

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

FORM 10-Q

(Mark One)

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

For the quarterly period ended March 31, 2023

OR

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

For the Transition Period From _____ to _____

Commission file number: 001-37792



NantHealth, Inc.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

3000 RDU Center Drive, Suite 200
Morrisville, North Carolina
(Address of principal executive offices)

27-3019889

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

27560
(Zip Code)

(855) 949-6268

(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, par value \$0.0001 per share	NH	The NASDAQ Global Select Market

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

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

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

As of May 12, 2023, the registrant had 7,703,304 shares of common stock, par value \$0.0001 per share, outstanding.

NantHealth, Inc.
Form 10-Q
As of and for the quarterly period ended March 31, 2023
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We own or have rights to trademarks and service marks that we use in connection with the operation of our business. NantHealth, Inc. and our logo as well as other brands such as NaviNet, Eviti, NaviNet Open, Eviti | Connect, OpenNMS, Quadris and other marks relating to our product lines are used in this Quarterly Report on Form 10-Q. Solely for convenience, the trademarks and service marks referred to in this Quarterly Report on Form 10-Q are listed without the (sm) and (TM) symbols, but we will assert, to the fullest extent under applicable law, our rights or the rights of the applicable licensors to these trademarks, service marks and trade names. Additionally, we do not intend for our use or display of other companies' trade names, trademarks, or service marks to imply a relationship with, or endorsement or sponsorship of us by, these other companies.

SPECIAL NOTE REGARDING FORWARD LOOKING STATEMENTS

This Quarterly Report on Form 10-Q this ("Quarterly Report"), including, without limitation, Part I, Item 2, "Management's Discussion and Analysis of Financial Condition and Results of Operations" and Part II, Item 1A, "Risk Factors," contains "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. In some cases you can identify these statements by forward-looking words such as "believe," "may," "will," "might," "estimate," "continue," "anticipate," "intend," "could," "should," "would," "project," "plan," "outlook," "target," "expect," or similar expressions, or the negative or plural of these words or expressions. These forward-looking statements include, but are not limited to, statements concerning the following:

- the result of the evaluation of strategic alternatives, including restructuring or refinancing our debt, seeking additional debt or equity capital, reducing or delaying our business activities and strategic initiatives, or sell assets, other strategic transactions and/or other measures, and the terms, value and timing of any transaction resulting from that process;
- our ability to increase cash flow to support our operating activities and fund our obligations and working capital needs;
- the structural change in the market for healthcare in the United States, including uncertainty in the healthcare regulatory framework and regulatory developments in the United States and foreign countries;
- general economic conditions including supply chain disruptions, labor shortages, wage pressures, rising inflation and the ongoing military conflict between Russia and Ukraine;
- security threats, catastrophic events and other disruptions that affect our information technology and related systems;
- physician, payer and pharmaceutical business needs for clinical decision support, payer/provider collaboration and data analytics solutions and any perceived advantage of our solutions over those of our competitors, including the ability of our platforms to help physicians treat their patients;
- our ability to increase the commercial success and to accelerate commercial growth of our clinical decision support, payer/provider collaboration, network monitoring and management, and data analytics solutions and our other products and services;
- our plans or ability to develop, implement and commercialize a cloud/SaaS-based version of our network monitoring and management solutions;
- our ability to effectively implement, offer and manage delegated entity services to health plans in a compliant and timely manner in connection with our decision support solutions;
- our ability to effectively manage our growth, including the rate and degree of market acceptance of our solutions;
- our ability to offer new and innovative products and services, including new features and functionality for our existing products and services;
- our ability to attract new partners and customers and our ability to retain or renew contracts with partners and customers;
- the impact of cost-savings measures;
- current and future debt financings placing restrictions on our operating and financial flexibility;
- our inability to generate sufficient cash to service all of our indebtedness or our ability to access additional capital;
- our expectations regarding our ability to comply with Nasdaq continued listing standards;
- our ability to estimate the size of our target market;
- our ability to maintain and enhance our reputation and brand recognition;
- consolidation in the healthcare industry;
- competition which could limit our ability to maintain or expand market share within our industry;
- restrictions and penalties as a result of privacy and data protection laws;
- our use of "open source" software;
- our ability to use, disclose, de-identify or license data and to integrate third-party technologies;
- data loss or corruption due to failures or errors in our systems and service disruptions at our data centers;
- breaches or failures of our security measures;
- our reliance on Internet infrastructure, bandwidth providers, data center providers, other third parties and our own systems for providing services to our users;
- risks related to future acquisition opportunities;
- the requirements of being a public company;
- our ability to attract and retain key personnel;

- our ability to obtain and maintain intellectual property protection for our solutions and not infringe upon the intellectual property of others;
- our ability to continue as a going concern;
- our financial performance expectations, including our expectations regarding our revenue, cost of revenue, gross profit or gross margin, operating expenses, including changes in research and development, sales and marketing and general and administrative expenses, and our ability to achieve and maintain future profitability; and
- other factors including but not limited to those detailed under the section entitled “Risk Factors.”

We caution you that the foregoing list does not contain all of the forward-looking statements made in this Quarterly Report.

These forward-looking statements are based on current expectations and assumptions that are subject to risks and uncertainties, which could cause our actual results to differ materially from those reflected in the forward-looking statements. These statements are within the meaning of the “safe harbor” provisions of the Private Securities Litigation Reform Act of 1995. These statements appear throughout this Quarterly Report and are statements regarding our intent, belief, or current expectations, primarily based on our current assumptions, expectations and projections about future events and trends that may affect our business, financial conditions, operating results, cash flows or prospects, as well as related industry developments. You should not place undue reliance on these forward-looking statements, which apply only as of the date of this Quarterly Report. Our actual results could differ materially from those anticipated in these forward-looking statements for many reasons, including the risks faced by us and described in Part II, Item 1A, “Risk Factors,” and in “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in Part I, Item 2 of this Quarterly Report. We undertake no obligation to update any forward-looking statements for any reason to conform these statements to actual results or to changes in our expectations, except as required by law.

PART I — FINANCIAL INFORMATION

Item 1. Financial Statements

NantHealth, Inc.
Consolidated Balance Sheets
(Dollars in thousands)

	March 31, 2023 (Unaudited)	December 31, 2022
Assets		
Current assets		
Cash and cash equivalents	\$ 14,149	\$ 1,759
Accounts receivable, net	6,732	5,948
Related party receivables, net	476	476
Prepaid expenses and other current assets	3,355	4,402
Total current assets	24,712	12,585
Property, plant, and equipment, net	11,995	12,383
Goodwill	98,333	98,333
Intangible assets, net	29,020	30,110
Related party receivable, net of current	937	937
Operating lease right-of-use assets	3,753	4,285
Other assets	750	918
Total assets	\$ 169,500	\$ 159,551
Liabilities and Stockholders' Equity		
Current liabilities		
Accounts payable	\$ 9,762	\$ 10,408
Accrued and other current liabilities	21,764	20,006
Deferred revenue	3,408	2,724
Related party payables, net	3,452	1,933
Notes payable	—	560
Total current liabilities	38,386	35,631
Deferred revenue, net of current	730	1,050
Notes payable	11,852	—
Related party liabilities	47,943	45,908
Related party promissory note	133,063	123,666
Related party convertible note, net	62,352	62,335
Convertible notes, net	74,703	74,683
Deferred income taxes, net	1,220	1,206
Operating lease liabilities	3,323	4,054
Other liabilities	32,573	36,411
Total liabilities	406,145	384,944
Commitments and Contingencies (Note 11)		
Stockholders' deficit		
Common stock, \$0.0001 par value per share, 750,000,000 shares authorized; 7,703,304 and 7,703,306 shares issued and outstanding at March 31, 2023 and December 31, 2022, respectively	12	12
Additional paid-in capital	896,805	895,897
Accumulated deficit	(1,132,917)	(1,120,676)
Accumulated other comprehensive loss	(545)	(626)
Total stockholders' deficit	(236,645)	(225,393)
Total liabilities and stockholders' deficit	\$ 169,500	\$ 159,551

The accompanying notes are an integral part of these Consolidated Financial Statements.

NantHealth, Inc.
Consolidated Statements of Operations
(Dollars in thousands, except per share amounts)
(Unaudited)

	Three Months Ended March 31,	
	2023	2022
Revenue		
Software-as-a-service related	\$ 16,440	\$ 15,771
Maintenance	575	464
Professional services	35	138
Total net revenue	<u>17,050</u>	<u>16,373</u>
Cost of Revenue		
Software-as-a-service related	5,589	5,563
Software and hardware related	39	—
Maintenance	693	369
Amortization of developed technologies	104	1,247
Total cost of revenue	<u>6,425</u>	<u>7,179</u>
Gross Profit	<u>10,625</u>	<u>9,194</u>
Operating Expenses		
Selling, general and administrative	16,705	14,980
Research and development	5,164	5,715
Amortization of acquisition-related assets	985	985
Total operating expenses	<u>22,854</u>	<u>21,680</u>
Gain (loss) from operations	(12,229)	(12,486)
Interest income (expense), net	(4,153)	(3,450)
Other income (expense), net	4,215	6
Income (loss) before income taxes	(12,167)	(15,930)
Provision for (benefit from) income taxes	74	20
Net income (loss)	<u>\$ (12,241)</u>	<u>\$ (15,950)</u>
Basic and diluted net income (loss) per share:		
Total net income (loss) per share - common stock	<u>\$ (1.59)</u>	<u>\$ (2.07)</u>
Weighted average shares outstanding		
Basic and diluted - common stock	<u>7,703,304</u>	<u>7,701,416</u>

The accompanying notes are an integral part of these Consolidated Financial Statements.

NantHealth, Inc.
Consolidated Statements of Comprehensive Loss
(Dollars in thousands)
(Unaudited)

	Three Months Ended March 31,	
	2023	2022
Net income (loss)	\$ (12,241)	\$ (15,950)
Other comprehensive (loss) income, net of tax		
Foreign currency translation adjustments	81	(96)
Total other comprehensive (loss) income	81	(96)
Comprehensive income (loss)	\$ (12,160)	\$ (16,046)

The accompanying notes are an integral part of these Consolidated Financial Statements.

NantHealth, Inc.
Consolidated Statements of Stockholders' Deficit
(Dollars in thousands)
(Unaudited)

	Common Stock		Additional Paid-In Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	Total NantHealth Stockholders' Deficit
	Shares	Amount				
Balance at December 31, 2022	7,703,306	\$ 12	\$ 895,897	\$ (1,120,676)	\$ (626)	\$ (225,393)
Stock-based compensation cost	—	—	908	—	—	908
Share repurchase	(2)	—	—	—	—	—
Other comprehensive income (loss)	—	—	—	—	81	81
Net income (loss)	—	—	—	(12,241)	—	(12,241)
Balance at March 31, 2023	<u>7,703,304</u>	<u>\$ 12</u>	<u>\$ 896,805</u>	<u>\$ (1,132,917)</u>	<u>\$ (545)</u>	<u>\$ (236,645)</u>

The accompanying notes are an integral part of these Consolidated Financial Statements.

NantHealth, Inc.
Consolidated Statements of Stockholders' Deficit
(Dollars in thousands)
(Unaudited)

	Common Stock		Additional Paid-In Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	Total NantHealth Stockholders' Deficit
	Shares	Amount				
Balance at December 31, 2021	<u>7,700,349</u>	<u>\$ 12</u>	<u>\$ 891,105</u>	<u>\$(1,052,897)</u>	<u>\$ (212)</u>	<u>\$ (161,992)</u>
Stock-based compensation cost	—	—	1,417	—	—	1,417
Shares issued in connection with employee stock plans, net of shares withheld for employee taxes	3,000	—	24	—	—	24
Purchase of non-controlling interest	—	—	—	—	—	—
Other comprehensive income (loss)	—	—	—	—	(96)	(96)
Net income (loss)	—	—	—	(15,950)	—	(15,950)
Balance at March 31, 2022	<u>7,703,349</u>	<u>\$ 12</u>	<u>\$ 892,546</u>	<u>\$(1,068,847)</u>	<u>\$ (308)</u>	<u>\$ (176,597)</u>

The accompanying notes are an integral part of these Consolidated Financial Statements.

NantHealth, Inc.
Consolidated Statements of Cash Flows
(Dollars in thousands)
(Unaudited)

	Three Months Ended March 31,	
	2023	2022
Cash flows from operating activities:		
Net income (loss)	\$ (12,241)	\$ (15,950)
Adjustments to reconcile net income (loss) to net cash used in operating activities:		
Depreciation and amortization	2,947	4,011
Amortization of debt discounts and deferred financing offering cost	125	37
Change in fair value of Bookings Commitment	(3,833)	94
Stock-based compensation	876	1,390
Deferred income taxes, net	25	(96)
Provision for bad debt expense	7	26
Gain on partial lease termination	(2)	—
Changes in operating assets and liabilities:		
Accounts receivable, net	(793)	759
Related party receivables, net	—	1
Prepaid expenses and other current assets	1,100	(617)
Accounts payable	(648)	2,077
Accrued and other current liabilities	1,578	(3,699)
Deferred revenue	366	33
Related party payables, net	4,052	948
Change in operating lease right-of-use assets and liabilities	(136)	(108)
Other assets and liabilities	5	45
Net cash provided by (used in) operating activities	(6,572)	(11,049)
Cash flows from investing activities:		
Purchases of property and equipment, including internal-use software	(1,263)	(1,203)
Net cash provided by (used in) investing activities	(1,263)	(1,203)
Cash flows from financing activities:		
Repayments of insurance promissory note and notes payable	(560)	(782)
Proceeds from related party notes	10,125	—
Proceeds from promissory notes	12,375	—
Proceeds from exercises of stock options	—	24
Payment of deferred financing costs, related party	(767)	—
Payment of deferred financing costs	(572)	—
Net cash provided by (used in) financing activities	20,601	(758)
Effect of exchange rate changes on cash, cash equivalents and restricted cash	(376)	(46)
Net increase (decrease) in cash, cash equivalents and restricted cash	12,390	(13,056)
Cash, cash equivalents and restricted cash, beginning of period ⁽¹⁾	3,559	31,402
Cash, cash equivalents and restricted cash, end of period ⁽¹⁾	\$ 15,949	\$ 18,346

⁽¹⁾ Cash and cash equivalents included restricted cash of \$1,800 and \$1,800 at March 31, 2023 and December 31, 2022, respectively.

Restricted cash is included in the financial statement line items noted below at March 31, 2023 and 2022:

Financial statement line item	Three Months Ended March 31,	
	2023	2022
Other current assets	\$ 1,180	\$ 1,180
Other assets	620	1,088
Total restricted cash	1,800	2,268

The accompanying notes are an integral part of these Consolidated Financial Statements.

NantHealth, Inc.
Notes to Consolidated Financial Statements
(Dollars in thousands, except per share amounts)
(Unaudited)

Note 1. Description of Business and Basis of Presentation

Nature of Business

Nant Health, LLC was formed on July 7, 2010, as a Delaware limited liability company. On June 1, 2016, Nant Health, LLC converted into a Delaware corporation (the "LLC Conversion") and changed its name to NantHealth, Inc. ("NantHealth"). NantHealth, together with its subsidiaries (the "Company"), is a healthcare IT company converging science and technology. The Company works to transform clinical delivery with actionable clinical intelligence at the moment of decision, enabling clinical discovery through real-time machine learning systems. The Company markets certain of its solutions as a comprehensive integrated solution that includes its clinical decision support, payer engagement solutions, data analysis and network monitoring and management. The Company also markets its clinical decision support, payer engagement solutions, data analysis and network monitoring and management on a stand-alone basis. NantHealth is a majority-owned subsidiary of NantWorks, LLC ("NantWorks"), which is a subsidiary of California Capital Equity, LLC ("Cal Cap"). The three companies were founded by and are led by Dr. Patrick Soon-Shiong.

The Company's product portfolio comprises the latest technology in payer/provider collaboration platforms for real-time coverage decision support (Evi and NaviNet) and data solutions that include multi-data analysis, reporting and professional services offerings (Quadris). In addition, The OpenNMS Group, Inc. ("OpenNMS"), the Company's wholly-owned subsidiary, helps businesses monitor and manage network health and performance. Altogether, we generally derive revenue from software as a service ("SaaS") subscription fees, support services, professional services, and revenue sharing through collaborations with complementary businesses.

The Company believes it is uniquely positioned to benefit from multiple significant market opportunities as healthcare providers and payers transition from fee-for-service to value-based reimbursement models. They need solutions that increase operational efficiency, manage costs, improve care collaboration and accelerate their pursuit of evidence-based clinical practice. The Company also believes that its core business lines enable opportunities to create data analytics services and assets which further drive value and efficiency for its customers. The Company is investing to further integrate big data and automated intelligence technologies within our core business lines and to create new product and service offerings.

As of March 31, 2023, the Company conducted the majority of its operations in the United States, Canada, and the United Kingdom.

Nasdaq Delisting

Publicly Held Shares Market Value Requirement

On October 31, 2022, the Company received a notice (the "Notice") from Nasdaq informing it that the Company was not in compliance with the minimum \$15,000,000 market value of publicly held shares requirement for continued listing on the Nasdaq Global Select Market pursuant to Listing Rule 5450(b)(2)(C) (the "Public Float Requirement"). The Notice had no immediate effect on the Company's Nasdaq listing or trading of its common stock.

In accordance with Listing Rule 5810(c)(3)(D), the Company had a period of 180 calendar days, or until May 1, 2023, to regain compliance with the Public Float Requirement (the "Compliance Period").

On May 2, 2023, the Company received written notice from Nasdaq stating that it had not complied with the Public Float Requirement prior to the expiration of the Compliance Period (the "Delisting Notice"). The Delisting Notice indicated that the Company's common stock would be suspended from trading on Nasdaq on May 11, 2023 unless the Company requested a hearing pursuant to the procedures set forth in the Nasdaq Listing Rule 5800 Series, by requesting a hearing before the Nasdaq Hearings Panel (the "Panel") by 4:00 p.m. Eastern Time on May 9, 2023. The Company timely requested a hearing before the Panel, which is expected to be held on June 8, 2023, and has stayed any trading suspension of the Company's common stock until the completion of the Nasdaq hearing process and expiration of any additional extension period, if any, that may be granted by the Panel following the hearing. At or prior to the hearing, the Company intends to present its plans to Nasdaq to regain compliance with the Public Float Requirement and request an extension of time to allow its board and management to implement such plans.

There continues to be no immediate effect on the listing of the Company's common stock, which continues to trade on the Nasdaq Global Select Market under the symbol "NH." the Company is working diligently to satisfy, and intends to regain compliance with, the Public Float Requirement. However, there can be no assurance that it will be able to regain compliance with the Public Float Requirement prior to the hearing date or at all or that Nasdaq will grant it an extension of time to achieve compliance with the Public Float Requirement. The Company intends to continue to monitor its closing bid price for its common stock and will continue considering all available options to comply with the Public Float Requirement as may be necessary.

NantHealth, Inc.
Notes to Consolidated Financial Statements
(Dollars in thousands, except per share amounts)
(Unaudited)

The Company intends to monitor the market value of its common stock and may, if appropriate, consider available options to regain compliance with the Public Float Requirement.

Basis of Presentation and Principles of Consolidation

The accompanying unaudited Consolidated Financial Statements include the accounts of NantHealth and its subsidiaries. All intercompany accounts and transactions have been eliminated in consolidation. These interim unaudited Consolidated Financial Statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP") and, in the opinion of management, include all adjustments, which are normal and recurring in nature, necessary for a fair presentation of the Company's financial position and results of operations. In accordance with the instructions to Form 10-Q and Article 10 of Regulation S-X as issued by the Securities and Exchange Commission ("SEC"), these unaudited Consolidated Financial Statements do not include all of the information and disclosures required by GAAP for complete financial statements. These unaudited Consolidated Financial Statements should be read in conjunction with the audited Consolidated Financial Statements for the fiscal year ended December 31, 2022. The accompanying Consolidated Balance Sheet as of December 31, 2022 has been derived from the audited Consolidated Financial Statements at that date. Operating results for interim periods are not necessarily indicative of the results that may be expected for a full fiscal year.

The Company has incurred significant losses and negative cash flows from operations. As of March 31, 2023, the Company had cash and cash equivalents of \$14,149 and an accumulated deficit of \$1,132,917. The Company had a net loss of \$12,241 and used cash of \$6,572 for operating activities for the three month period ended March 31, 2023. In accordance with Accounting Standards Update ("ASU") 2014-15, Presentation of Financial Statements—Going Concern (Subtopic 205-40): Disclosure of Uncertainties about an Entity's Ability to Continue as a Going Concern, management is required to perform a two-step analysis over the Company's ability to continue as a going concern. Management must first evaluate whether there are conditions and events that raise substantial doubt about the Company's ability to continue as a going concern for a period of 12 months from the date the financial statements are issued. If management concludes that substantial doubt is raised, management is also required to consider whether its plans alleviate that doubt.

As a result of continuing anticipated operating cash outflows the Company believes that substantial doubt exists regarding our ability to continue as a going concern without additional funding or financing. However, Highbridge Capital Management, LLC and its affiliates ("Highbridge") and Nant Capital, LLC ("Nant Capital") have agreed to consent to amendments to certain of our existing debt agreements in order to enhance our liquidity, and have confirmed their collective intent and ability to make additional loans to us to the extent necessary to support our operations in the manner currently conducted through May 17, 2024. Management believes that this agreement and intent alleviates such substantial doubt. Nant Capital is an affiliate of Dr. Patrick Soon-Shiong, our CEO. The Company may also seek to sell additional equity, through one or more follow-on public offerings or in separate financings, or sell additional debt securities, or obtain a credit facility. However, the Company may not be able to secure such financing in a timely manner or on favorable terms. We may also consider delaying our business activities and strategic initiatives, or selling off components of our business. Additionally, the Company continues to consider all strategic alternatives. The Company is undertaking a number of actions in order to improve its financial position and stabilize its results of operations including but not limited to, cost cutting, lowering capital expenditures, and implementing hiring freezes. To date, the Company's primary sources of capital have been the private placement of membership interests prior to its IPO, debt financing agreements, including promissory notes with Nant Capital and affiliates, convertible notes, the sale of its common stock, and proceeds from the sale of components of its business.

Note 2. Summary of Significant Accounting Policies

Use of Estimates

The preparation of the unaudited Consolidated Financial Statements in conformity with GAAP requires management to make estimates and assumptions that affect the amounts reported in the unaudited Consolidated Financial Statements and accompanying notes. Actual results may differ from those estimates. The estimates and assumptions used in the accompanying unaudited Consolidated Financial Statements are based upon management's evaluation of the relevant facts and circumstances at the balance sheet date. On an ongoing basis, the Company evaluates its estimates, including those related to revenue recognition, accounts receivable allowance, useful lives of long-lived assets and intangible assets, income taxes, stock-based compensation, impairment of long-lived assets and intangible assets, and the expected performance against minimum reseller commitments. The Company bases its estimates on historical experience and on various other assumptions that are believed to be reasonable, the results of which can affect the reported amounts of assets and liabilities as of the date of the financial statements, as well as the reported amounts of revenue and expenses during the periods presented.

NantHealth, Inc.
Notes to Consolidated Financial Statements
(Dollars in thousands, except per share amounts)
(Unaudited)

Segment Reporting

The chief operating decision maker for the Company is its Chief Executive Officer. The Chief Executive Officer reviews financial information presented on a consolidated basis for purposes of allocating resources and evaluating financial performance. The Company has one business activity and there are no segment managers who are held accountable for operations, operating results, or plans for levels or components below the consolidated unit level. Accordingly, management has determined that the Company operates in one reportable segment.

Upcoming Accounting Standard Pronouncements

In June 2016, the FASB issued ASU No. 2016-13, *Measurement of Credit Losses on Financial Instruments*, which changes how companies measure credit losses on most financial instruments measured at amortized cost, such as loans, receivables, and held-to-maturity debt securities. Rather than generally recognizing credit losses when it is probable that the loss has been incurred, the revised guidance requires companies to recognize an allowance for credit losses for the difference between the amortized cost basis of a financial instrument and the amount of amortized cost that the Company expects to collect over the instrument's contractual life. ASU No. 2016-13 is effective for fiscal periods beginning after December 15, 2022 for smaller reporting companies and must be adopted as a cumulative effect adjustment to retained earnings. Early adoption is permitted. We adopted this standard effective January 1, 2023. The impact of adoption on our unaudited Consolidated Financial Statements was not material.

Other recent accounting pronouncements issued by the FASB (including its Emerging Issues Task Force), the American Institute of Certified Public Accountants, and the SEC did not have, nor are believed by management to have, a material impact on the Company's present or future Consolidated Financial Statements.

Note 3. Revenue Recognition

Contract Balances

The Company records deferred revenue when cash payments are received, or payment is due, in advance of its fulfillment of performance obligations. During the three months ended March 31, 2023 and 2022, there were revenues of \$808 and \$727 recognized, respectively.

Assets Recognized from the Costs to Obtain a Contract with a Customer

The Company recognizes an asset for the incremental costs to obtain a contract with a customer, where the stated contract term, with expected renewals, is longer than one year. The Company amortizes these assets over the expected period of benefit. These costs are generally employee sales commissions, with amortization of the balance recorded in selling, general and administrative expenses. The value of these assets was \$473 at March 31, 2023 and \$686 at December 31, 2022. During the three months ended March 31, 2023 and 2022, the Company recorded amortization of \$119 and \$142, respectively.

Where management is not able to conclude that the costs of a contract will be recovered, costs to obtain the contract are expensed as incurred.

Performance Obligations

As of March 31, 2023, the Company has allocated a total transaction price of \$4,413 to unfulfilled performance obligations that are expected to be fulfilled within 8 years. Excluded from this amount are contracts of less than one year and variable consideration that relates to the value of services provided.

Note 4. Accounts Receivable, net

Accounts receivable are included in the Consolidated Balance Sheets, net of the allowance for doubtful accounts. The allowance for doubtful accounts at March 31, 2023 and December 31, 2022 was \$15 and \$15, respectively.

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Note 5. Prepaid Expenses and Other Current Assets and Accrued and Other Current Liabilities

Prepaid expenses and other current assets as of March 31, 2023 and December 31, 2022 consisted of the following:

	March 31, 2023	December 31, 2022
Prepaid expenses	\$ 1,823	\$ 1,574
Restricted cash	1,180	1,180
Securities litigation insurance receivable	—	1,250
Other current assets	352	398
Prepaid expenses and other current assets	<u>\$ 3,355</u>	<u>\$ 4,402</u>

Accrued and other current liabilities as of March 31, 2023 and December 31, 2022 consisted of the following:

	March 31, 2023	December 31, 2022
Payroll and related costs	\$ 8,758	\$ 7,949
Accrued liabilities	5,382	4,279
Bookings Commitment (see Note 9)	2,157	2,153
Interest payable	1,675	703
Operating lease liabilities	2,188	2,105
Securities litigation and cyber estimated liability	220	1,470
Other accrued and other current liabilities	1,384	1,347
Accrued and other current liabilities	<u>\$ 21,764</u>	<u>\$ 20,006</u>

Note 6. Property, Plant and Equipment, net

Property, plant and equipment, net as of March 31, 2023 and December 31, 2022 consisted of the following:

	March 31, 2023	December 31, 2022
Computer equipment and software	\$ 7,569	\$ 7,592
Furniture and equipment	1,037	1,054
Leasehold improvements	3,785	3,776
Property, plant, and equipment, excluding internal-use software, gross	12,391	12,422
Less: Accumulated depreciation and amortization	(11,421)	(11,073)
Property, plant and equipment, excluding internal-use software, net	970	1,349
Internal-use software	49,786	49,479
Construction in progress - Internal-use software	2,467	1,464
Less: Accumulated depreciation and amortization, internal-use software	(41,228)	(39,909)
Internal-use software, net	11,025	11,034
Property, plant and equipment, net	<u>\$ 11,995</u>	<u>\$ 12,383</u>

Depreciation expense was \$1,739 for the three months ended March 31, 2023, of which \$1,318, related to internal-use software costs. Depreciation expense was \$1,637 for the three months ended March 31, 2022, of which \$1,128 related to internal-use software costs.

Amounts capitalized to internal-use software related to continuing operations for the three months ended March 31, 2023 and 2022 were \$1,309 and \$1,206, respectively.

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Note 7. Intangible Assets, net

The Company's definite-lived intangible assets as of March 31, 2023 and December 31, 2022 consisted of the following:

	March 31, 2023	December 31, 2022
Customer relationships	\$ 53,000	\$ 53,000
Developed technologies	34,500	34,500
Trade name	3,300	3,300
Installed user base	1,400	1,400
Intangible assets, gross	92,200	92,200
Less: Accumulated amortization	(63,180)	(62,090)
Intangible assets, net	<u>\$ 29,020</u>	<u>\$ 30,110</u>

Amortization of definite-lived intangible assets is provided over their estimated useful lives on a straight-line basis or the pattern in which economic benefits are consumed, if reliably determinable. The Company reviews its definite-lived intangible assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Amortization expense from continuing operations for the three months ended March 31, 2023 and 2022 was \$1,089 and \$2,232, respectively.

The estimated future amortization expense over the next five years and thereafter for the intangible assets that exist as of March 31, 2023 is as follows:

	Amounts
Remainder of 2023	\$ 4,346
2024	4,283
2025	4,147
2026	3,467
2027	3,467
Thereafter	9,310
Total future intangible amortization expense	<u>\$ 29,020</u>

Note 8. Convertible Notes

2021 4.5% Convertible Senior Notes ("2021 Notes")

On April 13, 2021, the Company and its wholly owned subsidiary, NaviNet (the "Guarantor") entered into a note purchase agreement with Highbridge Capital Management, LLC and one of its affiliates ("Highbridge") and certain other buyers, including Nant Capital to issue and sell \$137,500 in aggregate principal amount of its 4.5% convertible senior notes in a private placement pursuant to an exemption from the registration requirements of the Securities Act afforded by Section 4(a)(2) of the Securities Act. The 2021 Notes were issued on April 27, 2021. The total net proceeds from this offering were approximately \$136,772, comprised of \$62,223 from Nant Capital and \$74,549 from Highbridge, after deducting Highbridge's debt issuance costs of \$118 and \$610 in debt issuance costs paid to third parties in connection with the 2021 Notes offering.

The Company used part of the proceeds from the 2021 Notes issuance to repurchase the remaining \$31,945 of principal amount of the 2016 5.5% Convertible Senior Notes ("2016 Notes") held by Highbridge ("Repurchased Notes") and pay \$644 of accrued and unpaid interest. On April 27, 2021, in connection with the issuance of the 2021 Notes, the Company provided a notice of a "Fundamental Change" (as defined in the indenture governing the Company's 2016 Notes) and an offer to repurchase all the outstanding 2016 Notes. On May 25, 2021, the Company purchased \$55,555 of the outstanding 2016 Notes via a Fundamental Change repurchase and paid \$1,358 of accrued and unpaid interest thereon.

On April 27, 2021, the 2021 Notes were issued to the investors under an indenture (the "2021 Indenture") dated April 27, 2021 entered into between the Company and U.S. Bank National Association (the "Trustee").

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Interest rates on the 2021 Notes are fixed at 4.5% per year, payable semi-annually on October 15th and April 15th of each year, beginning on October 15, 2021. The 2021 Notes will mature on April 15, 2026, unless earlier repurchased by the Company or converted pursuant to their terms.

The deferred financing offering costs on the 2021 Notes are being amortized to interest expense over the contractual terms of the 2021 Notes, using the effective interest method at an effective interest rate of 4.61%.

The initial conversion rate of the 2021 Notes is 17.3250 shares of common stock per \$1 principal amount of 2021 Notes (which is equivalent to an initial conversion price of approximately \$57.72 per share). The conversion rate will be subject to adjustment upon the occurrence of certain specified events in accordance with the terms of the 2021 Indenture but will not be adjusted for accrued and unpaid interest.

Holders of the 2021 Notes may convert all or a portion of their 2021 Notes, in multiples of \$1 principal amount, at any time prior to the close of business on the business day immediately preceding the maturity date. Upon conversion, the 2021 Notes will be settled in cash, shares of the Company's common stock or any combination thereof at the Company's option.

As of March 31, 2023, the remaining life of the Convertible Notes is approximately 36.5 months.

The 2021 Notes are the Company's general unsecured obligations and are initially guaranteed on a senior unsecured basis by the Guarantor.

The Company may not redeem the 2021 Notes prior to April 20, 2024. The Company may redeem for cash all or any portion of the 2021 Notes, at its option, on or after April 20, 2024, if the last reported sale price of the 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 (including the last trading day of such period) ending on and including, the trading day immediately preceding the date on which the Company provides notice of redemption at a redemption price equal to 100% of the principal amount of the 2021 Notes to be redeemed, plus any accrued and unpaid special interest up to, but excluding, the redemption date. No sinking fund is provided for the 2021 Notes, which means that the Company is not required to redeem or retire the 2021 Notes periodically. If the Company exercises this option to redeem the 2021 Notes owned by Highbridge and Highbridge is unable to convert such 2021 Notes as a result of the application of the beneficial ownership limitations, at the request of Highbridge, the Company shall convert such 2021 Notes into the number of shares of the Company's Series 1 Preferred Stock equal to the number of shares that the 2021 Notes are convertible into pursuant to the Conversion Option (as defined in the 2021 Indenture) into common stock.

Upon the occurrence of a fundamental change (as defined in the 2021 Indenture), holders may require the Company to purchase all or a portion of the 2021 Notes in principal amounts of \$1 or an integral multiple thereof, for cash at a price equal to 100% of the principal amount of the 2021 Notes to be purchased plus any accrued and unpaid interest to, but excluding, the fundamental change purchase date.

For so long as at least \$25,000 principal amount of the 2021 Notes are outstanding, the 2021 Indenture restricts the Company or any of its subsidiaries from creating, assuming, or incurring any indebtedness owing to any of the Company's affiliates (other than intercompany indebtedness between the Company and its subsidiaries and other than any of the Company's 2021 Notes), or prepaying any such indebtedness, subject to certain exceptions, unless certain conditions described in the 2021 Indenture have been satisfied. Under the 2021 Indenture, the Company may incur affiliate debt if there is (i) no default or event of default at the time of such incurrence or would occur as a consequence of such incurrence; (ii) such affiliate debt is unsecured and subordinated to the 2021 Notes; and (iii) no principal of such affiliate debt is scheduled to mature earlier than the date that is 181 days after April 15, 2026, the maturity date of the 2021 Notes. See Note 11 Commitments and Contingencies for default provisions.

Pursuant to the terms of the Credit Agreement (as defined below), the Company agreed with Nant Capital and Highbridge as a post-closing condition to amend the Indenture to, among other things, cause the 2021 Notes to be (i) guaranteed by the Company's subsidiaries that provided guarantees under the Credit Agreement, (ii) secured by second priority liens on the assets that secure borrowings made pursuant to the Credit Agreement, (iii) subject to covenants that are substantially similar to the covenants in Articles VI and VII of the Credit Agreement and (iv) subject to certain additional events of default consistent with Article VIII of the Credit Agreement.

Additionally, the Company is currently negotiating with Nant Capital and Highbridge to further amend the Indenture in order to, among other things, defer all cash interest payments that would otherwise have been payable on the 2021 Notes until May 17, 2024 (provided that such cash interest payments shall be paid-in-kind and capitalized to the principal of the outstanding 2021 Notes on each interest payment date, with such compounding to occur on each interest payment date).

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The following table summarizes how the issuance of the 2021 Notes is reflected in the Company's Consolidated Balance Sheets as of March 31, 2023 and December 31, 2022.

	<u>Related Party</u>	<u>Others</u>	<u>Total</u>
Balance as of March 31, 2023			
Gross proceeds	\$ 62,500	\$ 75,000	\$ 137,500
Unamortized debt discounts and deferred financing offering costs	(148)	(297)	(445)
Net carrying amount	<u>\$ 62,352</u>	<u>\$ 74,703</u>	<u>\$ 137,055</u>
Balance as of December 31, 2022			
Gross proceeds	\$ 62,500	\$ 75,000	\$ 137,500
Unamortized debt discounts and deferred financing offering costs	(165)	(317)	(482)
Net carrying amount	<u>\$ 62,335</u>	<u>\$ 74,683</u>	<u>\$ 137,018</u>

The following tables set forth the Company's interest expense recognized in the Company's Consolidated Statements of Operations with respect to its convertible notes.

	<u>Three Months Ended</u> <u>March 31, 2023</u>		
	<u>Related Party</u>	<u>Others</u>	<u>Total</u>
2021 Notes			
Accrued coupon interest expense	\$ 703	\$ 844	\$ 1,547
Amortization of deferred financing offering costs	17	20	37
Total convertible notes interest expense	<u>\$ 720</u>	<u>\$ 864</u>	<u>\$ 1,584</u>

	<u>Three Months Ended</u> <u>March 31, 2022</u>		
	<u>Related Party</u>	<u>Others</u>	<u>Total</u>
2021 Notes			
Accrued coupon interest expense	\$ 703	\$ 844	\$ 1,547
Amortization of deferred financing offering costs	17	20	37
Total convertible notes interest expense	<u>\$ 720</u>	<u>\$ 864</u>	<u>\$ 1,584</u>

Note 9. Fair Value Measurements

Liabilities measured at fair value on a recurring basis as of March 31, 2023 and December 31, 2022 consisted of the following:

	<u>March 31, 2023</u>			
	<u>Total fair value</u>	<u>Quoted price in active markets for identical assets (Level 1)</u>	<u>Significant other observable inputs (Level 2)</u>	<u>Significant unobservable inputs (Level 3)</u>
Liabilities				
Bookings Commitment	\$ 33,030	\$ —	\$ —	\$ 33,030
	<u>December 31, 2022</u>			
	<u>Total fair value</u>	<u>Quoted price in active markets for identical assets (Level 1)</u>	<u>Significant other observable inputs (Level 2)</u>	<u>Significant unobservable inputs (Level 3)</u>
Liabilities				
Bookings Commitment	\$ 36,863	\$ —	\$ —	\$ 36,863

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The Company's intangible assets and goodwill are initially measured at fair value and any subsequent adjustment to the initial fair value occurs only if an impairment charge is recognized.

Level 3 Inputs

Bookings Commitment

On August 3, 2017, the Company entered into an asset purchase agreement (the "APA") with Allscripts Healthcare Solutions, Inc. ("Allscripts"), pursuant to which the Company agreed to sell to Allscripts substantially all of the assets of the Company's provider/patient engagement solutions business, including the Company's FusionFX solution and components of its NantOS software connectivity solutions (the "Business"). On August 25, 2017, the Company and Allscripts completed the sale of the Business (the "Disposition") pursuant to the APA.

Concurrent with the closing of the Disposition and as contemplated by the APA, (a) the Company and Allscripts modified the amended and restated mutual license and reseller agreement dated June 26, 2015, which was further amended on December 30, 2017, such that, among other things, the Company committed to deliver a minimum of \$95,000 of total bookings over a ten-year period ("Bookings Commitment") from referral transactions and sales of certain Allscripts products; (b) the Company and Allscripts each licensed certain intellectual property to the other party pursuant to a cross license agreement; (c) the Company agreed to provide certain transition services to Allscripts pursuant to a transition services agreement; and (d) the Company licensed certain software and agreed to sell certain hardware to Allscripts pursuant to a software license and supply agreement. The Company also agreed that Allscripts shall receive at least \$500 per year in payments from bookings (the "Annual Minimum Commitment"). If the total payments received by Allscripts from bookings during such period are less than the Annual Minimum Commitment, the Company shall pay to Allscripts the difference between the Annual Minimum Commitment and the total amount received by Allscripts from bookings during such period. As of both March 31, 2023 and December 31, 2022, the accrued Annual Minimum Commitment was \$1,700. In the event of a Bookings Commitment shortfall at the end of the ten-year period, the Company may be obligated to pay 70% of the shortfall, subject to certain credits. The Company will earn 30% commission from Allscripts on each software referral transaction that results in a booking with Allscripts. The Company accounts for the Bookings Commitment at its estimated fair value over the life of the agreement.

The Company values the Bookings Commitment, assumed upon the disposal of the provider/patient engagement solutions business, using a Monte Carlo Simulation model to calculate average payments due under the Bookings Commitment, based on management's estimate of its performance in securing bookings and resulting annual payments, discounted at the cost of debt based on a yield curve. The cost of debt used for discounting was between 15% and 18% at March 31, 2023 and between 12% and 13% at December 31, 2022. The change in fair value is recorded within other income (expense), net in the Company's Consolidated Statements of Operations.

The fair value of the Bookings Commitment is dependent on management's estimate of the probability of success on individual opportunities and the cost of debt applied in discounting the liability. The higher the probability of success on each opportunity, the lower the fair value of the Bookings Commitment liability. The lower the cost of debt applied, the higher the value of the liability.

Management believes the assumptions used on projected financial information is reasonable, but those assumptions require judgment and are forward looking in nature. However, actual results may differ materially from those projections. The fair value of the Bookings Commitment is most sensitive to management's estimate of the discount rate applied to present value the liability. If the discount rate applied was 2% lower at March 31, 2023, the fair value of the liability would increase by \$2,850.

The fair market value for level 3 securities may be highly sensitive to the use of unobservable inputs and subjective assumptions. Generally, changes in significant unobservable inputs may result in significantly lower or higher fair value measurements.

The following tables set forth a summary of changes in the fair value of Level 3 liabilities for the three months ended March 31, 2023:

	December 31, 2022	Transfers in (out)	Change in fair value recognized in earnings	March 31, 2023
Liabilities				
Bookings Commitment	36,863	—	(3,833)	33,030
	<u>\$ 36,863</u>	<u>\$ —</u>	<u>\$ (3,833)</u>	<u>\$ 33,030</u>

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⁽¹⁾ Transfers out of the Bookings Commitment fair value liability relates to the Annual Minimum Commitment, which was recorded in accrued and other current liabilities.

Fair Value of Convertible Notes held at amortized cost

As of March 31, 2023 and December 31, 2022, the fair value and carrying value of the Company's Convertible 2021 Notes were:

	Fair value	Carrying value	Face value
2021 Notes			
Balance as of March 31, 2023			
Related party	\$ 44,055	\$ 62,352	\$ 62,500
Others	52,866	74,703	75,000
	<u>\$ 96,921</u>	<u>\$ 137,055</u>	<u>\$ 137,500</u>
Balance as of December 31, 2022			
Related party	\$ 48,125	\$ 62,335	\$ 62,500
Others	57,750	74,683	75,000
	<u>\$ 105,875</u>	<u>\$ 137,018</u>	<u>\$ 137,500</u>

The fair value of the 2021 Notes was determined by using unobservable inputs that are supported by minimal non-active market activity and that are significant to determining the fair value of the debt instrument. The fair value is level 3 in the fair value hierarchy.

