSTRUCTION OF THE SPRINKLER RENOVATION WORK

4.1 Tenant's Selection of Contractor and Tenant's Agents.

4.1.1 The Contractor. Tenant shall select a general contractor to construct the Sprinkler Renovation Work (the "**Contractor**"), which Contractor shall be subject to Landlord's reasonable approval.

4.1.2 Tenant's Agents. All subcontractors, laborers, materialmen, and suppliers used by Tenant (such subcontractors, laborers, materialmen, and suppliers, and the Contractor to be known collectively as "**Tenant's Agents**") must be approved in writing by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed.

4.2 Construction of Sprinkler Renovation Work by Tenant's Agents.

4.2.1 Construction Contract; Cost Budget. Prior to Tenant's execution of the construction contract and general conditions with Contractor (the "**Contract**"), Tenant shall submit the Contract to Landlord for its approval, which approval shall not be unreasonably withheld, conditioned or delayed. Prior to the commencement of the construction of the Sprinkler Renovation Work, Tenant shall provide Landlord with a written detailed cost breakdown (the "**Final Costs Statement**"), by trade, of the final costs to be incurred, or which have been incurred, as set forth more particularly in Section 2.2.1.1 through 2.2.1.6 above, in connection with the design, permitting and construction of the Sprinkler Renovation Work to be performed by or at the direction of Tenant or the Contractor, which costs form a basis for the amount of the Contract, if any (the "**Final Costs**").

4.2.2 Tenant's Agents.

4.2.2.1 Landlord's General Conditions for Tenant's Agents and Sprinkler Renovation Work. Tenant's and Tenant's Agents' construction of the Sprinkler Renovation Work shall comply with the following: (i) the Sprinkler Renovation Work shall be constructed in strict accordance with the Approved Working Drawings; (ii) Tenant's Agents shall submit schedules of all work relating to the Sprinkler Renovation Work to Contractor and Contractor shall, within five (5) business days after Tenant's receipt thereof, inform Tenant's Agents of any changes which are necessary thereto, and Tenant's Agents shall adhere to such corrected schedule; and (iii) Tenant shall abide by all rules made by Landlord's Building contractor or Landlord's Building manager with respect to the use of freight, loading dock and service elevators, storage of materials, and any other matter in connection with this Tenant Work Letter, including, without limitation, the construction of the Sprinkler Renovation Work.

4.2.2.2 Indemnity. Tenant's indemnity of Landlord as set forth in the Lease shall also apply with respect to any and all costs, losses, damages, injuries and liabilities related in any way to any act or omission of Tenant or Tenant's Agents, or anyone directly or indirectly employed by any of them, or in connection with Tenant's non-payment of any amount arising out of the Sprinkler Renovation Work and/or Tenant's disapproval of all or any portion of any request for payment. Such indemnity by Tenant, as set forth in the Lease, shall also apply with respect to any and all costs, losses, damages, injuries and liabilities related in any way to Landlord's performance of any ministerial acts reasonably necessary (i) to permit Tenant to complete the Sprinkler Renovation Work, and (ii) to enable Tenant to obtain any building permit for the 6350 Building required for the Sprinkler Renovation Work.

4.2.2.3 Insurance Requirements.

4.2.2.3.1 General Coverages. All of Tenant's Agents shall carry worker's compensation insurance covering all of their respective employees, and shall also carry public liability insurance, including property damage, all with limits, in form and with companies as are required to be carried by Tenant as set forth in the Lease.

4.2.2.3.2 Special Coverages. Tenant shall carry "**Builder's All Risk**" insurance in an amount equal to the full replacement cost of the improvements being

constructed by Tenant for the Sprinkler Renovation Work, and such other insurance as Landlord may reasonably require; provided, however, to the extent such other insurance is not available on a commercially reasonable basis, then Tenant shall not be required to carry such insurance. Such insurance shall be in amounts and shall include such extended coverage endorsements as may be reasonably required by Landlord, and in form and with companies as are required to be carried by Tenant as set forth in the Lease.

4.2.2.3.3 General Terms. Certificates for all insurance carried pursuant to this Section 4.2.2.4 shall be delivered to Landlord before the commencement of construction of the Sprinkler Renovation Work and before the Contractor's equipment is moved onto the site. All such policies of insurance must contain a provision that the company writing said policy will give Landlord thirty (30) days prior written notice of any cancellation or lapse of the effective date or any reduction in the amounts of such insurance. If the Sprinkler Renovation Work are damaged by any cause during the course of the construction thereof, Tenant shall immediately repair the same at Tenant's sole cost and expense. All policies carried under this Section 4.2.2.4 shall insure Landlord and Tenant, as their interests may appear, as well as Contractor and Tenant's Agents, and shall name as additional insureds Landlord's property manager, Landlord's asset manager, and all mortgagees and ground lessors of the 6350 Building and any other parties, each to the extent specified by Landlord to Tenant in writing. All insurance, except Workers' Compensation, maintained by Tenant's Agents shall preclude subrogation claims by the insurer against anyone insured thereunder. Such insurance shall provide that it is primary insurance as respects the owner and that any other insurance maintained by owner is excess and noncontributing with the insurance required hereunder. The requirements for the foregoing insurance shall not derogate from the provisions for indemnification of Landlord by Tenant under Section 4.2.2.3 of this Tenant Work Letter.

4.2.3 Governmental Compliance. The Sprinkler Renovation Work shall comply in all material respects with the following: (i) the Code and other state, federal, city or quasi-governmental laws, codes, ordinances and regulations, as each may apply according to the rulings of the controlling public official, agent or other person; (ii) applicable standards of the American Insurance Association (formerly, the National Board of Fire Underwriters) and the National Electrical Code; and (iii) building material manufacturer's specifications.

4.2.4 Inspection by Landlord. Landlord shall have the right to inspect the Sprinkler Renovation Work at reasonable times, provided however, that Landlord's failure to inspect the Sprinkler Renovation Work shall in no event constitute a waiver of any of Landlord's rights hereunder nor shall Landlord's inspection of the Sprinkler Renovation Work constitute Landlord's approval of the same. Should Landlord disapprove any portion of the Sprinkler Renovation Work, Landlord shall notify Tenant in writing of such disapproval and shall specify the items disapproved. Any defects or deviations in, and/or disapproval by Landlord of, the Sprinkler Renovation Work shall be rectified by Tenant at no expense to Landlord, provided however, that if Landlord determines that a defect or deviation exists or disapproves of any matter in connection with any portion of the Sprinkler Renovation Work and such defect, deviation or matter might adversely affect the mechanical, electrical, plumbing, HVAC or life-safety systems of the 6350 Building, or the structure or exterior appearance of the 6350 Building, Landlord may, take such action as Landlord deems necessary, at Tenant's expense and without incurring any liability on Landlord's part, to correct any such defect, deviation and/or matter, including, without limitation, causing the cessation of performance of the construction of the Sprinkler Renovation Work until such time as the defect, deviation and/or matter is corrected to Landlord's satisfaction.

4.2.5 Meetings. Subsequent to the execution of the Sixth Amendment, Tenant shall hold regularly-scheduled meetings at a reasonable time with the Architect and the Contractor regarding the progress of the preparation of Construction Drawings and the construction of the Sprinkler Renovation Work, which meetings shall be held at a location designated by Tenant. Landlord and/or its agents shall receive prior notice of, and shall have the

right to attend, all such meetings, and, upon Landlord's request, certain of Tenant's Agents shall attend such meetings. In addition, minutes shall be taken at all such meetings, a copy of which minutes shall be promptly delivered to Landlord. One such meeting each month shall include the review of Contractor's current request for payment.

4.3 Notice of Completion; Copy of "As Built" Plans. Within ten (10) business days after completion of construction of the Sprinkler Renovation Work, Tenant shall cause a Notice of Completion to be recorded in the office of the Recorder of the County in which the 6350 Building is located in accordance with Section 3093 of the Civil Code of the State of California or any successor statute, and shall furnish a copy thereof to Landlord upon such recordation. If Tenant fails to do so, Landlord may execute and file the same on behalf of Tenant as Tenant's agent for such purpose, at Tenant's sole cost and expense. At the conclusion of construction, (i) Tenant shall cause the Architect and Contractor (A) to update the Approved Working Drawings as necessary to reflect all changes made to the Approved Working Drawings during the course of construction, (B) to certify to the best of their knowledge that the "**record-set**" of as-built drawings are true and correct, which certification shall survive the expiration or termination of the Lease, (C) to deliver to Landlord two (2) sets of sepias of such as-built drawings within ninety (90) days following completion of construction of the Sprinkler Renovation Work, and (D) to deliver to Landlord a computer disk containing the Approved Working Drawings in AutoCAD format, (ii) Tenant shall deliver to Landlord a copy of all warranties, guaranties, and operating manuals and information relating to the Sprinkler Renovation Work in the 6350 Building, and (iii) Tenant shall assign to Landlord all warranties and guaranties pertaining to the Sprinkler Renovation Work.

4.4 Coordination by Tenant's Agents with Landlord. Upon Tenant's delivery of the Contract to Landlord under Section 4.2.1 of this Tenant Work Letter, Tenant shall furnish Landlord with a schedule setting forth the projected date of the completion of the Sprinkler Renovation Work and showing the critical time deadlines for each phase, item or trade relating to the construction of the Sprinkler Renovation Work.

SECTION 5

MISCELLANEOUS

5.1 Tenant's Representative. Tenant has designated Jon Haigis (858) 281-7013 and jon.haigis@dexcom.com as its sole representative with respect to the matters set forth in this Tenant Work Letter, who shall have full authority and responsibility to act on behalf of the Tenant as required in this Tenant Work Letter.

5.2 Landlord's Representative. Landlord has designated Holly Jump at (858) 292-1667 and holly_jump@jhancock.com as its sole representative with respect to the matters set forth in this Tenant Work Letter, who, until further notice to Tenant, shall have full authority and responsibility to act on behalf of the Landlord as required in this Tenant Work Letter.

5.3 Time of the Essence in This Tenant Work Letter. Unless otherwise indicated, all references herein to a "**number of days**" shall mean and refer to calendar days. If any item requiring approval is timely disapproved by Landlord, the procedure for preparation of the document and approval thereof shall be repeated until the document is approved by Landlord.

5.4 Tenant's Lease Default. Notwithstanding any provision to the contrary contained in the Lease, if an event of default by Tenant of this Tenant Work Letter or the Lease has occurred at any time on or before the completion of the Sprinkler Renovation Work, then (i) in addition to all other rights and remedies granted to Landlord pursuant to the Lease, at law and/or in equity, Landlord shall have the right to withhold payment of all or any portion of the Improvement Allowance and/or Landlord may cause Contractor to cease the construction of the Sprinkler Renovation Work, and (ii) all other obligations of Landlord under the terms of this

Tenant Work Letter shall be postponed until such time as such default is cured pursuant to the terms of the Lease.

TENANT ESTOPPEL CERTIFICATE

June 8, 2021

ARE-SD REGION NO. 76, LLC ("Buyer")
c/o Alexandria Real Estate Equities, Inc.
26 North Euclid Avenue
Pasadena, California 91101

Re: Lease dated March 31, 2006 (together with all amendments, modifications, supplements, guarantees, and restatements thereof set forth in items 1 and 2 of Schedule A attached hereto, the "Lease") executed between Kilroy Realty, L.P., a Delaware limited partnership, predecessor in interest to Sequence Tech. Center CA LLC, a Delaware limited liability company ("Landlord"), and Dexcom, Inc., a Delaware corporation ("Tenant"), for those premises comprised of 90,000 rentable square feet and located at 6290 Sequence Drive, 62,415 rentable square feet and located at 6310 Sequence Drive, 66,400 rentable square feet and located at 6340 Sequence Drive, and 132,600 rentable square feet and located at 6350 Sequence Drive located in San Diego, California (the "Premises")

To whom it may concern:

The undersigned Tenant understands that you or your assigns intend to acquire that property located at 6290, 6310, 6340 and 6350 Sequence Drive, San Diego, California 92121 (the "Property") from Landlord. The undersigned Tenant does hereby certify to you as follows:

A. The Lease consists of the documents identified in items 1 and 2 on Schedule A attached hereto ("Schedule A"). The Lease represents the entire agreement between the parties with respect to the Property. Attached hereto as Exhibit A is a true, correct and complete copy of the Lease.

B. The Lease is in full force and effect and has not been modified, supplemented, amended, subleased or assigned except as indicated in Item 2 on Schedule A.

C. To Tenant's knowledge, there are no defaults under the Lease by Landlord, including, without limitation, defaults relating to the design, construction, condition and tenant uses of the Property. Tenant knows of no event or condition which, with the passage of time, the giving of notice, or both, would constitute a default by Landlord under the Lease. To Tenant's knowledge, Tenant is not in default under the Lease and, to Tenant's knowledge, no events or conditions exist which, with the passage of time or giving of notice or both, would constitute a default by Tenant under the Lease.

D. As of the date hereof, Tenant does not claim any offsets or credits against rents payable under the Lease.

E. Tenant has not paid a security or other deposit with respect to the Lease, except as shown in Item 3 on Schedule A.

F. Tenant has fully paid rent on account of the month of June 2021; the current base rent under the Lease is as shown in Item 4 on Schedule A. The current monthly payment of operating expenses and real estate taxes is shown in Item 4 on Schedule A. Tenant's percentage share for operating expenses and real estate taxes is 100%.

G. Tenant has not paid any rentals in advance except for the current month of June 2021.

H. The term of the Lease has commenced and will terminate on the dates indicated in Item 5 on Schedule A. Tenant does not have any right or option to renew or extend the term of the Lease, except as indicated in Item 5 of Schedule A.

I. Except as shown in Item 6 on Schedule A, Tenant has no right of first refusal, right of first offer, or option to purchase the Property or any part thereof.

J. There are no unexpired free or reduced rent or abated rents periods or other rental concessions under the Lease except as set forth on Item 7 of Schedule A.

K. The improvements and space required to be furnished according to the Lease (if any) have been duly delivered by the Landlord and accepted by Tenant. Any payments by Landlord to Tenant for tenant improvements which are required under the Lease (whether due or to come due) have been made, except as may be indicated on Item 8 of Schedule A. Tenant has accepted the Premises and is in occupancy.

L. Tenant has not filed on its behalf, nor to Tenant's knowledge, has any party initiated against Tenant, proceedings for relief under bankruptcy, insolvency, or other proceedings.

M. Except as shown in Item 9 of Schedule A, Tenant has no right of first refusal or right of first offer to lease additional space at the Property.

N. Except as set forth in Item 2 on Schedule A, Tenant has not transferred, assigned, or sublet any portion of the Premises nor entered into any license or concession agreement with respect thereto.

O. The address for notices to be sent to Tenant under the Lease is indicated in Item 10 of Schedule A.

P. Tenant has not exercised any of its rights under Section 8.3 (captioned "Additional Parking") of the Second Amendment to Office Lease, and such rights have lapsed and are of no further force or effect.

Tenant acknowledges that the undersigned individual signing this Estoppel Certificate on behalf of Tenant is duly authorized to execute and deliver it on behalf of Tenant. Tenant further acknowledges that this Estoppel Certificate may be relied upon by Buyer (and any assignee of Buyer's right to purchase the above-described Property), any lender which makes a loan to Buyer, and such lender's successors and assigns. This Estoppel Certificate shall be binding upon Tenant and its permitted successors and assigns.

TENANT:

DEXCOM, INC.,
a Delaware corporation

By: /s/ Jereme Sylvain
Name: Jereme Sylvain
Title: EVP, Chief Financial Officer

SCHEDULE A

1. Lease:

   Landlord: Kilroy Realty, L.P., a Delaware limited partnership, predecessor in interest to Sequence Tech. Center CA LLC, a Delaware limited liability company
   Tenant: Dexcom, Inc., a Delaware corporation
   Premises Entire buildings located at 6290, 6310, 6340 and 6350 Sequence Drive, San Diego, California, consisting of 351,415 rentable square feet.
   Date: March 31, 2006

2. Modifications, Amendments and/or Assignments

   (a) Date: August 18, 2010 (First Amendment to Office Lease)
   (b) Date: July 10, 2012 (License Agreement (re: Mobile Food Trucks))
   (c) Date: October 1, 2014 (Second Amendment to Office Lease)
   (d) Date: March 10, 2015 (Letter re: Notice of Early Business Operations 6290 Must-Take Premises)
   (e) Date: August 3, 2017 (Letter re: DexCom Amenities)
   (f) Date: February 7, 2019 (Third Amendment to Office Lease)
   (f) Date: September 9, 2019 (Fourth Amendment to Office Lease)
   (g) Date: October 24, 2019 (Fifth Amendment to Lease)
   (h) Date: October 13, 2020 (Letter re: New Fire System)
   (i) Date: May 25, 2021 (Sixth Amendment to Office Lease)

3. Security Deposit
   (currently held by Landlord) $89,640.00

   Letter of Credit
   (currently held by Landlord) $664,000.00

4. Monthly Base Rent for current term of Lease

   6290 Sequence Drive

   $196,280.76 with future escalations as follows:
   $202,500.00 commencing 03/01/2022
   $208,530.00 commencing 03/01/2023

   6310 Sequence Drive

   $127,679.66 with future escalations as follows:
   $131,829.25 commencing 12/01/2022
   $140,433.75 commencing 03/01/2022
   $144,615.55 commencing 03/01/2023

   6340 Sequence Drive

   $135,831.60 with future escalations as follows:
   $140,246.13 commencing 12/01/2021
   $149,400.00 commencing 03/01/2022
   $153,848.80 commencing 03/01/2023

   6350 Sequence Drive

   $293,398.66 with future escalation as follows:
   $285,090.00 commencing 02/01/22

$298,350.00 commencing 03/01/22
$307,234.20 commencing 03/01/23

Monthly Operating Expense, Real Estate Tax and Insurance

6290 Sequence Drive	$54,700.00
6310 Sequence Drive	$38,034.00
6340 Sequence Drive	$42,364.00
6350 Sequence Drive	$87,192.00

5. Commencement Date: May 1, 2006
   Commencement Date (6310 Sequence Drive): September 15, 2010
   Commencement Date (6290 Sequence Drive): February 13, 2015
   Expansion Commencement Date (6350 Sequence Drive): October 1, 2019
   Termination Date: December 31, 2023
   Options to Extend: Two (2) separate options to extend the Lease Term for a period of not less than three (3) years and not more than five (5) years each, as more particularly set forth in the Lease.

6. Right of First Refusal/Purchase Option: None.

7. Unexpired Free Rent/ Rent Abatement: None.

8. Unpaid Tenant Improvement Allowance:

   (a) An aggregate amount of $58,397 as Landlord's contribution towards fire alarm control panel upgrades in each of the 6290, 6310, 6340 and 6350 Buildings, as more particularly set forth in the October 13, 2020 Letter re: New Fire System; and

   (b) An amount up to $1,633,000 for the "Sprinkler Renovation Work" for the 6350 Building, pursuant to the Sixth Amendment to Office Lease dated May 25, 2021

9. Right of First Refusal to Lease: Tenant has an on-going right of first refusal to lease space in the building located at 6260 Sequence Drive, 10390 Pacific Center Court, 10394 Pacific Center Court, 10398 Pacific Center Court, 10421 Pacific Center Court, 10445 Pacific Center Court and 10455 Pacific Center Court, as more particularly set forth in the Lease

10. Tenant's Notice Address:

    DexCom, Inc.
    6340 Sequence Drive
    San Diego, California 92121
    Attention: Chief Executive Officer

    with copies to:

    DexCom, Inc.
    6340 Sequence Drive
    San Diego, California 92121
    Attention: Legal Department

    and

Stuart Kane LLP
620 Newport Center Drive, Suite 200
Newport Beach, California 92660
Attention: Josh C. Grushkin

Exhibit A

Lease

[Attached]

SEVENTH AMENDMENT TO OFFICE LEASE

This SEVENTH AMENDMENT TO OFFICE LEASE ("**Seventh Amendment**") is made and entered into as of the 23rd day of December, 2022, by and between **ARE-SD REGION NO. 76, LLC**, a Delaware limited liability company ("**Landlord**"), and **DEXCOM, INC.**, a Delaware corporation ("**Tenant**").

RECITALS:

A. Landlord and Tenant are now parties to that certain Office Lease dated March 31, 2006 (the "**Original Lease**"), as amended by (i) that certain First Amendment to Office Lease dated August 18, 2010, (ii) that certain Second Amendment to Office Lease dated October 1, 2014 (the "**Second Amendment**"), (iii) that certain Third Amendment to Office Lease dated as of February 7, 2019 (the "**Third Amendment**"), (iv) that certain Fourth Amendment to Lease dated as of September 9, 2019 (the "**Fourth Amendment**"), and (v) that certain Fifth Amendment to Lease dated as of October 29, 2019 (the "**Fifth Amendment**"), and (vi) that certain Sixth Amendment to Office Lease dated as of May 25, 2021 (the "**Sixth Amendment**") (as amended, the "**Lease**"), whereby Landlord leases to Tenant and Tenant leases from Landlord those certain premises (collectively, the "**Premises**") located in the following buildings: (i) that certain office building located at 6340 Sequence Drive, San Diego, California, containing approximately 66,400 rentable square feet (the "**6340 Building**"), (ii) that certain office building located at 6310 Sequence Drive, San Diego, California, containing approximately 62,415 rentable square feet (the "**6310 Building**"), (iii) that certain office building located at 6290 Sequence Drive, San Diego, California, containing approximately 90,000 rentable square feet (the "**6290 Building**") and (iv) that certain office building located at 6350 Sequence Drive, San Diego, California, containing approximately 132,600 rentable square feet (the "**6350 Building**"), which buildings are located in the Project (as defined in the Lease). The 6340 Building, the 6310 Building, the 6290 Building and the 6350 Building may be collectively referred to herein as the "**Buildings**". Capitalized terms used herein without definition shall have the meanings defined for such terms in the Lease.

B. The term of the Lease is scheduled to expire on December 31, 2023.

C. Landlord and Tenant desire, subject to the terms and conditions set forth below, to amend the Lease to, among other things, extend the term of the Lease for a period of 60 months.

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein by this reference, the mutual promises and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. **Term**.

a. **Extension of Existing Term**. The term of the Lease is hereby extended for a period of 60 months (the "**Extension Term**"), which Extension Term shall commence on January 1, 2024 (the "**Extension Term Commencement Date**"), and expire on December 31, 2028. Tenant's occupancy of the Premises during the Extension Term shall be on an "as-is" basis and Landlord shall have no obligation to provide any tenant improvement allowance or to make any alterations to the Premises.

b. **Remaining Option Term**. Landlord and Tenant acknowledge and agree that the first Option Term provided for in Section 3.4 of the Second Amendment (as amended by Section 3.2 of the Fourth Amendment) no longer applies and that Tenant has only one remaining option to extend the term of the Lease for an additional Option Term pursuant to Section 3.4 of the Second Amendment (as amended by Section 3.2 of the Fourth Amendment). For the avoidance of doubt, if Tenant exercises its Partial Termination Right pursuant to Section 5 below, the terms of this Section 1(b) shall not apply with respect to the Partial Early Termination Premises.

2. **Base Rent**. Tenant shall continue to pay Base Rent as provided in the Fifth Amendment through December 31, 2023. Commencing on the Extension Term Commencement Date, Tenant shall pay Base Rent pursuant to the following schedule:

Period	Annualized Base Rent	Monthly Installment of Base Rent	Monthly Base Rent per RSF
01/01/24 -12/31/24	$10,088,291.86	$840,690.99	$2.39
01/01/25 -12/31/25	$10,416,161.34	$868,013.45	$2.47
01/01/26 -12/31/26	$10,754,686.59	$896,223.88	$2.55
01/01/27 -12/31/27	$11,104,213.90	$925,351.16	$2.63
01/01/28 -12/31/28	$11,465,100.85	$955,425.07	$2.72

3. **Direct Expenses**. Tenant shall continue to pay Tenant's Share of Direct Expenses and all other amounts due under the Lease through the Extension Term.

4. **Security Deposit/Letter of Credit**. Landlord shall continue to hold the Security Deposit pursuant to the terms and conditions of Article 21 of the Original Lease and the L-C in accordance with the terms and provisions of Article 22 of the Original Lease through the Extension Term, as many be extended.

5. **Partial Early Termination**. Notwithstanding anything to the contrary contained in this Seventh Amendment or otherwise in the Lease, Tenant shall have the option during the Extension Term to terminate the Lease (the "**Partial Termination Right**") with respect to both the 6290 Building and the 6310 Building (collectively, the "**Partial Early Termination Premises**") effective as of December 31, 2026 (the "**Partial Early Termination Date**"), so long as (a) Tenant delivers to Landlord a written notice ("**Termination Notice**"), of its election to exercise its Partial Termination Right on or before December 31, 2025, and (b) concurrent with Tenant's delivery of a Termination Notice to Landlord, Tenant delivers a one-time termination payment to Landlord in the amount of $1,202,554.50 (the "**Termination Payment**"). The Partial Termination Right may only be exercised by Tenant with respect to the entire Partial Early Termination Premises. If Tenant timely and properly exercises the Partial Termination Right by delivery of a Termination Notice and the Termination Payment to Landlord, then Tenant shall vacate the Partial Early Termination Premises and deliver possession thereof to Landlord in the condition required by the terms of the Lease on or before the Partial Early Termination Date, and Tenant shall have no further obligations under the Lease with respect to the Partial Early Termination Premises after the Partial Early Termination Date for the Partial Early Termination Premises except for those obligations accruing prior to the Partial Early Termination Date and those which, pursuant to the terms of the Lease, survive the expiration or early termination of the Lease. Further, if Tenant timely and properly exercises the Partial Termination Right by delivery of a Termination Notice and the Termination Payment to Landlord, Tenant shall, if requested by Landlord, enter into an amendment to the Lease to reflect the early termination of the Lease with respect to the Partial Early Termination Premises including, without limitation, the reduction of Tenant's parking rights in connection with the early termination of the Partial Early Termination Premises.

6. **Insurance**. In accordance with Section 10.4 of the Original Lease, Tenant shall name Landlord and ARE-SD Region No. 76, LLC; ARE-SD Region No. 76 Holding, LLC, and National Safe Harbor Exchanges, Inc., as additional insureds. Tenant shall furnish certificates evidencing the foregoing to Landlord concurrently with Tenant's delivery of an executed copy of this Seventh Amendment to Landlord.

7. **First Right to Negotiate**. During the term of the Lease, each time Tenant is considering leasing additional or alternative space in the San Diego area, prior to Tenant going out to the market to seek such additional or alternative space, Tenant shall deliver written notice to Landlord, which notice shall include a description of the additional or alternative space desired by Tenant. Landlord or an affiliate of Landlord shall have the opportunity, if it so elects and without obligation to do so, to offer for lease to Tenant, one or more alternative premises at the project or another project owned by an affiliate of Landlord which reasonably satisfies the additional or alternative space being sought by Tenant.

8. **California Accessibility Disclosure**. Section 3 of the Third Amendment is hereby incorporated by reference with respect to all of the Buildings.

9. **Right of First Refusal**. Section 2.4 of the Second Amendment is hereby deleted in its entirety and is of no further force or effect and Tenant shall have no further rights of first refusal under the Lease.

10. **OFAC**. Tenant is currently (a) in compliance with and shall at all times during the Term of the Lease remain in compliance with the regulations of the Office of Foreign Assets Control ("**OFAC**") of the U.S. Department of Treasury and any statute, executive order, or regulation relating thereto (collectively, the "**OFAC Rules**"), (b) not listed on, and shall not during the term of the Lease be listed on, the Specially Designated Nationals and Blocked Persons List, Foreign Sanctions Evaders List or the Sectoral Sanctions Identifications List, which are all maintained by OFAC and/or on any other similar list maintained by OFAC or other governmental authority pursuant to any authorizing statute, executive order, or regulation, and (c) not a person or entity with whom a U.S. person is prohibited from conducting business under the OFAC Rules.

11. **Broker**. Landlord and Tenant each represents and warrants that it has not dealt with any broker, agent or other person (collectively, "**Broker**") in connection with the transaction reflected in this Seventh Amendment and that no Broker brought about this transaction, other than Savills, Cushman & Wakefield and CBRE. Landlord and Tenant each hereby agree to indemnify and hold the other harmless from and against any claims by any Broker, other than the brokers referenced in this Section 6, claiming a commission or other form of compensation by virtue of having dealt with Tenant or Landlord, as applicable, with regard to this Seventh Amendment. Landlord shall be responsible for all commissions due to Savills, Cushman & Wakefield and CBRE arising out of this Seventh Amendment in accordance with the terms of separate written agreements between Landlord, on the one hand, and Savills, Cushman & Wakefield and CBRE, on the other hand.

12. **Miscellaneous**.

c. This Seventh Amendment is the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and discussions in connection therewith. This Seventh Amendment may be amended only by an agreement in writing, signed by the parties hereto.

d. This Seventh Amendment is binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

e. This Seventh Amendment may be executed in 2 or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature process complying with the U.S. federal ESIGN Act of 2000) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes. Electronic signatures shall be deemed original signatures for purposes of this Seventh Amendment and all matters related thereto, with such electronic signatures having the same legal effect as original signatures.

f. Except as amended and/or modified by this Seventh Amendment, the Lease is hereby ratified and confirmed and all other terms of the Lease shall remain in full force and effect, unaltered and unchanged by this Seventh Amendment. In the event of any conflict between the provisions of this Seventh Amendment and the provisions of the Lease, the provisions of this Seventh Amendment shall prevail. Whether or not specifically amended by this Seventh Amendment, all of the terms and provisions of the Lease are hereby amended to the extent necessary to give effect to the purpose and intent of this Seventh Amendment.

[Signatures are on the next page]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Seventh Amendment as of the day and year first above written.

LANDLORD:

ARE-SD REGION NO. 76, LLC,
a Delaware limited liability company

By: ARE-San Francisco No. 43, LLC,
a Delaware limited liability company,
managing member

By: ALEXANDRIA REAL ESTATE EQUITIES, L.P.,
a Delaware limited partnership,
managing member

By: ARE-QRS CORP.,
a Maryland corporation,
general partner

By: /s/ Gary Dean
Its: Executive Vice President – Real Estate Legal

TENANT:

DEXCOM, INC.,
a Delaware corporation

By: /s/ Jereme Sylvain
Name: Jereme Sylvain
Its: EVP, Chief Financial Officer

x I hereby certify that the signature, name,
and title above are my signature, name and title

Exhibit 10.19

DEXCOM, INC.

2015 EMPLOYEE STOCK PURCHASE PLAN

Effective On May 28, 2015, As Amended On December 13, 2019

1. PURPOSE. The purpose of this Plan is to provide eligible employees of the Company and the Participating Corporations with a means of acquiring an equity interest in the Company through payroll deductions, to enhance such employees' sense of participation in the affairs of the Company. Capitalized terms not defined elsewhere in the text are defined in Section 28.

2. ESTABLISHMENT OF PLAN. The Company proposes to grant rights to purchase shares of Common Stock to eligible employees of the Company and its Participating Corporations pursuant to this Plan. The Company intends this Plan to qualify as an "employee stock purchase plan" under Section 423 of the Code (including any amendments to or replacements of such Section), and this Plan shall be so construed. Any term not expressly defined in this Plan but defined for purposes of Section 423 of the Code shall have the same definition herein. In addition, with regard to offers of options to purchase shares of the Common Stock under the Plan to employees working for a Subsidiary or an Affiliate outside the United States, the Board or Committee (as defined herein) may offer a subplan or an option that is not intended to meet the Code Section 423 requirements, provided, if necessary under Code Section 423, that the other terms and conditions of the Plan are met.

Subject to Section 14, a total of 1,500,000 Shares are reserved for issuance under this Plan. The number of shares initially reserved for issuance under this Plan and the maximum number of shares that may be issued under this Plan shall be subject to adjustments effected in accordance with Section 14.

3. ADMINISTRATION. The Plan will be administered by the Committee. Subject to the provisions of this Plan and the limitations of Section 423 of the Code or any successor provision in the Code, all questions of interpretation or application of this Plan shall be determined by the Committee and its decisions shall be final and binding upon all Participants. The Committee will have full and exclusive discretionary authority to construe, interpret and apply the terms of the Plan, to determine eligibility, to designate the Participating Corporations, to determine when to grant options that are not intended to meet the Code Section 423 requirements and to decide upon any and all claims filed under the Plan. Every finding, decision and determination made by the Committee will, to the full extent permitted by law, be final and binding upon all parties. Notwithstanding any provision to the contrary in this Plan, the Committee may adopt rules, sub-plans, and/or procedures relating to the operation and administration of the Plan designed to comply with local laws, regulations or customs or to achieve tax, securities law or other objectives for eligible employees outside of the United States. The Committee will have the authority to determine the Fair Market Value of the Common Stock (which determination shall be final, binding and conclusive for all purposes) in accordance with Section 8 below and to interpret Section 8 of the Plan in connection with circumstances that impact the Fair Market Value. Members of the Committee shall receive no compensation for their services in connection with the administration of this Plan, other than standard fees as established from time to time by the Board for services rendered by Board members serving on Board committees. All expenses incurred in connection with the administration of this Plan shall be paid by the Company. For purposes of this Plan, the Committee may designate separate offerings under the Plan (the terms of which need not be identical) in which eligible employees of one or more Participating Corporations will participate, even if the dates of the applicable Offering Periods of each such offering are identical.

4. ELIGIBILITY.

(a) Any employee of the Company or the Participating Corporations is eligible to participate in an Offering Period under this Plan, except that one or more of the following

categories of employees may be excluded from coverage under the Plan by the Committee (other than where prohibited by applicable law):

(i) Employees who are not employed by the Company or a Participating Corporation prior to the beginning of such Offering Period or prior to such other time period as specified by the Committee;

(ii) employees who are customarily employed for twenty (20) hours or less per week;

(iii) employees who are customarily employed for five (5) months or less in a calendar year; and

(iv) employees who have been an employee of the Company for less than thirty (30) days prior to the first day of an Offering Period (or such longer period of time, not to exceed two (2) years, as determined by the Committee);

(v) employees who do not meet any other eligibility requirements that the Committee may choose to impose (within the limits permitted by the Code).

The foregoing notwithstanding, an individual shall not be eligible if his or her participation in the Plan is prohibited by the law of any country that has jurisdiction over him or her, if complying with the laws of the applicable country would cause the Plan to violate Section 423 of the Code, or if he or she is subject to a collective bargaining agreement that does not provide for participation in the Plan.

(b) No employee who, together with any other person whose stock would be attributed to such employee pursuant to Section 424(d) of the Code, owns stock or holds options to purchase stock possessing five percent (5%) or more of the total combined voting power or value of all classes of stock of the Company or its Parent or Subsidiary or who, as a result of being granted an option under this Plan with respect to such Offering Period, would own stock or hold options to purchase stock possessing five percent (5%) or more of the total combined voting power or value of all classes of stock of the Company or its Parent or Subsidiary shall be granted an option to purchase Common Stock under the Plan.

5. OFFERING DATES.

(a) The offering periods of this Plan (each, an "***Offering Period***") are described below. Each Offering Period shall consist of one or more purchase periods (individually, a "***Purchase Period***") during which payroll deductions of the Participants are accumulated under this Plan. The first business day of each Offering Period is referred to as the "***Offering Date.***" The last business day of each Purchase Period is referred to as the "***Purchase Date***." The Committee shall have the power to change the Offering Dates, the Purchase Dates, the duration of Offering Periods (provided that an Offering Period will in no event be longer than twenty-seven (27) months), and the Purchase Periods, in each case without stockholder approval if such change is announced prior to the relevant Offering Period or prior to such other time period as specified by the Committee.

(b) All Offering Periods that commence following the Amendment Date shall be of six (6) months duration commencing on March 1 and September 1 of each year and respectively ending on August 31st and February 28th (or the 29th if February has 29 days) of each year. Each such Offering Period shall consist of one six (6)-month Purchase Period.

(c) The Offering Periods that commenced on March 1, 2019 and September 1, 2019 shall continue in accordance with the terms of the Plan prior to the Amendment Date and shall respectively end on February 29th or August 31st.

6. PARTICIPATION IN THIS PLAN.

(a) Any employee who is an eligible employee determined in accordance with Section 4 immediately prior to an Offering Period will be eligible to participate in this Plan, subject to the requirement of Section 6(b) hereof and the other terms and provisions of this Plan.

(b) With respect to each Offering Period, a Participant may elect to participate in this Plan by submitting an enrollment agreement (or any electronic or online enrollment form provided by the Company) prior to the commencement of the Offering Period (or such earlier date as the Committee may determine) to which such agreement (or any electronic or online enrollment form provided by the Company) relates.

(c) Once an employee becomes a Participant in an Offering Period, then such Participant will automatically participate in each subsequent Offering Period commencing immediately following the last day of the prior Offering Period unless the Participant withdraws or is deemed to withdraw from this Plan or terminates further participation in an Offering Period as set forth in Section 11 below. A Participant who is continuing participation pursuant to the preceding sentence is not required to file any additional enrollment agreement in order to continue participation in this Plan; a Participant who is not continuing participation pursuant to the preceding sentence is required to file an enrollment agreement (or any electronic or online enrollment form provided by the Company) prior to the commencement of the Offering Period (or such earlier date as the Committee may determine) to which such agreement (or any electronic or online enrollment form provided by the Company) relates.

7. GRANT OF OPTION ON ENROLLMENT. Becoming a Participant with respect to an Offering Period will constitute the grant (as of the Offering Date) by the Company to such Participant of an option to purchase on the Purchase Date up to that number of shares of Common Stock of the Company determined by a fraction, the numerator of which is the amount accumulated in such Participant's payroll deduction account during such Purchase Period and the denominator of which is the lower of (i) eighty-five percent (85%) of the Fair Market Value of a share of Common Stock on the Offering Date (but in no event less than the par value of a share of the Common Stock), or (ii) eighty-five percent (85%) of the Fair Market Value of a share of the Common Stock on the Purchase Date, provided, that the number of shares of Common Stock subject to any option granted pursuant to this Plan shall not exceed the lesser of (x) the maximum number of shares set by the Committee pursuant to Section 10(b) below with respect to the applicable Purchase Date, or (y) the maximum number of shares which may be purchased pursuant to Section 10(a) below with respect to the applicable Purchase Date.

8. PURCHASE PRICE. The Purchase Price per share at which a share of Common Stock will be sold in any Offering Period shall be eighty-five percent (85%) of the lesser of:

(a) The Fair Market Value on the Offering Date; or

(b) The Fair Market Value on the Purchase Date.

9. PAYMENT OF PURCHASE PRICE; PAYROLL DEDUCTION CHANGES; SHARE ISSUANCES.

(a) The Purchase Price shall be accumulated by regular payroll deductions made during each Offering Period, unless the Committee determines with respect to categories of Participants outside the United States that contributions may be made in another form due to local legal requirements. The deductions are made as a percentage of the Participant's compensation in one percent (1%) increments not less than one percent (1%), nor greater than ten percent (10%) after taking into account any such lower limit set by the Committee. Compensation shall mean base salary or regular hourly wages (or in foreign jurisdictions, equivalent cash compensation); however, the Committee may at any time prior to the beginning of an Offering Period determine that for that and future Offering Periods, Compensation shall

mean solely base salary or all W-2 cash compensation, including without limitation base salary or regular hourly wages, bonuses, incentive compensation, commissions, overtime, shift premiums, plus draws against commissions (or in foreign jurisdictions, equivalent cash compensation) but excluding any W-2 non-cash compensation which includes a disqualifying dispositions, equity grants, equity exercises or settlements. For purposes of determining a Participant's Compensation, any election by such Participant to reduce his or her regular cash remuneration under Sections 125 (i.e. pre-tax cafeteria plan contributions) or 401(k) (i.e. pre-tax retirement contributions) of the Code (or in foreign jurisdictions, equivalent salary deductions) shall be treated as if the Participant did not make such election and as if such reductions were not made. Payroll deductions shall commence on the first payday following the last Purchase Date and shall continue to the end of the Offering Period unless sooner altered or terminated as provided in this Plan. Notwithstanding the foregoing, the terms of any sub-plan may permit matching shares without the payment of any purchase price.

(b) A Participant may decrease (but not increase) the rate of payroll deductions during an Offering Period by filing with the Company a new authorization (or any electronic or online authorization form provided by the Company) for payroll deductions , with the new rate to become effective no later than the second payroll period commencing after the Company's receipt of the authorization or once any trading restrictions are lifted and continuing for the remainder of the Offering Period unless changed as described below. A decrease in the rate of payroll deductions may be made once during a Purchase Period or more frequently under rules determined by the Committee. A Participant may increase or decrease the rate of payroll deductions for any subsequent Purchase Period by filing with the Company a new authorization for payroll deductions prior to the beginning of the Offering Period for such applicable Purchase Period, or such other time period as specified by the Committee.

(c) A Participant may reduce his or her payroll deduction percentage to zero during an Offering Period by filing with the Company a request (or any electronic or online request form provided by the Company) for cessation of payroll deductions. Such reduction shall be effective beginning no later than the second payroll period after the Company's receipt of the request or once any trading restrictions are lifted and no further payroll deductions will be made for the duration of the Offering Period. Payroll deductions credited to the Participant's account prior to the effective date of the request shall be used to purchase shares of Common Stock in accordance with Subsection (e) below. A reduction of the payroll deduction percentage to zero shall be treated as such Participant's withdrawal from such Offering Period and the Plan, effective as of the day after the next Purchase Date following the filing date of such request with the Company.

(d) All payroll deductions made for a Participant are credited to his or her account under this Plan and are deposited with the general funds of the Company, except to the extent local legal restrictions outside the United States require segregation of such payroll deductions. No interest accrues on the payroll deductions, except to the extent required due to local legal requirements. All payroll deductions received or held by the Company may be used by the Company for any corporate purpose, and the Company shall not be obligated to segregate such payroll deductions, except to the extent necessary to comply with local legal requirements outside the United States.

(e) On each Purchase Date, so long as this Plan remains in effect and provided that the Participant has not submitted a signed and completed withdrawal form before that date which notifies the Company that the Participant wishes to withdraw from that Offering Period under this Plan and have all payroll deductions accumulated in the account maintained on behalf of the Participant as of that date returned to the Participant, the Company shall apply the funds then in the Participant's account to the purchase of whole shares of Common Stock reserved under the option granted to such Participant with respect to the Offering Period to the extent that such option is exercisable on the Purchase Date. The Purchase Price per share shall be as specified in Section 8 of this Plan. Any fractional share, as calculated under this Subsection (e), shall be rounded down to the next lower whole share, unless the Committee determines with respect to all Participants that any fractional share shall be credited as a

fractional share. Any amount remaining in a Participant's account on a Purchase Date which is less than the amount necessary to purchase a full share of Common Stock shall be returned to the Participant, without interest (except to the extent necessary to comply with local legal requirements outside of the United States), unless the Committee determines that such amount shall be applied to the Participant's account, without interest (except to the extent necessary to comply with local legal requirements outside the United States). In the event that this Plan has been oversubscribed, all funds not used to purchase shares on the Purchase Date shall be returned to the Participant, without interest (except to the extent required due to local legal requirements outside the United States). No Common Stock shall be purchased on a Purchase Date on behalf of any employee whose participation in this Plan has terminated prior to such Purchase Date, except to the extent required due to local legal requirements outside the United States.

(f) As promptly as practicable after the Purchase Date, the Company shall issue shares for the Participant's benefit representing the shares purchased upon exercise of his or her option.