Note 10. Leases

The Company has operating leases for corporate offices, data centers, and certain equipment. The Company's leases have lease terms of 1 year to 11 years, some of which include options to extend the leases for up to 5 years, and some of which include options to terminate the leases within 1 year. Options to extend are included in the lease term where the Company is reasonably certain to exercise the options. Variable payments on the Company's leases are expensed as incurred, as they do not depend on an index or rate. The Company concluded certain leases for data centers had a term of less than 1 year at inception, as arrangements are only renewed following marketplace assessments and negotiations with vendors.

Future minimum lease payments under the Company's operating leases at March 31, 2023 were:

Maturity Analysis	Amounts
Remainder of 2023	\$ 2,004
2024	2,436
2025	573
2026	541
2027	427
2028	438
Thereafter	222
Total future minimum lease payments	6,641
Less: imputed interest	(1,130)
Total	<u>\$ 5,511</u>
As reported in the Consolidated Balance Sheet	
Accrued and other current liabilities	\$ 2,188
Operating lease liabilities	3,323
	<u>\$ 5,511</u>

On March 14, 2023, the Company reduced the size of its leased office space in the UK beginning in September 2023 for the remainder of the lease term. The Company recorded an ROU asset write down charge in the three months ended March 31, 2023 of \$160 and a reduction of the lease liability of \$162 which resulted in a gain on partial lease termination of \$2.

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Note 11. Commitments and Contingencies

The Company's principal commitments consist of obligations under its outstanding debt obligations, non-cancelable leases for its office space and certain equipment and vendor contracts to provide research services, and purchase obligations under license agreements and reseller agreements.

Related Party Promissory Note

On January 4, 2016, the Company executed a \$112,666 demand promissory note in favor of Nant Capital to fund the acquisition of NaviNet (see Note 14). On May 9, 2016 and December 15, 2016, the promissory note with Nant Capital was amended to provide that all outstanding principal and accrued interest is due and payable on June 15, 2022, and not on demand. On April 27, 2021, in connection with the issuance of the 2021 Notes, the Company entered into a Third Amended and Restated Promissory Note which amends and restates its promissory note, dated January 4, 2016, as amended on May 9, 2016, and on December 16, 2016, between the Company and Nant Capital, to, among other things, extend the maturity date of the promissory note to October 1, 2026 and to subordinate the promissory note in right of payment to the 2021 Notes (see Note 8).

Indenture Obligations Under Convertible Notes

On April 27, 2021, the Company and the Guarantor entered into an indenture (the "2021 Indenture") by and among NantHealth, the Guarantor and U.S. Bank National Association, as trustee (the "Trustee"), pursuant to which the Company issued the 2021 Notes. The 2021 Notes will bear interest at a rate of 4.5% per year, payable semi-annually on April 15 and October 15 of each year, beginning on October 15, 2021. The 2021 Notes will mature on April 15, 2026, unless earlier repurchased, redeemed or converted.

The following events are considered "events of default" with respect to the 2021 Notes, which may result in the acceleration of the maturity of the 2021 Notes:

- (1) the Company defaults in any payment of interest on the 2021 Notes when due and payable and the default continues for a period of 30 days;
- (2) the Company defaults in the payment of principal on the 2021 Notes when due and payable at the stated maturity, upon redemption, upon any required repurchase, upon declaration of acceleration or otherwise;
- (3) failure by the Company to comply with its obligation to convert the 2021 Notes in accordance with the 2021 Indenture upon exercise of a holder's conversion right and such failure continues for a period of five business days;
- (4) failure by the Company to give a fundamental change notice or notice of a specified corporate transaction when due with respect to the 2021 Notes;
- (5) failure by the Company to comply with its obligations under the 2021 Indenture with respect to consolidation, merger and sale of assets of the Company;
- (6) failure by the Company to comply with any of its other agreements contained in the 2021 Notes or the 2021 Indenture, for a period 60 days after written notice from the Trustee or the holders of at least 25% in principal amount of the 2021 Notes then outstanding has been received;
- (7) default by the Company or any of its significant subsidiaries (as defined in the 2021 Indenture) with respect to any mortgage, agreement or other instrument under which there may be outstanding, or by which there may be secured or evidenced, any indebtedness for money borrowed in excess of \$17,500 (or its foreign currency equivalent) in the aggregate of the Company and/or any such subsidiary, whether such indebtedness now exists or shall hereafter be created (i) resulting in such indebtedness becoming or being declared due and payable or (ii) constituting a failure to pay the principal of any such indebtedness when due and payable at its stated maturity, upon required repurchase, upon declaration of acceleration or otherwise, and, in the case of clauses (i) and (ii), such default is not rescinded or annulled or such failure to pay or default shall not have been cured or waived, such acceleration is not rescinded or such indebtedness is not discharged, as the case may be, within 30 days after notice to the Company by the Trustee or to the Company and the Trustee by holders of at least 25% in aggregate principal amount of 2021 Notes then outstanding in accordance with the 2021 Indenture; or
- (8) certain events of bankruptcy, insolvency, or reorganization of the Company or any of its significant subsidiaries (as defined in the 2021 Indenture).

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If such an event of default, other than an event of default described in clause (8) above with respect to the Company, occurs and is continuing, the Trustee by notice to the Company, or the holders of at least 25% in principal amount of the outstanding 2021 Notes by notice to the Company and the Trustee, may, and the Trustee at the request of such holders shall, declare 100% of the principal of and accrued and unpaid interest, if any, on all the 2021 Notes to be due and payable. In case of certain events of bankruptcy, insolvency or reorganization involving the Company, 100% of the principal of and accrued and unpaid interest on the 2021 Notes will automatically become due and payable. Upon such a declaration of acceleration, such principal and accrued and unpaid interest on the 2021 Notes, if any, will be due and payable immediately.

The Company has agreed with Nant Capital and Highbridge to amend the Indenture to, among other things, cause the 2021 Notes to be subject to certain additional events of default consistent with Article VIII of the Credit Agreement.

Regulatory Matter

The Company is subject to the Health Insurance Portability and Accountability Act ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act and related patient confidentiality laws and regulations with respect to patient information. The Company reviews the applicable laws and regulations regarding effects of such laws and regulations on its operations on an on-going basis and modifies operations as appropriate. The Company believes it is in substantial compliance with all applicable laws and regulations. Failure to comply with regulatory requirements could have a significant adverse effect on the Company's business and operations.

Legal Matters

The Company is, from time to time, subject to claims and litigation that arise in the ordinary course of its business. Based on existing facts and historical patterns, the Company accrues for litigation losses in instances where an adverse outcome is probable and the Company is able to reasonably estimate the probable loss in accordance with ASC 450-20. In the opinion of management, the ultimate outcome of proceedings of which management is aware, even if adverse to the Company, would not have a material adverse effect on the Company's consolidated financial condition, results of operations, or consolidated cash flows in a particular quarter or annual period. Regardless of the outcome, litigation can have an adverse impact on the Company because of defense and settlement costs, diversion of management resources and other factors.

Securities and Derivative Litigation

In April 2018, two putative shareholder derivative actions, captioned Engleman v. Soon-Shiong, Case No. 2018-0282-AGB, and Petersen v. Soon-Shiong, Case No. 2018-0302-AGB were filed in the Delaware Court of Chancery. The plaintiff in the Engleman action previously filed a similar complaint in California Superior Court, Los Angeles County, which was dismissed based on a provision in the Company's charter requiring derivative actions to be brought in Delaware. The Engleman and Petersen complaints contain allegations similar to those in the Deora action but asserted causes of action on behalf of NantHealth against various of the Company's current or former executive officers and directors for alleged breaches of fiduciary duty, abuse of control, gross mismanagement, waste of corporate assets, and unjust enrichment. The Company is named solely as a nominal defendant. In July 2018, the court issued an order consolidating the Engleman and Petersen actions as *In re NantHealth, Inc. Stockholder Litigation*, Lead C.A. No. 2018-0302, appointing Petersen as lead plaintiff, and designating the Petersen complaint as the operative complaint. On September 20, 2018, the defendants moved to dismiss the complaint. In October 2018, in response to the motion to dismiss, Petersen filed an amended complaint. In November 2018, the defendants moved to dismiss the amended complaint, which asserts claims for breach of fiduciary duty, waste of corporate assets (which Petersen subsequently withdrew), and unjust enrichment. On January 14, 2020, the court issued an order granting in part and denying in part the defendants' motion to dismiss. The court dismissed all claims except one claim against Dr. Patrick Soon-Shiong for breach of fiduciary duty. Dr. Soon-Shiong and the Company filed answers to the amended complaint on March 30, 2020. On June 29, 2021, the Court granted the Unopposed Motion to Substitute Lead Plaintiff, following Plaintiff Petersen's sale of his NantHealth stock, and appointed Engleman as Lead Plaintiff. On September 26, 2022, the parties filed with the Court a Stipulation for Compromise and Settlement to resolve the consolidated action in exchange for (i) the payment of \$400, to be funded by the Company's insurance carriers, to offset the Company's contribution to the settlement of the Deora action, and (ii) agreeing to implement certain corporate governance reforms. Additionally, the Company agreed to pay an award of attorneys' fees and expenses to counsel for Lead Plaintiff in an amount of \$1,250, to be funded by the Company's insurance carriers which was included in accrued and other current liabilities on the Consolidated Balance Sheets at December 31, 2022 but paid by our insurance in January 2023. The Court approved the settlement on January 10, 2023 and, as a result, the consolidated derivative action was dismissed. The Company has implemented, as required, the settlement's corporate governance reforms within 60 days following the approval. The settlement payment was received in January 2023.

Insurance

We purchase property, business interruption and related insurance coverage to mitigate the financial impact of catastrophic events or perils that is subject to deductible provisions based on the terms of the policies. These policies are on an occurrence basis.

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(Unaudited)

In addition, we also purchase cyber liability insurance from third parties. In August 2022, the Company became aware of unauthorized activity in a customer's account. In January 2023, the Company became aware of unauthorized activity in another customer's account. Both of these incidents involved payments issued to fraudulent accounts, unauthorized access to certain protected health information, and caused us to incur costs to respond to the incident. Approximately \$242 and \$100 in legal and professional fees have been incurred as part of our response and investigation into this incident and these costs are included in accrued and other current liabilities as of March 31, 2023 and December 31, 2022, respectively on the Consolidated Balance Sheets.

While the investigation is ongoing, the Company cannot be certain of the magnitude of a particular outcome, but recorded an estimated liability of \$220 for possible claims tied to this incident, which is included in accrued and other current liabilities on the Consolidated Balance Sheets at March 31, 2023 and December 31, 2022. There is a reasonable possibility of losses in excess of the amount accrued although the amount of such reasonably possible losses cannot be determined.

The Company has reflected its right to insurance recoveries, limited to the extent of incurred or probable losses, as a receivable when such recoveries have been agreed to with the Company's third-party insurers and receipt is deemed probable. This includes instances where the Company's third-party insurers have agreed to pay, on the Company's behalf, certain legal defense costs and settlement amounts directly to applicable law firms and a settlement fund. The amount of such receivable related to the securities litigation recorded at March 31, 2023 and December 31, 2022 was \$0 and \$1,250, respectively, and is included in prepaid expenses and other current assets on the Consolidated Balance Sheets. The insurance company paid these claims directly in January 2023.

Note 12. Income Taxes

The provision for income taxes for the three months ended March 31, 2023 was a provision of \$74. The provision for income taxes for the three months ended March 31, 2022 was a provision of \$20. The provision for income taxes for the three months ended March 31, 2023 and 2022 included an income tax provision for the consolidated group based on an estimated annual effective tax rate.

The effective tax rates for the three months ended March 31, 2023 was a benefit of 0.58%. The effective tax rates for the three months ended March 31, 2022 was a provision of 0.13%. The effective tax rates for the three months ended March 31, 2023 and 2022 differed from the U.S. federal statutory rates of 21% primarily as a result of a valuation allowance on the Company's deferred tax assets.

The Company has evaluated all available evidence supporting the realization of its deferred tax assets, including the amount and timing of future taxable income, and has determined that it is more likely than not that its net deferred tax assets will not be realized in the U.S. Due to uncertainties surrounding the realization of the deferred tax assets, the Company maintains a valuation allowance on substantially all deferred tax assets in excess of deferred tax liabilities. If / when the Company determines that it will be able to realize some portion or all of its deferred tax assets, an adjustment to its valuation allowance on its deferred tax assets would have the effect of increasing net income in the period(s) such determination is made. The Company files income tax returns in the U.S. Federal jurisdiction, various U.S. state jurisdictions and certain foreign jurisdictions. The Company has recently completed an IRS audit for the tax year 2016 with no adjustments. The Company is no longer subject to income tax examination by the U.S. federal, state or local tax authorities for years ended December 31, 2016 or prior, however, its tax attributes, such as net operating loss ("NOL") carryforwards and tax credits, are still subject to examination in the year they are used.

NantHealth, Inc.
Notes to Consolidated Financial Statements
(Dollars in thousands, except per share amounts)
(Unaudited)

Note 13. Net Income (Loss) Per Share

The following table sets forth reconciliations of the numerators and denominators used to compute basic and diluted net loss per share of common stock attributable to NantHealth for the three months ended March 31, 2023 and 2022:

	Three Months Ended March 31,	
	2023	2022
	Common Stock	Common Stock
Net income (loss) per share numerator:		
Net income (loss) for basic and diluted net loss per share	\$ (12,241)	\$ (15,950)
Weighted-average shares for basic and diluted net loss per share	7,703,304	7,701,416
Basic and diluted net income (loss) per share:		
Total net income (loss) per share - common stock	\$ (1.59)	\$ (2.07)

The following number of potential common shares at the end of each period were excluded from the calculation of diluted net loss per share attributable to common stockholders because their effect would have been anti-dilutive for the periods presented:

	March 31,	
	2023	2022
Unvested and vested and unissued restricted stock units	3,990	7,980
Unexercised stock options	875,158	954,125
Convertible notes	2,382,190	2,382,190

Note 14. Related Party Transactions

NantWorks Shared Services Agreement

In October 2012, the Company entered into a shared services agreement with NantWorks that provides for ongoing services from NantWorks in areas such as public relations, information technology and cloud services, human resources and administration management, finance and risk management, environmental health and safety, sales and marketing services, facilities, procurement and travel, and corporate development and strategy (the "NantWorks Shared Services Agreement"). The Company is billed quarterly for such services at cost, without mark-up or profit for NantWorks, but including reasonable allocations of employee benefits, facilities and other direct or fairly allocated indirect costs that relate to the associates providing the services. NantHealth also bills NantWorks and affiliates for services such as information technology and cloud services, finance and risk management, and facilities management, on the same basis. During the three months ended March 31, 2023, the Company incurred \$688 from selling, general and administrative expenses for services provided to the Company by NantWorks and affiliates, net of services provided to NantWorks and affiliates by the Company. During the three months ended March 31, 2022, the Company incurred \$594 from selling, general and administrative expenses for services provided to the Company by NantWorks and affiliates, net of services provided to NantWorks and affiliates by the Company.

Airstrip Shared Services Agreement

In February 2023, the Company entered into a shared services agreement with Airstrip Technologies, Inc. ("Airstrip") that provides for ongoing services from the Company in areas such as information technology and cloud services, administration management, finance and risk management, environmental health and safety, and corporate development and strategy (the "Airstrip Shared Services Agreement"). During the three months ended March 31, 2023, the Company billed \$321 for services provided to Airstrip. These services were netted against the related party payable due to NantWorks.

NantHealth, Inc.
Notes to Consolidated Financial Statements
(Dollars in thousands, except per share amounts)
(Unaudited)

Nant Capital Note Purchase Agreement

On April 13, 2021, the Company entered into a Note Purchase Agreement with Nant Capital to issue and sell \$62,500 in aggregate principal amount of its 2021 Notes (see Note 8). The accrued and unpaid interest on the 2021 Notes held by Nant Capital was \$1,289 and \$689 at March 31, 2023 and December 31, 2022, respectively, and was included as part of current related party payables, net in the Consolidated Balance Sheets.

Related Party Receivables and Payables

As of March 31, 2023 and December 31, 2022, the Company had related party receivables of \$1,413 and \$1,413, respectively, primarily consisting of a receivable from Ziosoft KK of \$1,041 and \$1,041, respectively, which was related to the sale of Qi Imaging. As of March 31, 2023 and December 31, 2022, the Company had related party payables and related party liabilities of \$51,395 and \$47,841, respectively, which primarily relate to interest payable on the \$112,666 promissory note in favor of Nant Capital and amounts owed to NantWorks pursuant to the Shared Services Agreement. The balance of the related party receivables and payables represent amounts paid by affiliates on behalf of the Company or vice versa.

Amended Reseller Agreement

On June 19, 2015, the Company entered into a five and a half year exclusive Reseller Agreement with NantOmics for sequencing and bioinformatics services (the "Original Reseller Agreement"). NantOmics is a majority owned subsidiary of NantWorks and is controlled by the Company's Chairman and CEO. On May 9, 2016, the Company and NantOmics executed an Amended and Restated Reseller Agreement (the "Amended Reseller Agreement"), pursuant to which the Company received the worldwide, exclusive right to resell NantOmics' quantitative proteomic analysis services, as well as related consulting and other professional services, to institutional customers (including insurers and self-insured healthcare providers) throughout the world. The Company retained its existing rights to resell NantOmics' molecular analysis and bioinformatics services. Under the Amended Reseller Agreement, the Company is responsible for various aspects of delivering its sequencing and molecular analysis solutions, including patient engagement and communications with providers such as providing interpretations of the reports delivered to the physicians and resolving any disputes, ensuring customer satisfaction, and managing billing and collections. On September 20, 2016, the Company and NantOmics further amended the Amended Reseller Agreement (the "Second Amended Reseller Agreement"). The Second Amended Reseller Agreement permits the Company to use vendors other than NantOmics to provide any or all of the services that are currently being provided by NantOmics and clarifies that the Company is responsible for order fulfillment and branding.

The Second Amended Reseller Agreement grants to the Company the right to renew the agreement (with exclusivity) for up to three renewal terms, each lasting three years, if the Company achieves projected volume thresholds, as follows: (i) the first renewal option can be exercised if the Company completes at least 300,000 tests between June 19, 2015 and June 30, 2020; (ii) the second renewal option can be exercised if the Company completes at least 570,000 tests between July 1, 2020 and June 30, 2023; and (iii) the third renewal option can be exercised if the Company completes at least 760,000 tests between July 1, 2023 and June 30, 2026. If the Company does not meet the applicable volume threshold during the initial term or the first or second exclusive renewal terms, the Company can renew for a single additional three-year term, but only on a non-exclusive basis.

The Company agreed to pay NantOmics noncancellable annual minimum fees of \$2,000 per year for each of the calendar years from 2016 through 2020 and, subject to the Company exercising at least one of its renewal options described above. The Company was also required to pay annual minimum fees to from 2021 through 2029. These annual minimum fees are no longer applicable with the execution of Amendment No. 3 to the Second Amended Reseller Agreement.

On December 18, 2017, the Company and NantOmics executed Amendment No. 1 to the Second Amended Reseller Agreement. The Second Amended Reseller Agreement was amended to allow fee adjustments with respect to services completed by NantOmics between the amendment effective date of October 1, 2017 to June 30, 2018.

On April 23, 2019, the Company and NantOmics executed Amendment No. 2 to the Second Amended Reseller Agreement. The Second Amended Reseller Agreement was amended to set a fixed fee with respect to services completed by NantOmics between the amendment effective date and the end of the Initial Term, December 31, 2020.

On December 31, 2020, the Company and NantOmics executed Amendment No. 3 to the Second Amended Reseller Agreement to automatically renew at the end of December 2020 for a non-exclusive renewal term and to waive the annual minimum fee for the 2020 calendar year and calendar years 2021 through 2023.

As of March 31, 2023 and December 31, 2022, the Company had no outstanding related party payables under the Second Amended Reseller Agreement. During the three months ended March 31, 2023 and March 31, 2022, no direct costs were recorded as cost of revenue related to the Second Amended Reseller Agreement.

NantHealth, Inc.
Notes to Consolidated Financial Statements
(Dollars in thousands, except per share amounts)
(Unaudited)

Related Party Promissory Notes

On March 2, 2023, the Company entered into a credit agreement (the "Credit Agreement") with Nant Capital and Highbridge. The Credit Agreement provides for a senior secured term loan facility in an aggregate principal amount of \$22,500 in a single drawdown made by the Company at closing (the "Senior Secured Term Loan Facility"). The maturity date of the Senior Secured Term Loan Facility was originally December 15, 2023, which was subsequently agreed by the parties to be extended to May 17, 2024 (the "Maturity Date"), and accrues interest at an annual rate of 13% per annum with a 1% original issue discount. The proceeds from the Senior Secured Term Loan Facility will be used by the Company to fund working capital needs, expenditures and general corporate purposes of the Company. The accrued and unpaid interest on this note was \$105 as of March 31, 2023.

Concurrently with the execution of, and pursuant to, the Credit Agreement, the Company also entered into (1) a subordination agreement (the "Subordination Agreement") with Nant Capital and Airstrip (collectively, the "Affiliated Lenders"), who are holders of certain affiliated debt of the Company, and (2) a letter agreement (the "Letter Agreement") with certain entities affiliated with Highbridge and Nant Capital, who are holders of the 2021 Notes issued pursuant to the 2021 Indenture. The Subordination Agreement provides, among other things, that any payment of principal of, premium, if any, or interest on certain subordinated debt held by the Affiliated Lenders shall be subordinated and subject in right of payment to the prior payment of the full Senior Secured Term Loan Facility so long as such Senior Secured Term Loan Facility is outstanding. The Letter Agreement provides that, among other things, (1) the holders of the 2021 Notes shall waive compliance with certain provisions of the 2021 Indenture, including, but not limited to, restrictions on borrowings from an affiliate lender of the Company and any current or future Default or Event of Default (as each term is defined in the 2021 Indenture) pursuant to any breach of Section 4.10 of the 2021 Indenture arising from any borrowing made by the affiliated lender to the Company, each such waiver is solely in connection with the Senior Secured Term Loan Facility, (2) prohibit the holders of the 2021 Notes from exercising any right to require the Company to repurchase any or all of the 2021 Notes upon the occurrence of a Fundamental Change (as defined in the 2021 Indenture) solely in connection with the Company's common stock being delisted from the Nasdaq Global Select Market or similar securities exchange for a period beginning on the Closing Date (as defined in the Credit Agreement) and ending on the date that is five (5) months after the Closing Date, and (3) restricting the holders of the 2021 Notes from disposing of or otherwise transferring the 2021 Notes to any person other than an affiliate of such holder, until the approval of the Indenture Consent (as defined in the Letter Agreement).

On November 21, 2022, the Company entered into an unsecured subordinated promissory note (the "2022 Nant Capital Note") with Nant Capital, whereby Nant Capital loaned \$7,000 to the Company. Nant Capital is an entity affiliated with Dr. Patrick Soon-Shiong, our Chairman of the Board of Directors and Chief Executive Officer. The 2022 Nant Capital Note contains an interest rate equal to the Term Secured Overnight Financing Rate ("SOFR") plus 8.5% per annum, compounded annually and a maturity date of October 31, 2026. The Nant Capital Note also contains semiannual interest payments due on April 15th and October 15th of each year. The payment of the 2022 Nant Capital Note shall be subordinated and subject in right of payment to the prior payment in full of the 2021 Notes, and, as disclosed above, is subordinated and subject in right of payment to the prior payment of the full Senior Secured Term Loan Facility so long as such Senior Secured Term Loan Facility is outstanding pursuant to the Subordination Agreement. The accrued and unpaid interest on the Airstrip Note was \$327 and \$103 at March 31, 2023 and December 31, 2022, respectively, and was included as part of current related party payables, net in the Consolidated Balance Sheets.

On October 3, 2022, the Company entered into an unsecured subordinated promissory note (the "Airstrip Note") with Airstrip Technologies, Inc., a Delaware corporation ("Airstrip"), whereby AirStrip loaned \$4,000 to the Company. AirStrip is an entity affiliated with Dr. Patrick Soon-Shiong, our Chairman of the Board of Directors (the "Board") and Chief Executive Officer. The Airstrip Note contains an 8.5% interest rate compounded annually and a maturity date of October 31, 2026. The payment of the Airstrip Note shall be subordinated and subject in right of payment to the prior payment in full of the 2021 Notes, and, as disclosed above, is subordinated and subject in right of payment to the prior payment of the full Senior Secured Term Loan Facility so long as such Senior Secured Term Loan Facility is outstanding pursuant to the Subordination Agreement. The accrued and unpaid interest on the Airstrip Note was \$167 and \$83 at March 31, 2023 and December 31, 2022, respectively, and was included as part of current related party payables, net in the Consolidated Balance Sheets.

NantHealth, Inc.
Notes to Consolidated Financial Statements
(Dollars in thousands, except per share amounts)
(Unaudited)

In January 2016, the Company executed a demand promissory note with Nant Capital (the "Nant Capital Note"), a personal investment vehicle for Dr. Soon-Shiong, our Chairman and CEO. As of March 31, 2023, the total advances made by Nant Capital to us pursuant to the note was approximately \$112,666. On May 9, 2016, the Nant Capital Note was amended and restated to provide that all outstanding principal and accrued and unpaid interest is due and payable on June 30, 2021, and not on demand. On December 15, 2016, in connection with the offering of the 2016 Notes, the Company entered into a Second Amended and Restated Promissory Note which amended and restated the Amended and Restated Promissory Note, dated May 9, 2016, between us and Nant Capital, to, among other things, extend the maturity date of the Nant Capital Note to June 15, 2022 and to subordinate the Nant Capital Note in right of payment to the 2016 Notes. The Nant Capital Note bears interest at a per annum rate of 5.0% compounded annually and computed on the basis of the actual number of days in the year. When a repayment is made, Nant Capital has the option, but not the obligation, to require us to repay any such amount in cash, Series A-2 units of NantOmics (based on a per unit price of \$1.484 held by us, shares of our common stock based on a per share price of \$18.6126 (if such equity exists at the time of repayment), or any combination of the foregoing at the sole discretion of Nant Capital. On April 27, 2021, in connection with the issuance of the 2021 Notes, the Company entered into a Third Amended and Restated Promissory Note which amends and restates its promissory note, dated January 4, 2016, as amended on May 9, 2016, and on December 16, 2016, between the Company and Nant Capital, to, among other things, extend the maturity date of the promissory note to October 1, 2026 and to subordinate the promissory note in right of payment to the 2021 Notes.

As of March 31, 2023 and December 31, 2022, the total principal and interest outstanding on the promissory note amounted to \$160,442 and \$158,491, respectively. The accrued and unpaid interest on the promissory note as of March 31, 2023 and December 31, 2022 was \$47,776 and \$45,825, respectively, included as part of non-current related party liabilities in the Consolidated Balance Sheets.

On March 3, 2017, NantHealth Labs (formerly Liquid Genomics, Inc.), executed a promissory note with NantWorks. The principal amount of the advance made by NantWorks totaled \$250 as of March 31, 2023 and December 31, 2022. On June 30, 2017, the promissory note was amended and restated to provide that all outstanding principal and accrued and unpaid interest is due on demand. The note bears interest at a per annum rate of 5.0%, compounded annually. As of March 31, 2023 and December 31, 2022, the total interest outstanding on this note amounted to \$86 and \$82, respectively, and is included in related party payables, net.

2021 Notes

On April 13, 2021, the Company and NaviNet entered into a note purchase agreement with Highbridge and certain other buyers, including Nant Capital to issue and sell \$137,500 in aggregate principal amount of the 2021 Notes in a private placement pursuant to an exemption from the registration requirements of the Securities Act afforded by Section 4(a)(2) of the Securities Act. See Note 8 for additional information regarding the 2021 Notes.

Related Party Share-based Payments

On December 21, 2020, ImmunityBio, Inc. (formerly known as NantKwest, Inc.) ("ImmunityBio"), NantCell, and Nectarine Merger Sub, Inc., a wholly owned subsidiary of ImmunityBio, entered into an Agreement and Plan of Merger, which was completed on March 9, 2021 (the "Merger"). The newly merged entity is majority owned by entities controlled by Dr. Soon-Shiong, Chairman and Chief Executive Officer of the Company. On March 4, 2021, prior to the Merger, NantCell awarded restricted stock units to its employees, including certain NantHealth employees working on behalf of ImmunityBio, which vest over defined service periods, subject to completion of a liquidity event. At the effective time of the Merger on March 9, 2021, the performance condition was met and each share of common stock of NantCell that was issued and outstanding immediately prior to the Merger was automatically converted into the right to receive as consideration newly issued common shares of ImmunityBio. The Company accounts for these awards as compensation cost at its estimated fair value over the vesting period with a corresponding credit to equity to reflect a capital contribution from, or on behalf of, the common controlling entity, to the extent that those services provided by its employees associated with these awards benefit NantHealth. The fair value is dependent on management's estimate of the benefit to NantHealth. The higher the estimate of benefit to the Company, the higher the fair value of compensation cost. The compensation cost attributed to NantHealth associated with these awards was an expense of \$8 for the three months ended March 31, 2023.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

The following is a discussion and analysis of our financial condition and the results of operations as of and for the periods presented below. The following discussion and analysis should be read in conjunction with the "Consolidated Financial Statements" and notes thereto included elsewhere in this Quarterly Report on Form 10-Q ("Quarterly Report"). This discussion contains forward-looking statements that are based on the beliefs, assumptions, and information currently available to our management, and are subject to known and unknown risks, uncertainties, and other factors that may cause our actual results to differ materially from those expressed or implied by such forward-looking statements. These risks, uncertainties, and other factors include, among others, those described in greater detail elsewhere in this Quarterly Report and in our Annual Report on Form 10-K, particularly in Item 1A, "Risk Factors".

Overview

NantHealth, Inc. ("we" or "us") provides enterprise solutions that help businesses transform complex data into actionable insights. By offering efficient ways to move, interpret, and visualize complex and highly sensitive information, we help our customers in healthcare, life sciences, logistics, telecommunications, and other industries, to automate, understand, and act on data while keeping it secure and scalable.

Our product portfolio comprises the latest technology in payer/provider collaboration platforms for real-time coverage decision support (NaviNet and Eviti), and data solutions that include multi-data analysis, reporting and professional services offerings (Quadris). In addition, OpenNMS, a subsidiary of ours, helps businesses monitor and manage network health and performance. Altogether, we generally derive revenue from SaaS subscription fees, support services, professional services, and revenue sharing through collaborations with complementary businesses.

We market certain of our solutions as a comprehensive integrated solution that includes our clinical decision support, payer engagement solutions, data analysis and network monitoring and management. We also market our clinical decision support, payer engagement solutions, data analysis and network monitoring and management on a stand-alone basis. To accelerate our commercial growth and enhance our competitive advantage, we intend to continue to:

- introduce new marketing, education and engagement efforts and foster relationships across the health care community to drive adoption of our products and services;
- strengthen our commercial organization to increase our NantHealth solutions customer base and to broaden usage of our solutions by existing customers;
- develop new features and functionality for NantHealth solutions to address the needs of current and future healthcare provider and payer, self-insured employer and biopharmaceutical company customers, as well as logistics, telecommunications and other customers through OpenNMS; and
- publish scientific and medical advances.

The acquisition of OpenNMS, an enterprise-grade open-source network management company, expands and diversifies our software portfolio and service offerings, adding AI technologies, and enhancing cloud and SaaS capabilities. We believe OpenNMS will provide our customers with a new set of services to maintain reliable network connections for critical data flows that enable patient data collaboration and decision making at the point of care.

Since our inception, we have devoted substantially all our resources to the development and commercialization of NantHealth solutions. To complement our internal growth and expertise, we have made several strategic acquisitions of companies, products and technologies. We have incurred significant losses since our inception and, as of March 31, 2023, our accumulated deficit was approximately \$1.1 billion. We expect to continue to incur operating losses over the near term as we expand our commercial operations and invest further in NantHealth solutions.

We plan to (i) continue investing in our infrastructure, including but not limited to solution development, sales and marketing, implementation and support, (ii) continue efforts to make infrastructure investments within an overall context of maintaining reasonable expense discipline, (iii) add new customers through maintaining and expanding sales, marketing and solution development activities, (iv) expand our relationships with existing customers through delivery of add-on and complementary solutions and services and (v) continue our commitment of service in support of our customer satisfaction programs.

Senior Secured Term Loan Facility

On March 2, 2023, we and certain of our subsidiaries as guarantors (the “Subsidiary Guarantors,” and together with us, the “Obligors”), entered into a credit agreement (the “Credit Agreement”) with Nant Capital, LLC (“Nant Capital”), an affiliate of Dr. Patrick Soon-Shiong, our CEO, and Highbridge Tactical Credit Master Fund, L.P. and Highbridge Convertible Dislocation Fund, L.P. (collectively, “Highbridge Senior Lenders”), as the lenders, GLAS USA, LLC, as administrative agent, and GLAS Americas, LLC, as collateral agent (collectively, “Agent”). The Credit Agreement provides for a senior secured term loan facility in an aggregate principal amount of \$22.5 million that was made in a single drawdown by us at closing (the “Senior Secured Term Loan Facility”).

The maturity date of the Senior Secured Term Loan Facility was originally December 15, 2023, which was subsequently agreed by the parties to be extended to May 17, 2024 (the “Maturity Date”), and accrues interest at an annual rate of 13% per annum with a 1% original issue discount. Our obligations under the Credit Agreement are guaranteed by the Subsidiary Guarantors and are secured by a security interest in, and lien on, substantially all property (subject to certain exceptions) of the Obligors (the “Collateral”). We have the right to prepay the Senior Secured Term Loan Facility at any time or from time to time on or after the Existing Convertible Senior Notes Security Date (as defined in the Credit Agreement), subject to a prepayment premium.

The Credit Agreement includes conditions precedent, representations and warranties, affirmative and negative covenants and post-closing conditions customary for financings of this type and size, such as, among other things, limitations on indebtedness, a minimum liquidity requirement of cash and cash equivalents of not less than \$5 million at any time, liens, fundamental changes, asset sales, investments and other matters customarily restricted in such agreements. The Credit Agreement also contains customary events of default, after which the Senior Secured Term Loan Facility may be due and payable immediately, including, without limitation, payment defaults, material inaccuracy of representations and warranties, covenant defaults, bankruptcy and insolvency proceedings, cross-defaults to certain other agreements, judgments against the Company and its subsidiaries, change in control and lien priority. In addition, the Credit Agreement contains certain post-closing conditions requiring, among other things, that the Company use its commercially reasonable efforts to sell certain businesses of the Company.

Concurrently with the execution of, and pursuant to, the Credit Agreement, we also entered into (1) a subordination agreement (the “Subordination Agreement”) with Nant Capital and Airstrip Technologies, Inc. (collectively, the “Affiliated Lenders”), who are holders of certain affiliated debt of the Company, and (2) a letter agreement (the “Letter Agreement”) with certain entities affiliated with the Highbridge Senior Lenders and Nant Capital, who are holders of the 2021 Notes (as defined below) issued pursuant to the Indenture, dated as of April 27, 2021, by and among the Company, NaviNet, Inc. and U.S. Bank Trust Company, National Association (as successor in interest to U.S. Bank National Association) (the “2021 Indenture”). The Subordination Agreement provides, among other things, that any payment of principal of, premium, if any, or interest on certain subordinated debt held by the Affiliated Lenders shall be subordinated and subject in right of payment to the prior payment of the full Senior Secured Term Loan Facility so long as such Senior Secured Term Loan Facility is outstanding. The Letter Agreement provides that, among other things, (1) the holders of the 2026 Notes shall waive compliance with certain provisions of the 2021 Indenture, including, but not limited to, restrictions on borrowings from an affiliate lender of ours and any current or future Default or Event of Default (as each term is defined in the 2021 Indenture) pursuant to any breach of Section 4.10 of the 2021 Indenture arising from any borrowing made by the affiliated lender to us, each such waiver is solely in connection with the Senior Secured Term Loan Facility, (2) prohibit the holders of the 2026 Notes from exercising any right to require us to repurchase any or all of the 2026 Notes upon the occurrence of a Fundamental Change (as defined in the 2021 Indenture) solely in connection with our common stock being delisted from the Nasdaq Global Select Market or a similar securities exchange for a period beginning on the Closing Date (as defined in the Credit Agreement) and ending on the date that is five (5) months after the Closing Date, and (3) restricting the holders of the 2026 Notes from disposing of or otherwise transferring the 2026 Notes to any person other than an affiliate of such holder, until the approval of the Indenture Consent (as defined in the Letter Agreement).

2022 Nant Capital Promissory Note

On November 21, 2022, the Company entered into an unsecured subordinated promissory note (the “2022 Nant Capital Note”) with Nant Capital, whereby Nant Capital loaned \$7.0 million to the Company. The 2022 Nant Capital Note contains an interest rate equal to the Term Secured Overnight Financing Rate (“SOFR”) plus 8.5% per annum, compounded annually and a maturity date of October 31, 2026. The Nant Capital Note also contains semiannual interest payments due on April 15th and October 15th of each year. The payment of the 2022 Nant Capital Note shall be subordinated and subject in right of payment to the prior payment in full of the 2021 Notes (as defined below).

Airstrip Promissory Note

On October 3, 2022, we entered into an unsecured subordinated promissory note (the “Airstrip Note”) with Airstrip Technologies, Inc., a Delaware corporation (“Airstrip”), whereby AirStrip loaned \$4.0 million to us. The Airstrip Note contains an 8.5% interest rate

compounded annually and a maturity date of October 31, 2026. The payment of the Airstrip Note shall be subordinated and subject in right of payment to the prior payment in full of the 2021 Notes.

2021 Notes

On April 13, 2021, we and NaviNet entered into a note purchase agreement with Highbridge and certain other buyers, including Nant Capital to issue and sell \$137,500 in aggregate principal amount of the 2021 Notes in a private placement pursuant to an exemption from the registration requirements of the Securities Act afforded by Section 4(a)(2) of the Securities Act.

Pursuant to the terms of the Credit Agreement, we agreed with Nant Capital and Highbridge as a post-closing condition to amend the Indenture to, among other things, cause the 2021 Notes to be (i) guaranteed by our subsidiaries that provided guarantees under the Credit Agreement, (ii) secured by second priority liens on the assets that secure borrowings made pursuant to the Credit Agreement, (iii) subject to covenants that are substantially similar to the covenants in Articles VI and VII of the Credit Agreement and (iv) subject to certain additional events of default consistent with Article VIII of the Credit Agreement.

Additionally, we are currently negotiating with Nant Capital and Highbridge to further amend the Indenture in order to, among other things, defer all cash interest payments that would otherwise have been payable on the 2021 Notes until May 17, 2024 (provided that such cash interest payments shall be paid-in-kind and capitalized to the principal of the outstanding 2021 Notes on each interest payment date, with such compounding to occur on each interest payment date).

Nasdaq Delisting

On October 31, 2022, we received a notice (the "Notice") from Nasdaq informing us that we are not in compliance with the minimum \$15,000,000 market value of publicly held shares requirement for continued listing on the Nasdaq Global Select Market pursuant to Listing Rule 5450(b)(2)(C) (the "Public Float Requirement"). The Notice had no immediate effect on our Nasdaq listing or trading of our common stock.

In accordance with Listing Rule 5810(c)(3)(D), we had a period of 180 calendar days, or until May 1, 2023, to regain compliance with the Public Float Requirement (the "Compliance Period").

On May 2, 2023, we received written notice from Nasdaq stating that we have not complied with the Public Float Requirement prior to the expiration of the Compliance Period (the "Delisting Notice"). The Delisting Notice indicated that our common stock would be suspended from trading on Nasdaq on May 11, 2023 unless we requested a hearing pursuant to the procedures set forth in the Nasdaq Listing Rule 5800 Series, by requesting a hearing before the Nasdaq Hearings Panel (the "Panel") by 4:00 p.m. Eastern Time on May 9, 2023. We timely requested a hearing before the Panel, which is expected to be held on June 8, 2023, and has stayed any trading suspension of our common stock until the completion of the Nasdaq hearing process and expiration of any additional extension period, if any, that may be granted by the Panel following the hearing. At or prior to the hearing, we intend to present our plans to Nasdaq to regain compliance with the Public Float Requirement and request an extension of time to allow our board and management to implement such plans.

There continues to be no immediate effect on the listing of our common stock, which continues to trade on the Nasdaq Global Select Market under the symbol "NH." We are working diligently to satisfy, and intend to regain compliance with, the Public Float Requirement. However, there can be no assurance that we will be able to regain compliance with the Public Float Requirement prior to the hearing date or at all or that Nasdaq will grant us an extension of time to achieve compliance with the Public Float Requirement. We intend to continue to monitor our closing bid price for our common stock and will continue considering all available options to comply with the Public Float Requirement as may be necessary.

We intend to monitor the market value of our common stock and may, if appropriate, consider available options to regain compliance with the Public Float Requirement.

2017 Asset Purchase Agreement with Allscripts

On August 3, 2017, we entered into an asset purchase agreement (the "APA") with Allscripts Healthcare Solutions, Inc. ("Allscripts"), pursuant to which we agreed to sell to Allscripts substantially all of the assets of our provider/patient engagement solutions business, including our FusionFX solution and components of its NantOS software connectivity solutions (the "Business"). On August 25, 2017, we and Allscripts completed the sale pursuant to the APA.

Allscripts conveyed to us 1,000,000 shares of our common stock at par value of \$0.0001 per share that were previously owned by Allscripts as consideration for the transaction. We retired the shares of stock. Allscripts also paid \$1.7 million of cash consideration to us as an estimated working capital payment, and we recorded a receivable of \$1.0 million related to final working capital.

adjustments. We are also responsible for paying Allscripts for fulfilling certain customer service obligations of the business post-closing.

Concurrent with the closing and as contemplated by the APA, we and Allscripts modified the amended and restated mutual license and reseller agreement dated June 26, 2015, which was further amended on December 30, 2017, such that, among other things, we committed to deliver a minimum of \$95.0 million of total bookings over a ten-year period ("Bookings Commitment") from referral transactions and sales of certain Allscripts products under this agreement (see Note 9 of the Consolidated Financial Statements). We also agreed that Allscripts shall receive at least \$0.5 million per year in payments from bookings (the "Annual Minimum Commitment"). If the total payments received by Allscripts from bookings during such period are less than the Annual Minimum Commitment, we shall pay to Allscripts the difference between the Annual Minimum Commitment and the total amount received by Allscripts from bookings during such period. In the event of a Bookings Commitment shortfall at the end of the ten-year period, we may be obligated to pay 70% of the shortfall, subject to certain credits. We will earn 30% commission from Allscripts on each software referral transaction that results in a booking with Allscripts. We account for the Bookings Commitment at its estimated fair value over the life of the agreement. The total estimated liability was \$29.5 million and \$35.7 million as of March 31, 2023 and December 31, 2022, respectively.