(g) Unless determined otherwise by the Committee, the shares issued pursuant to Section 9(f) above shall be deposited into an account established in the Participant's name at the ESPP Broker. Subject to any applicable insider trading policy, a Participant shall be free to undertake a disposition (as that term is defined in Section 424(c) of the Code) of the shares in his or her ESPP Broker account at any time, whether by sale, exchange, gift or other transfer of legal title but in the absence of such a disposition of the shares, the shares must remain in the Participant's ESPP Broker account until the holding period set forth in Section 423(a) of the Code has been satisfied. With respect to shares for which the Section 423(a) holding period has been satisfied, the Participant may move those shares to another brokerage account of Participant's choosing. Notwithstanding the above, a Participant who is not subject to income taxation under the Code may move his or her shares to another brokerage account of his or her choosing at any time, without regard to the satisfaction of the Section 423(a) holding period.

(h) During a Participant's lifetime, his or her option to purchase shares hereunder is exercisable only by him or her. The Participant will have no interest or voting right in shares covered by his or her option until such option has been exercised.

(i) To the extent required by applicable federal, state, local or foreign law, a Participant shall make arrangements satisfactory to the Company for the satisfaction of any withholding tax obligations that arise in connection with the Plan. The Company or any Subsidiary or Affiliate, as applicable, may withhold, by any method permissible under the applicable law, the amount necessary for the Company or Subsidiary or Affiliate, as applicable, to meet applicable withholding obligations, including any withholding required to make available to the Company or Subsidiary or Affiliate, as applicable, any tax deductions or benefits attributable to the sale or early disposition of shares of Common Stock by a Participant. The Company shall not be required to issue any shares of Common Stock under the Plan until such obligations are satisfied.

10. LIMITATIONS ON SHARES TO BE PURCHASED.

(a) Any other provision of the Plan notwithstanding, no Participant shall purchase Common Stock with a Fair Market Value in excess of the following limit:

(i) In the case of Common Stock purchased during an Offering Period that commenced in the current calendar year, the limit shall be equal to (A) $25,000 minus (B) the Fair Market Value of the Common Stock that the Participant previously purchased in the current calendar year (under this Plan and all other employee stock purchase plans of the Company or any parent or Subsidiary of the Company).

(ii) In the case of Common Stock purchased during an Offering Period that commenced in the immediately preceding calendar year, the limit shall be equal to (A) $50,000 minus (B) the Fair Market Value of the Common Stock that the Participant previously purchased (under this Plan and all other employee stock purchase plans of the Company or any parent or Subsidiary of the Company) in the current calendar year and in the immediately preceding calendar year.

(iii) In the case of Common Stock purchased during an Offering Period that commenced two calendar years prior, the limit shall be equal to (A) $75,000 minus (B) the Fair Market Value of the Common Stock that the Participant previously purchased (under this Plan and all other employee stock purchase plans of the Company or any parent or Subsidiary of the Company) in the current calendar year and in the two immediately preceding calendar years.

(b) Initially, a Participant shall not be permitted to purchase more than 5,000 shares on any one Purchase Date. The Committee may, in its sole discretion, set a new maximum number of shares which may be purchased by any employee at any single Purchase Date, which shall then be the Maximum Share Amount for subsequent Offering Periods. If a lower limit is set under this Subsection (b), then all Participants will be notified of such limit prior to the commencement of the next Offering Period for which it is to be effective. If a new Maximum Share Amount is set, then all participants must be notified of such Maximum Share Amount prior to the commencement of the next Offering Period for which it is to be effective. The Maximum Share Amount shall continue to apply with respect to all succeeding Purchase Dates and Offering Periods unless revised by the Committee as set forth above.

(c) If the number of shares to be purchased on a Purchase Date by all employees participating in this Plan exceeds the number of shares then available for issuance under this Plan, then the Company will make a pro rata allocation of the remaining shares in as uniform a manner as shall be reasonably practicable and as the Committee shall determine to be equitable. In such event, the Company shall give written notice of such reduction of the number of shares to be purchased under a participant's option to each participant affected.

(d) Any payroll deductions accumulated in a participant's account which are not used to purchase stock due to the limitations in this Section 10 shall be returned to the participant as soon as practicable after the end of the applicable Purchase Period, without interest.

(e) If a Participant is precluded by this Subsection (a) from purchasing additional Common Stock under the Plan, then his or her employee contributions may be automatically discontinued by the Company and shall automatically resume at the beginning of the earliest Purchase Period that will end in the next calendar year (if he or she then is an eligible employee), provided that when the Company automatically resumes such payroll deductions, the Company must apply the rate in effect immediately prior to such suspension.

(f) If the number of shares to be purchased on a Purchase Date by all Participants exceeds the number of shares then available for issuance under this Plan, then the Company will make a pro rata allocation of the remaining shares in as uniform a manner as shall be reasonably practicable and as the Committee shall determine to be equitable. In such event, the Company will give notice of such reduction of the number of shares to be purchased under a Participant's option to each Participant affected.

(g) Any payroll deductions accumulated in a Participant's account which are not used to purchase stock due to the limitations in this Section 10, and not covered by Section 9(e), shall be returned to the Participant as soon as practicable after the end of the applicable Purchase Period, without interest (except to the extent required due to local legal requirements outside the United States).

11. WITHDRAWAL.

(a) Each Participant may withdraw from an Offering Period under this Plan pursuant to a method specified for such purpose by the Company. Such withdrawal may be elected at any time prior to the end of an Offering Period, or such other time period as specified by the Committee.

(b) Upon withdrawal from this Plan, the accumulated payroll deductions shall be returned to the withdrawn Participant, without interest (except to the extent required due to local legal requirements outside the United States), and his or her interest in this Plan shall terminate. In the event a Participant voluntarily elects to withdraw from this Plan, he or she may not resume his or her participation in this Plan during the same Offering Period, but he or she may participate in any Offering Period under this Plan which commences on a date subsequent to such withdrawal by filing a new authorization for payroll deductions in the same manner as set forth in Section 6 above for initial participation in this Plan.

12. TERMINATION OF EMPLOYMENT. Termination of a Participant's employment for any reason, including retirement, death, disability, or the failure of a Participant to remain an eligible employee of the Company or of a Participating Corporation, immediately terminates his or her participation in this Plan. In such event, accumulated payroll deductions credited to the Participant's account will be returned to him or her or, in the case of his or her death, to his or her legal representative, without interest (except to the extent required due to local legal requirements outside the United States). For purposes of this Section 12, an employee will not be deemed to have terminated employment or failed to remain in the continuous employ of the Company or of a Participating Corporation in the case of sick leave, military leave, or any other leave of absence approved by the Company; provided that such leave is for a period of not more than ninety (90) days or reemployment upon the expiration of such leave is guaranteed by contract or statute. The Company will have sole discretion to determine whether a Participant has terminated employment and the effective date on which the Participant terminated employment, regardless of any notice period or garden leave required under local law.

13. RETURN OF PAYROLL DEDUCTIONS. In the event a Participant's interest in this Plan is terminated by withdrawal, termination of employment or otherwise, or in the event this Plan is terminated by the Board, the Company shall deliver to the Participant all accumulated payroll deductions credited to such Participant's account. No interest shall accrue on the payroll deductions of a Participant in this Plan (except to the extent required due to local legal requirements outside the United States).

14. CAPITAL CHANGES. If the number of outstanding shares is changed by a stock dividend, recapitalization, stock split, reverse stock split, subdivision, combination, reclassification or similar change in the capital structure of the Company, without consideration, then the Committee shall adjust the number and class of Common Stock that may be delivered under the Plan, the Purchase Price per share and the number of shares of Common Stock covered by each option under the Plan which has not yet been exercised, and the numerical limits of Sections 2 and 10 shall be proportionately adjusted, subject to any required action by the Board or the stockholders of the Company and in compliance with the applicable securities laws; provided that fractions of a share will not be issued.

15. NONASSIGNABILITY. Neither payroll deductions credited to a Participant's account nor any rights with regard to the exercise of an option or to receive shares under this Plan may be assigned, transferred, pledged or otherwise disposed of in any way (other than by will, the laws of descent and distribution or as provided in Section 22 below) by the Participant. Any such attempt at assignment, transfer, pledge or other disposition shall be void and without effect.

16. USE OF PARTICIPANT FUNDS AND REPORTS. The Company may use all payroll deductions received or held by it under the Plan for any corporate purpose, and the Company will not be required to segregate Participant payroll deductions (except to the extent

required due to local legal requirements outside the United States). Until shares are issued, a Participant will only have the rights of an unsecured creditor unless otherwise required under local law. Each Participant shall receive promptly after the end of each Purchase Period a report of his or her account setting forth the total payroll deductions accumulated, the number of shares purchased, the per share price thereof and the remaining cash balance, if any, carried forward to the next Purchase Period or Offering Period, as the case may be.

17. NOTICE OF DISPOSITION. Each U.S. taxpayer Participant shall notify the Company in writing if the Participant disposes of any of the shares purchased in any Offering Period pursuant to this Plan if such disposition occurs within the Notice Period. The Company may, at any time during the Notice Period, place a legend or legends on any certificate representing shares acquired pursuant to this Plan requesting the Company's transfer agent to notify the Company of any transfer of the shares. The obligation of the Participant to provide such notice shall continue notwithstanding the placement of any such legend on the certificates.

18. NO RIGHTS TO CONTINUED EMPLOYMENT. Neither this Plan nor the grant of any option hereunder shall confer any right on any employee to remain in the employ of the Company or any Participating Corporation, or restrict the right of the Company or any Participating Corporation to terminate such employee's employment.

19. EQUAL RIGHTS AND PRIVILEGES. All eligible employees granted an option under this Plan that is intended to meet the Code Section 423 requirements shall have equal rights and privileges with respect to this Plan or within any separate offering under the Plan so that this Plan qualifies as an "employee stock purchase plan" within the meaning of Section 423 or any successor provision of the Code and the related regulations. Any provision of this Plan which is inconsistent with Section 423 or any successor provision of the Code, without further act or amendment by the Company, the Committee or the Board, shall be reformed to comply with the requirements of Section 423. This Section 19 shall take precedence over all other provisions in this Plan.

20. NOTICES. All notices or other communications by a Participant to the Company under or in connection with this Plan shall be deemed to have been duly given when received in the form specified by the Company at the location, or by the person, designated by the Company for the receipt thereof.

21. TERM; STOCKHOLDER APPROVAL. This Plan will become effective on the Effective Date. This Plan shall be approved by the stockholders of the Company, in any manner permitted by applicable corporate law, within twelve (12) months before or after the date this Plan is adopted by the Board. No purchase of shares that are subject to such stockholder approval before becoming available under this Plan shall occur prior to stockholder approval of such shares and the Board or Committee may delay any Purchase Date and postpone the commencement of any Offering Period subsequent to such Purchase Date as deemed necessary or desirable to obtain such approval (provided that if a Purchase Date would occur more than twelve (12) months after commencement of the Offering Period to which it relates, then such Purchase Date shall not occur and instead such Offering Period shall terminate without the purchase of such shares and Participants in such Offering Period shall be refunded their contributions without interest). This Plan shall continue until the earlier to occur of (a) termination of this Plan by the Board (which termination may be effected by the Board at any time pursuant to Section 25 below), (b) issuance of all of the shares of Common Stock reserved for issuance under this Plan, or (c) the tenth anniversary of the Effective Date under the Plan.

22. DESIGNATION OF BENEFICIARY.

(a) Unless otherwise determined by the Committee, a Participant may file a written designation of a beneficiary who is to receive any cash from the Participant's account under this Plan in the event of such Participant's death prior to a Purchase Date. Such form shall be valid only if it was filed with the Company at the prescribed location before the Participant's death.

(b) Such designation of beneficiary may be changed by the Participant at any time by written notice filed with the Company at the prescribed location before the Participant's death. In the event of the death of a Participant and in the absence of a beneficiary validly designated under this Plan who is living at the time of such Participant's death, the Company shall deliver such cash to the executor or administrator of the estate of the Participant, or if no such executor or administrator has been appointed (to the knowledge of the Company), the Company, in its discretion, may deliver such cash to the spouse or, if no spouse is known to the Company, then to any one or more dependents or relatives of the Participant, or if no spouse, dependent or relative is known to the Company, then to such other person as the Company may designate.

23. CONDITIONS UPON ISSUANCE OF SHARES; LIMITATION ON SALE OF SHARES. Shares shall not be issued with respect to an option unless the exercise of such option and the issuance and delivery of such shares pursuant thereto shall comply with all applicable provisions of law, domestic or foreign, including, without limitation, the Securities Act of 1933, the Securities Exchange Act of 1934, as amended, the rules and regulations promulgated thereunder, and the requirements of any stock exchange or automated quotation system upon which the shares may then be listed, exchange control restrictions and/or securities law restrictions outside the United States, and shall be further subject to the approval of counsel for the Company with respect to such compliance. Shares may be held in trust or subject to further restrictions as permitted by any subplan.

24. APPLICABLE LAW. The Plan shall be governed by the substantive laws (excluding the conflict of laws rules) of the State of Delaware.

25. AMENDMENT OR TERMINATION. The Committee, in its sole discretion, may amend, suspend, or terminate the Plan, or any part thereof, at any time and for any reason. If the Plan is terminated, the Committee, in its discretion, may elect to terminate all outstanding Offering Periods either immediately or upon completion of the purchase of shares of Common Stock on the next Purchase Date (which may be sooner than originally scheduled, if determined by the Committee in its discretion), or may elect to permit Offering Periods to expire in accordance with their terms (and subject to any adjustment pursuant to Section 14). If an Offering Period is terminated prior to its previously-scheduled expiration, all amounts then credited to Participants' accounts for such Offering Period, which have not been used to purchase shares of Common Stock, shall be returned to those Participants (without interest thereon, except as otherwise required under local laws) as soon as administratively practicable. Further, the Committee will be entitled to change the Purchase Periods and Offering Periods, limit the frequency and/or number of changes in the amount withheld during an Offering Period, establish the exchange ratio applicable to amounts withheld or contributed in a currency other than U.S. dollars, permit payroll withholding in excess of the amount designated by a Participant in order to adjust for delays or mistakes in the administration of the Plan, establish reasonable waiting and adjustment periods and/or accounting and crediting procedures to ensure that amounts applied toward the purchase of Common Stock for each Participant properly correspond with amounts withheld from the Participant's base salary and other eligible compensation, and establish such other limitations or procedures as the Committee determines in its sole discretion advisable which are consistent with the Plan. Such actions will not require stockholder approval or the consent of any Participants. However, no amendment shall be made without approval of the stockholders of the Company (obtained in accordance with Section 21 above) within twelve (12) months of the adoption of such amendment (or earlier if required by Section 21) if such amendment would: (a) increase the number of shares that may be issued under this Plan; or (b) change the designation of the employees (or class of employees) eligible for participation in this Plan. In addition, in the event the Board or Committee determines that the ongoing operation of the Plan may result in unfavorable financial accounting consequences, the Board or Committee may, in its discretion and, to the extent necessary or desirable, modify, amend or terminate the Plan to reduce or eliminate such accounting consequences including, but not limited to: (i) amending the definition of compensation, including with respect to an Offering Period underway at the time; (ii) altering the Purchase Price for any Offering Period including an Offering Period underway at the time of the change in Purchase Price; (iii)

shortening any Offering Period by setting a Purchase Date, including an Offering Period underway at the time of the Committee's action; (iv) reducing the maximum percentage of compensation a participant may elect to set aside as payroll deductions; and (v) reducing the maximum number of shares a Participant may purchase during any Offering Period. Such modifications or amendments will not require approval of the stockholders of the Company or the consent of any Participants.

26. CORPORATE TRANSACTIONS. In the event of a Corporate Transaction, the Offering Period for each outstanding right to purchase Common Stock will be shortened by setting a new Purchase Date and will end on the new Purchase Date (unless otherwise specified in the agreement effecting the applicable Corporate Transaction). The new Purchase Date shall occur on or prior to the consummation of the Corporate Transaction, as determined by the Board or Committee, and the Plan shall terminate on the consummation of the Corporate Transaction (unless otherwise specified in the agreement effecting the applicable Corporate Transaction).

27. CODE SECTION 409A; TAX QUALIFICATION.

(a) Options granted under the Plan generally are exempt from the application of Section 409A of the Code. However, options granted to U.S. taxpayers which are not intended to meet the Code Section 423 requirements are intended to be exempt from the application of Section 409A of the Code under the short-term deferral exception and any ambiguities shall be construed and interpreted in accordance with such intent. Subject to Subsection (b), options granted to U.S. taxpayers outside of the Code Section 423 requirements shall be subject to such terms and conditions that will permit such options to satisfy the requirements of the short-term deferral exception available under Section 409A of the Code, including the requirement that the shares of Common Stock subject to an option be delivered within the short-term deferral period. Subject to Subsection (b), in the case of a Participant who would otherwise be subject to Section 409A of the Code, to the extent the Committee determines that an option or the exercise, payment, settlement or deferral thereof is subject to Section 409A of the Code, the option shall be granted, exercised, paid, settled or deferred in a manner that will comply with Section 409A of the Code, including Treasury regulations and other interpretive guidance issued thereunder, including without limitation any such regulations or other guidance that may be issued after the Effective Date. Notwithstanding the foregoing, the Company shall have no liability to a Participant or any other party if the option that is intended to be exempt from or compliant with Section 409A of the Code is not so exempt or compliant or for any action taken by the Committee with respect thereto.

(b) Although the Company may endeavor to (i) qualify an option for favorable tax treatment under the laws of the United States or jurisdictions outside of the United States or (ii) avoid adverse tax treatment (e.g., under Section 409A of the Code), the Company makes no representation to that effect and expressly disavows any covenant to maintain favorable or avoid unfavorable tax treatment, notwithstanding anything to the contrary in this Plan, including Subsection (a). The Company shall be unconstrained in its corporate activities without regard to the potential negative tax impact on Participants under the Plan.

28. DEFINITIONS.

(a) "***Affiliate***" means (i) any entity that, directly or indirectly, is controlled by, controls or is under common control with, the Company and (ii) any entity in which the Company has a significant equity interest, in either case as determined by the Committee, whether now or hereafter existing.

(b) "***Amendment Date***" means December 13, 2019.

(c) "***Board***" shall mean the Board of Directors of the Company.

(d) "***Code***" shall mean the Internal Revenue Code of 1986, as amended.

(e) "***Committee***" shall mean the Compensation Committee of the Board that consists exclusively of one or more members of the Board appointed by the Board.

(f) "***Common Stock***" shall mean the common stock of the Company.

(g) "***Company***" shall mean Dexcom, Inc.

(h) "***Corporate Transaction***" means the occurrence of any of the following events: (i) any "person" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) becomes the "beneficial owner" (as defined in Rule 13d-3 of the Exchange Act), directly or indirectly, of securities of the Company representing fifty percent (50%) or more of the total voting power represented by the Company's then outstanding voting securities; or (ii) the consummation of the sale or disposition by the Company of all or substantially all of the Company's assets; or (iii) the consummation of a merger or consolidation of the Company with any other corporation, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or its parent) at least fifty percent (50%) of the total voting power represented by the voting securities of the Company or such surviving entity or its parent outstanding immediately after such merger or consolidation.

(i) "***Effective Date***" shall mean May 28, 2015, the date on which the Company obtained the stockholder approval pursuant to Section 21.

(j) "***ESPP Broker***" shall mean a stock brokerage or other entity designated by the Company to establish account for stock purchased under the Plan by Participants.

(k) "***Fair Market Value***" shall mean, as of any date, the value of a share of Common Stock determined as follows:

(1) if such Common Stock is then quoted on the Nasdaq Global Select Market, the Nasdaq Global Market or the Nasdaq Capital Market (collectively, the "***Nasdaq Market***"), its closing price on the Nasdaq Market on the date of determination, or if there are no sales for such date, then the last preceding business day on which there were sales, as reported in *The Wall Street Journal* or such other source as the Board or the Committee deems reliable; or

(2) if such Common Stock is publicly traded and is then listed on a national securities exchange, its closing price on the date of determination on the principal national securities exchange on which the Common Stock is listed or admitted to trading as reported in *The Wall Street Journal* or such other source as the Board or the Committee deems reliable; or

(3) if such Common Stock is publicly traded but is neither quoted on the Nasdaq Market nor listed or admitted to trading on a national securities exchange, the average of the closing bid and asked prices on the date of determination as reported in *The Wall Street Journal* or such other source as the Board or the Committee deems reliable; and

(4) if none of the foregoing is applicable, by the Board or the Committee in good faith.

(l) "***Notice Period***" shall mean within two (2) years from the Offering Date or within one (1) year from the Purchase Date on which such shares were purchased.

(m) "***Offering Date***" shall mean the first business day of each Offering Period.

(n) "***Offering Period***" shall mean a period with respect to which the right to purchase Common Stock may be granted under the Plan, as determined by the Committee pursuant to Section 5(a).

(o) "***Parent***" shall have the same meaning as "parent corporation" in Sections 424(e) and 424(f) of the Code.

(p) "***Participant***" shall mean an eligible employee who meets the eligibility requirements set forth in Section 4 and who is either automatically enrolled in the initial Offer Period or who elects to participate in this Plan pursuant to Section 6(b).

(q) "***Participating Corporation***" shall mean any Parent, Subsidiary or Affiliate that the Committee designates from time to time as eligible to participate in this Plan, provided, however, that employees of Affiliates that are designated for participation may be granted only options that do not intend to comply with the Code Section 423 requirements.

(r) "***Plan***" shall mean this Dexcom, Inc. 2015 Employee Stock Purchase Plan, as amended from time to time.

(s) "***Purchase Date***" shall mean the last business day of each Purchase Period.

(t) "***Purchase Period***" shall mean a period during which contributions may be made toward the purchase of Common Stock under the Plan, as determined by the Committee pursuant to Section 5(b).

(u) "***Purchase Price***" shall mean the price at which Participants may purchase shares of Common Stock under the Plan, as determined pursuant to Section 8.

(v) "***Subsidiary***" shall have the same meaning as "subsidiary corporation" in Sections 424(e) and 424(f) of the Code.

DEXCOM, INC. **Enrollment/Change Form**
2015 Employee Stock Purchase Plan ("ESPP")

Section 1: **Actions**	Check Desired Action: and Complete Sections: Enroll in the ESPP 2 + 3 + 4 + 17 Elect / Change Contribution Percentage 2 + 4 + 17 Withdraw from Plan/Discontinue Contributions 2 + 5 + 17	
Section 2: **Personal Data**	Name_____ Home Address:_____ _____ Social Security No:_____	Department _____
Section 3: **Enroll**	I hereby elect to participate in the ESPP, effective at the beginning of the next Offering Period. I elect to purchase shares of the Common Stock of Dexcom, Inc. (the "***Company***") pursuant to the ESPP. I understand that the shares purchased on my behalf will be issued in street name and deposited directly into my brokerage account at the Company's captive broker (the "***ESPP Broker***"). I hereby agree to take all steps, and sign all forms, required to establish an account with the Company's ESPP Broker for this purpose. I understand and agree that I will be required to utilize the ESPP Broker with respect to the shares purchased under this ESPP until the end of the time period described in Section 6 below. My participation will continue as long as I remain eligible, unless I withdraw from the ESPP by filing a new Enrollment/Change Form with the Company. I understand that if I am subject to U.S. taxation, I must notify the Company of any disposition of shares purchased under the ESPP.	
Section 4: **Elect/Change Contribution Percentage**	I hereby authorize the Company or the Parent, Subsidiary or Affiliate employing me (the "***Employer***") to withhold a percentage of my bi-weekly payroll that will total ___% of my compensation (as defined in the ESPP) for the Purchase Period. That amount will be applied to the purchase of shares of the Company's Common Stock pursuant to the ESPP. **The percentage compensation to purchase common stock must be a whole number (from 1%, up to a maximum of 10%).** **Note:** You may decrease your contribution percentage once within a six-month Purchase Period. Each change will become effective as soon as reasonably practicable after the form is received by the Company.	
Section 5: **Discontinue Contributions**	I hereby elect to stop my contributions under the ESPP, effective as soon as reasonably practicable after this form is received by the Company. The contributions that I have made to date during this Offering Period should be applied as follows: Purchase shares of the Company's Common Stock at the end of the Purchase Period. Refund all contributions to me in cash, without interest. **I understand that I cannot resume participation until the start of the next Offering Period**.	

Section 6: **ESPP Broker**	I hereby agree the shares issued to me under the ESPP shall be deposited into an account established in my name at the ESPP Broker. Subject to any applicable insider trading policy, I shall be free to undertake a disposition (as that term is defined in Section 424(c) of the Internal Revenue Code of 1986, as amended (the "***Code***") of the shares in my ESPP Broker account at any time, whether by sale, exchange, gift, or other transfer of legal title, but in the absence of such a disposition of the shares, the shares must remain in my ESPP Broker account until the holding period set forth in Section 423(a) of the Code has been satisfied. With respect to shares for which the Section 423(a) holding period has been satisfied, I may move those shares to another brokerage account of my choosing. Notwithstanding the above, if I am not subject to income taxation under the Code, I may move my shares to another brokerage account of my choosing at any time, without regard to the satisfaction of the Section 423(a) holding period.
Section 7: **Nature of Grant**	By enrolling in the ESPP, I understand, acknowledge and agree that (a) the ESPP is established voluntarily by the Company, it is discretionary in nature and it may be amended, terminated or modified at any time, to the extent permitted by the ESPP; (b) the grant of the right to purchase shares of Common Stock under the ESPP is voluntary and does not create any contractual or other right to receive future rights to purchase shares of Common Stock, or benefits in lieu of rights to purchase shares, even if rights to purchase shares have been granted in the past; (c) all decisions with respect to future grants of rights to purchase shares of Common Stock under the ESPP, if any, will be at the sole discretion of the Company; (d) the grant of rights to purchase shares of Common Stock under the ESPP and my participation in the ESPP will not create a right to employment or be interpreted as forming an employment or service agreement with the Company; (e) the grant of rights to purchase shares of Common Stock under the ESPP and my participation in the ESPP will not interfere with the ability of the Employer to terminate my employment relationship at any time with or without cause; (f) I am voluntarily participating in the ESPP; (g) the rights to purchase shares of Common Stock and the shares purchased under the ESPP, and the income and value of same, are not intended to replace any pension rights or compensation; (h) the rights to purchase shares of Common Stock and the shares purchased under the ESPP, and the income and value of same, are not part of normal or expected compensation for purposes of, including, but not limited to, calculating any severance, resignation, termination, redundancy, dismissal, end of service payments, bonuses, long-service awards, pension or retirement benefits or similar payments; (i) unless otherwise agreed with the Company, the rights to purchase shares of Common Stock and the shares purchased under the ESPP, and the income and value of same, are not granted as consideration for, or in connection with, any service I may provide as a director of the Subsidiary or Affiliate; (j) the future value of the underlying shares purchased or to be purchased under the ESPP is unknown, indeterminable and cannot be predicted with certainty, and the value of the shares of Common Stock purchased under the ESPP may increase or decrease in the future, even below the Purchase Price; (k) no claim or entitlement to compensation or damages will arise from termination of the right to purchase shares of Common Stock under the ESPP resulting from termination of my employment (for any reason whatsoever and whether or not later found to be invalid or in breach of employment laws in the jurisdiction where I am employed or the terms of my employment agreement, if any) and in consideration of the grant of rights to purchase shares of Common Stock under the ESPP, I irrevocably agree never to institute any claim against the Company, the Parent, the Employer or any other Subsidiary or Affiliate, I hereby waive my ability, if any, to bring any such claim, and I release the Company, the Parent, the Employer or any other Subsidiary or Affiliate from any such claim; if, notwithstanding the foregoing, any such claim is allowed by a court of competent jurisdiction, then, by enrolling in the ESPP, I will be deemed irrevocably to have agreed not to pursue such claim and agree to execute any and all documents necessary to request dismissal or withdrawal of such claims; (l) in the event of termination of my employment (for any reason whatsoever, whether or not later found to be invalid or in breach of employment laws in the jurisdiction where I am employed or the terms of my employment agreement, if any), my right to participate in the ESPP and my right to purchase shares of Common Stock, if any, will terminate effective as of the date I cease to actively provide services and will not be extended by any notice period (*e.g.*, employment would not include any contractual notice or any period of "garden leave" or similar period mandated under employment laws in the jurisdiction where I am employed or the terms of my employment agreement, if any); the Committee will have exclusive discretion to determine when I am no longer actively employed for purposes of my participation in the ESPP (including whether I may still be considered to be providing services while on a leave of absence); (m) unless otherwise provided in the ESPP or by the Company in its discretion, the right to purchase shares of Common Stock and the benefits evidenced by this Enrollment/Change Form do not create any entitlement to have the ESPP or any such benefits granted thereunder transferred to, or assumed by, another company nor to be exchanged, cashed out or substituted for, in connection with any Corporate Transaction affecting the Common Stock; and (n) if I am providing services outside the United States: (1) the rights to purchase shares of Common Stock and the shares purchased under the ESPP, and the income and value of same, are not part of normal or expected compensation or salary for any purpose, and (2) neither the Company, the Parent, the Employer nor any other Subsidiary or Affiliate will be liable for any foreign exchange rate fluctuation between my local currency and the United States Dollar that may affect the value of the rights to purchase shares of Common Stock, the shares purchased under the ESPP or any amounts due to me pursuant to the sale of any shares of Common Stock acquired under the ESPP.

Section 8: **Data Privacy**	***I hereby explicitly, voluntarily and unambiguously consent to the collection, use and transfer, in electronic or other form, of my personal data as described in this Enrollment/Change Form and any other ESPP grant materials by and among, as applicable, the Company, the Parent and any of their respective Subsidiaries or Affiliates or any third parties assisting in the implementation, administration and management of my participation in the ESPP.*** ***I understand that the Company may hold certain personal information about me, including, but not limited to, my name, home address and telephone number, date of birth, social insurance number or other identification number, salary, nationality, job title, any shares of stock or directorships held in the Company, the fact and conditions of my participation in the ESPP, details of all rights to purchase shares or any other entitlement to shares of Common Stock awarded, cancelled, exercised, vested, unvested or outstanding in my favor ("Data"), for the exclusive purpose of implementing, administering and managing the ESPP.*** ***I also authorize any transfer of Data, as may be required, to the stock plan service provider that may be designated by the Company from time to time, which is assisting the Company with the implementation, administration and management of the ESPP and/or with whom any shares of Common Stock acquired under the ESPP are deposited. I acknowledge that these recipients may be located in my country or elsewhere, and that the recipient's country (e.g., the United States) may have different data privacy laws and protections to my country, which may not give the same level of protection to Data. I understand that, if I reside outside the United States, I may request a list with the names and addresses of any potential recipients of Data by contacting my local human resources representative. I authorize the Company, the designated broker and any other possible recipients which may assist the Company (presently or in the future) with implementing, administering and managing my participation in the ESPP to receive, possess, use, retain and transfer Data, in electronic or other form, for the sole purpose of implementing, administering and managing my participation in the ESPP. I understand that Data will be held only as long as is necessary to implement, administer and manage my participation in the ESPP. I understand that, if I reside outside the United States, I may at any time view Data, request additional information about the storage and processing of Data, require any necessary amendments to Data or refuse or withdraw the consents herein, in any case, without cost, by contacting in writing my local human resources representative. Further, I understand that I am providing the consents herein on a purely voluntary basis. If I do not consent, or if I later seek to revoke my consent, my employment status or service and career with the Company will not be adversely affected; the only adverse consequence of refusing or withdrawing my consent is that the Company would not be able to grant future rights to purchase shares of Common Stock or other equity awards to me or administer or maintain such awards. Therefore, I understand that refusing or withdrawing my consent may affect my ability to participate in the ESPP. For more information on the consequences of my refusal to consent or withdrawal of consent, I understand that I may contact my local human resources representative.***

Section 9: **Responsibility for Taxes**	I acknowledge that, regardless of any action taken by the Company or the Employer, the ultimate liability for all income tax, social insurance, payroll tax, fringe benefits tax, payment on account or other tax-related items related to my participation in the ESPP and legally applicable to me ("***Tax-Related Items***") is and remains my responsibility and may exceed the amount actually withheld by the Company or the Employer. I further acknowledge that the Company and/or the Employer (1) make no representations or undertakings regarding the treatment of any Tax-Related Items in connection with any aspect of the ESPP, including, but not limited to, my enrollment in the ESPP, the grant of rights to purchase shares of Common Stock, the purchase of shares of Common Stock, the issuance of Common Stock purchased, the sale of shares of Common Stock purchased under the ESPP or the receipt of any dividends; and (2) do not commit to and are under no obligation to structure the terms of the ESPP to reduce or eliminate my liability for Tax-Related Items or achieve any particular tax result. Further, if I am subject to Tax-Related Items in more than one jurisdiction, I acknowledge that the Company and/or the Employer (or former employer, as applicable) may be required to withhold or account for Tax-Related Items in more than one jurisdiction. Prior to any relevant taxable or tax withholding event, as applicable, I agree to make adequate arrangements satisfactory to the Company and/or the Employer to satisfy all Tax-Related Items. In this regard, I authorize the Company and/or the Employer to satisfy their withholding obligations with regard to all Tax-Related Items by one or a combination of the following: (a) withholding from my wages or other cash compensation payable to me by the Company and/or the Employer, (b) withholding from proceeds of the sale of shares of Common Stock purchased under the ESPP, either through a voluntary sale or through a mandatory sale arranged by the Company (on my behalf pursuant to this authorization without further consent), and (c) withholding in shares to be issued upon purchase under the ESPP. Depending on the withholding method, the Company may withhold or account for Tax-Related Items by considering applicable statutory withholding amounts or other applicable withholding rates, including up to the maximum applicable rates, in which case I will receive a refund of any over-withheld amount in cash and will have no entitlement to the Common Stock equivalent. If the obligation for Tax-Related Items is satisfied by withholding in shares of Common Stock, for tax purposes, I am deemed to have been issued the full number of shares of Common Stock, notwithstanding that a number of the shares of Common Stock are held back solely for the purpose of paying the Tax-Related Items. Finally, I agree to pay to the Company or the Employer any amount of Tax-Related Items that the Company or the Employer may be required to withhold or account for as a result of my participation in the ESPP that cannot be satisfied by the means previously described. The Company may refuse to purchase or deliver the shares or the proceeds from the sale of shares of Common Stock, if I fail to comply with my obligations in connection with the Tax-Related Items.
Section 10: **Governing Law & Language**	The rights to purchase shares and the provisions of this Enrollment/Change Form are governed by, and subject to, the laws of the State of Delaware, without regard to any conflict of law provisions. If I have received this or any other document related to the ESPP translated into a language other than English and if the meaning of the translated version is different than the English version, the English version will control.
Section 11: **Appendix & Imposition of Other Requirements**	Notwithstanding any provision herein, my participation in the ESPP will be subject to any special terms and conditions as set forth in the Appendix for my country, if any. Moreover, if I relocate to one of the countries included in the Appendix, the special terms and conditions for such country will apply to me, to the extent the Company determines that the application of such terms and conditions is necessary or advisable for legal or administrative reasons. The Appendix constitutes part of this Enrollment/Change Form. The Company reserves the right to impose other requirements on my participation in the ESPP or on any shares of Common Stock purchased under the ESPP, to the extent the Company determines it is necessary or advisable for legal or administrative reasons, and to require me to sign any additional agreements or undertakings that may be necessary to accomplish the foregoing.

Section 12: **Electronic Delivery and Acceptance**	The Company may, in its sole discretion, decide to deliver any documents related to current or future participation in the ESPP by electronic means. I hereby consent to receive such documents by electronic delivery and agree to participate in the ESPP through an on-line or electronic system established and maintained by the Company or a third party designated by the Company.
Section 13: **Severability & Waiver**	The provisions of this Enrollment/Change Form are severable and if any one or more provisions are determined to be illegal or otherwise unenforceable, in whole or in part, the remaining provisions will nevertheless be binding and enforceable. I acknowledge that a waiver by the Company of breach of any provision of this Enrollment/Change Form will not operate or be construed as a waiver of any other provision herein, or of any subsequent breach by me or any other Participant.
Section 14: **Insider Trading Restrictions /Market Abuse Laws**	I acknowledge that I may be subject to insider trading restrictions and/or market abuse laws, which may affect my ability to acquire or sell shares of Common Stock or my rights to purchase shares under the ESPP during such times as I am considered to have "inside information" regarding the Company (as defined by or determined under the laws in my country). Any restrictions under these laws or regulations are separate from and in addition to any restrictions that may be imposed under any applicable the Company insider trading policy. I acknowledge that it is my responsibility to comply with any applicable restrictions, and that I am advised to speak to my personal advisor on this matter.
Section 15: **No Advice Regarding Grant**	The Company is not providing any tax, legal or financial advice, nor is the Company making any recommendations regarding my participation in the ESPP, or my purchase or sale of the shares of Common Stock. I am hereby advised to consult with my own personal tax, legal and financial advisors regarding my participation in the ESPP before taking any action related to the ESPP.
Section 16: **Compliance With Law**	Unless there is an available exemption from any registration, qualification or other legal requirement applicable to the shares of Common Stock, the Company will not be required to deliver any shares under the ESPP prior to the completion of any registration or qualification of the shares under any local, state, federal or foreign securities or exchange control law or under rulings or regulations of the U.S. Securities and Exchange Commission ("***SEC***") or of any other governmental regulatory body, or prior to obtaining any approval or other clearance from any local, state, federal or foreign governmental agency, which registration, qualification or approval the Company will, in its absolute discretion, deem necessary or advisable. I understand that the Company is under no obligation to register or qualify the shares with the SEC or any state or foreign securities commission or to seek approval or clearance from any governmental authority for the issuance or sale of the shares. Further, I agree that the Company will have unilateral authority to amend the ESPP and the Enrollment/Change Form without my consent to the extent necessary to comply with securities or other laws applicable to issuance of shares.
Section 17: **Acknowledgment and Signature**	I acknowledge that I have received a copy of the Prospectus summarizing the major features of the ESPP. I have read the Prospectus and this form and hereby agree to be bound by the terms of the ESPP. Signature: _____ Date: _____

Exhibit 10.20

LEASE
10455 Pacific Center Court
San Diego, California

Basic Lease Information

Date:	January 31, 2020
Landlord:	GC Pacific Center Court Owner LLC, a Delaware limited liability company
Tenant:	Dexcom, Inc., a Delaware corporation
Building (section 1.1):	That certain building located at 10455 Pacific Center Court, San Diego, California 92121
Premises (section 1.1):	A portion of the Building comprising 49,152 square feet of rentable area and commonly known as Suites 150 and 250
Parking (section 1.4):	2.95 unreserved parking spaces per 1,000 rentable square feet of Premises (for an initial parking space total of 145 as of the Commencement Date)
Lease Term (section 2.1):	Approximately eighty-four (84) months
Delivery Date (section 2.1):	The date on which Landlord tenders possession of the Premises to Tenant with the Landlord Delivery Date Work (as such term is defined in Exhibit B) Substantially Complete.
Commencement Date (section 2.1):	September 1, 2020
Expiration Date (section 2.1):	August 31, 2027

Base Rent (section 3.1(a)):

Month	Monthly Base Rent
09/01/20 – 08/31/21	$103,219.20
09/01/21 – 08/31/22	$106,315.78
09/01/22 – 08/31/23	$109,505.25
09/01/23 – 08/31/24	$112,790.41
09/01/24 – 08/31/25	$116,174.12

	09/01/25 – 08/31/26 $119,659.34 09/01/26 – 08/31/27 $123,249.12
Rent Payment Address (section 3.3):	c/o Graymark Capital, Inc. 180 Sutter Street, Suite 400 San Francisco, CA 94104
Tenant's Percentage Share (section 4.1(c)):	55.00%
Permitted Use (section 6.1):	General office, research and development and warehouse
Service Hours (section 7.2)	8 A.M. to 6 P.M. ("Business Hours") Monday through Friday (except union holidays and legal holidays) ("Business Days")
Deposit (section 27.1):	None
Tenant's Address (section 30.1):	Dexcom, Inc. 6340 Sequence Drive San Diego, California 92121 Attention: Chief Executive Officer with a copy to: Dexcom, Inc. 6340 Sequence Drive San Diego, California 92121 Attention: Legal Department and with a copy to: Stuart Kane LLP 620 Newport Center Drive, Suite 200 Newport Beach, California 92660 Attention: Josh C. Grushkin
Landlord's Address (section 30.1):	c/o Graymark Capital, Inc. 180 Sutter Street, Suite 400 San Francisco, CA 94104
Landlord's Broker (section 32.1):	Kidder Mathews
Tenant's Broker (section 32.1):	Cushman & Wakefield
Exhibits	Exhibit A – Plan Outlining Premises Exhibit B – Work Letter Exhibit C – Rules and Regulations Exhibit D – Tenant's Building Signage Exhibit E – Appraisal Method Exhibit F – Dish / Antenna

The foregoing Basic Lease Information is incorporated in and made a part of this Lease. If there is any conflict between the Basic Lease Information and any other part of this Lease, the former shall control.

TENANT:

DEXCOM, INC.,
a Delaware corporation

By /s/ Jereme Sylvain

Name Jereme Sylvain

Title VP, Finance

LANDLORD:

GC PACIFIC CENTER COURT OWNER LLC,
a Delaware limited liability company

By /s/ Brian Hecktman

Name Brian Hecktman

Title Authorized Signatory

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LEASE

THIS LEASE is made as of the date specified in the Basic Lease Information by and between the landlord specified in the Basic Lease Information ("Landlord"), and the tenant specified in the Basic Lease Information ("Tenant").

W I T N E S S E T H:

ARTICLE 1
Premises

1.1 Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, subject to the terms, covenants and conditions set forth in this Lease, the space (the "Premises") substantially shown outlined on the floor plan attached hereto as Exhibit A and described in the Basic Lease Information, which Premises are located in the building (the "Building") described in the Basic Lease Information. As used in this Lease, the term "Building" shall include the parcel or parcels of land on which the Building is located and all appurtenances thereto. During the Lease Term, Tenant shall have the nonexclusive right, in common with other tenants of the Building, to use only for their intended purposes of lobbies, entrances, stairs, elevators and other public portions of the Building, that are designated by Landlord from time to time as common areas and not leased to or allocated for the exclusive use of another tenant of the Building. Landlord shall have the right from time to time to change the size, location, configuration, character or use of any such common areas, construct additional improvements or facilities in any such common areas, or close any such common areas; provided, however, Landlord shall use commercially reasonable efforts to not materially adversely affect Tenant's access to and use of the Premises and parking areas. Tenant shall not interfere with the rights of Landlord and other tenants of the Building to use such common areas. All of the windows and outside decks or terraces and walls of the Premises and any space in the Premises used for shafts, stacks, pipes, conduits, ducts, electric or other utilities, sinks or other Building facilities, and the use thereof and access thereto through the Premises for the purposes of operation, maintenance and repairs, are reserved to Landlord; provided, however, at no additional cost to Tenant, Landlord shall permit Tenant the nonexclusive right, in common with Landlord and other tenants of the Building, to utilize the existing Building risers, raceways, shafts and conduit for the installation and operation of Tenant's telecommunications systems, including voice, video, data, internet, and any other services provided over wire, fiber optic, microwave, wireless, and any other transmission systems, and Landlord shall provide Tenant with reasonable access, at reasonable times determined by Landlord, to other areas within the Building (other than the premises of other tenants), including the Building's MPOE (main point of entry), as reasonably necessary for the installation of required infrastructure for Tenant's telecommunications systems.