Non-GAAP Net Loss from Continuing Operations and Non-GAAP Net Loss Per Share from Continuing Operations

Adjusted net loss from continuing operations and adjusted net loss per share from continuing operations are financial measures that are not prepared in conformity with United States generally accepted accounting principles (U.S. GAAP). Our management believes that the presentation of Non-GAAP financial measures provides useful supplementary information regarding operational performance, because it enhances an investor's overall understanding of the financial results for our core business. Additionally, it provides a basis for the comparison of the financial results for our core business between current, past and future periods. Other companies may define these measures in different ways. Non-GAAP financial measures should be considered only as a supplement to, and not as a substitute for or as a superior measure to, financial measures prepared in accordance with U.S. GAAP.

Non-GAAP net loss from continuing operations excludes the effects of the stock-based compensation expense, change in fair value of the Bookings Commitment, gain on partial lease termination, noncash interest expense related to convertible notes, intangible amortization, impacts of certain income tax benefits and provisions from noncash activity, and a litigation settlement.

The following table reconciles Net loss from continuing operations attributable to NantHealth to Net loss from continuing operations attributable to NantHealth - Non-GAAP for the three months ended March 31, 2023 and 2022 (Unaudited).

(Dollars in thousands, except per share amounts)	Three Months Ended March 31,	
	2023	2022
Net income (loss)	\$ (12,241)	\$ (15,950)
Adjustments to GAAP net income (loss):		
Stock-based compensation expense	876	1,390
Change in fair value of Bookings Commitment	(3,833)	94
Gain on partial lease termination	(2)	—
Noncash interest expense related to convertible notes	37	37
Intangible amortization expense	1,089	2,232
Litigation settlement	(400)	—
Tax provision (benefit) resulting from certain noncash tax items	—	(40)
Total adjustments to GAAP net income (loss)	(2,233)	3,713
Net income (loss) - Non-GAAP	\$ (14,474)	\$ (12,237)
Weighted average basis common shares outstanding	7,703,304	7,701,416
Net income (loss) per common share - Non-GAAP	\$ (1.88)	\$ (1.59)

The following table reconciles Net loss per common share from continuing operations attributable to NantHealth to Net loss per common share from continuing operations attributable to NantHealth - Non-GAAP for the three months ended March 31, 2023 and 2022 (Unaudited):

(Dollars in thousands, except per share amounts)	Three Months Ended March 31,	
	2023	2022
Net income (loss) per common share attributable to NantHealth	\$ (1.59)	\$ (2.07)
Adjustments to GAAP net income (loss) per common share:		
Stock-based compensation expense	0.11	0.18
Change in fair value of Bookings Commitment	(0.5)	—
Gain on partial lease termination	—	—
Noncash interest expense related to convertible notes	—	—
Intangible amortization expense	0.14	0.29
Litigation settlement	(0.05)	—
Tax provision (benefit) resulting from certain noncash tax items	—	(0.01)
Total adjustments to GAAP net income (loss) per common share	(0.30)	0.46
Net income (loss) per common share - Non-GAAP	\$ (1.89)	\$ (1.61)

Components of Our Results of Operations

Revenue

We generate our revenue from the sale of SaaS, maintenance, and services. Our systems infrastructure and platforms support the delivery and implementation of value-based care models across the healthcare continuum, and the maintenance of reliable network connections. We generate revenue from the following sources:

Software-as-a-service related - SaaS related revenue is generated from our customers' access to and usage of our hosted software solutions on a subscription basis for a specified contract term. In SaaS arrangements, the customer cannot take possession of the software during the term of the contract and generally only has the right to access and use the software and receive any software upgrades published during the subscription period. Solutions sold under a SaaS model include our Eviti platform solutions and NaviNet.

Maintenance - Maintenance revenue includes technical support or maintenance on OpenNMS software during the contract term. Our networking monitoring solutions typically consist of a term-based subscription to the OpenNMS software license and maintenance, which entitle customers to unspecified software updates and upgrades on a when-and-if-available basis. Revenue is recognized over the maintenance or support term.

Professional services - Professional services revenue is generated from consulting services to help customers install, integrate and optimize OpenNMS, sponsored development, and training to assist customers deploy and use OpenNMS solutions. Sponsored development relates to professional services to build customer specific functionality, features, and enhancements into the OpenNMS open source platform. Typically, revenue is recognized over time using direct labor hours as a measure of progress.

Cost of Revenue

Cost of revenue includes associated salaries and fringe benefits, stock-based compensation, consultant costs, direct reimbursable travel expenses, depreciation related to software developed for internal use, depreciation related to lab equipment, and other direct engagement costs associated with the design, development, sale and installation of systems, including system support and maintenance services for customers. System support includes ongoing customer assistance for software updates and upgrades, installation, training and functionality. All service costs, except development of internal use software and deferred implementation costs, are expensed when incurred. Amortization of deferred implementation costs are also included in cost of revenue. Cost of revenue associated with each of our revenue sources consists of the following types of costs:

Software-as-a-service related - SaaS related cost of revenue includes personnel-related costs, amortization of deferred implementation costs, amortization of internal-use software, and other direct costs associated with the delivery and hosting of our subscription services.

Maintenance - Maintenance cost of revenue includes personnel-related costs, amortization of internal-use software, and other direct costs associated with the ongoing support or maintenance provided to our customers.

Professional services - Professional services cost of revenue include personnel-related costs and other direct costs associated with consulting, sponsored development, and training provided to our customers.

We plan to continue to expand our capacity to support our growth, which will result in higher cost of revenue in absolute dollars. We expect cost of revenue to decrease as a percentage of revenue over time as we expand NantHealth solutions and realize economies of scale.

Operating Expenses

Our operating expenses consist of selling, general and administrative, research and development, amortization of acquisition-related assets, and impairment of intangible assets, including internal-use software.

Selling, general and administrative

Selling, general and administrative expense consists primarily of personnel-related expenses for our sales and marketing, finance, legal, human resources, and administrative associates, stock-based compensation, advertising and marketing promotions of NantHealth solutions, and corporate shared services fees from NantWorks. This includes amortization of deferred commission costs. It also includes trade show and event costs, sponsorship costs, point of purchase display expenses and related amortization as well as legal costs, facility costs, consulting and professional fees, insurance and other corporate and administrative costs.

We continue to review our other selling, general and administrative investments and expect to drive cost savings through greater efficiencies and synergies across our company. Additionally, we expect to continue to incur additional costs for legal, accounting, insurance, investor relations and other costs associated with operating as a public company, including costs associated with other regulations governing public companies as well as increased costs for directors' and officers' liability insurance and an enhanced investor relations function. However, we expect our selling, general and administrative expense to decrease as a percentage of revenue over the long term as our revenue increases and we realize economies of scale.

Research and development

Research and development expenses consist primarily of personnel-related costs for associates working on development of solutions, including salaries, benefits and stock-based compensation. Also included are non-personnel costs such as consulting and professional fees to third-party development resources.

Substantially all our research and development expenses are related to developing new software solutions and improving our existing software solutions.

We expect our research and development expenses to continue to increase in absolute dollars and as a percentage of revenue as we continue to make investments in developing new solutions and enhancing the functionality of our existing solutions. However, we expect our research and development expenses to decrease as a percentage of revenue over the long term as we realize economies of scale from our developed technology.

Amortization of acquisition related assets

Amortization of acquisition related assets consists of noncash amortization expense related to our non-revenue generating technology as well as amortization expense that we recognize on intangible assets that we acquired through our investments.

Interest Expense, Net

Interest expense, net primarily consists of interest expense associated with our outstanding borrowings, including coupon interest expense, amortization of debt discounts and amortization of deferred financing offering cost, offset by interest income earned on our cash and cash equivalents.

Other Income (Expense), Net

Other income (expense), net consists primarily of foreign currency gains (losses), changes in the fair value of the Bookings Commitment and other non-recurring items.

Provision for (Benefit from) Income Taxes

Provision for income taxes consists of U.S. federal and state and foreign income taxes. To date, we have no significant U.S. federal, state and foreign cash income taxes because of our current and accumulated net operating losses ("NOLs").

We record a valuation allowance when it is more likely than not that some portion or all of a deferred tax asset will not be realized. In making such a determination, we consider all the available positive and negative evidence, including future reversals of existing taxable temporary differences, projected future taxable income, and ongoing prudent and feasible tax planning strategies in assessing the amount of the valuation allowance. When we establish or reduce the valuation allowance against the deferred tax assets, our provision for income taxes will increase or decrease, respectively, in the period such determination is made.

Results of Operations

The following table sets forth our Consolidated Statements of Operations data for each of the periods indicated (Unaudited):

(Dollars in thousands)	Three Months Ended March 31,	
	2023	2022
Revenue		
Software-as-a-service related	\$ 16,440	\$ 15,771
Maintenance	575	464
Professional services	35	138
Total net revenue	17,050	16,373
Cost of Revenue		
Software-as-a-service related	5,589	5,563
Software and hardware related	39	—
Maintenance	693	369
Professional services	—	—
Amortization of developed technologies	104	1,247
Total cost of revenue	6,425	7,179
Gross Profit	10,625	9,194
Operating Expenses		
Selling, general and administrative	16,705	14,980
Research and development	5,164	5,715
Amortization of acquisition-related assets	985	985
Total operating expenses	22,854	21,680
Gain (loss) from operations	(12,229)	(12,486)
Interest income (expense), net	(4,153)	(3,450)
Other income (expense), net	4,215	6
Income (loss) before income taxes	(12,167)	(15,930)
Provision for (benefit from) income taxes	74	20
Net income (loss)	\$ (12,241)	\$ (15,950)

The following table sets forth our Consolidated Statements of Operations data as a percentage of revenue for each of the periods indicated (Unaudited):

	Three Months Ended March 31,	
	2023	2022
Revenue		
Software-as-a-service related	96.4 %	96.3 %
Maintenance	3.4 %	2.8 %
Professional services	0.2 %	0.9 %
Total net revenue	<u>100.0 %</u>	<u>100.0 %</u>
Cost of Revenue		
Software-as-a-service related	32.8 %	34.0 %
Software and hardware related	0.2 %	— %
Maintenance	4.1 %	2.3 %
Professional services	— %	(0.1)%
Amortization of developed technologies	0.6 %	7.6 %
Total software-related cost of revenue	<u>37.7 %</u>	<u>43.8 %</u>
Gross Profit	<u>62.3 %</u>	<u>56.2 %</u>
Operating Expenses		
Selling, general and administrative	98.0 %	91.5 %
Research and development	30.3 %	34.9 %
Amortization of acquisition-related assets	5.7 %	6.0 %
Total operating expenses	<u>134.0 %</u>	<u>132.4 %</u>
Gain (loss) from operations	(71.7)%	(76.2)%
Interest income (expense), net	(24.4)%	(21.1)%
Other income (expense), net	24.7 %	— %
Income (loss) before income taxes	(71.4)%	(97.3)%
Provision for (benefit from) income taxes	0.4 %	0.1 %
Net income (loss)	<u>(71.8)%</u>	<u>(97.4)%</u>

Comparison of the Three Months Ended March 31, 2023 and 2022 (Unaudited)

Revenue

(Dollars in thousands)	Three Months Ended March 31,		Period-To-Period Change Three Months Ended March 31,	
	2023	2022	Amount	Percent
	Software-as-a-service related	\$ 16,440	\$ 15,771	\$ 669
Maintenance	575	464	111	23.9 %
Professional services	35	138	(103)	(74.6)%
Total software-related revenue	17,050	16,373	677	4.1 %
Other	—	—	—	— %
Total net revenue	\$ 17,050	\$ 16,373	\$ 677	4.1 %

Comparison of the three month periods ended March 31, 2023 and 2022 (Unaudited)

Total revenue increased \$0.7 million, or 4.1%, for the three months ended March 31, 2023, compared to the prior year period, due to increased SaaS revenue of \$0.7 million, related to increased revenue from SaaS Payor go-lives of \$0.8 million. These increases were partially offset by a decrease in OpenNMS professional services revenue of \$0.1 million.

Cost of Revenue

(Dollars in thousands)	Three Months Ended March 31,		Period-To-Period Change Three Months Ended March 31,	
	2023	2022	Amount	Percent
	Software-as-a-service related	\$ 5,589	\$ 5,563	\$ 26
Software and hardware related	39	—	39	— %
Maintenance	693	369	324	87.8 %
Amortization of developed technologies	104	1,247	(1,143)	(91.7)%
Total software-related cost of revenue	6,425	7,179	(754)	(10.5)%
Other	—	—	—	— %
Total cost of revenue	\$ 6,425	\$ 7,179	\$ (754)	(10.5)%

Comparison of the three month periods ended March 31, 2023 and 2022 (Unaudited)

Total cost of revenue decreased \$0.8 million, or 10.5%, for the three months ended March 31, 2023, compared to the prior year period. The primary cause of the decrease was a decline in the amortization of developed technologies due to some assets being fully amortized. The decrease was partially offset by an increase in OpenNMS maintenance cost of revenue due to increased headcount to support incremental go-live activities.

Selling, General and Administrative

(Dollars in thousands)	Three Months Ended March 31,		Period-To-Period Change Three Months Ended March 31,	
	2023	2022	Amount	Percent
	Selling, general and administrative	\$ 16,705	\$ 14,980	\$ 1,725

Comparison of the three month periods ended March 31, 2023 and 2022 (Unaudited)

Selling, general and administrative expenses increased \$1.7 million, or 11.5% for the three months ended March 31, 2023, compared to the prior year period. The increase was driven by \$1.4 million in higher personnel costs attributable to the expansion of our headcount to support future growth plans and upgrading of various software tools and solutions. Higher legal and compliance costs totaling \$0.9 million also contributed to the increase, offset with savings of \$0.5 million in aggregate for other expense reductions.

Research and Development

(Dollars in thousands)	Three Months Ended March 31,		Period-To-Period Change Three Months Ended March 31,	
	2023	2022	Amount	Percent
	Research and development	\$ 5,164	\$ 5,715	\$ (551)

Comparison of the three month periods ended March 31, 2023 and 2022 (Unaudited)

Research and development expenses decreased \$0.6 million, or 9.6%, for the three months ended March 31, 2023, compared to the prior year period. The decrease was primarily driven by lower overall headcount supporting R&D initiatives at the Company.

Amortization of Acquisition-related Assets

(Dollars in thousands)	Three Months Ended March 31,		Period-To-Period Change Three Months Ended March 31,	
	2023	2022	Amount	Percent
	Amortization of acquisition-related assets	\$ 985	\$ 985	\$ —

Comparison of the three month periods ended March 31, 2023 and 2022 (Unaudited)

Amortization of acquisition-related assets was flat at \$1.0 million for the three months ended March 31, 2023 compared to \$1.0 million for the three months ended March 31, 2022.

Interest Expense, net

(Dollars in thousands)	Three Months Ended March 31,		Period-To-Period Change Three Months Ended March 31,	
	2023	2022	Amount	Percent
	Interest expense, net	\$ 4,153	\$ 3,450	\$ 703

Comparison of the three month periods ended March 31, 2023 and 2022 (Unaudited)

Interest expense, net increased by \$0.7 million, or 20.4%, for the three months ended March 31, 2023, compared to the prior year period. The increase was primarily due to the interest on the new notes entered into during the fourth quarter of 2022 and the first quarter of 2023.

See the section entitled "Liquidity and Capital Resources" below and refer to Note 8 and Note 14 to the accompanying Consolidated Financial Statements for further discussion of our convertible notes and the new subordinated notes.

Other Income (Expense), net

(Dollars in thousands)	Three Months Ended March 31,		Period-To-Period Change Three Months Ended March 31,	
	2023	2022	Amount	Percent
	Other income (expense), net	\$ 4,215	\$ 6	\$ 4,209

Comparison of the three month periods ended March 31, 2023 and 2022 (Unaudited)

The increase of \$4.2 million Other income (expense), net for the three months ended March 31, 2023 compared to the prior year period was driven by the change in the fair value of the Bookings Commitment which resulted in a gain of \$3.8 million and a gain due to litigation settlement of \$0.4 million.

Liquidity and Capital Resources

Sources of Liquidity

As of March 31, 2023, we had cash and cash equivalents of \$14.1 million, compared to \$1.8 million as of December 31, 2022, of which \$0.4 million and \$0.8 million, respectively, related to foreign subsidiaries.

As a result of continuing anticipated operating cash outflows we believe that substantial doubt exists regarding our ability to continue as a going concern without additional funding or financing. Highbridge and Nant Capital have agreed to consent to amendments to certain of our existing debt agreements in order to enhance our liquidity, and have confirmed their collective intent and ability to make additional loans to us to the extent necessary to support our operations in the manner currently conducted through May 17, 2024. Management believes that this agreement and intent alleviates such substantial doubt. Nant Capital is an affiliate of Dr. Patrick Soon-Shiong, our CEO. We may also seek to sell additional equity, through one or more follow-on public offerings or in separate financings, or sell additional debt securities, or obtain a credit facility. However, we may not be able to secure such financing in a timely manner or on favorable terms. We may also consider delaying our business activities and strategic initiatives, or selling off components of our business. Additionally, we continue to consider all strategic alternatives. We are undertaking a number of actions in order to improve our financial position and stabilize our results of operations including but not limited to, cost cutting, lowering capital expenditures, and implementing hiring freezes.

Related Party Notes

On March 2, 2023, we and the Subsidiary Guarantors, entered into the Credit Agreement with Nant Capital, an affiliate of Dr. Soon-Shiong, our CEO, and Highbridge, as the lenders, and the Agent, as administrative and collateral agent. The Credit Agreement provides for a senior secured term loan facility in an aggregate principal amount of \$22.5 million that was made in a single drawdown by us at closing (the "Senior Secured Term Loan Facility").

Concurrently with the execution of, and pursuant to, the Credit Agreement, we also entered into (1) a subordination agreement (the "Subordination Agreement") with Nant Capital and Airstrip (collectively, the "Affiliated Lenders"), who are holders of certain affiliated debt, including the 2022 Nant Capital Note and Airstrip Note, respectively, and (2) a letter agreement (the "Letter Agreement") with certain entities affiliated with Highbridge and Nant Capital, who are holders of the 2021 Notes issued pursuant to the 2021 Indenture. The Subordination Agreement provides, among other things, that any payment of principal of, premium, if any, or interest on certain subordinated debt held by the Affiliated Lenders shall be subordinated and subject in right of payment to the prior payment of the full Senior Secured Term Loan Facility so long as such Senior Secured Term Loan Facility is outstanding. The Letter Agreement provides that, among other things, (1) the holders of the 2021 Notes shall waive compliance with certain provisions of the 2021 Indenture, including, but not limited to, restrictions on borrowings from an affiliate lender of ours and any current or future Default or Event of Default (as each term is defined in the 2021 Indenture) pursuant to any breach of Section 4.10 of the 2021 Indenture arising from any borrowing made by the affiliated lender to the Company, each such waiver is solely in connection with the Senior Secured Term Loan Facility, (2) prohibit the holders of the 2021 Notes from exercising any right to require us to repurchase any or all of the 2021 Notes upon the occurrence of a Fundamental Change (as defined in the 2021 Indenture) solely in connection with our common stock being delisted from the Nasdaq Global Select Market or similar securities exchange for a period beginning on the Closing Date (as defined in the Credit Agreement) and ending on the date that is five (5) months after the Closing Date, and (3) restricting the holders of the 2021 Notes from disposing of or otherwise transferring the 2021 Notes to any person other than an affiliate of such holder, until the approval of the Indenture Consent (as defined in the Letter Agreement).

As of March 31, 2023, the Company was in compliance with all covenants. See Note 14 for additional information on these and other Notes.

If we raise additional funds by issuing equity securities or securities convertible into equity, our stockholders could experience dilution. Additional debt financing, if available, may involve us granting a security interest in some or all of our assets, covenants restricting our operations or our ability to incur additional debt. Any additional debt financing or additional equity that we raise may contain terms that are not favorable to us or our stockholders and require significant debt service payments, which diverts resources from other activities. Additional financing may not be available at all, or in amounts or on terms acceptable to us. If we are unable to obtain additional financing, we may be required to consider strategic alternatives or delay the development, commercialization and marketing of our products and scale back our business and operations.

Open Market Sale Agreement

On November 12, 2021, we entered into an Open Market Sale Agreement (the "Sale Agreement") with Jefferies LLC (the "Sales Agent") under which we may offer and sell up to \$30.0 million of shares of our common stock, par value \$0.0001 per share (the "Shares"), from time to time through the Sales Agent. The sales and issuances of the Shares under the Sale Agreement will be made pursuant to our effective shelf registration statement on Form S-3 (the "Registration Statement") that was declared effective on May 6, 2021.

The Sales Agent is not required to sell any specific amount of securities, but will act as our sales agent using commercially reasonable efforts to sell the Shares from time to time, consistent with their normal trading and sales practices, applicable state and federal laws, rules and regulations and the rules of The Nasdaq Stock Market LLC, based upon instructions from us (including any price, time or size limits or other customary parameters or conditions we may impose). We have agreed to pay the Sales Agent a commission of 3.0% of the aggregate gross proceeds from each sale of the Shares pursuant to the Sale Agreement and to provide the Sales Agent with customary indemnification and contribution rights, including for liabilities under the Securities Act of 1933, as amended.

Capital Expenditures

There have been no material changes during the three months ended March 31, 2023 to our capital expenditure obligations disclosed in our "Management's Discussion and Analysis of Financial Condition and Results of Operations" included in our Annual Report on Form 10-K for the year ended December 31, 2022. Our principal material cash requirements consist of obligations under our outstanding debt obligations related to the Senior Secured Term Facility, Nant Capital Note, Airstrip Note, Convertible Notes, Bookings Commitment, and noncancellable leases for our office space. Refer to Note 8, Note 9, Note 10, and Note 14 to the accompanying Consolidated Financial Statements.

Cash Flows

The following table sets forth our primary sources and uses of cash for the periods indicated:

(Dollars in thousands)	Three Months Ended March 31,	
	2023	2022
Cash (used in) provided by:		
Operating activities	\$ (6,572)	\$ (11,049)
Investing activities	(1,263)	(1,203)
Financing activities	20,601	(758)
Effect of exchange rate changes on cash, cash equivalents and restricted cash	(376)	(46)
Net decrease in cash, cash equivalents and restricted cash	<u>\$ 12,390</u>	<u>\$ (13,056)</u>

Our net cash flows used in operating activities decreased \$4.4 million during the three months ended March 31, 2023 primarily driven by decreased net losses of \$3.7 million and an increase in working capital of \$5.5 million from the three months ended March 31, 2023 compared to the three months ended March 31, 2022, partially offset by a decrease in fair value of our Bookings Commitment of \$3.8 million and reduction of depreciation and amortization of \$1.1 million.

Our net cash flows used in investing activities saw an increase of \$0.1 million primarily driven by additional investment in internally developed software and purchases of property and equipment for the three months ended March 31, 2023 compared to the three months ended March 31, 2022.

Our net cash flows from financing activities saw an increase of \$21.4 million primarily due to related party note and promissory note proceeds, for the three months ended March 31, 2023 compared to the three months ended March 31, 2022.

See the accompanying Consolidated Statements of Cash Flows for additional details around sources and uses of cash for the years ended December 31, 2022 and 2021

New Accounting Pronouncements

See Note 2 to the accompanying Consolidated Financial Statements for a discussion of new accounting standards.

Related Party Transactions

See Note 14 to the accompanying Consolidated Financial Statements for a discussion of related party transactions.

Critical Accounting Policies and Significant Judgments and Estimates

This Management's Discussion and Analysis of our Results of Operations and Liquidity and Capital Resources is based on our Consolidated Financial Statements, which we have prepared in accordance with U.S. GAAP. The preparation of our 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 our financial statements, as well as the reported revenues and expenses during the reported periods. We evaluate these estimates and judgments on an ongoing basis. 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. We believe the critical accounting policies and estimates discussed in Note 2 to the Consolidated Financial Statements of our Annual Report on 10-K that was filed with the SEC on April 14, 2023, reflect our more significant judgments and estimates used in the preparation of the Consolidated Financial Statements. Refer to Note 2 to the accompanying Consolidated Financial Statements for a discussion of any significant changes to our critical accounting policies and estimates as disclosed in our 10-K.

Smaller Reporting Company Status

Currently, we qualify as a smaller reporting company. As a smaller reporting company, we are eligible and have taken advantage of certain exemptions from various reporting requirements that are not available to public reporting companies that do not qualify for this classification, including, but not limited to:

- An opportunity for reduced disclosure obligations regarding executive compensation in our periodic and annual reports, including without limitation exemption from the requirement to provide a compensation discussion and analysis describing compensation practices and procedures,
- An opportunity for reduced financial statement disclosure in registration statements and in annual reports on Form 10-K, which only requires two years of audited financial statements rather than the three years of audited financial statements that are required for other public companies,
- An opportunity for reduced audit and other compliance expenses as we are not subject to the requirement to obtain an auditor's report on internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act of 2002, and
- An opportunity to utilize the non-accelerated filer time-line requirements beginning with our annual report for the year ending December 31, 2021 and quarterly filings thereafter.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

As a smaller reporting company, we are not required to provide the information required by this Item.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we conducted an evaluation of the effectiveness of our disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of the end of the period covered by this report. Our disclosure controls and procedures are designed to ensure that information required to be disclosed in the reports we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and that such information is accumulated and communicated to management, including the Chief Executive Officer and Chief Financial Officer, to allow timely decisions regarding required disclosure. Management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures. Based on this evaluation, our Chief Executive Officer and Chief Financial Officer concluded that, as of the end of the quarter covered by this report, our disclosure controls and procedures were effective at the reasonable assurance level.

Changes in Internal Control Over Financial Reporting

There were no changes to our internal control over financial reporting identified in connection with the evaluation required by Rule 13a-15(d) and 15d-15(d) of the Exchange Act that occurred during the quarter ended March 31, 2023 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Inherent Limitations in the Effectiveness of Controls

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

PART II—OTHER INFORMATION

Item 1. Legal Proceedings

We are, from time to time, subject to claims and litigation that arise in the ordinary course of our business. Except as discussed in Note 11, in the opinion of management, the ultimate outcome of proceedings of which management is aware, even if adverse to us, would not have a material adverse effect on our consolidated financial condition or results of operations. Regardless of the outcome, litigation can have an adverse impact on us because of defense and settlement costs, diversion of management resources and other factors. See Note 11 to the accompanying Consolidated Financial Statements for a discussion of our legal proceedings.

Item 1A. Risk Factors

Investing in our common stock involves a high degree of risk. You should carefully consider the risks described below, as well as all other information included in our Annual Report on Form 10-K, including our financial statements and the related notes thereto and Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations", any of which may be relevant to decisions regarding an investment in or ownership of our common stock. Our future operating results may vary substantially from anticipated results due to a number of risks and uncertainties, many of which are beyond our control. The risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties that we are unaware of, or that we currently believe are not material, may also become important factors that affect us. The following discussion highlights some of these risks and uncertainties and the possible impact of these risks on future results of operations. If any of the following risks actually occurs, our business, financial condition, operating results, prospects and ability to accomplish our strategic objectives could be materially harmed. As a result, the trading price of our common stock could decline and you could lose all or part of your investment. Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also impair our business operations and the market price of our common stock.

Risk Factor Summary

Risks related to our business approach

- We may not be successful in implementing our transformative plan and we are considering all strategic alternatives, including restructuring or refinancing of our debt, seeking additional debt or equity capital, reducing or delaying our business activities and strategic initiatives, or selling assets, other strategic transactions and/or other measures.
- We are an early commercial-stage company attempting to integrate complex platforms and systems to address a wide range of healthcare issues, and we may not be successful in doing so.
- The success of NantHealth solutions is dependent upon the robustness of the information we and others input into our platforms and systems to achieve maximum network effects, and if we are unable to amass and input the requisite data to achieve these effects, our business will be adversely affected.
- We may be unable to appropriately allocate our financial and human resources across our broad array of product and service offerings.

Risks related to our financial condition and capital requirements

- If we are unable to obtain additional funding in the future, we believe a substantial doubt would exist regarding our ability to continue as a going concern.
- We may need to raise additional capital to fund our existing operations, develop our solutions, commercialize new products and expand our operations.
- We have a history of significant losses, which we expect to continue, and we may never achieve or sustain profitability in the future.

Risks related to our capital structure

- The Credit Agreement governing our Senior Secured Term Loan Facility restricts our current and future operations, particularly our ability to respond to changes or to take certain actions.
- 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 or related interest.
- The convertible note holders will not be entitled to any rights with respect to our common stock, but will be subject to all changes made with respect to our common stock.

Risks related to our system infrastructure and software solutions business

- The market for our systems infrastructure and software solutions is new and unproven and may not grow.
- The data and information that we provide to our customers and their constituents, could be inaccurate or incomplete, which could harm both patients and our business, financial condition and results of operations.
- Our use of open source technology could impose limitations on our ability to commercialize our offerings.
- If we are not able to enhance our systems infrastructure or software solutions to achieve market acceptance and keep pace with technological developments, our business will be harmed.
- A large portion of our revenue is derived from a small group of our customers, and the loss of such customers could adversely affect our business.
- If we experience fraudulent activity relating to our system infrastructure and products, we could incur substantial costs.
- We face intense competition in our markets, and we may be unable to compete effectively for new customers.

Risks related to our OpenNMS open source business

- Our OpenNMS business incorporates third-party open source software, which could negatively affect our ability to sell our OpenNMS solutions and subject us to possible litigation.
- Because of the characteristics of open source software, there may be fewer technology barriers to entry in the open source market by new competitors and it may be relatively easy for new and existing competitors with greater resources than we have to compete with our OpenNMS business.

Risks related to our relationships with our employee other companies

- We rely on third-party computer hardware and software that may be difficult to replace or which could cause errors or failures of our service which could damage our reputation, harm our ability to attract and maintain customers and decrease our revenue.
- We are heavily dependent on our senior management, particularly Dr. Patrick Soon-Shiong, and a loss of a member of our senior management team in the future could harm our business.

Risks related to our business generally

- We have in the past and may in the future acquire other companies or technologies, which could divert our management's attention, result in dilution to our stockholders and otherwise disrupt our operations and adversely affect operating results.
- Our marketing efforts depend significantly on our ability to receive positive references from our existing customers.
- Our estimates of market opportunity and forecasts of market growth may prove to be inaccurate, and even if the market in which we compete achieves the forecasted growth, our business could fail to grow at similar rates, if at all.

Risks related to intellectual property

- We may be unable to adequately protect, and we may incur significant costs in enforcing, our intellectual property and other proprietary rights.
- Obtaining and maintaining our patent protection depends on compliance with various procedural, documentary, fee payment and other requirements imposed by governmental patent agencies, and our patent protection could be reduced or eliminated for non-compliance with these requirements.
- Litigation or other proceedings or third-party claims of intellectual property infringement could require us to spend significant time and money and could prevent us from selling our products and services.

Risks related to government regulation

- The healthcare industry is highly regulated, and thus, we are subject to several laws, regulations and industry initiatives, non-compliance with certain of which could materially adversely affect our operations or otherwise adversely affect our business, results of operations and financial condition.
- If we fail to comply with applicable health information privacy and security laws and other state and federal privacy and security laws, we may be subject to significant liabilities, reputational harm and other negative consequences, including decreasing the willingness of current and potential customers to work with us.
- If we, including our employees, suppliers, distributors, independent contractors, and agents acting on our behalf, fail to comply with federal and state healthcare laws and regulations, including those governing submissions of false or fraudulent claims to government healthcare programs and financial relationships with healthcare providers, we may be subject to significant civil and criminal penalties and/or loss of eligibility to participate in government healthcare programs.

Risks related to our common stock

- Dr. Soon-Shiong, our Chairman and Chief Executive Officer and our principal stockholder, and entities affiliated with him, collectively own a significant majority of our common stock and will exercise significant influence over matters requiring stockholder approval, regardless of the wishes of other stockholders.
- Dr. Soon-Shiong, has significant interests in other companies which may conflict with our interests.
- The trading price of our common stock has been and may continue to be volatile. This volatility may affect the price at which you could sell our common stock, the notes and any common stock you receive upon conversion of your notes.
- Our common stock may be delisted from The Nasdaq Global Select Market if we cannot regain compliance with Nasdaq's continued listing requirements.

Risks related to our business approach

We may not be successful in implementing our transformative plan and we are considering all strategic alternatives, including restructuring or refinancing of our debt, seeking additional debt or equity capital, reducing or delaying our business activities and strategic initiatives, or selling assets, other strategic transactions and/or other measures.

We are undertaking a number of actions to support our ongoing transformation, including but not limited to, cost cutting, and lowering capital expenditures. The timely achievement of our transformative plan as well as our ability to maintain an adequate level of liquidity are subject to various risks, some of which are outside of our control. We may not be successful in implementing our transformative plan or such initiatives may not be successful, which may adversely impact our business, financial condition or results of operations.

In addition, we continue to consider all strategic alternatives including restructuring or refinancing our debt, seeking additional debt or equity capital, reducing or delaying our business activities and strategic initiatives, or selling assets, other strategic transactions and/or other measures. We may not be able to successfully execute any strategic alternatives we are currently considering or any others, and our ability to do so could be adversely affected by numerous factors, including changes in the economic or business environment, financial market volatility and the performance of our business. We caution that trading in our securities is highly speculative and poses substantial risks and that trading prices for our securities may bear little or no relationship to the actual recovery, if any, by holders of our securities if we seek protection under federal or state law.

We are an early commercial-stage company attempting to integrate complex platforms and systems to address a wide range of healthcare issues, and we may not be successful in doing so.

We are an early commercial-stage company with a business model based upon a novel approach to healthcare. NantHealth solutions are designed to address many of the key challenges healthcare constituents face by enabling them to move, interpret, and visualize complex and highly sensitive information, combine diagnostic inputs with phenotypic and cost data, analyze datasets and clinical research, securely deliver data to providers in a clinical setting to aid selection of the appropriate treatments, and demonstrate improved patient outcomes and costs. Integration across our systems infrastructure and platforms may take longer than we expect or may never occur at all.

We have engaged and may in the future engage in the acquisition or disposition of other companies, technologies, and businesses which could divert our management's attention, result in additional dilution to our stockholders and otherwise disrupt our operations and harm our operating results.

Based on the above factors, it may take longer than we expect, or we may never be able, to fully integrate our system as planned. If our integration efforts are not successful, we may not be able to attract new customers and to expand our offerings to existing customers.

The success of NantHealth solutions is dependent upon the robustness of the information we and others input into our platforms and systems to achieve maximum network effects, and if we are unable to amass and input the requisite data to achieve these effects, our business will be adversely affected.

NantHealth solutions become more valuable as more accurate and clinically relevant information is integrated into them, and our ultimate outputs and recommendations to a patient, provider or payer are therefore highly dependent on the information that is input into our platforms and systems. As a result, we need to consistently and continuously have access to and integrate the most medically relevant and cutting-edge clinical data and research studies with patient-specific data. Further, to have access to certain other data points, we rely in part on third parties to supply or in some instances to generate more data to be integrated into NantHealth solutions. These third parties may never develop data interfaces or applications compatible with our software solutions or may develop them at a slower rate than our ability to address shifts in healthcare. In addition, if such third-party solutions are not produced to specification, are produced in accordance with modified specifications, or are defective, they may not be compatible with our systems. In such case, the reliability and performance of our products may be compromised. To the extent we are unable to amass sufficient data, keep an inflow of current and continuous data or integrate and access the data we currently have to populate NantHealth solutions, the network effects we expect will not be fully realized and our business may be adversely affected.

We may be unable to appropriately allocate our financial and human resources across our broad array of product and service offerings.

We have a broad array of product and service offerings. Our management team is responsible for allocating resources across these products and services and may forego or delay pursuit of opportunities with certain products or services that later prove to

have greater commercial potential. These and other resource allocation decisions may cause us to fail to capitalize on attractive products or services or market opportunities. Our spending on current and future research and development programs and future products or services may not yield commercially viable products or services or may fail to optimize the anticipated network effects of NantHealth solutions. If our management team is unable to appropriately prioritize the allocation of our resources among our broad range of products and services in an efficient manner, our business may be adversely affected.

Risks related to our financial condition and capital requirements

As disclosed in Note 1 of our consolidated audited financial statements, we believe that our current level of cash, cash equivalents and marketable securities, together with committed financing facilities, are not sufficient to fund ongoing operations for at least the twelve-month period after the financial statements are issued without additional funding or financing.

Our financial statements for the quarter ended March 31, 2023 are prepared assuming that we will continue as a going concern. The going concern basis of presentation assumes that we will continue in operation for the foreseeable future and will be able to realize our assets and discharge our liabilities and commitments in the normal course of business and do not include any adjustments to reflect the possible future effects on the recoverability and classification of assets or the amounts and classification of liabilities that may result from our inability to continue as a going concern. As of March 31, 2023, we had cash and cash equivalents of \$14.1 million. Further, we have incurred, and expect to continue to incur, negative cash flows in pursuit of our business plans for at least the twelve-month period following the date the financial statements are issued. Without giving effect to the prospect of raising additional capital from Highbridge and Nant Capital, increasing revenue in the near future or executing other mitigating plans, many of which are beyond our control, it is unlikely that we will be able to generate sufficient cash flows to meet our required financial obligations, including our debt service and other obligations due to third parties. Management's plans to address this uncertainty are discussed under Part II, Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations." Our ability to continue as a going concern is dependent upon our success in obtaining additional equity or debt financing, attaining further operating efficiencies, reducing expenditures and ultimately, generating significant revenue growth. Our plans to raise additional capital, including our ability to consummate any equity or debt financing, or take other actions to address any doubt regarding our ability to continue as a going concern, may not be successful. There can be no assurance that we would be able to obtain additional liquidity when needed or under acceptable terms, if at all. The perception of our ability to continue as a going concern may make it more difficult for us to obtain financing for the continuation of our operations and could result in the loss of confidence by investors, customers and employees, and continued cash losses may risk our status as a going concern.

Our business would be adversely affected if we are unable to service our debt obligations.

We have incurred substantial indebtedness under our 2021 Notes. Our ability to pay interest and principal when due, comply with debt covenants or repurchase the 2021 Notes if a change of control occurs, will depend upon, among other things, sales and cash flow levels and other factors that affect our future financial and operating performance, including prevailing economic conditions and financial and business factors, many of which are beyond our control. Given the current economic environment, and ongoing challenges to our business, we may be unable to service our debt obligations, or comply with the other terms of the 2021 Notes, which would among other things, result in an event of default under the indenture governing the 2021 Notes.

The principal sources of our liquidity are funds generated from operating activities, available cash and cash equivalents, borrowings under affiliated and non-affiliated debt, and equity sales. We have incurred net losses in our most recently completed three fiscal years, including a net loss of \$67.8 million for the fiscal year ended December 31, 2022. We may continue to incur net losses in future periods, which would adversely affect our business, financial condition and ability to service our debt obligations, and due to the risks inherent in our operations, our future net losses may be greater than our past net losses. Our ability to achieve our business and cash flow plans is based on a number of assumptions which involve significant judgments and estimates of future performance, borrowing capacity and credit availability, which cannot at all times be assured. Accordingly, there is no assurance that cash flows from operations and other internal and external sources of liquidity will at all times be sufficient for our cash requirements. If necessary, we may need to consider actions and steps to improve our cash position and mitigate any potential liquidity shortfall, such as modifying our business plan, pursuing additional financing to the extent available, reducing capital expenditures, pursuing and evaluating other alternatives and opportunities to obtain additional sources of liquidity and other potential actions to reduce costs. There can be no assurance that any of these actions would be successful, sufficient or available on favorable terms. Any inability to generate or obtain sufficient levels of liquidity to meet our cash requirements at the level and times needed would have a material adverse impact on our business and financial position.

If we become unable in the future to generate sufficient cash flow to meet our debt service requirements, we may be forced to take remedial actions such as restructuring or refinancing our debt; seeking additional debt or equity capital; reducing or delaying our business activities and strategic initiatives, selling assets, or other strategic transactions and/or measures. There can be no assurance that any such measures would be successful.

Our ability to obtain any additional financing or any refinancing of our debt, if needed at any time, depends upon many factors, including our existing level of indebtedness and restrictions in the agreements governing our indebtedness, historical business performance, financial projections, the value and sufficiency of collateral, prospects and creditworthiness, external economic conditions and general liquidity in the credit and capital markets. Any additional debt, equity or equity-linked financing may require modification of our existing debt agreements, which there is no assurance would be obtainable. Any additional financing or refinancing could also be extended only at higher costs and require us to satisfy more restrictive covenants, which could further limit or restrict our business and results of operations, or be dilutive to our stockholders.

Our degree of leverage could adversely affect our ability to raise additional capital to fund our operations, limit our ability to react to changes in the economy or our industry and expose us to interest rate risk on our variable rate debt.

We have a significant amount of debt outstanding. As of March 31, 2023, we had \$282.0 million of notes outstanding.

Our degree of leverage could have consequences, including:

- increasing our vulnerability to general economic and industry conditions;
- requiring a substantial portion of cash flow from operations to be dedicated to the payment of principal and interest on our indebtedness, thereby reducing our ability to use our cash flow to fund our operations, capital expenditures, research and development and future business opportunities;
- exposing us to the risk of increased interest rates under our credit facilities to the extent such facilities have variable rates of interest, as well as to refinancing risks as facilities mature;
- limiting our ability to make strategic acquisitions and investments;
- limiting our ability to refinance our indebtedness as it becomes due; and
- limiting our ability to adjust quickly or at all to changing market conditions and placing us at a competitive disadvantage compared to our competitors who are less highly leveraged.

General economic, financial market, competitive, legislative and regulatory factors, among other things, may negatively affect our ability to fund our debt requirements or reduce our debt, which could have a material adverse effect on our business, operating results, cash flows and financial condition.

Despite our level of indebtedness, we and our subsidiaries may incur additional indebtedness. The incurrence of additional indebtedness could further exacerbate the risks associated with our degree of leverage.

We and our subsidiaries may incur additional indebtedness in the future. Although our indenture governing the 2021 Notes contains restrictions on the incurrence of additional indebtedness, these restrictions are subject to a number of significant qualifications and exceptions, and any indebtedness incurred in compliance with these restrictions could be substantial. In addition, the indenture for the 2021 Notes does not restrict us from incurring additional debt provided it is subordinate to the 2021 Notes. To the extent we or our subsidiaries incur additional debt beyond anticipated debt levels, the related risks that we and our subsidiaries face could intensify.

We may need to raise additional capital to fund our existing operations, develop our solutions, commercialize new products and expand our operations.

We may consider raising additional capital in the future to fund our ongoing operations, expand our business, to pursue strategic investments, to take advantage of financing opportunities, or for other reasons, including to:

- increase our sales and marketing efforts to drive market adoption of NantHealth solutions;
- address competitive developments;
- fund development and marketing efforts of any future platforms and solutions;
- expand adoption of Eviti platform solutions into critical illnesses outside of oncology;
- acquire, license or invest in complementary businesses, technologies or service offerings; and
- finance capital expenditures and general and administrative expenses.

Our present and future funding requirements will depend on many factors, including:

- our ability to achieve revenue growth;
- the cost of expanding our products and service offerings, including our sales and marketing efforts;
- our ability to achieve interoperability across all of our acquired businesses, technologies and service offerings to deliver networking effects to our customers;
- the effect of competing technological and market developments;
- costs related to international expansion; and
- the potential cost of and delays in product development as a result of any regulatory oversight applicable to our products.

The various ways we could raise additional capital carry potential risks. If we raise funds by issuing equity securities, dilution to our stockholders could result. Any equity securities issued also could provide for rights, preferences or privileges senior to those of holders of our common stock. If we raise funds by issuing debt securities, those debt securities would have rights, preferences and privileges senior to those of holders of our common stock. The terms of debt securities issued or borrowings pursuant to a credit agreement could impose significant restrictions on our operations.

We have a limited operating history, which may make it difficult to evaluate our current business and predict our future performance.

We were organized as a limited liability company in Delaware and began operations in 2010. In June 2016, we converted to a Delaware corporation. Additionally, our business has operated as part of the larger NantWorks, LLC ("NantWorks") group of affiliated companies. Our limited independent operating history, particularly in light of the increasingly complex and rapidly evolving healthcare and technology markets in which we operate, may make it difficult to evaluate our current business and predict our future performance. In addition, we have acquired numerous companies or businesses over the past five years, including certain assets of NaviNet, NantHealth Labs, and most recently OpenNMS. In addition, in August 2017, we sold our provider/patient engagement solutions business to Allscripts and in February 2020, we sold assets relating to our connected care business to Masimo. We have had limited experience operating these businesses as a whole and as such, it may be difficult to evaluate our current business and predict our future operating performance. In light of the foregoing, any assessment of our profitability or prediction about our future success or viability is subject to significant uncertainty. We have encountered and will continue to encounter risks and difficulties frequently experienced by early, commercial-stage companies in rapidly evolving industries. If we do not address these challenges successfully, our business results will suffer.

We have a history of significant losses, which we expect to continue, and we may never achieve or sustain profitability in the future.

We have incurred significant net losses from continuing operations in each fiscal year since inception and expect to continue to incur net losses for the foreseeable future. We experienced net losses of \$67.8 million and \$58.5 million during the years ended December 31, 2022 and 2021, respectively, and \$12.2 million for the three months ended March 31, 2023. As of March 31, 2023, we had an accumulated deficit of \$1.1 billion. The losses and accumulated deficit were primarily due to the substantial investments we made to grow our business and enhance our systems infrastructure and platforms. We have grown our business through research and development and the acquisition of assets, businesses and customers. We anticipate that our operating expenses will increase substantially in the foreseeable future as we seek to continue to grow our business, including through strategic acquisitions, and build and further penetrate our customer base and develop our product and service offerings, including (i) expansion of the features and capabilities of our NaviNet and Eviti product lines and (ii) expanding the OpenNMS solutions through the creation of cloud solutions and the addition of hardware devices for edge monitoring. These efforts may prove more expensive than we currently anticipate, and we may not succeed in increasing our revenue sufficiently to offset these higher expenses.

In addition, inflationary pressure, including as a result of supply shortages, may adversely impact our financial results and our operating costs may increase. We may not fully offset these cost increases by raising prices for our products and services, which could result in downward pressure on our margins. Further, our customers may choose to reduce their business with us if we increase our pricing.

Our prior losses, combined with our expected future losses, have had and will continue to have an adverse effect on our stockholders' deficit and working capital. We expect to continue to incur operating losses for the foreseeable future and may never become profitable on a quarterly or annual basis, or if we do, we may not be able to sustain profitability in subsequent periods. Our failure to achieve and sustain profitability in the future would negatively affect our business, financial condition, results of operations and cash flows, and could cause the market price of our common stock to decline.

Risks related to our capital structure

The Credit Agreement governing our Senior Secured Term Loan Facility restricts our current and future operations, particularly our ability to respond to changes or to take certain actions.

On March 2, 2023, we and certain of our subsidiaries as guarantors (the “Subsidiary Guarantors,” and together with us, the “Obligors”), entered into a credit agreement (the “Credit Agreement”) with Nant Capital, LLC (“Nant Capital”), an affiliate of Dr. Patrick Soon-Shiong, our CEO, and Highbridge Tactical Credit Master Fund, L.P. and Highbridge Convertible Dislocation Fund, L.P. (collectively, “Highbridge Senior Lenders”), as the lenders, GLAS USA, LLC, as administrative agent, and GLAS Americas, LLC, as collateral agent (collectively, “Agent”). The Credit Agreement provides for a senior secured term loan facility in an aggregate principal amount of \$22.5 million that was made in a single drawdown by us at closing (the “Senior Secured Term Loan Facility”).

The Credit Agreement governing our Senior Secured Term Loan Facility are collateralized by substantially all of our assets, including our subsidiaries and intellectual property, and impose significant operating and financial restrictions and limit our ability and our other restricted subsidiaries’ ability to, among other things:

- incur additional indebtedness for borrowed money and guarantee indebtedness;
- pay dividends or make other distributions in respect of, or repurchase or redeem, capital stock;
- enter into any new line of business not reasonably related to our existing business;
- prepay, redeem or repurchase certain debt;
- make loans and investments;
- sell or otherwise dispose of assets;
- incur liens;
- enter into transactions with affiliates; and
- enter into agreements restricting our ability to consolidate, merge or sell all or substantially all of our assets.

In addition, the Credit Agreement requires us to guarantee the 2021 Notes secured by second priority liens collateralized by substantially all of our assets including our subsidiaries and intellectual property with substantially similar restrictions as described above within forty-five (45) days after the closing of the Senior Secured Term Loan Facility.

As a result of these covenants and restrictions, we are and will be limited in how we conduct our business, and we may be unable to raise additional debt or equity financing to compete effectively or to take advantage of new business opportunities. In addition, our Senior Secured Term Loan Facility requires us to comply with a minimum liquidity covenant. The operating and financial restrictions and covenants in the Senior Secured Term Loan Facility, as well as any future financing agreements that we may enter into, may restrict our ability to finance our operations, engage in business activities or expand or fully pursue our business strategies. Our ability to comply with these covenants may be affected by events beyond our control, and we may not be able to meet those covenants. We cannot guarantee that we will be able to maintain compliance with certain financial covenants in our debt agreements in the future and, if we fail to do so, that we will be able to obtain waivers from the lenders and/or amend the covenants.

Our failure to comply with the restrictive covenants described above as well as others contained in our future debt instruments from time to time could result in an event of default, which, if not cured or waived, could result in our being required to repay these borrowings before their due date. If we are forced to refinance these borrowings on less favorable terms, our business, results of operations, and financial condition could be adversely affected.

The Credit Agreement also contains certain customary events of default, the occurrence of which could result in the declaration that all outstanding principal and interest under the Senior Secured Term Loan Facility is immediately due and payable in whole or in part, which could have a material adverse effect on our business, financial condition, and results of operations.

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 or related interest.

Our ability to make scheduled payments of the principal of, to pay interest on or to refinance our indebtedness, including the Senior Secured Term Loan Facility, the 2021 Notes, the 2022 Nant Capital Note, and the 2022 Airstrip Note, depends on our future performance, which is subject to economic, financial, competitive and other factors beyond our control. For example, on April 13, 2021 we and our wholly owned subsidiary, NaviNet, as guarantor, entered into a note purchase agreement with Highbridge Capital Management, LLC and certain other buyers, including Nant Capital, LLC, (“Nant Capital”) to issue and sell \$137.5 million in aggregate principal amount of our 2021 Notes in a private placement pursuant to an exemption from registration under Section 4(a)(2) of the Securities Act. The 2021 Notes were issued on April 27, 2021. In addition, under the terms of the 2021 Notes, we may be required to repurchase the notes of such series at a price equal to 100% of the principal amount of such notes to be repurchased, plus accrued and unpaid interest, upon the occurrence of a fundamental changes (as defined in the indenture governing the 2021 Notes). For example, in connection with the issuance of the 2021 Notes and the related amended and restated promissory notes on April 27, 2021, we provided a notice of fundamental change (as defined in the indenture governing our 5.5% senior convertible notes

due 2021 (the “2016 Notes”) and an offer to repurchase all of the outstanding 2016 Notes. On May 25, 2021, we purchased approximately \$55.6 million of the outstanding 2016 Notes (“Fundamental Change Repurchase”) and paid approximately \$1.4 million of accrued and unpaid interest thereon.

Concurrently with the execution of, and pursuant to, the Credit Agreement, we also entered into (1) a subordination agreement (the “Subordination Agreement”) with Nant Capital and Airstrip (collectively, the “Affiliated Lenders”), who are holders of certain affiliated debt of ours, and (2) a letter agreement (the “Letter Agreement”) with certain entities affiliated with Highbridge and Nant Capital, who are holders of the 2021 Notes issued pursuant to the 2021 Indenture. The Subordination Agreement provides, among other things, that any payment of principal of, premium, if any, or interest on certain subordinated debt held by the Affiliated Lenders shall be subordinated and subject in right of payment to the prior payment of the full Senior Secured Term Loan Facility so long as the Senior Secured Term Loan Facility is outstanding. The Letter Agreement provides that, among other things, (1) the holders of the 2021 Notes shall waive compliance with certain provisions of the 2021 Indenture, including, but not limited to, restrictions on borrowings from an affiliate lender of ours and any current or future Default or Event of Default (as each term is defined in the 2021 Indenture) pursuant to any breach of Section 4.10 of the 2021 Indenture arising from any borrowing made by the affiliated lender to the Company, each such waiver is solely in connection with the Senior Secured Term Loan Facility, (2) prohibit the holders of the 2021 Notes from exercising any right to require us to repurchase any or all of the 2021 Notes upon the occurrence of a Fundamental Change (as defined in the 2021 Indenture) solely in connection with our common stock being delisted from the Nasdaq Global Select Market or similar securities exchange for a period beginning on the Closing Date (as defined in the Credit Agreement) and ending on the date that is five (5) months after the Closing Date, and (3) restricting the holders of the 2021 Notes from disposing of or otherwise transferring the 2021 Notes to any person other than an affiliate of such holder, until the approval of the Indenture Consent (as defined in the Letter Agreement).

Our business may not continue to generate cash flow from operations in the future sufficient to service our debt, including the 2021 Notes, and make necessary capital expenditures. If we are unable to generate such cash flow, we may be required to adopt one or more alternatives, such as selling assets, restructuring debt or obtaining additional equity capital on terms that may be onerous or highly dilutive. Our ability to refinance our indebtedness will depend on the capital markets and our financial condition at such time. We may not be able to engage in any of these activities or engage in these activities on desirable terms, which could result in a default on our debt obligations.

The convertible note holders will not be entitled to any rights with respect to our common stock, but will be subject to all changes made with respect to our common stock.

Holders of notes will not be entitled to any rights with respect to our common stock (including, without limitation, voting rights and rights to receive any dividends or other distributions on our common stock), but note holders will be subject to all changes affecting our common stock. For example, if an amendment is proposed to our certificate of incorporation requiring stockholder approval and the record date for determining the stockholders of record entitled to vote on the amendment occurs prior to the relevant conversion date, such holder will not be entitled to vote on the amendment to our certificate of incorporation, although such holder will nevertheless be subject to any changes in the powers, preferences or special rights of our common stock.

Risks related to our system infrastructure and software solutions business

The market for our systems infrastructure and software solutions is new and unproven and may not grow.

We believe our future success will depend in large part on establishing and growing a market for our systems infrastructure and that our solutions and systems are able to provide operational intelligence, particularly designed to collect and index machine data. Our systems infrastructure and software solutions are designed to address interoperability challenges across the healthcare continuum. They integrate big data with real time resources and, for some functions and features apply machine learning algorithms to inform and optimize treatment decisions. In order to grow our business, we intend to expand the functionality of our offerings to increase acceptance and use by the broader market. In particular, our Eviti and NaviNet systems infrastructure and software solutions are targeted at those in the healthcare continuum that are transitioning from fee-for-service to a value-based reimbursement model. While we believe this to be the current trend in healthcare, this trend may not continue in the future. Our systems infrastructure and software solutions are less effective with a traditional fee-for-service model and if there is a reversion in the industry towards fee-for-service, or a shift to another model, we would need to update our offerings and we may not be able to do so effectively or at all. It is difficult to predict customer adoption and renewal rates, customer demand for our software, the size and growth rate of the market for our solutions, the entry of competitive products or the success of existing competitive products. Many of our potential customers may already be party to existing agreements for competing offerings that may have lengthy terms or onerous termination provisions, and they may have already made substantial investments into those platforms which would result in high switching costs. Any expansion in our market depends on several factors, including the cost, performance and perceived value associated with our solutions, particularly considering the shifting market dynamics. The rate of adoption of our systems infrastructure and software solutions, may slow or decline in the future, which would harm our business and operating results. In

addition, while many large payers use our solutions, many of these entities use only certain of our offerings, and we may not be successful in driving broader adoption of our solutions among these existing users, which would limit our revenue growth.

If the market for our offerings does not achieve widespread adoption or there is a reduction in demand for our offerings caused by a lack of customer acceptance, technological challenges, lack of accessible machine data, competing technologies or products, decreases in corporate spending, weakening economic conditions, or otherwise, it could result in reduced customer orders, early terminations, reduced renewal rates or decreased revenues, any of which would adversely affect our business operations and financial results. You should consider our business and prospects in light of the risks and difficulties we may encounter in this new and unproven market.

The data and information that we provide to our customers and their constituents, could be inaccurate or incomplete, which could harm both patients and our business, financial condition and results of operations.

Some of our software solutions store and display data from a variety of third-party sources for use in treating patients and to search and compare options for healthcare services and treatments. As part of our Eviti platform, we provide up-to-date information regarding research in the diseases that our solutions support (e.g. cancer and autoimmune disease), along with a list of potential treatments and relevant clinical trials seeking enrollment. Most of this data comes from health plans, our customers, published guidelines, peer-reviewed journals and other third parties. Because data in the healthcare industry is often fragmented in origin, inconsistent in format and often incomplete, the overall quality of certain types of data we receive can be poor. If this data is incorrect or incomplete or if we make mistakes in the capture or input of their data, or in our interpretation or analysis of such data, adverse consequences, including patient death and serious injury, may occur and give rise to product liability and other claims against us. In addition, a court or government agency may take the position that our storage and display of health information exposes us to personal injury liability or other liability for wrongful delivery or handling of healthcare services or erroneous health information. While we maintain insurance coverage, we cannot assure that this coverage will prove to be adequate or will continue to be available on acceptable terms, if at all. Even unsuccessful claims could result in substantial costs, reputational damage, and diversion of management resources. A claim brought against us that is uninsured or under-insured could harm our business, financial condition and results of operations.

Our use of open source technology could impose limitations on our ability to commercialize our offerings.

Our offerings incorporate open source software components that are licensed to us under various public domain licenses. Some open source software licenses require users who distribute open source software as part of their software to publicly disclose all or part of the source code to such software or make available any derivative works of the open source code on unfavorable terms or at no cost. There is little or no legal precedent governing the interpretation of many of the terms of these licenses and therefore the potential impact of such terms on our business is not fully known or predictable. There is a risk that such licenses could be construed in a manner that imposes unanticipated conditions or restrictions on our ability to market our software products and services. While we monitor our use of open source software and try to ensure that none is used in a manner that would require us to disclose the source code of our proprietary solutions or that would otherwise breach the terms of an open source agreement, such use could inadvertently occur and we may be required to release our proprietary source code, pay damages for breach of contract, re-engineer one or more of our offerings, discontinue sales of one or more of our offerings in the event re-engineering cannot be accomplished on a timely basis or take other remedial action that may divert resources away from our development efforts, any of which could cause us to breach obligations to our customers, harm our reputation, result in customer losses or claims, increase our costs or otherwise adversely affect our business and operating results.

If we are not able to enhance our systems infrastructure or software solutions to achieve market acceptance and keep pace with technological developments, our business will be harmed.

Our ability to attract new subscribers and licensees, and increase revenue from existing subscribers and licensees, depends in large part on our ability to enhance and improve our existing offerings and to introduce new products and services, including products and services designed for a mobile user environment. To grow our business, we must develop products and services that reflect the changing nature of business management software and expand our offerings. The success of any enhancements to our offerings depends on several factors, including timely completion, adequate quality testing and sufficient demand. Any new product or service that we develop may not be introduced in a timely or cost-effective manner, may contain defects or may not achieve the market acceptance necessary to generate sufficient revenue. If we are unable to successfully develop new products or services, enhance our existing offerings to meet subscriber requirements or otherwise gain market acceptance, our business and operating results will be harmed.

In addition, because many of our offerings are available over the Internet, we need to continuously modify and enhance them to keep pace with changes in Internet-related hardware, software, communications and database technologies and standards. If we are unable to respond in a timely and cost-effective manner to these rapid technological developments and changes in standards, our

offerings may become less marketable, less competitive or obsolete, and our operating results will be harmed. If new technologies emerge that are able to deliver competitive products and applications at lower prices, more efficiently, more conveniently or more securely, such technologies could adversely impact our ability to compete. Our offerings must also integrate with a variety of network, hardware, mobile, and software platforms and technologies, and we need to continuously modify and enhance them to adapt to changes and innovation in these technologies. Any failure of our offerings to operate effectively with future infrastructure platforms and technologies could reduce the demand for such offerings. If we are unable to respond to these changes in a cost-effective manner, our offerings may become less marketable, less competitive or obsolete, and our operating results may be adversely affected.

Our data suppliers might restrict our use of or refuse to license data, which could lead to our inability to provide certain products or services.

A portion of the data that we use is either purchased or licensed from third parties or is obtained from our customers for specific customer engagements. Although we typically enter into long-term contractual arrangements with many of these suppliers of data, at the time of entry into a new contract or renewal of an existing contract, suppliers may increase restrictions on our use of such data, increase the price they charge us for data or refuse altogether to license the data to us. In addition, during the term of any data supply contract, suppliers may fail to adhere to our data quality control standards or fail to deliver data. Further, although no single individual data supplier is material to our business, if a number of suppliers collectively representing a significant amount of data that we use for one or more of our services were to impose additional contractual restrictions on our use of or access to data, fail to adhere to our quality-control standards, repeatedly fail to deliver data or refuse to provide data, now or in the future, our ability to provide those services to our customers could be materially adversely impacted, which may harm our operating results and financial condition.

We believe that we have rights necessary to use the data that is incorporated into our offerings. However, in the future, data providers could withdraw their data from us if there is a competitive reason to do so, or if legislation is passed restricting the use of such data, or if judicial interpretations are issued restricting the use of the data that we currently use in our products and services. If a substantial number of data providers were to withdraw their data, our ability to provide our offerings to our customers could be materially adversely impacted.

For example, in order to deliver the full functionality offered by some of our solutions, we need access, on behalf of our customers, to sources of pricing and claims data, much of which is managed by a limited number of health plans and other third parties. We have developed various long-term and short-term data sharing relationships with certain health plans and other third parties, including some of the largest health plans in the United States. The health plans and other third parties that we currently work with may, in the future, change their position and limit or eliminate our access to pricing and claims data, increase the costs charged to us for access to data, provide data to us in more limited or less useful formats, or restrict our permitted uses of data. Furthermore, some health plans have developed or are developing their own proprietary price and quality estimation tools and may perceive continued cooperation with us as a competitive disadvantage and choose to limit or discontinue our access to pricing and claims data. Failure to continue to maintain and expand our access to pricing and claims data will adversely impact our ability to continue to serve existing customers and expand our offerings to new customers.

Failure by our customers to obtain proper permissions and waivers may result in claims against us or may limit or prevent our use of data which could harm our business.

We require our customers and business associates to provide necessary notices and to obtain necessary permissions and waivers for use and disclosure of the information that we receive, and we require contractual assurances from them that they have done so and will do so. If they do not obtain necessary permissions and waivers, then our use and disclosure of information that we receive from them or on their behalf may be limited or prohibited by state or federal privacy laws or other laws. This could impair our functions, processes and databases that reflect, contain or are based upon such data and may prevent use of such data. In addition, this could interfere with or prevent creation or use of rules, analyses or other data-driven activities that benefit us. Moreover, we may be subject to claims or liability for use or disclosure of information by reason of lack of valid notice, permission or waiver. These claims or liabilities could subject us to unexpected costs and adversely affect our operating results.

Our sales cycle can be lengthy and unpredictable, which may cause our revenue and operating results to fluctuate significantly.

Our sales cycle can be lengthy and unpredictable. Our sales efforts involve educating our customers about the use and benefits of our offerings and solutions, including the technical capabilities of our solutions and the potential cost savings and productivity gains achievable by deploying them. Additionally, many of our potential customers are typically already in long-term contracts with their current providers and face significant costs associated with transitioning to our offerings and solutions. As a result, potential customers typically undertake a significant evaluation process, which frequently involves not only NantHealth solutions and

component systems infrastructure and platforms but also their existing capabilities and solutions and can result in a lengthy sales cycle. We spend substantial time, effort and money on our sales efforts without any assurance that our efforts will produce any sales. In addition, purchases of NantHealth solutions and component systems infrastructure are frequently subject to budget constraints, multiple approvals and unplanned administrative, processing and other delays. For example, currently, hospitals in the United States face significant uncertainty over the continuing impact of federal government budgets, and continuing changes in the implementation and deadlines for compliance with the Patient Protection and Affordable Care Act of 2010, or ACA, and other healthcare reform legislation, as well as potential future statutes and rulemaking. Many of our potential hospital customers have used all or a significant portion of their revenues to comply with federal mandates to adopt electronic medical records to maintain their Medicaid and Medicare reimbursement levels. In the event we are unable to manage our lengthy and unpredictable sales cycle, our business may be adversely affected.

We bill our customers and recognize revenue over the term of the contract for certain of our products. As a result, near term declines in new or renewed agreements for these products may not be reflected immediately in our operating results and may be difficult to discern.

A portion of our revenue in each quarter is derived from agreements entered with our customers during previous quarters. Consequently, a decline in new or renewed agreements in any one quarter may not be fully reflected in our revenue for that quarter. Such declines, however, would negatively affect our revenue in future periods and the effect of significant downturns in sales of and market demand for certain of our solutions, and potential changes in our rate of renewals or renewal terms, may not be fully reflected in our results of operations until future periods. In addition, we may be unable to adjust our cost structure rapidly, or at all, to take account for reduced revenue. Our subscription model for certain of our solutions also makes it difficult for us to increase our total revenue through additional sales in any quarterly period, as revenue from new customers for those products must be recognized over the applicable term of the agreement. Accordingly, the effect of changes in the industry impacting our business or changes we experience in our new sales may not be reflected in our short-term results of operations.

A large portion of our revenue is derived from a small group of our customers, and the loss of such customers could adversely affect our business.

During the year ended December 31, 2022 we derived 27.7% of our revenue through a single channel partner, who contracts with various health plans and other healthcare entities to manage the utilization of specialty health services for their covered members, and another 13.0% of our revenue through a customer of our NaviNet solution. On June 30, 2022, we received a notice of termination from the single channel partner, such termination will be effective June 30, 2023. We cannot guarantee that we will be able to find new sources of revenue to offset the termination by this channel partner or that the above mentioned NaviNet customer or any of our other customers or partners will continue to contract for our services or acquire new services. We are currently in discussions with the channel partner regarding a new commercial agreement but if we are unable to establish a new agreement with the channel partner regarding such new commercial arrangement or our major NaviNet customer does not renew its agreement with us, our revenue could be greatly reduced, which would materially and adversely affect our business.

Customer churn is a natural part of our business and, while there is no guarantee that we will be able to offset the loss of this customer in the short term, we continue to develop new product enhancements and offerings to help drive customer acquisition and expansion opportunities to replace this lost revenue in the long term.

If our existing customers do not continue to renew their agreements with us, renew at lower fee levels or decline to purchase additional applications and services from us, our business and operating results will suffer.

We expect to derive a significant portion of our revenue from renewal of existing customer agreements, and sales of additional applications and services to existing customers. As a result, achieving high customer satisfaction to keep existing customers and sell additional platform offerings is critical to our future operating results.

Factors that may affect the renewal rate for our offerings and our ability to sell additional solutions include:

- the price, performance and functionality of our offerings;
- the availability, price, performance and functionality of competing solutions;
- a customer's desire and ability to develop their own internal solution;
- our ability to develop complementary applications and services;
- our continued ability to access the pricing and claims data necessary to enable us to deliver reliable data in our cost estimation and price transparency offering to customers;
- the stability, performance and security of our SaaS infrastructure and services;
- changes in healthcare laws, regulations or trends; and
- the business environment of our customers, in particular, headcount reductions by our customers.

For our SaaS solutions, we typically enter into master services agreements with our customers. These agreements generally have stated terms of three to five years. Our customers have no obligation to renew their subscriptions for our offering after the term expires. In addition, our customers may negotiate terms less advantageous to us upon renewal, which may reduce our revenue from these customers. Factors that are not within our control may contribute to a reduction in our contract revenue. For instance, our customers may reduce their number of employees, which would result in a corresponding reduction in the number of employee users eligible for our offering and thus a lower aggregate monthly services fee. Our future operating results also depend, in part, on our ability to sell new solutions to our existing customers. If our customers fail to renew their agreements, renew their agreements upon less favorable terms or at lower fee levels, or fail to purchase new solutions from us, our revenue may decline, or our future revenue may be constrained.

In addition, a significant number of our customer agreements allow our customers to terminate such agreements for convenience at certain times, typically with one to three months advance notice. Any cancellations of such agreements would have a negative result on our business and results of operations. For example, we received a notice of termination from our largest single channel partner, which such termination will be effective on June 23, 2023. If we fail to renew this agreement or renew this agreement upon less favorable terms or at lower fee levels or fail to grow our customer base to offset the loss of this channel partner, it may cause our revenue to decline in the future or our future revenue may be constrained.

If any new applications and services we may develop or acquire in the future are not adopted by our customers, or if we fail to continue to innovate and develop or acquire new applications and services that are adopted by customers, then our revenue and operating results will be adversely affected.

In addition to past investments made in NantHealth solutions, and component systems infrastructure and platforms, we have invested, and will continue to invest, significant resources in research and development and in acquisitions to enhance our existing offerings and introduce new high-quality applications and services. If existing customers are not willing to make additional payments for such new applications or services, or if new customers do not value such new applications or services, our business and operating results will be harmed. If we are unable to predict user preferences or our industry changes, or if we are unable to modify our offering and services on a timely basis, we might lose customers. Our operating results would also suffer if our innovations and acquisitions are not responsive to the needs of our customers, are not appropriately timed with market opportunity or are not effectively brought to market.

Security breaches and incidents, loss of data and other disruptions could compromise sensitive information related to our business and/or protected health information or prevent us from accessing critical information and expose us to liability, which could adversely affect our business and our reputation.

In the ordinary course of our business, we and our customers, consultants, contractors and business associates collect and store petabytes of sensitive data, including legally protected health information, personally identifiable information, intellectual property and proprietary business information owned or controlled by ourselves or our customers, payers, providers and partners. We manage and maintain our applications and data by utilizing a combination of on-site systems, managed data center systems, and cloud-based data center systems. These applications and data encompass a wide variety of business-critical information, including research and development information, commercial information and business and financial information. We face risks relative to protecting this critical information, including loss of access risk, inappropriate disclosure risk, inappropriate modification risk and the risk of being unable to adequately monitor our controls.

The secure processing, storage, maintenance and transmission of this critical information is vital to our operations and business strategy, and we devote significant resources to protecting such information. Although we take measures to protect sensitive information from unauthorized access or disclosure, our information technology and infrastructure, and that of our third-party billing and collections provider and other third parties that maintain or otherwise process such information for us, are vulnerable to attacks by hackers or viruses, breaches, security incidents, employee error, malfeasance or other events. For example, in August 2022, we became aware of unauthorized activity in a customer's account, which involved payments issued to a fraudulent account, unauthorized access to certain protected health information, and caused us to incur costs to respond to the incident. Any such breach or incident could result in a disruption or interruption to, or compromise, our networks and systems or those of our third-party service providers or partners, and the information stored or otherwise processed there could be publicly disclosed, accessed, rendered unavailable, used, modified, disclosed or otherwise processed without authorization, lost or stolen. Any such event, or the perception that any such event has occurred, could result in legal claims or proceedings (including regulatory investigations and enforcement actions), liability under laws that protect the privacy of personal information, such as the Health Insurance Portability and Accountability Act ("HIPAA"), regulatory penalties and other liabilities. Although we have implemented security measures and a formal, dedicated enterprise security program in an effort to prevent unauthorized access to patient data, there is no guarantee we can continue to protect our online portal or will be able to protect our mobile applications from breach. Unauthorized access to, or unavailability, loss or dissemination of data, or unauthorized access to, interruptions or other disruptions to systems, whether

maintained by us or by third parties performing services for us, could also disrupt our operations, including our ability to conduct our analyses, bill payers, providers or patients, process claims and appeals, provide customer assistance services, conduct research and development activities, collect, process and prepare company financial information, provide information about our products and other patient and physician education and outreach efforts through our website, manage the administrative aspects of our business and damage our reputation, any of which could adversely affect our business.

Additionally, ransomware attacks, including these from organized criminal threat actors, nation-states and nation-state supported actors, are becoming increasingly prevalent and severe and can lead to significant interruptions, delays, or outages in our operations, disruptions in our services, loss or unavailability of data, loss of income, significant extra expense to restore data or systems, reputational loss and the diversion of funds. Furthermore, there may be heightened risk of potential attacks by state actors or others since the escalation of the situation in Ukraine. To alleviate the financial, operational and reputational impact of a ransomware attack, it may be preferable to make extortion payments, but we may be unwilling or unable to do so (including, for example, if applicable laws or regulations prohibit such payments).

The U.S. Office of Civil Rights may impose penalties on us if we do not fully comply with requirements of HIPAA. Penalties will vary significantly depending on factors such as whether we knew or should have known of the failure to comply, or whether our failure to comply was due to willful neglect. These penalties include civil monetary penalties of \$100 to \$50,000 per violation, up to an annual cap of \$1,500,000 for identical violations. A person who knowingly obtains or discloses individually identifiable health information in violation of HIPAA may face a criminal penalty of up to \$50,000 per violation and up to one-year imprisonment. The criminal penalties increase to \$100,000 per violation and up to five years imprisonment if the wrongful conduct involves false pretenses, and to \$250,000 per violation and up to 10 years imprisonment if the wrongful conduct involves the intent to sell, transfer, or use identifiable health information for commercial advantage, personal gain, or malicious harm. The U.S. Department of Justice is responsible for criminal prosecutions under HIPAA. Furthermore, in the event of a breach as defined by HIPAA, we have specific reporting requirements to the Office of Civil Rights under the HIPAA regulations as well as to affected individuals, and we may also have additional reporting requirements to other state and federal regulators, including the Federal Trade Commission, and/or to the media. Issuing such notifications can be costly, time and resource intensive, and can generate significant negative publicity. Breaches of HIPAA may also constitute contractual violations, and such contractual violations or any other contractual violations relating to a security breach or incident, could lead to claims, damages, legal proceedings, and contractual damages, other liability or terminations.

In addition, the interpretation and application of consumer, healthcare privacy, data protection and cybersecurity laws in the United States, Europe and elsewhere are often uncertain, contradictory and in flux. It is possible that these laws may be interpreted and applied in a manner that is inconsistent with our practices. If so, this could result in claims, proceedings, damages, and liabilities, including government-imposed fines, and orders requiring that we change our practices, which could adversely affect our business. In addition, these laws and regulations vary between states, countries and other jurisdictions, and may vary based on whether services or operations are performed in the jurisdiction. Complying with these various laws and regulations could cause us to incur substantial costs or require us to change our business practices and compliance procedures in a manner adverse to our business.

If we experience fraudulent activity relating to our system infrastructure and products, we could incur substantial costs.

Our products have in the past and may be subject to fraudulent usage, including but not limited to electronic fund transfer (“EFT”) fraud, unauthorized access to protected health information and other fraudulent schemes. Although our customers and the provider office users who access our products on behalf of the customer are required to set passwords or personal identification numbers to protect their accounts, third parties have in the past been, and may in the future be, able to access and use their accounts through fraudulent means. For example, in January 2023, a user in one of the provider offices accessing NaviNet on behalf of one of our customers experienced a cybersecurity breach of its systems, which resulted in unauthorized access of certain users’ NaviNet accounts that resulted in EFT fraud. Cyberattacks are increasing in their frequency, sophistication and intensity. The techniques used to sabotage or to obtain unauthorized access to our products or those upon which we, our customers and the provider office users rely to process our information change frequently, and we, our customers and the provider office users may be unable to anticipate such techniques or implement adequate preventative measures or to stop security incidents in all instances. Any cybersecurity breach or security incident impacting our, our customers’ or the provider office users’ systems could result in exposure of authentication credentials, unauthorized access to accounts or fraudulent calls on accounts, any of which could adversely affect our reputation, business, results of operations and financial condition.

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

Our ability to deliver our Internet-based services is dependent on the development and maintenance of the infrastructure of the Internet and other telecommunications services by third parties, including bandwidth and telecommunications equipment providers. This includes maintenance of a reliable network connection with the necessary speed, data capacity and security for providing reliable Internet access and services. We exercise limited control over these third-party providers. As a result, our information systems require an ongoing commitment of significant resources to maintain and enhance existing systems and develop new systems in order to keep pace with continuing changes in IT, emerging cybersecurity risks and threats, evolving industry and regulatory standards and changing preferences of our customers.

Our services are designed to operate without perceptible interruption in accordance with our service level commitments. We have, however, experienced limited interruptions in these services in the past, and we expect that we will in the future experience interruptions and delays in services and availability from time to time. We rely on internal systems as well as third-party vendors, including data center providers and bandwidth providers, to provide our services. We store, process and transport petabytes of data and the nature of our business requires us to scale our storage capacity. In the event we are unable to scale appropriately, we may lose customers or fail to realize the network effects of our system and our business may be impaired. We do not currently maintain redundant systems or facilities for some of these services. Our operations and facilities are vulnerable to interruption and/or damage from a number of sources, many of which are beyond our control, including, without limitation: power loss and telecommunications failures; fire, flood, hurricane, tornado and other natural disasters; software and hardware errors, failures or crashes; and cyber and ransomware attacks, computer viruses, hacking, break-ins, sabotage, intentional acts of vandalism and other similar disruptive problems. The occurrence of any of these events could result in interruptions, delays or cessations in service to users of our services, which could impair or prohibit our ability to provide our services, reduce the attractiveness of our services to our customers and could have a material adverse impact on our business, results of operations or financial condition. If user access to our services is interrupted because of problems in our operations, we could be in breach of our agreements with customers and/or exposed to significant claims, particularly if the access interruption is associated with problems in the timely delivery of medical care. In the event of a catastrophic event with respect to one or more of these systems or facilities, we may experience an extended period of system unavailability, which could result in substantial cost to remedy such unavailability and negatively impact our relationship with our customers and our business. To operate without interruption, both we and our service providers must guard against:

- damage from fire, power loss and other natural disasters;
- communications failures;
- software and hardware errors, failures and crashes;
- security breaches and incidents, computer viruses and similar disruptive problems; and
- other potential interruptions.

In addition, many of our third-party vendors, including data center providers, do not have an obligation to renew their agreements with us on commercially reasonable terms, or at all. If we are unable to renew our agreements with these providers on commercially reasonable terms, if our agreements with our providers are prematurely terminated, due to such providers insolvency, catastrophic damage to such provider's data centers or otherwise, or if in the future we add additional third-party vendors, including data center providers, we may experience costs or downtime in connection with the transfer to, or the addition of, new providers. If these third-party vendors were to increase the cost of their services, we may have to increase the price of our existing and future offerings, and our business may be harmed.

Any disruption in the network access or co-location, hosting or cloud services provided by third-party providers or any failure of or by third-party providers or our own systems to handle current or higher volume of use could significantly harm our business. We exercise limited control over third-party vendors, which increases our vulnerability to problems with services they provide.

We also rely on a number of vendors, such as cloud service providers, to provide us with a variety of solutions and services, including cloud-based data hosting, telecommunications and data processing services necessary for our services and processing functions and software developers for the development and maintenance of certain software products we use to provide our solutions. We exercise limited control over vendors, which increases our vulnerability to problems with services they provide. Any errors, failures, interruptions or delays experienced in connection with third-party technologies and information services or our own systems could negatively impact our relationships with customers and adversely affect our business and could expose us to third-party liabilities. Although we maintain insurance for our business, the coverage under our policies may not be adequate to compensate us for all losses that may occur. In addition, we cannot provide assurance that we will continue to be able to obtain adequate insurance coverage at an acceptable cost. If vendors do not fulfill their contractual obligations, have system failures or choose to discontinue their products or services, our business and operations could be disrupted, our brand and reputation could be harmed, and our financial condition or results of operations could be adversely affected.

The reliability and performance of the Internet may be harmed by increased usage or by denial-of-service attacks. The Internet has experienced a variety of outages and other delays as a result of damages to portions of its infrastructure, and it could face outages and delays in the future. These outages and delays could reduce the level of Internet usage as well as the availability of the

Internet to us for delivery of our internet-based services. Any failure to offer high-quality technical support services may adversely affect our relationships with our customers and harm our financial results.

Because of the complexity of the issues facing healthcare providers and payers and the inherent complexity of our solutions to such issues, our customers depend on our support organization to resolve any technical issues relating to our offerings. In addition, our sales process is highly dependent on the quality of our offerings, our business reputation and on strong recommendations from our existing customers. Any failure to maintain high-quality and highly responsive technical support, or a market perception that we do not maintain high-quality and highly responsive support, could harm our reputation, adversely affect our ability to sell our offerings to existing and prospective customers, and harm our business, operating results and financial condition.

We offer technical support services with our offerings and we may be unable to respond quickly enough to accommodate short-term increases in customer demand for support services, particularly as we increase the size of our customer base. We also may be unable to modify the format of our support services to compete with changes in support services provided by competitors. It is difficult to predict customer demand for technical support services and if customer demand increases significantly, we may be unable to provide satisfactory support services to our customers and their constituents. Additionally, increased customer demand for these services, without corresponding revenue, could increase costs and adversely affect our operating results.

If we cannot implement NantHealth solutions and component systems infrastructure and platforms for customers in a timely manner, we may lose customers and our reputation may be harmed.

Our customers have a variety of different data formats, enterprise applications and infrastructures, and NantHealth solutions and component systems infrastructure and platforms, must support our customers' data formats and integrate with complex enterprise applications and infrastructures. If our platforms do not currently support a customer's required data format or appropriately integrate with a customer's applications and infrastructure, then we must configure our systems infrastructure to do so, which increases our expenses. Additionally, we do not control our customers' implementation schedules. As a result, if our customers do not allocate internal resources necessary to meet their implementation responsibilities or if we face unanticipated implementation difficulties, the implementation may be delayed. Further, our implementation capacity has at times constrained our ability to successfully implement our offerings for our customers in a timely manner, particularly during periods of high demand. If the customer implementation process is not executed successfully or if execution is delayed, we could incur significant costs, customers could become dissatisfied and decide not to increase usage of our offerings, or not to use our offerings beyond an initial period prior to their term commitment or, in some cases, revenue recognition could be delayed. In addition, competitors with more efficient operating models with lower implementation costs could penetrate our customer relationships.

Additionally, large and demanding enterprise customers, who currently comprise most of our customer base, may request or require specific features or functions unique to their business processes, which increase our upfront investment in sales and deployment efforts and the revenue resulting from the customers under our typical contract length may not cover the upfront investments. If prospective large customers require specific features or functions that we do not offer, then the market for our offerings will be more limited and our business could suffer.

In addition, supporting large customers could require us to devote significant development services and support personnel and strain our personnel resources and infrastructure. Furthermore, if we are unable to address the needs of these customers in a timely fashion or further develop and enhance our offerings, or if a customer or its constituents are not satisfied with the quality of work performed by us or with the offerings delivered or professional services rendered, then we could incur additional costs to address the situation, we may be required to issue credits or refunds for pre-paid amounts related to unused services, the profitability of that work might be impaired and the customer's dissatisfaction with our offerings could damage our ability to expand the number of applications and services purchased by that customer. Furthermore, if a customer or its constituents do not opt into or need certain aspects of our offerings, there may not be enough demand for that aspect of our offering to warrant future purchases by that customer, or the customer may seek to terminate their relationship with us. These customers may not renew their agreements, seek to terminate their relationship with us or renew on less favorable terms. Moreover, negative publicity related to our customer relationships, regardless of its accuracy, may further damage our business by affecting our ability to compete for new business with current and prospective customers. If any of these were to occur, our revenue may decline, and our operating results could be adversely affected.

We face intense competition in our markets, and we may be unable to compete effectively for new customers.

Although our product offerings target the new and emerging market for evidence-based personalized healthcare technology solutions, we compete against a variety of large software vendors and smaller specialized companies, open source initiatives and custom development efforts, which provide solutions in the specific markets we address. Our principal competitors include:

- Payer-provider collaboration vendors, such as Availity, LLC, Change Healthcare, Inc., Experian Information Solutions, Inc. (including its Experian Health/Passport division), Zipari, Inc. (formerly Healthx), Cohere Health and Health-Trio, LLC;
- Payer-provider specialty care cost management vendors, including The Advisory Board Company healthcare business (acquired by Optum), Evolent Health, eviCore Healthcare, HealthCatalyst, Inc., International Business Machines Corporation, or IBM, Inovalon Holdings, Inc., NCH Management Systems, Inc. (dba New Century Health), Oncology Analytics, Inc. (dba OncoHealth) and Truven Health Analytics (acquired by IBM);
- Network monitoring vendors, including Zabbix, LLC, LogicMonitor, Inc., SolarWinds Worldwide, LLC, SevOne, Splunk and Datadog, Inc.

The principal competitive factors in our markets include product features, performance and support, product scalability and flexibility, ease of deployment and use, total cost of ownership and time to value. Some of our actual and potential competitors have advantages over us, such as longer operating histories, significantly greater financial, technical, marketing or other resources, stronger brand and business user recognition, larger intellectual property portfolios and broader global distribution and presence. Further, competitors may be able to offer products or functionality similar to ours at a more attractive price than we can by integrating or bundling their software products with their other product offerings. In addition, our industry is evolving rapidly and is becoming increasingly competitive. Larger and more established companies may focus on creating a learning system or solutions that could directly compete with one or more of our offerings. If companies move a greater proportion of their data and computational needs to the cloud, new competitors may emerge which offer services comparable to ours or that are better suited for cloud-based data, and the demand for one or more of our offerings may decrease. Smaller companies could also launch new products and services that we do not offer and that could gain market acceptance quickly.