1.2 Tenant acknowledges that Tenant has inspected the Premises and the Building or has had the Premises and the Building inspected by professional consultants retained by Tenant, Tenant is familiar with the condition of the Premises and the Building, the Premises and the Building are suitable for Tenant's purposes, and, except for the Landlord's Work (as defined in Exhibit B) to be constructed or installed by Landlord pursuant to Exhibit B, the condition of the Premises and the Building is acceptable to Tenant. Except for the Landlord's Work to be constructed or installed by Landlord pursuant to Exhibit B, and as otherwise expressly set forth in this Lease, Landlord shall have no obligation to construct or install any improvements in the Premises or the Building or to remodel, renovate, recondition, alter or improve the Premises or the Building in any manner, and Tenant shall accept the Premises "as is" on the Commencement Date subject to Landlord's Work being substantially complete and the Landlord's Warranty (as defined below). Landlord and Tenant expressly agree that there are and shall be no implied warranties of merchantability, habitability, fitness for a particular purpose, or any other kind arising out of this Lease and there are and shall be no warranties that extend beyond the warranties, if any, expressly set forth in this Lease. Notwithstanding the foregoing, subject to Landlord's substantial completion of the Landlord's Work, Landlord shall be responsible for causing as of the Delivery Date, at no cost to Tenant, the structural portions of

the roof, and the Base Building systems (as defined below) to be in good condition and repair, and the Building and Premises to be in compliance with all applicable codes, laws, ordinances, rules and regulations (including, but not limited to in compliance with the American with Disabilities Act ("ADA")) that were in effect as of the date such improvements were constructed (the "Landlord's Warranty"). If a non-compliance with the Landlord Warranty exists as of the Delivery Date or any non-compliance is discovered by Tenant within one hundred twenty (120) days following the Delivery Date, then Tenant shall provide written notice of same to Landlord, and Landlord shall rectify such lack of compliance at Landlord's sole cost and expense; provided, however, that the foregoing shall not diminish Tenant's responsibility to perform any repairs, modifications or improvements if necessitated after the Delivery Date due to Tenant's use of the same, Tenant's Alterations, ordinary wear and tear. For purposes of this Lease "Base Building systems" means all Base Building systems (including, elevator, plumbing, air conditioning, heating, ventilation, electrical, security, life safety and power, and other mechanical and emergency systems for the Building), except (A) those special systems installed for specific tenants (including Tenant), (B) any systems installed by Tenant as part of the Alterations performed by Tenant to the Premises and (C) the portion of any Building system within any specific tenant space (including the Premises) or which exclusively serves such tenant or is otherwise the responsibility of such tenant pursuant to its lease.

1.3 No easement for light, air or view is included with or appurtenant to the Premises. Any diminution or shutting off of light, air or view by any structure which may hereafter be erected (whether or not constructed by Landlord) shall in no way affect this Lease or impose any liability on Landlord.

1.4 Notwithstanding section 1.1 of this Lease relating to use of the common areas of the Building for parking, Tenant shall have the right to use only the number of parking spaces specified in the Basic Lease Information at no additional cost or expense throughout the Lease Term. No parking spaces shall be reserved for the exclusive use of Tenant. Tenant shall use such parking spaces solely for parking automobiles of Tenant's officers and employees. Tenant shall not, at any time, use more than the number of parking spaces specified in the Basic Lease Information. Tenant shall comply with all Rules and Regulations and all laws now or hereafter in effect relating to the use of parking spaces. Without limiting the foregoing, in no event shall this Lease be void or voidable, nor shall Landlord be liable to Tenant for any loss or damage, nor shall there be any abatement of rent hereunder, by reason of any reduction in Tenant's parking rights hereunder by reason of strikes, lock-outs, labor disputes, shortages of material or labor, fire, flood or other casualty, acts of God or any other cause beyond the control of Landlord.

1.5 As required by Section 1938(a) of the California Civil Code, Landlord discloses to Tenant that the Premises have not undergone inspection by a Certified Access Specialist ("CASp"). As required by Section 1938(e) of the California Civil Code, Landlord also states that:

> "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises."

As permitted by the quoted language above, it is agreed that: (a) any CASp inspection requested by Tenant shall be requested by Tenant within ten (10) days after the date on which this Lease has been executed by Landlord and Tenant, (b) the contract under which the inspection is to be performed shall not limit the CASp's liability if the CASp fails to perform the inspection in accordance with the standard of care applicable to experts performing such inspections, Landlord shall be an intended third party beneficiary of such contract and the

contract shall otherwise comply with the provisions of this Lease applicable to Tenant contracts for construction; (c) the CASp inspection shall be conducted (i) at Tenant's sole cost and expense, (ii) by a CASp approved in advance by Landlord, (iii) after normal business hours, (iv) in a manner reasonably satisfactory to Landlord, and (v) shall be addressed to, and, upon completion, promptly delivered to, Landlord and Tenant; (d) the information in the inspection shall not be disclosed by Tenant to anyone other than contractors, subcontractors, and consultants of Tenant who have a need to know the information therein and who agree in writing not to further disclose such information; and (e) to the extent that such CASp inspection identifies any necessary repairs to correct violations of construction-related accessibility standards within the Premises, the provisions of Article 14 below shall govern Tenant's responsibility to make such repairs to the Premises. Landlord may elect to perform any portion of such work at Tenant's expense, which expense shall be estimated by Landlord and prepaid by Tenant within ten (10) days after Landlord's request. When the work is substantially completed, the estimated and actual costs and charges for such work shall be compared and Tenant shall receive a credit against future Rent for any overpayment and shall pay any underpayment to Landlord with the next installment of Rent due hereunder.

ARTICLE 2
Term

1.1 The terms and provisions of this Lease shall be effective as of the date of this Lease. The term of this Lease shall be the term specified in the Basic Lease Information (the "Lease Term"), which shall commence on the commencement date specified in the Basic Lease Information (the "Commencement Date") and, unless extended or sooner terminated as hereinafter provided, shall end on the expiration date specified in the Basic Lease Information (the "Expiration Date"). If Landlord, for any reason whatsoever, does not deliver possession of the Premises to Tenant with the Landlord Delivery Date Work Substantially Completed on or before June 1, 2020, as such date may be extended by Tenant Delay (as such term is defined in Exhibit B) or Force Majeure (as such term is defined below) (such date being referred to herein as the "Target Delivery Date"), and Tenant has Substantially Completed the components of Tenant's Work (as defined in Exhibit B) required for issuance of a certificate of occupancy by the City of San Diego, this Lease shall not be void or voidable and Landlord shall not be liable to Tenant for any loss or damage resulting therefrom, but in such event, (a) Landlord shall provide to Tenant a credit against Base Rent equal to (i) one (1) day of Base Rent for each day (if any) that passes from the Target Delivery Date until the actual Delivery Date occurs (such number of days referred to herein as the "Delay Period"), and (b) the Commencement Date shall be extended by the number of days equal to the Delay Period, however the Expiration Date shall not be extended due to such Delay Period. For purposes of this Lease, "Force Majeure" shall mean strikes, lock-outs, labor disputes, shortages of material or labor, fire, earthquake, flood or other casualty, acts of terror, acts of God, tenant holdover, or any other cause (other than financial inability) beyond the reasonable control of Landlord.

1.2 At any time during the Lease Term, Landlord may deliver to Tenant a notice confirming the Commencement Date and the Expiration Date, as determined in accordance with this Lease, which notice Tenant shall execute and return to Landlord within ten (10) business days following receipt.

1.3 Landlord shall construct or install in the Premises those improvements to be constructed or installed by Landlord pursuant to Exhibit B. Landlord shall deliver and Tenant shall accept the Premises upon Substantial Completion of the Landlord Delivery Date Work (as such is defined in Exhibit B). Substantial Completion of the Landlord Delivery Date Work shall be deemed to occur when Landlord has completed the Landlord Delivery Date Work pursuant to Exhibit B, subject to the completion or correction of items on a punch list mutually agreed upon by Landlord and Tenant. Landlord shall complete or correct the items on such punch list promptly, and in any event within thirty (30) days after the Delivery Date.

1.4 Tenant shall have the right to enter and utilize the Premises from the Delivery Date through the Commencement Date (the "Early Access Period") solely for the purpose of

constructing improvements and installing fixtures and equipment in the Premises for use by Tenant following the Commencement Date. If Tenant enters the Premises for any such permitted purpose prior to the Commencement Date, all of the agreements and covenants of Tenant in this Lease, except the payment of rent (including, but not limited to, Base Rent and Tenant's Share of Operating Expenses and Property Taxes), shall apply and be in force, including, without limitation, the provisions of Article 6, Article 7 and Article 8 of this Lease (provided, to the extent the provisions of Article 8 conflict with those of Exhibit B, the provisions of Exhibit B shall control). Before Tenant enters the Premises, Tenant shall deliver certificates of insurance to Landlord as required by Article 13 of this Lease. During any such entry into the Premises before the Commencement Date, Tenant shall not interfere in any way with any construction work or other activity by Landlord in the Premises and Tenant shall cooperate in all reasonable ways with Landlord while Landlord is carrying on any construction work or other activity within the Premises. Tenant shall be solely responsible for all furniture, fixtures and equipment and for any loss or damage thereto caused by Tenant's early entry. In the event Tenant completes Tenant's Work and receives a Certificate of Occupancy from the City of San Diego for the Premises, and after providing Landlord with a copy of such Certificate of Occupancy, occupies and/or commences business operations in the Premises prior to the Commencement Date, such occupancy and use shall not advance the Commencement Date, however commencing as of such date that Tenant occupies and/or commences business operations in the Premises, Tenant shall be obligated to pay Tenant's Share of Operating Expenses and Property Taxes pursuant to Articles 3 and 4 of this Lease. Tenant shall be obligated to pay for all utilities (including, without limitation, Tenant's Monthly Utility Charge pursuant to Section 3.1(d) of this Lease) at all times during the Early Access Period.

ARTICLE 3
Rent

1.1 Tenant shall pay to Landlord the following amounts as rent for the Premises:

(a) During the Lease Term, Tenant shall pay to Landlord, as monthly rent, the base rent specified in the Basic Lease Information (the "Base Rent").

(b) During each calendar year or part thereof during the Lease Term, Tenant shall pay to Landlord, as additional rent, Tenant's Percentage Share (as hereinafter defined) of all Operating Expenses (as hereinafter defined) paid or incurred by Landlord in such calendar year.

(c) During each calendar year or part thereof during the Lease Term, Tenant shall pay to Landlord, as additional rent, Tenant's Percentage Share of all Property Taxes (as hereinafter defined) paid or incurred by Landlord in such calendar year.

(d) During each calendar year or part thereof during the Lease Term, Tenant shall pay to Landlord, as additional rent, the actual cost incurred by Landlord with respect to all electricity, chilled water, air conditioning, gas, fuel, steam, heat, light, power and other utilities consumed within the Premises, as more particularly described herein (all such costs payable by Tenant pursuant to this section 3.1(d) shall be referred to as "Tenant's Monthly Utility Charge", and all such amounts shall constitute rent hereunder).

(i) All electricity directly serving the Premises ("Direct Electrical Costs") shall be metered or submetered and Tenant shall pay, as monthly rental, the actual cost (without mark up by Landlord) of all such Direct Electrical Costs either to Landlord as a reimbursement, or, at Landlord's election, as a payment directly to the entity providing such electricity. Such payments to Landlord of Direct Electrical Costs shall be made within thirty (30) days of Landlord's delivery of an invoice to Tenant therefor.

(ii) With respect to all utility costs for the Premises other than Direct Electrical Costs (collectively, "Other Utility Costs"), Landlord shall have the right, from

time to time, to equitably allocate some or all of such Other Utility Costs among different portions or occupants of the Building ("Cost Pools"), in Landlord's reasonable discretion. Such Cost Pools may include, but shall not be limited to, office space tenants, residential space occupants, and retail space tenants of the Building. The utility costs within each such Cost Pool shall be allocated and charged to the tenants within such Cost Pool in an equitable manner (without markup by Landlord).

(e) Throughout the Lease Term, Tenant shall pay, as additional rent, all other amounts of money and charges required to be paid by Tenant under this Lease, whether or not such amounts of money and charges are otherwise designated "additional rent." As used in this Lease, "rent" shall mean and include all Base Rent, all additional rent and all other amounts payable by Tenant in accordance with this Lease.

1.2 The additional rent payable pursuant to sections 3.1(b), 3.1(c), and 3.1(d)(ii) hereof shall be calculated and paid in accordance with the following procedures:

(a) On or before the first day of each calendar year during the Lease Term, or as soon thereafter as practicable, Landlord shall give Tenant written notice of Landlord's estimate of the amounts payable under sections 3.1(b), 3.1(c), and 3.1(d)(ii) hereof for the ensuing calendar year. On or before the first day of each month during such ensuing calendar year, Tenant shall pay to Landlord, as monthly rent, one-twelfth of such estimated amounts. If such notice is not given for any calendar year, Tenant shall continue to pay on the basis of the prior calendar year's estimate until the month after such notice is given. If at any time it appears to Landlord that the amounts payable under sections 3.1(b), 3.1(c), and 3.1(d)(ii) hereof for the current calendar year will vary from Landlord's estimate, Landlord may, by giving written notice to Tenant, revise its estimate for such calendar year. If Landlord delivers its estimate after the first day of a calendar year, or if Landlord revises its estimate for a calendar year, then subsequent payments by Tenant for such calendar year shall be based on such late or revised estimate, as the case may be, with an appropriate adjustment to the amount of such subsequent payments such that, prior to the end of such calendar year or portion thereof during the Lease Term, Tenant shall have paid Landlord's entire estimate of the amounts payable under sections 3.1(b), 3.1(c), and 3.1(d)(ii) hereof for such calendar year.

(b) Within a reasonable time after the end of each calendar year, Landlord shall give Tenant a written statement of the amounts payable under sections 3.1(b), 3.1(c), and 3.1(d)(ii) hereof for such calendar year certified by Landlord. If such statement shows an amount owing by Tenant that is less than the estimated payments for such calendar year previously made by Tenant, Landlord shall credit the excess to the next succeeding monthly installments payable under sections 3.1(b), 3.1(c), and 3.1(d)(ii) hereof. If such statement shows an amount owing by Tenant that is more than the estimated payments for such calendar year previously made by Tenant, Tenant shall pay the deficiency to Landlord within thirty (30) days after delivery of such statement. Failure by Landlord to give any notice or statement to Tenant under this section 3.2 shall not waive Landlord's right to receive, and Tenant's obligation to pay, the amounts payable by Tenant under sections 3.1(b), 3.1(c), and 3.1(d)(ii) hereof. During the Lease Term, but in no event more often than once in any one (1) year period, Tenant or its authorized employee or representative shall have the right to inspect the books of Landlord relating to Operating Expenses and Property Taxes, after giving reasonable prior written notice to Landlord and during the business hours of Landlord at Landlord's office in the Building or at such other location as Landlord may designate, for the purpose of verifying the information in such statement; provided that, if Tenant utilizes an independent accountant to perform such review, then such accountant shall be one of national standing which is reasonably acceptable to Landlord and is not compensated on a contingency basis; and provided further that Tenant shall have no right to inspect such books pertaining to any given period more than one hundred eighty (180) days after Landlord shall have delivered the written statement pertaining to such period. If Tenant wishes to dispute an amount shown on the annual statement, Tenant shall give Landlord written notice of such dispute within one hundred eighty (180) days after Tenant's receipt of the annual statement. If Tenant does not give Landlord such notice within such time, Tenant shall have waived its right to dispute the annual statement. Promptly after the receipt of

such written notice from Tenant, Landlord and Tenant shall endeavor in good faith to resolve such dispute. If such efforts do not succeed, Tenant shall have the right to cause a nationally recognized independent certified public accountant designated by Tenant, to be paid on an hourly and not a contingent fee basis, to audit the items questioned by Tenant in its original notice contesting the annual statement, provided that Tenant (i) notifies Landlord in writing of Tenant's intention to exercise such audit right within thirty (30) days after the relevant initial written notice from Tenant to Landlord with respect to such dispute, (ii) actually begins such audit within thirty (30) days after the notice from Tenant to Landlord advising Landlord that Tenant will require an audit (provided that such 30-day period within which the audit must be commenced shall be extended by the length of any delay in the commencement of the audit that is caused by Landlord) and (iii) diligently pursues such audit to completion as quickly as reasonably possible. Landlord agrees to make available to Tenant's auditors, at Landlord's office in San Francisco and/or at Landlord's office in the Building (at Landlord's sole option), the books and records relevant to the audit for review and copying, but such books and records may not be removed from Landlord's offices. Tenant shall bear all costs of such audit, including Landlord's actual copying costs and personnel costs, if any incurred in connection with such audit (provided that, prior to incurring any personnel costs in connection with any such audit, Landlord shall advise Tenant of Landlord's anticipated personnel costs so that Tenant may, at Tenant's option, modify Tenant's activities with regard to such audit in order to preclude the need for Landlord to incur such personnel costs), except that, if the audit (as conducted and certified by the auditor) shows an aggregate overstatement of Operating Expenses of five (5%) or more, and Landlord's auditors concur in such findings (or, in the absence of such concurrence, such overstatement is confirmed by a court of competent jurisdiction or such other dispute resolution mechanism as to which the parties mutually agree in writing), then Landlord shall bear all costs of the audit. If the agreed or confirmed audit shows an underpayment of Operating Expenses by Tenant, Tenant shall pay to Landlord, within thirty (30) days after the audit is agreed to or confirmed, the amount owed to Landlord, and, if the agreed or confirmed audit shows an overpayment of Operating Expenses by Tenant, Landlord shall reimburse Tenant for such overpayment within thirty (30) days after the audit is agreed to or confirmed. Notwithstanding anything to the contrary set forth above, Tenant's audit rights under this section 3.2(b) shall be conditioned upon (i) Tenant having paid the total amounts billed by Landlord under this Article 3 within the time stipulated herein for payment (including, without limitation, the contested amounts) and (ii) Tenant executing, prior to the commencement of the audit, a confidentiality agreement in form and substance reasonably satisfactory to Landlord in which Tenant shall agree to keep confidential, and not disclose to any other party, the results of any such audit or any action taken by Landlord in response thereto.

(c) If the Lease Term ends on a day other than the last day of a calendar year, the amounts payable by Tenant under sections 3.1(b), 3.1(c), and 3.1(d)(ii) hereof applicable to the calendar year in which the end of the term occurs shall be prorated on the basis which the number of days from the commencement of such calendar year to and including the date on which the end of the term occurs bears to three hundred sixty-five (365). Termination of this Lease shall not affect the obligations of Landlord and Tenant pursuant to section 3.2(b) hereof to be performed after such termination.

1.3 Tenant shall pay all monthly installments of Base Rent and monthly installments of Landlord's estimates of amounts payable under sections 3.1(b), 3.1(c), and 3.1(d)(ii) hereof (collectively, "Monthly Rent") to Landlord, in advance, on or before the first day of each and every calendar month during the Lease Term, without notice, demand, deduction or offset except as otherwise expressly set forth in this Lease, in lawful money of the United States of America. Landlord instructs Tenant to pay all such Monthly Rent to the address specified therefor in the Basic Lease Information, or to such other person or at such other place as Landlord may from time to time designate in writing. Landlord shall have the right to apply payments received from Tenant pursuant to this Lease, regardless of Tenant's designation of such payments, to satisfy any obligations of Tenant hereunder, in such order and amounts as Landlord, in its sole discretion, may elect. If Tenant's obligation to pay Base Rent hereunder commences on a day other than the first day of a calendar month, or if the Lease Term terminates on a day other than the last day of a calendar month, then the Base Rent payable for

such partial month shall be appropriately prorated on the basis of a thirty (30)-day month. Upon signing this Lease, Tenant shall pay to Landlord an amount equal to the Base Rent for the first full calendar month of the Term in which monthly Base Rent is payable, which amount Landlord shall apply to the Base Rent for such first full calendar month.

ARTICLE 4
Operating Expenses and Property Taxes Definitions

1.1 The following terms shall have the definitions herein specified:

(a) "Operating Expenses" shall mean all costs and expenses paid or incurred by Landlord in connection with the ownership, management, operation, replacement, maintenance or repair of the Building or providing services in accordance with this Lease, including, without limitation, the following: (i) salaries, wages, other compensation and benefits for personnel engaged in the management, operation, maintenance or repair of the Building; (ii) uniforms provided to such personnel; (iii) premiums and other charges incurred by Landlord with respect to fire, other casualty, rent and liability insurance, any other insurance as is deemed necessary or advisable in the reasonable judgment of Landlord, or any insurance required by the holder of any mortgage or deed of trust encumbering the Building; (iv) costs of repairing an insured casualty to the extent of the deductible amount under the applicable insurance policy; (v) water and sewer charges or fees; (vi) license, permit and inspection fees; (vii) sales, use and excise taxes on goods and services purchased by Landlord; (viii) telephone, delivery, postage, stationery supplies and other expenses; (ix) management fees and expenses; (x) costs and expenses for electricity, chilled water, air conditioning, water for heating, gas, fuel, steam, heat, lights, power and other energy related utilities required in connection with the operation, maintenance and repair of the common areas; (xi) equipment lease payments; (xii) repairs to and physical maintenance of the Building, including Building systems and accessories thereto and repair and replacement of worn-out or broken equipment, facilities, parts and installations; (xiii) window cleaning, security, guard, extermination, water treatment, garbage and waste disposal, rubbish removal, plumbing and other services; (xiv) inspection or service contracts for elevator, electrical, mechanical and other Building equipment and systems; (xv) supplies, tools, materials and equipment used in connection with the management, operation, maintenance or repair of the Building; (xvi) accounting, legal and other professional fees and expenses (excluding legal fees incurred by Landlord relating to disputes with specific tenants or the negotiation, interpretation or enforcement of specific leases); (xvii) painting the exterior or the public or common areas of the Building and the cost of maintaining the sidewalks, landscaping and other common areas of the Building; (xviii) the cost of furniture, draperies, carpeting and other customary and ordinary items of personal property (excluding paintings, sculptures or other works of fine art) provided by Landlord for use in common areas of the Building or in the Building office, such costs to be reasonably amortized as determined by Landlord; (xix) all costs and expenses resulting from work, labor, supplies, materials or services similar or in addition to, or in lieu of, any of the foregoing, or resulting from compliance with any laws, ordinances, rules, regulations or orders, or to comply with any amendment or other change to the enactment or interpretation of any applicable laws from its enactment or interpretation; (xx) Building office rent or rental value for office space reasonably necessary for the proper management and operation of the Building; (xxi) all costs and expenses of contesting by appropriate legal proceedings any matter concerning managing, operating, maintaining or repairing the Building or the amount or validity of any Property Taxes; (xxii) reasonable depreciation as determined by Landlord on all personal property, fixtures and equipment (including window washing machinery) used in the management, operation, maintenance or repair of the Building and on exterior window coverings provided by Landlord and carpeting in public corridors and common areas; and (xxiii) the cost, reasonably amortized as determined by Landlord, together with interest at the rate of ten percent (10%) per annum, or such higher annual rate as Landlord may actually have to pay, on the unamortized balance, of all capital improvements made to the Building or capital assets acquired by Landlord that are (A) required to comply with any conservation program or required by any law, ordinance, rule, regulation or order that are first enacted, or first interpreted to apply to the Building, after the date of this Lease or (B) performed primarily to reduce current or future

operating costs, to upgrade Building security, to otherwise improve the operating efficiency of the Building, or for the protection of the health and safety of the occupants of the Building.

Operating Expenses shall not include (1) Property Taxes, (2) depreciation on the Building (except as specified above), (3) costs of tenants' improvements, (4) real estate brokers' commissions, (5) interest and capital improvements (except the cost of capital improvements and capital assets and interest thereon as specified above), (6) Direct Electrical Costs or any other amounts for which Tenant is billed pursuant to section 3.1(d) above, (7) subject to the provisions of item (iv) above, repairs and other work occasioned by fire, windstorm or other casualty, to the extent Landlord is reimbursed by insurance proceeds, and other work paid from insurance or condemnation proceeds; (8) all direct costs of refinancing, selling or exchanging the Building, including broker commissions, attorney's fees and closing costs, (9) the cost (including permits, licenses and inspection fees) of decorating, improving for tenant occupancy, renovating, painting or redecorating portions of the Building to be demised to tenants, (10) advertising and promotional expenditures, (11) costs, penalties or fines arising from Landlord's violation of any applicable governmental rule or authority, except to the extent such costs reflect costs that would have been incurred by Landlord absent such violation, (12) penalties or other costs incurred due to a violation by Landlord, as determined by written admission, stipulation, final judgment or arbitration award, of any of the terms and conditions of this Lease or any other lease relating to the Building, except to the extent such costs reflect costs that would have been incurred by Landlord absent such violation, (13) accountants' and attorneys' fees and expenses incurred in connection with lease negotiations or lease disputes with current or prospective Building tenants or in connection with the defense of Landlord's title to the Building, (14) the cost of services made available at no special cost to any tenant in the Building but not to Tenant, and (15) Landlord's general corporate office overhead and administrative expenses (which shall not be deemed to include a management fee).

Actual Operating Expenses for each calendar year of the Lease Term shall be adjusted to equal Landlord's reasonable estimate of Operating Expenses for a full calendar year with one hundred percent (100%) of the total rentable area of the Building occupied during such full calendar year. Landlord shall have the right, from time to time, to equitably allocate some or all of the Operating Expenses for the Building among different portions or occupants of the Building (the "Cost Pools"), in Landlord's discretion. The Operating Expenses within each such Cost Pool shall be allocated and charged to the tenants within such Cost Pool in an equitable and consistent manner over all expense years.

(b) "Property Taxes" shall mean all taxes, assessments, excises, levies, fees and charges (and any tax, assessment, excise, levy, fee or charge levied wholly or partly in lieu thereof or as a substitute therefor or as an addition thereto) of every kind and description, general or special, ordinary or extraordinary, foreseen or unforeseen, secured or unsecured, whether or not now customary or within the contemplation of Landlord and Tenant, that are levied, assessed, charged, confirmed or imposed by any public or government authority on or against, or otherwise with respect to, the Building or any part thereof, any personal property used in connection with the Building and any taxes based upon the receipt of rent, including gross receipts or sales taxes applicable to the receipt of rent. Property Taxes shall also include any assessment, tax, fee, levy or charge in addition to, or in substitution, partially or totally, of any assessment, tax, fee, levy or charge previously included within the definition of real property taxes. Property Taxes shall not include (i) net income (measured by the income of Landlord from all sources or from sources other than solely rent), franchise, documentary transfer, inheritance or capital stock taxes of Landlord, unless levied or assessed against Landlord in whole or in part in lieu of, as a substitute for, or as an addition to any Property Taxes, or (ii) any tax, assessment, fee or charge paid by Tenant pursuant to section 5.1 hereof.

(c) "Tenant's Percentage Share" shall mean the percentage specified in the Basic Lease Information.

ARTICLE 5
Other Taxes Payable by Tenant

1.1 In addition to all monthly rent and other charges to be paid by Tenant under this Lease, Tenant shall reimburse Landlord upon demand for all taxes, assessments, excises, levies, fees and charges, including, without limitation, all transit impact development fees, housing impact development fees and other payments related to the cost of providing facilities or services, whether or not now customary or within the contemplation of Landlord and Tenant, that are payable by Landlord and levied, assessed, charged, confirmed or imposed by any public or government authority upon, or measured by, or reasonably attributable to (a) the Premises, (b) the cost or value of any equipment, furniture, fixtures and other personal property located in the Premises or the cost or value of any leasehold improvements made in or to the Premises by or for Tenant, regardless of whether title to such improvements is vested in Tenant or Landlord, (c) any monthly rent or any additional rent payable under this Lease, including, without limitation, any gross income tax or excise tax levied by any public or government authority with respect to the receipt of any such rent, (d) the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises, or (e) this transaction or any document to which Tenant is a party creating or transferring an interest or an estate in the Premises. Such taxes, assessments, excises, levies, fees and charges shall not include net income (measured by the income of Landlord from all sources or from sources other than solely rent), franchise, documentary transfer, inheritance or capital stock taxes of Landlord, unless levied or assessed against Landlord in whole or in part in lieu of, as a substitute for, or as an addition to any such taxes, assessments, excises, levies, fees and charges. If it is unlawful for Tenant to reimburse Landlord for any such taxes, assessments, excises, levies, fees or charges, the Base Rent payable prior to the imposition thereof shall be increased to provide Landlord the same net Base Rent after the imposition thereof as Landlord received prior to the imposition of such taxes, assessments, excises, levies, fees or charges. All taxes, assessments, excises, levies, fees and charges payable by Tenant under this Article 5 shall be deemed to be, and shall be paid as, additional rent.

ARTICLE 6
Use; Environmental Matters

1.1 Tenant shall use the Premises only for the purposes described in the Basic Lease Information for Tenant's business and no other purpose whatsoever without the prior written consent of Landlord, which may be withheld in Landlord's sole discretion. Tenant shall not do or permit to be done in, on or about the Premises, nor bring or keep or permit to be brought or kept therein, anything which is prohibited by or will in any way conflict with any law, ordinance, rule, regulation or order now in force or which may hereafter be enacted, or which is prohibited by any property insurance policy carried by Landlord for the Building, or will in any way increase the existing rate of, or cause a cancellation of, or affect any property or other insurance for the Building or any part thereof or any of its contents. Tenant shall not do or permit anything to be done in, on or about the Premises which will in any way obstruct or interfere with the rights of Landlord or other tenants of the Building, or injure or unreasonably annoy them. Tenant shall not use or allow the Premises to be used for any improper, immoral, unlawful or objectionable activity, nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises or commit or suffer to be committed any waste in, on or about the Premises. Tenant shall not bring into the Building any furniture, equipment, materials or other objects which overload the Building or any portion thereof.

1.2 Except as expressly permitted in this Section 6.2, Tenant shall not bring or keep, or permit to be brought or kept, in the Premises or the Building any "hazardous substance" (as hereinafter defined). Except as may be done in compliance with all applicable "environmental laws" (as hereinafter defined) in connection with the operation of Tenant's business at the Premises for the Permitted Use, Tenant shall not use, produce, process, manufacture, generate, treat, handle, store or dispose of any hazardous substance in the Premises or the Building, or use the Premises for any such purpose, or emit, release or discharge any hazardous substance into any air, soil, surface water or groundwater comprising the Premises or the Building, or

permit any person using or occupying the Premises to do any of the foregoing. The preceding sentence shall not prohibit the ordinary use of any hazardous substance normally used in the operation and cleaning of a general office for Tenant's business as permitted by this Lease, provided the amount of any such hazardous substance does not exceed the quantity necessary for the normal operation of a general office in the ordinary course of business and the use, storage and disposal of any such hazardous substance strictly comply with all applicable environmental laws. Tenant shall comply, and shall cause all persons using or occupying the Premises to comply, with all environmental laws applicable to the use or occupancy of the Premises by Tenant or any operation or activity of Tenant therein.

1.3 Tenant shall indemnify and defend Landlord and the Landlord Parties (as defined in Section 13.1 below) against and hold Landlord and the Landlord Parties harmless from all claims, demands, actions, judgments, liabilities, costs, expenses, losses, damages, penalties, fines and obligations of any nature (including reasonable attorneys' fees and disbursements incurred in the investigation, defense or settlement of claims) that Landlord may incur as a result of, or in connection with, claims arising from the presence, use, storage, transportation, treatment, disposal, release or other handling, on or about or beneath the Premises, of any hazardous substances introduced or permitted on or about or beneath the Premises by any act or omission of Tenant or its agents, officers, employees, contractors, invitees or licensees. The liability of Tenant under this section 6.3 shall survive the termination of this Lease with respect to acts or omissions that occur before such termination.

1.4 Landlord shall be responsible, at its sole cost, for the prompt investigation, removal, mitigation, and/or remediation of any actionable levels of Hazardous Materials located on the Premises prior to the Delivery Date. Landlord shall, at Landlord's sole cost and expense, remediate (i) any actionable levels of Hazardous Materials existing on the Premises on the Delivery Date, and (ii) actionable levels of Hazardous Materials released on the Premises after the date hereof by Landlord or any Landlord Party.

1.5 As used in this Lease, "hazardous substance" shall mean any substance or material that is described as a toxic or hazardous substance, waste or material or a pollutant or contaminant, or words of similar import, in any of the environmental laws, and includes asbestos, petroleum, petroleum products, polychlorinated biphenyls, radon gas, radioactive matter, and chemicals which may cause cancer or reproductive toxicity. As used in this Lease, "environmental laws" shall mean all federal, state and local laws, ordinances, rules and regulations now or hereafter in force, as amended from time to time, in any way relating to or regulating human health or safety, or industrial hygiene or environmental conditions, or protection of the environment, or pollution or contamination of the air, soil, surface water or groundwater.

ARTICLE 7
Services

1.1 Landlord shall maintain the public and common areas of the Building (such as lobbies, stairs, corridors and restrooms in the common areas, but not including any such areas located within any tenant's premises), the roof and exterior elements of the Building, and the mechanical (heating, ventilating and air conditioning) and electrical systems of the Building in reasonably good order and condition. Any damage in or to any such areas, elements or systems caused by Tenant or any agent, employee, contractor, licensee or invitee of Tenant shall be repaired by Landlord at Tenant's expense and Tenant shall reimburse Landlord therefor on demand, as additional rent. Landlord shall not be liable for any criminal acts of others or for any direct, consequential or other loss or damage related to any malfunction, circumvention or other failure of any access control service, device or personnel.

1.2 Landlord shall furnish the following utilities and services ("Basic Services") for the Premises: (i) during Business Days (as defined in the Basic Lease Information), electricity for Building standard lighting and power suitable for the use of the Premises for ordinary general office purposes, (ii) during Business Hours (as defined in the Basic Lease Information) on

Business Days, heat and air conditioning required in Landlord's judgment for the comfortable use and occupancy of the Premises for ordinary general office purposes, and (iii) elevator service to the floor(s) of the Premises by nonattended automatic elevators for general office pedestrian usage. Notwithstanding the foregoing, however, Tenant may use water, heat, air conditioning, electric current, elevator and other services in excess of that provided in Basic Services ("Excess Services," which shall include without limitation any power usage other than through existing standard 110-volt AC outlets; electricity and/or water consumed by Tenant in connection with any dedicated or supplemental heating, ventilating and/or air conditioning, computer power, telecommunications and/or other special units or systems of Tenant; chilled, heated or condenser water; or water used for any purpose other than ordinary drinking and lavatory purposes), provided that the Excess Services desired by Tenant are reasonably available to Landlord and to the Premises (it being understood that in no event shall Landlord be obligated to make available to the Premises more than the pro rata share of the capacity of any Excess Service available to the Building or the applicable floor of the Building, as the case may be), and provided further that Tenant complies with the procedures established by Landlord from time to time for requesting and paying for such Excess Services and with all other provisions of this Article 7. Landlord reserves the right to install in the Premises or the Building electric current and/or water meters (including, without limitation, any additional wiring, conduit or panel required therefor) to measure the electric current or water consumed by Tenant or to cause the usage to be measured by other reasonable methods (e.g. by temporary "check" meters or by survey).

1.3 Except for the cost of utilities (which are addressed in section 3.1(d) above), the cost of Basic Services shall be included in Operating Expenses. In addition, Tenant shall pay to Landlord upon demand (i) the cost, at Landlord's prevailing rate, of any Excess Services used by Tenant, (ii) the cost of installing, operating, maintaining or repairing any meter or other device used to measure Tenant's consumption of utilities, (iii) the cost of installing, operating, maintaining or repairing any Temperature Balance Equipment (as defined in section 7.4 below) for the Premises and/or any equipment required in connection with any Excess Services requested by Tenant, and (iv) any cost otherwise incurred by Landlord in keeping account of or determining any Excess Services used by Tenant. Landlord's failure to bill Tenant for any of the foregoing shall not waive Landlord's right to bill Tenant for the same at a later time.

1.4 If the temperature otherwise maintained in any portion of the Premises by the heating, air conditioning or ventilation system is affected as a result of (i) the type or quantity of any lights, machines or equipment (including without limitation typical office equipment) used by Tenant in the Premises, (ii) the occupancy of such portion of the Premises to exceed the normal occupancy for use of the Premises described in the Basic Lease Information, as reasonably determined by Landlord, or (iii) any rearrangement of partitioning or other improvements, then at Tenant's sole cost, Landlord may install any equipment, or modify any existing equipment (including the standard air conditioning equipment) Landlord deems necessary to restore the temperature balance (such new equipment or modifications to existing equipment termed herein "Temperature Balance Equipment"). Tenant agrees to keep closed, when necessary, draperies and/or window treatments which, because of the sun's position, must be closed to provide for the efficient operation of the air conditioning system, and Tenant agrees to cooperate with Landlord and to abide by the regulations and requirements which Landlord may prescribe for the proper functioning and protection of the heating, ventilating and air conditioning system. Landlord makes no representation to Tenant regarding the adequacy or fitness of the heating, air conditioning or ventilation equipment in the Building to maintain temperatures that may be required for, or because of, any computer or communications rooms, machine rooms, conference rooms or other areas of high concentration of personnel or electrical usage, or any other uses other than or in excess of the fractional horsepower normally required for office equipment, and Landlord shall have no liability for loss or damage suffered by Tenant or others in connection therewith.

1.5 Landlord's obligation to provide utilities and services for the Premises are subject to the Rules and Regulations of the Building, applicable laws (including the rules or actions of the public utility company furnishing the utility or service), and shutdowns for maintenance and

repairs, for security purposes, or due to strikes, lockouts, labor disputes, fire or other casualty, acts of God, or other causes beyond the control of Landlord. In the event of an interruption in, or failure or inability to provide any service or utility for the Premises for any reason, such interruption, failure or inability shall not constitute an eviction of Tenant, constructive or otherwise, or impose upon Landlord any liability whatsoever, including, but not limited to, liability for consequential damages or loss of business by Tenant. Tenant hereby waives the provisions of California Civil Code Section 1932(1) or any other applicable existing or future laws permitting the termination of this Lease due to such interruption, failure or inability. Notwithstanding the foregoing, if any interruption in, or failure or inability to provide any of the services or utilities described in Section 7.2 is (i) within Landlord's reasonable control and continues for four (4) or more consecutive Business Days after Tenant's written notice thereof to Landlord, or (ii) outside of Landlord's reasonable control and continues for thirty (30) or more consecutive days after Tenant's written notice thereof to Landlord, and Tenant is unable to use and does not use a material portion of the Premises for Tenant's business purposes as a result thereof, then Tenant shall be entitled to an abatement of Base Rent and Additional Rent, which abatement shall commence as of the first day after the expiration of such four (4) Business Day or thirty (30) day period, as the case may be, and shall be based on the extent of Tenant's inability to use the Premises for Tenant's business, and in the case of an interruption, failure or inability described in clause (ii) above, such abatement shall be applicable only to the extent and for so long as Landlord is reimbursed for the so abated rent pursuant to Landlord's rental loss insurance. The abatement provisions set forth above shall be inapplicable to any interruption in, or failure or inability to provide any of the services or utilities described in Section 7.2 that is caused by (x) damage by fire or other casualty or a taking (it being acknowledged that such situations shall be governed by Articles 11 and 21, respectively), or (y) the negligence or willful misconduct of Tenant or any agents, employees, contractors, licensees, subtenants, customers, guests or invitees of Tenant (collectively with Tenant, "Tenant Parties").

1.6 In the event any governmental authority having jurisdiction over the Building promulgates or revises any applicable laws or building, fire or other code or imposes mandatory or voluntary controls or guidelines on Landlord or the Building relating to the use or conservation of energy or utilities or the reduction of automobile or other emissions (collectively "Controls") or in the event Landlord is required or elects to make alterations to the Building in order to comply with such mandatory or voluntary Controls, Landlord may, in its sole discretion, comply with such Controls or make such commercially reasonable alterations to the Building related thereto. Such compliance and the making of such commercially reasonable alterations shall not constitute an eviction of Tenant, constructive or otherwise, or impose upon Landlord any liability whatsoever, including, but not limited to, liability for consequential damages or loss of business by Tenant.

1.7 Tenant acknowledges that Landlord may, from time to time, be required to disclose certain information concerning the Building's energy use pursuant to California Public Resources Code Section 25402.10 and the regulations promulgated pursuant thereto (collectively, together with any future law or regulation regarding disclosure of energy efficiency data with respect to the Building, "Energy Disclosure Regulations"). Tenant shall reasonably cooperate with Landlord with respect to any disclosure and/or reporting requirements pursuant to any Energy Disclosure Regulations. Without limiting the generality of the foregoing, Tenant shall, within ten (10) business days following request from Landlord, disclose to Landlord all information reasonably requested by Landlord in connection with the Energy Disclosure Regulations, including, but not limited to, the amount of power or other utilities consumed within the Premises for which the meters for such utilities are in Tenant's name, the number of employees working within the Premises, the operating hours for Tenant's business in the Premises, and the type and number of equipment operated by Tenant in the Premises. Tenant acknowledges that this information shall be provided on a non-confidential basis and may be provided by Landlord to the applicable utility providers, the California Energy Commission (and other governmental entities having jurisdiction with respect to the Energy Disclosure Regulations), and any third parties to whom Landlord is required to make the disclosures pursuant to the Energy Disclosure Regulations. Tenant agrees that none of the Landlord Parties (as defined below) shall be liable for any loss, cost, damage, expense or liability related to

Landlord's disclosure of such information provided by Tenant. In addition, Tenant represents to Landlord that any and all information provided by Tenant to Landlord pursuant to this paragraph shall be, to the best of Tenant's knowledge, true and correct in all material respects.

ARTICLE 8
Alterations

1.1 Tenant shall not make any alterations, additions, modifications or improvements in or to the Premises or any part thereof, or attach any fixtures or equipment thereto (collectively, "Alterations"), without Landlord's prior written consent. Notwithstanding the preceding sentence, Tenant may make such Alterations without Landlord's consent only if the total cost is fifty thousand dollars ($50,000) or less and it will not affect in any way the structural, exterior, entry or roof elements of the Building or the Premises, or the mechanical, electrical, plumbing, utility or life safety systems of the Building, but Tenant shall give prior written notice of any such Alterations to Landlord. All Alterations (except the Landlord's Work to be installed by Landlord pursuant to Exhibit B and the Tenant's Work to be installed by Landlord pursuant to Exhibit B) in or to the Premises to which Landlord consents shall be made by Tenant at Tenant's sole cost and expense as follows:

(a) Tenant shall submit to Landlord in accordance with the delivery requirements of Section 30.1 below and via email, for Landlord's prior written approval, complete plans and specifications for all work to be done by Tenant. Such plans and specifications shall be prepared by responsible licensed architect(s) and engineer(s) approved in writing by Landlord, shall comply with all applicable codes, laws, ordinances, rules and regulations, shall not adversely affect the basic Building shell or any systems, components or elements of the Building, shall be in a form sufficient to secure the approval of all government authorities with jurisdiction over the approval thereof, and shall be otherwise satisfactory to Landlord in Landlord's reasonable discretion. Landlord shall respond to Tenant's plans and specifications (and to any resubmittal of plans) within ten (10) business days of Landlord's receipt thereof, and Landlord's approval shall not be unreasonably withheld, conditioned or delayed. In the event Tenant submits (or resubmits) such plans and specifications in accordance with the delivery requirements set forth in this Section 8.1(a) and Landlord fails to respond within such ten (10) business day period, the submitted plans and specifications shall be deemed approved by Landlord. Tenant shall provide Landlord advance written notice of the licensed architect(s) and engineer(s) whom Tenant proposes to engage to prepare such plans and specifications; provided, however, Landlord hereby approves of Tenant using Mansour Architecture Corporation as Tenant's architect, as well as Pacific Rim Mechanical (Design Build) for mechanical/plumbing engineering, WME (Michael Wall and Associates) and/or MPE Electric for electrical engineering, and GSSI Structural Engineers for structural engineering. To the extent Tenant desires to use any alternative architects or engineers, Landlord shall notify Tenant in writing whether Landlord approves or disapproves such alternative architect(s) and engineer(s), provided that Landlord's approval shall not be unreasonably withheld, conditioned or delayed, and any disapproval shall be accompanied by a reasonable explanation as to why the approval was withheld. Landlord's approval or consent to any such work shall not impose any liability upon Landlord, and no action taken by Landlord in connection with such approval, including, without limitation, attending construction meetings of Tenant's contractors, shall render Tenant the agent of Landlord for purposes of constructing any Alterations.