In recent years, there have been significant acquisitions and consolidation by and among our actual and potential competitors. We anticipate this trend of consolidation will continue, which will present heightened competitive challenges to our business. In particular, consolidation in our industry increases the likelihood of our competitors offering bundled or integrated products, and we believe that it may increase the competitive pressures we face with respect to our solutions. If we are unable to differentiate one or more of our offerings from the integrated or bundled products of our competitors, such as by offering enhanced functionality, performance or value, we may see decreased demand for those solutions, which would adversely affect our business, results of operations, financial condition and cash flows. Further, it is possible that continued industry consolidation may impact our customers' and prospective customers' perceptions of the viability of smaller or even medium-sized software firms and, consequently, their willingness to use technology solutions from such firms. Similarly, if customers seek to concentrate their technology purchases in the product portfolios of a few large providers, we may be at a competitive disadvantage regardless of the performance and features of our offerings. We believe that in order to remain competitive at the large enterprise level, we will need to develop and expand relationships with resellers and large system integrators that provide a broad range of products and services. If we are unable to compete effectively, our business, results of operations, financial condition and cash flows could be materially and adversely affected.

The healthcare technology industry in which we operate is subject to rapidly changing technologies and trends, each of which could contribute to making our products obsolete.

The markets for cloud-based data platforms and internet-based business services such as NantHealth solutions and component systems infrastructure and platforms and their associated offerings are in the early stages of development, but the market is competitive even at this stage, and we expect it to attract increased competition, which could make it hard for us to succeed. We currently face competition for one or more of our offerings from a range of companies. In addition, large, well-financed health plans, with whom we cooperate and on whom we depend in order to obtain the pricing and claims data we need to deliver our offerings to customers have in some cases developed their own cost and quality estimation tools and provide these solutions to their customers at discounted prices or often for free. If enterprises do not perceive the benefits of our services, then the market for these services may not develop at all, or it may develop more slowly than we expect, either of which would materially adversely affect our operating results. In addition, as a new company in this unproven market, we have limited insight into trends that may develop and affect our business. We may make errors in predicting and reacting to relevant business trends, which could harm our business. If any of these risks occur, it could materially adversely affect our business, financial condition or results of operations.

Healthcare industry consolidation could impose pressure on our prices, reduce our potential customer base and reduce demand for one or more of our offerings.

Many hospitals, imaging centers and third-party payers have consolidated to create larger healthcare enterprises with greater market and purchasing power. In addition, group purchasing organizations and managed care organizations could increase pressure on providers of healthcare related services to reduce prices. If this consolidation trend continues, it could reduce the size of our potential customer base and give the resulting enterprises greater bargaining or purchasing power, which may lead to erosion of the prices for our software or decreased margins for our offerings.

Our offerings and solutions may experience design or manufacturing defects from time to time that can result in decreased sales, decreased operating margins and reduced network effects to NantHealth solutions and component systems infrastructure and platforms which could materially and adversely affect our reputation and business.

We sell and/or rely upon software and hardware solutions that could contain design or manufacturing defects in their materials, hardware, or software. These defects could include defective materials or components, or “bugs” that can unexpectedly interfere with the products’ intended operations or result in inaccurate data. Our online services may from time-to-time experience outages, service slowdowns, or errors. Defects may also occur in components and products we purchase from third parties. There can be no assurance we will be able to detect and fix all defects in the hardware, software and services third parties sell to us. Failure to detect, prevent, or fix defects could result in a variety of consequences, including returns of products, regulatory proceedings, product recalls, and litigation, which could harm our revenue and operating results. If our products fail to provide accurate measurements and data to users, then the network effects of our adaptive clinical learning system may be materially and adversely impacted.

Our solutions could give rise to product liability claims and product recall events that could materially and adversely affect our financial condition and results of operations.

The development, manufacturing and sale of hardware components in connection with some of our software solutions expose us to significant risk of product liability claims, product recalls and, occasionally, product failure claims. We face an inherent business risk of financial exposure to product liability claims if the use of our solutions or services, including companion hardware products, results in personal injury or death. Some of our solutions or services may become subject to product liability claims and/or product recalls. Future product liability claims and/or product recall costs may exceed the limits of our insurance coverages or such insurance may not continue to be available to us on commercially reasonable terms, or at all. In addition, a significant product liability claim, or product recall could significantly damage our reputation for producing safe, reliable and effective products, making it more difficult for us to market and sell our products in the future. Consequently, a product liability claim, product recall or other claim could have a material adverse effect on our business, financial condition, operating results and cash flows.

Risks related to our OpenNMS open source business

Our OpenNMS business incorporates third-party open source software, which could negatively affect our ability to sell our OpenNMS solutions and subject us to possible litigation.

Our OpenNMS platform includes third-party open source software and we intend to continue to incorporate third-party open source software in our OpenNMS platform in the future. There is a risk that the use of third-party open source software in our OpenNMS platform could impose conditions or restrictions on our ability to monetize our software. Although we monitor the incorporation of open source software into our OpenNMS platform to avoid such restrictions, we cannot be certain that we have not incorporated open source software in our OpenNMS platform in a manner that is inconsistent with our licensing model. Certain open source projects also include other open source software and there is a risk that those dependent open source libraries may be subject to inconsistent licensing terms. This could create further uncertainties as to the governing terms for the open source software we incorporate.

In addition, the terms of certain open source licenses to which we are subject have not been interpreted by U.S. or foreign courts and there is a risk that open source software licenses could be construed in a manner that imposes unanticipated restrictions or conditions on our use of such software. Additionally, we may, from time to time, face claims from third parties claiming ownership of, or demanding release of, the software or derivative works that we developed using such open source software, which could include proprietary portions of our source code, or otherwise seeking to enforce the terms of the open source licenses. These claims could result in litigation and could require us to make those proprietary portions of our source code freely available, purchase a costly license or cease offering the implicated software or services unless and until we can re-engineer them to avoid infringement. This re-engineering process could require significant additional research and development resources and we may not be able to complete it successfully.

In addition to risks related to license requirements, use of third-party open source software can lead to greater risks than use of third-party commercial software, as open source licensors generally do not provide warranties. In addition, licensors of open source software included in our offerings may, from time to time, modify the terms of their license agreements in such a manner that those license terms may become incompatible with our licensing model and thus could, among other consequences, prevent us from incorporating the software subject to the modified license. Any of these risks could be difficult to eliminate or manage and if not addressed, could have a negative effect on our business, results of operations and financial condition.

Because of the characteristics of open source software, there may be fewer technology barriers to entry in the open source market by new competitors and it may be relatively easy for new and existing competitors with greater resources than we have to compete with our OpenNMS business.

One of the characteristics of open source software is that the governing license terms generally allow liberal modifications of the code and distribution thereof to a wide group of companies and/or individuals. As a result, others could easily develop new software products or services based upon those open source programs that compete with existing open source software that we support and incorporate into our OpenNMS platform. Such competition with use of the open source projects that we utilize can materialize without the same degree of overhead and lead time required by us, particularly if the customers do not value the differentiation of our proprietary components. It is possible for new and existing competitors, including those with greater resources than ours, to develop their own open source software or hybrid proprietary and open source software offerings, potentially reducing the demand for, and putting price pressure on, our OpenNMS services. In addition, some competitors make open source software available for free download or use or may position competing open source software as a loss leader. We cannot guarantee that we will be able to compete successfully against current and future competitors or that competitive pressure and/or the availability of open source software will not result in price reductions, reduced revenue and gross margins and loss of market share, any one of which could seriously harm our OpenNMS business.

We do not control and may be unable to predict the future course of open source technology development, including the ongoing development of open source components used in our OpenNMS platform, which could reduce the market appeal of our OpenNMS solutions and damage our reputation.

We do not control many aspects of the development of the open source technology in our OpenNMS platform. Different groups of open source software programmers collaborate with one another to develop the software projects in our OpenNMS platform. Given the disparate inputs from various developers, we cannot control entirely how an open source project develops and matures. Also, different open source projects may overlap or compete with the ones that we incorporate into our OpenNMS platform. The technology developed by one group for one project may become more widely used than that developed by others. If we acquire or adopt a new technology and incorporate it into our OpenNMS platform but a competing technology becomes more widely used or accepted, the market appeal of our OpenNMS services may be reduced and that could harm our reputation, diminish our brand and result in decreased revenue.

If open source software programmers, many of whom we do not employ, or our own internal programmers do not continue to develop and enhance open source technologies, we may be unable to develop new technologies, adequately enhance our existing technologies or meet customer requirements for innovation, quality and price.

We rely to a significant degree on a number of open source software programmers, or committers and contributors, to develop and enhance components of our OpenNMS platform. Additionally, members of the corresponding open source project management committees, are primarily responsible for the oversight and evolution of the codebases of important components of the open source data management ecosystem. If the open source data management committers and contributors fail to adequately further develop and enhance open source technologies, or if the committees fail to oversee and guide the evolution of open source data management technologies in the manner that we believe is appropriate to maximize the market potential of our solutions, then we would have to rely on other parties, or we would need to expend additional resources, to develop and enhance our OpenNMS platform. We also must devote adequate resources to our own internal programmers to support their continued development and enhancement of open source technologies, and if we do not do so, we may have to turn to third parties or experience delays in developing or enhancing open source technologies. We cannot predict whether further developments and enhancements to these technologies would be available from reliable alternative sources. In either event, our development expenses could be increased and our technology release and upgrade schedules could be delayed. Delays in developing, completing or delivering new or enhanced components to our platform could cause our offerings to be less competitive, impair customer acceptance of our solutions and result in delayed or reduced revenue for our solutions.

Our use of open source software could subject us to possible litigation or could prevent us from offering products that include open source software or require us to obtain licenses on unfavorable terms.

A portion of the technologies we use incorporate "open source" software, and we may incorporate open source software in the future. Open source licenses may subject us to certain unfavorable conditions, including requirements that we offer our products that incorporate the open source software for no cost, that we make publicly available the source code for any modifications or derivative works we create based upon, incorporating or using the open source software, or that we license such modifications or derivative works under the terms of the particular open source license. We may license to others some of our software through open source projects which require us to make the source code publicly available, and therefore can affect our ability to protect our intellectual property rights with respect to that software. If an author or other third party that distributes open source software that we use or license were to allege that we had not complied with the conditions of the applicable license, we could be required to incur significant legal expenses defending against such allegations and could be subject to significant damages, enjoined from offering our products that contained the open source software, required to release proprietary source code, required to obtain licenses from third parties or otherwise required to comply with the unfavorable conditions unless and until we can re-engineer the product so that it complies with

the open source license or does not incorporate the open source software. Any of the foregoing could disrupt our ability to offer our products and harm our business, revenue and financial results.

Risks related to our relationships with our employee other companies

We rely on third-party computer hardware and software that may be difficult to replace or which could cause errors or failures of our service which could damage our reputation, harm our ability to attract and maintain customers and decrease our revenue.

We rely on computer hardware purchased or leased and software licensed from third parties in order to offer our service. These licenses are generally commercially available on varying terms; however, it is possible that this hardware and software may not continue to be available on commercially reasonable terms, or at all. In addition, we may not be able to secure enough hardware components at reasonable prices or of acceptable quality in a timely manner in the quantities or configurations needed. For example, in response to a surge in COVID-19 infections in the first half of 2022, the Chinese government imposed lockdowns in certain parts of the country, which has had, and may continue to have, a negative impact on manufacturing and/or supply chains. If as a result of global economic or political instability, such as the ongoing escalation of the situation in Ukraine, other disease outbreaks, or supply issues, we, our third-party vendors or our contractors could experience shortages, business disruptions or delays for materials sourced or manufactured in the affected countries, their ability to supply hardware components may be affected. If any of these events occur, our business and operating results could be harmed. Accordingly, if any of the foregoing occurs, our ability to commercialize our services, revenue and gross margins could suffer until lockdowns from COVID-19 infections are reduced and supply issues or business disruptions are resolved.

Any loss of the right to use any of this hardware or software could result in delays in providing NantHealth solutions (including Eviti, and NaviNet apps) until equivalent technology is either developed by us, or, if available, is identified, obtained and integrated, which could harm our business. Any errors or defects in third-party hardware or software could result in errors or a failure of our service which could damage our reputation, harm our ability to attract and maintain customers and decrease our revenue.

We have experienced significant turnover in our senior management team and across our organization, and our failure to attract and retain qualified personnel and skilled workers could have an adverse effect on us.

We have recently experienced significant turnover in our senior management team and reductions in our workforce and have promoted employees to fill certain key roles and are conducting searches for additional key roles, including a permanent general counsel. Our business may be adversely affected by the transitions in our senior management team and reduction in workforce, and turnover at the senior management level may create instability within the Company, which could disrupt and impede our day-to-day operations, internal controls and our ability to fully implement our business plan and growth strategy. In addition, management transition inherently causes some loss of institutional knowledge, which can negatively affect strategy and execution, and our results of operations and financial condition could be negatively impacted as a result. Competition for key management personnel is intense. If we fail to successfully attract and appoint permanent replacements with the appropriate expertise, we could experience increased employee turnover and harm to our business, results of operations, cash flow and financial condition. The search for permanent replacements could also result in significant recruiting and relocation costs, as well as increased salary and benefit costs. Like most businesses, our employees are important to our success and we are dependent in part on our ability to retain the services of our key management, technical, operational, compliance, finance and administrative personnel. In order to compete and implement our growth strategy, we must attract, retain, and motivate employees, and turnover of senior management and reductions in workforce may make it difficult to retain qualified and skilled employees.

We are heavily dependent on our senior management, particularly Dr. Patrick Soon-Shiong, and a loss of a member of our senior management team in the future could harm our business.

If we lose members of our senior management, we may not be able to find appropriate replacements on a timely basis, and our business could be adversely affected. Our existing operations and continued future development depend to a significant extent upon the continued performance and active participation of certain key individuals, including Dr. Soon-Shiong, our Chairman, Chief Executive Officer and our principal stockholder. Although we expect Dr. Soon-Shiong will continue to devote on average at least 20 hours per week to our company, he will continue to primarily focus on ImmunityBio, Inc., or ImmunityBio, a publicly-traded, clinical-stage immunotherapy company, of which he is Executive Chairman and Global Chief Scientific and Medical Officer. Dr. Soon-Shiong will also devote time to other companies operating under NantWorks, a collection of multiple companies in the healthcare and technology space that Dr. Soon-Shiong founded in 2011. We do not believe Dr. Soon-Shiong has any material conflicting obligations as a result of his involvement with other companies. Additionally, we are dependent on commercial relationships with various other parties affiliated with NantWorks and with Dr. Soon-Shiong and we may enter into additional relationships in the future. If Dr. Soon-Shiong was to cease his affiliation with us or with NantWorks, these entities may be unwilling to continue these relationships with us on commercially reasonable terms, or at all. The risks related to our dependence upon Dr. Soon-Shiong are particularly acute given

his ownership percentage and role in our company. If we were to lose Dr. Soon-Shiong, we may not be able to find appropriate replacements on a timely basis and our financial condition and results of operations could be materially adversely affected. We have not entered into, nor do we intend to enter into, an employment agreement with Dr. Soon-Shiong.

We also face significant competition for employees from other healthcare-related companies and software businesses, which include both publicly-traded and privately-held companies, and we may not be able to hire new employees quickly enough to meet our needs. This competition has become exacerbated by the increase in employee resignations in 2022 reported by employers nationwide and continued high rates of employee turnover continuing into 2023. To induce valuable employees to remain at our company, in addition to salary and cash incentives, we have provided equity incentives that vest over time and, in some cases, upon the occurrence of certain events. The value to employees of these equity incentives that vest over time may be significantly affected by movements in our stock price that are beyond our control and may at any time be insufficient to counteract more lucrative offers from other companies. We may face challenges in retaining and recruiting such individuals due to sustained declines in our stock price that could reduce the retention value of equity awards. Although we may have employment agreements with certain of our key employees, these employment agreements provide for at-will employment, which means that any of our employees could leave our employment at any time, with or without notice. We do not maintain "key man" insurance policies on the lives of these individuals or the lives of any of our other employees.

Risks related to our business generally

We have in the past and may in the future acquire other companies or technologies, which could divert our management's attention, result in dilution to our stockholders and otherwise disrupt our operations and adversely affect operating results.

Part of our business model is the acquisition of technologies and businesses that promote our transformational vision for personalized healthcare. We have in the past and may in the future seek to acquire or invest in additional businesses, applications, services and/or technologies that we believe complement or expand our offerings, enhance our technical capabilities or otherwise offer growth opportunities. The pursuit of potential acquisitions may divert the attention of management and cause us to incur various expenses in identifying, investigating and pursuing suitable acquisitions, whether or not they are consummated.

For example, in January 2016, we acquired NaviNet to bolster our payer platform and, in February 2018, we acquired NantHealth Labs to expand into the liquid tumor profiling market and sold a commercial liquid biopsy test product (marketed as Liquid GPS). In July 2020, we acquired OpenNMS to expand our software and SaaS service offerings for both the healthcare sector and other industries. In the second quarter of 2019, we ceased commercial sales of the Liquid GPS product. Realizing the benefits of these acquisitions and any future acquisition depend, in part, upon the successful integration into our existing operations, and we may not be able to integrate the acquired personnel, operations and technologies successfully, or effectively manage the combined business following the acquisition. We also may not realize the anticipated benefits from any acquired business due to several factors, including:

- inability to integrate or benefit from acquired technologies or services in a profitable manner;
- unanticipated costs or liabilities associated with the acquisition;
- difficulty integrating the accounting systems, operations and personnel of the acquired business;
- difficulties and additional expenses associated with supporting legacy products and hosting infrastructure of the acquired business;
- difficulty converting the customers of the acquired business onto our platform and contract terms, including disparities in the revenue, licensing, support or professional services model of the acquired company;
- difficulty in cross-selling our existing solutions and offerings to the acquired business' customers;
- diversion of management's attention from other business concerns;
- adverse effects to our existing business relationships with business partners and customers as a result of the acquisition;
- the potential loss of key employees;
- use of resources that are needed in other parts of our business; and
- use of substantial portions of our available cash to consummate the acquisition.

In addition, a significant portion of the purchase price of companies we acquire may be allocated to acquired goodwill and other intangible assets, which must be assessed for impairment at least annually. As of March 31, 2023, the total value of our goodwill and intangible assets, net of accumulated amortization was \$127.4 million. If our acquisitions do not yield expected returns, we have in the past, and may in the future, be required to take charges to our operating results based on this impairment assessment process, which could adversely affect our results of operations.

Acquisitions could also result in dilutive issuances of equity securities or the incurrence of debt, which could adversely affect our operating results. In addition, if the acquisition of NaviNet, NantHealth Labs, OpenNMS, or any other business we may acquire in the future fails to meet our expectations, our operating results, business and financial position may suffer.

We cannot assure you that we will be successful in integrating certain assets of NaviNet, NantHealth Labs, OpenNMS, or any other businesses or technologies we may acquire in the future. The failure to successfully integrate these businesses could have a material adverse effect on our business, financial condition, or results of operations.

Business disruptions, including from weakened and volatile global economic and market conditions, natural disasters, and the COVID-19 pandemic, among other things, could seriously harm our future revenue and financial condition and increase our costs and expenses.

Events such as recessions, inflation, disruptions and uncertainty in global financial markets and other adverse global developments, including those related to the Russia-Ukraine war, have caused, and could, in the future, cause economic and market slowdown or downturn. The resulting impacts of such slowdown or downturn may lead to reduced consumer and commercial spending, consumption and demand, increased costs of business operations, rising prices of goods and services and decreased corporate profitability. As such, this could negatively impact the businesses and customers that we work with and have a materially adverse effect on our own business, financial condition, overall performance and results and ability to forecast our operations and make decisions about future investments and endeavors.

Moreover, our operations, and those of our contractors, consultants, customers, resellers or partners, could be subject to earthquakes, power shortages, telecommunications failures, water shortages, floods, hurricanes, typhoons, fires, extreme weather conditions, medical epidemics or pandemics, acts of terrorism, acts of war and other natural or man-made disasters or business interruptions, for which we are predominantly self-insured. For example, we have corporate offices in Los Angeles County, California near major earthquake faults and fire zones. We attempt to mitigate these risks through various means including redundant infrastructure, disaster recovery plans, separate test systems and change control and system security measures, but our precautions will not protect against all potential problems. If our customers' access is interrupted because of problems in the operation of our facilities, we could be exposed to significant claims by customers or their patients, particularly if the access interruption is associated with problems in the timely delivery of funds due to customers or medical information relevant to patient care. The occurrence of any of these business disruptions could seriously harm our operations and financial condition and increase our costs and expenses.

Also, in March 2020, the World Health Organization declared the novel coronavirus (COVID-19) a pandemic. In the same month, the President of the United States declared a State of National Emergency due to the COVID-19 outbreak, and the world has been and continues to be impacted by COVID-19 and its variants. As a result, many jurisdictions, particularly in North America (including the United States), Europe and Asia, including the U.S. states in which we operate, such as California, have adopted or are considering laws, rules, regulations or decrees intended to address the COVID-19 outbreak, including implementing travel restrictions, closing non-essential businesses and/or restricting daily activities. In addition, many communities have limited, and are considering to further limit, social mobility and gathering. To date, there has been no material adverse impact to our business from the COVID-19 pandemic. Given the unprecedented and evolving nature of the pandemic, the future impact of these changes and potential changes on us and our contractors, consultants, customers, resellers and partners is unknown at this time. Moreover, the extent of the impact of the COVID-19 pandemic on our business and operating results is uncertain and difficult to predict and will depend on factors outside of our control including the timing or effectiveness of the vaccine roll-out globally, the timing of easing of preventative or mitigation measures or mandates, the impact of any variants that emerge, or any impact of a global vaccine roll-out on the global economy. For example, the demand for our solutions among certain of our provider or payer customers could be impacted in the future, either through reduced transaction volume for solutions by which we derive revenue on a per transaction basis or through the delayed closing or signing of new or add-on contracts with customers that are dealing with impacts from the COVID-19 pandemic. In April 2023, President Biden signed legislation that ends the COVID-19 national emergency on May 11, 2023. The full impact of this termination of the national emergency and the wind-down of the public health emergency on FDA and other regulatory policies and operations is unclear.

The COVID-19 pandemic has negatively impacted the global economy to date and is likely to cause further global economic disruption. While the duration and severity of the economic impacts of COVID-19 are unknown, it is possible that such economic impacts may be prolonged and have continued effects even after the widespread administration of vaccines. However, in light of the uncertainties regarding economic, business, social, health and geopolitical conditions, our revenues, earnings, liquidity, and cash flows could be adversely affected, whether on an annual or quarterly basis. Continued impacts of the COVID-19 pandemic could materially adversely affect our current and long-term account receivable collectability, as our negatively impacted customers from the COVID-19 pandemic may request temporary relief, delay, or not make scheduled payments. In addition, the deployment of our solutions may represent a large portion of our customers' investments in software technology. Decisions to make such an investment are impacted by the economic environment in which the customers operate. Uncertain global geopolitical, economic and health conditions and the lack of visibility or the lack of financial resources may cause some customers to reduce, postpone or terminate their investments, or to reduce or not renew ongoing paid services, adversely impacting our revenues or timing of revenue. Health conditions in some geographic areas where our customers operate could impact the economic situation of those areas. These conditions, including the COVID-19 pandemic, may present risks for health and limit the ability to travel for our employees, which

could further lengthen our sales cycle and delay revenue and cash flows in the near-term. Moreover, the potential for future infections among our employees and/or consultants is possible even after the widespread administration of vaccines and such future infections (depending on the severity, variant type, scope and location) could impact our ability to continue operations in the ordinary course.

As of the date of this Annual Report on Form 10-K, we serve our customers primarily from third-party data hosting facilities. We do not control the operation of these third-party facilities, and they are vulnerable to damage or interruption from earthquakes, floods, fires, power loss, telecommunications failures and similar events. They are also subject to break-ins, sabotage, intentional acts of vandalism and similar misconduct. Despite precautions taken at these facilities, the occurrence of a natural disaster or a crime, a decision to close the facilities without adequate notice or other unanticipated problems at these facilities could result in lengthy interruptions in our service. Even with the disaster recovery arrangements, our service could be interrupted.

We may, from time to time, transition our data hosting to new or alternative providers. In connection with these transitions, we may be moving, transferring or installing some of our equipment, data and software to and in other facilities. Despite precautions taken during this process, any unsuccessful transfers may impair the delivery of our one or more of our offerings. Further, any damage to, or failure of, our systems generally could result in interruptions in one or more of our offerings. Interruptions in our service may reduce our revenue, cause us to issue credits or pay penalties, may cause customers to terminate one or more of our offerings and may adversely affect our renewal rates and our ability to attract new customers. Our business may also be harmed if our customers and potential customers believe one or more of our offerings are unreliable.

Adverse developments affecting the financial services industry, such as actual events or concerns involving liquidity, defaults or non-performance by financial institutions or transactional counterparties, could adversely affect our current and projected business operations and its financial condition and results of operations.

Actual events involving limited liquidity, defaults, non-performance or other adverse developments that affect financial institutions, transactional counterparties or other companies in the financial services industry or the financial services industry generally, or concerns or rumors about any events of these kinds or other similar risks, have in the past and may in the future lead to market-wide liquidity problems. For example, on March 10, 2023, Silicon Valley Bank (“SVB”) was closed by the California Department of Financial Protection and Innovation, which appointed the Federal Deposit Insurance Corporation (the “FDIC”), as receiver. Similarly, on March 12, 2023, Signature Bank and Silvergate Capital Corp. were each swept into receivership. Although a statement by the Department of the Treasury, the Federal Reserve and the FDIC stated that all depositors of SVB would have access to all of their money after only one business day of closure, including funds held in uninsured deposit accounts, borrowers under credit agreements, letters of credit and certain other financial instruments with SVB, Signature Bank or any other financial institution that is placed into receivership by the FDIC may be unable to access undrawn amounts thereunder. If any of our counterparties to any such instruments were to be placed into receivership, we may be unable to access such funds. In addition, if any parties with whom we conduct business are unable to access funds pursuant to such instruments or lending arrangements with such a financial institution, such parties’ ability to pay their obligations to us or to enter into new commercial arrangements requiring additional payments to us could be adversely affected. In this regard, counterparties to SVB credit agreements and arrangements, and third parties such as beneficiaries of letters of credit (among others), may experience direct impacts from the closure of SVB and uncertainty remains over liquidity concerns in the broader financial services industry. Similar impacts have occurred in the past, such as during the 2008-2010 financial crisis. At times we have deposits at financial institutions above FDIC insurance limits.

Although we assess our banking relationships as we believe necessary or appropriate, our access to funding sources and other credit arrangements in amounts adequate to finance or capitalize our current and projected future business operations could be significantly impaired by factors that affect us, the financial institutions with which we have arrangements directly, or the financial services industry or economy in general. These factors could include, among others, events such as liquidity constraints or failures, the ability to perform obligations under various types of financial, credit or liquidity agreements or arrangements, disruptions or instability in the financial services industry or financial markets, or concerns or negative expectations about the prospects for companies in the financial services industry. These factors could involve financial institutions or financial services industry companies with which we have financial or business relationships, but could also include factors involving financial markets or the financial services industry generally.

The results of events or concerns that involve one or more of these factors could include a variety of material and adverse impacts on our current and projected business operations and our financial condition and results of operations. These could include, but may not be limited to, the following:

- Delayed access to deposits or other financial assets or the uninsured loss of deposits or other financial assets;
- Loss of access to revolving existing credit facilities or other working capital sources and/or the inability to refund, roll over or extend the maturity of, or enter into new credit facilities or other working capital resources;

- Potential or actual breach of contractual obligations that require us to maintain letters or credit or other credit support arrangements; or
- Termination of cash management arrangements and/or delays in accessing or actual loss of funds subject to cash management arrangements.

In addition, investor concerns regarding the U.S. or international financial systems could result in less favorable commercial financing terms, including higher interest rates or costs and tighter financial and operating covenants, or systemic limitations on access to credit and liquidity sources, thereby making it more difficult for us to acquire financing on acceptable terms or at all. Any decline in available funding or access to our cash and liquidity resources could, among other risks, adversely impact our ability to meet our operating expenses, financial obligations or fulfill our other obligations, result in breaches of our financial and/or contractual obligations or result in violations of federal or state wage and hour laws. Any of these impacts, or any other impacts resulting from the factors described above or other related or similar factors not described above, could have material adverse impacts on our liquidity and our current and/or projected business operations and financial condition and results of operations.

In addition, any further deterioration in the macroeconomic economy or financial services industry could lead to losses or defaults by parties with whom we conduct business, which in turn, could have a material adverse effect on our current and/or projected business operations and results of operations and financial condition. For example, a party with whom we conduct business may fail to make payments when due, default under their agreements with us, become insolvent or declare bankruptcy. Any bankruptcy or insolvency, or the failure to make payments when due, of any counterparty of ours, or the loss of any significant relationships, could result in material losses to us and may material adverse impacts on our business.

Our marketing efforts depend significantly on our ability to receive positive references from our existing customers.

Our marketing efforts depend significantly on our ability to call on our current customers to provide positive references to new, potential customers. Given our limited number of long-term customers, the loss or dissatisfaction of any customer could substantially harm our brand and reputation, inhibit the market adoption of our offerings and impair our ability to attract new customers and maintain existing customers. Any of these consequences could have a material adverse effect on our business, financial condition and results of operations.

Our estimates of market opportunity and forecasts of market growth may prove to be inaccurate, and even if the market in which we compete achieves the forecasted growth, our business could fail to grow at similar rates, if at all.

Our market opportunity estimates and growth forecasts are subject to significant uncertainty and are based on assumptions and estimates that may not prove to be accurate. Our estimates and forecasts regarding the size and expected growth of the healthcare information technology and network monitoring markets may prove to be inaccurate. Even if the markets in which we compete meet our size estimates and forecasted growth, our business could fail to grow at similar rates, if at all.

We have recently been involved in derivative and securities litigation, which were costly to us and harmful to our reputation, and we cannot assure you that we will not be involved in additional legal proceedings in the future with similar, or worse, results.

We have been named as a defendant in lawsuits arising out of our initial public offering and later public statements. In March 2017, a number of putative class action securities complaints were filed in the U.S. District Court for the Central District of California, naming as defendants the Company and certain of our executive officers and directors. Certain plaintiffs also named, as defendants, investment banks who were underwriters in our initial public offering but the claims against the underwriters were dropped. The complaints generally alleged that defendants made material misstatements and omissions in violation of the federal securities laws. The complaints were consolidated with the lead case captioned *Deora v. NantHealth, Inc.*, 2:17-cv-01825 ("Deora"). In October 2019, the parties reached an agreement in principle to settle these federal class actions in their entirety for \$16.5 million, which was included in accrued and other current liabilities in the Consolidated Balance Sheet at December 31, 2019. The Court granted preliminary approval of the settlement on January 31, 2020. A hearing for final approval of the settlement was scheduled for June 15, 2020, but on June 5, 2020, the Court decided to take the final approval motion on submission, and on July 17, 2020, the Court directed Plaintiff's counsel to submit evidence substantiating all costs incurred. The \$16.5 million settlement was paid into a settlement fund prior to the payment deadline of March 2, 2020. The majority of the settlement amount was funded by our insurance carriers, and a portion was funded by us. On September 10, 2020, the Court entered an order granting final approval of the settlement, and the order and the settlement are now final. In May 2017, a putative class action complaint was filed in California Superior Court, Los Angeles County, asserting claims for violations of the Securities Act based on allegations similar to those in Deora. That case is captioned *Bucks County Employees Retirement Fund v. NantHealth, Inc.*, BC 662330. At a case management conference on December 3, 2019, the parties informed the court of the pending settlement of the federal class action in the Deora action. During a status conference on February 4, 2021, the Court scheduled a further status conference for April 7, 2021 and stated that if Plaintiff did not voluntarily dismiss the action, the Court would entertain a motion to dismiss in light of the finalization of the

Deora settlement. Plaintiff filed an unopposed request for voluntarily dismissal on March 15, 2021. On March 22, 2021, the court issued an order granting plaintiff's request and dismissing the action with prejudice. For additional information regarding this and other lawsuits in which we are involved, see Part II, Item 1, Legal Proceedings. We cannot assure you that we will not be involved in additional legal proceedings in the future, with similar, or worse, results which could harm our business, financial conditions and results of operations.

In April 2018, two putative shareholder derivative actions, captioned Engleman v. Soon-Shiong, Case No. 2018-0282, and Petersen v. Soon-Shiong, Case No. 2018-0302 were filed in the Delaware Court of Chancery. The plaintiff in the Engleman action previously filed a similar complaint in California Superior Court, Los Angeles County, which was dismissed based on a provision in the Company's charter requiring derivative actions to be brought in Delaware. The Engleman and Petersen complaints contain allegations similar to those in the Deora action but asserted causes of action on behalf of NantHealth against various of the Company's current or former executive officers and directors for alleged breaches of fiduciary duty, abuse of control, gross mismanagement, waste of corporate assets, and unjust enrichment. The Company is named solely as a nominal defendant. In July 2018, the court issued an order consolidating the Engleman and Petersen actions as In re NantHealth, Inc. Stockholder Litigation, Lead C.A. No. 2018-0302, appointing Petersen as lead plaintiff, and designating the Petersen complaint as the operative complaint. On September 20, 2018, the defendants moved to dismiss the complaint. In October 2018, in response to the motion to dismiss, Petersen filed an amended complaint. In November 2018, the defendants moved to dismiss the amended complaint, which asserts claims for breach of fiduciary duty, waste of corporate assets (which Petersen subsequently withdrew), and unjust enrichment. On January 14, 2020, the court issued an order granting in part and denying in part the defendants' motion to dismiss. The court dismissed all claims except one claim against Dr. Patrick Soon-Shiong for breach of fiduciary duty. Dr. Soon-Shiong and the Company filed answers to the amended complaint on March 30, 2020. On June 29, 2021, the Court granted the Unopposed Motion to Substitute Lead Plaintiff, following Plaintiff Petersen's sale of his NantHealth stock, and appointed Engleman as Lead Plaintiff. On September 26, 2022, the parties filed with the Court a Stipulation for Compromise and Settlement to resolve the consolidated action in exchange for (i) the payment of \$400, to be funded by the Company's insurance carriers, to offset the Company's contribution to the settlement of the Deora action, and (ii) agreeing to implement certain corporate governance reforms. Additionally, the Company agreed to pay an award of attorneys' fees and expenses to counsel for Lead Plaintiff in an amount of \$1.25 million, to be funded by the Company's insurance carriers. The Court approved the settlement on January 10, 2023 therefore the Company is required to implement the settlement's corporate governance reforms within 60 days following the approval.

If we fail to develop widespread brand awareness, our business may suffer.

We believe that developing and maintaining widespread awareness of our brand is critical to achieving widespread adoption of our offering and attracting new customers. Brand promotion activities may not generate customer awareness or increase revenue, and even if they do, any increase in revenue may not offset the expenses we incur in building our brand. If we fail to successfully promote and maintain our brand, or incur substantial expenses in doing so, we may fail to attract or retain customers necessary to realize a sufficient return on our brand-building efforts, or to achieve the widespread brand awareness that is critical for broad customer adoption of our offerings.

If we become subject to product liability or other litigation, we may incur substantial liabilities and may be required to limit commercialization of our current and any future products.

We are from time to time subject to legal proceedings and claims that arise in the ordinary course of business, such as claims brought by our customers in connection with commercial disputes and employment claims made by our current or former employees. Litigation, regardless of merit, may result in substantial costs and may divert management's attention and resources, which may harm our business.

Our services, some of which involve recommendations and advice to healthcare providers regarding complex business and operational processes, regulatory and compliance issues and patient treatment options, may give rise to liability claims by our members or by third parties who bring claims against us. In addition, third parties, including former employees, have in the past, and may in the future, file lawsuits alleging non-compliance with government regulations. Investigating and defending such claims, even if they lack merit, may require significant time and resources and could damage our reputation and harm our business.

We maintain product and other insurance, but this insurance may not fully protect us from the financial impact of defending against product liability or other claims. Any product liability or other claim brought against us, with or without merit, could increase our insurance rates or prevent us from securing insurance coverage in the future. Additionally, any product liability lawsuit could damage our reputation, or cause current customers to terminate existing agreements and potential customers to seek other vendors, any of which could impact our results of operations.

We are subject to changes in and interpretations of financial accounting matters that govern the measurement of our performance, including our revenue, one or more of which could adversely affect our business.

Based on our reading and interpretations of relevant guidance, principles or concepts issued by, among other authorities, the American Institute of Certified Public Accountants, the Financial Accounting Standards Board and the SEC, we believe our current sales and licensing contract terms and business arrangements have been properly reported. However, this guidance involves interpretations, and there continue to be issued interpretations and guidance for applying the relevant standards to a wide range of sales and licensing contract terms and business arrangements that are prevalent in the software industry. For example, we must apply significant judgment to determine whether revenue should be recognized on a gross or net basis for our reseller arrangements, including recognizing revenue under our reseller agreement with NantOmics. Disagreement with the regulators as to our current interpretations and any future changes by the regulators of existing accounting standards or changes in our business practices could result in changes in our revenue recognition and/or other accounting policies and practices that could adversely affect our business.

Failure to manage our future growth effectively could increase our expenses, decrease our revenue and prevent us from implementing our business strategy.

To manage our anticipated future growth effectively, we must continue to maintain and may need to enhance our information technology infrastructure, financial and accounting systems and controls and manage expanded operations in geographically-diverse locations. We also must attract, train and retain a significant number of qualified sales and marketing personnel, professional services personnel, software engineers, technical personnel and management personnel. Failure to manage our rapid growth effectively could lead us to over invest or under invest in technology and operations, could result in weaknesses in our infrastructure, systems or controls, could give rise to operational mistakes, losses, loss of productivity or business opportunities, and could result in loss of employees and reduced productivity of remaining employees. Our growth could require significant capital expenditures and may divert financial resources from other projects, such as the development of new services. If our management is unable to effectively manage our growth, our expenses may increase more than expected, our revenue could decline or may grow more slowly than expected, and we may be unable to implement our business strategy.

The industry-and market-related estimates we rely upon are based on various assumptions and may prove to be inaccurate.

Industry-and market-related estimates we rely upon, including, without limitation, estimates related to our market size and industry data, are subject to uncertainty and are based on assumptions which may not prove to be accurate. This may have negative consequences, such as us overestimating our potential market opportunity.

We are exposed to risks related to our international operations and failure to manage these risks may adversely affect our operating results and financial condition.

We are a global company with operations both inside and outside the United States. For example, we have foreign wholly owned subsidiaries, including NaviNet Limited and OpenNMS Group Canada, Inc. As a result, a portion of our operations are conducted by and/or rely on entities outside the United States. We may therefore be denied access to our customers or suppliers as a result of economic, legislative, political and military conditions in such countries.

International operations are subject to several other inherent risks, and our future results could be adversely affected by several factors, including:

- requirements or preferences for domestic products or solutions, which could reduce demand for our products;
- differing existing or future regulatory and certification requirements;
- management communication and integration problems resulting from cultural and geographic dispersion;
- greater difficulty in collecting accounts receivable and longer collection periods;
- difficulties in enforcing contracts;
- difficulties and costs of staffing and managing non-U.S. operations;
- the uncertainty of protection for intellectual property rights in some countries;
- tariffs and trade barriers, export regulations and other regulatory and contractual limitations on our ability to sell our products;
- greater risk of a failure of foreign employees to comply with both U.S. and foreign laws, including export and antitrust regulations, the U.S. Foreign Corrupt Practices Act of 1977, as amended ("FCPA") and any trade regulations ensuring fair trade practices;
- heightened risk of unfair or corrupt business practices in certain geographies and of improper or fraudulent sales arrangements that may impact financial results and result in restatements of, or irregularities in, financial statements;
- potentially adverse tax consequences, including multiple and possibly overlapping tax structures;
- the impact of public health epidemics on our employees and suppliers as well as the global economy, including the COVID-19 pandemic; and

- political and economic instability, political unrest and terrorism.

In addition, the expansion of our existing international operations and entry into additional international markets has required, and will continue to require, significant management attention and financial resources. These factors and other factors could harm our ability to gain future revenues and, consequently, materially impact our business, financial condition and results of operations.

Risks related to intellectual property

We may be unable to adequately protect, and we may incur significant costs in enforcing, our intellectual property and other proprietary rights.

Our success depends in part on our ability to enforce our intellectual property and other proprietary rights. We rely upon a combination of trademark, trade secret, copyright, patent and unfair competition laws, as well as license and access agreements and other contractual provisions, to protect our intellectual property and other proprietary rights. In addition, we attempt to protect our intellectual property and proprietary information by requiring certain of our employees and consultants to enter into confidentiality, noncompetition and assignment of inventions agreements. Any disclosure to or misappropriation by third parties of our confidential proprietary information could enable competitors to quickly duplicate or surpass our technological achievements, eroding our competitive position in the market. Moreover, we do not have any written contractual agreements with respect to any intellectual property and technology that relate to our business developed in the future by our Chairman and Chief Executive Officer, Dr. Soon-Shiong. In the event we are unable to protect our intellectual property and proprietary information, including in particular with respect to such property or information created by Dr. Soon-Shiong, our business would be adversely affected. In addition, our attempts to protect our intellectual property may be challenged by others or invalidated through administrative process or litigation.

We have developed, acquired, and licensed various patents and patent applications and we possess substantial know-how, copyrights and trade secrets relating to the development and commercialization of healthcare technology products and services. In January 2016, we acquired NaviNet, a leading payer-provider collaboration platform. As part of this and other acquisitions, we acquired patents and other intellectual property. As of March 31, 2023, our patent portfolio consisted of the following matters relating to our proprietary technology and inventions: (i) twenty one (21) issued U.S. utility patents and two (2) issued U.S. design patents; (ii) eighteen (18) pending U.S. utility patent applications; (iii) eighteen (18) issued patents outside the United States; and (iv) six (6) patent applications pending in jurisdictions outside the United States. Twenty five (25) of these assets are jointly owned. We believe we have intellectual property rights that are necessary to commercialize our healthcare technology products and services. However, our patent applications may not result in issued patents, and, even if issued, the patents may be challenged and invalidated. Moreover, our patents and patent applications may not be sufficiently broad to prevent others from practicing our technologies or developing competing products. We also face the risk that others may independently develop similar or alternative technologies or may design around our proprietary property.

If any patents are issued in the future, they may not provide us with any competitive advantages, or may be successfully challenged by third parties. Agreement terms that address non-competition are difficult to enforce in many jurisdictions and may not be enforceable in any particular case. To the extent that our intellectual property and other proprietary rights are not adequately protected, third parties might gain access to our proprietary information, develop and market products or services similar to ours, or use trademarks similar to ours, each of which could materially harm our business. Existing United States federal and state intellectual property laws offer only limited protection. Moreover, the laws of other countries in which we now, or may in the future, conduct operations or contract for services may afford little or no effective protection of our intellectual property. Further, our platforms incorporate open source software components that are licensed to us under various public domain licenses. While we believe we have complied with our obligations under the various applicable licenses for open source software that we use, there is little or no legal precedent governing the interpretation of many of the terms of certain of these licenses and therefore the potential impact of such terms on our business is somewhat unknown. The failure to adequately protect our intellectual property and other proprietary rights could materially harm our business.

The patent application process, also known as patent prosecution, is expensive and time consuming, and we and any current or future licensors and licensees may not be able to prepare, file and prosecute all necessary or desirable patent applications at a reasonable cost or in a timely manner. It is also possible that we or any current or future licensors or licensees, will fail to identify patentable aspects of inventions made in the course of development and commercialization activities before it is too late to obtain patent protection on them. Moreover, in some circumstances, we may not have the right to control the preparation, filing and prosecution of patent applications, or to maintain the patents, covering technology that we license from or license to third parties and are therefore reliant on our licensors or licensees. Therefore, these and any of our patents and applications may not be prosecuted and enforced in a manner consistent with the best interests of our business. Although we are unaware of any material defects that we believe would affect the validity or enforceability of our patents, defects of form in the preparation or filing of our patents or patent applications may exist, or may arise in the future, for example, with respect to proper priority claims, inventorship, and the like, although we are unaware of any such defects that we believe are of material importance. If we or any current or future licensors or

licensees, fail to establish, maintain or protect such patents and other intellectual property rights, such rights may be reduced or eliminated. If any current or future licensors or licensees are not fully cooperative or disagree with us as to the prosecution, maintenance or enforcement of any patent rights, such patent rights could be compromised. If there are material defects in the form, preparation or prosecution of our patents or patent applications, such patents or applications may be invalid and unenforceable. Any of these outcomes could impair our ability to prevent competition from third parties, which may have an adverse impact on our business.

The strength of patent rights involves complex legal and scientific questions and can be uncertain. This uncertainty includes changes to the patent laws through either legislative action to change statutory patent law or court action that may reinterpret existing law or rules in ways affecting the scope or validity of issued patents. The patent applications that we own or license may fail to result in issued patents in the United States or foreign countries with claims that cover our products or services. Even if patents do successfully issue from the patent applications that we own or license, third parties may challenge the validity, enforceability or scope of such patents, which may result in such patents being narrowed, invalidated or held unenforceable. Any successful challenge to our patents could deprive us of exclusive rights necessary for the successful commercialization of our products and services. Furthermore, even if they are unchallenged, our patents may not adequately protect our products and services, provide exclusivity for our products and services, or prevent others from designing around our claims. If the breadth or strength of protection provided by the patents we hold or pursue with respect to our products and services is challenged, it could dissuade companies from collaborating with us to develop, or threaten our ability to commercialize, our products and services.

Patents have a limited term. In the United States, the natural expiration of a utility patent is generally 20 years after its earliest effective non-provisional filing date and the natural expiration of a design patent is generally 14 years after its issue date, unless the filing date occurred on or after May 13, 2015, in which case the natural expiration of a design patent is generally 15 years after its issue date. Various extensions may be available; however, the life of a patent, and the protection it affords, is limited. Without patent protection for our products and services, we may be open to competition. Further, if we encounter delays in our development efforts, the period of time during which we could market our products and services under patent protection may be reduced.

In addition to the protection afforded by patents, we also rely on trade secret protection to protect proprietary know-how that may not be patentable or that we elect not to patent, processes for which patents may be difficult to obtain or enforce, and any other elements of our products and services that involve proprietary know-how, information or technology that is not covered by patents. However, trade secrets can be difficult to protect. We cannot be certain that our trade secrets and other confidential proprietary information will not be disclosed despite having such confidentiality agreements. If the steps taken to maintain our trade secrets are deemed inadequate, we may have insufficient recourse against third parties for misappropriating any trade secrets. In addition, in some situations, any confidentiality agreement we may have with an employee, consultant, advisor, or others may conflict with, or be subject to, the rights of third parties with whom our employees, consultants, or advisors have previous employment or consulting relationships. To the extent that our employees, consultants, advisors, or contractors use any intellectual property owned by third parties in their work for us, disputes may arise as to the rights in any related or resulting know-how and inventions. Misappropriation or unauthorized disclosure of our trade secrets could significantly affect our competitive position and may have a material adverse effect on our business. Furthermore, trade secret protection does not prevent competitors from independently developing substantially equivalent information and techniques and we cannot guarantee that our competitors will not independently develop substantially equivalent information and techniques. The FDA, as part of its Transparency Initiative, is currently considering whether to make additional information of life science companies publicly available on a routine basis, including information that we may consider to be trade secrets or other proprietary information, and it is not clear at the present time how the FDA's disclosure policies may change in the future, if at all.

Obtaining and maintaining our patent protection depends on compliance with various procedural, documentary, fee payment and other requirements imposed by governmental patent agencies, and our patent protection could be reduced or eliminated for non-compliance with these requirements.

The United States Patent and Trademark Office ("USPTO") and various foreign governmental patent agencies require compliance with a number of procedural, documentary, fee payment and other similar provisions during the patent prosecution process. Periodic maintenance fees and various other governmental fees on any issued patent and/or pending patent applications are due to be paid to the USPTO and foreign patent agencies in several stages over the lifetime of a patent or patent application. We have systems in place to remind us to pay these fees, and we employ an outside firm and rely on our outside counsel to pay these fees. While an inadvertent lapse may sometimes be cured by payment of a late fee or by other means in accordance with the applicable rules, there are many situations in which noncompliance can result in abandonment or lapse of the patent or patent application, resulting in partial or complete loss of patent rights in the relevant jurisdiction. If we fail to maintain the patents and patent applications directed to our products and services, our competitors might be able to enter the market earlier than should otherwise have been the case, which would have a material adverse effect on our business.

Litigation or other proceedings or third-party claims of intellectual property infringement could require us to spend significant time and money and could prevent us from selling our products and services.

Our commercial success depends in part on our avoiding infringement of the patents and proprietary rights of third parties, for example, the intellectual property rights of competitors. Our research, development and commercialization activities may be subject to claims that we infringe or otherwise violate patents owned or controlled by third parties. Numerous U.S. and foreign issued patents and pending patent applications, which are owned by third parties, exist in the fields in which we are developing our products and services. As the healthcare technology and network monitoring industries expand and more patents are issued, the risk increases that our activities related to our products and services may give rise to claims of infringement of the patent rights of others. We cannot assure you that our products and services will not infringe existing or future patents. The coverage of patents is subject to interpretation by the courts, and the interpretation is not always uniform. We may not be aware of patents that have already issued that a third party, for example, a competitor in our market, might assert are infringed by our products and services. It is also possible that patents of which we are aware, but which we do not believe are relevant to our products and services, could nevertheless be found to be infringed by our products and services. Nevertheless, we are not aware of any issued patents that we believe could prevent us from marketing our products and services. There may also be patent applications that have been filed but not published that, when issued as patents, could be asserted against us.

Third parties have asserted and may in the future assert that we are employing their proprietary technology without authorization. As we continue to commercialize our products and services in their current or updated forms, launch new products and services and enter new markets, we expect that competitors will claim that our products and services infringe their intellectual property rights as part of business strategies designed to impede our successful commercialization and entry into new markets. We occasionally receive letters from third parties inviting us to take licenses under, or alleging that we infringe, their patents or trademarks. Third parties may have obtained, and may in the future obtain, patents under which such third parties may claim that the use of our technologies constitutes patent infringement.

If we are sued for patent infringement, we would need to demonstrate that our products or services either do not infringe the patent claims of the relevant patent or that the patent claims are invalid or unenforceable, and we may not be able to do this. Proving that a patent is invalid and/or unenforceable is difficult. For example, in the United States, proving invalidity requires a showing of clear and convincing evidence to overcome the presumption of validity enjoyed by issued patents. We could incur substantial costs and divert the attention of our management and technical personnel in defending ourselves or our licensors against any of these claims. Defense of these claims, regardless of their merit, would cause us to incur substantial expenses and, would be a substantial diversion of employee resources from our business. Any adverse ruling or perception of an adverse ruling in defending ourselves against these claims could have a material adverse impact on our business. Furthermore, parties making claims against us may be able to obtain injunctive or other relief, which could block our ability to develop, commercialize, and sell products or services, and could result in the award of substantial damages against us, potentially including treble damages and attorneys' fees if we are found to have willfully infringed a patent. In the event of a successful claim of infringement or misappropriation against us, we may be required to pay damages and obtain one or more licenses from third parties, pay royalties to the third party, redesign any infringing product, or be prohibited from selling certain products or services, all of which could have a material adverse impact on our business. Redesigning any infringing products may be commercially impractical, not readily feasible, and/or require substantial time and monetary expenditure. Further, we cannot predict whether any required license would be available at all or whether it would be available on commercially reasonable terms.

In addition, we may be unable to obtain these licenses at a reasonable cost, if at all. We could therefore incur substantial costs related to royalty payments for licenses obtained from third parties, which could negatively affect our gross margins. Even if we were able to obtain a license, it could be non-exclusive, thereby giving our competitors access to the same technologies licensed to us. Ultimately, we could be prevented from commercializing a product, or be forced to cease some aspect of our business operations, if, as a result of actual or threatened patent infringement claims, we are unable to enter into licenses on acceptable terms. Moreover, we could encounter delays in product or service introductions while we attempt to develop alternative products or services. Defense of any lawsuit or failure to obtain any of these licenses on favorable terms could prevent us from commercializing products and services, and the prohibition of sale of any of our products and services would materially affect our ability to grow and maintain profitability and have a material adverse impact on our business.

Defending ourselves in litigation is very expensive, particularly for a company of our size, and time-consuming. In addition to infringement claims against us, we may become a party to other patent litigation and other proceedings, including interference, derivation, or post-grant proceedings, such as, ex parte review, inter partes review, or post grant review, declared or granted by the USPTO and similar proceedings in foreign countries, regarding intellectual property rights with respect to our current or future products. The cost to us of any patent litigation or other proceeding, even if resolved in our favor, could be substantial. Some of our competitors may be able to sustain the costs of litigation or administrative proceedings more effectively than we can because of greater financial resources. Patent litigation and other proceedings may also absorb significant management time. Uncertainties resulting from the initiation and continuation of patent litigation or other proceedings could impair our ability to compete in the

marketplace. The occurrence of any of the foregoing could have a material adverse effect on our business, financial condition, or results of operations.

We may become involved in lawsuits to protect or enforce our patents or other intellectual property, or the patents of our licensors, which could be expensive, time consuming and ultimately unsuccessful.

Competitors may infringe or misappropriate our patents, trademarks, copyrights or other intellectual property, including our existing patents or patents that may issue to us in the future, or the patents of our licensors to which we have a license. To counter infringement or unauthorized use, we may be required to file infringement or inventorship claims to stop third party infringement, unauthorized use, or to correct inventorship, which can be expensive and time consuming and divert the time and attention of our management and scientific personnel. Any claims that we assert against perceived infringers could provoke these parties to assert counterclaims against us alleging that we infringe their patents, in addition to counterclaims asserting that our patents are invalid or unenforceable, or both. These competitors may further challenge the scope, validity or enforceability of our licensors' patents, requiring our licensors to engage in complex, lengthy and costly litigation or other proceedings. In any patent infringement proceeding, there is a risk that a court will decide that a patent of ours or of our licensors' is invalid or unenforceable, in whole or in part, and that we do not have the right to stop the other party from using the invention at issue. There is also a risk that, even if the validity of such patents is upheld, the court will construe the patent's claims narrowly or decide that we do not have the right to stop the other party from using the invention at issue on the grounds that our patent claims do not cover the invention. An adverse outcome in a litigation or proceeding involving our patents could limit our ability to assert our patents against those parties or other competitors and may curtail or preclude our ability to exclude third parties from making and selling similar or competitive products. Any of these occurrences could adversely affect our competitive business position, business prospects and financial condition. Similarly, if we assert trademark infringement claims, a court may determine that the marks we have asserted are invalid or unenforceable, or that the party against whom we have asserted trademark infringement has superior rights to the marks in question. In this case, we could ultimately be forced to cease use of such trademarks. An adverse determination of any litigation or other proceedings could put one or more of our patents at risk of being invalidated, held unenforceable or interpreted narrowly and could put our patent applications at risk of not issuing.

Interference, derivation or other proceedings, brought at the USPTO or any foreign patent authority may be necessary to determine the priority or patentability of inventions with respect to our patent applications or those our collaborators. Litigation or USPTO proceedings brought by us may fail. An unfavorable outcome in any such proceeding could require us to cease using the related technology or to attempt to license rights to it from the prevailing party or could cause us to lose valuable intellectual property rights. Our business could be harmed if the prevailing party does not offer us a license on commercially reasonable terms, if any license is offered at all. Even if we are successful, domestic or foreign litigation, or USPTO or foreign patent office proceedings may result in substantial costs and distraction to our management. We may not be able, alone or with collaborators, to prevent misappropriation of our trade secrets, confidential information or proprietary rights, particularly in countries where the laws may not protect such rights as fully as in the United States.

Even if we establish infringement, the court may decide not to grant an injunction against further infringing activity and instead award only monetary damages, which may or may not be an adequate remedy. Moreover, there can be no assurance that we will have sufficient financial or other resources to file and pursue such infringement claims, which often last for years before they are concluded. Even if we ultimately prevail in such claims, the monetary cost of such litigation and the diversion of the attention of our management and scientific personnel could outweigh any benefit we receive as a result of the proceedings.

Enforcing our intellectual property rights through litigation is very expensive, particularly for a company of our size, and time-consuming. Some of our competitors may be able to sustain the costs of litigation or administrative proceedings more effectively than we can because of greater financial resources. Patent litigation and other proceedings may also absorb significant management time. Uncertainties resulting from the initiation and continuation of patent litigation or other proceedings could impair our ability to compete in the marketplace. The occurrence of any of the foregoing could have a material adverse effect on our business, financial condition, or results of operations.

Furthermore, because of the substantial amount of discovery required in connection with intellectual property litigation or administrative proceedings, there is a risk that some of our confidential information could be comprised by disclosure. In addition, during the course of litigation or administrative proceedings, there could be public announcements of the results of hearings, motions, or other interim proceedings or developments or public access to related documents. If investors perceive these results to be negative, the market price for our common stock could be significantly harmed.

We may not be able to protect our intellectual property rights throughout the world.

Third parties may attempt to commercialize competitive products or services in foreign countries where we do not have any patents or patent applications where legal recourse may be limited. This may have a significant commercial impact on our ability to expand into foreign business operations.

Filing, prosecuting and defending patents on our products and services in all countries throughout the world would be prohibitively expensive, and our intellectual property rights in some countries outside the United States can be less extensive than those in the United States. The requirements for patentability may differ in certain countries, particularly developing countries. For example, Europe has a heightened requirement for patentability of software inventions. Thus, even in countries where we do pursue patent protection, there can be no assurance that any patents will issue with claims that cover our products. In addition, the laws of some foreign countries do not protect intellectual property rights to the same extent as laws in the United States and in some cases may even force us to grant a compulsory license to competitors or other third parties. Consequently, we may not be able to prevent third parties from practicing our inventions in all countries outside the United States or from selling or importing products concerning our healthcare technology into the United States or other jurisdictions. Competitors may use our technologies in jurisdictions where we have not obtained patent protection to develop their own products and services and further, may export otherwise infringing products and services to territories where we have patent protection, but enforcement on infringing activities is inadequate. These products or services may compete with ours, and our patents or other intellectual property rights may not be effective or sufficient to prevent them from competing.

Many companies have encountered significant problems in protecting and defending intellectual property rights in foreign jurisdictions. The legal systems of certain countries, particularly certain developing countries, do not favor the enforcement of patents and other intellectual property protection, which could make it difficult for us to stop the infringement of our patents or marketing of competing products in violation of our proprietary rights generally. Proceedings to enforce our patent rights in foreign jurisdictions could result in substantial costs and divert our efforts and attention from other aspects of our business, could put our patents at risk of being invalidated or interpreted narrowly and our patent applications at risk of not issuing, and could provoke third parties to assert claims against us. We may not prevail in any lawsuits that we initiate and the damages or other remedies awarded, if any, may not be commercially meaningful. In addition, certain countries in Europe and certain developing countries, including India and China, have compulsory licensing laws under which a patent owner may be compelled to grant licenses to third parties. In those countries, we may have limited remedies if our patents are infringed or if we are compelled to grant a license to our patents to a third party, which could materially diminish the value of those patents. This could limit our potential revenue opportunities. Accordingly, our efforts to enforce our intellectual property rights around the world may be inadequate to obtain a significant commercial advantage from the intellectual property that we own or license. Finally, our ability to protect and enforce our intellectual property rights may be adversely affected by unforeseen changes in foreign intellectual property laws.

Developments in U.S. patent law could have a negative impact on our business.

As is the case with other healthcare technology companies, our success is in part dependent on intellectual property. Obtaining and enforcing patents in the healthcare technology industry involves both technological and legal complexity, and therefore, is costly, time consuming, and inherently uncertain. In addition, the United States has recently enacted and has now implemented wide-ranging patent reform legislation. Further, recent United States Supreme Court rulings have either narrowed the scope of patent protection available in certain circumstances and weakened the rights of patent owners in certain situations. In addition to increasing uncertainty with regard to our ability to obtain patents in the future, this combination of events has created uncertainty with respect to the value of patents once obtained. Changes in U.S. patent law could diminish the value of patents in general, thereby impairing our ability to protect our products and services.

For our United States patent applications containing a claim not entitled to priority before March 16, 2013, there is a greater level of uncertainty in the patent law. In September 2011, the Leahy-Smith America Invents Act, or the America Invents Act, or AIA, was signed into law. The AIA includes a number of significant changes to United States patent law, including provisions that affect the way patent applications will be prosecuted and enforced in any patent litigation. The USPTO developed regulations and procedures to govern administration of the AIA, and many of the substantive changes to patent law associated with the AIA. It is not clear what other, if any, impact the AIA will have on the operation of our business. Moreover, the AIA and its implementation could increase the uncertainties and costs surrounding the prosecution of our patent applications and the enforcement or defense of our issued patents, all of which could have a material adverse effect on our business and financial condition.

An important change introduced by the AIA is that, as of March 16, 2013, the United States transitioned to a “first-to-file” system for deciding which party should be granted a patent when two or more patent applications are filed by different parties claiming the same invention. A third party that files a patent application in the USPTO on or after March 16, 2013 before us could therefore be awarded a patent covering an invention of ours even if we were the first to conceive of the invention. This will require us to be cognizant going forward of the time from invention to filing of a patent application. Furthermore, our ability to obtain and maintain valid and enforceable patents depends on whether the differences between our technology and the prior art allow our technology to be patentable over the prior art. Because patent applications in the United States and many other countries are confidential for a

period of time after filing, we cannot be certain that we were the first to either file any patent application related to our products or services or invent any of the inventions claimed in our patents or patent applications.

Among some of the other changes introduced by the AIA are changes that limit where a patentee may file a patent infringement suit and provide opportunities for third parties to challenge any issued patent in the USPTO. This applies to all of our United States patents, even those issued before March 16, 2013. Because of a lower evidentiary standard in USPTO proceedings necessary to invalidate a patent claim compared to the evidentiary standard in United States federal court, a third party could potentially provide evidence in a USPTO proceeding sufficient for the USPTO to hold a claim invalid even though the same evidence may be insufficient to invalidate the claim if first presented in a district court action.

Two cases, one involving diagnostic method claims and the other involving “gene patents” were decided by the Supreme Court. On March 20, 2012, the Supreme Court issued a decision in *Mayo Collaborative v. Prometheus Laboratories, or Prometheus*, a case involving patent claims directed to optimizing the amount of drug administered to a specific patient. According to that decision, Prometheus’ claims failed to incorporate sufficient inventive content above and beyond mere underlying natural correlations to allow the claimed processes to qualify as patent-eligible processes that apply natural laws. On June 13, 2013, the Supreme Court subsequently decided *Association for Molecular Pathology v. Myriad Genetics, or Myriad*, a case brought by multiple plaintiffs challenging the validity of patent claims held by Myriad Genetics, Inc. relating to the breast cancer susceptibility genes BRCA1 and BRCA2, holding that isolated genomic DNA that exists in nature, such as the DNA constituting the BRCA1 and BRCA2 genes, is not patentable subject matter, but that cDNA, which is an artificial construct created from RNA transcripts of genes, may be patent eligible.

On July 3, 2012, the USPTO issued a memorandum to patent examiners providing interim guidelines for examining process claims for patent eligibility in view of the Supreme Court decision in *Prometheus*. The guidance indicates that claims directed to a law of nature, a natural phenomenon, or an abstract idea that do not meet the eligibility requirements should be rejected as non-statutory subject matter. Furthermore, a case involving financial software was even more recently decided by the Supreme Court. On June 19, 2014, the Supreme Court issued a decision in *Alice Corp. Pty. Ltd. v. CLS Bank Int'l, or Alice*, a case involving patent claims directed to methods of exchanging obligations as between parties so as to mitigate settlement risk in financial transactions, computer systems configured to carry out the method, and computer-readable media containing program code for performing the method. In *Alice*, the Court applied the analytic framework from *Prometheus* and extended its application to all types of claims. According to that decision, *Alice Corp.*’s claims failed to incorporate sufficient inventive content above and beyond the mere idea of intermediated transaction to allow the claimed processes to qualify as patent-eligible processes that apply the idea in a particular way to solve a problem. On December 16, 2014, the USPTO issued interim guidelines for examining claims for patent eligibility in view of the Supreme Court decision in *Alice*. The guidance indicates that claims reciting an abstract idea that do not include significantly more than the idea itself should be rejected as non-statutory subject matter. We cannot assure you that our efforts to seek patent protection for our technology, products, and services will not be negatively impacted by the decision in *Alice*, rulings in other cases, or changes in guidance or procedures issued by the USPTO. Since then, the USPTO has issued several memoranda on the topic of patent eligible subject matter, including those dated May 4, 2016, May 19, 2016, July 14, 2016, and November 2, 2016.

More specifically, we cannot fully predict what impact the Supreme Court’s decisions in *Prometheus*, *Myriad* and *Alice* may have on the ability of healthcare technology companies or other entities to obtain or enforce patents relating to genomic discoveries, diagnostic products and services or computer-implemented inventions in the future. Despite the USPTO’s guidance described above, these contours of when certain claims allegedly directed to laws of nature, natural phenomenon or abstract ideas meet the patent eligibility requirements are not clear and may take many years to develop via interpretation in the courts.

There are many patents claiming diagnostic methods based on similar or related correlations that issued before *Prometheus*, and although some of these patents may be invalid under the standard set forth in *Prometheus*, until successfully challenged, these patents are presumed valid and enforceable, and certain third parties could allege that we infringe, or request that we obtain a license to, these patents. Whether based on patents issued prior to or after *Prometheus*, we could have to defend ourselves against claims of patent infringement, or choose to license rights, if available, under patents claiming such methods. Similarly, there are many patents claiming software and/or business methods that include an abstract idea that issued before *Alice*, and although some of these patents may be invalid under the standard set forth in *Prometheus* and *Alice*, until successfully challenged, these patents are presumed valid and enforceable, and certain third parties could allege that we infringe, or request that we obtain a license to, these patents. Whether based on patents issued prior to or after *Alice*, we could have to defend ourselves against claims of patent infringement, or choose to license rights, if available, under patents claiming such software or business methods. In any of the foregoing or in other situations involving third-party intellectual property rights, if we are unsuccessful in defending against claims of patent infringement, we could be forced to pay damages or be subjected to an injunction that would prevent us from utilizing the patented subject matter in question if we are unable to obtain a license on reasonable terms. Such outcomes could materially affect our ability to offer our products and have a material adverse impact on our business. Even if we are able to obtain a license or successfully defend against claims of patent infringement, the cost and distraction associated with the defense or settlement of these claims could have a material adverse impact on our business. Moreover, one or more of our pending United States patent

applications may be rejected based on the changes in the law and the standards set forth in Prometheus, Myriad, Alice, or other cases. Our ability to secure United States patent rights could be impaired if we cannot overcome such rejections, which could have a material adverse impact on our business. In addition, one or more of our issued United States patents could be challenged on the basis of the law and the standards set forth in Prometheus, Myriad, Alice, or other cases, which could have a material adverse impact on our business. Further, on July 30, 2015, in response to the public comment on the Interim Eligibility Guidance, the USPTO issued an update pertaining to the Interim Eligibility Guidance. The Updated Eligibility Guidance includes additional examples from the case law and is intended to assist examiners in applying the Interim Eligibility Guidance during the patent examination process.

If we fail to comply with our obligations in any current or future agreements under which we have licensed, or will license in the future, intellectual property rights from third parties or otherwise experience disruptions to our business relationships with our licensors, we could lose license rights that are important to our business.

Licensing of intellectual property rights involves complex legal, business and scientific issues.

Disputes may arise between us and our licensors regarding intellectual property rights subject to a license agreement, including:

- the scope of rights granted under the license agreement and other interpretation-related issues;
- our right to sublicense intellectual property rights to third parties under collaborative development relationships; and
- our diligence obligations with respect to the use of the licensed technology in relation to our development and commercialization of our product candidates, and what activities satisfy those diligence obligations.

While we would expect to exercise all rights and remedies available to us, including seeking to cure any breach by us, and otherwise seek to preserve our rights under the intellectual property licensed to us, we may not be able to do so in a timely manner, at an acceptable cost or at all. Generally, the loss of any one of our current licenses, or any other license we may acquire in the future, could materially harm our business, prospects, financial condition and results of operations.

Confidentiality agreements with employees and others may not adequately prevent disclosure of our trade secrets and other proprietary information and may not adequately protect our intellectual property, which could limit our ability to compete.

Because we operate in the highly technical field of research and development, we rely in part on trade secret protection in order to protect our proprietary trade secrets and unpatented know-how. However, trade secrets are difficult to protect, and we cannot be certain that others will not develop the same or similar technologies on their own. Enforcing a claim that a party illegally obtained and is using our trade secrets or know-how is difficult, expensive and time consuming, and the outcome is unpredictable. In addition, courts outside the United States may be less willing to protect trade secrets or know-how. The failure to obtain or maintain trade secret protection could adversely affect our competitive position.

We may be subject to claims that our employees, consultants or independent contractors have wrongfully used or disclosed confidential information of third parties.

We have received confidential and proprietary information from third parties. In addition, we employ individuals who were previously employed at other healthcare companies. We may be subject to claims that we or our employees, consultants or independent contractors have inadvertently or otherwise improperly used or disclosed confidential information of these third parties or our employees' former employers. Further, we may be subject to ownership disputes in the future arising, for example, from conflicting obligations of consultants or others who are involved in developing our products and services. We may also be subject to claims that former employees, consultants, independent contractors or other third parties have an ownership interest in our patents or other intellectual property. Litigation may be necessary to defend against these and other claims challenging our right to and use of confidential and proprietary information. If we fail in defending any such claims, in addition to paying monetary damages, we may lose our rights therein. Such an outcome could have a material adverse effect on our business. Even if we are successful in defending against these claims, litigation could result in substantial cost and be a distraction to our management and employees.

We rely in part on trademarks to distinguish our products and services from those of other entities. Trademarks may be opposed or cancelled, and we may be involved in lawsuits or other proceedings to protect or enforce our trademarks.

We rely on trademarks, in the United States and in certain foreign jurisdictions, to distinguish our products and services in the minds of our customers and our business partners from those of other entities. Third parties may challenge our pending trademark applications through opposition proceedings in the United States, or comparable proceedings in foreign jurisdictions, in which they seek to prevent registration of a mark. Our registered trademarks may be subject to cancellation proceedings in the United States, or comparable proceedings in foreign jurisdictions, in which a third party seeks to cancel an existing registration. To enforce our trademark rights, we may be involved in lawsuits or other proceedings which could be expensive, time-consuming and uncertain.

Our corporate name, NantHealth, and the names of our products and services have not been trademarked in each market where we operate and plan to operate. Our trademark applications for our products and services may not be allowed for registration, and our registered trademarks may not be maintained or enforced. During trademark registration proceedings, we may receive rejections, which we may be unable to overcome in our responses. If we do not secure registrations for our trademarks, we may encounter more difficulty in enforcing them against third parties than we otherwise would.

Risks related to government regulation

The healthcare industry is highly regulated, and thus, we are subject to several laws, regulations and industry initiatives, non-compliance with certain of which could materially adversely affect our operations or otherwise adversely affect our business, results of operations and financial condition.

As a participant in the health care industry, our operations and relationships, and those of our clients, are regulated by several U.S. federal, state, local and foreign governmental entities. The impact of these regulations on us is both direct, to the extent that we are subject to these laws and regulations, and also indirect, in terms of government program requirements applicable to our clients for the use of health information technology. Even though we may not be directly regulated by specific healthcare laws and regulations, our products must be capable of being used by our clients in a way that complies with those laws and regulations. There are a number of regulations in the United States, such as regulations in the areas of healthcare fraud and abuse, information blocking, prior authorization, utilization review and practice management solutions, the security and privacy of patient data and interoperability standards, that may be directly or indirectly applicable to our operations and relationships or the business practices of our clients.

U.S. federal and state governments continue to enhance regulation of and increase their scrutiny over practices involving healthcare fraud, waste and abuse perpetuated by healthcare providers and professionals whose services are reimbursed by Medicare, Medicaid and other government health care programs. Our healthcare provider clients, as well as our provision of products to government entities, subject our business to laws and regulations on fraud and abuse which, among other things, prohibit the direct or indirect payment or receipt of any remuneration for patient referrals, or arranging for or recommending referrals or other business paid for in whole or in part by these federal or state healthcare programs. U.S. federal enforcement personnel have substantial powers and remedies to pursue suspected or perceived fraud and abuse. The effect of this government regulation on our clients is difficult to predict. Many of the regulations applicable to our clients and that may be applicable to us, including those relating to marketing incentives offered in connection with sale of products or services and information blocking, are vague or indefinite and have not been fully interpreted by the courts. They may be interpreted or applied by prosecutors, regulatory or judicial authorities in a manner that could broaden their applicability to us or require our clients to make changes in their operations or the way in which they deal with us. If we fail to comply with any applicable laws and regulations, we could be subject to significant civil and criminal penalties, sanctions or other liability, including exclusion from government healthcare programs or from providing certain products to our clients who participate in such programs, which could have a material adverse effect on our business, results of operations and financial condition. Even an unsuccessful challenge by a regulatory authority of our activities could result in adverse publicity, require a costly response from us and adversely affect our business, results of operations and financial condition.

Our products include technology solutions related to claim status and management, utilization management and prior authorization. While we do not submit claims to payors, claims submitted by our clients using our technology solutions are governed by U.S. federal and state laws, which can impact our operations indirectly. U.S. federal law provides civil liability to any persons that knowingly submit, or cause to be submitted, a claim to a payor, including Medicare, Medicaid and private health plans, seeking payment for any services or items that overbills or bills for services or items that have not been provided to the patient. U.S. federal law may also impose criminal penalties for intentionally submitting such false claims. In addition, federal and state law regulates the collection of debt and may impose monetary penalties for violating those regulations. The Health Insurance Portability and Accountability Act of 1996 ("HIPAA") security, privacy and transaction standards, as discussed below, also have a potentially significant effect on our claims-related technology solutions because those solutions must be structured and provided in a way that supports our clients' HIPAA compliance obligations. In connection with these laws, we may be subjected to U.S. federal or state government investigations and possible penalties may be imposed upon us; false claims actions may have to be defended; private payers may file claims against us; and we may be excluded from Medicare, Medicaid or other government-funded health care programs. Any investigation or proceeding related to these laws, even if unwarranted or without merit, may have a material adverse effect on our business, results of operations and financial condition.

U.S. federal, state and local laws and foreign legislation govern the confidentiality of personal information, how that information may be used, and the circumstances under which such information may be released. These regulations govern both the disclosure and use of confidential personal and patient medical record information and require the users of such information to implement specified security and privacy measures. U.S. regulations currently in place governing electronic health data transmissions continue to evolve and are often unclear and difficult to apply. Laws in non-U.S. jurisdictions are also evolving and may have similar or even

stricter requirements related to the treatment of personal or patient information. Data protection regulations impact how businesses, including both us and our clients, can collect and process the personal data of individuals. The costs of compliance with, and other burdens imposed by, such laws, regulations and policies, or modifications thereto, that are applicable to us may limit the use and adoption of our technology solutions and could have a material adverse impact on our business, results of operations and financial condition. Furthermore, we incur development, resource, and capital costs in delivering, updating, and supporting solutions to enable our clients to comply with these varying and evolving standards. If we fail to comply with any applicable laws or regulations or fail to deliver compliant products and solutions, we could be subject to civil penalties, sanctions and contract liability. Enforcement investigations, even if meritless, could have a negative impact on our reputation, cause us to lose existing clients or limit our ability to attract new clients. Furthermore, our failure to maintain confidentiality of sensitive personal information in accordance with the applicable regulatory requirements could damage our reputation and expose us to claims, fines and penalties.

Our commercial and government clients continue to be subject to requirements to adopt interoperable health information technology which requires that our products and solutions to be interoperable with other third-party health information technology providers. Market forces and governmental or regulatory authorities create software interoperability standards that may apply to our products and solutions. For applicable products, these interoperability standards are the basis of certification requirements that our products must meet, and, in turn, many of our clients must meet prerequisite or participation requirements for many federal health insurance programs, including Medicare and Medicaid Fee for Service programs, for alternative payment models under the Innovation Center of CMS and for other federal or state health insurance or reimbursement programs. These expectations for interoperability are supported by the information blocking prohibitions of the Cures Act. If our products are not consistent with those requirements, we could be forced to incur substantial additional development costs to conform. The Office of the National Coordinator for Health Information Technology ("ONC") is also charged under the Cures Act with developing a Trusted Exchange Framework that establishes governance requirements for trusted health information exchange in the United States. ONC has developed the U.S. Common Data Set for Interoperability which may lay the groundwork for iterative expansion of future data exchange requirements for trusted exchange. ONC continues to modify and refine these standards. We may incur increased software development and administrative expenses and delays in delivering such products if we need to update our products to conform to these varying and evolving requirements. In addition, delays in interpreting these standards may result in postponement or cancellation of our clients' decisions to purchase our products. If our products are not compliant with these evolving standards, our market position and sales could be impaired, and we may have to invest significantly in changes to our products.

Various U.S. federal, state and non-government agencies continue to generate requirements for the use of certified health information technology, or certified electronic health record technology ("CEHRT"). In many cases, these requirements have become conditions for receiving payment for health care services to beneficiaries of federal health insurance programs. The Cures Act has tied CEHRT to its policy goals of reducing barriers to the exchange of health information data blocking, encouraging nationwide interoperability, consumer access to health information and improving health information availability between consumers and their care teams. The regulations establishing the certification standards for CEHRT will continue to be updated to support these government policy goals with greater emphasis on interoperability, consumer engagement, patient safety and health information privacy and security. The ONC has finalized additional regulations under the Cures Act to enforce the Act's policy directives relating to data blocking and interoperability. Along with recent CMS actions taken for Medicare and Medicaid, these regulations will also mandate adoption of updated and expanded certified capabilities of CEHRT that some of our clients must adopt to remain able to participate in the federal programs. In addition, the ONC has increased its surveillance activities concerning vendor compliance with respect to CEHRT requirements, which could expose us to greater liability and increased cost of compliance.

Our delegated services and offerings with health plans could subject us to audits by health plans and governmental payors and increase our exposure to liabilities under federal and state health care fraud and abuse laws, including claims under the False Claims Act.

Our contracts with health plans or qualified health plan (QHP) partners for delegated services obligate us and any contractors or agents we use for such delegated services to comply with additional regulatory and contractual requirements and standards as a delegated entity, including 45 CFR Parts 155 and 156, which increase our exposure to additional liabilities under health care fraud and abuse laws, require us to maintain a more robust healthcare compliance program, as well as obtain and comply with applicable licensing and credentialing requirements. We are subject to stringent regulatory and contractual oversight, including audits by our health plan partners, CMS, and other regulatory authorities. Negative results of any such audit could have a material adverse effect on our business, financial condition, results of operations or prospects and could damage our reputation. Changes in regulations, standards, and contractual obligations can increase our compliance costs, expose us to greater liability, or materially impact our profitability.

In particular, entities that perform prior authorization and utilization management functions as a delegated entity are subject to additional federal and state requirements, including, but not limited to, credentialing, accreditation or licensing requirements and standards (such as requirements of the National Committee for Quality Assurance), state prior authorization laws, Medicare and Medicaid regulations, manuals and policies, and other federal and state laws and standards related to delegation, prior authorization,

and utilization management. Health plans and other healthcare organizations that contract with delegated entities flow down extensive federal and state requirements to delegated entities, which can increase the cost of operations and exposure to potential liabilities for such delegated entities. Delegated entities are also subject to audits and oversight by healthcare plans as well as federal and state regulatory authorities. To the extent federal and state government programs or regulatory authorities change current laws, regulations or policies, or the prior authorization process and related requirements, such changes could impact our business operations. Complying with new regulatory requirements or changes to current regulations could be time-intensive and expensive, resulting in a material adverse effect on our business. If we or any third parties we may engage are slow or unable to adapt to changes in existing requirements or the adoption of new requirements or policies, or if we or such third parties are not able to maintain regulatory compliance, we may lose regulatory licensure or authorization for our products and services, be exposed to contractual liabilities, and we may not achieve or sustain profitability. Efforts to ensure compliance with applicable healthcare laws and regulations can involve substantial costs. Violations of healthcare laws can result in significant penalties, including the imposition of significant civil, criminal and administrative penalties, damages, monetary fines, disgorgement, individual imprisonment, possible exclusion from participation in Medicare, Medicaid and other U.S. healthcare programs, integrity oversight and reporting obligations, contractual damages, reputational harm, diminished profits and future earnings, and curtailment or restructuring of operations.

If we fail to comply with applicable health information privacy and security laws and other state and federal privacy and security laws, we may be subject to significant liabilities, reputational harm and other negative consequences, including decreasing the willingness of current and potential customers to work with us.

We are subject to data privacy and security regulation by both the federal government and the states in which we conduct our business. HIPAA established uniform federal standards for certain "covered entities," which include certain healthcare providers, healthcare clearinghouses, and health plans, governing the conduct of specified electronic healthcare transactions and protecting the security and privacy of protected health information ("PHI"). The Health Information Technology for Economic and Clinical Health Act ("HITECH Act"), which became effective on February 17, 2010, makes HIPAA's security standards directly applicable to "business associates," which are independent contractors or agents of covered entities that create, receive, maintain, or transmit PHI in connection with providing a service for or on behalf of a covered entity. The HITECH Act also increased the civil and criminal penalties that may be imposed against covered entities, business associates and certain other persons, and gave state attorneys general new authority to file civil actions for damages or injunctions in federal courts to enforce HIPAA's requirements and seek attorney's fees and costs associated with pursuing federal civil actions.

A portion of the data that we obtain and handle for or on behalf of our customers is considered PHI, subject to HIPAA. We are also required to maintain similar business associate agreements with our subcontractors that have access to PHI of our customers in rendering services to us or on our behalf. Under HIPAA and our contractual agreements with our HIPAA-covered entity health plan customers, we are considered a "business associate" to those customers and are required to maintain the privacy and security of PHI in accordance with HIPAA and the terms of our business associate agreements with our customers, including by implementing HIPAA-required administrative, technical and physical safeguards. We have incurred, and will continue to incur, significant costs to establish and maintain these safeguards and, if additional safeguards are required to comply with HIPAA, other laws or regulations relating to health information privacy or security, or our customers' requirements, our costs could increase further, which would negatively affect our operating results. Furthermore, we cannot guarantee that such safeguards have been and will continue to be adequate. If we have failed, or fail in the future, to maintain adequate safeguards, or we or our agents or subcontractors use or disclose PHI in a manner prohibited or not permitted by HIPAA or other laws or regulations relating to health information privacy or security, our subcontractor business associate agreements, or our business associate agreements with our customers, or if the privacy or security of PHI that we obtain and handle is otherwise compromised, or if any of the foregoing is perceived or believed to have occurred, we could be subject to significant liabilities and consequences, including, without limitation:

- actual or asserted breach of our contractual obligations to customers, which may cause our customers to terminate their relationship with us and may result in potentially significant financial obligations to our customers;
- investigation by the federal and state regulatory authorities empowered to enforce HIPAA and other data privacy and security laws, which include the U.S. Department of Health and Human Services ("HHS"), the Federal Trade Commission and state attorneys general, and the possible imposition of civil and criminal penalties;
- private claims and litigation, including by individuals adversely affected by any misuse of their personal health information for which we are or are asserted to be responsible; and
- negative publicity, which may decrease the willingness of current and potential future customers to work with us and negatively affect our sales and operating results.

Further, we publish statements to end users of our services that describe how we handle and protect personal information. If federal or state regulatory authorities or private litigants consider any portion of these statements to be untrue, we may be subject to claims of deceptive practices, which could lead to significant liabilities and consequences, including, without limitation, damage to our reputation and costs of responding to investigations, defending against litigation, settling claims and complying with regulatory or court orders.

Federal or state governmental authorities may impose additional data security standards or additional privacy or other restrictions on the collection, use, maintenance, transmission and other disclosures of health information. Legislation has been proposed at various times at both the federal and the state level that would limit, forbid or regulate the use or transmission of medical information outside of the United States. Such legislation, if adopted, may render our use of off-shore partners for work related to such data impracticable or substantially more expensive. Alternative processing of such information within the United States may involve substantial delay in implementation and increased cost.

We may be, or may become, subject to data protection laws and regulations relating to privacy, data protections and cybersecurity, and our failure to comply with such laws and regulations could lead to government enforcement actions and significant penalties against us, and adversely impact our operating results.

The regulatory framework for privacy, data protection, and cybersecurity issues worldwide is rapidly evolving and is likely to remain uncertain for the foreseeable future. The U.S. federal and various state, local and foreign government bodies and agencies have adopted or are considering adopting laws and regulations limiting, or laws and regulations regarding, the collection, distribution, use, disclosure, storage, security, and other processing of data relating to individuals.