(b) If Landlord disapproves such plans and specifications, or any portion thereof, Landlord shall notify Tenant in writing of such disapproval and the reason for such disapproval, and of the reasonable revisions which Landlord requires in order to obtain Landlord's approval. Thereafter, Tenant shall submit to Landlord, in accordance with the delivery requirements of Section 30.1 below and via email, revised plans and specifications incorporating the revisions required by Landlord. Such revisions shall be subject to Landlord's prior written approval. Landlord shall respond to Tenant's resubmitted plans and specifications (and to any subsequent resubmittal of plans) within three (3) business days of Landlord's receipt thereof, such approval not to be unreasonably withheld, conditioned or delayed. In the event Tenant resubmits such plans and specifications in accordance with the delivery requirements set forth

in this Section 8.1(b) and Landlord fails to respond within such three (3) business day period, the resubmitted plans and specifications shall be deemed approved by Landlord. If Landlord again disapproves such revised plans and specifications, or any portion thereof, Landlord shall notify Tenant in writing of such disapproval, the reason for such disapproval and of the reasonable revisions which Landlord requires in order to obtain Landlord's approval. The process shall repeat until such time as Landlord has approved or is deemed to have approved the further revised plans and specifications. Tenant shall pay all costs, including the fees and expenses of the licensed architect(s) and engineer(s), in preparing such plans and specifications.

(c) Tenant shall pay for all work (including, without limitation, the cost of all utilities, permits, fees, taxes, and property and liability insurance premiums in connection therewith) required to make the Alterations. Tenant shall engage responsible licensed contractor(s) approved in writing by Landlord to perform all work, such approval not to be unreasonably withheld, conditioned or delayed; provided, however, Landlord hereby approves of Tenant using BN Builders or DPR Construction as the general contractor, Neal Electric, Bergelectric and/or Ickler Electric as the electrical contractor, and Pacific Rim Mechanical for mechanical/plumbing contracting. Tenant shall provide Landlord advance written notice of the contractors, subcontractors, mechanics and materialmen whom Tenant proposes to engage for the work, all of which shall be licensed in the State of in which the Building is located and capable of being bonded. To the extent Tenant desires to use any alternative contractors, Landlord shall notify Tenant in writing whether Landlord approves or disapproves such contractor(s) within a reasonable period of time, such approval not to be unreasonably withheld, conditioned, or delayed. All contractors and other persons shall at all times be subject to Landlord's control while in the Building. Prior to the commencement of any Alterations, if required by Landlord, Tenant shall provide Landlord with evidence that Tenant carries "Builder's All Risk" insurance in form and amount approved by Landlord covering such Alterations. Under no circumstances shall Landlord be liable to Tenant for any liability, loss, cost or expense incurred by Tenant on account of Tenant's plans and specifications, Tenant's contractors or subcontractors, design of any work, construction of any work, or delay in completion of any work. In addition, Tenant acknowledges and agrees that any and all Alterations have not been expressly or impliedly required as a condition to the execution of this Lease for the use of the Premises permitted under this Lease or in lieu of payment of rent.

(d) Tenant shall give written notice to Landlord of the date on which construction of any work will be commenced at least ten (10) business days prior to such date(or such additional time as may be necessary under applicable laws) to afford Landlord the opportunity of posting and recording appropriate notices of non-responsibility. Tenant shall cause all work to be performed by the licensed contractor(s) approved in writing by Landlord in accordance with the plans and specifications approved in writing by Landlord and in full compliance with all applicable codes, laws, ordinances, rules and regulations.

(e) All changes in the plans and specifications approved by Landlord shall be subject to Landlord's prior written approval, such approval not to be unreasonably withheld, conditioned or delayed. If Tenant wishes to make any such change in such approved plans and specifications, Tenant shall have Tenant's architect(s) and engineer(s) prepare plans and specifications for such change and submit them to Landlord for Landlord's written approval. If Landlord disapproves such change, Landlord shall specify in writing the reasons for disapproval and such plans and specifications shall be revised by Tenant and resubmitted to Landlord for Landlord's written approval. After Landlord's written approval of such change, such change shall become part of the plans and specifications approved by Landlord.

(f) Tenant shall pay Landlord on demand prior to or during the course of construction of any Alterations an amount (the "Supervision Fee") equal to five percent (5%) of the total cost of such Alteration (and for purposes of calculating the Supervision Fee, such cost shall include architectural and engineering fees, but shall not include permit fees) as compensation to Landlord for Landlord's review of the plans and specifications for such Alterations and general oversight of the construction; provided, however, in the event the cost of

any Alteration is greater than Fifty Thousand Dollars ($50,000), then the Supervision Fee shall be equal to one percent (1%) of the total cost of such Alteration. In addition, Tenant shall pay to Landlord any direct costs incurred by Landlord with respect to any Alterations made by Tenant (beyond the normal services provided to tenants in the Building) and shall reimburse Landlord for all out-of-pocket expenses incurred by Landlord in connection with the review, approval and supervision of such Alterations.

1.2 All Alterations, including, without limitation, carpeting and all other improvements made pursuant to Exhibit B, if any, whether temporary or permanent in character, made in or to the Premises either by Tenant or by Landlord shall become part of the Building and Landlord's property. At Landlord's sole election any or all Alterations made for or by Tenant shall be removed by Tenant from the Premises at the expiration or sooner termination of this Lease. Upon Tenant's express written request making specific reference to this Section 8.2, Landlord shall advise Tenant at the time of Landlord's approval of any Alteration requested by Tenant (or within ten (10) Business Days after receipt of Tenant's notice to Landlord with respect to those Alterations not requiring Landlord's approval) whether Landlord will require the removal of the Alteration and restoration of the Premises to its previous condition at the expiration or sooner termination of this Lease. Landlord's failure to expressly waive in writing Tenant's removal obligation as to any Alterations shall preserve Landlord's right to make its foregoing election with respect to such Alterations. In the event Landlord requires such removal, the Premises shall be restored by Tenant to their condition prior to the making of the Alterations, ordinary wear and tear excepted. The removal of the Alterations and the restoration of the Premises shall be performed by a general contractor selected by Tenant and approved by Landlord, in which event Tenant shall pay the general contractor's fees and costs in connection with such work. Movable furniture, equipment, trade fixtures and personal property (except partitions) shall remain the property of Tenant and Tenant shall, at Tenant's expense, remove all such property from the Building at the end of the Lease Term. Termination of this Lease shall not affect the obligations of Tenant pursuant to this section 8.2 to be performed after such termination.

1.3 Intentionally Omitted.

ARTICLE 9
Liens

1.1 Tenant shall keep the Premises and the Building free from mechanics', materialmen's and all other liens arising out of any work performed, materials furnished or obligations incurred by Tenant. Tenant shall promptly and fully pay and discharge all claims on which any such lien could be based within ten (10) days after Tenant has notice of any such lien. Tenant shall have the right to contest the amount or validity of any such lien, provided Tenant gives prior written notice of such contest to Landlord, prosecutes such contest by appropriate proceedings in good faith and with diligence, and, upon request by Landlord, furnishes such bond as may be required by law to protect the Building and the Premises from such lien. Landlord shall have the right to post and keep posted on the Premises any notices that may be provided by law or which Landlord may deem to be proper for the protection of Landlord, the Premises and the Building from such liens, and to take any other action Landlord deems necessary to remove or discharge liens or encumbrances at the expense of Tenant.

ARTICLE 10
Maintenance and Repairs

1.1 Tenant shall, at all times during the Lease Term and at Tenant's sole cost and expense, maintain and repair the non-structural portions of the Premises and every part thereof (including, without limitation (i) any portions of the Buildings systems located within and/or exclusively serving the Premises, (ii) any supplemental systems (including air-conditioning systems or power generators, regardless of whether they are located inside or outside the Premises), and (iii) any equipment used in connection with the Premises and installed specifically for Tenant) and all equipment, fixtures and improvements therein and keep all of the foregoing clean and in good order and operating condition, ordinary wear and tear and damage

thereto by fire or other casualty excepted. For clarity, the maintenance and repair obligations of Landlord and Tenant are summarized on the Maintenance and Repair Responsibility Matrix attached hereto as Exhibit G. In the event of a conflict between Exhibit G and the other provisions of this Lease, Exhibit G shall control. Tenant hereby waives all rights under California Civil Code section 1941 and all rights to make repairs at the expense of Landlord or in lieu thereof to vacate the Premises as provided by California Civil Code section 1942 or any other law, statute or ordinance now or hereafter in effect. Landlord has no obligation and has made no promise to alter, remodel, improve, repair, maintain, decorate or paint the Premises or the Building or any part thereof or any equipment, fixtures or improvements therein. No representations respecting the condition of the Premises or the Building have been made to Tenant either by Landlord or by any real estate broker. Tenant's obligation to keep the Premises and every part thereof and all equipment, fixtures and improvements located therein and/or exclusively serving the Premises in good condition and repair in accordance with this section 10.1 is part of the consideration for Landlord's leasing the Premises to Tenant.

ARTICLE 11
Damage or Destruction

1.1 If the Building or the Premises, or any part thereof, is damaged by fire or other casualty before the Commencement Date or during the Lease Term, and this Lease is not terminated pursuant to sections 11.2 or 11.3 hereof, Landlord shall repair such damage and restore the Building and the Premises to substantially the same condition in which the Building and the Premises existed before the occurrence of such fire or other casualty (provided that Landlord shall have no obligation to restore any above-Building standard improvements or Alterations in the Premises, unless the cost thereof is paid by Tenant in advance of such restoration, or any Alterations made by or for Tenant in the Premises following the Commencement Date) and this Lease shall, subject to the provisions of this Article 11, remain in full force and effect. If such fire or other casualty damages the Premises or common areas of the Building necessary for Tenant's use and occupancy of the Premises and Tenant ceases to use any portion of the Premises as a result thereof, then during the period the Premises are rendered untenantable by such damage Tenant shall be entitled to a reduction in Monthly Rent in the proportion that the area of the Premises rendered unusable by such damage bears to the total area of the Premises. Landlord shall not be obligated to repair any damage to, or to make any replacement of, any movable furniture, equipment, trade fixtures or personal property in the Premises or Alterations made by or for Tenant in the Premises following the Commencement Date. Tenant shall, at Tenant's sole cost and expense, repair and replace all such movable furniture, equipment, trade fixtures, personal property and any Alterations made by or for Tenant in the Premises following the Commencement Date. Such repair and replacement by Tenant shall be done in accordance with Article 8 hereof. Tenant hereby waives California Civil Code sections 1932(2) and 1933(4), or any successor statute, providing for termination of hiring upon destruction of the thing hired.

1.2 If the Building or the Premises, or any part thereof, is damaged by fire or other casualty before the Commencement Date or during the Lease Term and (a) such fire or other casualty occurs during the last twelve (12) months of the Lease Term and the repair and restoration work to be performed by Landlord in accordance with section 11.1 hereof cannot, as reasonably estimated by Landlord, be completed within two (2) months after the occurrence of such fire or other casualty, or (b) the insurance proceeds received by Landlord in respect of such damage are not adequate to pay the entire cost, as reasonably estimated by Landlord, of the repair and restoration work to be performed by Landlord in accordance with section 11.1 hereof, or (c) the repair and restoration work to be performed by Landlord in accordance with section 11.1 hereof cannot, as reasonably estimated by Landlord, be completed within six (6) months after the occurrence of such fire or other casualty, then, in any such event, Landlord shall have the right, by giving written notice to Tenant within sixty (60) days after the occurrence of such fire or other casualty, to terminate this Lease as of the date specified in such notice, which date shall be not less than thirty (30) days nor more than sixty (60) days after the date such notice is given.

1.3 A total destruction of the Building shall automatically terminate this Lease effective as of the date of such total destruction.

ARTICLE 12
Subrogation

1.1 Each party hereto hereby releases the other respective party and the respective partners, shareholders, agents, employees, officers, directors and authorized representatives of such released party, from any claims such releasing party may have for damage to the Building, the Premises or any of such releasing party's fixtures, personal property, improvements and alterations in or about the Premises or the Building that is caused by or results from risks insured against under any fire and extended coverage insurance policies actually carried by such releasing party or deemed to be carried by such releasing party; provided, however, that such waiver shall be limited to the extent of the net insurance proceeds payable by the relevant insurance company with respect to such loss or damage (or in the case of deemed coverage, the net proceeds that would have been payable). For purposes of this section 12.1, Tenant shall be deemed to be carrying any of the insurance policies required pursuant to section 13.2 but not actually carried by Tenant, and Landlord shall be deemed to carry standard fire and extended coverage policies on the Building. Each party hereto shall cause each such fire and extended coverage insurance policy obtained by it to provide that the insurance company waives all rights of recovery by way of subrogation against the other respective party and the other released parties in connection with any matter covered by such policy.

ARTICLE 13
Indemnification and Insurance

1.1 Waiver and Indemnity.

(a) Tenant hereby waives all claims against Landlord, Landlord's members, partners, shareholders, trustees, and beneficiaries, the Building's property manager, and Landlord's asset manager, and their respective officers, directors, agents, servants, employees and independent contractors (collectively, the "Landlord Parties"), for damage to or loss or theft of any property or for any bodily or personal injury, illness or death of any person in, on or about the Premises or the Building arising at any time and from any cause whatsoever other than solely by reason of the gross negligence or willful misconduct of Landlord. Tenant further assumes all risk of, and agrees that Landlord and the Landlord Parties shall not be liable for, any and all loss, cost, damage, expense and liability (including without limitation court costs and reasonable attorneys' fees) sustained as a result of the Premises not having been inspected by a Certified Access Specialist (CASp).

(b) Tenant shall indemnify, defend and hold harmless the Landlord Parties from and against all claims, demands, liabilities, damages, losses, costs and expenses, including, without limitation, reasonable attorneys' fees, incurred in connection with or arising from (a) any cause whatsoever in, on or about the Premises or any part thereof arising at any time other than solely by reason of the gross negligence or willful misconduct of Landlord or any Landlord Parties, or (b) any act or omission of Tenant or its agents, employees, contractors, invitees or licensees in, on or about any part of the Building other than the Premises (including, without limitation, any damage, bodily or personal injury, illness or death which is caused in part by Landlord), or (c) any breach by Tenant of the terms of this Lease.

(c) Landlord shall indemnify, defend and hold harmless the Tenant Parties from and against all claims, demands, liabilities, damages, losses, costs and expenses, including, without limitation, reasonable attorneys' fees, directly and solely arising from the gross negligence or willful misconduct of Landlord or any Landlord Parties in, on or about the Building or any part thereof.

(d) This Article 13 shall survive the termination of this Lease with respect to any damage, bodily or personal injury, illness or death occurring prior to such termination.

1.2 Tenant shall, at Tenant's sole cost and expense, obtain and keep in force during the term of this Lease the following insurance:

(a) Intentionally Omitted.

(b) Automobile liability insurance policy containing liability symbol "1" (any automobile), including owned, non-owned and hired automobiles, with a combined single limit of $1,000,000 for bodily injury and property damage or equivalent approved by Landlord.

(c) An occurrence form commercial general liability insurance policy with coverage at least as broad as ISO form CG0001 with limits of not less than $2,000,000 combined single limit, each occurrence and aggregate, and will not provide for a self-insured retention or deductible in excess of $100,000. Such insurance shall include Legal Liability limits of $1,000,000 per occurrence, and $2,000,000 products/completed operations coverage and such insurance shall be primary insurance as respects any claims, losses or liability arising directly or indirectly from the Tenant's operations and/or occupancy, and any other insurance maintained by Landlord shall be excess and not contributory with the insurance required hereunder. Said insurance policies shall include an endorsement, providing that the Landlord Parties and their officers and employees are additional insured using CG 2011 or comparable wording. The Additional Insured(s) endorsement shall be at no cost to Landlord or the other additional insured(s). All such insurance shall insure the performance by Tenant of the indemnity agreement set forth in section 13.1 hereof.

(d) Umbrella liability insurance policy with a limit of not less than $6,000,000 or such higher limit as may be required by Landlord. The policy shall provide excess coverage over Tenant's Employers' Liability, Automobile Liability and Commercial General Liability coverages.

(e) Insurance policy for full replacement cost of Tenant's movable furniture, equipment, trade fixtures and personal property in the Premises and any Alterations made by or for Tenant after the Commencement Date, with special form cause of loss (including earthquake and flood if applicable) with agreed value endorsement. Loss of business income and continuing expense coverage will be included for a minimum of 12 months rental value. Tenant will name Landlord as additional insured for loss of business income and continuing expenses. All amounts received by Tenant under the insurance specified in this section 13.2 shall first be applied to the payment of the cost of the repair and replacement Tenant is obligated to do under Article 11 hereof.

1.3 Landlord reserves the right to increase the amounts of coverage specified in section 13.2 above from time to time as Landlord determines is required to adequately protect Landlord and the other parties designated by Landlord from the matters insured thereby (provided, however, that Landlord makes no representation that the limits of liability required hereunder from time to time shall be adequate to protect Tenant). In addition, Landlord reserves the right to require that Tenant cause any of its contractors, vendors, movers or other parties conducting activities in or about or occupying the Premises to obtain and maintain insurance as determined by Landlord (which insurance coverages may be greater than those set forth in section 13.2 above and which may include types of insurance not specified above with respect to Tenant) and as to which Landlord and such other parties designated by Landlord shall be additional insureds.

1.4 All insurance required under this Article 13 and all renewals thereof shall be issued by good and responsible companies rated not less than A-:VIII in Best's Insurance Guide and qualified to do and doing business in the State in which the Building is located. Each policy, other than Tenant's workers' compensation insurance, shall: (a) provide that the policy shall not be canceled or altered without thirty (30) days' prior written notice to Landlord and shall remain in effect notwithstanding any such cancellation or alteration until such notice shall have been given to Landlord and such period of thirty (30) days shall have expired; (b) protect Tenant, as named insured, and Landlord and all the other Landlord Parties and any other parties

designated by Landlord, as additional insureds, using such ISO or other form of endorsement as directed in writing by Landlord; (c) shall insure Landlord's and such other parties' contingent liability with regard to acts or omissions of Tenant; (d) include all waiver of subrogation rights endorsements necessary to effect the provisions of Article 12 above; (e) provide that the policy and the coverage provided shall be primary, that Landlord, although an additional insured, shall nevertheless be entitled to recovery under such policy for any damage to Landlord or the other Landlord Parties by reason of acts or omissions of Tenant, and that any coverage carried by Landlord shall be noncontributory with respect to policies carried by Tenant; (f) specifically include all liability assumed by Tenant under this Lease (provided, however, that such contractual liability coverage shall not limit or be deemed to satisfy Tenant's indemnity obligations under this Lease); and (g) if subject to deductibles, shall provide for deductible amounts not in excess of those approved in advance in writing by Landlord in its sole discretion. Tenant shall deliver certificates of insurance, acceptable to Landlord, to Landlord at least ten (10) days before the Commencement Date and at least ten (10) days before expiration of each policy. In addition, upon the issuance thereof, Tenant shall deliver each such policy or a certified copy thereof to Landlord for retention by Landlord. If Tenant fails to insure or fails to furnish to Landlord upon notice to do so any such policy or certified copy and certificate thereof as required, Landlord shall have the right from time to time to effect such insurance for the benefit of Tenant or Landlord or both of them and all premiums paid by Landlord shall be payable by Tenant as additional rent on demand.

ARTICLE 14
Compliance With Legal Requirements

1.1 Tenant shall, at its sole cost and expense, promptly comply with all laws, ordinances, rules, regulations, orders and other requirements of any government or public authority now in force or which may hereafter be in force, with the requirements of any board of fire underwriters or other similar body now or hereafter constituted, and with any direction or certificate of occupancy issued pursuant to any law by any governmental agency or officer, insofar as any thereof relate to or affect the condition, use or occupancy of the Premises or the operation, use or maintenance of any equipment, fixtures or improvements in the Premises (collectively, "Legal Requirements"), excluding requirements of structural changes not related to or affected by Tenant's acts or use of the Premises or by Alterations made by or for Tenant.

ARTICLE 15
Assignment and Subletting

1.1 Except as to a Permitted Transfer (as defined below), Tenant shall not, directly or indirectly, without the prior written consent of Landlord, which consent shall not be unreasonably withheld, assign this Lease or any interest herein or sublease the Premises or any part thereof, or permit the use or occupancy of the Premises by any person other than Tenant. Except as to a Permitted Transfer, Tenant shall not, directly or indirectly, without the prior written consent of Landlord, pledge, mortgage or hypothecate this Lease or any interest herein. This Lease shall not, nor shall any interest herein, be assignable as to the interest of Tenant involuntarily or by operation of law without the prior written consent of Landlord. For purposes of this Lease, except as to a Permitted Transfer, any of the following transfers on a cumulative basis shall constitute an assignment of this Lease that requires the prior written consent of Landlord: if Tenant is a corporation, the transfer of more than forty-nine percent (49%) of the stock of the corporation; if Tenant is a partnership or a limited liability company, the transfer of more than forty-nine percent (49%) of the capital or profits or partnership or membership interests in the partnership or limited liability company; and if Tenant is a trust, the transfer of more than forty-nine (49%) of the beneficial interest under the trust. Any of the foregoing acts without such prior written consent of Landlord shall be void and shall, at the option of Landlord, constitute a default that entitles Landlord to terminate this Lease.

1.2 Except as to a Permitted Transfer, if Tenant wishes to assign this Lease or sublease all or any part of the Premises, Tenant shall provide Landlord written notice identifying the intended assignee or subtenant by name and address and specifying all of the terms of the

intended assignment or sublease, and a copy of all documentation pertaining to such assignment or sublease (except that Landlord shall have the right to require that Tenant and such assignee or subtenant execute Landlord's standard form of consent document). Tenant shall give Landlord such additional information as Landlord requests concerning the intended assignee or subtenant (including, without limitation, current financial statements) or the intended assignment or sublease. Without limiting or excluding other reasonable grounds for withholding Landlord's consent to a proposed assignment or sublease, Landlord shall have the right to withhold consent if (a) the proposed assignee or subtenant or the use of the Premises to be made by the proposed assignee or subtenant is not consistent with the character and nature of other tenants and uses in the Building or is prohibited by this Lease or any laws, covenants, or restrictions applicable to the Building, (b) it is not demonstrated to the satisfaction of Landlord that the proposed assignee or subtenant has good business and moral character and reputation and is financially able to perform all of the obligations of Tenant under this Lease, (c) the assignment or subletting would increase the operating costs for the Building or the burden on the Building services, (d) the space will be used for a personnel or employment agency, an office or facility of any governmental or quasi-governmental agency or authority, or any use by or affiliation with a foreign government (including without limitation an embassy or consulate or similar office), (e) the proposed assignee or subtenant is a current tenant of the Building or a prospective tenant of the Building, or (f) the proposed assignee or subtenant is an entity or related to an entity with whom Landlord or any affiliate of Landlord has had adverse dealings.

1.3 Intentionally omitted.

1.4 Tenant shall pay to Landlord, as Landlord's cost of processing each proposed assignment or subletting, an amount equal to the sum of (i) Landlord's reasonable attorneys' and other professional fees, plus (ii) the sum of $750.00 for the cost of Landlord's administrative, accounting and clerical time (collectively, "Processing Costs"), and the amount of all direct and indirect costs and expenses incurred by Landlord arising from the assignee or sublessee taking occupancy of the subject space (including, without limitation, costs of freight elevator operation for moving of furnishings and trade fixtures, security service, janitorial and cleaning service, and rubbish removal service). Notwithstanding anything to the contrary herein, Landlord shall not be required to process any request for Landlord's consent to an assignment or subletting until Tenant has paid to Landlord the amount of Landlord's estimate of the Processing Costs and all other direct and indirect costs and expenses of Landlord and its agents arising from the assignee or subtenant taking occupancy.

1.5 No assignment, sublease, pledge, mortgage, hypothecation or other transfer, nor any consent by Landlord to any of the foregoing, shall release Tenant from any of Tenant's obligations and liabilities under this Lease or alter the primary liability of Tenant to pay rent and to perform all other obligations to be performed by Tenant hereunder (and Landlord may proceed directly against Tenant without the necessity of exhausting any remedies against such assignee, subtenant or successor), or shall be deemed to be a consent to any subsequent pledge, mortgage, hypothecation, assignment, sublease, or occupation or use by another person. Tenant hereby acknowledges and agrees, and any instrument by which an assignment or sublease is accomplished shall expressly provide: (a) that the assignee or subtenant will perform and observe all the agreements, covenants and conditions to be performed and observed by Tenant under this Lease as and when performance and observance is due after the effective date of the assignment or sublease, (b) that Landlord will have the right to enforce such agreements, covenants and conditions directly against such assignee or subtenant, (c) in the case of a sublease, the subtenant shall, at Landlord's election, attorn directly to Landlord in the event that this Lease is terminated for any reason, (d) in the case of an assignment, the assignee assumes all of Tenant's obligations under this Lease arising on or after the date of the assignment, and (e) in the case of a sublease, the subtenant agrees to be and remain jointly and severally liable with Tenant for the payment of rent pertaining to the sublet space in the amount set forth in the sublease, and for the performance of all of the terms and provisions of this Lease. Any assignment or sublease without an instrument containing the foregoing provisions shall be void and shall, at the option of Landlord, constitute a default under this Lease. No assignment or sublease shall be valid and no assignee or subtenant shall take

possession of the Premises or any part thereof until an executed duplicate original of such assignment or sublease (and any standard form of consent document required by Landlord) has been delivered to Landlord, together with the written consent to such assignment or sublease of any guarantor of Tenant's obligations hereunder, if any, and certificates evidencing that such subtenant or assignee is carrying all insurance coverage required under this Lease has been provided to Landlord.

1.6 If Landlord consents in writing, then as condition to and in consideration for such consent, all "excess rent" (as hereinafter defined) derived from such assignment or sublease that is not a Permitted Transfer shall be divided and paid fifty percent (50%) to Tenant and fifty percent (50%) to Landlord during each month of the sublease term. Landlord's share of such excess rent shall be computed monthly and shall be deemed to be, and shall be paid by Tenant to Landlord as, additional rent. Tenant shall pay Landlord's share of such excess rent to Landlord immediately as and when such excess rent is receivable by Tenant. As used in this section 15.6, "excess rent" shall mean the amount by which the total money and other economic consideration to be paid by the assignee or subtenant as a result of an assignment or sublease, whether denominated rent or otherwise, for any given month exceeds, in the aggregate, the total amount of rent which Tenant is obligated to pay to Landlord under this Lease for such month (prorated to reflect the rent allocable to the portion of the Premises subject to such assignment or sublease), less the reasonable costs paid by Tenant for tenant improvements, rent concessions, and brokers' commissions and attorneys' fees with respect to such sublease or assignment, which costs shall be amortized without interest over the term of such assignment or sublease. As a condition to Tenant recapturing its assignment or subletting costs as provided herein, Tenant shall provide to Landlord, within thirty (30) days of Landlord's execution of Landlord's consent to the assignment or subletting, a detailed accounting of such costs and reasonable supporting documents.

1.7 Any sublease hereunder, including a Permitted Transfer, shall be subordinate and subject to the provisions of this Lease, and if this Lease shall be terminated during the term of any sublease, Landlord shall have the right to: (a) treat such sublease as canceled and repossess the entire Premises by any lawful means, or (b) require that such subtenant attorn to and recognize Landlord as its landlord under any such sublease. If Tenant shall be in default under this Lease, Landlord is hereby irrevocably authorized, as Tenant's agent and attorney-in-fact, to direct any subtenant to make all payments under or in connection with a sublease directly to Landlord (which Landlord shall apply towards Tenant's obligations under this Lease) until such default is cured. Such subtenant shall rely on any representation by Landlord that Tenant is in default hereunder, without any need for confirmation thereof by Tenant.

1.8 Notwithstanding anything to the contrary in sections 15.1, 15.2 or 15.6, but subject to sections 15.4, 15.5 and 15.7, Tenant may assign this Lease or sublet the Premises or any portion thereof, without Landlord's consent (each, a "Permitted Transfer"), to any partnership, corporation or other entity which controls, is controlled by, or is under common control with Tenant or Tenant's parent (control being defined for such purposes as ownership of at least 50% of the equity interests in, and the power to direct the management of, the relevant entity), or to any partnership, corporation or other entity resulting from a merger or consolidation with Tenant or Tenant's parent, or to any person or entity which acquires all or substantially all the assets of Tenant as a going concern (including by means of a purchase of all or substantially all of Tenant's stock) (collectively, an "Affiliate"), provided that (i) Landlord receives at least ten (10) days' prior written notice of the assignment or subletting, together with evidence that the requirements of this section 15.8 have been met, (ii) the Affiliate's net worth is not less than Tenant's net worth as of the date of this Lease or as of the date immediately prior to the assignment or subletting (or series of transactions of which the same is a part), whichever is greater, (iii) the Affiliate has proven experience in the operation of a first-class business of a type consistent with the use of the Building as a first-class office Building, (iv) except in the case of an assignment where the assignor is dissolved as a matter of law following the series of transactions of which the assignment is a part (e.g. a merger) and where such assignor makes sufficient reserves for contingent liabilities (including its obligations under this Lease) as required by applicable law, the Affiliate remains an Affiliate for the duration of the subletting or

the balance of the term in the event of an assignment, (v) the Affiliate assumes (in the event of an assignment) in writing all of Tenant's obligations under this Lease, and agrees (in the event of a sublease) that such subtenant will, at Landlord's election, attorn directly to Landlord in the event that this Lease is terminated for any reason, (vi) Landlord receives a fully executed copy of an assignment or sublease agreement between Tenant and the Affiliate, (vii) in the case of an assignment by means of a purchase of all or substantially all of Tenant's stock, the essential purpose of such assignment is to transfer an active, ongoing business with substantial assets in addition to this Lease, and in the case of an assignment (by any means), or a sublease, the transaction is for legitimate business purposes unrelated to this Lease and the transaction is not a subterfuge by Tenant to avoid it obligations under this Lease or the restrictions on assignment and subletting contained herein, and (viii) in the case of a sublease, the Affiliate executes and Tenant delivers to Landlord a fully executed counterpart of Landlord's waiver and acknowledgement form for an Affiliate sublease.

ARTICLE 16
Rules and Regulations

1.1 Tenant shall faithfully observe and comply with the rules and regulations (the "Rules and Regulations") set forth in Exhibit C and, after notice thereof, all modifications thereof and additions thereto from time to time made in writing by Landlord. If there is any conflict, this Lease shall prevail over the Rules and Regulations and any modifications thereof or additions thereto. Landlord shall not be responsible to Tenant for the noncompliance by any other tenant or occupant of the Building with any Rules and Regulations; provided, Landlord shall not discriminate in the enforcement of any Rules and Regulations against Tenant.

ARTICLE 17
Entry by Landlord

1.1 Landlord shall have the right to enter the Premises reasonable times and upon first giving at least 48 hours' notice to Tenant (except in the case of an emergency, in which reasonable notice may be less than 48 hours) (a) inspect the Premises, (b) exhibit the Premises to prospective purchasers or lenders, and during the final twelve (12) months of the Lease Term, to prospective tenants, (c) determine whether Tenant is performing all of its obligations hereunder, (d) supply any service to be provided by Landlord, (e) post notices of nonresponsibility, and (f) make any repairs to the Premises, or make any repairs to any adjoining space or utility services, or make any repairs, alterations or improvements to any other portion of the Building, provided all such work shall be done as promptly as reasonably practicable and so as to cause as little interference to Tenant as reasonably practicable. So long as such entry by Landlord does not materially adversely affect Tenant's access to and use of the Premises, Tenant waives all claims for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises or any other loss occasioned by such entry. Landlord shall at all times have and retain a key with which to unlock all of the doors in, on or about the Premises (but excluding Tenant's vaults, safes, and special security areas designated in writing by Tenant and approved in writing by Landlord in advance), and Landlord shall have the right to use any and all means which Landlord may deem proper to open such doors in an emergency to obtain entry to the Premises. Any entry to the Premises obtained by Landlord by any of such means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into or a detainer of the Premises or an eviction, actual or constructive, of Tenant from the Premises or any portion thereof.

ARTICLE 18
Events of Default

1.1 The occurrence of any one or more of the following events ("Event of Default") shall constitute a breach of this Lease by Tenant:

(a) Tenant fails to pay any Monthly Rent as and when such rent becomes due and payable and such failure continues for more than five (5) business days; or

(b) Tenant fails to pay any other additional rent or other amount of money or charge payable by Tenant hereunder as and when such additional rent or amount or charge becomes due and payable and such failure continues for more than ten (10) days after Landlord gives written notice thereof to Tenant; provided, however, that after the second such failure in a calendar year, only the passage of time, but no further notice, shall be required to establish an Event of Default in the same calendar year; or

(c) Tenant fails to perform or observe any agreement, covenant or condition according to the provisions of Articles 6, 9, 15, 22 or 25 of this Lease as and when performance or observance is due and such failure continues for more than two (2) business days after Landlord gives written notice thereof to Tenant; or

(d) Tenant fails to perform or observe any other agreement, covenant or condition of this Lease to be performed or observed by Tenant as and when performance or observance is due and such failure continues for more than ten (10) days after Landlord gives written notice thereof to Tenant; provided, however, that if, by the nature of such agreement, covenant or condition, such failure cannot reasonably be cured within such period of ten (10) days, an Event of Default shall not exist as long as Tenant commences with due diligence and dispatch the curing of such failure within such period of ten (10) days and, having so commenced, thereafter prosecutes with diligence and dispatch and completes the curing of such failure within a reasonable time; or

(e) Tenant or any guarantor of Tenant's obligations under this Lease (i) is generally not paying its debts as they become due, (ii) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction, (iii) makes an assignment for the benefit of its creditors, (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Tenant (or such guarantor) or of any substantial part of Tenant's (or such guarantor's) property, or (v) takes action for the purpose of any of the foregoing; or

(f) A court or governmental authority of competent jurisdiction enters an order appointing a custodian, receiver, trustee or other officer with similar powers with respect to Tenant (or any guarantor of Tenant's obligations under this Lease) or with respect to any substantial part of Tenant's (or such guarantor's) property, or constituting an order for relief or approving a petition for relief or reorganization or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding-up or liquidation of Tenant (or such guarantor), or if any such petition is filed against Tenant (or such guarantor) and such petition is not dismissed within sixty (60) days; or

(g) This Lease or any estate of Tenant or any guarantor of Tenant's obligations under this Lease hereunder is levied upon under any attachment or execution and such attachment or execution is not vacated within thirty (30) days; or

(h) Tenant abandons the Premises; or

(i) Any guarantor of Tenant's obligations under this Lease fails to perform or observe any agreement, covenant or condition of the guaranty to be performed or observed by

such guarantor as and when performance or observance is due and such failure continues for more than ten (10) days after Landlord gives written notice thereof to such guarantor.

ARTICLE 19
Remedies Upon Default

1.1 Landlord shall have the remedy described in California Civil Code section 1951.2. If an Event of Default occurs, Landlord at any time thereafter shall have the right to give a written termination notice to Tenant (which may be included in a single notice given by Landlord under section 18.1 hereof) and on the date specified in such notice, Tenant's right to possession shall terminate and this Lease shall terminate. Upon such termination, Landlord shall have the right to recover from Tenant:

(a) The worth at the time of award of all unpaid rent which had been earned at the time of termination;

(b) The worth at the time of award of the amount by which all unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided;

(c) The worth at the time of award of the amount by which all unpaid rent for the balance of the Lease Term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; and

(d) All other amounts necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom.

The "worth at the time of award" of the amounts referred to in clauses (a) and (b) above shall be computed by allowing interest at the Interest Rate (as defined in section 31.2 below). The "worth at the time of award" of the amount referred to in clause (c) above shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%). For the purpose of determining unpaid rent under clauses (a), (b) and (c) above, the rent reserved in this Lease shall be deemed to be all sums of every nature required to be paid by Tenant pursuant to the terms of this Lease, whether to Landlord or to others.

1.2 Landlord shall have the remedy described in California Civil Code section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has the right to sublet or assign, subject only to reasonable limitations). Accordingly, even though Tenant has breached this Lease and an Event of Default has occurred, this Lease shall continue in effect for so long as Landlord does not terminate Tenant's right to possession, and Landlord shall have the right to enforce all its rights and remedies under this Lease, including the right to recover all rent as it becomes due under this Lease. Acts of maintenance or preservation or efforts to relet the Premises or the appointment of a receiver upon initiative of Landlord to protect Landlord's interest under this Lease shall not constitute a termination of Tenant's right to possession unless written notice of termination is given by Landlord to Tenant.

1.3 The remedies provided for in this Lease are in addition to all other remedies available to Landlord at law or in equity by statute or otherwise. Tenant hereby waives, for Tenant and for all those claiming under Tenant, any and all rights now or hereafter existing to redeem by order or judgment of any court or by any legal process or writ, Tenant's right of occupancy of the Premises after any termination of this Lease.

1.4 If Landlord defaults under this Lease, Tenant shall give written notice to Landlord specifying such default with particularity, and Landlord shall have thirty (30) days after receipt of such notice within which to cure such default; provided, however, that if such default cannot

reasonably be cured within such period of thirty (30) days, a default by Landlord shall not exist as long as Landlord commences with due diligence and dispatch the curing of such default within such period of thirty (30) days and, having so commenced, thereafter prosecutes with diligence and dispatch and completes the curing of such default within a reasonable time. In the event of any default by Landlord, Tenant's exclusive remedy shall be an action for damages. Notwithstanding any other provision of this Lease, neither Landlord nor any of the other Landlord Parties shall have any personal liability under this Lease. In the event of any default by Landlord under this Lease, Tenant agrees to look solely to the equity or interest then owned by Landlord in the Building, and in no event shall any deficiency judgment or personal money judgment of any kind be sought or obtained against Landlord or any of the other Landlord Parties.

ARTICLE 20
Landlord's Right to Cure Defaults

1.1 All agreements to be performed by Tenant under this Lease shall be at Tenant's sole cost and expense and without any abatement of rent. If Tenant fails to pay any sum of money required to be paid by Tenant hereunder or fails to perform any other act on Tenant's part to be performed hereunder, Landlord shall have the right, without waiving or releasing Tenant from any obligations of Tenant, but shall not be obligated, to make any such payment or to perform any such other act on behalf of Tenant in accordance with this Lease. All sums so paid by Landlord and all necessary incidental costs shall be deemed additional rent hereunder and shall be payable by Tenant to Landlord on demand, together with interest on all such sums from the date of expenditure by Landlord to the date of repayment by Tenant at the Interest Rate. Landlord shall have, in addition to all other rights and remedies of Landlord, the same rights and remedies in the event of the nonpayment of such sums plus interest by Tenant as in the case of default by Tenant in the payment of rent.

ARTICLE 21
Eminent Domain

1.1 If a material part of the Premises is taken for a period in excess of one hundred eighty (180) days by exercise of the power of eminent domain before the Commencement Date or during the Lease Term, Landlord and Tenant each shall have the right, by giving written notice to the other within thirty (30) days after the date of such taking, to terminate this Lease. If either Landlord or Tenant exercises such right to terminate this Lease in accordance with this section 21.1, this Lease shall terminate as of the date of such taking. If neither Landlord nor Tenant exercises such right to terminate this Lease in accordance with this section 21.1, or if less than a material part of the Premises is so taken, this Lease shall terminate as to the portion of the Premises so taken as of the date of such taking and shall remain in full force and effect as to the portion of the Premises not so taken, and the Base Rent and amounts payable under sections 3.1(b) and 3.1(c) hereof shall be reduced as of the date of such taking in the proportion that the usable area of the Premises so taken bears to the total usable area of the Premises. If all of the Premises is taken by exercise of the power of eminent domain before the Commencement Date or during the Lease Term, this Lease shall terminate as of the date of such taking.

1.2 If all or any part of the Premises is taken by exercise of the power of eminent domain, all awards, compensation, damages, income, rent and interest payable in connection with such taking shall, except as expressly set forth in this section 21.2, be paid to and become the property of Landlord, and Tenant hereby assigns to Landlord all of the foregoing. Without limiting the generality of the foregoing, Tenant shall have no claim against Landlord or the entity exercising the power of eminent domain for the value of the leasehold estate created by this Lease or any unexpired Lease Term. Tenant shall have the right to claim and receive directly from the entity exercising the power of eminent domain only the share of any award determined to be owing to Tenant for the taking of improvements installed in the portion of the Premises so taken by Tenant at Tenant's sole cost and expense based on the unamortized cost paid by Tenant for such improvements, for the taking of Tenant's movable furniture, equipment, trade fixtures and personal property, for loss of goodwill, for interference with or interruption of

Tenant's business, or for removal and relocation expenses, but only if such share does not reduce the amount otherwise payable to Landlord.

1.3 Notwithstanding anything to the contrary contained in this Article 21, in the event of a temporary taking of all or any portion of the Premises for a period of one hundred and eighty (180) days or less, then this Lease shall not terminate but the Base Rent and amounts payable under sections 3.1(b) and 3.1(c) hereof shall be abated for the period of such taking in proportion to the ratio that the amount of rentable square feet of the Premises taken bears to the total rentable square feet of the Premises. Landlord shall be entitled to receive the entire award made in connection with any such temporary taking.

1.4 As used in this Article 21, a "taking" means the acquisition of all or part of the Premises for a public use by exercise of the power of eminent domain and the taking shall be considered to occur as of the earlier of the date on which possession of the Premises (or part so taken) by the entity exercising the power of eminent domain is authorized as stated in an order for possession or the date on which title to the Premises (or part so taken) vests in the entity exercising the power of eminent domain. Tenant hereby waives any and all rights it might otherwise have pursuant to section 1265.130 of the California Code of Civil Procedure.

ARTICLE 22
Subordination to Mortgages

1.1 This Lease shall be subject and subordinate at all times to the lien of all mortgages and deeds of trust securing any amount or amounts whatsoever which may now exist or hereafter be placed on or against the Building or on or against Landlord's interest or estate therein, all without the necessity of having further instruments executed by Tenant to effect such subordination. Notwithstanding the foregoing, in the event of a foreclosure of any such mortgage or deed of trust or of any other action or proceeding for the enforcement thereof, or of any sale thereunder, this Lease shall not be terminated or extinguished, nor shall the rights and possession of Tenant hereunder be disturbed, if no Event of Default exists under this Lease, and Tenant shall attorn to the person who acquires Landlord's interest hereunder through any such mortgage or deed of trust. Tenant agrees to execute, acknowledge and deliver upon demand such further instruments evidencing such subordination of this Lease to the lien of all such mortgages and deeds of trust as may reasonably be required by Landlord, so long as the same includes a non-disturbance agreement in a form reasonably acceptable to Tenant. Tenant hereby acknowledges that, after the date hereof, Landlord may obtain secured financing for the Building secured by a mortgage or deed of trust. If any lender secured or to be secured by a mortgage or deed of trust should require, as a condition to such financing, either execution by Tenant of an agreement requiring Tenant to send such lender written notice of any default by Landlord under this Lease, giving such lender the right to cure such default until such lender has completed foreclosure and preventing Tenant from terminating this Lease unless such default remains uncured after foreclosure has been completed, or any modification of the agreements, covenants or conditions of this Lease, or both of them, then Tenant agrees to execute and deliver such agreement or modification as required by such lender within ten (10) days after receipt thereof; provided, however, that no such modification shall affect the length of the Lease Term or increase the rent payable by Tenant under Article 3 hereof.

ARTICLE 23
Surrender of Premises; Ownership and Removal of Trade Fixtures

1.1 No act or thing done by Landlord or any agent or employee of Landlord during the Lease Term shall be deemed to constitute an acceptance by Landlord of a surrender of the Premises unless such intent is specifically acknowledged in writing by Landlord. The delivery of keys to the Premises to Landlord or any agent or employee of Landlord shall not constitute a surrender of the Premises or effect a termination of this Lease, whether or not the keys are thereafter retained by Landlord, and notwithstanding such delivery Tenant shall be entitled to the return of such keys at any reasonable time upon request until this Lease shall have been properly terminated. The voluntary or other surrender of this Lease by Tenant, whether accepted

by Landlord or not, or a mutual termination hereof, shall not work a merger, and at the option of Landlord shall operate as an assignment to Landlord of all subleases or subtenancies affecting the Premises or terminate any or all such subtenants or subtenancies.

1.2 Upon the expiration of the Lease Term, or upon any earlier termination of this Lease, Tenant shall, subject to the provisions of this Article 23 and section 8.2 above, quit and surrender possession of the Premises to Landlord in the condition required under this Lease, ordinary wear and tear and damage thereto by fire or other casualty excepted. Upon such expiration or termination, Tenant shall, without expense to Landlord, remove or cause to be removed from the Premises all debris and rubbish, and such items of furniture, equipment, business and trade fixtures, free-standing cabinet work, movable partitions, voice and data cabling and other articles of personal property owned by Tenant or installed or placed by Tenant at its expense in the Premises, and such similar articles of any other persons claiming under Tenant, as Landlord may, in its sole discretion, require to be removed; provided, however, that in lieu of removing certain cabling, Tenant shall, at Landlord's request, abandon and leave in place, without additional payment to Tenant or credit against rent, any cabling (including conduit) designated by Landlord and installed in the Premises or elsewhere in the Building by or on behalf of Tenant (including all connections for such cabling), in a neat and safe condition in accordance with the requirements of all applicable Legal Requirements, including the National Electric Code or any successor statute, and terminated at both ends of a connector, properly labeled at each end and in each electrical closet and junction box. Any such property not so removed by Tenant shall be deemed to be abandoned and at the option of Landlord shall either (a) become Landlord's property without any payment to Tenant or (b) remain Tenant's property, but Landlord shall have the right to sell or otherwise dispose of such personal property in any commercially reasonable manner, provided that any proceeds realized from the sale of Tenant's property shall be applied first to offset all expenses of storage and sale, then credited against Tenant's outstanding obligations under this Lease (including, without limitation, past due rent amounts and any termination damages owing by Tenant to Landlord pursuant to Article 19 hereof), and any remaining balance shall be returned to Tenant.

ARTICLE 24
Sale

1.1 If the original Landlord hereunder, or any successor owner of the Building, sells or conveys the Building, all liabilities and obligations on the part of the original Landlord, or such successor owner, under this Lease accruing after such sale or conveyance shall terminate and the original Landlord, or such successor owner, shall automatically be released therefrom, and thereupon all such liabilities and obligations shall be binding upon the new owner. Tenant agrees to attorn to such new owner so long as any such written attornment agreement includes a non-disturbance agreement for the benefit of Tenant. All liabilities and obligations on the part of the original Landlord or such successor owner that accrued before the sale or conveyance shall remain the responsibility of the original Landlord or such successor owner. This Article 24 shall survive termination of the Lease.

ARTICLE 25
Estoppel Certificate

1.1 At any time and from time to time, Tenant shall, within ten (10) business days after written request by Landlord, execute, acknowledge and deliver to Landlord a certificate certifying: (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect as modified, and stating the date and nature of each modification); (b) the Commencement Date and the Expiration Date determined in accordance with Article 2 hereof and the date, if any, to which all rent and other sums payable hereunder have been paid; (c) that no notice has been received by Tenant of any default by Tenant hereunder which has not been cured, except as to defaults specified in such certificate; (d) that Landlord is not in default hereunder, except as to defaults specified in such certificate; and (e) such other matters as may be reasonably requested by Landlord or any actual or prospective purchaser or mortgage lender. Any such certificate may be relied upon by Landlord

and any actual or prospective purchaser, mortgagee or beneficiary under any deed of trust of the Building or any part thereof.

ARTICLE 26
Holding Over

1.1 Any holding over after the expiration or other termination of the Lease Term without the express written consent of Landlord delivered to Tenant shall be construed to be a tenancy at sufferance. Any holding over after the expiration or other termination of the Lease Term with the express written consent of Landlord delivered to Tenant shall be construed to be a tenancy from month to month only, and shall be on all the terms set forth herein, except that the monthly Base Rent shall be an amount equal to one hundred fifty percent (150%) of the monthly Base Rent payable for the last full month of the Lease Term (without giving consideration to any period of abatement arising as a result of the occurrence of any casualty or for any other reason). Acceptance by Landlord of any rent after the expiration or termination of this Lease shall not constitute a consent by Landlord to any such tenancy from month to month or result in any other tenancy or any renewal of the Lease Term. The provisions of this section are in addition to, and do not affect, Landlord's right to re-entry or other rights hereunder or provided by law.

1.2 Tenant shall indemnify, defend and hold Landlord and the Landlord Parties harmless from and against all claims, demands, liabilities, damages, losses, costs and expenses, including, without limitation, attorneys' fees, incurred by or asserted against Landlord or the Landlord Parties and arising directly or indirectly from Tenant's failure to timely surrender the Premises, including but not limited to (i) any rent payable by or any loss, cost, or damages, including lost profits, claimed by any prospective tenant of the Premises or any portion thereof, and (ii) Landlord's damages as a result of such prospective tenant rescinding or refusing to enter into the prospective lease of the Premises or any portion thereof by reason of such failure to timely surrender the Premises; provided, however, as a condition to Tenant's obligations under this Section 26.2, Landlord shall give Tenant written notice of the existence of a prospective successor tenant for the Premises or any portion thereof, or the existence of any other matter which might give rise to a claim by Landlord under the foregoing indemnity, at least thirty (30) days prior to the date Landlord shall require Tenant's surrender of the Premises, and Tenant shall not be responsible to Landlord under the foregoing indemnity if Tenant shall surrender the Premises on or prior to the expiration of such thirty (30) day period (it being agreed, however, that Landlord need not identify the prospective tenant by name in its notice, and it being further agreed that such notice may be given prior to the scheduled expiration date of this Lease).

ARTICLE 27
Intentionally Omitted

ARTICLE 28
Signage

1.1 Tenant may, at Tenant's expense, install Building standard suite signage identifying Tenant's business at the entrance to the Premises, provided that the design, size, color and location of the sign shall be subject to Landlord's prior reasonable approval. Tenant shall be entitled, at no cost to Tenant, to have the name of Tenant's company listed on the Building directory situated in the lobby of the Building. If, after Tenant's name is initially listed on the directories, Tenant requests a change in Tenant's name as printed thereon, Tenant shall reimburse Landlord for Landlord's cost of reprinting Tenant's name for the directories.

1.2 Tenant, at Tenant's sole cost and expense (including, without limitation, costs and expenses to construct any such signage to the extent the same does not exist as of the date of this Lease), and subject to Tenant's compliance with applicable Legal Requirements (including signage ordinances), shall be entitled to signage on the exterior of the Building in the maximum size and number of locations as permitted by the City and Legal Requirements, and in locations

reasonably approved by Landlord identifying Tenant's business ("Tenant's Building Signage"). Except for Tenant's Building Signage, Tenant shall have no other right to maintain any signage at any other location in, on or about the exterior of the Building. Tenant's Building Signage, and any changes to Tenant's Building Signage, shall be subject to Landlord's reasonable approval as to the design, size, color, material, content, location and illumination, shall be appropriate for the Building, shall be in conformity with the overall design and ambiance of the Building, and shall comply with all applicable Legal Requirements and the Project signage criteria. Tenant shall be responsible for obtaining any governmental permits or approvals required for Tenant's Building Signage, all at Tenant's sole cost and expense; provided, however, that Landlord, at no cost to Landlord, shall reasonably cooperate with Tenant as reasonably required for obtaining any governmental permits or approvals required for Tenant's Building Signage. Tenant's repair, maintenance, construction and/or improvement of Tenant's Building Signage shall be at its sole cost and expense and shall comply with all applicable Legal Requirements, the requirements applicable to construction of Alterations pursuant to Article 8 of this Lease, and such other reasonable rules, procedures and requirements as Landlord shall impose with respect to such work, including insurance coverage in connection therewith. Any cost or reimbursement obligations of Tenant under this section 28.2, including with respect to the installation, maintenance or removal of Tenant's Building Signage, shall survive the expiration or earlier termination of this Lease. Tenant's rights to maintain Tenant's Building Signage shall terminate upon the earlier to occur of: (a) the expiration or earlier termination of the Lease or Tenant's right to possession of the Premises; (b) if the original tenant hereunder (i.e. Dexcom, Inc.) ("Original Tenant") or an Affiliate to whom this Lease has been assigned or the Premises subleased in accordance with section 15.8 above fails to occupy at least one (1) full floor in the Building; (c) Tenant assigns this Lease other than to an Affiliate; or (d) an Event of Default occurs under this Lease. If Tenant's signage rights shall terminate pursuant to the foregoing, the same shall not be reinstated, notwithstanding that the cause for termination may have been cured. Upon the termination of Tenant's signage rights under this section 28.2, Tenant shall remove any of Tenant's Building Signage at Tenant's sole cost and expense, and repair and restore to good condition the areas of the Building on which the signage was located or that were otherwise affected by such signage or the removal thereof (including, without limitation, patching any holes or other penetrations caused by such signage and otherwise restoring the Building to the condition existing prior to the initial installation of such signage), or at Landlord's election, Landlord may perform any such removal and/or repair and restoration and Tenant shall pay Landlord the reasonable cost thereof within thirty (30) days after Landlord's written demand. If any signs, projections, awnings, signals or advertisements is installed by Tenant in violation of this section 28.2, or done by Tenant through any person not approved by Landlord, Landlord shall notify Tenant in writing and if Tenant fails to remove such signage within ten (10) Business Days after Landlord's notice, Landlord shall have the right to remove such signs, projections, awnings, signals or advertisements without being liable to the Tenant by reason thereof and to charge the cost of such removal to Tenant, payable within thirty (30) days of Landlord's demand therefor.

ARTICLE 29
Waiver

1.1 The waiver by Landlord or Tenant of any breach of any agreement, covenant or condition in this Lease shall not be deemed to be a waiver of any subsequent breach of the same or any other agreement, covenant or condition in this Lease, nor shall any custom or practice which may grow up between Landlord and Tenant in the administration of this Lease be construed to waive or to lessen the right of Landlord or Tenant to insist upon the performance by Landlord or Tenant in strict accordance with this Lease. The subsequent acceptance of rent hereunder by Landlord or the payment of rent by Tenant shall not waive any preceding breach by Tenant of any agreement, covenant or condition in this Lease, nor cure any Event of Default, nor waive any forfeiture of this Lease or unlawful detainer action, other than the failure of Tenant to pay the particular rent so accepted, regardless of Landlord's or Tenant's knowledge of such preceding breach at the time of acceptance or payment of such rent.

ARTICLE 30
Notices

1.1 All notices that may be given or are required to be given by either Landlord or Tenant to the other under this Lease shall be in writing and shall be either hand delivered, delivered by a nationally recognized overnight courier, or deposited in the United States mail, postage prepaid, certified mail with return receipt requested, and addressed as follows: to Tenant, before the Commencement Date, at the address of Tenant specified in the Basic Lease Information, or at such other place as Tenant may from time to time designate in a notice to Landlord, and, after the Commencement Date, to Tenant at the Premises, or at such other place as Tenant may from time to time designate in a notice to Landlord; to Landlord at the address of Landlord specified in the Basic Lease Information, or at such other place as Landlord may from time to time designate in a notice to Tenant. All notices shall be effective on the date of delivery. If any notice is not delivered or cannot be delivered because the receiving party changed the address of the receiving party and did not previously give notice of such change to the sending party, or due to a refusal to accept the notice by the receiving party, such notice shall be effective on the date delivery is attempted. Any notice under this Lease may be given on behalf of a party by the attorney for such party.

ARTICLE 31
Miscellaneous

1.1 The words “Landlord” and “Tenant” as used herein shall include the plural as well as the singular. If there is more than one Tenant, the obligations hereunder imposed upon Tenant shall be joint and several. Time is of the essence of this Lease and each and all of its provisions. Submission of this instrument for examination or signature by Tenant does not constitute a reservation of or option for lease, and it is not effective as a lease or otherwise until execution and delivery by both Landlord and Tenant. Subject to Article 15 hereof, this Lease shall benefit and bind Landlord and Tenant and the personal representatives, heirs, successors and assigns of Landlord and Tenant. Unless required by a lender pursuant to section 22.1, neither this Lease nor any memorandum, short form, affidavit or other writing with respect thereto, shall be recorded by Tenant or anyone acting through, under or on behalf of Tenant. Tenant shall not, without the prior written consent of Landlord, use the name of the Building for any purpose other than as the address of the business to be conducted by Tenant in the Premises. If any provision of this Lease is determined to be illegal or unenforceable, such determination shall not affect any other provision of this Lease and all such other provisions shall remain in full force and effect. This Lease shall be construed as though the covenants herein between Landlord and Tenant are independent and not dependent and Tenant hereby expressly waives the benefit of any statute to the contrary and agrees that if Landlord fails to perform its obligations set forth herein, Tenant shall not be entitled to make any repairs or perform any acts hereunder at Landlord’s expense or to any setoff of the rent or other amounts owing hereunder against Landlord. If Tenant requests the consent or approval of Landlord to any assignment, sublease or other action by Tenant, including without limitation Landlord’s consent and execution of any lien waiver or estoppel certificate, Tenant shall pay on demand to Landlord all costs and expenses, including, without limitation, reasonable attorneys’ fees, incurred by Landlord in connection therewith. This Lease shall be governed by and construed in accordance with the laws of the State in which the Building is located.

1.2 Tenant acknowledges that the late payment by Tenant of any monthly installment of Monthly Rent will cause Landlord to incur costs and expenses, the exact amount of which is extremely difficult and impractical to fix. Such costs and expenses will include, without limitation, administration and collection costs and processing and accounting expenses. Therefore, if any monthly installment of Monthly Rent is not received by Landlord from Tenant within five (5) days after such installment is due, Tenant shall immediately pay to Landlord a late charge equal to five percent (5%) of such delinquent installment. Landlord and Tenant agree that such late charge represents a reasonable estimate of such costs and expenses and is fair compensation to Landlord for its loss suffered by Tenant’s failure to make timely payment. In no event shall such late charge be deemed to grant to Tenant a grace period or extension of time within which

to pay any Monthly Rent or prevent Landlord from exercising any right or remedy available to Landlord upon Tenant's failure to pay each installment of Monthly Rent due under this Lease in a timely fashion, including the right to terminate this Lease. Notwithstanding the foregoing, no late charge will be imposed with respect to the first late payment in the twelve (12) months following the Commencement Date or with respect to the first late payment in any succeeding twelve (12) month period during the Term unless the applicable payment due from Tenant is not received by Landlord within five (5) business days following written notice from Landlord that such payment was not received when due. All amounts of money payable by Tenant to Landlord hereunder, if not paid when due, shall bear interest from the due date until paid at the rate (the "Interest Rate") equal to ten percent (10%) per annum.

1.3 If there is any legal action or proceeding between Landlord and Tenant to enforce any provision of this Lease or to protect or establish any right or remedy of either Landlord or Tenant hereunder, the unsuccessful party to such action or proceeding shall pay to the prevailing party all costs and expenses, including reasonable attorneys' fees, incurred by such prevailing party in such action or proceeding and in any appeal in connection therewith. If such prevailing party recovers a judgment in any such action, proceeding or appeal, such costs, expenses and attorneys' fees shall be included in and as a part of such judgment. Notwithstanding the foregoing, however, Landlord shall be deemed the prevailing party in any unlawful detainer or other action or proceeding instituted by Landlord based upon any default or alleged default of Tenant hereunder if (a) judgment is entered in favor of Landlord, or (b) prior to trial or judgment Tenant pays all or any portion of the rent claimed by Landlord, vacates the Premises, or otherwise cures the default claimed by Landlord.

1.4 Exhibit A (Plan Outlining the Premises), Exhibit B (Work Letter), Exhibit C (Rules and Regulations), Exhibit D (Tenant's Building Signage), Exhibit E (Appraisal Method), and Exhibit F (Dish / Antenna), and any other attachments specified in the Basic Lease Information are attached to and made a part of this Lease.

1.5 Landlord and Tenant each hereby expressly, irrevocably, fully and forever releases, waives and relinquishes any and all right to trial by jury and any and all right to receive from the other (or any past, present or future board member, trustee, director, officer, employee, agent, representative, or advisor of the other) punitive, exemplary or consequential damages, in each case, however occurring in any claim, demand, action, suit, proceeding or cause of action in which Landlord and Tenant are parties, which in any way (directly or indirectly) arises out of, results from or relates to any of the following, in each case whether now existing or hereafter arising and whether based on contract or tort or any other legal basis: this Lease; any past, present or future act, omission, conduct or activity with respect to this Lease; any transaction, event or occurrence contemplated by this Lease; or the performance of any obligation or the exercise of any right under this Lease. Landlord and Tenant reserve the right to recover actual or compensatory damages, with interest, attorneys' fees, costs and expenses as provided in this Lease, for any breach of this Lease.

1.6 Intentionally Omitted.

1.7 Landlord reserves the right (upon thirty (30) days' prior notice to, but otherwise without the consent of Tenant) to make improvements and/or additions to portions of the Building, including, without limitation, adding floor area to one or more existing floors of the Building, and to undertake structural and seismic improvement projects in the Building; provided, however, in no event will such construction activity result in the need for any construction activity within the Premises. Such construction activity may result in columns, beams and other structural components being placed in the Premises to accommodate the construction work and/or the permanent additions and/or expansions to be constructed. Any such construction activity is entirely discretionary with Landlord, and Tenant agrees that no representation, express or implied, with respect to the future condition of the Building or any improvements thereto have been made to Tenant by Landlord or any Landlord representative. In the event Landlord elects to engage in such construction activity, Landlord shall consult with Tenant and seek Tenant's input on how to perform such proposed improvements or additions in

a manner that minimizes disruption to Tenant, and shall use commercially reasonable efforts to (i) ensure Tenant continues to have unfettered access to and use of the Premises and parking areas, and (ii) minimize any disruption of Tenant's business caused by such construction activities. Tenant hereby waives any and all rights or claims of any kind for rent offsets or based on constructive eviction, nuisance, or interference with enjoyment which may arise in connection with or result from such construction activities, to the extent Landlord uses commercially reasonable efforts to minimize disruption of Tenant's business caused by such construction activities. Notwithstanding anything in this section 31.7 to the contrary, if Landlord reasonably determines that any of the foregoing construction activities will result in a material interference with or disruption to Tenant's business in the Premises, Landlord, upon ninety (90) days' prior written notice to Tenant that Landlord intends to commence such construction activity, may relocate Tenant, temporarily, to other space in the Building or other properties owned by affiliates of Landlord, which relocation shall be performed at Landlord's cost. If the Premises are altered by reason of such improvements, Landlord agrees to re-measure the Premises following the completion of the improvements and to adjust Tenant's rental obligations hereunder based on the new square footage of the Premises, as determined by Landlord.

1.8 Subject to the Publicly-Traded Exemption (as defined below), within sixty (60) days following the end of Tenant's fiscal year, Tenant shall furnish to Landlord copies of true and accurate audited financial statements for such fiscal year, as prepared on an audited basis by the independent certified public accountants of Tenant (which accountants shall be from a reputable national or regional accounting firm) in accordance with GAAP, and certified by a responsible officer of Tenant as presenting fairly in all material respects the financial condition and results of operations of Tenant. In addition, and also subject to the Publicly-Traded Exemption, at any time within fifteen (15) days after Landlord's request therefor, Tenant shall furnish to Landlord copies of Tenant's most recent internally prepared financial statements reflecting Tenant's then current financial situation. Landlord shall use good faith efforts to keep such information received from Tenant confidential, except that Landlord may disclose such financial information received from Tenant to any lender or prospective lender for, or purchaser or prospective purchaser of, the Building, as necessary in the course of any litigation arising out of or concerning this Lease, or as required by applicable law, and provided however that the foregoing confidentiality requirement shall be inapplicable in the event the subject financial information is made publicly available by the Securities and Exchange Commission or any other governmental body. "GAAP" means those generally accepted accounting principles and practices that are recognized as such by the American Institute of Certified Public Accountants or by the Financial Accounting Standards Board or through other appropriate boards or committees thereof, and that are consistently applied for all periods, after the date hereof, so as to properly reflect the financial position of Tenant, except that any accounting principle or practice required to be changed by the Financial Accounting Standards Board (or other appropriate board or committee of the said Board) in order to continue as a generally accepted accounting principle or practice may be so changed. Notwithstanding the foregoing, the provisions of this section 31.8 shall not apply so long as Tenant is publicly-traded on a recognized national stock exchange and Tenant's financial statements and information are available to the public over the internet and are discernible from any parent or affiliate entity (the "Publicly-Traded Exemption").

1.9 Notwithstanding any other provision of this Lease, the liability of Landlord for its obligations under this Lease is limited solely to Landlord's interest in the Building as the same may from time to time be encumbered, and no personal liability shall at any time be asserted or enforceable against any other assets of Landlord, any of the Landlord Parties, or against the constituent shareholders, partners or other owners of Landlord, or the directors, officers, employees and agents of Landlord or such constituent shareholder, partner or other owner, on account of any of Landlord's obligations or actions under this Lease.

1.10 Tenant agrees that the terms of this Lease are confidential and constitute proprietary information of Landlord, and that disclosure of the terms hereof could adversely affect the ability of Landlord to negotiate with other tenants. Tenant hereby agrees that Tenant and its partners, officers, directors, employees, agents, real estate brokers and sales persons

and attorneys shall not disclose the terms of this Lease to any other person without Landlord's prior written consent, except to any accountants of Tenant in connection with the preparation of Tenant's financial statements or tax returns, to an assignee of this Lease or sublessee of the Premises, or to an entity or person to whom disclosure is required by applicable law or in connection with any action brought to enforce this Lease.

1.11 Landlord and Tenant agree that the rentable area of the Premises as calculated as of the date of this Lease is accurately set forth in the Basic Lease Information. The rentable square footage of the Premises and the Building shall be subject to verification from time to time by Landlord's architect. That verification shall be made in accordance with Landlord's then current adopted standard with respect to the Building), which may result in an increase or decrease in the number of rentable square feet contained therein, provided that such remeasurement shall not under any circumstances entitle Tenant to a refund or credit for any sums paid under this Lease, nor shall such remeasurement under any circumstances obligate Tenant to pay any additional sums under this Lease as a result of any adjustment in the measurement of the Premises or Building. The determination of Landlord's architect shall be conclusive and binding on the parties, but shall not increase any economic obligations of Tenant under this Lease. In the event of such an adjustment in the rentable square footage, all amounts, percentages and figures (other than any Landlord allowance or contribution for construction of improvements already completed) determined based on rentable square footage, such as Tenant's Percentage Share, Base Rent, and parking rights, if any, shall be adjusted prospectively; provided, however, notwithstanding the foregoing, there shall be no increase in Tenant's Percentage Share or Base Rent as a result of such adjustment during the initial Term of this Lease. The parties shall execute an amendment to the Lease confirming any measurement change within thirty (30) days after Landlord shall request the same. Subject to the foregoing, the square footage figures contained in this Lease are final and binding on the parties.

ARTICLE 32
Real Estate Brokers

1.1 Tenant warrants and represents that it has negotiated this Lease directly with the real estate brokers specified in the Basic Lease Information and has not authorized or employed, or acted by implication to authorize or to employ, any other real estate broker or salesperson to act for Tenant in connection with this Lease. Landlord and Tenant shall each indemnify and defend the other against and hold the other harmless from all claims, demands, liabilities, damages, losses, costs and expenses, including, without limitation, reasonable attorneys' fees, arising from any claim for any compensation, commission or finder's fee by any real estate broker or salesperson actually or allegedly representing or acting on behalf of such party other than those specified in this Article 32.

ARTICLE 33
Authority

1.1 If Tenant is a corporation, partnership, limited liability company, trust, association or other entity, Tenant and each person executing this Lease on behalf of Tenant, hereby covenants and warrants that (a) Tenant is duly incorporated or otherwise established or formed and validly existing under the laws of its state of incorporation, establishment or formation, (b) Tenant has and is duly qualified to do business in the state in which the Building is located, (c) Tenant has full corporate, partnership, trust, association or other appropriate power and authority to enter into this Lease and to perform all Tenant's obligations hereunder, and (d) each person (and all of the persons if more than one signs) signing this Lease on behalf of Tenant is duly and validly authorized to do so. Concurrently with signing this Lease, Tenant shall deliver to Landlord a true and correct copy of resolutions duly adopted by the board of directors or other governing body of Tenant, certified by the secretary or assistant secretary of Tenant to be true and correct, unmodified and in full force, which authorize and approve this Lease and authorize each person signing this Lease on behalf of Tenant to do so.

ARTICLE 34
Complete Agreement

1.1 There are no oral agreements between Landlord and Tenant affecting this Lease, and this Lease supersedes and cancels any and all previous negotiations, arrangements, brochures, offers, agreements and understandings, oral or written, if any, between Landlord and Tenant or displayed by Landlord to Tenant with respect to the subject matter of this Lease, the Premises or the Building. There are no representations between Landlord and Tenant or between any real estate broker and Tenant other than those expressly set forth in this Lease and all reliance with respect to any representations is solely upon representations expressly set forth in this Lease. This Lease may not be amended or modified in any respect whatsoever except by an instrument in writing signed by Landlord and Tenant.

ARTICLE 35
Option to Renew

1.1 Tenant shall have the option to renew this Lease for one (1) additional term of five (5) years, commencing upon the expiration of the initial Lease Term. The renewal option must be exercised, if at all, by written notice given by Tenant to Landlord not later than nine (9) months nor earlier than twelve (12) months prior to expiration of the initial Lease Term. Notwithstanding the foregoing, at Landlord's election, this renewal option shall be null and void and Tenant shall have no right to renew this Lease if on the date that Tenant exercises its renewal option or as of the date immediately preceding the commencement of the renewal period: (a) Tenant is not in, and has not during the Lease Term been in, default under the Lease beyond any applicable cure periods; (b) all or any portion of the Premises is sublet (other than to an Affiliate of Tenant); (c) the Lease has been assigned prior to such date; (d) the Tenant originally named herein is not occupying the Premises; or (e) the Premises is not intended for the exclusive use of Tenant during the renewal term.

1.2 If Tenant exercises the renewal option, then all of the terms and conditions set forth in this Lease as applicable to the Premises during the initial Lease Term shall apply during the renewal term, except that (a) Tenant shall have no further right to renew this Lease, (b) Tenant shall take the Premises in their then "as-is" state and condition, (c) the rates for parking in the Building shall be as reasonably determined by Landlord based on the then current rates for parking in the Building, and (d) subject to section 35.5 below, the Base Rent payable by Tenant for the Premises shall be the then fair market rent for the Premises based upon the terms of this Lease, as renewed. Fair market rent shall include the periodic rental increases, if any, that would be included for space leased for the period the space will be covered by the Lease.

1.3 For purposes of this Article 35, the term "fair market rent" shall mean the rental rate for comparable space under primary lease (and not sublease) to new tenants, taking into consideration the quality of the Building and such amenities as existing improvements and the like, situated in similar buildings in comparable locations in the Sorrento Mesa submarket of San Diego, California, in comparable physical and economic condition, taking into consideration the then prevailing ordinary rental market practices with respect to tenant concessions (if any) (e.g., not offering extraordinary rental, promotional deals and other concessions to tenants which deviate from what is the then prevailing ordinary practice in an effort to alleviate cash flow problems, difficulties in meeting loan obligations or other financial distress, or in response to a greater than average vacancy rate).

1.4 The fair market rent shall be mutually agreed upon by Landlord and Tenant in writing within the thirty (30) calendar day period commencing four (4) months prior to commencement of the renewal period. If Landlord and Tenant are unable to agree upon the fair market monthly rent within said thirty (30) day period, then the fair market rent shall be established by appraisal in accordance with the procedures set forth in Exhibit D attached hereto.

1.5 Notwithstanding anything in the foregoing or Exhibit E attached hereto to the contrary, in no event shall the Base Rent during the renewal period be less than the amount of Base Rent payable by Tenant (for all of the Premises leased hereunder) under this Lease for the calendar month immediately preceding the commencement of the renewal period.

ARTICLE 36
Right of First Offer

1.1 Tenant shall have a continuous and ongoing right of first offer (the "Right of First Offer") with respect to any space located in the Building (the "Offering Space"). Tenant's Right of First Offer shall be exercised, if at all, as set forth in section 36.2 below.

1.2 At any time after Landlord has determined that (i) the existing tenant in the Offering Space will not extend or renew the term of its lease for the Offering Space, whether pursuant to a then existing right or pursuant to new arrangements with Landlord and (ii) Landlord intends to market the Offering Space through a third party broker to the general public, then prior to leasing such Offering Space to a party other than the existing tenant, Landlord shall advise Tenant (the "Advice") of the terms under which Landlord is prepared to lease the Offering Space to Tenant, which terms shall reflect the fair market (hereinafter defined) rate for such Offering Space as reasonably determined by Landlord. Tenant may lease such Offering Space in its entirety only, under such terms, or such other terms as mutually agreed upon in writing by Landlord Tenant, by delivering written notice of exercise to Landlord (the "Notice of Exercise") within five (5) business days after the date of the Advice, except that Tenant shall have no such Right of First Offer and Landlord need not provide Tenant with an Advice, if at the time that Landlord would otherwise deliver the Advice: (a) Tenant is in default under the Lease beyond any applicable cure periods; (b) more than 40% of the Premises is sublet (other than to an Affiliate); (c) the Lease has been assigned prior to such date (other than to an Affiliate); (d) Original Tenant or an Affiliate is not occupying the Premises; or (e) the Offering Space is not intended for the exclusive use of Original Tenant (or an Affiliate) during the Lease Term.

1.3 If Tenant timely and validly exercises the Right of First Offer, the lease of the Offering Space shall be on the terms stated in the Advice, or on such other terms as mutually agreed upon in writing by Landlord and Tenant (such terms to be applicable to the Offering Space referred to herein as the "Expansion Terms"), and the terms and conditions of this Lease (but to the extent that the Expansion Terms and this Lease conflict, the terms and conditions of the Advice shall govern), subject to the following:

(a) The lease term for the Offering Space shall be coterminous with the Lease Term, unless otherwise stated in the Expansion Terms;

(b) Tenant shall pay Base Rent and additional rent for the Offering Space in accordance with the Expansion Terms, which terms and conditions shall reflect the fair market rate for the Offering Space as determined in Landlord's reasonable judgment. For purposes hereof, the term "fair market rent" shall mean the rental rate for comparable space under primary lease (and not sublease) to new tenants, taking into consideration the quality of the Building and such amenities as existing improvements, view, floor on which the Premises are situated and the like, situated in first-class, reputable, established office buildings in comparable locations in the Sorrento Mesa submarket of San Diego, California, in comparable physical and economic condition, taking into consideration the then prevailing ordinary rental market practices with respect to tenant concessions (if any) (e.g., not offering extraordinary rental, promotional deals and other concessions to tenants which deviate from what is the then-prevailing ordinary practice in an effort to alleviate cash flow problems, difficulties in meeting loan obligations or other financial distress, or in response to a greater than average vacancy rate); and

(c) The Offering Space (including improvements and personalty, if any) shall be accepted by Tenant in its condition and as-built configuration existing on the earlier of the date Tenant takes possession of the Offering Space or as of the date the term for such Offering

Space commences, unless the Expansion Terms specify any work to be performed or improvements allowances to be given by Landlord in the Offering Space, in which case Landlord shall perform such work or give such improvement allowances in the Offering Space. If Landlord is delayed delivering possession of the Offering Space due to the holdover or unlawful possession of such space by any party, Landlord shall use reasonable efforts to obtain possession of the space, and the commencement of the term for the Offering Space shall be postponed until the date Landlord delivers possession of the Offering Space to Tenant free from occupancy by any party.

1.4 The rights of Tenant hereunder with respect to the Offering Space shall terminate on the earlier to occur of: (a) Tenant's failure to exercise its Right of First Offer within the period provided in section 36.1 above; (b) the date Landlord would have provided Tenant an Advice if Tenant had not been in violation of one or more of the conditions set forth in section 35.1 above; or (c) that date that is thirty-six (36) months prior to the expiration of the term of this Lease. If Tenant fails to exercise its Right of First Offer within the period provided in section 36.1 above, Landlord may lease the Offering Space to a third party on any terms or conditions acceptable to Landlord without any obligation to re-offer the space to Tenant.

1.5 If Tenant exercises its Right of First Offer, Landlord shall prepare an amendment (the "Offering Amendment") adding the Offering Space to the Premises on the terms set forth in the Advice and reflecting the changes in the Base Rent, rentable square footage of the Premises, Tenant's Percentage Share and other appropriate terms. A copy of the Offering Amendment shall be sent to Tenant within a reasonable time after Landlord's receipt of the Notice of Exercise executed by Tenant, and Tenant shall execute and return the Offering Amendment to Landlord within fifteen (15) days thereafter, but an otherwise valid exercise of the Right of First Offer shall be fully effective whether or not the Offering Amendment is executed.

ARTICLE 37
Intentionally Omitted

ARTICLE 38
Rooftop Equipment

1.1 Tenant shall have the right, at no additional cost, to utilize space on the roof of the Building for the purpose of installing (in accordance with the terms and conditions of Article 8 of this Lease), operating and maintaining the rooftop dishes/antennas described in Exhibit F attached hereto (collectively the "Dish/Antenna"). The exact location of the space on the roof to be used by Tenant shall be reasonably designated by Landlord (the "Roof Space"). Landlord reserves the right to relocate the location of the designated Roof Space as reasonably necessary during the remainder of the Lease Term, provided that such relocation shall be at Landlord's cost and expense and shall not diminish the intended signal, nor unreasonably interfere with Tenant's use of any Dish/Antenna in the original Roof Space. Landlord's designation shall take into account Tenant's use of the Dish/Antenna. Notwithstanding the foregoing, Tenant's right to install the Dish/Antenna shall be subject to the reasonable approval rights of Landlord and Landlord's architect and/or engineer with respect to the plans and specifications of the Dish/Antenna, the manner in which the Dish/Antenna is attached to the roof of the Building and the manner in which any cables are run to and from the Dish/Antenna. Tenant shall be solely responsible for obtaining all necessary governmental and regulatory approvals and for the cost of installing, operating, maintaining and removing the Dish/Antenna. Tenant shall notify Landlord upon completion of the installation of the Dish/Antenna. If Landlord reasonably determines that the Dish/Antenna equipment does not comply with the approved plans and specifications, that the Building has been damaged during installation of the Dish/Antenna or that the installation was defective, Landlord shall notify Tenant of any noncompliance or detected problems and Tenant immediately shall cure the defects. If the Tenant fails to immediately cure the defects, Tenant shall pay to Landlord upon demand the cost, as reasonably determined by Landlord, of correcting any defects and repairing any damage to the Building caused by such installation. If at any time Landlord, in its sole discretion, deems it necessary, Tenant shall provide and install, at Tenant's sole cost and expense, appropriate

aesthetic screening, reasonably satisfactory to Landlord, for the Dish/Antenna (the "Aesthetic Screening").

1.2 Landlord agrees that Tenant, upon reasonable prior written notice to Landlord, shall have access to the roof of the Building and the Roof Space for the purpose of installing, maintaining, repairing and removing the Dish/Antenna, the appurtenances and the Aesthetic Screening, if any, all of which shall be performed by Tenant or Tenant's authorized representative or contractors, which shall be reasonably approved by Landlord (such approval not to be unreasonably withheld, conditioned or delayed), at Tenant's sole cost and risk. It is agreed, however, that only authorized engineers, employees or properly authorized contractors of Tenant, FCC (defined below) inspectors, or persons under their direct supervision will be permitted to have access to the roof of the Building and the Roof Space. Tenant further agrees to exercise control over the people requiring access to the roof of the Building and the Roof Space in order to keep to a minimum the number of people having access to the roof of the Building and the Roof Space and the frequency of their visits. It is further understood and agreed that the installation, maintenance, operation and removal of the Dish/Antenna, the appurtenances and the Aesthetic Screening, if any, is not permitted to damage the Building or the roof thereof, or interfere with the use of the Building and roof by Landlord. Tenant agrees to be responsible for any damage caused to the roof or any other part of the Building, which may be caused by Tenant or any of its agents or representatives.

1.3 Tenant agrees to install only equipment of types and frequencies which will not cause unreasonable interference to Landlord or existing tenants of the Building. In the event Tenant's equipment causes such interference, Tenant will change the frequency on which it transmits and/or receives and take any other steps necessary to eliminate the interference. If said interference cannot be eliminated within a reasonable period of time, in the reasonable judgment of Landlord, then Tenant agrees to remove the Dish/Antenna from the Roof Space. Tenant shall, at its sole cost and expense, and at its sole risk, install, operate and maintain the Dish/Antenna in a good and workmanlike manner, and in compliance with all Building, electric, communication, and safety codes, ordinances, standards, regulations and requirements, now in effect or hereafter promulgated, of the Federal Government, including, without limitation, the Federal Communications Commission (the "FCC"), the Federal Aviation Administration ("FAA") or any successor agency of either the FCC or FAA having jurisdiction over radio or telecommunications, and of the state, city and county in which the Building is located. Under this Lease, Landlord and its agents assume no responsibility for the licensing, operation and/or maintenance of Tenant's equipment. Tenant has the responsibility of carrying out the terms of its FCC license in all respects. The Dish/Antenna shall be connected to Landlord's power supply in strict compliance with all applicable Building, electrical, fire and safety codes. Neither Landlord nor its agents shall be liable to Tenant for any stoppages or shortages of electrical power furnished to the Dish/Antenna or the Roof Space because of any act, omission or requirement of the public utility serving the Building, or the act or omission of any other tenant, invitee or licensee or their respective agents, employees or contractors, or for any other cause beyond the reasonable control of Landlord, and Tenant shall not be entitled to any rental abatement for any such stoppage or shortage of electrical power. Neither Landlord nor its agents shall have any responsibility or liability for the conduct or safety of any of Tenant's representatives, repair, maintenance and engineering personnel while in or on any part of the Building or the Roof Space.

1.4 The Dish/Antenna, the appurtenances and the Aesthetic Screening, if any, shall remain the personal property of Tenant, and shall be removed by Tenant at its own expense at the expiration or earlier termination of the Lease or Tenant's right to possession hereunder. Tenant shall repair any damage caused by such removal, including the patching of any holes to match, as closely as possible, the color surrounding the area where the equipment and appurtenances were attached. Tenant agrees to maintain all of the Tenant's equipment placed on or about the roof or in any other part of the Building in proper operating condition and maintain same in satisfactory condition as to appearance and safety in Landlord's reasonable discretion. Such maintenance and operation shall be performed in a manner to avoid any interference with any other tenants or Landlord. Tenant agrees that at all times during the Lease

Term, it will keep the roof of the Building and the Roof Space free of all trash or waste materials produced by Tenant or Tenant's agents, employees or contractors.

1.5 In light of the specialized nature of the Dish/Antenna, Tenant shall be permitted to utilize the services of its choice for installation, operation, removal and repair of the Dish/Antenna, the appurtenances and the Aesthetic Screening, if any, subject to the reasonable approval of Landlord. Notwithstanding the foregoing, Tenant must provide Landlord with prior written notice of any such installation, removal or repair and coordinate such work with Landlord in order to avoid voiding or otherwise adversely affecting any warranties granted to Landlord with respect to the roof. If necessary, Tenant, at its sole cost and expense, shall retain any contractor having a then existing warranty in effect on the roof to perform such work (to the extent that it involves the roof), or, at Tenant's option, to perform such work in conjunction with Tenant's contractor. In the event Landlord contemplates roof repairs that could affect Tenant's Dish/Antenna, or which may result in an Interruption of the Tenant's telecommunication service, Landlord shall formally notify Tenant at least thirty (30) days in advance (except in cases of an emergency) prior to the commencement of such contemplated work in order to allow Tenant to make other arrangements for such service.

1.6 Tenant specifically acknowledges and agrees that the terms and conditions of Articles 8 and 13 of this Lease shall apply with full force and effect to the Roof Space and any other portions of the roof accessed or utilized by Tenant, its representatives, agents, employees or contractors.

ARTICLE 39
Generator

1.1 Subject to the terms hereof and applicable laws, Tenant shall have the right to use one (1) back-up electrical generator of a type, size and specifications reasonably approved by Landlord (the "Generator") in a location reasonably approved by Landlord (the "Generator Area"). In no event shall Tenant permit the Generator to interfere with normal and customary use or operation of the Building by Landlord or other tenants and/or occupants (including, without limitation, by means of noise or odor). Tenant shall be responsible for obtaining all permits and other approvals required by any governmental or quasi-governmental authority in connection with the operation and use of the Generator, and Tenant shall be solely responsible for any and all costs, if any, incurred by Landlord as a result of or in connection with Tenant's operation and use of the Generator. In the event that Landlord shall incur any costs as a result of or in connection with the rights granted to Tenant herein, Tenant shall reimburse Landlord for the same within ten (10) days following billing. Tenant shall be responsible for all maintenance and repairs and compliance with law obligations related to the Generator and acknowledges and that Landlord shall have no responsibility in connection therewith and that Landlord shall not be liable for any damage that may occur with respect to the Generator. The Generator shall be used by Tenant only during (i) testing and regular maintenance, and (ii) the period of any electrical power outage in the Building. Tenant shall be entitled to operate the Generator and such connections to the Building for testing and regular maintenance only upon notice to Landlord and at times reasonably approved by Landlord. All repairs and maintenance and compliance with laws with respect to the Generator shall be the sole responsibility of Tenant (at Tenant's sole cost and expense), and Landlord makes no representation or warranty of any kind with respect to such Generator. The Generator shall be deemed to be a part of the Premises for purposes of the insurance provisions of this Lease, as amended hereby, and, in addition, Tenant shall maintain, at Tenant's cost, industry standard "boiler and machinery" insurance coverage with respect thereto. At Landlord's request, Tenant shall be required to remove the Generator and restore such area to the condition that existed prior to the installation of the Generator upon the expiration or earlier termination of this Lease.