For example, the California Consumer Privacy Act of 2018 ("CCPA"), which went into effect on January 1, 2020, requires covered businesses to provide substantial disclosures to California residents and honor such residents' data protection and privacy rights, including the right to opt-out of certain sales of personal information. The CCPA provides for civil penalties for violations, as well as a private right of action for certain data breaches that result in the compromise of highly sensitive personal information, which may increase the likelihood of, and risks associated with, data breach litigation. The CCPA has been amended several times, including by the California Privacy Rights Act ("CPRA"), a ballot initiative that passed in November 2020 that, among other things, created a new state agency vested with authority to implement and enforce the CCPA and the CPRA. Effective in most material aspects on January 1, 2023, the CPRA, among other things, expands California residents' rights with respect to certain sensitive personal information and gives California residents a right to opt out of the sharing of certain personal information for targeted online advertising.

The CCPA and other similar laws could impact our business activities, depending on their interpretation. Additionally, other state legislatures have enacted or are currently contemplating, and may pass, their own comprehensive data privacy and security laws, with potentially greater penalties and more rigorous compliance requirements relevant to our business. For example, Virginia, Colorado, Utah, and Connecticut have enacted such legislation that has or will become effective in 2023, and Iowa and Indiana have enacted such legislation that will go into effect in 2025 and 2026, respectively.

The EU has adopted data protection laws and regulations which may apply to us in certain circumstances, or in the future. The collection and use of health data and other personal data is governed in the EU by the General Data Protection Regulation ("GDPR"), which extends the geographical scope of EU data protection law to entities and operations outside of the EU under certain conditions and imposes substantial obligations upon companies and new rights for individuals, and by certain EU member state-level legislation. The GDPR, which is wide-ranging in scope and applicability, imposes several requirements relating to the consent of the individuals to whom the personal data relates, the information provided to the individuals, the security and confidentiality of the personal data, data breach notification and the use of third party processors in connection with the processing of personal data, including clinical trials. The GDPR also imposes strict rules on the transfer of personal data out of the EU to the U.S., provides an enforcement authority and imposes large penalties for noncompliance, including the potential for fines of up to €20 million or 4% of the annual global revenues of the noncompliant company, whichever is greater. The United Kingdom ("UK") has substantially implemented the GDPR in legislation known as the UK GDPR. The UK GDPR sits alongside the UK Data Protection Act 2018, which implements certain derogations in the EU GDPR into English law. The requirements of the UK GDPR may lead to similar compliance and operational costs with potential fines of up to £17.5 million or 4% of total worldwide annual turnover.

In addition, other new regulation or legislative actions regarding data privacy and security (together with applicable industry standards) may increase our costs of doing business. In this regard, we expect that there will continue to be new proposed laws, regulations and industry standards relating to privacy and data protection in the United States, the EU, the UK and other jurisdictions, and we cannot determine the impact such future laws, regulations and standards may have on our business. With the GDPR, UK GDPR, CCPA, CPRA, and other laws, regulations and other obligations relating to privacy, data protection, and cybersecurity imposing new and relatively burdensome obligations, and with substantial uncertainty over the interpretation and application of these and other obligations, we may face challenges in addressing their requirements and making necessary changes to our policies and practices, and may incur significant costs and expenses in an effort to do so. Additionally, if third parties we work with, such as vendors or service providers, violate applicable laws or regulations or our policies, such violations may also put our or our customers' data at risk and could in turn have an adverse effect on our business. Any failure or perceived failure by us or our service providers to comply with our applicable policies or notices relating to privacy, data protection, or cybersecurity, our contractual or other obligations to third parties, or any of our other legal obligations relating to privacy, data protection, or cybersecurity, may result in governmental

investigations or enforcement actions, litigation, claims and other proceedings, harm our reputation, and could result in significant liability.

To the extent we contract with government entities, such government contracts could expose us to additional risks inherent in the government contracting environment.

To the extent we contract with any government entities, such government contracts carry various risks inherent in contracting with government entities. These risks include, but are not limited to, the following:

- Government entities, particularly in the United States, often reserve the right to audit our contracts and conduct reviews, inquiries and investigations of our business practices and performance with respect to government contracts. If a government client discovers improper conduct during its audits or investigations, we may become subject to various civil and criminal penalties, including those under the civil U.S. False Claims Act, and administrative sanctions, which may include termination of contracts, suspension of payments, fines and civil money penalties, and suspensions or debarment from doing business with other government agencies.
- U.S. government contracting regulations impose strict compliance and disclosure obligations and our failure to comply with these obligations could be a basis for suspension or debarment, or both, from federal government contracting in addition to breach of the specific contract.
- Government contracts are subject to heightened reputational and contractual risks compared to contracts with commercial clients and often involve more extensive scrutiny and publicity. Negative publicity, including allegations of improper or illegal activity, poor contract performance, or information security breaches, regardless of accuracy, may adversely affect our reputation.
- Terms and conditions of government contracts also tend to be more onerous, are often more difficult to negotiate and involve additional costs. We must comply with specific procurement regulations and a variety of other socio-economic requirements, as well as various statutes, regulations and requirements related to employment practices, recordkeeping and accounting. Our failure to comply with a variety of complex procurement rules and regulations could result in our liability for penalties, including termination of our government contracts, disqualification from bidding on future government contracts and suspension or debarment from government contracting.
- Government entities typically fund projects through appropriated monies, which can be impacted by changes in presidential administration and budget priorities.
- Government entities reserve the right to change the scope of or terminate these projects at their convenience for lack of approved funding or other reasons, which could limit our recovery of reimbursable expenses or investments. In addition, government contracts may be protested, which could result in administrative procedures and litigation, result in delays in performance and payment, be expensive to defend and be incapable of prompt resolution.
- It is common in contracting with governments for there to be a prime contractor with privity of contract to the government client and one or more subcontractors. There are inherent risks in being a subcontractor, including without limitation, reliance on the performance of the prime contractor for the execution of the contract to the satisfaction of the client. Additionally, when we serve as the prime contractor, we rely on our subcontractors to fulfill certain contractual obligations under our agreements with government clients. A failure by the prime contractor to perform under an agreement under which we serve as a subcontractor, or a failure by a subcontractor to perform under an agreement under which we serve as a prime contractor, could have a material adverse impact on our business, results of operations and financial condition.

The occurrences or conditions described above could affect not only our business with government entities involved, but also our business with other entities of the same or other governmental bodies or with certain commercial clients and could have a material adverse effect on our business, results of operations and financial condition.

If we, including our employees, suppliers, distributors, independent contractors, and agents acting on our behalf, fail to comply with federal and state healthcare laws and regulations, including those governing submissions of false or fraudulent claims to government healthcare programs and financial relationships with healthcare providers, we may be subject to significant civil and criminal penalties and/or loss of eligibility to participate in government healthcare programs.

We are subject to certain federal and state laws and regulations designed to protect patients, governmental healthcare programs, and private health plans from fraudulent and abusive activities. These laws include anti-kickback restrictions and laws prohibiting the submission of false or fraudulent claims. These laws are complex and their application to our specific products, services and relationships may not be clear and may be applied to our business in ways that we do not anticipate. Federal and state regulatory and law enforcement authorities have recently increased enforcement activities with respect to Medicare and Medicaid fraud and abuse regulations and other reimbursement laws and rules. From time to time in the future, we may receive inquiries or subpoenas to produce documents in connection with such activities. We could be required to expend significant time and resources to comply with these requests, and the attention of our management team could be diverted to these efforts. Furthermore, third parties have in the past alleged, and may in the future allege that we have sought federal funding in a manner that may violate

federal or state law. Though we dispute such allegations, if we are found to be in violation of any federal or state fraud and abuse laws, we could be subject to civil and criminal penalties, and we could be excluded from participating in federal and state healthcare programs such as Medicare and Medicaid. The occurrence of any of these events could significantly harm our business and financial condition.

Provisions in Title XI of the Social Security Act, commonly referred to as the federal Anti-Kickback Statute, prohibit the knowing and willful offer, payment, solicitation or receipt of remuneration, directly or indirectly, in cash or in kind, in return for or to reward the referral of patients or arranging for the referral of patients, or in return for the recommendation, arrangement, purchase, lease or order of items or services that are covered, in whole or in part, by a federal healthcare program such as Medicare or Medicaid. The definition of "remuneration" has been broadly interpreted to include anything of value such as gifts, discounts, rebates, waiver of payments or providing anything inconsistent with the fair market value. Many states have adopted similar prohibitions against kickbacks and other practices that are intended to induce referrals which are applicable to all patients regardless of whether the patient is covered under a governmental health program or private health plan. We attempt to scrutinize our business relationships and activities to comply with the federal Anti-Kickback Statute and similar laws and we attempt to structure our sales and group purchasing arrangements in a manner that is consistent with the requirements of applicable safe harbors to these laws. We cannot assure you, however, that our arrangements will be protected by such safe harbors or that such increased enforcement activities will not directly or indirectly have an adverse effect on our business, financial condition or results of operations. Any determination by a state or federal agency that any of our activities or those of our vendors or customers violate any of these laws could subject us to civil or criminal penalties, monetary fines, disgorgement, individual imprisonment, contractual damages, reputational harm, diminished profits and future earnings and curtailment of our operations, could require us to change or terminate some portions of operations or business, could disqualify us from providing services to healthcare providers doing business with government programs and, thus, could have an adverse effect on our business.

Our business is also subject to numerous federal and state laws, including without limitation the civil False Claims Act, that prohibits the knowing submission or "causing the submission" of false or fraudulent information or the failure to disclose information in connection with the submission and payment of claims for reimbursement to Medicare, Medicaid, federal healthcare programs or private health plans. Analogous state laws and regulations may apply to our arrangements and claims involving healthcare items or services reimbursed by non-governmental third-party payers. Additionally, HIPAA also imposes criminal and civil liability for, among other things, executing a scheme to defraud any healthcare benefit program or making false statements relating to healthcare matters.

These laws and regulations may change rapidly, and it is frequently unclear how they apply to our business. Errors created by our products or consulting services that relate to entry, formatting, preparation or transmission of claim or cost report information may be determined or alleged to be in violation of these laws and regulations. Any failure of our products or services to comply with these laws and regulations could result in substantial civil or criminal liability, monetary fines, disgorgement, individual imprisonment, contractual damages, reputational harm, diminished profits and future earnings and curtailment of our operations, could adversely affect demand for our one or more of our offerings, could invalidate all or portions of some of our customer contracts, could require us to change or terminate some portions of our business, could require us to refund portions of our services fees, could cause us to be disqualified from serving customers doing business with government payers and could have an adverse effect on our business.

Our activities are also subject to state and federal self-referral laws, including the federal Physician Self-referral Law, commonly known as the Stark Law, which prohibits physicians from referring Medicare or Medicaid patients to providers of "designated health services" with whom the physician or a member of the physician's immediate family has an ownership interest or compensation arrangement, unless a statutory or regulatory exception applies, and similar state equivalents that may apply regardless of payer. Our failure to abide by these state and federal laws could result in substantial fines and penalties.

Because of the far-reaching nature of these laws, we may be required to alter or discontinue one or more of our business practices to be in compliance with these laws. If we fail to adequately mitigate our operational risks or if we or our agents fail to comply with any of those regulations, laws and/or requirements, a range of actions could result, including, but not limited to restrictions on our products or manufacturing processes, withdrawal of our products from the market, significant fines, exclusion from government healthcare programs or other sanctions or litigation. Such occurrences could have a material and adverse effect on our product sales, business and results of operations.

The scope and enforcement of these laws is uncertain and subject to rapid change in the current environment of healthcare reform, especially in light of the lack of applicable precedent and regulations. Federal or state regulatory authorities might challenge our current or future activities under these laws. Any such challenge could have a material adverse effect on our reputation, business, results of operations and financial condition. In addition, efforts to ensure that our business arrangements with third parties will comply with these laws and regulations and will involve substantial costs. Any state or federal regulatory review of us or the third parties with whom we contract, regardless of the outcome, would be costly and time-consuming. Further, it is not always possible to identify and deter misconduct by employees and third parties, and the precautions we take to detect and prevent misconduct may

not be effective in controlling unknown or unmanaged risks or losses or in protecting us from governmental investigations or other actions or lawsuits stemming from a failure to be in compliance with applicable healthcare laws. If any such actions are instituted against us, and we are not successful in defending ourselves or asserting our rights, those actions could have a significant impact on our business, including the imposition of significant fines or other sanctions.

Healthcare policy changes, including legislation reforming the U.S. healthcare system, may have a material adverse effect on our financial condition, results of operations and cash flows.

Changes in political, economic and regulatory influences could impact the purchasing practices and operations of our clients and increase our costs to deliver products and solutions that enable our clients to meet their compliance requirements. The demand for our products and solutions is subject to changes in new regulatory requirements and compliance deadlines, which could impact our financial results. We cannot predict whether or when future health care reform initiatives at the federal or state level or other initiatives affecting our business will be proposed, enacted or implemented, or what impact those initiatives may have on our business, results of operations and financial condition.

In March 2010, the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010 (collectively, the "ACA") was enacted in the United States, which made a number of substantial changes in the way healthcare is financed by both governmental and private insurers. Among other things, the ACA, creates initiatives to promote quality indicators in payment methodologies and the coordination and promotion of research on comparative clinical effectiveness of different technologies and procedures.

We cannot predict whether future healthcare initiatives will be implemented at the federal or state level, or how any future legislation or regulation may affect us. The taxes imposed by the new federal legislation and the expansion of government's role in the U.S. healthcare industry, as well as changes to the reimbursement amounts paid by payers for our current and future offerings, may reduce our profits and have a materially adverse effect on our business, financial condition, results of operations, and cash flows.

Furthermore, since its enactment, there have been judicial and Congressional challenges to certain aspects of the ACA. In June 2021, the United States Supreme Court held that Texas and other challengers had no legal standing to challenge the ACA, dismissing the case without specifically ruling on the constitutionality of the ACA. Accordingly, the ACA remains in effect in its current form. It is unclear how this Supreme Court decision, future litigation, or healthcare measures promulgated by the Biden administration will impact our business, financial condition and results of operations. Complying with any new legislation or changes in healthcare regulation could be time-intensive and expensive, resulting in material adverse effect on our business.

In the United States, there have been and continue to be a number of legislative initiatives to contain healthcare costs. Recently, Congress passed the Inflation Reduction Act of 2022, which includes prescription drug provisions that have significant implications for the pharmaceutical industry and Medicare beneficiaries, including allowing the federal government to negotiate a maximum fair price for certain high-priced single source Medicare drugs, imposing penalties and excise tax for manufacturers that fail to comply with the drug price negotiation requirements, requiring inflation rebates for all Medicare Part B and Part D drugs, with limited exceptions, if their drug prices increase faster than inflation, and redesigning Medicare Part D to reduce out-of-pocket prescription drug costs for beneficiaries, among other changes. We face uncertainties that might result from legislative, executive, and administrative actions and future healthcare measures and agency rules implemented by at the federal and state levels. Any changes to the ACA or implementation of cost containment measures or other healthcare reforms are likely to have an impact on our results of operations and may have a material adverse effect on our results of operations, or may prevent us from being able to generate revenue or attain profitability. We cannot predict what other healthcare programs and regulations will ultimately be implemented at the federal or state level or the effect of any future legislation or regulation in the United States may have on our business. Changes in healthcare policy could increase our costs and subject us to additional regulatory requirements that may interrupt commercialization of our current and future solutions.

We are subject to U.S. and foreign anti-corruption and anti-money laundering laws with respect to our operations and non-compliance with such laws can subject us to criminal and/or civil liability and harm our business.

We are subject to the U.S. Foreign Corrupt Practices Act of 1977, as amended ("FCPA"), the U.S. domestic bribery statute contained in 18 U.S.C. § 201, the U.S. Travel Act, the USA PATRIOT Act, and possibly other state and national anti-bribery and anti-money laundering laws in countries in which we conduct activities. Anti-corruption laws are interpreted broadly and prohibit companies and their employees, agents, third-party intermediaries, joint venture partners and collaborators from authorizing, promising, offering, or providing, directly or indirectly, improper payments or benefits to recipients in the public or private sector. We currently engage in business and sales with select government and state-owned entities outside of the United States. In addition, we engage third-party intermediaries to promote and sell certain of our products and solutions abroad and/or to obtain necessary permits, licenses, and other regulatory approvals. We or our third-party intermediaries may have direct or indirect interactions with

officials and employees of government agencies or state-owned or affiliated entities. We can be held liable for the corrupt or other illegal activities of these third-party intermediaries, our employees, representatives, contractors, partners, and agents, even if we do not explicitly authorize or have actual knowledge of such activities.

We have adopted an anti-corruption policy that, mandates compliance with the FCPA and other anti-corruption laws applicable to our business throughout the world. However, we cannot assure you that our employees and third-party intermediaries will comply with this policy or such anti-corruption laws. Noncompliance with anti-corruption and anti-money laundering laws could subject us to whistleblower complaints, investigations, sanctions, settlements, prosecution, other enforcement actions, disgorgement of profits, significant fines, damages, other civil and criminal penalties or injunctions, suspension and/or debarment from contracting with certain persons, the loss of export privileges, reputational harm, adverse media coverage, and other collateral consequences. If any subpoenas, investigations, or other enforcement actions are launched, or governmental or other sanctions are imposed, or if we do not prevail in any possible civil or criminal litigation, our business, financial condition and results of operations could be materially harmed. In addition, responding to any action will likely result in a materially significant diversion of management's attention and resources and significant defense and compliance costs and other professional fees. In certain cases, enforcement authorities may even cause us to appoint an independent compliance monitor which can result in added costs and administrative burdens.

We are subject to governmental export and import controls that could impair our ability to compete in international markets due to licensing requirements and subject us to liability if we are not in compliance with applicable laws.

Our products and solutions are subject to export control and import laws and regulations, including the U.S. Export Administration Regulations, U.S. Customs regulations, and various economic and trade sanctions regulations administered by the U.S. Treasury Department's Office of Foreign Assets Controls. Exports of our products and solutions outside of the United States must be made in compliance with these laws and regulations. If we fail to comply with these laws and regulations, we and certain of our employees could be subject to substantial civil or criminal penalties, including the possible loss of export or import privileges, fines, which may be imposed on us and responsible employees or managers and, in extreme cases, the incarceration of responsible employees or managers.

In addition, changes in our products or solutions or changes in applicable export or import laws and regulations may create delays in the introduction, provision, or sale of our products and solutions in international markets, prevent customers from using our products and solutions or, in some cases, prevent the export or import of our products and solutions to certain countries, governments or persons altogether. Any limitation on our ability to export, provide, or sell our products and solutions could adversely affect our business, financial condition and results of operations.

We may be subject to fines, penalties or legal liability, if it is determined that we are practicing medicine without a license through our Eviti solutions.

State laws prohibit the practice of medicine without a license. Our Eviti reports delivered to physicians provide information regarding FDA-approved therapies and clinical trials that oncologists may use in making treatment decisions for their patients. We make members of our organization available to clinicians to discuss the information provided in the report. Our customer service representatives provide support to our customers, including assistance in interpreting the results of our Eviti solution. A governmental authority or third party could allege that the identification of available therapies and clinical trials in our reports and the related customer service we provide constitute the practice of medicine. A state may seek to have us discontinue the inclusion of certain aspects of our reports or the related services we provide or subject us to fines, penalties, or licensure requirements. Any determination that we are practicing medicine without a license may result in significant liability to us and harm to our reputation and/or our Eviti business.

Errors, misconduct, or illegal activity on the part of our customers may result in claims against us.

We rely on our customers, and we contractually obligate them, to provide us with accurate and appropriate data and directives for our actions. We rely upon our customers, as users of our solutions and systems infrastructure, for key activities to produce proper claims for reimbursement. Failure of customers to provide these data and directives or to perform these activities may result in claims against us that our reliance was misplaced.

Our services present the potential for embezzlement, identity theft or other similar illegal behavior by our employees or subcontractors with respect to third parties.

Our services also involve the use and disclosure of personal and business information that could be used to impersonate third parties or otherwise gain access to their data or funds. If any of our employees or subcontractors takes, converts or misuses such funds, documents or data, we could be liable for damages, and our business reputation could be damaged or destroyed.

Risks related to our common stock

Dr. Soon-Shiong, our Chairman and Chief Executive Officer and our principal stockholder, and entities affiliated with him, collectively own a significant majority of our common stock and will exercise significant influence over matters requiring stockholder approval, regardless of the wishes of other stockholders.

As of April 13, 2023, our Chairman and Chief Executive Officer and our principal stockholder, Dr. Soon-Shiong, and entities affiliated with him, collectively beneficially own approximately 62% of the voting power of our common stock. As a result, Dr. Soon-Shiong and his affiliates have significant influence over management and significant control over matters requiring stockholder approval, including the annual election of directors and significant corporate transactions, such as a merger or other sale of our company or assets, for the foreseeable future. This concentrated control will limit stockholders' ability to influence corporate matters and, as a result, we may take actions that our stockholders do not view as beneficial. As a result, the market price of our common stock could be adversely affected.

Dr. Soon-Shiong, has significant interests in other companies which may conflict with our interests.

Dr. Soon-Shiong, is the founder of NantWorks. The various NantWorks companies are currently exploring opportunities in the immunotherapy, infectious disease and inflammatory disease fields. As a result, they or other companies affiliated with Dr. Soon-Shiong may compete with us for business opportunities or, in the future, develop products that are competitive with ours. As a result, Dr. Soon-Shiong's interests may not be aligned with the interests of our other stockholders, and he may from time to time be incentivized to take certain actions that benefit his other interests and that our other stockholders do not view as being in their interest as investors in our company. Moreover, even if they do not directly relate to us, actions taken by Dr. Soon-Shiong and the companies and charitable organizations with which he is involved could have a negative impact on our business.

Our certificate of incorporation contains a waiver of the corporate opportunities doctrine for NantWorks and its affiliates, which includes our Chairman and Chief Executive Officer, and therefore covered persons have no obligations to make opportunities available to us.

NantWorks, which is controlled by our Chairman and Chief Executive Officer, and its affiliates, beneficially owns approximately 62% of the voting power of our common stock as of April 13, 2023.

NantWorks and its affiliates engage in a broad spectrum of activities across the life science, biopharmaceutical, healthcare information technology and technology sectors. In the ordinary course of their business activities, NantWorks and its affiliates may from time to time acquire and hold interests in businesses that compete directly or indirectly with us. Our certificate of incorporation provides that none of NantWorks, any of its affiliates and all of their respective partners, principals, directors, officers, members, managers and/or employees, including any of the foregoing who serve as officers or directors of our company, to the fullest extent permissible by law, have any duty to bring business opportunities to our attention or to refrain from engaging, directly or indirectly, in the same business activities or similar business activities or lines of business in which we operate. NantWorks or its affiliates may also pursue acquisition opportunities that may be complementary to our business and, as a result, those acquisition opportunities may not be available to us. In addition, NantWorks may have an interest in pursuing acquisitions, divestitures and other transactions that, in its judgment, could enhance its investment, even though such transactions might involve risks to you.

We can provide no assurances that we will be able to maintain an active, liquid and orderly trading market for our common stock or what the market price of our common stock will be and as a result it may be difficult for you to sell your common stock.

Prior to our initial public offering in June 2016, there was no public market for our common stock. Although our common stock is listed on The Nasdaq Global Select Market (Nasdaq"), the market for our shares has demonstrated varying levels of trading activity. Further, because a significant amount of our common stock following our initial public offering is and is expected to continue to be held by our Chairman and Chief Executive Officer, Dr. Soon-Shiong, and entities affiliated with him, we have relatively small historic trading volumes. As a result of these and other factors, you may not be able to sell your common stock quickly or at or above the price you purchased your stock or at all. Further, an inactive market may also impair our ability to raise capital by selling additional common stock and may impair our ability to enter into strategic collaborations or acquire companies or products by using our common stock as consideration.

The trading price of our common stock has been and may continue to be volatile. This volatility may affect the price at which you could sell our common stock, the notes and any common stock you receive upon conversion of your notes.

The trading price of our common stock has been and may continue to be volatile and could be subject to wide fluctuations in response to various factors. The trading price of our common stock may fluctuate widely in response to various factors, some of which are beyond our control, including:

- announcements by us or our competitors of new products, significant contracts, commercial relationships or capital commitments and the timing of these introductions or announcements;
- adverse regulatory or reimbursement announcements;
- announcements by us or our competitors of significant acquisitions, strategic collaborations, joint ventures or capital commitments;
- the results of our efforts to develop additional offerings;
- our dependence on our customers, partners and collaborators;
- regulatory or legal developments in the United States or other countries;
- developments or disputes concerning patent applications, issued patents or other proprietary rights;
- the recruitment or departure of key management or other personnel;
- our ability to successfully commercialize our future products;
- the level of expenses related to any of our products;
- actual or anticipated changes in estimates as to financial results, development timelines or recommendations by securities analysts;
- actual or anticipated quarterly variations in our financial results or those of our competitors;
- any change to the composition of the board of directors or key personnel;
- sales of common stock by us or our stockholders in the future, as well as the overall trading volume of our common stock;
- commencement of, or our involvement in, litigation, including claims by our equity holders pertaining to our conversion from a Delaware limited liability company into a Delaware corporation or the pending class action litigation;
- general economic, industry and market conditions and other factors that may be unrelated to our operating performance or the operating performance of our competitors, including changes in market valuations of similar companies; and
- the other factors described in this "Risk Factors" section.

In addition, the stock market in general, and the Nasdaq and the healthcare industry in particular, have from time to time experienced volatility that often has been unrelated to the operating performance of the underlying companies, including the current macroeconomic trends and geopolitical events. These broad market and industry fluctuations may adversely affect the market price of our common stock or the notes, regardless of our operating performance. In several recent situations where the market price of a stock has been volatile, holders of that stock have instituted securities class action litigation against the company that issued the stock. If any of our stockholders were to bring a lawsuit against us, the defense and disposition of the lawsuit could be costly and divert the time and attention of our management and would harm our business operating results or financial condition.

If we are unable to maintain effective internal controls over financial reporting, our investors may lose confidence in us and the market price of our common stock may be adversely affected. If our internal controls over financial reporting are not effective, we may not be able to accurately report our financial results or prevent fraud.

We are required, pursuant to Section 404 ("Section 404") of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"), to furnish a report by management on the effectiveness of our internal control over financial reporting. This assessment includes disclosure of any material weaknesses identified by our management in our internal control over financial reporting.

Our compliance with Section 404 requires that we incur substantial accounting expense and expend significant management efforts. We have engaged outside consultants who function in the capacity of an internal audit group, and we will continue to hire additional consultants, accounting and financial staff with appropriate public company experience and technical accounting knowledge as we maintain the system and process documentation necessary to perform the evaluation needed to comply with Section 404.

We are continuing to develop and refine our disclosure controls and other procedures that are designed to ensure that information required to be disclosed by us in the reports that we file with the SEC is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms, and that information required to be disclosed in reports under the Securities Exchange Act of 1934, as amended (the "Exchange Act") is accumulated and communicated to our principal executive and financial officers. Our current controls and any new controls that we develop may become inadequate and weaknesses in our internal control over financial reporting may be discovered in the future.

We cannot assure you that the measures we have taken, or will take, to remediate a material weakness and significant deficiencies will continue to be effective or that we will be successful in implementing them. Moreover, we cannot assure you that we have identified all significant deficiencies or material weaknesses or that we will not in the future have additional significant deficiencies or material weaknesses, in particular as we seek to transition to a more developed internal control environment and

continue to grow as a company in terms of size, complexity of business and potentially in connection with future strategic transactions.

Any failure to maintain internal control over financial reporting could severely inhibit our ability to accurately report our financial condition or results of operations. If we are unable to conclude that our internal control over financial reporting is effective, or if our independent registered public accounting firm determines we have a material weakness in our internal control over financial reporting, we may be late with the filing of our periodic reports, we could lose investor confidence in the accuracy and completeness of our financial reports, the market price of our common stock could decline, and we could be subject to sanctions or investigations by Nasdaq, the SEC or other regulatory authorities, and become subject to litigation from investors and stockholders, which could harm our reputation, financial condition or divert financial and management resources from our core business and would have a material adverse effect on our business, financial condition and results of operations. Failure to remedy our current and any future material weakness in our internal control over financial reporting, or to implement or maintain other effective control systems required of public companies, could also restrict our future access to the capital markets.

In addition, our independent registered public accounting firm did not perform an evaluation of our internal control over financial reporting during any period in accordance with the provisions of the Sarbanes-Oxley Act. Had our independent registered public accounting firm performed an evaluation of our internal control over financial reporting in accordance with the provisions of the Sarbanes-Oxley Act, additional control deficiencies amounting to significant deficiencies or material weaknesses may have been identified. We cannot assure you that there will not be material weaknesses or significant deficiencies in our internal controls in the future. If we are unable to assert that our internal control over financial reporting is effective, we could lose investor confidence in the accuracy and completeness of our financial reports, which could have a material adverse effect on the price of our common stock.

Our common stock may be delisted from The Nasdaq Global Select Market if we cannot regain compliance with Nasdaq's continued listing requirements.

In order to maintain our listing on Nasdaq, we are required to comply with the Nasdaq requirements, which includes maintaining a minimum bid price and a minimum public float. In particular, we are required to maintain a minimum bid price of \$1.00 per share and a minimum of \$15 million in public float.

On October 31, 2022, we received a notice (the "MVPHS Notice") from Nasdaq informing us that we are not in compliance with the minimum \$15 million market value of publicly held shares requirement for continued listing on the Nasdaq Global Select Market pursuant to Listing Rule 5450(b)(2)(C) (the "Public Float Requirement"). The MVPHS Notice had no immediate effect on our Nasdaq listing or trading of our common stock.

In accordance with Listing Rule 5810(c)(3)(D), we had a period of 180 calendar days, or until May 1, 2023, to regain compliance with the Public Float Requirement (the "Compliance Period").

On May 2, 2023, we received written notice from Nasdaq stating that we have not complied with the Public Float Requirement prior to the expiration of the Compliance Period (the "Delisting Notice"). The Delisting Notice indicated that our common stock would be suspended from trading on Nasdaq on May 11, 2023 unless we requested a hearing pursuant to the procedures set forth in the Nasdaq Listing Rule 5800 Series, by requesting a hearing before the Nasdaq Hearings Panel (the "Panel") by 4:00 p.m. Eastern Time on May 9, 2023. We timely requested a hearing before the Panel, which is expected to be held on June 8, 2023 (the "Hearing"), and has stayed any trading suspension of our common stock until the completion of the Nasdaq hearing process and expiration of any additional extension period, if any, that may be granted by the Panel following the Hearing.

There continues to be no immediate effect on the listing of our common stock, which continues to trade on the Nasdaq Global Select Market under the symbol "NH." There can be no assurance that we will be able to regain compliance with the Public Float Requirement prior to the Hearing or at all or that Nasdaq will grant us an extension of time to achieve compliance with the Public Float Requirement.

If we fail to regain compliance with the Public Float Requirement, our common stock may be delisted. Delisting from the Nasdaq Global Select Market or any Nasdaq market could make trading our common stock more difficult for investors, potentially leading to declines in our share price and liquidity. In addition, without a Nasdaq market listing, stockholders may have a difficult time getting a quote for the sale or purchase of our common stock, the sale or purchase of our common stock would likely be made more difficult and the trading volume and liquidity of our common stock could decline. Delisting from Nasdaq could also result in negative publicity and could also make it more difficult for us to raise additional capital. The absence of such a listing may adversely affect the acceptance of our common stock as currency or the value accorded by other parties. Further, if we are delisted, we would also incur additional costs under state blue sky laws in connection with any sales of our securities. These requirements could severely limit the market liquidity of our common stock and the ability of our stockholders to sell our common stock in the secondary market. If our common stock is delisted by Nasdaq, our common stock may be eligible to trade on an over-the-counter quotation system, such as

the OTCQB market, where an investor may find it more difficult to sell our common stock or obtain accurate quotations as to the market value of our common stock. We cannot assure you that our common stock, if delisted from Nasdaq, will be listed on another national securities exchange or quoted on an over-the counter quotation system. If our common stock is delisted, it may come within the definition of "penny stock" as defined in the Exchange Act, and would be covered by Rule 15c-9 of the Exchange Act. This rule imposes additional sales practice requirements on broker-dealers who sell securities to persons other than established customers and accredited investors. For transactions covered by Rule 15c-9, the broker-dealer must make a special suitability determination for the purchaser and receive the purchaser's written agreement to the transaction prior to the sale. Consequently, Rule 15c-9, if it were to become applicable, would affect the ability or willingness of broker-dealers to sell our securities, and accordingly would affect the ability of stockholders to sell their securities in the public market. These additional procedures could also limit our ability to raise additional capital in the future.

We have incurred and will continue to incur costs as a result of operating as a public company and our management has been and will be required to devote substantial time to public company compliance initiatives.

As a public company, listed in the United States, and increasingly after we no longer qualify as a "smaller reporting company," we have incurred and will continue to incur significant additional legal, accounting and other expenses as a result of operating as a public company. In addition, changing laws and regulations and standards relating to corporate governance and public disclosure, including compliance with the Sarbanes-Oxley Act, as well as rules implemented by the SEC and Nasdaq, may increase legal and financial compliance costs and make some activities more time consuming. These laws, regulations and standards are subject to varying interpretations and, as a result, their application in practice may evolve over time as new guidance is provided by regulatory and governing bodies. If, notwithstanding our efforts to comply with new laws, regulations and standards, we fail to comply, regulatory authorities may initiate legal proceedings against us and our business may be harmed.

Stockholder activism, the current political environment, and the current high level of government intervention and regulatory reform may lead to substantial new regulations and disclosure obligations, which may lead to additional compliance costs and impact, in ways we cannot currently anticipate, the manner in which we operate our business. Our management and other personnel have and will continue to devote a substantial amount of time to these compliance programs and monitoring of public company reporting obligations and, as a result of the new corporate governance and executive compensation related rules, regulations, and guidelines prompted by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") and further regulations and disclosure obligations expected in the future, we will likely need to devote additional time and costs to comply with such compliance programs and rules. New laws and regulations, as well as changes to existing laws and regulations affecting public companies, including provisions of the Sarbanes-Oxley Act, Dodd-Frank Act and rules adopted by the SEC and Nasdaq, will likely result in increased costs to us as we respond to their requirements. We are currently evaluating and monitoring developments with respect to these rules and regulations, and we cannot predict or estimate the amount of additional costs we may incur or the timing of such costs.

New legislation that would change U.S. or foreign taxation of international business activities or other tax-reform policies, including the imposition of tax based on gross income, could seriously harm our business.

Reforming the taxation of international businesses has been a priority for politicians, and a wide variety of potential changes have been proposed. Some proposals, several of which have been enacted, impose incremental taxes on gross revenue, regardless of profitability. Any changes in the taxation of such activities may increase our worldwide effective tax rate and the amount of taxes we pay and seriously harm our business.

For example, the Tax Cuts and Jobs Act of 2017 ("Tax Act") was enacted on December 22, 2017 and significantly reformed the Code. The Tax Act lowered the U.S. federal corporate income tax rate, changed the utilization of net operating loss carryforwards arising in tax years beginning after December 31, 2017, allowed for the expensing of certain capital expenditures, and put into effect sweeping changes to U.S. taxation of international business activities. As a result, our net U.S. deferred tax assets and corresponding valuation allowances were revalued at the new U.S. corporate rate.

The Tax Act contains provisions which require mandatory capitalization of research and development (R&D) costs, with amortization over five years for US expenditures and amortization over 15 years for foreign activities. Section 174 is amended for tax years beginning January 1, 2022 to eliminate the option to deduct Section 174 expenses and requires capitalization of the expenditures with amortization over five years for domestic expenditures and fifteen years for foreign expenditures. We continue to examine the impact this tax reform legislation may have on our business.

We continue to examine the impact this tax reform legislation may have on our business. The impact of this tax reform on us and on holders of our common stock is uncertain and could seriously harm our business.

Our ability to use our net operating loss carryforwards to offset future taxable income may be subject to certain limitations.

In general, under Section 382 of the Code, a corporation that undergoes an “ownership change” is subject to annual limitations on its ability to use its pre-change net operating loss (“NOL”) carryforwards or other tax attributes, to offset future taxable income or reduce taxes. We believe that we have undergone one or more ownership changes and accordingly, our ability to use our NOL carryforwards may be limited.

Additionally, the Tax Act, which was enacted on December 22, 2017, significantly reformed the Code, including changes to the rules governing NOL carryforwards. For NOL carryforwards arising in tax years beginning after December 31, 2017, the Tax Act limited a taxpayer’s ability to utilize such carryforwards to 80% of taxable income. In addition, NOL carryforwards arising in tax years ending after December 31, 2017 can be carried forward indefinitely, but carryback is generally prohibited. NOL carryforwards generated by us before January 1, 2018 will not be subject to the taxable income limitation and will continue to have a twenty-year carryforward period. However, the changes in the carryforward and carryback periods as well as the new limitation on use of NOLs may significantly impact our ability to use NOL carryforwards generated after December 31, 2017, as well as the timing of any such use, and could seriously harm our business.

We do not anticipate paying any cash dividends on our common stock in the foreseeable future.

We do not currently intend to pay any cash dividends on our common stock in the foreseeable future. We currently intend to retain all of our future earnings, if any, to finance the growth and development of our business. In addition, the terms of any future debt agreements may preclude us from paying dividends. As a result, capital appreciation, if any, of our common stock may be investors’ sole source of gain for the foreseeable future.

We are a “smaller reporting company” and the reduced disclosure requirements applicable to smaller reporting companies could make our common stock less attractive to investors.

We qualify as a “smaller reporting company” during fiscal year 2023, which allows us to take advantage of many of the same exemptions from disclosure requirements, including reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements. These exemptions include:

- being permitted to provide only two years of audited financial statements, in addition to any required unaudited interim financial statements, with correspondingly reduced “Management’s discussion and analysis of financial condition and results of operations” disclosure;
- not being required to comply with the auditor attestation requirements in the assessment of our internal control over financial reporting; and
- reduced disclosure obligations regarding executive compensation.

Investors may find our common stock less attractive as a result of our reliance on these exemptions. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and the market price of our common stock may be reduced or more volatile.

Because we are relying on the exemptions from corporate governance requirements as a result of being a “controlled company” within the meaning of the Nasdaq listing standards, you do not have the same protections afforded to stockholders of companies that are subject to such requirements.

Our Chairman and Chief Executive Officer, Dr. Soon-Shiong, and entities affiliated with him, control a majority of our common stock. As a result, we are a “controlled company” within the meaning of Nasdaq listing standards. Under these rules, a company of which more than 50% of the voting power is held by an individual, a group or another company is a “controlled company” and may elect not to comply with certain Nasdaq corporate governance requirements, including (1) the requirement that a majority of the board of directors consist of independent directors and (2) the requirement that we have a nominating and corporate governance committee that is composed entirely of independent directors with a written charter addressing the committee’s purpose and responsibilities. We have elected to rely on certain of these exemptions, and do not have a nominating and corporate governance committee. Accordingly, you will not have the same protections afforded to stockholders of companies that are subject to all of the Nasdaq corporate governance requirements.

If securities or industry analysts do not publish research or publish inaccurate or unfavorable research about our business, our share price and trading volume could decline.

The trading market for our common stock will depend on the research and reports that securities or industry analysts publish about us or our business. We do not have any control over these analysts. There can be no assurance that analysts will cover us or provide favorable coverage. If one or more of the analysts who cover us downgrade our stock or change their opinion of our stock,

our share price would likely decline. If one or more of these analysts cease coverage of our company or fail to regularly publish reports on us, we could lose visibility in the financial markets, which could cause our share price or trading volume to decline.

We are not subject to the provisions of Section 203 of the Delaware General Corporation Law, which could negatively affect your investment.

We elected in our amended and restated certificate of incorporation to not be subject to the provisions of Section 203 of the Delaware General Corporation Law, or Section 203. In general, Section 203 prohibits a publicly held Delaware corporation from engaging in a “business combination” with an “interested stockholder” for a period of three years after the date of the transaction in which the person became an interested stockholder, unless the business combination is approved in a prescribed manner. A “business combination” includes a merger, asset sale or other transaction resulting in a financial benefit to the interested stockholder. An “interested stockholder” is a person who, together with affiliates and associates, owns (or, in certain cases, within three years prior, did own) 15% or more of the corporation’s voting stock. Our decision not to be subject to Section 203 will allow, for example, Dr. Soon-Shiong, our Chairman and Chief Executive Officer (who, with entities affiliated with him, beneficially own approximately 62% of the voting power of our common stock, as of April 13, 2023), to transfer shares in excess of 15% of our voting stock to a third-party free of the restrictions imposed by Section 203. This may make us more vulnerable to takeovers that are completed without the approval of our board of directors and/or without giving us the ability to prohibit or delay such takeovers as effectively.

Some provisions of our charter documents and Delaware law may have anti-takeover effects that could discourage an acquisition of us by others, even if an acquisition would be beneficial to our stockholders, and may prevent attempts by our stockholders to replace or remove our current management.

Provisions in our amended and restated certificate of incorporation and amended and restated bylaws, as well as provisions of Delaware law, could make it more difficult for a third party to acquire us or increase the cost of acquiring us, even if doing so would benefit our stockholders. These provisions include:

- a requirement that special meetings of stockholders be called only by the board of directors, the president or the chief executive officer;
- advance notice requirements for stockholder proposals and nominations for election to our board of directors; and
- the authority of the board of directors to issue preferred stock on terms determined by the board of directors without stockholder approval and which preferred stock may include rights superior to the rights of the holders of common stock.

These anti-takeover provisions and other provisions in our amended and restated certificate of incorporation and amended and restated bylaws could make it more difficult for stockholders or potential acquirers to obtain control of our board of directors or initiate actions that are opposed by the then-current board of directors and could also delay or impede a merger, tender offer or proxy contest involving our company. These provisions could also discourage proxy contests and make it more difficult for you and other stockholders to elect directors of your choosing or cause us to take other corporate actions you desire. Any delay or prevention of a change of control transaction or changes in our board of directors could cause the market price of our common stock to decline.

Claims for indemnification by our directors and officers may reduce our available funds to satisfy successful third-party claims against us and may reduce the amount of money available to us.

Our amended and restated certificate of incorporation and amended and restated bylaws provide that we will indemnify our directors and officers, in each case to the fullest extent permitted by Delaware law. In addition, as permitted by Section 145 of the Delaware General Corporation Law, our amended and restated bylaws and our indemnification agreements that we have entered into with our directors and officers provide that:

- We will indemnify our directors and officers for serving us in those capacities or for serving other business enterprises at our request, to the fullest extent permitted by Delaware law. Delaware law provides that a corporation may indemnify such person if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the registrant and, with respect to any criminal proceeding, had no reasonable cause to believe such person’s conduct was unlawful.
- We may, in our discretion, indemnify employees and agents in those circumstances where indemnification is permitted by applicable law.
- We are required to advance expenses, as incurred, to our directors and officers in connection with defending a proceeding, except that such directors or officers shall undertake to repay such advances if it is ultimately determined that such person is not entitled to indemnification.
- We will not be obligated pursuant to our amended and restated bylaws to indemnify a person with respect to proceedings initiated by that person against us or our other indemnitees, except with respect to proceedings authorized by our board of directors or brought to enforce a right to indemnification.