1.2 Tenant shall indemnify, defend, protect, and hold harmless Landlord, its partners, subpartners and their respective officers, agents, servants, employees, and independent contractors from any and all loss, cost, damage, expense and liability (including, without limitation, court costs and reasonable attorneys' fees) incurred in connection with or arising from

any cause related to or connected with the use, operation, and/or repair of the Generator and/or any acts, omissions or negligence of Tenant or of any person claiming by, through or under Tenant, or of the contractors, agents, servants, employees, invitees, guests or licensees of Tenant or any such person, in connection with the Generator. In the event that Tenant shall fail to comply with the requirements set forth herein, without limitation of Landlord's other remedies (a) Landlord shall have the right to terminate Tenant's rights with respect to the Generator, and/or (b) Landlord shall have the right, at Tenant's sole cost and expense, to cure such breach, in which event Tenant shall be obligated to pay to Landlord, within ten (10) days following demand by Landlord, the amount expended by Landlord, plus Landlord's standard administration fee.

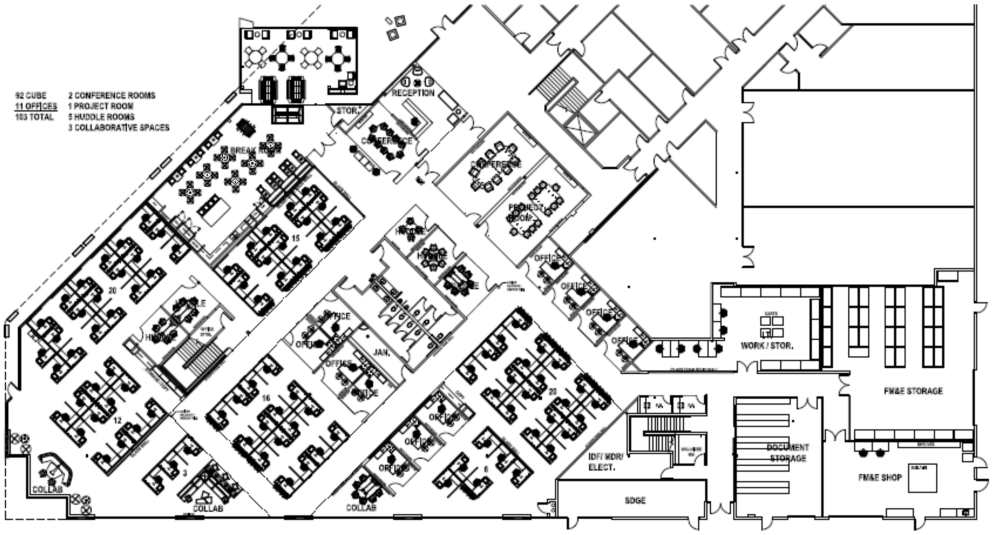
[*no further text on this page*]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Office Lease as of the date first hereinabove written.

TENANT:	LANDLORD:
DEXCOM, INC., a Delaware corporation	GC PACIFIC CENTER COURT OWNER LLC, a Delaware limited liability company
By	By
Name	Name
Title	Title

EXHIBIT A

Plan Outlining the Premises



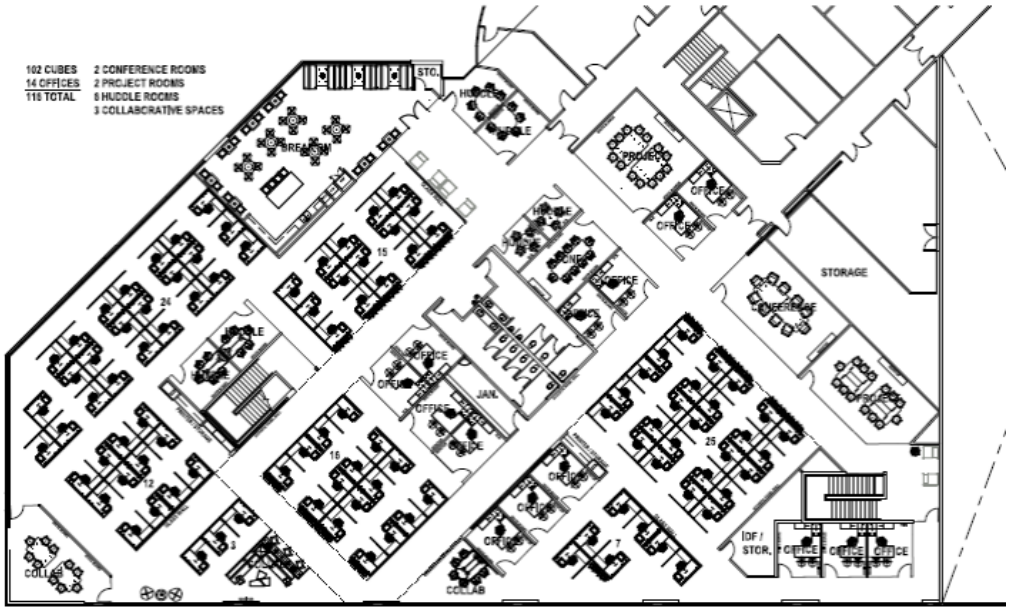


EXHIBIT B

Work Letter

1. LANDLORD WORK. At Landlord's sole cost and expense, Landlord shall perform the work described in **Schedule 1** attached hereto (the "Landlord's Work") in the Building and in the Premises, which work may be performed in the Building and Premises concurrently with Tenant's Improvements; provided, however, Landlord shall perform a portion of the Landlord's Work (the "Landlord Delivery Date Work") consisting of (i) demolishing the existing office improvements on the second floor of the Building per the space plan attached as Schedule 1-A, (ii) performing all required exterior accessibility work, including ADA parking and associated striping and signage, and (iii) completing the restroom work, all of which shall be Substantially Completed on or before the Delivery Date. Except as set forth in such **Schedule 1**, and the Lease, Tenant shall accept the Premises in its existing "as-is" condition. Landlord hereby appoints Rick Lafranchi (phone: (415) 596-0494, email: rlafranchi@graymarkcapital.com) as Landlord's representative to act for Landlord in all matters covered by this Work Letter. Tenant hereby appoints Jon Haigis, Director of Facilities (cell: (858) 736-7039, email: jon.haigis@dexcom.com) as Tenant's representative to act for Tenant in all matters covered by this Work Letter. All inquiries, requests, instructions, authorizations and other communications with respect to the matters covered by this Work Letter shall be directed to Landlord's representative or Tenant's representative, as the case may be. Tenant will not make any inquiries of or request to, and will not give any instructions or authorizations to, any other employee or agent of Landlord, including Landlord's architects, engineers, and contractors or any of their agents or employees, with regard to matters covered by this Work Letter. Either Landlord or Tenant may change its representative at any time by written notice to the other. Tenant warrants and represents to Landlord that Tenant's representative is duly authorized to act on Tenant's behalf with respect to all matters covered by this Work Letter, and agrees that Landlord and Landlord's Agents shall be entitled to rely on all requests, instructions, authorizations, approvals and other communications of any nature by, of or from such Tenant's representative, it being agreed to by Tenant that such requests, instructions, authorizations, approvals and other communications shall be binding on Tenant for all purposes.

2. TENANT IMPROVEMENTS. As used in the Lease and this Work Letter, the term "Tenant Improvements" or "Tenant Improvement Work" or "Tenant's Work" means those items of general tenant improvement construction shown on the Final Plans (described in Section 4 below), more particularly described in Section 5 below.

3. INTENTIONALLY OMITTED.

4. TENANT IMPROVEMENT PLANS.

a. Preliminary Space Plan. Landlord has approved Tenant's preliminary space plans attached hereto as **Schedule 2** (the "Preliminary Space Plan").

b. Preparation of Final Plans. Based on the approved Preliminary Space Plan, Tenant's architect will prepare complete architectural plans, drawings and specifications and complete engineered mechanical, structural and electrical working drawings for all of the Tenant Improvements for the Premises (collectively, the "Final Plans"). The Final Plans will show (a) the subdivision (including partitions and walls), layout, lighting, finish and decoration work (including carpeting and other floor coverings) for the Premises; (b) all internal and external communications and utility facilities which will require conduiting or other improvements from the base Building shell work and/or within common areas; and (c) all other specifications for the Tenant Improvements. The Final Plans will be submitted to Landlord in accordance with the delivery requirements of Section 30.1 of the Lease and via email for signature to confirm that they are consistent with the Preliminary Space Plan. Landlord shall respond to Tenant's submittal of Final Plans within seven (7) business days of Landlord's receipt thereof, such approval not to be unreasonably withheld, conditioned or delayed. In the event Tenant submits the Final Plans to Landlord in accordance with the delivery requirements set forth in this Section

4(b) and Landlord fails to respond within such seven (7) business day period, then the submitted plans and specifications shall be deemed approved by Landlord. If Landlord reasonably disapproves any aspect of the Final Plans based on any inconsistency with the Preliminary Space Plan, Landlord agrees to advise Tenant in writing of such disapproval and the reasons therefor within such seven (7) business day period. Tenant will then cause Tenant's architect to redesign the Final Plans incorporating the revisions reasonably requested by Landlord so as to make the Final Plans consistent with the Preliminary Space Plan. Tenant shall resubmit the Final Plans to Landlord in accordance with the delivery requirements of Section 30.1 of the Lease and via email, and Landlord shall respond to Tenant's resubmitted Final Plans (and to any subsequent resubmittal of Final Plans) within three (3) business days of Landlord's receipt thereof, such approval not to be unreasonably withheld, conditioned or delayed. In the event Tenant resubmits the Final Plans to Landlord in accordance with the delivery requirements set forth in this Section 4(b) and Landlord fails to respond within such three (3) business day period, then the resubmitted plans and specifications shall be deemed approved by Landlord. If Landlord again disapproves such revised Final Plans, or any portion thereof, Landlord shall notify Tenant in writing of such disapproval, the reason for such disapproval and of the reasonable revisions which Landlord requires in order to obtain Landlord's approval. The process shall repeat until such time as Landlord has approved or is deemed to have approved the further revised Final Plans.

c. Requirements of Tenant's Final Plans. Tenant's Final Plans will include locations and complete dimensions, and the Tenant Improvements, as shown on the Final Plans, will: (i) be compatible with the Building shell and with the design, construction and equipment of the Building; (ii) if not comprised of the Building standards set forth in the written description thereof (the "Standards"), then compatible with and of at least equal quality as the Standards and approved by Landlord; (iii) comply with all applicable laws, ordinances, rules and regulations of all governmental authorities having jurisdiction, and all applicable insurance regulations; (iv) not require Building service beyond the level normally provided to other tenants in the Building and will not overload the Building floors; and (v) be of a nature and quality consistent with the overall objectives of Landlord for the Building, as determined by Landlord in its reasonable but subjective discretion.

d. Submittal of Final Plans. Once approved by Landlord and Tenant, Tenant's architect will submit the Final Plans to the appropriate governmental agencies for plan checking and the issuance of a building permit. Tenant's architect, with Landlord's cooperation, will make any changes to the Final Plans which are requested by the applicable governmental authorities to obtain the building permit. After approval of the Final Plans no further material changes may be made without the prior written approval of both Landlord and Tenant, and then only after agreement by Tenant to pay any excess costs resulting from the design and/or construction of such changes, if any.

e. Changes to Shell of Building. If the Final Plans or any amendment thereof or supplement thereto shall require changes in the Building shell, the increased cost of the Building shell work caused by such changes will be paid for by Tenant or charged against the "Tenant Improvement Allowance" described in Section 5 below.

f. Work Cost Estimate and Statement. Prior to the commencement of construction of any of the Tenant Improvements shown on the Final Plans, Tenant will submit to Landlord a written estimate of the cost to complete the Tenant Improvement Work, which written estimate will be based on the Final Plans taking into account any modifications which may be required to reflect changes in the Final Plans required by the City or County in which the Premises are located (the "Work Cost Estimate"). Landlord will either approve the Work Cost Estimate or disapprove specific items and submit to Tenant revisions to the Final Plans to reflect deletions of and/or substitutions for such disapproved items. Upon Landlord's approval of the Work Cost Estimate (such approved Work Cost Estimate to be hereinafter known as the "Work Cost Statement"), Tenant will have the right to purchase materials and to commence the construction of the items included in the Work Cost Statement pursuant to Section 6 hereof. If

the total costs reflected in the Work Cost Statement exceed the Tenant Improvement Allowance described in Section 5 below, Tenant agrees to pay such excess.

5. PAYMENT FOR THE TENANT IMPROVEMENTS.

a. Tenant Improvement Allowance. Landlord hereby grants to Tenant a tenant improvement allowance of $65.00 per rentable square foot of the Premises (i.e., $3,194,880.00) (the "Tenant Improvement Allowance"). The Tenant Improvement Allowance is to be used only for:

(i) Payment of the cost of preparing the Final Plans, including mechanical, electrical, plumbing and structural drawings and of all other aspects necessary to complete the Final Plans. The Tenant Improvement Allowance will not be used for the payment of extraordinary design work not consistent with the scope of the Standards (i.e., above-standard design work) or for payments to any other consultants, designers or architects other than Landlord's architect and/or Tenant's architect.

(iii) The payment of plan check, permit and license fees relating to construction of the Tenant Improvements.

(iv) Construction of the Tenant Improvements, including, without limitation, the following:

(a) Installation within the Premises of all partitioning, doors, floor coverings, ceilings, wall coverings and painting, millwork and similar items;

(b) All electrical wiring, lighting fixtures, outlets and switches, and other electrical work necessary for the Premises;

(c) The furnishing and installation of all duct work, terminal boxes, diffusers and accessories necessary for the heating, ventilation and air conditioning systems within the Premises, including the cost of meter and key control for after-hour air conditioning;

(d) Any additional improvements to the Premises required for Tenant's use of the Premises including, but not limited to, odor control, special heating, ventilation and air conditioning, noise or vibration control or other special systems or improvements;

(e) All fire and life safety control systems such as fire walls, sprinklers, halon, fire alarms, including piping, wiring and accessories, necessary for the Premises;

(f) All plumbing, fixtures, pipes and accessories necessary for the Premises;

(g) Testing and inspection costs; and

(h) Fees and costs attributable to general conditions associated with the construction of the Tenant Improvements plus a one percent (1%) construction administration fee ("Construction Administration Fee") to cover the services of Landlord's tenant improvement coordinator.

(v) All costs incurred by Landlord for construction of elements of the Tenant Improvements in the Premises, which construction was performed by Landlord prior to the execution of this Lease by Landlord and Tenant and which construction is for the benefit of tenants and is customarily performed by Landlord prior the execution of leases for space in the

Building for reasons of economics (examples of such construction would include, but not be limited to, the extension of mechanical [including heating, ventilating and air conditioning systems] and electrical distribution systems outside of the core of the Building, wall construction, column enclosures and painting outside of the core of the Building, ceiling hanger wires and window treatment).

In no event shall the Tenant Improvement Allowance be used for data cabling, telecom installation, signage, or any of Tenant's furniture, fixtures or equipment.

b. Over-Allowance Amount. All costs of the Tenant Improvements in excess of the Tenant Improvement Allowance shall be paid by Tenant at Tenant's sole cost and expense. Tenant shall pay for all costs of the Tenant Improvements and shall complete the Tenant Improvements prior to any disbursement of the Tenant Improvement Allowance by Landlord. Upon Tenant's completion of the Tenant Improvements, the Tenant Improvement Allowance shall be disbursed to Tenant in accordance with the provisions of Section 5(g) below. In no event will the Allowance be used to pay for Tenant's furniture, artifacts, equipment, telephone systems or any other item of personal property which is not affixed to the Premises. In addition to the Allowance, Landlord shall be responsible at its sole cost, not to exceed an amount equal to $0.15 per rentable square foot of the Premises (i.e., $7,372.80), for an initial test fit of the Premises by Tenant's architect.

c. Changes. Any material changes to the Final Plans will be approved by Landlord and Tenant in the manner set forth in Section 4 above. Tenant shall be solely responsible for any additional costs associated with such changes including the Construction Administration Fee, which fee shall be paid to Landlord within ten (10) business days after invoice therefor. Landlord will have the right to decline Tenant's request for a material change to the Final Plans if such changes are inconsistent with the provisions of Section 4 above.

d. Governmental Cost Increases. If increases in the cost of the Tenant Improvements as set forth in the Work Cost Statement are due to requirements of any governmental agency, Tenant shall be solely responsible for such additional costs including the Construction Administration Fee, which fee shall be paid to Landlord within five (5) business days after invoice therefor; provided, however, that Landlord will first apply toward any such increase any remaining balance of the Tenant Improvement Allowance.

e. Unused Allowance Amounts. Any portion of the Tenant Improvement Allowance which exceeds the cost of the Tenant Improvements or is otherwise remaining after December 31, 2020, will not be refunded to Tenant or be available to Tenant as a credit against any obligations of Tenant under the Lease.

f. Additional Reimbursable Work. In connection with Landlord's Work related to the replacement of the HVAC systems, as further set forth on **Schedule 1** attached hereto, Landlord and Tenant may mutually agree that Tenant, instead of Landlord, shall perform certain demolition, preparation and installation work related to such new HVAC systems (the "HVAC Work") concurrently with Tenant performing the Tenant's Work, but such HVAC Work shall be done at Landlord's sole cost and expense, not to exceed Five Hundred Sixteen Thousand Dollars ($516,000); provided, however, in the event the cost of the HVAC Work exceeds such amount, Tenant shall be solely responsible for all such excess cost at Tenant's sole cost and expense. In the event Landlord and Tenant agree in writing that Tenant shall perform the HVAC, Tenant shall cause its contractor to separately account for the costs of performing the HVAC Work, and Tenant may submit a request for reimbursement to Landlord for the cost of the HVAC Work as part of a request for disbursement of the Tenant Improvement Allowance; provided that the amounts payable by Landlord for the HVAC Work shall be in addition to the Tenant Improvement Allowance (and shall not be deducted from the Tenant Improvement Allowance).

g. Disbursement of the Tenant Improvement Allowance. Provided Tenant is not in default following the giving of notice and passage of any applicable cure period under the

Lease or this Work Letter, Landlord shall disburse the Tenant Improvement Allowance to Tenant to reimburse Tenant for the actual construction costs which Tenant incurs in connection with the construction of the Tenant Improvements within thirty (30) days after Tenant's satisfaction of the following conditions:

(i) Landlord has received the following "Evidence of Completion and Payment" with respect to the Tenant's Work:

(A) Tenant has delivered to Landlord a draw request ("Draw Request") in a form satisfactory to Landlord and Landlord's lender with respect to the Tenant Improvements specifying that the Tenant's Work has been completed, together with invoices, receipts and bills evidencing the costs and expenses and evidence of payment by Tenant for all costs which are payable in connection with the Tenant's Work. The Draw Request shall constitute a representation by Tenant that the Tenant's Work identified has been completed in a good and workmanlike manner and in accordance with the Final Plans and has been paid for;

(B) The architect for the Tenant Improvements has certified to Landlord that the Tenant Improvements have been completed in accordance with the Final Plans;

(C) Tenant has delivered to Landlord such other evidence of Tenant's payment of the general contractor and subcontractors for the Tenant's Work and the absence of any liens generated by the Tenant's Work as may be required by Landlord (i.e., either unconditional lien releases in accordance with the applicable provisions of the California Civil Code);

(D) Landlord or Landlord's architect or construction representative has inspected the Tenant Improvements and determined that the Tenant's Work has been completed in a good and workmanlike manner;

(ii) Thirty-five (35) days shall have elapsed following the filing of a valid notice of completion by Tenant for the Tenant Improvements;

(iii) A certificate of occupancy for the Tenant Improvements and the Premises has been issued by the appropriate governmental body;

(iv) Tenant has delivered to Landlord: (i) properly executed mechanics lien releases from all of Tenant's contractors, agents and suppliers in compliance with the applicable provisions of the California Civil Code, which lien releases shall be conditional with respect to the then-requested payment amounts and unconditional with respect to payment amounts previously disbursed by Landlord; (ii) an application and certificate for payment (AIA form G702-1992 or equivalent) signed by Tenant's architect/space planner; (iii) original stamped building permit plans; (iv) copy of the building permit; (v) original stamped building permit inspection card with all final sign-offs; (vi) a reproducible copy (in a form approved by Landlord) of the "as-built" drawings of the Tenant Improvements; (vii) air balance reports; (viii) excess energy use calculations; (ix) one year warranty letters from Tenant's contractors; (x) manufacturer's warranties and operating instructions; (xi) final punchlist completed and signed off by Tenant's architect/space planner; and (xii) an acceptance of the Premises signed by Tenant;

(v) Landlord has determined that no work exists which adversely affects the mechanical, electrical, plumbing, heating, ventilating and air conditioning, life-safety or other systems of the Building, the curtain wall of the Building, the structure or exterior appearance of the Building, or any other tenant's use of such other tenant's leased premises in the Building;

(vi) The satisfaction of any other requirements or conditions which may be required or imposed by Landlord's lender with respect to the construction of the Tenant Improvements; and

(vii) Tenant has delivered to Landlord evidence satisfactory to Landlord that all construction costs in excess of the Tenant Improvement Allowance have been paid for by Tenant.

Notwithstanding anything to the contrary contained hereinabove, all disbursements of the Tenant Improvement Allowance shall be subject to the prior deduction of the portion of the Construction Administration Fee allocable to the Tenant Improvements described in the applicable Draw Request.

h. Books and Records. At its option, Landlord, at any time within three (3) years after final disbursement of the Tenant Improvement Allowance to Tenant, and upon at least ten (10) days prior written notice to Tenant, may cause an audit to be made of Tenant's books and records relating to Tenant's expenditures in connection with the construction of the Tenant Improvements. Tenant shall maintain complete and accurate books and records in accordance with generally accepted accounting principles of these expenditures for at least three (3) years. Tenant shall make available to Landlord's auditor at the Premises within ten (10) business days following Landlord's notice requiring the audit, all books and records maintained by Tenant pertaining to the construction and completion of the Tenant Improvements. In addition to all other remedies which Landlord may have pursuant to the Lease, Landlord may recover from Tenant the reasonable cost of its audit if the audit discloses that Tenant falsely reported to Landlord expenditures which were not in fact made or falsely reported a material amount of any expenditure or the aggregate expenditures.

6. CONSTRUCTION OF TENANT IMPROVEMENTS. Following the later of (i) the Delivery Date, and (ii) Landlord's approval of the Final Plans and the Work Cost Statement described in Section 4(f) above, Tenant's contractor (selected as provided in Section 9(n)) will commence and diligently proceed with the construction of the Tenant Improvements. Tenant shall use diligent efforts to cause its contractor to complete the Tenant Improvements in a good and workmanlike manner in accordance with the Final Plans. Tenant agrees to use diligent efforts to cause construction of the Tenant Improvements to commence promptly following the issuance of a building permit for the Tenant Improvements. Landlord shall have the right to enter upon the Premises to inspect Tenant's construction activities following reasonable advance notice Tenant, and at times when a representative of Tenant is available to accompany Landlord during such inspection.

7. TENANT DELAY. Any delay in the completion of the Landlord's Work caused by (a) Tenant's failure to prepare and submit information or instructions within the time periods required herein or inadequacies in such information or instructions, (b) Tenant's failure to approve the Final Plans within the time periods required herein, (c) any changes in the Landlord's Work requested by Tenant, (d) any interruption or interference in the improvement work caused by Tenant, (e) the inclusion of any so-called "long lead" materials in the improvements (such as fabrics, paneling, carpeting or other items that are not readily available within industry standard lead times (e.g., custom made items that require time to procure beyond that customarily required for standard items, or items that are currently out of stock and will require extra time to back order) and for which suitable substitutes exist), and (f) any other delay requested or caused by Tenant (each, a "Tenant Delay"). Under no circumstances shall Landlord be liable to Tenant for any loss, cost or expense resulting to Tenant on account of delay in completion of the improvement work.

8. SUBSTANTIAL COMPLETION. The Tenant Improvements will be deemed to be "substantially completed" when Tenant's contractor certifies in writing to Landlord and Tenant that Tenant has substantially performed all of the Tenant Improvement Work required to be performed by Tenant under this Work Letter, other than decoration and minor "punch-list" type items and adjustments which do not materially interfere with Tenant's use of the Premises; and

Tenant has obtained a temporary certificate of occupancy or other required equivalent approval from the local governmental authority permitting occupancy of the Premises. Within ten (10) days after receipt of such certificates, Tenant and Landlord will conduct a walk-through inspection of the Premises and Landlord shall provide to Tenant a written punch-list specifying those decoration and other punch-list items which require completion, which items Tenant will thereafter diligently complete.

9. MISCELLANEOUS CONSTRUCTION COVENANTS.

a. No Liens. Tenant shall not allow the Tenant Improvements or the Building or any portion thereof to be subjected to any mechanic's, materialmen's or other liens or encumbrances arising out of the construction of the Tenant Improvements.

b. Diligent Construction. Tenant will promptly, diligently and continuously pursue construction of the Tenant Improvements to successful completion in full compliance with the Final Plans and this Work Letter. Landlord and Tenant shall cooperate with one another during the performance of Tenant's Work to effectuate such work in a timely and compatible manner.

c. Compliance with Laws. Tenant will construct the Tenant Improvements in a safe and lawful manner. Subject to the other terms and conditions set forth in this Lease, Tenant shall, at its sole cost and expense, comply with all applicable laws and all regulations and requirements of, and all licenses and permits issued by, all municipal or other governmental bodies with jurisdiction which pertain to the installation of the Tenant Improvements. Copies of all filed documents and all permits and licenses shall be provided to Landlord. Any portion of the Tenant Improvements which is not acceptable to any applicable governmental body, agency or department, or not reasonably satisfactory to Landlord, shall be promptly repaired or replaced by Tenant at Tenant's expense. Notwithstanding any failure by Landlord to object to any such Tenant Improvements, Landlord shall have no responsibility therefor.

d. Indemnification. Subject to the terms of the Lease regarding insurance and waiver of subrogation by the parties, Tenant hereby indemnifies and agrees to defend and hold Landlord, the Landlord Parties, the Premises and the Building harmless from and against any and all suits, claims, actions, losses, costs or expenses of any nature whatsoever, together with reasonable attorneys' fees for counsel of Landlord's choice, arising out of or in connection with the Tenant Improvements or the performance of Tenant's Work (including, but not limited to, claims for breach of warranty, worker's compensation, personal injury or property damage, and any materialmen's and mechanic's liens).

e. Insurance. Construction of the Tenant Improvements shall not proceed without Tenant first acquiring workers' compensation and commercial general liability insurance and property damage insurance as well as "All Risks" builders' risk insurance, with minimum coverage of $2,000,000 or such other amount as may be approved by Landlord in writing and issued by an insurance company reasonably satisfactory to Landlord. In addition to the foregoing, at Landlord's request, Tenant shall furnish to Landlord a completion and lien indemnity bond or other surety satisfactory to Landlord with respect to the performance of the Tenant Improvements. Not less than thirty (30) days before commencing the construction of the Tenant Improvements, certificates of such insurance shall be furnished to Landlord or, if requested, the original policies thereof shall be submitted for Landlord's approval. All such policies shall provide that thirty (30) days prior notice must be given to Landlord before modification, termination or cancellation. All insurance policies maintained by Tenant pursuant to this Work Letter shall name Landlord and any lender with an interest in the Premises as additional insureds, shall be primary and non-contributory and comply with all of the applicable terms and provisions of the Lease relating to insurance. Tenant's contractor shall be required to maintain the same insurance policies as Tenant, and such policies shall name Tenant, Landlord and any lender with an interest in the Premises as additional insureds on a primary, non-contributory basis.

f. Construction Defects. Landlord shall have no responsibility for the Tenant Improvements and Tenant will remedy, at Tenant's own expense, and be responsible for any and all defects in the Tenant Improvements that may appear during or after the completion thereof whether the same shall affect the Tenant Improvements in particular or any parts of the Premises in general. Tenant shall indemnify, hold harmless and reimburse Landlord for any costs or expenses incurred by Landlord by reason of any defect in any portion of the Tenant Improvements constructed by Tenant or Tenant's contractor or subcontractors, or by reason of inadequate cleanup following completion of the Tenant Improvements.

g. Additional Services. If the construction of the Tenant Improvements shall require that additional services or facilities (including, but not limited to, hoisting, cleanup or other cleaning services, trash removal, field supervision, or ordering of materials) be provided by Landlord, then Tenant shall pay Landlord for such items at Landlord's cost or at a reasonable charge if the item involves time of Landlord's personnel only. Electrical power and heating, ventilation and air conditioning shall be available to Tenant during normal business hours for construction purposes at no charge to Tenant.

h. Coordination of Labor. All of Tenant's contractors, subcontractors, employees, servants and agents must work in harmony with and shall not interfere with any labor employed by Landlord, or Landlord's contractors or by any other tenant or its contractors with respect to the any portion of the Building.

i. Work in Adjacent Areas. Any work to be performed in areas adjacent to the Premises shall be performed only after obtaining Landlord's express written permission, which shall not be unreasonably withheld, conditioned or delayed, and shall be done only if an agent or employee of Landlord is present; Tenant will reimburse Landlord for the expense of any such employee or agent.

j. HVAC Systems. Tenant agrees to be entirely responsible for the maintenance or the balancing of any heating, ventilating or air conditioning system installed by Tenant and/or maintenance of the electrical or plumbing work installed by Tenant and/or for maintenance of lighting fixtures, partitions, doors, hardware or any other installations made by Tenant.

k. Coordination with Lease. Nothing herein contained shall be construed as (i) constituting Tenant as Landlord's agent for any purpose whatsoever, or (ii) a waiver by Landlord or Tenant of any of the terms or provisions of the Lease. Any default by Tenant following the giving of notice and the passage of any applicable cure period with respect to any portion of this Work Letter shall be deemed a breach of the Lease for which Landlord shall have all the rights and remedies as in the case of a breach of said Lease.

l. Approval of Plans. Landlord will not check Tenant drawings for building code compliance. Approval of the Final Plans by Landlord is not a representation that the drawings are in compliance with the requirements of governing authorities, and it shall be Tenant's responsibility to meet and comply with all federal, state, and local code requirements. Approval of the Final Plans does not constitute assumption of responsibility by Landlord or its architect for their accuracy, sufficiency or efficiency, and Tenant shall be solely responsible for such matters.

m. Tenant's Deliveries. Tenant shall deliver to Landlord, at least five (5) days prior to the commencement of construction of Tenant's Work, the following information:

(i) The names, addresses, telephone numbers, and primary contacts for the general, mechanical and electrical contractors Tenant intends to engage in the performance of Tenant's Work; and

(ii) The date on which Tenant's Work will commence, together with the estimated dates of completion of Tenant's construction and fixturing work.

n. Qualification of Contractors. Once the Final Plans have been proposed and approved, Tenant shall select and retain a contractor and subcontractors from a list of contractors and subcontractors approved by Landlord for the construction of the Tenant Improvement Work in accordance with the Final Plans. All contractors engaged by Tenant shall be bondable, licensed contractors, possessing good labor relations, capable of performing quality workmanship and working in harmony with Landlord's general contractor and other contractors on the job, if any, all as determined by Landlord. All work shall be coordinated with general construction work within the Building, if any.

o. Warranties. Tenant shall cause its contractor to provide warranties for not less than one (1) year (or such shorter time as may be customary and available without additional expense to Tenant) against defects in workmanship, materials and equipment, which warranties shall run to the benefit of Landlord or shall be assignable to Landlord to the extent that Landlord is obligated to maintain any of the improvements covered by such warranties.

p. Landlord's Performance of Work. Within ten (10) working days after receipt of Landlord's notice of Tenant's failure to perform its obligations under this Work Letter, if Tenant shall fail to commence to cure such failure, Landlord shall have the right, but not the obligation, to perform, on behalf of and for the account of Tenant, subject to reimbursement of the cost thereof by Tenant, any and all of Tenant's Work which Landlord determines, in its reasonable discretion, should be performed immediately and on an emergency basis for the best interest of the Premises including, without limitation, work which pertains to structural components, mechanical, sprinkler and general utility systems, roofing and removal of unduly accumulated construction material and debris; provided, however, Landlord shall use reasonable efforts to give Tenant at least ten (10) days prior notice to the performance of any of Tenant's Work.

q. As-Built Drawings. Tenant shall cause "As-Built Drawings" (excluding furniture, fixtures and equipment) to be delivered to Landlord and/or Landlord's representative no later than sixty (60) days after the completion of Tenant's Work. In the event these drawings are not received by such date, Landlord may, at its election, cause said drawings to be obtained and Tenant shall pay to Landlord, as additional rent, the cost of producing these drawings.

SCHEDULE 1

Landlord's Work

(i) Intentionally Omitted;

(ii) Deliver all parking areas, walk paths, and the portions of the Common Areas in Tenant's path of travel to the Premises in compliance with the American with Disabilities Act ("ADA") as applicable on the date of construction of such areas. Subject to the provisions of the Lease, any ADA items that are required due to tenant improvements will be the responsibility of the Tenant;

(iii) Deliver the Base Building systems (as defined in Section 1.2 of the Lease), including, but not limited to, Fire Protection alarm system, communication system, Fire Sprinkler system, life support systems and security systems installed according to building code as applicable on the original installation date of the applicable system, Any improvements that are required due to tenant improvements will be the responsibility of the Tenant;

(v) Demolish the existing office improvements on the first and second floors per the floor plan attached hereto as Schedule 1-A.

(vi) Demolish the second floor restrooms and provide new building-standard fixtures and finishes in the first floor and second floor restrooms, provided, however, in no event shall Landlord's cost with respect to such fixtures and finishes exceed $310,150.00, and cost in excess thereof shall be deducted by Landlord from the Tenant Improvement Allowance. Demolish the second floor individual restrooms, replace carpet in both stairwells and paint walls, cover the light wells between the ground floor and second floor, removal of fenced area immediately east of the roll up door on the south side of the Building, renovate the materials storage area in the south parking area, replace the transformer east of the roll up door on the south side of the Building, and replace all roll-up doors and exterior man doors serving the Premises.

(vii) Completion of all of the elements of the Pacific Center Remodel plan set, as approved by the City of San Diego November 25, 2019, other than any and all work related to the interior of the first floor premises except the restroom core, referred to as rooms 103 and 104 (which restroom core work will be completed).

(viii) Completion of all of the elements outlined in the ACO Construction Management letter dated October 22, 2019, with the subject line: "The Canyons – 10455 Pacific Center Court – CAP EX Scope".

SCHEDULE 1-A

Landlord Demo Work

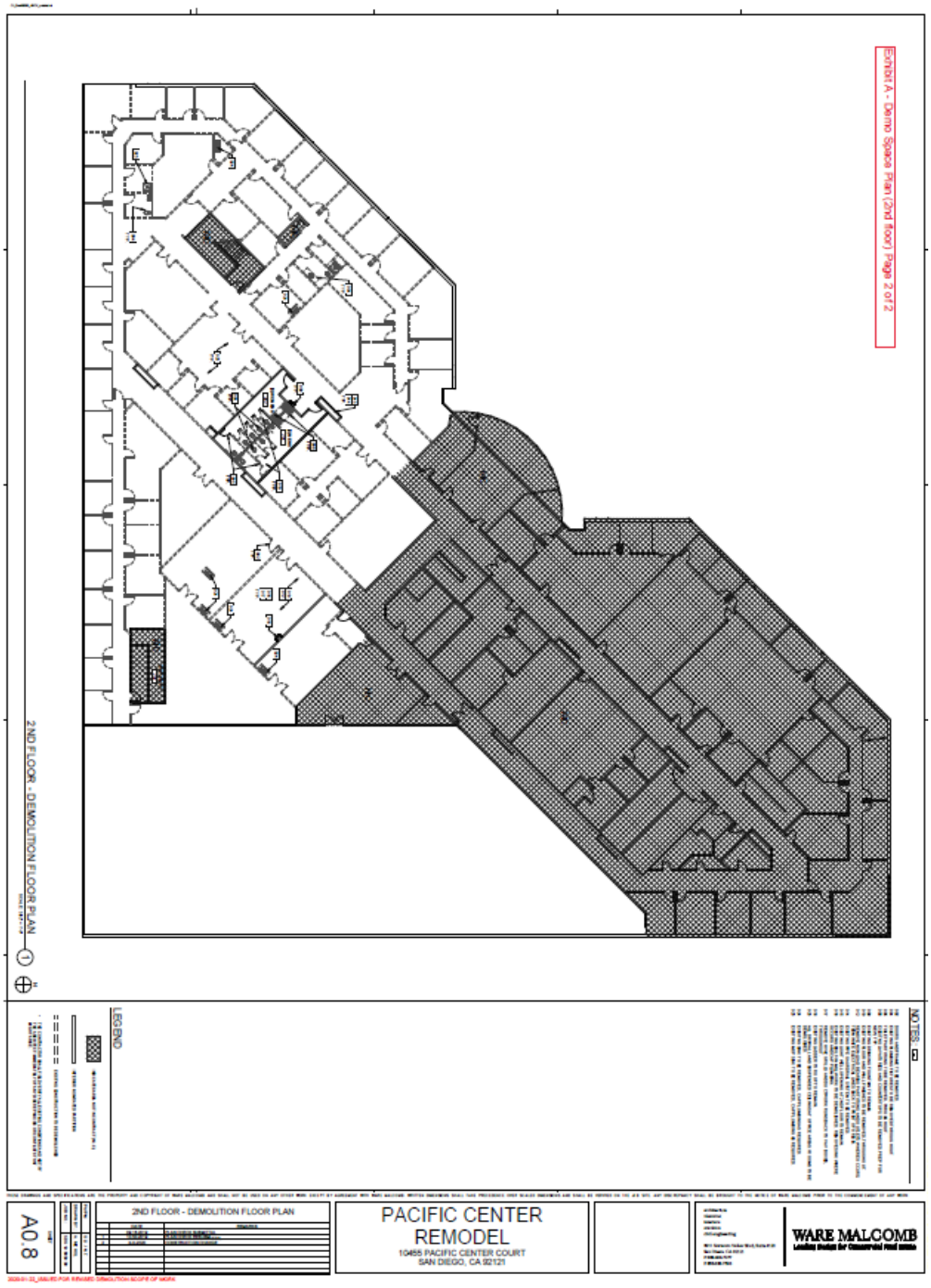


Exhibit A - Demo Space Plan (2nd floor) Page 2 of 2
2ND FLOOR - DEMOLITION FLOOR PLAN
LEGEND
NOTES
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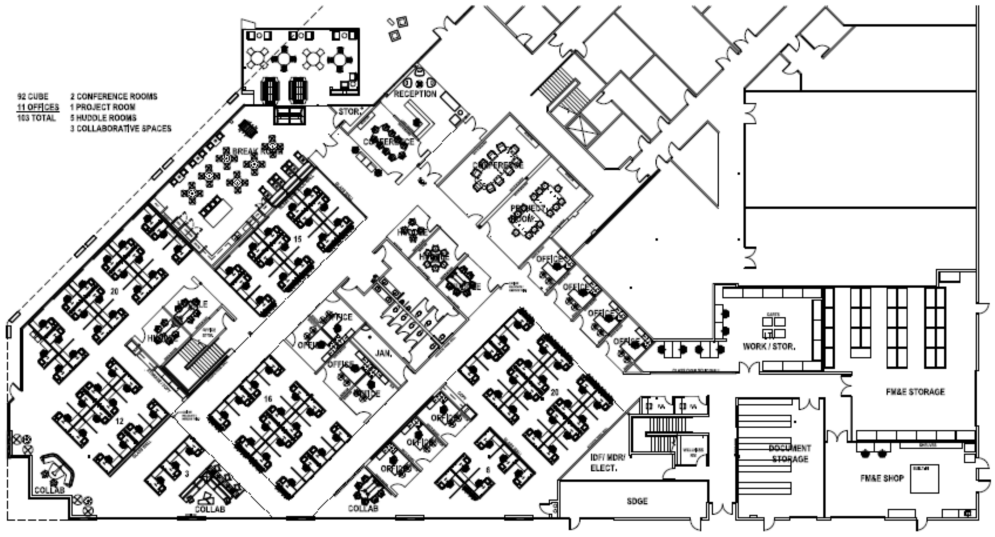
2ND FLOOR - DEMOLITION FLOOR PLAN
PACIFIC CENTER
REMODEL
10455 PACIFIC CENTER COURT
SAN DIEGO, CA 92121
WARE MALCOMB

SCHEDULE 2

Preliminary Space Plan



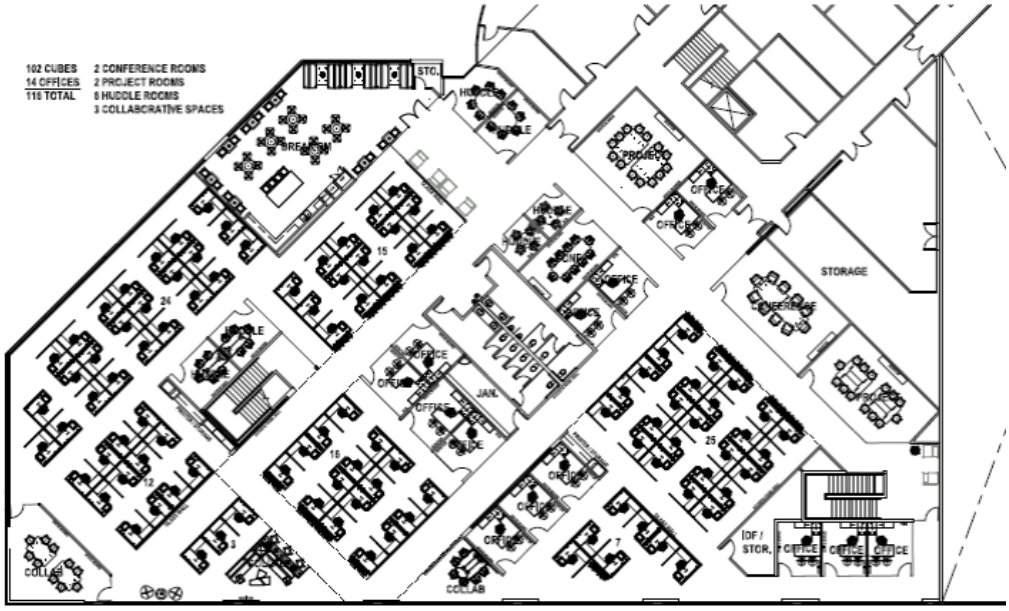


EXHIBIT C

Rules and Regulations

1. No sign, placard, picture, advertisement, name or notice shall be installed, inscribed, exhibited, painted, affixed or displayed on the Premises or on any part of the outside or inside of the Building without the prior written consent of Landlord. Tenant shall be allowed to install signs on the interior of the Premises. Landlord shall adopt and furnish to Tenant reasonable general guidelines for the display of signs in the Building. Tenant shall comply with such guidelines, but may request the consent of Landlord to modifications to such guidelines or to exceptions thereto, which consent shall not be unreasonably withheld or delayed. All approved signs or lettering on doors shall be inscribed, painted, affixed or otherwise displayed at the expense of Tenant by a person approved by Landlord, which approval shall not be unreasonably withheld or delayed. Landlord shall have the right, without liability, to remove, at Tenant's expense and without notice, any sign installed or displayed in violation of this rule.

2. Unless Tenant has obtained Landlord's prior written consent, Tenant shall not use the name of the Building in connection with or in promoting or advertising the business of Tenant except as part of Tenant's address. Landlord shall have the right to prohibit any advertising by Tenant which, in Landlord's opinion, tends to impair the reputation of the Building, and upon written notice from Landlord, Tenant shall refrain from or discontinue such advertising.

3. No curtains, blinds, shades, screens or hanging plants or other similar objects attached to or used in connection with any window or door of the Premises shall be permitted except for Building standard vertical or horizontal blinds furnished by Landlord. No awning shall be permitted on any part of the Premises. The sashes, sash doors, windows, glass lights and any lights or skylights that reflect or admit light into the halls or other places of the Building shall not be obstructed. Neither the interior nor exterior of any windows shall be coated or otherwise sunscreened without Landlord's prior written consent. Tenant shall not place anything against or near glass partitions or doors or windows which may appear unsightly from outside the Premises. Further, Tenant shall not be permitted to place anything on the Building's balconies.

4. No furniture shall be placed in front of the Building or in any lobby or corridor without the prior written consent of Landlord. Landlord shall have the right to remove all of such unpermitted furniture, without notice to Tenant, and at Tenant's expense.

5. All electric ceiling fixtures hung in offices or spaces along the perimeter of the Building must be fluorescent, of a quality, type, design and bulb color reasonably approved by Landlord.

6. Tenant shall not enter the mechanical rooms, air handler rooms, electrical closets, janitorial closets (provided, Tenant's janitorial vendor may freely access janitorial closets) without the prior written consent of Landlord.

7. Landlord shall have the exclusive right to regulate the common areas of the Building. The halls, passages, exits, entrances, elevators and stairways of the Building are not for the general public, and Landlord shall in all cases retain the right to control and prevent access thereto by all persons whose presence, in the judgment of Landlord, would be prejudicial to the safety, character, reputation and interests of the Building and its tenants, provided that nothing herein contained shall be construed to prevent such access to persons with whom Tenant normally deals in the ordinary course of its business, unless such persons are engaged in illegal activities.

8. Any damage caused by Tenant, its employees or agents to the public portions of the Building or to any portions used in common with other tenants or occupants shall be repaired at the sole cost and expense of Tenant, except to the extent such damage is covered by the proceeds of insurance purchased by Landlord as part of Operating Expenses.

9. Tenant shall not purchase or otherwise obtain for use in the Premises, water, ice, food, towel, barbering, bootblacking services or other like services, except from persons authorized in writing by Landlord to provide the foregoing, and at hours and under regulations fixed by Landlord, with the exception of food and drink purchased for immediate consumption by Tenant's employees and visitors. Notwithstanding the above, Tenant shall have the right without prior written authorization to contract with "Sparkletts" or "Arrowhead" or similar providers for the delivery of ice, water or coffee for use in the Premises.

10. Landlord will furnish to Tenant, free of charge, two keys to each door lock in the Premises and additional keys for each such lock at a reasonable charge, and in the event the Building or Premises is or later becomes equipped with an electronic access control device, Landlord will furnish Tenant with identification keys or cards, each for the sum of Ten Dollars ($10.00). Each of such sums shall be a deposit against the return of such an identification key or card. Landlord may charge a reasonable amount for additional keys or cards. Tenant shall not make or have additional keys made, and Tenant shall not install a new or additional lock or bolt on any door or window of the Premises, nor make any changes to existing locks or the mechanisms thereof, without the prior written consent of Landlord, and Tenant shall furnish Landlord with a key for any such new, additional or altered lock. Tenant must, upon the termination of its tenancy, give Landlord the combination to all combination locks on safes, safe cabinets and vaults remaining on the Premises, and deliver to Landlord all identification keys or cards, if any, keys of stores, offices, and toilet rooms, which keys or cards were either furnished to, or otherwise Procured by Tenant. In the event of the loss of any card or key so furnished, Tenant shall pay to Landlord the cost of replacing the same or of changing the lock or locks opened by such lost key or card if Landlord deems it necessary to make such change.

11. No deliveries shall be made which impede or interfere with other tenants or the operation of the Building. Tenant's initial move-in, and subsequent deliveries of bulky items, such as furniture and safes, shall be made during such hours and in such manner as may be prescribed by Landlord from time to time. Landlord reserves the right to inspect all safes, freight or other bulky articles to be brought into the Building and to exclude from the Building any bulky articles which violate any of these Rules and Regulations or provisions of the Lease. No safes or other objects which exceed the weight, size or other limits on the freight elevators of the Building shall be brought into or installed on the Premises. The Building's freight elevators and loading platform shall be available for use by Tenant, subject to prior reservation and such reasonable scheduling as Landlord in its discretion shall deem appropriate. Prior to delivery of any heavy object to the Building, Tenant shall notify Landlord of such object's specifications and contemplated location in order that Landlord may take action to prevent structural load damage to the Building. Landlord shall have the right to prescribe the weight and size of all equipment, materials, furniture or other property brought into the Building. Heavy objects shall, if considered necessary by Landlord, stand on such platforms (to be provided at Tenant's expense) as determined by Landlord to be necessary to properly distribute the weight of such objects, but in no event shall Tenant place a load upon any floor of the Premises which exceeds the load per square foot which such floor was designed to carry and which is allowed by law. Landlord shall be responsible for all structural engineering required to determine structural load, the actual cost of which engineering Tenant shall reimburse to Landlord promptly after Landlord's invoice therefor. Landlord reserves the right to prohibit or impose other conditions upon the installation in the Premises of heavy objects which might overload the floors of the Building. Landlord shall have the right to approve (but such approval shall not be unreasonably withheld or delayed) the movers or moving company employed by Tenant and Tenant shall cause such movers to use only the loading facilities and elevators designated by Landlord. If Tenant's movers damage any of the elevators or any other part of the Building, Tenant shall pay to Landlord, upon demand, the amount required to repair such damage. Landlord shall have the right to require, and may supply, an elevator operator for the moving of bulky items by Tenant. Tenant shall pay to Landlord, upon demand, Landlord's costs for such elevator operator.

12. The persons employed to move equipment, machines and similar items (other than those items described in Rule 12 above) in or out of the Building must be approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed. Landlord

will not be responsible for loss of, or damage to, any such equipment or other items caused by the moving thereof, and all damage done to the Building by moving or maintaining such equipment or other items shall be repaired at the expense of Tenant.

13. Business machines and mechanical equipment belonging to Tenant, which cause noise or vibration that may be transmitted to the structure of the Building or to any space therein to such a degree as to be objectionable to Landlord or to any tenants in the Building, shall be placed and maintained by Tenant, at Tenant's expense, on vibration eliminators or other devices sufficient to eliminate noise or vibration.

14. No explosives or firearms shall be brought into the Premises or other portion of the Building without the prior written consent of Landlord. Neither Tenant nor its servants, employees, agents, visitors or licensees shall at any time bring, use or keep in the Premises or in any other portion of the Building any kerosene, gasoline or inflammable or combustible fluid or material other than limited quantities thereof reasonably necessary for the operation or maintenance of office equipment or Tenant's vehicles in the on-site parking facility. Tenant shall not do or permit anything to be done in the Premises, or bring or keep anything therein, which shall in any way violate or conflict with the regulations of the fire department, with any insurance policy on the Premises or the Building, or with any laws, rules, regulations or ordinances established by any governmental authority. Tenant shall not permit the smoking or carrying of lighted cigars or cigarettes in areas reasonably designated by Landlord or designated by applicable governmental agencies as non-smoking areas.

15. Except as Landlord may otherwise agree, Tenant shall not install any air conditioning or heating units or similar apparatus, nor use any method of heating or air conditioning other than that supplied by Landlord. Tenant shall (i) not waste electricity, water, air conditioning or other utilities supplied by Landlord, (ii) cooperate fully with Landlord to assure the most efficient operation of the Building's heating and air conditioning systems and (iii) use its best efforts to comply with any governmental energy-saving laws, rules or regulations.

16. At the end of each day, Tenant shall close and lock the doors, and shut off all water faucets, apparatus and other utilities located in the Premises so as to prevent waste or damage, and for any default or carelessness in this regard, Tenant shall be liable for all injuries and damage resulting therefrom. On multiple-tenancy floors, Tenant shall keep the doors to the Building corridors closed at all times and permit them to be opened only for purposes of ingress and egress. Tenant assumes any and all responsibility for protecting its Premises from theft, robbery, pilferage and vandalism.

17. Tenant and Tenant's employees and invitees shall have access to the Building twenty-four (24) hours per day seven (7) days per week. Notwithstanding the foregoing, Landlord reserves the right to exclude from the Building on Sundays and legal holidays, holidays on which the New York Stock Exchange is closed, and on Mondays through Fridays other than between the hours of 8:00 A.M. and 6:00 P.M., and other than between 9:00 A.M. and 1:00 P.M. on Saturdays or other than between such other hours as may be established from time to time by Landlord, any person unless that person is either known to the person or employee in charge of the Building and/or has a valid pass or is otherwise properly identified. Tenant shall be responsible for all persons for whom it requests passes and shall be liable to Landlord for all acts of such persons. Landlord shall not be liable for damages caused by reason of any error with regard to the admission to or exclusion from the Building of any person. Landlord reserves the right to prevent access to the Building in case of invasion, mob, riot, public excitement, act of God or other commotion by closing and locking the doors or by other appropriate action. Landlord may exclude or expel from the Building any person who, in Landlord's judgment, is intoxicated or under the influence of liquor or drugs or is in violation of any of these Rules and Regulations (as amended and supplemented from time to time). If Tenant uses the Premises after regular business hours or on nonbusiness days, Tenant shall lock any entrance doors to the Premises used by Tenant immediately after using such doors.

18. The toilet rooms, toilets, urinals, wash bowls and other similar apparatus shall not be used for any purpose other than that for which they were constructed and no foreign substance of any kind whatsoever shall be thrown therein. The expense of any breakage, stoppage or damage resulting from the violation of this rule shall be borne by the Tenant who, or whose employees, agents, visitors, licensees or invitees shall have caused the breakage, stoppage or damage.

19. Tenant shall not sell, or permit the sale of, newspapers, magazines, periodicals, theater tickets or any other goods or merchandise to the general public in or from the Premises without Landlord's prior written consent, nor shall Tenant carry on, or permit or allow any employee or other person to carry on, the business of stenography, typewriting or any similar business in or from the Premises for the service or accommodation of tenants or occupants of any other portion of the Building, nor shall the Premises be used by Tenant for manufacturing of any kind, or any business or activity other than that set forth in the Lease.

20. Tenant shall not commit any act or permit anything in or about the Building which is likely to subject Landlord to liability or responsibility for injury to any person or damage to any property.

21. Tenant shall store all its trash and garbage within the Premises. No material shall be placed in trash boxes or receptacles if such material is of such a nature that it may not be disposed of in the ordinary and customary manner of removing and disposing of trash and garbage in the City in which the Building is located without being in violation of any law or ordinance governing such disposal. All garbage and refuse disposal shall be made only through entry ways and elevators provided for such purposes and at such times as Landlord shall designate.

22. Tenant shall not mark, paint, drill into, cut, string wires, except for telephone, computer and LAN cables, within or in any way deface any part of the Premises or any other portion of the Building, without the express prior written consent of Landlord, and as Landlord may direct. Any damage to the walls or floors of the Premises caused by the removal of any wall decorations or installations of floor coverings by Tenant shall be repaired by Tenant at Tenant's sole cost and expense. Without limiting any of the provisions of the Lease, Tenant shall refer all representatives of contractors, installation technicians, janitorial workers and other mechanics, artisans and laborers rendering any service in connection with the repair, maintenance or improvement of the Premises to Landlord for Landlord's supervision, approval and control before any of such persons commence performing any of the foregoing services. This paragraph shall apply to all Work performed in the Premises or any other portion of the Building, including, without limitation, the installation of telephones, telegraph equipment, electrical devices and attachments, and installations of any nature affecting the floors, walls, woodwork, trim, windows, ceilings, equipment or any other portion of the Building. The means by which telephone, telegraph and similar wires are to be introduced to the Premises and the location of telephones, call boxes and other office equipment affixed to the Premises shall be subject to the express prior written consent of Landlord, except for decorative items which do not otherwise require the consent of Landlord under this Lease.

23. Tenant shall not lay linoleum or similar floor coverings so that the same shall come into direct contact with the floor of the Premises and, if linoleum or other similar floor covering is to be used, an interlining of builder's deadening felt shall be first affixed to the floor, by a paste or other material soluble in water. The use of cement or other similar adhesive material is expressly prohibited. Tenant shall not, without the prior written consent of Landlord, alter or repair the ceiling, remove any ceiling tiles or remove or replace any lamps or ceiling fixtures on the Premises. Landlord shall replace, and Tenant shall pay for the replacement of, any broken ceiling tiles, or lamps, light bulbs or ceiling fixtures which are damaged by Tenant.

24. Except to the extent expressly permitted pursuant to Article 38 of the Lease, Tenant shall not install any radio or television antenna, loudspeaker or other device on the roof or exterior walls of the Building nor shall Tenant install or maintain in the Premises any device or

equipment which might interfere with the normal reception in the Building of radio or television transmissions.

25. No vending or coin-operated machines shall be placed by Tenant within the Premises without Landlord's prior written consent, which shall not be unreasonably withheld or delayed.

26. The Premises shall not be used for the storage of merchandise held for sale to the general public, or for lodging, nor shall the Premises be used for any improper, immoral, illegal or objectionable purpose. Tenant shall not occupy or permit any portion of the Premises to be occupied for the manufacture or direct sale of liquor, narcotics or tobacco in any form, or as a medical office, barber shop, manicure shop, music or dance studio, travel agency or employment agency.

27. No cooking or food preparation shall be done or permitted by Tenant on the Premises, except Tenant's employees may use Underwriters' Laboratory-approved equipment for brewing coffee, tea, hot chocolate and similar beverages and for warming food, provided that such equipment and use thereof is in accordance with all applicable laws, codes, ordinances, rules and regulations. All such equipment and photocopy machines shall be turned off after regular business hours.

28. Tenant shall not engage or pay any employees on the Premises except those actually working for Tenant on the Premises nor advertise for laborers giving the address of the Premises.

29. Tenant shall not bring or keep within the Premises or Building any animals or birds. Bicycles, motorcycles and other vehicles shall be kept only in the parking facility or facilities designated by Landlord.

30. Tenant shall comply with all safety, fire protection and evacuation procedures and regulations established by Landlord or any governmental agency.

31. Tenant shall not, without the prior written consent of Landlord, request the maintenance personnel of the Building to perform any tasks outside of their regular duties (unless under special instructions from Landlord to do so) for Tenant in or near the Premises or the Building.

32. Tenant shall not use in any area of the Building any hand truck or similar equipment unless it is equipped with rubber tires and side guards.

33. Tenant shall not make, or permit to be made, any unseemly or disturbing noises by the use of any musical instrument, radio, phonograph, nor shall Tenant otherwise disturb or interfere with occupants of the Building or neighboring buildings or premises. Neither Tenant nor its servants, employees, agents, visitors or licensees shall throw anything out of doors, windows or skylights or down public corridors.

34. Except as otherwise set forth in this Lease, Tenant shall not conduct or permit to be conducted any sale by auction in, upon or from the Premises, whether voluntary, involuntary or pursuant to any assignment for the payment of creditors or pursuant to any bankruptcy or other insolvency proceedings.

35. If any governmental license or permit shall be required for the proper and lawful conduct of any business or other activity carried on by Tenant in the premises, or if Tenant's failure to secure such license or permit would adversely affect Landlord, Tenant shall duly procure and thereafter maintain such license or permit.

36. Any consent, approval, request, agreement or other communication required or permitted to be given under these Rules and Regulations shall be given in accordance with the provisions for notices under the Lease.

37. These Rules and Regulations are in addition to, and shall not be construed to modify or amend, in whole or in part, the terms, covenants, agreements or conditions of the Lease.

38. Landlord may waive any one or more of these rules for the benefit of any tenant, but no such waiver by Landlord shall be construed as a waiver of such rule in favor of any other tenant, nor prevent Landlord from thereafter enforcing any such rule against any or all of the tenants of the Building.

39. Landlord reserves the right at any time to change or rescind any one or more of these Rules and Regulations, or to make such other and further reasonable Rules and Regulations as Landlord may from time to time deem necessary for the management, safety, care and cleanliness of the Premises, and Building, as well as for the convenience of other occupants and tenants therein. Tenant shall be deemed to have read these Rules and Regulations and to have agreed to abide by them as a condition of its occupancy of the Premises.

40. Tenant shall be responsible for the observance of all of these Rules and Regulations (as amended and supplemented from time to time) by Tenant's employees, agents, clients, customers, invitees and guests. Landlord shall not be liable to Tenant for the nonobservance or violation by any tenant or occupant of the Building, or any other person of any of these Rules and Regulations.

EXHIBIT D

Tenant's Building Signage

[to be attached]

EXHIBIT E

Appraisal Procedure

Within fifteen (15) calendar days after the expiration of the thirty (30)-calendar day period set forth in section 35.4 of the Lease for the mutual agreement of Landlord and Tenant as to the fair market monthly rental, each party hereto, at its cost, shall engage a real estate broker to act on its behalf in determining the fair market monthly rental. The brokers each shall have at least ten (10) years' experience with leases in buildings comparable to the Building in the Sorrento Mesa submarket of San Diego, California area, and shall submit to Landlord and Tenant in advance for Landlord's and Tenant's reasonable approval the appraisal methods to be used. If a party does not appoint a broker within such fifteen (15)-calendar day period but a broker is appointed by the other respective party, the single broker appointed shall be the sole broker and shall set the fair market monthly rental. If the two brokers are appointed by the parties as stated in this paragraph, such brokers shall meet promptly and attempt to set the fair market monthly rental. If such brokers are unable to agree within thirty (30) calendar days after appointment of the second broker, the brokers shall elect a third broker meeting the qualifications stated in this paragraph within ten (10) calendar days after the last date the two brokers are given to set the fair market monthly rental. Each of the parties hereto shall bear one-half (1/2) the cost of appointing the third broker and of the third broker's fee. The third broker shall be a person who has not previously acted in any capacity for either party.

The third broker shall conduct his own investigation of the fair market monthly rent, and shall be instructed not to advise either party of his determination of the fair market monthly rent except as follows: When the third broker has made his determination, he shall so advise Landlord and Tenant and shall establish a date, at least five (5) calendar days after the giving of notice by the third broker to Landlord and Tenant, on which he shall disclose his determination of the fair market monthly rent. Such meeting shall take place in the third broker's office unless otherwise agreed by the parties. After having initialed a paper on which his determination of fair market monthly rent is set forth, the third broker shall place his determination of the fair market monthly rent in a sealed envelope. Landlord's broker and Tenant's broker shall each set forth their determination of fair market monthly rent on a paper, initial the same and place them in sealed envelopes. Each of the three envelopes shall be marked with the name of the party whose determination is inside the envelope.

In the presence of the third broker, the determination of the fair market monthly rent by Landlord's broker and Tenant's broker shall be opened and examined. If the higher of the two determinations is one hundred five percent (105%) or less of the amount set forth in the lower determination, the average of the two (2) determinations shall be the fair market monthly rent, the envelope containing the determination of the fair market monthly rent by the third broker shall be destroyed and the third broker shall be instructed not to disclose his determination. If either party's envelope is blank, or does not set forth a determination of fair market monthly rent, the determination of the other party shall prevail and be treated as the fair market monthly rent. If the higher of the (2) two determinations is more than one hundred five percent (105%) of the amount of the lower determination, the envelope containing the third broker's determination shall be opened. If the value determined by the third broker is the average of the values proposed by Landlord's broker and Tenant's broker, the third broker's determination of fair market monthly rent shall be the fair market monthly rent. If such is not the case, fair market monthly rent shall be the rent proposed by whichever of Landlord's broker or Tenant's broker is closest to the determination of fair market monthly rent by the third broker.

EXHIBIT F

Dish / Antenna

[to be attached]

EXHIBIT G

Maintenance and Repair Responsibility Matrix

Equipment/Service Area	Landlord	Tenant
Main Electrical Service	X	
Tenant Specific Electrical distribution		X
Tenant Specific Electrical Generation Equipment		X
Tenant Specific HVAC Equipment		X
Common Area HVAC Equipment	X	
Landscaping	X	
Common Area Janitorial	X	
Tenant Space Janitorial		X
Parking and Refuse Area Janitorial	X	
Main Water Service	X	
Tenant Specific Water Distribution		X
Tenant Space Architectural Finishes		X
Common Area Architectural Finishes	X	
Elevator	X	
Common Stairwell	X	
Tenant Stairwell		X
Common restrooms	X	
Tenant Restrooms		X
Main Building sewer	X	
Tenant specific sewer		X
Roof	X	
Glazing	X	
Exterior doors and seals tenant space		X
Exterior doors and seals common area	X	
Parking Lot maintenance	X	
Data service and infrastructure		X
Tenant specific access control		X
Common area access control	X	
Tenant specific CCTV		X
Common area CCTV	X	
Exterior building and lot lighting	X	
Tenant Specific Fire Detection System		X
Common area Fire Detection System	X	
Tenant Specific Fire Suppression System		X
Common area Fire Suppression System	X	

FIRST AMENDMENT TO LEASE

THIS FIRST AMENDMENT TO LEASE ("**Amendment**") is dated as of November 17, 2020 (the "**Effective Date**"), by and among GC PACIFIC CENTER COURT OWNER, LLC, a Delaware limited liability company ("**Landlord**"), and DEXCOM, INC., a Delaware corporation ("**Tenant**").

RECITALS

A. Tenant and Landlord are parties to that certain lease dated as of January 31, 2020 (the "**Lease**"), pursuant to which Tenant leases from Landlord certain premises consisting of approximately 49,152 rentable square feet of space (the "**Premises**") in that certain building located at 10455 Pacific Center Court, San Diego, California (the "**Building**").

B. Landlord and Tenant desire to amend the Lease to (i) expand the Premises into space consisting of approximately 43,325 rentable square feet and comprising the remainder of the Building (the "**Expansion Premises**"), (ii) extend the Lease Term, (iii) provide Tenant with a Right of First Offer to Purchase, and make certain other modifications, all as more particularly set forth herein.

NOW, THEREFORE, in consideration of the foregoing, the parties hereto agree as follows:

1. Recitals; Defined Terms. Landlord and Tenant hereby acknowledge and agree that all of the foregoing Recitals are true and correct and are fully incorporated herein. Except for those terms expressly defined in this Amendment, all initially capitalized terms will have the meanings ascribed to them in the Lease.

2. Extension of Term. Subject to satisfaction of the Amendment Contingency (as defined below), the Lease Term is extended for an additional twelve (12) months, and in connection with such extension of the Lease Term, the Expiration Date of the Lease is hereby modified to be August 31, 2028, instead of August 31, 2027. Notwithstanding the forgoing extension of the Lease Term, Tenant hereby retains the option to renew the Lease pursuant to the terms and conditions set forth in Article 35 of the Lease, as modified by Section 16 of this Amendment, below. All of the terms, covenants and conditions of the Lease shall be applicable through the Expiration Date, as extended, except as modified herein.

3. Expansion of Premises.

(a) Effective upon the date that Landlord delivers the Expansion Premises to Tenant in the Delivery Condition (as defined below) (the "**Expansion Premises Commencement Date**"), and continuing to the Expiration Date, the Expansion Premises shall be added to the Premises covered by the Lease. Commencing on the Expansion Premises Commencement Date, all references in the Lease and in this Amendment to the "Premises" shall be deemed to consist of the entirety of the Building. Landlord represents and warrants that the Expansion Premises has measured in accordance with BOMA standard, and Landlord and Tenant hereby stipulate for all purposes of the Lease that the Expansion Premises contains 43,325 rentable square feet, and, once the Expansion Premises Commencement Date shall have occurred and continuing until the New Termination Date, the Premises shall be deemed to consist of the entirety of the Building, and shall contain a total of 92,477 rentable square feet. Consistent with Section 31.11 of the Lease, any remeasurement shall not under any circumstances entitle Tenant to a refund or credit for any sums paid under this Lease, nor shall such remeasurement under any circumstances obligate Tenant to pay any additional sums under this Lease as a result of any adjustment in the measurement of the Premises or Building.

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(b) In connection with the expansion of the Premises and Tenant becoming the sole tenant in the Building, effective as of the Expansion Premises Commencement Date, Section 1.1 of the Lease is hereby deleted in its entirety and replaced with the following:

> 1.1 Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, subject to the terms, covenants and conditions set forth in this Lease, the space (the "Premises") substantially shown outlined on the floor plan attached hereto as Exhibit A and described in the Basic Lease Information, which Premises are located in the building (the "Building") described in the Basic Lease Information. As used in this Lease, the term "Building" shall include the parcel or parcels of land on which the Building is located and all appurtenances thereto. During the Lease Term, as the sole tenant in the Building, Tenant shall have the exclusive right to use only for their intended purposes of lobbies, entrances, stairs, elevators and other portions of the Building. Landlord acknowledges and agrees that Landlord shall not have any right to change the size, location, configuration, character or use of any portion of the Premises, the Building or the land on which the Building is located. Except in the event Tenant provides its express written consent, which may be granted, conditioned or withheld in Tenant's sole discretion, Landlord agrees that Landlord will not construct additional improvements or facilities within the Premises, the Building or the land on which the Building is located, nor close any such areas. Tenant shall have the exclusive use of all windows and outside decks or terraces and walls of the Premises and any space in the Premises used for shafts, stacks, pipes, conduits, ducts, electric or other utilities, sinks or other Building facilities, existing Building risers, raceways, shafts and conduit, and the Building's MPOE (main point of entry), including, but not limited to, for the installation and operation of Tenant's telecommunications systems, including voice, video, data, internet, and any other services provided over wire, fiber optic, microwave, wireless, and any other transmission systems.

4. Amendment Contingency.

(a) Notwithstanding anything to the contrary herein, the parties hereto acknowledge and agree that the Expansion Premises is presently leased by Trex Enterprises Corporation ("**Existing Tenant**") pursuant to a lease between Landlord and Existing Tenant (the "**Existing Tenant Lease**"), and Landlord hereby notifies Tenant that Landlord and Existing Tenant are in the process of negotiating a binding early termination of the Existing Tenant Lease (the "**Early Termination Agreement**") to enable Landlord to deliver to Tenant possession of the Expansion Premises in the Delivery Condition no later than Friday, January 1, 2021 (the "**Delivery Deadline**"). The Early Termination Agreement will evidence Existing Tenant's obligation to surrender possession of the Expansion Premises by such date that Landlord may thereafter deliver to Tenant possession of the Expansion Premises in the Delivery Condition no later than the Delivery Deadline.

(b) Landlord shall have until 5:00 pm Pacific Time on the date that is fourteen (14) days after the mutual execution of this Amendment (the "**Landlord Termination Deadline**") to deliver to Tenant a copy of the fully-executed Early Termination Agreement (the "**Amendment Contingency**"). In the event Landlord fails to deliver the fully-executed Early Termination Agreement to Tenant on or before the Landlord Termination Deadline, then the Amendment Contingency shall be deemed to have not been satisfied, and Landlord shall have the option to terminate the entirety of this Amendment (a "**Landlord Termination**") at any time during the period commencing one (1) day after the Landlord Termination Deadline and ending at 5:00 pm Pacific time on the date that is five (5) business days after the Landlord Termination Deadline. Landlord may exercise its option to terminate this Amendment by delivering written notice of the Landlord Termination to Tenant. In the event Landlord so elects to terminate this Amendment due to the failure of the Amendment Contingency, following the Landlord Termination the Lease

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shall be deemed unmodified by this Amendment, and the Lease shall remain in full force and effect as if this Amendment was not entered into. In the event Landlord declines to terminate this Amendment due to the failure of the Amendment Contingency, then this Amendment shall remain in full force and effect.

(c) In the event Landlord declines to terminate this Amendment pursuant to the Landlord Termination, and thereafter Landlord fails to deliver to Tenant possession of the Expansion Premises in the Delivery Condition on or prior to the Delivery Deadline, then Landlord shall provide to Tenant a credit against Base Rent for the Expansion Premises (the "**Rent Credit**") equal to one (1) day of Base Rent for the Expansion Premises for each day (if any) that passes from the Delivery Deadline until the earlier to occur of (i) February 28, 2021 (the "**Tenant Termination Deadline**") or (ii) the actual date that Landlord delivers to Tenant possession of the Expansion Premises in the Delivery Condition (such number of days referred to herein as the "**Delay Period**"). In addition, notwithstanding the length of the Delay Period, in no event shall the Expiration Date of the Lease (as modified by this Amendment) be adjusted or extended due to such delays. In the event Landlord fails to deliver to Tenant possession of the Expansion Premises in the Delivery Condition on or prior to the Tenant Termination Deadline, then in addition to receiving the Rent Credit, Tenant shall also have the option to terminate all provisions of this Amendment other than Landlord's obligation to provide the Rent Credit (the "**Tenant Termination**"). Tenant may elect to exercise the Tenant Termination at any time during the period commencing one (1) day after the Tenant Termination Deadline and ending at 5:00 pm Pacific time on the date that is five (5) business days after the Tenant Termination Deadline. Tenant may exercise the Tenant Termination by delivering written notice of the same to Landlord. In the event Tenant so elects to terminate this Amendment pursuant to the Tenant Termination, all provisions of this Amendment other than Landlord's obligation to provide the Rent Credit shall be rendered of no force nor effect on the Lease, and other than Landlord's obligation to provide the Rent Credit to Tenant, the Lease shall be deemed unmodified by this Amendment. Upon Landlord's crediting to Tenant the amount of the Rent Credit, the entirety of this Amendment shall be deemed terminated, and the Lease shall remain in full force and effect as if this Amendment was not entered into.

(d) For the purpose of this Amendment, the "**Delivery Condition**" shall mean that the Expansion Premises shall be broom clean, with all of personal property, furniture, fixtures and equipment removed from the Expansion Premises prior to delivery of possession to Tenant.

5. Base Rent. Prior to the Expansion Premises Commencement Date, Tenant shall continue to pay Base Rent for the Premises in accordance with the terms of the Lease, as set forth below. Tenant shall commence payment of Base Rent for the Expansion Premises effective as of the date (the "**Expansion Premises Rent Commencement Date**") that is six (6) months following the Expansion Premises Commencement Date. Effective as of the dates set forth below, Tenant shall pay monthly Base Rent for the Premises (including the Expansion Premises) in the amounts indicated:

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Period	Monthly Base Rent
September 1, 2020 – day immediately prior to Expansion Premises Rent Commencement Date	$103,219.20
Expansion Premises Rent Commencement Date – August 31, 2021	$194,201.70
September 1, 2021 – August 31, 2022	$200,027.75
September 1, 2022 – August 31, 2023	$206,028.58
September 1, 2023 – August 31, 2024	$212,209.44
September 1, 2024 – August 31, 2025	$218,575.72
September 1, 2025 – August 31, 2026	$225,133.00
September 1, 2026 – August 31, 2027	$231,886.99
September 1, 2027 – August 31, 2028	$238,843.60

6. Operating Expenses and Property Taxes.

(a) Prior to the Expansion Premises Commencement Date, Tenant shall continue paying Tenant's Percentage Share of Operating Expenses and Property Taxes for the Premises in accordance with Article 3 of the Lease. Effective as of the Expansion Premises Commencement Date, Tenant's Percentage Share shall be 100%, and the definition of Operating Expenses set forth in Section 4.1(a) of the Lease shall be modified as set forth below; provided, however, during the period commencing as of the Expansion Premises Commencement Date and ending on the earlier to occur of (i) the day immediately prior to the Expansion Premises Rent Commencement Date or (ii) the date Tenant first commences business operations in any portion of the Expansion Premises, Tenant shall not be required to pay for any Operating Expenses or Property Taxes with respect to the Expansion Premises other than costs for utilities consumed and janitorial services (which shall be contracted for directly by Tenant).

(b) Effective as of the earlier to occur of (i) the Expansion Premises Rent Commencement Date, or (ii) the day Tenant first commences business operations in any portion of the Expansion Premises, and continuing throughout the Lease Term (as extended hereby), (A) Tenant shall be required to pay 100% of all Operating Expenses, Taxes and utilities serving the Premises, and (B) the definition of Operating Expenses set forth in Section 4.1(a) of the Lease is hereby deleted in its entirety and replaced with the following:

> "Operating Expenses" shall mean all costs and expenses paid or incurred by Landlord in connection with the ownership, management, operation, replacement, maintenance or repair of the Building or providing services required of Landlord in accordance with this Lease, limited to the following: (i) premiums and other charges incurred by Landlord with respect to fire, other casualty, rent and liability insurance, any other insurance as is deemed necessary or advisable in the reasonable judgment of Landlord, or any insurance required by the holder of any mortgage or deed of trust encumbering the Building; (ii) costs of repairing an insured casualty to the extent of the deductible amount under the applicable insurance policy; (iii) reasonable costs arising from maintenance, repair and replacement of components of the Building in accordance with Section 10.2; (iv) property management fee equal to two percent (2.0%) of the Base Rent payable by Tenant; (v) [intentionally omitted]; (vi) all reasonable costs and expenses resulting from work, labor, supplies, materials or services similar or in addition to, or in lieu of, any of the foregoing, or resulting from compliance with any laws, ordinances, rules, regulations or orders, or to comply with any

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amendment or other change to the enactment or interpretation of any applicable laws from its enactment or interpretation; (vii) all costs and expenses of contesting by appropriate legal proceedings any matter concerning managing, operating, maintaining or repairing the Building or the amount or validity of any Property Taxes; and (viii) the cost, reasonably amortized as determined by Landlord, together with interest at the rate of ten percent (10%) per annum, or such higher annual rate as Landlord may actually have to pay, on the unamortized balance, of all capital improvements made to the Building or capital assets acquired by Landlord that are (A) required to comply with any conservation program or required by any law, ordinance, rule, regulation or order that are first enacted, or first interpreted to apply to the Building, after the date of this Lease or (B) performed primarily to reduce current or future operating costs, to upgrade Building security, to otherwise improve the operating efficiency of the Building, or for the protection of the health and safety of the occupants of the Building.

Operating Expenses shall not include (1) Property Taxes, (2) depreciation on the Building, (3) subject to the provisions of item (ii) above, repairs and other work occasioned by fire, windstorm or other casualty, to the extent Landlord is reimbursed by insurance proceeds, and other work paid from insurance or condemnation proceeds; (4) all direct costs of refinancing, selling or exchanging the Building, including broker commissions, attorney's fees and closing costs, (5) advertising and promotional expenditures, (6) costs, penalties or fines arising from Landlord's violation of any applicable governmental rule or authority, except to the extent such costs reflect costs that would have been incurred by Landlord absent such violation, (7) penalties or other costs incurred due to a violation by Landlord, as determined by written admission, stipulation, final judgment or arbitration award, of any of the terms and conditions of this Lease or any other lease relating to the Building, except to the extent such costs reflect costs that would have been incurred by Landlord absent such violation, (8) accountants' and attorneys' fees and expenses incurred in connection with lease negotiations or lease disputes with current or prospective Building tenants or in connection with the defense of Landlord's title to the Building, and (9) Landlord's general corporate office overhead and administrative expenses (which shall not be deemed to include a management fee).

7. Refurbishment Allowance; Premises As-Is.

(a) Commencing as of the Expansion Premises Commencement Date, Tenant shall have the right to perform (i) alterations and improvements to the Premises as set forth on the attached Exhibit A (the "**Expansion Premises Improvements**"), and (ii) the Base Building Improvements (as defined below. The Expansion Premises Improvements and the Base Building Improvements are collectively referred to herein as the "**Refurbishment Improvements**". The Refurbishment Improvements shall be performed subject to the terms and conditions of this Section 7. Notwithstanding the foregoing, Tenant and its contractors shall not have the right to perform the Refurbishment Improvements unless and until Tenant has complied with all of the terms and conditions of Article 8 of the Lease, including, without limitation, approval by Landlord of the final plans for the Refurbishment Improvements and the contractors to be retained by Tenant to perform such Refurbishment Improvements. Tenant shall be responsible for all elements of the design of Tenant's plans (including, without limitation, compliance with applicable codes, Legal Requirements, ordinances, rules and regulations), and Landlord's approval of Tenant's plans shall in no event relieve Tenant of the responsibility for such design. Landlord's approval of final plans for the Refurbishment Improvements (the "**Final Plans**") and the contractors to perform the Refurbishment Improvements shall not be unreasonably withheld, conditioned or delayed. The cost estimate, as approved by Landlord and

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Tenant, for the Refurbishment Improvements as set forth in the Final Plans, is referred to herein as the "**Final Estimate**".

(b) The "**Base Building Improvements**" shall mean (i) bringing to compliance with the applicable building code in effect on the original installation date of the applicable system, the base building fire protection alarm system, communication system, fire sprinkler system, life support systems and security systems; (ii) demolition of the existing office improvements within the first floor and second floor of the Expansion Premises; (iii) demolition of the first floor and second floor restrooms in the Expansion Premises, and provide fixtures and finishes to match the same in the first floor and second floor restrooms in the Existing Premises; (iv) replace carpet in both stairwells and paint walls, cover the light wells between the ground floor and second floor; (v) replace all roll-up doors and exterior man doors serving the Expansion Premises; (vi) repair and/or replace HVAC equipment serving the Expansion Premises, as needed, based on the condition and age of units and associated equipment, among other criteria.

(c) Landlord agrees to contribute the sum of Three Million Three Hundred Ninety-One Thousand One Hundred Twenty-Five and No/100 Dollars ($3,391,125.00) (the "**Refurbishment Allowance**"), which is comprised of (i) Two Million Eight Hundred Sixteen Thousand One Hundred Twenty-Five and No/100 ($2,816,125.00) based on Sixty-Five and No/100 Dollars ($65.00) per rentable square foot for the Expansion Premises for the Expansion Premises Improvements, plus (ii) Five Hundred Seventy-Five Thousand and No/100 Dollars ($575,000.00) for the Base Building Improvements. Notwithstanding the forgoing, Landlord and Tenant acknowledge and agree that the Refurbishment Allowance may be applied toward the cost of performing any portion of the combined scope of work for the Expansion Premises Improvements and the Base Building Improvements (collectively, the "**Refurbishment Improvements**"). The Refurbishment Allowance may only be used for the cost of preparing the design and construction documents and mechanical and electrical plans for the Refurbishment Improvements, for payment of plan check, permit and license fees relating to construction of the Refurbishment Improvements, for hard costs in connection with the Refurbishment Improvements and any other costs associated with the Refurbishment Improvements, including a third-party project management fee, or may also be used toward payment of Base Rent. The Refurbishment Allowance shall be paid to Tenant in one (1) disbursement within thirty (30) days after completion of the Refurbishment Improvements and Landlord's receipt of the following documentation: (i) general contractor and architect's completion affidavits, (ii) full and final waivers of lien, (iii) receipted bills covering all labor and materials expended and used, (iv) as-built plans of the Refurbishment Improvements, and (v) the certification of Tenant and its architect that the Refurbishment Improvements have been installed in a good and workmanlike manner in accordance with the approved plans, and in accordance with all applicable codes, laws, ordinances, rules and regulations. Notwithstanding anything herein to the contrary, Landlord shall not be obligated to disburse any portion of the Refurbishment Allowance during the continuance of an uncured default under the Lease, and Landlord's obligation to disburse shall only resume when and if such default is cured. Any portion of the Refurbishment Allowance that remains unused after the date that is twelve (12) months following the Expansion Premises Commencement Date, shall accrue to the sole benefit of Landlord, it being agreed that Tenant shall not be entitled to any credit, offset, abatement or payment with respect thereto. In the event the cost of the Refurbishment Improvements exceeds the Refurbishment Allowance, Tenant shall pay all such excess costs after the full amount of the Refurbishment Allowance has been disbursed hereunder directly to Tenant's contractor or subcontractor or suppliers involved and shall furnish to Landlord copies of receipted invoices therefor and such waivers of lien rights as Landlord may reasonably require. In addition to the Refurbishment Allowance, Landlord shall also provide an allowance to Tenant for the initial test fit of the Expansion Premises in an amount equal to Six Thousand Five Hundred and No/100 Dollars ($6,500.00). In no event shall the Refurbishment Allowance be used for the purchase of equipment, furniture or other items of personal property of Tenant. Landlord shall receive a one-time construction management fee in connection with the Refurbishment Improvements in an amount equal to Fifteen Thousand Dollars ($15,000.00), which may be retained out of the Refurbishment Allowance by Landlord.

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(d) Subject to Landlord causing the Expansion Premises to be in the Delivery Condition prior to delivery of possession of same to Tenant, Tenant shall accept the Expansion Premises in its as-is condition as of the Expansion Premises Commencement Date and, except as set forth in this Section 6, Landlord shall have no obligation to make or pay for any alterations, additions, improvement or renovations in or to the Premises (including the Expansion Premises) to prepare the same for Tenant's occupancy.

8. Landlord's Work and Tenant Improvement Allowance Under Original Lease. Landlord and Tenant acknowledge and agree that Landlord and Tenant previously agreed that Tenant would perform the carpet and paint installation that was included in the Landlord's Work set forth in Schedule 1 to Exhibit B to the Lease, and in connection therewith, the Tenant Improvement Allowance set forth in section 5(a) of Exhibit B to the Lease would be increased to Three Million Two Hundred Seven Thousand Three Hundred Seventy and No/100 Dollars ($3,207,380.00). In connection with the foregoing, the Landlord's Work set forth in Schedule 1 to Exhibit B to the Lease is hereby modified to remove all references to installation of carpet and paint, as such work shall instead be performed by Tenant, and the Tenant Improvement Allowance set forth in section 5(a) of Exhibit B to the Lease is hereby increased from Three Million One Hundred Ninety-Four Thousand Eight Hundred Eighty and No/100 Dollars ($3,194,880.00) to Three Million Two Hundred Seven Thousand Three Hundred Seventy and No/100 Dollars ($3,207,380.00), and shall be payable to Tenant in accordance with the terms, conditions and provisions of Exhibit B to the Lease.

9. Right of First Offer to Purchase. Tenant shall have a one-time right of first offer (the "**Right of First Offer to Purchase**"), during the Lease Term, including the Extension Term, to purchase the Building (the "**Purchase Space**") pursuant to the following terms and conditions:

(a) Provided that Tenant is not then in default of the terms of the Lease, as amended, at the time of Tenant's exercise of the Right of First Offer to Purchase under this Section 8, if, at any time during the Lease Term, Landlord elects to sell the Purchase Space (i) to a party other than a "Landlord Affiliate" or a "Foreclosure Owner" as those terms are defined below, and (ii) on a single asset basis and not as part of a "Group Sale," as that term is defined below, Landlord shall provide written notice to Tenant of the terms and conditions upon which Landlord would be willing to sell the Purchase Space (the "**Landlord's Notice**"). Landlord's Notice shall set forth the material economic terms and conditions (including, without limitation, a statement regarding whether the Purchase Space will be sold free and clear of all deeds of trust, mortgages, or other similar instruments affecting the Purchase Space) under which Landlord is willing to sell the Purchase Space to Tenant (the "**Material Terms**"), but shall not constitute an agreement between the parties or an offer to sell such Purchase Space. Landlord agrees to bargain in good faith on any terms not stated in Landlord's Notice.

(b) Tenant shall have ten (10) Business Days after receipt of Landlord's Notice (the "**Tenant Response Period**") to notify Landlord in writing whether or not Tenant desires to purchase the Purchase Space on the terms stated in Landlord's Notice (the "**Tenant's Notice**"). If Tenant delivers the Tenant's Notice within the Tenant Response Period, Landlord and Tenant shall promptly enter into a purchase and sale agreement for the Purchase Space on the Material Terms stated in Landlord's Notice (the "**Purchase Agreement**"). Tenant's Right of First Offer to Purchase is personal to Original Tenant and any Affiliate, and shall terminate upon Tenant's failure to timely exercise its Right of First Offer to Purchase within the Tenant Response Period. Accordingly, if Original Tenant shall assign the Lease prior to its exercise of Tenant's Right of First Offer to Purchase (other than to an Affiliate), Tenant's Right of First Offer to Purchase shall thereupon be deemed terminated and Tenant shall have no rights pursuant to this Section 8, and any purported exercise of Tenant's Right of First Offer to Purchase after the date of such assignment shall be deemed void and of no force or effect.

(c) In the event that (i) Tenant either (A) elects not to purchase the Purchase Space on the Material Terms stated in Landlord's Notice or (B) fails to deliver Tenant's Notice to

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Landlord prior to the expiration of the Tenant Response Period, or (ii) Tenant delivers a Tenant's Notice to Landlord within the Tenant Response Period but Landlord and Tenant fail to execute the Purchase Agreement within fifteen (15) Business Days after the date of Landlord's receipt of Tenant's Notice, then (i) Tenant shall be deemed to have waived its Right of First Offer to Purchase the Purchase Space, (ii) Tenant's Right of First Offer to Purchase shall be deemed null and void, and (iii) Landlord shall have the right to sell the Purchase Space to any third party without having any obligation to deliver a Landlord's Notice to Tenant.

(d) In no event shall Landlord be required to provide Tenant with any of the following items: (1) appraisal and valuation reports and information, (2) any documents, materials or information which are subject to attorney/client, work product or similar privilege or which constitute attorney communications with respect to the Purchase Space, (3) any confidential or proprietary information and communications, (4) any documents pertaining to the marketing of the Purchase Space for sale to prospective purchasers, (5) any internal memoranda, reports or assessments of Landlord or Landlord's affiliates to the extent relating to Landlord's valuation of the Purchase Space or interpretation of any agreements, contracts or third party reports pertaining to the Purchase Space, or (6) any materials projecting or relating to the future performance of the Purchase Space. Tenant hereby acknowledges that Landlord will not make any warranty or representation, express or implied, regarding the truth or accuracy of any of the documents, materials or information provided to or made available to Tenant or the source thereof and Landlord shall have no liability as a result of providing or making available to Tenant such documents, materials or information or as a result of Tenant's reliance thereon. During the Offer Period, Tenant and its agents, contractors, subcontractors, consultants, employees, engineers, legal counsel and other authorized representatives of Tenant who shall inspect, investigate, test or evaluate the Purchase Space on behalf of Tenant (collectively, "**Licensee Parties**") shall have reasonable access to the Purchase Space at agreed upon times during normal business hours for agreed upon purposes on at least one (1) business day's prior notice to Landlord. Such notice shall describe the scope of the studies Tenant intends to conduct during Tenant's access to the Purchase Space. Landlord shall have the right to have a representative present during any visits to or inspections of the Purchase Space or interviews with any tenants of the Purchase Space. If Tenant desires to conduct any physically intrusive studies such as, but not limited to, sampling of soils or the like ("**Inspection**"), Tenant will identify in writing the procedures Tenant desires to perform and shall request Landlord's express written consent thereto, which consent may be withheld in Landlord's sole discretion. The Inspection will be at Tenant's sole cost and expense and will be conducted in a manner and by Licensee Parties reasonably acceptable to Landlord. Should Tenant choose to conduct such an investigation at the Purchase Space, then Tenant shall promptly cause to be removed any mechanics' liens that may be recorded against the Purchase Space on account of the performance of work or activities by or for Tenant, at Tenant's sole cost and expense. Tenant and any Licensee Parties will: (i) maintain commercial general liability (occurrence) insurance on terms reasonably satisfactory to Landlord covering any occurrence arising in connection with the presence of Tenant or the Licensee Parties on the Purchase Space, and deliver to Landlord a certificate of insurance, which names Landlord as an additional insured thereunder, verifying such coverage prior to entry upon the Purchase Space; (ii) promptly pay when due the costs of all entry and inspections and examinations done with regard to the Purchase Space; and (iii) restore the Purchase Space to the condition in which the same was found before any such entry, inspection or examination was undertaken. Tenant shall, at Landlord's request, provide Landlord with copies of all studies, tests, reports and other documents or materials relating to the Purchase Space that are prepared, conducted or made by, for or on behalf of Tenant, each of which shall be addressed to Tenant and to Landlord so that Landlord will be entitled to rely thereon as if it were the client of the party preparing such document. Tenant shall maintain as confidential the terms of the proposed sale transaction and any and all information obtained by Tenant about the Landlord or about the Purchase Space, the other leases at the Purchase Space, this Agreement or the proposed sale transaction, and shall not disclose such information to any third party. Except as may be required by law, Tenant will not divulge any such information to other persons or entities including, without limitation, appraisers, real estate brokers, or competitors of Landlord. Notwithstanding the foregoing, Tenant shall have the right to disclose information with respect to the Purchase Space to its officers, directors, employees,

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attorneys, accountants, environmental auditors, engineers, and potential lenders and other consultants to the extent necessary for Tenant to evaluate its acquisition of the Purchase Space provided that all such persons are told that such information is confidential and agree (in writing for any third party engineers, environmental auditors or other consultants) to keep such information confidential. The provisions of this paragraph shall survive any termination of the Lease.

(e) Tenant shall indemnify and defend Landlord against and hold Landlord harmless from all claims, demands, liabilities, losses, damages, costs and expenses, including reasonable attorneys' fees and disbursements, arising from any entry on the Purchase Space by Tenant or any of the Licensee Parties. The foregoing covenant shall survive any termination of the Lease.

(f) For purposes of this Section 8, the following definitions shall have the meanings as follows:

(i) "**Foreclosure Owner**" shall be an entity or person which becomes the owner of the Purchase Space through a foreclosure by trustee's power of sale, judicially or otherwise, or as a purchaser at a foreclosure sale, or a mortgagee of the Purchase Space (or an entity which is controlled by, controls or is under common control with such mortgagee) that acquires title by deed in lieu or transfer of equity in lieu of foreclosure or any UCC foreclosure action.

(ii) "**Group Sale**" shall mean a sale or other transfer of the Purchase Space as a direct or indirect interest in the entity that is Landlord together with one or more other commercial office properties or buildings owned by Landlord and/or any Landlord Affiliate to a single purchaser.

(iii) "**Landlord Affiliate**" shall mean an entity which is controlled by, controls or is under common control with the originally named Landlord under this Amendment or by Graymark Capital.

(iv) "**Sale**", "**Sell**" or "**Selling**" shall mean to convey fee ownership of the Purchase Space or enter into a ground lease of the entire Purchase Space for a period in excess of thirty-five (35) years.

10. Parking.

(a) Notwithstanding anything to the contrary in the Lease, including without limitation the provisions set forth in the Basic Lease Information, effective as of the Expansion Premises Commencement Date Tenant shall have the right to use all parking spaces located at the Building, at no additional cost or expense throughout the Lease Term (as extended hereby).

(b) In connection with the expansion of the Premises and Tenant becoming the sole tenant in the Building, effective as of the Expansion Premises Commencement Date, Section 1.4 of the Lease is hereby deleted in its entirety and replaced with the following:

> 1.4 Notwithstanding Section 1.1 of this Lease relating to use of the land on which the Building is located for parking, Tenant shall have the right to use all parking spaces located at the Building at no additional cost or expense throughout the Lease Term, and all such parking shall be for the exclusive use of Tenant. Tenant shall use such parking spaces solely for parking automobiles of Tenant's officers and employees. Tenant shall comply with all Rules and Regulations and all laws now or hereafter in effect relating to the use of parking spaces. Without limiting the foregoing, in no event shall this Lease be void or voidable, nor shall Landlord be liable to Tenant for any loss or damage, nor shall there be

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any abatement of rent hereunder, by reason of any reduction in Tenant's parking rights hereunder by reason of strikes, lock-outs, labor disputes, shortages of material or labor, fire, flood or other casualty, acts of God or any other cause beyond the control of Landlord.

11. Services. Effective as of the Expansion Premises Commencement Date, Article 7 of the Lease is hereby deleted in its entirety and replaced with the provisions set forth on Exhibit B attached hereto.

12. Maintenance and Repairs. Effective as of the Expansion Premises Commencement Date, Article 10 of the Lease is hereby deleted in its entirety and replaced with the provisions set forth on Exhibit C attached hereto. Accordingly, Exhibit G to the Lease is hereby deleted in its entirety effective as of the Expansion Premises Commencement Date.

13. Compliance With Legal Requirements. Article 14 of the Lease is hereby deleted in its entirety and replaced with the following: "Tenant shall, at its sole cost and expense, promptly comply with all laws, ordinances, rules, directives, guidelines, regulations, orders and other requirements of any governmental entity, agency or public authority now in force or which may hereafter be in force, with the requirements of any board of fire underwriters or other similar body now or hereafter constituted, and with any direction or certificate of occupancy issued pursuant to any law by any governmental agency or officer, insofar as any thereof relate to or affect the condition, use or occupancy of the Premises, including any requirements to cease or reduce Tenant's business operations in or Tenant's use of the Premises, or the operation, use or maintenance of any equipment, fixtures or improvements in the Premises (collectively, "**Legal Requirements**"), excluding requirements of structural changes not related to or affected by Tenant's acts or use of the Premises or by Alterations made by or for Tenant.

14. Remedies Upon Default. Notwithstanding anything to the contrary in the Lease, Landlord shall have the right to exercise all of its remedies pursuant to Article 19 of the Lease during any eviction moratorium, to the extent allowed by applicable Legal Requirements.

15. Condemnation. Notwithstanding anything to the contrary in Article 21 of the Lease, and to the extent allowed by applicable Legal Requirements, none of the following events shall (a) constitute a taking or condemnation, either permanent or temporary, or (b) entitle Tenant to any compensation from Landlord or any abatement of Rent or any other remedy under the Lease: (i) a governmental action that requires Tenant's business or the Building to close during the Lease Term (as extended hereby), and (ii) a governmental action taken for the purpose of protecting public safety (e.g., to protect against acts of war, the spread of communicable diseases, or an infestation).

16. Building Signage. Effective as of the Expansion Premises Commencement Date, Article 28 of the Lease is hereby deleted in its entirety and replaced with the following:

28.1 Tenant may, at Tenant's expense, install Building standard suite signage identifying Tenant's business at the entrance to the Premises, provided that the design, size, color and location of the sign is in compliance with applicable Legal Requirements and has been approved by Landlord (which approval shall not be unreasonably withheld, conditioned or delayed). Tenant shall be entitled, at no cost to Tenant, to have the name of Tenant's company listed on the Building directory situated in the lobby of the Building. If, after Tenant's name is initially listed on the directories, Tenant requests a change in Tenant's name as printed thereon, Tenant shall reimburse Landlord for Landlord's cost of reprinting Tenant's name for the directories.

28.2 Tenant, at Tenant's sole cost and expense (including, without limitation, costs and expenses to construct any such signage to

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the extent the same does not exist as of the date of this Lease), and subject to Tenant's compliance with applicable Legal Requirements (including signage ordinances), shall be entitled to signage on the exterior of the Building and to the extent desired by Tenant on the land on which the Building is located, in the maximum size and number of locations as permitted by the City and Legal Requirements ("Tenant's Signage"). Tenant shall be responsible for obtaining any governmental permits or approvals required for Tenant's Signage, all at Tenant's sole cost and expense; provided, however, that Landlord, at no cost to Landlord, shall reasonably cooperate with Tenant as reasonably required for obtaining any governmental permits or approvals required for Tenant's Signage. Tenant's repair, maintenance, construction and/or improvement of Tenant's Signage shall be at its sole cost and expense and shall comply with all applicable Legal Requirements, the requirements applicable to construction of Alterations pursuant to Article 8 of this Lease, and such other reasonable rules, procedures and requirements as Landlord shall impose with respect to such work, including insurance coverage in connection therewith. Any cost or reimbursement obligations of Tenant under this section 28.2, including with respect to the installation, maintenance or removal of Tenant's Signage, shall survive the expiration or earlier termination of this Lease.

28.3 Tenant's rights to maintain Tenant's Signage shall terminate upon the earlier to occur of: (a) the expiration or earlier termination of the Lease or Tenant's right to possession of the Premises; (b) Tenant assigns the Lease other than to an Affiliate; or (c) Landlord elects to terminate this Lease as a result of an uncured Event of Default under this Lease. The rights provided for in Article 28 shall be personal to the original tenant hereunder (i.e., Dexcom, Inc.) ("Original Tenant") and any Affiliate of Original Tenant, and shall not be transferable to any other party unless otherwise agreed to by Landlord in writing. Upon the termination of Tenant's signage rights under this Article 28, Tenant shall remove any of Tenant's Signage at Tenant's sole cost and expense, and repair and restore to good condition the areas of the Building on which the signage was located or that were otherwise affected by such signage or the removal thereof (including, without limitation, patching any holes or other penetrations caused by such signage and otherwise restoring the Building to the condition existing prior to the initial installation of such signage), or at Landlord's election, Landlord may perform any such removal and/or repair and restoration and Tenant shall pay Landlord the reasonable cost thereof within thirty (30) days after Landlord's written demand.

17. Option to Renew. Tenant shall continue to have the option to renew the Lease Term pursuant to Article 35 of the Lease, provided that (i) Tenant shall now have the option to renew the Lease Term for a total of two (2) additional terms of five (5) years each, and (ii) the renewal options shall be applicable to the Premises as expanded by the Expansion Premises. All of the terms and provisions of Article 35 of the Lease shall continue to be applicable to such renewal options.

18. Rooftop Use. Effective as of the Expansion Premises Commencement Date, Article 38 of the Lease is hereby deleted in its entirety and replaced with the following:

38.1 Tenant shall have the right, at no additional cost, to utilize the roof of the Building for the purpose of installing (in accordance with the terms and conditions of Article 8 of this Lease), operating and maintaining the rooftop dishes/antennas or any other legally permissible items (collectively the "Dish/Antenna"). The portion of the roof so utilized

by Tenant at any time during the Lease term is referred to herein as the "Roof Space". Tenant shall have the right to utilize the entire roof of the Building as the Roof Space. Tenant's right to install the Dish/Antenna shall be subject to the reasonable approval rights of Landlord and Landlord's architect and/or engineer with respect to the plans and specifications of the Dish/Antenna, the manner in which the Dish/Antenna is attached to the roof of the Building and the manner in which any cables are run to and from the Dish/Antenna; provided, Landlord shall not withhold its approval if the proposed installation is in compliance with Legal Requirements. Tenant shall be solely responsible for obtaining all necessary governmental and regulatory approvals and for the cost of installing, operating, maintaining and removing the Dish/Antenna. Tenant shall notify Landlord upon completion of the installation of the Dish/Antenna. If Landlord reasonably determines that the Dish/Antenna equipment does not comply with the approved plans and specifications, that the Building has been damaged during installation of the Dish/Antenna or that the installation was defective, Landlord shall notify Tenant of any noncompliance or detected problems and Tenant immediately shall cure the defects. If the Tenant fails to immediately cure the defects, Tenant shall pay to Landlord upon demand the cost, as reasonably determined by Landlord, of correcting any defects and repairing any damage to the Building caused by such installation. If at any time Landlord, in its sole discretion, deems it necessary, Tenant shall provide and install, at Tenant's sole cost and expense, appropriate aesthetic screening, reasonably satisfactory to Landlord, for the Dish/Antenna (the "Aesthetic Screening").

38.2 Landlord agrees that Tenant shall have access to the roof of the Building and the Roof Space during the Lease Term. Tenant further agrees to exercise control over the people requiring access to the roof of the Building and the Roof Space in order to keep to a minimum the number of people having access to the roof of the Building and the Roof Space and the frequency of their visits. It is further understood and agreed that the installation, maintenance, operation and removal of the Dish/Antenna, the appurtenances and the Aesthetic Screening, if any, is not permitted to damage the Building or the roof thereof. Tenant agrees to be responsible for any damage caused to the roof or any other part of the Building, which may be caused by Tenant or any of its agents or representatives.

38.3 Tenant shall, at its sole cost and expense, and at its sole risk, install, operate and maintain the Dish/Antenna in a good and workmanlike manner, and in compliance with all Building, electric, communication, and safety codes, ordinances, standards, regulations and requirements, now in effect or hereafter promulgated, of the Federal Government, including, without limitation, the Federal Communications Commission (the "FCC"), the Federal Aviation Administration ("FAA") or any successor agency of either the FCC or FAA having jurisdiction over radio or telecommunications, and of the state, city and county in which the Building is located. Under this Lease, Landlord and its agents assume no responsibility for the licensing, operation and/or maintenance of Tenant's equipment. Tenant has the responsibility of carrying out the terms of its FCC license in all respects. The Dish/Antenna shall be connected to Landlord's power supply in strict compliance with all applicable Building, electrical, fire and safety codes. Neither Landlord nor its agents shall be liable to Tenant for any stoppages or shortages of electrical power furnished to the Dish/Antenna or the Roof Space because of any act, omission or requirement of the public utility serving the Building, or the act

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or omission of any other tenant, invitee or licensee or their respective agents, employees or contractors, or for any other cause beyond the reasonable control of Landlord, and Tenant shall not be entitled to any rental abatement for any such stoppage or shortage of electrical power. Neither Landlord nor its agents shall have any responsibility or liability for the conduct or safety of any of Tenant's representatives, repair, maintenance and engineering personnel while in or on any part of the Building or the Roof Space.

38.4 The Dish/Antenna, the appurtenances and the Aesthetic Screening, if any, shall remain the personal property of Tenant, and shall be removed by Tenant at its own expense at the expiration or earlier termination of the Lease or Tenant's right to possession hereunder. Tenant shall repair any damage caused by such removal, including the patching of any holes to match, as closely as possible, the color surrounding the area where the equipment and appurtenances were attached. Tenant agrees to maintain all of the Tenant's equipment placed on or about the roof or in any other part of the Building in proper operating condition and maintain same in satisfactory condition as to appearance and safety in Landlord's reasonable discretion. Such maintenance and operation shall be performed in a manner to avoid any interference with any other tenants or Landlord. Tenant agrees that at all times during the Lease Term, it will keep the roof of the Building and the Roof Space free of all trash or waste materials produced by Tenant or Tenant's agents, employees or contractors.

38.5 In light of the specialized nature of the Dish/Antenna, Tenant shall be permitted to utilize the services of its choice for installation, operation, removal and repair of the Dish/Antenna, the appurtenances and the Aesthetic Screening, if any, subject to the reasonable approval of Landlord. Notwithstanding the foregoing, Tenant must provide Landlord with prior written notice of any such installation, removal or repair and coordinate such work with Landlord in order to avoid voiding or otherwise adversely affecting any warranties granted to Landlord with respect to the roof. If necessary, Tenant, at its sole cost and expense, shall retain any contractor having a then existing warranty in effect on the roof to perform such work (to the extent that it involves the roof), or, at Tenant's option, to perform such work in conjunction with Tenant's contractor. In the event Landlord contemplates roof repairs that could affect Tenant's Dish/Antenna, or which may result in an Interruption of the Tenant's telecommunication service, Landlord shall formally notify Tenant at least thirty (30) days in advance (except in cases of an emergency) prior to the commencement of such contemplated work in order to allow Tenant to make other arrangements for such service.

38.6 Tenant specifically acknowledges and agrees that the terms and conditions of Articles 8 and 13 of this Lease shall apply with full force and effect to the Roof Space and any other portions of the roof accessed or utilized by Tenant, its representatives, agents, employees or contractors.

19. CASp Disclosure. Section 1.5 of the Lease is hereby supplemented with the following: As required by Section 1938(a) of the California Civil Code, Landlord discloses to Tenant that the Expansion Premises have not undergone inspection by a Certified Access Specialist ("**CASp**"). As required by Section 1938(e) of the California Civil Code, Landlord also states that:

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> "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises."

As permitted by the quoted language above, it is agreed that: (a) any CASp inspection for the Expansion Premises requested by Tenant shall be requested by Tenant within ten (10) days after the date on which this Amendment has been executed by Landlord and Tenant, (b) the contract under which the inspection is to be performed shall not limit the CASp's liability if the CASp fails to perform the inspection in accordance with the standard of care applicable to experts performing such inspections, Landlord shall be an intended third party beneficiary of such contract and the contract shall otherwise comply with the provisions of the Lease applicable to Tenant contracts for construction; (c) the CASp inspection of the Expansion Premises shall be conducted (i) at Tenant's sole cost and expense, (ii) by a CASp approved in advance by Landlord, (iii) after normal business hours, (iv) in a manner reasonably satisfactory to Landlord, and (v) shall be addressed to, and, upon completion, promptly delivered to, Landlord and Tenant; (d) the information in the inspection shall not be disclosed by Tenant to anyone other than contractors, subcontractors, and consultants of Tenant who have a need to know the information therein and who agree in writing not to further disclose such information; and (e) to the extent that such CASp inspection identifies any necessary repairs to correct violations of construction-related accessibility standards within the Expansion Premises, the provisions of Article 14 of the Lease shall govern Tenant's responsibility to make such repairs to the Expansion Premises.

20. Release. As a material inducement to Landlord to enter into this Amendment, Tenant hereby releases Landlord from, and hereby waives, any and all losses, costs, damages, expenses, liabilities, claims and causes of action (collectively, the "**Released Claims**") arising prior to the Effective Date from or related to Tenant's inability or limitation to conduct operations from the Premises as a result of any "shelter in place" orders or similar governmental directives, including, without limitation, any claims for, and/or rights of, termination of the Lease and/or abatement, offset and/or deferral of Rent under the Lease, at law and/or in equity related to the inability of Tenant to conduct operations from the Premises as a result of any "shelter in place" orders or similar governmental directives related thereto. With respect to the Released Claims, Tenant acknowledges that Tenant has either been advised by legal counsel or has made itself familiar with the provisions of California Civil Code section 1542, which provides as follows: **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY**. Tenant, being aware of the foregoing code section, hereby expressly waives any rights Tenant may have thereunder, as well as under any other statutes or common-law principles of similar effect, pertaining to the Released Claims.

21. Brokers. Landlord and Tenant each represents and warrants to the other that, other than Cushman & Wakefield, representing Landlord, and Kidder Mathews, representing Tenant, Landlord and Tenant, respectively, have not authorized or employed, or acted by implication to authorize or to employ, any real estate broker or salesman to act for Landlord or Tenant, respectively, in connection with this Amendment. Landlord and Tenant shall each indemnify, defend and hold the other harmless from and against any and all claims as a result of

a breach by the indemnifying party of the foregoing representation (including reasonable attorneys' fees, court costs and any commissions, if ultimately owed).

22. Miscellaneous. Except as provided above, the Lease is unmodified hereby and remains in full force and effect. Submission of this instrument for examination and signature by Tenant does not constitute an offer to amend the Lease, or a reservation of or option to amend the Lease, and is not effective as an amendment or otherwise until execution and delivery by both Landlord and Tenant. The parties may execute several copies of this Amendment. All copies of this Amendment bearing signatures of the parties shall constitute one and the same Amendment, binding upon all parties. The parties may execute this Amendment using electronic signature (e.g., DocuSign) and may exchange counterpart signatures by facsimile or electronic transmission and the same shall constitute delivery of this Amendment with respect to the delivering party. If a variation or discrepancy among counterparts occurs, the copy of this Amendment in Landlord's possession shall control.

[signature page to follow]

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-/11-17-20//

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date and year first above written.

TENANT:

DEXCOM, INC.,
a Delaware corporation

By: /s/ Jereme Sylvain
Name: Jereme Sylvain
Title: VP, Finance

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-/11-17-20//

LANDLORD:

GC PACIFIC CENTER COURT OWNER LLC,
a Delaware limited liability company

By: /s/ Brian Hecktman
Name: Brian Hecktman
Title: Authoried Signatory

EXHIBIT A

Scope of Refurbishment Improvements

Full demolition and removal of all interior finishes.

Refresh both restroom blocks to same level of finishes in current suite.

First and second floor to be fit out to mixed use of office and production space similar to and at the same level of finishes of existing suite.

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-/11-17-20//

EXHIBIT B

Services Provision

ARTICLE 7
Services

7.1 On or before the Expansion Premises Commencement Date, Tenant will cause each utility provider to set up an account for the Premises in Tenant's name and to bill Tenant directly for all utilities supplied to the Premises from the Expansion Premises Commencement Date throughout the Term. Landlord and Tenant will coordinate the timing for establishing service under such new accounts to avoid any interruption in services. Tenant will pay when due for electrical service, water, sewer service, natural gas, telecommunications services, garbage removal, and all other utility services supplied to or consumed in, at, or from the Premises and all related access charges and connection fees.

7.2 In the event of an interruption in, or failure or inability to provide any service or utility for the Premises for any reason, such interruption, failure or inability shall not constitute an eviction of Tenant, constructive or otherwise, or impose upon Landlord any liability whatsoever, including, but not limited to, liability for consequential damages or loss of business by Tenant. Tenant hereby waives the provisions of California Civil Code Section 1932(1) or any other applicable existing or future laws permitting the termination of this Lease due to such interruption, failure or inability. Notwithstanding the foregoing, if any interruption in, or failure or inability to provide any of the services or utilities described in Section 7.2 is (i) within Landlord's reasonable control and continues for three (3) or more consecutive Business Days after Tenant's written notice thereof to Landlord, or (ii) outside of Landlord's reasonable control and continues for thirty (30) or more consecutive days after Tenant's written notice thereof to Landlord, and Tenant is unable to use and does not use a material portion of the Premises for Tenant's business purposes as a result thereof, then Tenant shall be entitled to an abatement of Base Rent and Additional Rent, which abatement shall commence as of the first day after the expiration of such three (3) Business Day or thirty (30) day period, as the case may be, and shall be based on the extent of Tenant's inability to use the Premises for Tenant's business, and in the case of an interruption, failure or inability described in clause (ii) above, such abatement shall be applicable only to the extent and for so long as Landlord is reimbursed for the so abated rent pursuant to Landlord's rental loss insurance. The abatement provisions set forth above shall be inapplicable to any interruption in, or failure or inability to provide any of the services or utilities described in Section 7.2 that is caused by (x) damage by fire or other casualty or a taking (it being acknowledged that such situations shall be governed by Articles 11 and 21, respectively), or (y) the negligence or willful misconduct of Tenant or any agents, employees, contractors, licensees, subtenants, customers, guests or invitees of Tenant (collectively with Tenant, "Tenant Parties").

7.3 In the event any governmental authority having jurisdiction over the Building promulgates or revises any applicable laws or building, fire or other code or imposes mandatory or voluntary controls or guidelines on Landlord or the Building relating to the use or conservation of energy or utilities or the reduction of automobile or other emissions (collectively "Controls") or in the event Landlord is required by Legal Requirements to make alterations to the Building in order to comply with such mandatory Controls, Landlord shall provide written notice to Tenant advising Tenant of the mandatory Controls, and Landlord's proposed commercially reasonable alterations to the Building intended to comply with such mandatory Controls. Tenant and Landlord shall thereafter cooperate to agree upon the scope of work for such alterations and the schedule for performing same, which shall be coordinated to not unreasonably interfere with Tenant's access to and use of the Premises or Tenant's business operations conducted therein. So long as Landlord complies with the foregoing terms and conditions, the making of such commercially reasonable alterations to comply with such mandatory Controls shall not constitute an eviction of Tenant, constructive or otherwise, or impose upon Landlord any liability

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whatsoever, including, but not limited to, liability for consequential damages or loss of business by Tenant.

7.4 Landlord makes no representation to Tenant regarding the adequacy or fitness of the heating, air conditioning or ventilation equipment in the Building to maintain temperatures that may be required for, or because of, any computer or communications rooms, machine rooms, conference rooms or other areas of high concentration of personnel or electrical usage, or any other uses other than or in excess of the fractional horsepower normally required for office equipment, and Landlord shall have no liability for loss or damage suffered by Tenant or others in connection therewith.

7.5 Tenant acknowledges that Landlord may, from time to time, be required to disclose certain information concerning the Building's energy use pursuant to California law (any such current or future law or regulation regarding disclosure of energy efficiency data with respect to the Building shall be referred to herein as the "Energy Disclosure Regulations"). Tenant shall reasonably cooperate with Landlord with respect to any disclosure and/or reporting requirements pursuant to any Energy Disclosure Regulations. Without limiting the generality of the foregoing, Tenant shall, within fifteen (15) Business Days following request from Landlord, disclose to Landlord all information reasonably requested by Landlord in connection with the Energy Disclosure Regulations, including, but not limited to, the amount of power or other utilities consumed within the Premises for which the meters for such utilities are in Tenant's name, the number of employees working within the Premises, the operating hours for Tenant's business in the Premises, and the type and number of equipment operated by Tenant in the Premises. Tenant acknowledges that this information shall be provided on a non-confidential basis and may be provided by Landlord to the applicable utility providers, the California Energy Commission (and other governmental entities having jurisdiction with respect to the Energy Disclosure Regulations), and any third parties to whom Landlord is required to make the disclosures pursuant to the Energy Disclosure Regulations. Tenant agrees that none of the Landlord Parties (as defined below) shall be liable for any loss, cost, damage, expense or liability related to Landlord's disclosure of such information provided by Tenant. In addition, Tenant represents to Landlord that any and all information provided by Tenant to Landlord pursuant to this paragraph shall be, to the best of Tenant's knowledge, true and correct in all material respects.

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-/11-17-20//

EXHIBIT C

Maintenance and Repairs Provision

ARTICLE 10
Maintenance and Repairs

7.1 Tenant shall, at all times during the Lease Term and at Tenant's sole cost and expense, maintain, repair and replace all parts of the Premises (excluding only the entire structural envelope of the Building, the foundation, the roof, the exterior face of exterior walls, all windows and glazing, main sewer line, and the load-bearing portions of load-bearing walls, parking area and sidewalks), including, without limitation, all Building systems, all of Tenant's signs, doors, truck doors, and other penetrations in the outer walls of the Premises, all loading docks and lifts that serve the Premises, floor coverings, ceilings, elevators, all HVAC equipment and systems and all other mechanical, electrical, plumbing, lighting, life-safety, and utility systems, equipment, conduits, pipes, ducts, and lines, and all fixtures and appliances in good order and operating condition, ordinary wear and tear and damage thereto by fire or other casualty excepted. Tenant will also repair, or reimburse Landlord for, any blockage of or damage to the sewer lines and sewer system at the Building that results from anything that enters the sewer lines from the Premises; provided, Landlord shall otherwise be responsible for the sewer lines. Tenant will provide and pay for all garbage removal from the Premises, as well as janitorial services for the Building. Tenant will perform all repairs and replacements with first-class materials and with first-class workmanship. Tenant will, at Tenant's sole cost, maintain throughout the Lease Term a regularly scheduled preventative maintenance and service contract or contracts with a contractor or contractors specializing and experienced in the maintenance of HVAC equipment, for the maintenance of the HVAC systems. The maintenance and service contract shall include all services suggested by the equipment manufacturer (including requiring that the filters be changed at least every 60 days) and shall become effective (and Tenant shall deliver a copy to Landlord) within thirty (30) days after the Expansion Premises Commencement Date. Tenant shall at all times maintain the HVAC systems in compliance with all applicable federal, state and local laws. If a leak occurs in any portion of the HVAC systems, Tenant shall promptly repair such leak in compliance with all applicable federal, state and local laws and complete such repairs within any deadline imposed by such federal, state or local laws. Tenant shall indemnify and defend Landlord against and hold Landlord harmless from all claims, demands, liabilities, damages, losses, costs and expenses, including reasonable attorneys' fees and disbursements, arising from or related to any failure by Tenant to maintain the HVAC systems in compliance with all applicable federal, state and local laws or any failure by Tenant to repair any leak in any portion of the HVAC systems in compliance with all applicable federal, state and local laws. If Tenant replaces any part or component of the HVAC systems and receives a warranty from the manufacturer or a guaranty by the installer, Tenant shall furnish a duplicate original of each such warranty and guaranty to Landlord. Tenant shall, at the end of the term of this Lease, surrender to Landlord the Premises with the HVAC systems in good condition and working order. Notwithstanding the provisions of this section 10.1 to the contrary, Landlord may at any time, upon thirty (30) days' notice to Tenant, assume maintenance of the HVAC systems, in which case Tenant will reimburse Landlord for the cost incurred by Landlord in maintaining, repairing and replacing such HVAC systems within thirty (30) days following demand from Landlord; provided, however, that any capital repairs or replacements of the HVAC systems shall be reasonably amortized as determined by Landlord and consistent with prudent real property management practices for comparable buildings in the San Diego area, together with interest at the rate of ten percent (10%) per annum. Tenant hereby waives all rights under California Civil Code section 1941 and all rights to make repairs at the expense of Landlord or in lieu thereof to vacate the Premises as provided by California Civil Code section 1942 or any other law, statute or ordinance now or hereafter in effect. Landlord has no obligation and has made no promise to alter, remodel, improve, repair, maintain, decorate or paint the Premises or the Building or any part thereof or any equipment, fixtures or improvements therein.

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7.2 Landlord shall maintain (i) the entire structural envelope of the Building, (ii) foundation, (iii) roof, (iv) exterior face of exterior walls, (v) all windows and glazing, (vi) main sewer line, (vii) the load-bearing portions of load-bearing walls of the Building, (viii) parking area and sidewalks, (ix) landscaping, and (x) all back flow preventers (BFPs) and post indicating valves (PIVs) for the main fire service, main domestic water, and main landscape irrigation, all in reasonably good order and condition. In connection with such maintenance obligations, Landlord shall cause the following to be performed:

(a) exterior walls of the Building to be painted no less than is reasonably required to maintain such walls in good condition;

(b) replacement of the roof, glazing joints and concrete tilt up panel joints, as needed;

(c) maintain the parking surfaces and lighting, asphalt slurry and stripe, and grind, re-lay, slurry stripe as often as is reasonably required in order to maintain the same in good condition; and

(d) repair sidewalks damaged or heaved by tree roots, weather, etc., as needed.

Notwithstanding the foregoing, any damage in or to any such areas or elements caused by Tenant or any agent, employee, contractor, licensee or invitee of Tenant shall be repaired by Landlord at Tenant's expense and Tenant shall reimburse Landlord therefor on demand, as additional rent. Landlord shall not be liable for any criminal acts of others or for any direct, consequential or other loss or damage related to any malfunction, circumvention or other failure of any access control service, device or personnel.

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TENANT ESTOPPEL CERTIFICATE

The undersigned, Dexcom, Inc., a Delaware corporation ("**Tenant**"), hereby certifies to NR THE CANYONS LLC, a Delaware limited liability company, and its affiliates, successors and assigns ("**Buyer**") and any lenders and their successors and assigns that provide Buyer financing in connection with the Property (as defined below) as follows, with respect to that certain lease between Tenant and GC Pacific Center Court Owner, LLC, a Delaware limited liability company ("**Landlord**"), dated January 31, 2020, as amended by First Amendment to Lease dated November 17, 2020 between Tenant and Landlord (as amended, the "**Lease**") of a portion of that certain real property located at 10455 Pacific Center Court, San Diego, California (the "**Property**"):

1. **Schedule 1** is a complete and correct list of the Lease and all amendments or modifications thereto and the Lease and has not been amended, supplemented or changed, except pursuant to the First Amendment to Lease listed in **Schedule 1** (the "**First Amendment**"). There are no other agreements, written or oral, affecting or relating to Tenant's lease of the leased premises described in the Lease (the "**Premises**") or any other portion of the Property.

2. The Lease is in full force and effect. Tenant has accepted possession of the Premises and all conditions to be satisfied by Landlord under the Lease as of the date hereof have been satisfied, and all work to be performed by Landlord for Tenant under the Lease as of the date hereof has been performed and has been accepted by Tenant, and all tenant improvement allowances have been paid to Tenant with respect to the Lease except for (i) the $3,207,380.00 "**Tenant Improvement Allowance**" as defined in Section 5(a) of Exhibit B to the Lease, and modified by Section 8 of the First Amendment, (ii) the $516,000 "**HVAC Allowance**" for the HVAC Work (as defined in the Lease) performed by Tenant concurrently with the Tenant's Work, as described in Section 5(e) of Exhibit B to the Lease, and (iii) the $3,391,125.00 "**Refurbishment Allowance**" defined in Section 7(c) of the First Amendment. The Tenant Improvement Allowance and the HVAC Allowance have been requested by Tenant, but not yet disbursed by Landlord. The Refurbishment Allowance will be requested once the Refurbishment Improvements (as defined in the First Amendment) have been performed. Tenant has no disputes or claims outstanding against the Landlord, and there are no offsets due, nor payment currently due to Tenant under the Lease other than the previously requested Tenant Improvement Allowance and the HVAC Allowance.

3. All base rent and additional rent under the Lease has been paid through May, 2021.

4. Base rent is currently payable in the amount of $103,219.20 per month.

5. Tenant is currently paying estimated payments of additional rent of $16,627.38 on account of real estate taxes, insurance, and common area maintenance expenses. Tenant pays its full proportionate share of real estate taxes, insurance, and common area maintenance expenses.

6. Lease commencement date is September 1, 2020. Lease expiration date is August 31, 2028. The Expansion Premises Commencement Date (as such term is defined in Section 3(a) of the First Amendment) is January 1, 2021, and the Expansion Premises Rent Commencement Date (as such term is defined in Section 5 of the First Amendment) is July 1, 2021.

7. Tenant has no option to extend, expand or terminate the Lease, except as follows: two (2) additional option terms of five (5) years each, and the continuous and ongoing Right of First Offer to expand into any other space in the Building pursuant to Article 36 of the Lease.

8. Tenant's one-time right of first offer to purchase the Property set forth in Section 9 of the First Amendment described on **Schedule 1** has terminated and is no longer in effect. Tenant has no options to purchase or rights of first refusal to purchase or right of first offer to purchase the Property.

9. Landlord holds a security deposit in the amount of NONE.

10. Tenant has not prepaid any rent.

11. Tenant has not entered into any sublease, assignment or any other agreement transferring any of its interest in the Lease or the Premises, except as follows: NONE.

12. Neither Tenant nor, to Tenant's actual knowledge, Landlord is currently in default under the Lease and, to Tenant's actual knowledge, there is no occurrence which with the passage of time or giving of notice would result in a default by Landlord or Tenant under the Lease, except as follows: NONE.

The undersigned has executed this certificate with the knowledge and agreement that the undersigned will be bound by the statements contained herein and that they may be relied upon by Buyer, any mortgagee of the Property, and their respective successors and assigns. This certificate may be executed by electronic imaging, which shall be deemed an original signature for all purposes.

DEXCOM, INC.,
a Delaware corporation

By: /s/ Jereme Sylvain
Name: Jereme Sylvain
Title: EVP, Chief Financial Officer

Date: May 17, 2021

Schedule 1

Lease dated January 31, 2020 between GC Pacific Center Court Owner LLC, a Delaware limited liability company, and Dexcom, Inc., a Delaware corporation

First Amendment to Lease dated November 17, 2020 between GC Pacific Center Court Owner LLC, a Delaware limited liability company, and Dexcom, Inc., a Delaware corporation

Tenant's Acceptance of Possession

Premises Address: Expansion Premises per First Amendment dated November 10, 2020 1045 Pacific Center Court

San Diego, CA 92126

Landlord: GC Pacific Center Court Owner, LLC

Tenant: DexCom, Inc.

As a representative of the above referenced tenant, I have physically inspected the suite noted above and its improvements with Dee Ordonez, Property Manager, as authorized agent for the Landlord. I accept the suite as of January 4, 2021 and as to compliance with the requirements indicated in our Lease, also including the verified information below:

Expansion Premises:
Lease Commencement Date: January 1, 2021

Expansion Premises:
Lease Rent Commencement Date: July 1, 2021 Date Keys Delivered to Tenant: January 4, 2021

THE FOREGOING IS ACKNOWLEDGED AND ACCEPTED: TENANT: DEXCOM, INC.

By: /s/ Jereme Sylvain

Name: Jereme Sylvain

Title: EVP, Chief Financial Officer

Exhibit 21.01

DEXCOM, INC.

SUBSIDIARY **(Name under which subsidiary does business)**	**JURISDICTION OF INCORPORATION**
SweetSpot Diabetes Care, Inc.	Delaware
TypeZero Technologies, Inc.	Delaware
DexCapital, LLC	Delaware
The Glucose Program, LLC	Delaware
Nintamed Handels GmbH	Austria
DexCom Canada, Co.	Canada
DexCom Deutschland GmbH	Germany
DexCom Lithuania UAB	Lithuania
DexCom (Malayisa) Sdn Bhd.	Malaysia
DexCom Philippines, Inc.	Philippines
DexCom Asia Pacific Operations PTE Ltd.	Singapore
DexCom Suisse GmbH	Switzerland
DexCom (UK) Ltd.	United Kingdom
DexCom (UK) Intermediate Holdings Ltd.	United Kingdom
DexCom Operating Ltd.	United Kingdom
DexCom International Ltd.	United Kingdom
DexCom (UK) Distribution Ltd.	United Kingdom

Exhibit 23.01

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in the following Registration Statements:

- Registration Statement (Form S-3 Nos. 333-206619, 333-211101, 333-228495, and 333-261265) of DexCom, Inc.,
- Registration Statement (Form S-8 No. 333-204699) pertaining to the 2015 Equity Incentive Plan and the 2015 Employee Stock Purchase Plan of DexCom, Inc., and
- Registration Statement (Form S-8 Nos. 333-218562 and 333-234682) pertaining to the Amended and Restated 2015 Equity Incentive Plan of DexCom, Inc.;

of our reports dated February 9, 2023 with respect to the consolidated financial statements and schedule of DexCom, Inc., and the effectiveness of internal control over financial reporting of DexCom, Inc., included in this Annual Report (Form 10-K) of DexCom, Inc. for the year ended December 31, 2022.

/s/ Ernst & Young LLP

San Diego, California
February 9, 2023

Exhibit 31.01

CERTIFICATION OF CHIEF EXECUTIVE OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Kevin R. Sayer, certify that:

1. I have reviewed this annual report on Form 10-K of DexCom, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including 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 and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

February 9, 2023

By: /s/ KEVIN R. SAYER
Kevin R. Sayer
Chairman of the Board of Directors, President and
Chief Executive Officer
(Principal Executive Officer)

Exhibit 31.02

CERTIFICATION OF CHIEF FINANCIAL OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Jereme M. Sylvain, certify that:

1. I have reviewed this annual report on Form 10-K of DexCom, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including 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 and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

February 9, 2023

By: /s/ JEREME M. SYLVAIN

Jereme M. Sylvain
Executive Vice President and Chief Financial Officer
(Principal Financial and Accounting Officer)

Exhibit 32.01

CERTIFICATION OF CHIEF EXECUTIVE OFFICER
PURSUANT TO
18 U.S.C. SECTION 1350

The undersigned, Kevin R. Sayer, President and Chief Executive Officer of DexCom, Inc. (the "Company"), pursuant to 18 U.S.C. §1350, hereby certifies that:

(i) the annual Report on Form 10-K for the period ended December 31, 2022 of the Company (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: February 9, 2023

/s/ KEVIN R. SAYER
Kevin R. Sayer
Chairman of the Board of Directors, President and
Chief Executive Officer
(Principal Executive Officer)

Exhibit 32.02

CERTIFICATION OF CHIEF FINANCIAL OFFICER
PURSUANT TO
18 U.S.C. SECTION 1350

The undersigned, Jereme M. Sylvain, Executive Vice President and Chief Financial Officer of DexCom, Inc. (the "Company"), pursuant to 18 U.S.C. §1350, hereby certifies that:

(i) the annual Report on Form 10-K for the period ended December 31, 2022 of the Company (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: February 9, 2023

/s/ JEREME M. SYLVAIN
Jereme M. Sylvain
Executive Vice President and Chief Financial Officer
(Principal Financial and Accounting Officer)