- The rights conferred in our amended and restated bylaws are not exclusive, and we are authorized to enter into indemnification agreements with our directors, officers, employees and agents and to obtain insurance to indemnify such persons.
- We may not retroactively amend our bylaw provisions to reduce our indemnification obligations to directors, officers, employees and agents.

To the extent that a claim for indemnification is brought by any of our directors or officers, it would reduce the amount of funds available for use in our business.

Our amended and restated certificate of incorporation designates the Court of Chancery of the State of Delaware as the sole and exclusive forum for certain types of actions and proceedings that may be initiated by our stockholders, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers or other employees.

Our amended and restated certificate of incorporation provides that, unless we consent in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for (i) any derivative action or proceeding brought on our behalf, (ii) any action asserting a claim of breach of a fiduciary duty owed by any of our directors, officers or other employees to us or our stockholders, (iii) any action asserting a claim arising pursuant to any provision of the Delaware General Corporation Law, our amended and restated certificate of incorporation or our amended and restated bylaws, or (iv) any action asserting a claim against us governed by the internal affairs doctrine. Any person or entity purchasing or otherwise acquiring any interest in shares of our capital stock shall be deemed to have notice of and consented to the provisions of our amended and restated certificate of incorporation described above. This choice of forum provision may limit a stockholder's ability to bring a claim in a judicial forum that it finds favorable for disputes with us or our directors, officers or other employees, which may discourage such lawsuits against us and our directors, officers and other employees. Alternatively, if a court were to find these provisions of our amended and restated certificate of incorporation inapplicable to, or unenforceable in respect of, one or more of the specified types of actions or proceedings, we may incur additional costs associated with resolving such matters in other jurisdictions, which could adversely affect our business, financial condition or results of operations.

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

Unregistered Sales of Equity Securities

None.

Recent Repurchases of Equity Securities

None.

Item 3. Defaults Upon Senior Securities

Not applicable.

Item 4. Mine Safety Disclosures

Not applicable.

Item 5. Other Information

None.

Item 6. Exhibits Index

The exhibits listed in the accompanying index to exhibits are filed as part of, or incorporated by reference into, this Quarterly Report on Form 10-Q.

Number	Exhibit Title	Incorporated by Reference			
		Form	Exhibit	Filing Date	Filed Herewith
10.1 + †	Credit Agreement, dated as of March 2, 2023, by and between the Registrant, certain subsidiaries of the Registrant, as the guarantors, the lender parties thereto and GLAS USA LLC, as administrative agent.		10.1		X
10.2	Subordination Agreement, dated March 2, 2023, by and between the Registrant, NaviNet, Inc., Airstrip Technologies, Inc. and Nant Capital, LLC.		10.2		X
10.3	Letter Agreement, dated March 2, 2023, by and between the Registrant and the beneficial owners listed thereto.		10.3		X
10.4	Amendment No. 1 to Shared Services Agreement, dated as of March 24, 2023, by and between the Registrant and NantWorks, LLC.		10.4		X
31.1	Certification of Principal Executive Officer required by Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.				X
31.2	Certification of Principal Financial Officer required by Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.				X
32.1*	Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.*				X
32.2*	Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.*				X
101.INS**	XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.				X
101.SCH**	XBRL Taxonomy Extension Schema Document.				X
101.CAL**	XBRL Taxonomy Extension Calculation Linkbase Document.				X
101.DEF**	XBRL Taxonomy Extension Definition Linkbase Document.				X
101.LAB**	XBRL Taxonomy Extension Label Linkbase Document.				X
101.PRE**	XBRL Taxonomy Extension Presentation Linkbase Document.				X
104	Cover Page Interactive Data File - the cover page interactive data file does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document (included in Exhibit 101).				X

* As contemplated by SEC Release No. 33-8212, these exhibits are furnished with this Quarterly Report on Form 10-Q and are not deemed filed with the Securities and Exchange Commission and are not incorporated by reference in any filing of NantHealth, Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, whether made before or after the date hereof and irrespective of any general incorporation language contained in such filings.

** XBRL (eXtensible Business Reporting Language) information is furnished and not filed or a part of a registration statement or prospectus for purposes of sections 11 or 12 of the Securities Act of 1933, as amended, is deemed not filed for purposes of section 18 of the Securities Exchange Act of 1934, as amended, and is otherwise not subject to liability under these sections.

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

† Certain of the exhibits and schedules to this exhibit have been omitted in accordance with Regulation S-K Item 601(a)(5). The Registrant agrees to furnish a copy of all omitted exhibits and schedules to the SEC upon its request.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this Quarterly Report on Form 10-Q to be signed on its behalf by the undersigned thereunto duly authorized.

NantHealth, Inc.

(Registrant)

Date: May 15, 2023

By: /s/ Patrick Soon-Shiong
Name: Patrick Soon-Shiong
Its: Chairman, Chief Executive Officer and Director
(Principal Executive Officer)

Date: May 15, 2023

By: /s/ Bob Petrou
Name: Bob Petrou
Its: Chief Financial Officer
(Principal Financial and Accounting Officer)

Certain identified information marked with [***] has been excluded from this exhibit because it is not material and is of the type that the registrant treats as private and confidential.

Exhibit 10.1

CREDIT AGREEMENT

Dated as of March 2, 2023

among

NANTHEALTH, INC.,
as the Borrower,

CERTAIN SUBSIDIARIES OF THE BORROWER PARTY HERETO,
as the Guarantors,

THE LENDERS PARTY HERETO

and

GLAS USA LLC,
as Administrative Agent

GLAS AMERICAS LLC,
as Collateral Agent

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CREDIT AGREEMENT

This CREDIT AGREEMENT is entered into as of March 2, 2023, among NANTHEALTH, INC., a Delaware corporation (the “Borrower”), the Guarantors (as defined herein) party hereto from time to time, each of the lenders from time to time party hereto (collectively, the “Lenders” and individually, a “Lender”) GLAS USA LLC as administrative agent for the Lenders (in such capacity, together with its successors in such capacity, the “Administrative Agent”) and GLAS Americas LLC as collateral agent for the Lenders (in such capacity, together with its successors in such capacity, the “Collateral Agent”).

PRELIMINARY STATEMENTS

WHEREAS, the Borrower has requested that the Lenders make term loans to the Borrower on the Closing Date in an aggregate principal amount of \$22,500,000.

WHEREAS, the Lenders have agreed to make such term loans to the Borrower and to provide the term loan facility evidenced by this Agreement as of the Closing Date, in each case on the terms and subject to the conditions set forth herein.

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

ARTICLE I DEFINITIONS AND ACCOUNTING TERMS

1.1 Defined Terms.

As used in this Agreement, the following terms shall have the meanings set forth below:

“Acquisition” means the acquisition, whether through a single transaction or a series of related transactions, of (a) a majority of the Voting Stock or other controlling ownership interest in another Person (including the purchase of an option, warrant or convertible or similar type security to acquire such a controlling interest at the time it becomes exercisable by the holder thereof), whether by purchase of such equity or other ownership interest or upon the exercise of an option or warrant for, or conversion of securities into, such equity or other ownership interest, or (b) assets of another Person which constitute all or substantially all of the assets of such Person or of a division, line of business or other business unit of such Person.

“Administrative Agent” has the meaning specified in the introductory paragraph hereto.

“Administrative Agent’s Office” means the Administrative Agent’s address and, as appropriate, account as set forth on Schedule 1.1(b), or such other address or account as the Administrative Agent may from time to time notify the Borrower and the Lenders, which office may include any Affiliate of the Administrative Agent or any domestic or foreign branch of the Administrative Agent or such Affiliate.

“Administrative Questionnaire” means an Administrative Questionnaire in substantially the form of Exhibit G or any other form approved by the Administrative Agent.

“Affected Financial Institution” means (a) any EEA Financial Institution or (b) any UK Financial Institution.

“Affiliate” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“Affiliate Debt” has the meaning specified in the Convertible Senior Notes Documents as of the Closing Date.

“Affiliated Entity” means any of (a) Dr. Patrick Soon-Shiong or his estate, heirs and lineal descendants, (b) any trust, individual retirement account, or business entity (including any corporation, limited liability company, partnership, foundation or similar entity) for which Dr. Patrick Soon-Shiong retains direct or indirect Control with respect to the Common Stock held by such trust, individual retirement account, or business entity and the trustees, legal representatives, beneficiaries and/or beneficial owners of such trust, individual retirement account or business entity, (c) any not-for-profit-entity where the acquisition of the Borrower’s Voting Stock is directed by Dr. Patrick Soon-Shiong and (d) any entity directly or indirectly Controlled by Dr. Patrick Soon-Shiong or his estate.

“Affiliate Transaction” has the meaning specified in Section 7.8.

“Agent Fee Letter” means that certain fee letter, dated as of the date hereof, between the Borrower, the Administrative Agent and the Collateral Agent, as amended, modified, extended, restated, replaced or supplemented from time to time.

“Agents” means the Administrative Agent and the Collateral Agent.

“Agreement” means this Credit Agreement.

“Applicable Premium” means, on any date with respect to any Loans being prepaid or repaid on such date, the excess (if any) of (A) the present value as of such date of all interest that would have accrued on such Loans being prepaid or repaid from such date through the Maturity Date, plus the present value as of such date of the principal amount of such Loans being prepaid or repaid, assuming a prepayment or repayment date of the Maturity Date, in each case computed using a discount rate equal to the Treasury Rate plus 50 basis points over (B) the principal amount of such Loans being prepaid or repaid. For purposes of this definition, “Treasury Rate” means the yield for 3-month U.S. Treasury bills in secondary market trading for the fifth Business Day immediately preceding the date on which the Borrower delivers the Notice of Prepayment or, if no such Notice of Prepayment is delivered, the date on which such prepayment or repayment is made, as displayed opposite the caption “U.S. government securities—Treasury bills (secondary market)—3-month” on the “H.15” weekly release or daily update, as applicable, for that Business Day published by the Federal Reserve System Board of Governors (or its successor) (or its equivalent successor if such weekly release or daily update, as applicable, is not available). If such yield is unavailable, the “Treasury Rate” will be the average of the secondary market bid rates of at least three nationally recognized independent investment banking firms selected by the Borrower for this purpose, and may include the investment banking firm selected by the Borrower to determine any component of the Applicable Premium, as of 3:30 p.m., New York City time, on that Business Day for the issue of U.S. Treasury bills with a remaining maturity closest to three months. The Administrative Agent shall not be responsible for calculating or verifying the calculation of the Applicable Premium.

“Applicable Rate” means, for any day, 13.00% per annum.

“Approved Fund” means, with respect to any Lender, any Fund that is administered or managed by (a) such Lender, (b) an Affiliate of such Lender or (c) an entity or an Affiliate of an entity that administers or manages such Lender.

“Assignment and Assumption” means an Assignment and Assumption Agreement substantially in the form of Exhibit E.

“Attributable Indebtedness” means, on any date, (a) in respect of any Capitalized Lease of such Person, the capitalized amount thereof with respect to any Person that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease or similar payments under the relevant lease or other applicable agreement or instrument that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease or other agreement or instrument were accounted for as a Capitalized Lease, (c) all Synthetic Debt of such Person, (d) in respect of any Securitization Transaction, the outstanding principal amount of such financing, after taking into account reserve accounts and making appropriate adjustments, determined by the Required Lenders in their reasonable judgment and (e) in respect of any Sale and Leaseback Transaction, the present value (discounted in accordance with GAAP at the debt rate implied in the applicable lease) of the obligations of the lessee for rental payments during the term of such lease.

“Audited Financial Statements” means the audited Consolidated balance sheet of the Borrower and its Subsidiaries for the fiscal year ended December 31, 2021, and the related Consolidated statements of operations, comprehensive loss, stockholders’ deficit and cash flows for such fiscal year of the Borrower and the related notes.

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

“Bail-In Legislation” means (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

“Bankruptcy Code” shall mean the provisions of Title 11 of the United States Code, 11 USC §§ 101 et seq., as amended, or any similar federal or state law for the relief of debtors.

“BHC Act Affiliate” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“Borrower” has the meaning specified in the introductory paragraph hereto.

“Borrower Materials” has the meaning specified in Section 6.2.

“Borrowing” means the borrowing of the Loans pursuant to Section 2.1.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the State of California or New York.

“Capitalized Leases” means all leases that have been or should be, in accordance with GAAP, recorded as capitalized leases.

“Cash Equivalents” means any of the following types of Investments, to the extent owned by the Borrower or any of its Subsidiaries free and clear of all Liens (other than Permitted Liens):

(a) readily marketable obligations issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof having maturities of not more than three hundred sixty days (360) days from the date of acquisition thereof; provided that the full faith and credit of the United States is pledged in support thereof;

(b) marketable direct obligations issued or fully guaranteed by any state of the United States or any political subdivision of any such state or any public instrumentality thereof having maturities of not more than three hundred sixty (360) days from the date of acquisition thereof and having one of the two highest ratings obtainable from either S&P or Moody’s;

(c) time deposits with, or insured certificates of deposit or bankers’ acceptances of, any commercial bank that (i) is organized under the laws of the United States, any state thereof or the District of Columbia or is the principal banking subsidiary of a bank holding company organized under the laws of the United States, any state thereof or the District of Columbia, and is a member of the Federal Reserve System, (ii) issues (or the parent of which issues) commercial paper rated as described in clause (d) of this definition and (iii) has combined capital and surplus of at least \$1,000,000,000, in each case with maturities of not more than one hundred eighty (180) days from the date of acquisition thereof;

(d) commercial paper issued by any Person organized under the laws of any state of the United States and rated at least “Prime-1” (or the then equivalent grade) by Moody’s or at least “A-1” (or the then equivalent grade) by S&P, in each case with maturities of not more than one hundred eighty (180) days from the date of acquisition thereof; and

(e) Investments, classified in accordance with GAAP as current assets of the Borrower or any of its Subsidiaries, in money market investment programs registered under the Investment Company Act of 1940, which are administered by financial institutions that have the highest rating obtainable from either Moody’s or S&P, and the portfolios of which are limited solely to Investments of the character, quality and maturity described in clauses (a), (b), (c) and (d) of this definition.

“CFC” means a Person that is a controlled foreign corporation under Section 957 of the Code.

“Change in Law” means the occurrence, after the Closing Date, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority made or issued after the Closing Date; provided that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith or in the implementation thereof and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted, issued or implemented.

“Change of Control” means an event or series of events by which:

(a) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act, but excluding any Affiliated Entity, any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that a person or group shall be deemed to have “beneficial ownership” of all securities that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an “option right”)), directly or indirectly, of more than 50% of the Equity Interests of the Borrower entitled to vote for members of the board of directors or equivalent governing body of the Borrower on a fully-diluted basis (and taking into account all such securities that such “person” or “group” has the right to acquire pursuant to any option right);

(b) the Borrower shall dispose of all or substantially all of its assets and its Subsidiaries’ assets (other than all or a portion of [***]);

(c) the Borrower ceases to own and control, directly or indirectly, free and clear of all Liens (other than Permitted Liens) 100% of the Equity Interests of (x) each Subsidiary that is a Guarantor on the Closing Date and (y) each other Subsidiary that becomes a Guarantor following the Closing Date (in each case, other than directors’ qualifying shares, as may be required by applicable Law, and other than as a result of a transaction permitted by Section 7.4);

(d) the closing of an exchange of the Equity Interests of the Borrower for the Equity Interests of any other Person or Persons (but excluding any such exchange pursuant to which the Persons that “beneficially owned” (as determined pursuant to Rule 13d-3 under the Exchange Act), directly or indirectly, the Equity Interests of the Borrower immediately prior to such transaction are substantially identical to the Persons that “beneficially own”, directly or indirectly, more than 50% of the Equity Interests of such surviving Person immediately after such transaction); or

(e) a “fundamental change”, “change of control” or any comparable term under, and as defined in, the Existing Convertible Senior Notes or other Indebtedness in excess of the Threshold Amount (excluding, however, a Delisting Event).

“Closing Date” means the date hereof.

“Code” means the Internal Revenue Code of 1986.

“Collateral” means all of the “Collateral” and “Mortgaged Property” referred to in the Collateral Documents and all of the other property that is or is intended under the terms of the Collateral Documents to be subject to Liens in favor of the Collateral Agent for the benefit of the Secured Parties; provided, that Collateral shall exclude all Excluded Property.

“Collateral Agent” has the meaning specified in the introductory paragraph hereto.

“Collateral Documents” means, collectively, the Security Agreement, the Mortgages, each Joinder Agreement, each of the mortgages, collateral assignments, security agreements, pledge agreements or other similar agreements delivered to the Collateral Agent pursuant to Section 6.13 or Article IV, and each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Collateral Agent for the benefit of the Secured Parties.

“Commitment” means, with respect to each Lender, the commitment of such Lender to make term loans hereunder, in each case as such Dollar amounts are set forth beside such Lender’s name under the applicable heading on Schedule 1.1(a) or in the Assignment and Assumption pursuant to which such Lender became a Lender under this Agreement, in each case as such amounts may be reduced or increased from time to time pursuant to assignments made in accordance with this Agreement. The aggregate Commitments of the Lenders on the Closing Date shall be \$22,500,000.

“Common Stock” means the common stock of the Borrower, par value \$0.0001 per share, at the date of this Agreement.

“Compliance Certificate” means a certificate substantially in the form of Exhibit A.

“Connection Income Taxes” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“Consolidated” means, when used with reference to financial statements or financial statement items of the Borrower and its Subsidiaries or any other Person, such statements or items on a consolidated basis in accordance with the consolidation principles of GAAP.

“Consolidated Total Assets” shall mean, as of any date of determination, the total consolidated assets of the Borrower and its Subsidiaries without giving effect to any impairment or amortization of the amount of intangible assets since the Closing Date, determined on a consolidated basis in accordance with GAAP, as set forth on the consolidated balance sheet of the Borrower and its Subsidiaries as of the last day of the fiscal quarter most recently ended for which financial statements have been (or were required to be) delivered pursuant to Section 5.5(a) or 5.5(b), as applicable, calculated on a Pro Forma Basis after giving effect to any acquisition, Disposition or other pro forma event that may have occurred on or after the last day of such fiscal quarter.

“Contingent Obligation” means, with respect to any Person, any contingent obligation of such Person calculated in conformity with GAAP, and in any event shall include any agreement, undertaking or arrangement by which such Person assumes, guarantees, endorses, contingently agrees to purchase or provide funds for the payment of, or otherwise becomes or is contingently liable upon, the obligation or liability of any other Person, or agrees to maintain the net worth or working capital or other financial condition of any other Person, or otherwise assures any creditor of such other Person against loss, including, without limitation, any comfort letter, operating agreement, take or pay contract or the obligations of any such Person as general partner of a partnership with respect to the liabilities of the partnership.

“Contractual Obligation” means, as to any Person, any provision of any security issued by such Person or of any agreement, contract, indenture, mortgage, deed of trust, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto. Without limiting the generality of the foregoing, a Person shall be deemed to be Controlled by another Person if such other Person possesses, directly or indirectly, power to vote ten percent (10%) or more of the securities having ordinary voting power for the election of directors, managing general partners or the equivalent.

“Convertible Senior Notes Documents” means that certain Indenture between the Borrower and U.S. Bank National Association, as trustee, dated as of April 27, 2021 and all other agreements, instruments and other documents pursuant to which the Existing Convertible Senior Notes have been issued or otherwise setting forth the terms of the Existing Convertible Senior Notes.

“Covered Party” has the meaning assigned to it in Section 10.22.

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

“Default” means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

“Default Rate” means a rate per annum equal to two percent (2.00%) in excess of the rate otherwise applicable thereto.

“Delisting Event” means an event or series of events resulting in the Borrower ceasing to be listed or quoted on any of The New York Stock Exchange, The NASDAQ Global Select Market, The NASDAQ Global Market or the NASDAQ Capital Market (or any of their respective successors), but excluding such event or series of events if the cessation of the listing or quotation on such exchanges or markets is a result of the Borrower “going private” (a “Rule 13e-3 transaction” as defined in Rule 13e-3(a)(3) promulgated under the Exchange Act).

“Designated Jurisdiction” means any country or territory to the extent that such country or territory is the subject of any Sanction.

“Disposition” or “Dispose” means the sale, conveyance, assignment, transfer, license, lease or other disposition (including any Sale and Leaseback Transaction) of any property by any Loan Party or Subsidiary (or the granting of any option or other right to do any of the foregoing), including any sale, conveyance, assignment, transfer, license, lease or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith, or the sale or issuance of Equity Interests in the Borrower or any Subsidiary, but excluding any (a) Involuntary Disposition and (b) the disposition of cash and Cash Equivalents in the ordinary course of business.

“Disposition Prepayment Event” has the meaning specified in Section 2.5(b).

“Dollar” and “\$” mean lawful money of the United States.

“Domestic Subsidiary” means any Subsidiary that is organized under the laws of the United States or any political subdivision thereof.

“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a Subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

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

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

“Environmental Laws” means any and all federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower, any other Loan Party or any of their respective Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Environmental Permit” means any permit, approval, identification number, license or other authorization required under any Environmental Law.

“Equity Interests” means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the rules and regulations promulgated thereunder.

“ERISA Affiliate” means any trade or business (whether or not incorporated) under common control with the Borrower within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) the withdrawal of the Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such entity was a “substantial employer” as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by the Borrower or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is insolvent; (d) the filing of a notice of intent to terminate, the treatment of a Pension Plan amendment as a termination under Section 4041 or 4041A of ERISA; (e) the institution by the PBGC of proceedings to terminate a Pension Plan; (f) any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (g) the determination that any Pension Plan is considered an at-risk plan within the meaning of Section 430(i) of the Code or Section 303(i) of ERISA or a plan in endangered or critical status within the meaning of Section 432 of the Code or Section 305 of

ERISA; (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Borrower or any ERISA Affiliate or (i) a failure by the Borrower or any ERISA Affiliate to meet all applicable requirements under the Pension Funding Rules in respect of a Pension Plan, whether or not waived, or the failure by the Borrower or any ERISA Affiliate to make any required contribution to a Multiemployer Plan.

“Erroneous Payment” has the meaning specified in Section 11.13(a).

“Erroneous Payment Subrogation Rights” has the meaning specified in Section 11.13(d).

“Event of Default” has the meaning specified in Section 8.1.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, or any successor statute, and the rules and regulations promulgated thereunder.

“Excluded Equity Interests” means, collectively (a) any Voting Stock of any CFC, solely to the extent that such Voting Stock represents more than 65% of the outstanding Voting Stock of such CFC and (b) any Equity Interests of any Subsidiary of a CFC.

“Excluded Property” means, with respect to any Loan Party, (a) any Real Estate other than Material Real Estate, (b) any Excluded Equity Interests, (c) any United States intent-to-use trademark applications prior to the filing of a “Statement of Use” or “Amendment to Allege Use” with respect thereto, to the extent that, and solely during the period in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark applications under applicable federal law, provided that upon submission and acceptance by the United States Patent and Trademark Office of an amendment to allege use pursuant to 15 U.S.C. Section 1060(a) (or any successor provision), such intent-to-use trademark application shall be considered Collateral and (d) any rights or interest in any General Intangible, Instrument, contract, lease, permit, license, or license agreement covering real or personal property of any Loan Party if under the terms of such General Intangible, Instrument, contract, lease, permit, license, or license agreement, or applicable law with respect thereto, the grant of a security interest or lien therein is prohibited as a matter of law or under the terms of such General Intangible, Instrument, contract, lease, permit, license, or license agreement, and the Equipment and Goods, if any, which are the subject thereof, and such prohibition or restriction has not been waived or the consent of the other party to such General Intangible, Instrument, contract, lease, permit, license, or license agreement has not been obtained (provided, that, (A) the foregoing exclusions of this clause (d) shall in no way be construed (1) to apply to the extent that any described prohibition or restriction is unenforceable under the UCC or other applicable Law (including Debtor Relief Laws) or principles of equity, (2) to apply to the extent that any consent or waiver has been obtained that would permit the Collateral Agent’s security interest or lien notwithstanding the prohibition or restriction on the pledge of such General Intangible, Instrument, contract, lease, permit, license, or license agreement or to the extent the Person in whose favor the applicable contractual restriction runs is to the Borrower or any Subsidiary or (3) to limit, impair, or otherwise affect any of the Collateral Agent’s continuing security interests in and liens upon any rights or interests of the Borrower in or to (x) monies due or to become due under or in connection with any described General Intangible, Instrument, contract, lease, permit, license, license agreement, or stock (including any accounts or stock), or (y) any proceeds from the sale, license, lease, or other dispositions of any such General Intangible, Instrument, contract, lease, permit, license, license agreement, or stock).

“Excluded Taxes” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch

profits taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loans or Commitment or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 3.1, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient's failure to comply with Section 3.1(e), and (d) any U.S. federal withholding Taxes imposed under FATCA.

"Existing Convertible Senior Notes" means the 4.50% Convertible Senior Notes of the Borrower due 2026 and issued pursuant to the Convertible Senior Notes Documents.

"Existing Convertible Senior Notes Security Date" means the date as of which the Borrower's obligations set forth in paragraph (b) to Schedule 6.17 have been completed. The Borrower shall promptly notify the Administrative Agent that the Existing Convertible Senior Notes Security Date has occurred, but in any case before delivering the first Notice of Loan Prepayment under Section 2.5(a).

"Facility" means at any time, (a) on or prior to the Closing Date, the aggregate amount of the Commitments at such time and (b) thereafter, the aggregate principal amount of the Loans outstanding at such time.

"Facility Termination Date" means the date as of which (a) the Commitments have terminated and (b) all Secured Obligations have been paid in full in cash (other than contingent indemnification obligations for which no claim has been made).

"Fair Market Value" shall mean, with respect to any asset on any date of determination, the value of the consideration obtainable in a sale of such asset at such date of determination assuming a sale by a willing seller to a willing purchaser dealing at arm's length and arranged in an orderly manner over a reasonable period of time having regard to the nature and characteristics of such asset, as reasonably determined by the Borrower in good faith; provided that with respect to any such asset with a Fair Market Value determined in accordance with this definition to be at least \$1,000,000, the Administrative Agent shall have received (for distribution to the Lenders) a certificate from a Responsible Officer setting forth in reasonable detail the basis for such determination in form and substance reasonably satisfactory to the Required Lenders.

"FASB ASC" means the Accounting Standards Codification of the Financial Accounting Standards Board.

"FATCA" means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any intergovernmental agreement, treaty, regulations, guidance or any other agreement entered into in order to comply with, facilitate, supplement or implement the foregoing.

"Flood Laws" means, collectively, (i) the National Flood Insurance Act of 1968 as now or hereafter in effect or any successor statute thereto, (ii) the Flood Disaster Protection Act of 1973 as now or hereafter in effect or any successor statute thereto (the "Flood Disaster Protection"),

Act”), (iii) the National Flood Insurance Reform Act of 1994 as now or hereafter in effect or any successor statute thereto and (iv) the Flood Insurance Reform Act of 2004, and any regulations promulgated thereunder, as now or hereafter in effect or any successor statute or regulations thereto.

“Foreign Subsidiary” means any Subsidiary that is not a Domestic Subsidiary.

“FRB” means the Board of Governors of the Federal Reserve System of the United States.

“Fund” means any Person (other than a natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

“GAAP” means generally accepted accounting principles in the United States set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the accounting profession) including, without limitation, the FASB Accounting Standards Codification, that are applicable to the circumstances as of the date of determination, consistently applied and subject to Section 1.3.

“Governmental Authority” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including, without limitation, any supra-national bodies such as the European Union or the European Central Bank).

“Guarantee” means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness of the kind described in clauses (a) through (g) of the definition thereof or other obligation payable or performable by another Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness of the kind described in clauses (a) through (g) of the definition thereof or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed or expressly undertaken by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term “Guarantee” as a verb has a corresponding meaning.

“Guaranteed Obligations” has the meaning set forth in Section 9.1.

“Guarantors” means, collectively, the Subsidiaries of the Borrower as are or may from time to time become parties to this Agreement pursuant to Section 6.12 or Article IV.

“Guaranty” means, collectively, the Guarantee made by the Guarantors under Article IX in favor of the Secured Parties, together with each other guaranty delivered pursuant to Section 6.12.

“Hazardous Materials” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, natural gas, natural gas liquids, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, toxic mold, infectious or medical wastes and all other substances, wastes, chemicals, pollutants, contaminants or compounds of any nature in any form regulated pursuant to any Environmental Law.

“Highbridge” means Highbridge Capital Management, LLC and any of its Affiliates, limited partners and funds or partnerships managed or advised by its or any of its Affiliates or limited partners, in each case, not including any portfolio company of any of the foregoing.

“Immaterial Subsidiary” shall mean any Foreign Subsidiary that (a) did not, as of the last day of the fiscal quarter of the Borrower most recently ended for which financial statements have been (or were required to be) delivered pursuant to Section 5.5(a) or 5.5(b), have assets with a value in excess of 5.0% of the Consolidated Total Assets as of such date or revenues representing in excess of 5.0% of total revenues of the Borrower and its Subsidiaries on a consolidated basis as of such date, and (b) taken together with all Immaterial Subsidiaries as of such date, did not have assets with a value in excess of 10% of Consolidated Total Assets as of such date or revenues representing in excess of 10% of total revenues of the Borrower and its Subsidiaries on a consolidated basis as of such date; provided, that the Borrower may elect in its sole discretion to exclude as an Immaterial Subsidiary any Foreign Subsidiary that would otherwise meet the definition thereof; provided further that, notwithstanding anything to the contrary herein, no Foreign Subsidiary will be an Immaterial Subsidiary if it at any time owns any of the [***].

“Indebtedness” means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

- (a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;
- (b) the maximum amount of all direct or Contingent Obligations of such Person arising under letters of credit, bankers' acceptances, bank guaranties, surety bonds and similar instruments;
- (c) net obligations of such Person under any Swap Contract;
- (d) all obligations (including, without limitation, earnout obligations to the extent due and payable) of such Person to pay the deferred purchase price of property or services (other than accounts payable arising in the ordinary course of such Person's business payable on terms customary in the trade);
- (e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) all Attributable Indebtedness in respect of Capitalized Leases and Synthetic Lease Obligations of such Person;

(g) all obligations of such Person to, prior to the date that is one hundred eighty (180) days after the Maturity Date, purchase, redeem, retire, defease or otherwise make any payment in respect of any Equity Interest in such Person or any other Person or any warrant, right or option to acquire such Equity Interest, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends;

(h) Past Due Accounts Payable; and

(i) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date.

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

“Indemnitees” has the meaning specified in Section 10.4(b).

“Information” has the meaning specified in Section 10.7.

“Initial Cash Flow Projection” has the meaning specified in clause (m) of Article IV.

“Intellectual Property” has the meaning set forth in the Security Agreement.

“Intercompany Debt” has the meaning specified in Section 7.2(d).

“Interest Payment Date” means, the (i) last Business Day of each calendar quarter, commencing on March 31, 2023 and (ii) the Maturity Date.

“Investment” means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or interest in, another Person (including any partnership or joint venture interest in such other Person and any arrangement pursuant to which the investor guaranties Indebtedness of such other Person), or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person which constitute all or substantially all of the assets of such Person or of a division, line of business or other business unit of such Person. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment, but decreased to the extent of any dividends received in relation to, or repayments of, such Investments.

“Involuntary Disposition” means any loss of, damage to or destruction of, or any condemnation or other taking for public use of, any property of any Loan Party or any Subsidiary.

“IRS” means the United States Internal Revenue Service.

“Joinder Agreement” means a joinder agreement substantially in the form of Exhibit B executed and delivered in accordance with the provisions of Section 6.12.

“Laws” means, collectively, all international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, governmental licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“Lenders” has the meaning specified in the introductory paragraph hereto.

“Lien” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or otherwise), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property and any financing lease having substantially the same economic effect as any of the foregoing).

“Liquidity” means unrestricted cash and Cash Equivalents of the Loan Parties that are (a) held in an account that is the subject of a Qualifying Control Agreement; provided that a Qualifying Control Agreement shall not be required for 30 days after the Closing Date (or such later date as the Required Lenders shall agree), (b) not subject to any Lien (other than the Liens described in Section 7.1(i) for the deposit and/or securities accounts in which such cash and Cash Equivalents are held, if a Qualifying Control Agreement is not required under the Loan Documents to be in effect for such accounts) senior to the Liens of the Collateral Agent and (c) not held in a restricted account, a payroll account, tax account, trust account, pension account, royalty account or similar type of account.

“Loan Documents” means, collectively, (a) this Agreement, (b) the Guaranty, (c) the Collateral Documents, (d) each Joinder Agreement, (e) the Perfection Certificate, (f) the Agent Fee Letter and (g) all other certificates, agreements, documents and instruments executed and delivered, in each case, by or on behalf of any Loan Party pursuant to the foregoing.

“Loan Parties” means, collectively, the Borrower and each Guarantor.

“Loan Payment Date” shall mean (a) any date that all or a portion of the Loans are prepaid or repaid by the Borrower pursuant to Section 2.5 or 2.7 or otherwise in accordance with this Agreement and (b) any other date on which all or a portion of the Loans become due and payable in accordance with Section 8.2.

“Loan Payment Fees” means, collectively, the Prepayment Fee and the Applicable Premium.

“Loans” means the term loans made by the Lenders to the Borrower pursuant to this Agreement.

“Master Agreement” has the meaning set forth in the definition of “Swap Contract.”

“Material Adverse Effect” means, individually or in the aggregate, (a) a material adverse change in, or a material adverse effect upon, the operations (including results of operation),

business, properties, liabilities (actual or contingent) or condition (financial or otherwise) of the Borrower or the Borrower and its Subsidiaries taken as a whole; (b) a material impairment of the rights, remedies or benefits of any Agent or any of the Lenders under any Loan Document (including a material adverse effect upon a significant portion of the Collateral or the validity, perfection or priority of the Collateral Agent's Liens on such Collateral), or of the ability of the Loan Parties to perform their obligations under the Loan Documents; or (c) a material adverse effect upon the legality, validity, binding effect, rights, remedies, benefits or enforceability against the Loan Parties of the Loan Documents.

“Material Real Estate” means any Real Estate that has a Fair Market Value in excess of \$500,000, as reasonably determined by the Borrower based on available information including book value, assessed value, existing title policy amounts and existing appraisals.

“Material Subsidiary” means any Subsidiary other than an Immaterial Subsidiary.

“Maturity Date” means December 15, 2023.

“Measurement Period” means, at any date of determination, the most recently completed four (4) fiscal quarters of the Borrower.

“Moody's” means Moody's Investors Service, Inc. and any successor thereto.

“Mortgage” or “Mortgages” means, individually and collectively, as the context requires, each of the fee mortgages, deeds of trust or similar instruments executed by a Loan Party that purports to grant a Lien to the Collateral Agent for the benefit of the Secured Parties in any Mortgaged Properties, in form and substance satisfactory to the Collateral Agent and the Required Lenders.

“Mortgaged Property” means any owned real property of a Loan Party that is or will become encumbered by a Mortgage in favor of the Collateral Agent for the benefit of the Secured Parties in accordance with the terms of this Agreement.

“Multiemployer Plan” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which the Borrower or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five (5) plan years, has made or been obligated to make contributions.

“Multiple Employer Plan” means a Plan which has two or more contributing sponsors (including the Borrower or any ERISA Affiliate) at least two of whom are not under common control, as such a plan is described in Section 4064 of ERISA.

“NaviNet” means NaviNet, Inc., a Delaware corporation.

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“Net Cash Proceeds” means the aggregate cash or Cash Equivalents proceeds received (including any cash received in respect of any non-cash proceeds (including, without limitation, the monetization of notes receivables), but only as and when received), directly or indirectly, by any Loan Party or any Subsidiary in respect of any Disposition or Involuntary Disposition, net of (a) direct costs incurred in connection therewith (including, without limitation, legal, accounting and investment banking fees and sales commissions) and (b) taxes paid or payable as a result thereof, in each case to the extent, but only to the extent, that the amounts so deducted are actually paid or payable to a Person that is not an Affiliate of such Loan Party, and are properly attributable to such transaction; it being understood that “Net Cash Proceeds” shall include,

without limitation, any cash or Cash Equivalents received upon the sale or other disposition of any non-cash consideration received by any Loan Party or any Subsidiary in any Disposition or Involuntary Disposition.

“Notice of Borrowing” means a notice of the Borrowing on the Closing Date, which shall be substantially in the form of Exhibit E or such other form as may be approved by the Administrative Agent and the Lenders, appropriately completed and signed by a Responsible Officer.

“Notice of Loan Prepayment” means a notice of prepayment with respect to the Loans, which shall be substantially in the form of Exhibit D or such other form as may be approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer.

“Obligations” means, in each case, whether now in existence or hereafter arising (a) all advances to, and debts, liabilities, obligations, covenants and duties and Erroneous Payment Subrogation Rights of, any Loan Party arising under any Loan Document of every kind, nature and description, direct or indirect, absolute or contingent, due or to become due, contractual or tortious, liquidated or unliquidated, and whether or not evidenced by any note and including interest and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such advances to, and debts, liabilities, obligations, covenants and duties of such Loan Party are allowed or allowable claims in such proceeding and (b) all costs and expenses incurred in connection with enforcement and collection of the foregoing, including the fees, charges and disbursements of counsel, in each case whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, and including interest, expenses (including attorneys’ fees), charges, commissions and fees that accrue in respect of the Loans, the Loan Payment Fees and the other obligations under the Loan Documents after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest, expenses, charges, commissions and fees are allowed or allowable claims in such proceeding.

“OFAC” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“Organization Documents” means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement or limited liability company agreement (or equivalent or comparable documents with respect to any non-U.S. jurisdiction); (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization (or equivalent or comparable documents with respect to any non-U.S. jurisdiction) and (d) with respect to all entities, any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization (or equivalent or comparable documents with respect to any non-U.S. jurisdiction).

“Other Connection Taxes” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Lender having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a

security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment.

“Past Due Accounts Payable” means accounts payable owed by any Loan Party or any of its Subsidiaries to any non-Affiliate, in each case, with respect to invoices received on or after March 7, 2023 regarding accounts payable that are more than 30 days overdue.

“Payment Recipient” has the meaning specified in Section 11.13(a).

“PBGC” means the Pension Benefit Guaranty Corporation.

“Pension Funding Rules” means the rules of the Code and ERISA regarding minimum funding standards for Pension Plans and set forth in Section 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

“Pension Plan” means any employee pension benefit plan (including a Multiple Employer Plan or a Multiemployer Plan) that is maintained or contributed to by the Borrower or any ERISA Affiliate or with respect to which the Borrower or any ERISA Affiliate has any liability and is either covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the Code.

“Perfection Certificate” means the information certificate of the Borrower and the other Loan Parties dated as of the date hereof.

“Permitted Acquisition” means an Acquisition by a Loan Party (the Person or division, line of business or other business unit of the Person to be acquired in such Acquisition shall be referred to herein as the “Target”), in each case that is a type of business (or assets used in a type of business) permitted to be engaged in by the Borrower and its Subsidiaries pursuant to the terms of this Agreement, in each case so long as:

- (a) no Default or Event of Default shall then exist or would exist after giving effect thereto;
- (b) the Collateral Agent shall have received (or shall receive in connection with the closing of such Acquisition) a first priority perfected security interest in all property (including, without limitation, Equity Interests) acquired with respect to the Target in accordance with the terms of Section 6.13 and the Target, if a Person, shall have executed a Joinder Agreement to the extent required by Section 6.12;
- (c) if requested by the Required Lenders, the Lenders shall have received at least fifteen (15) days prior to the consummation of such Acquisition (i) a description of the material terms of such Acquisition, (ii) audited financial statements (or, if unavailable, management-prepared financial statements) of the Target for its two most recent fiscal years and for any fiscal quarters ended within the fiscal year to date and (iii) consolidated projected income statements of the Borrower and its Subsidiaries (giving effect to such Acquisition);

- (d) the Target shall have positive operating cash flow less capital expenditures as determined in accordance with GAAP for the four (4) fiscal quarter period prior to the acquisition date;
- (e) such Acquisition shall not be a “hostile” Acquisition and shall have been approved by the board of directors (or equivalent) and/or shareholders (or equivalent) of the applicable Loan Party and the Target;
- (f) the purchase consideration payable in respect of all Permitted Acquisitions made on and after the Closing Date shall not exceed \$5,000,000 in the aggregate;
- (g) no Indebtedness will be incurred, assumed, or would exist with respect to the Borrower or its Subsidiaries as a result of such Acquisition, other than indebtedness permitted under clauses (c), (f) and (m) of Section 7.2 and no Liens will be incurred, assumed or would exist with respect to the assets of the Borrower or its Subsidiaries as a result of such Acquisition other than Permitted Liens; and
- (h) (x) the assets or Equity Interests acquired are located in the United States and shall be owned by a Loan Party or (y) the Person whose Equity Interests are being acquired is organized in a jurisdiction located within the United States and shall become a Guarantor.

“Permitted Liens” has the meaning set forth in Section 7.1.

“Permitted Refinancing” means, with respect to any Person, any modification, refinancing, refunding, renewal or extension of any Indebtedness of such Person; provided that (a) the principal amount (or accreted value, if applicable) thereof does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so modified, refinanced, refunded, renewed or extended except by an amount equal to unpaid accrued interest and premium thereon plus other amounts paid, and fees and expenses incurred, in connection with such modification, refinancing, refunding, renewal or extension and by an amount equal to any existing commitments unutilized thereunder, (b) other than with respect to a Permitted Refinancing in respect of Indebtedness permitted pursuant to Section 7.2(c), the Indebtedness resulting from such modification, refinancing, refunding, renewal or extension has a final maturity date equal to or later than the final maturity date of the Indebtedness being modified, refinanced, refunded, renewed or extended, (c) the Weighted Average Life to Maturity of the Indebtedness resulting from such modification, refinancing, refunding, renewal or extension shall be no shorter than the Weighted Average Life to Maturity of the Indebtedness being modified, refinanced, refunded, renewed or extended, (d) immediately after giving effect thereto, no Event of Default shall have occurred and be continuing, (e) if the Indebtedness being modified, refinanced, refunded, renewed or extended is subordinated in right of payment to the Secured Obligations, Indebtedness resulting from such modification, refinancing, refunding, renewal or extension is subordinated in right of payment to the Secured Obligations on terms at least as favorable to the Secured Parties as those contained in the documentation governing the Indebtedness being modified, refinanced, refunded, renewed or extended and (f) if the Indebtedness being modified, refinanced, refunded, renewed or extended is unsecured, the Indebtedness resulting from such modification, refinancing, refunding, renewal or extension shall be unsecured. For the avoidance of doubt, it is understood that a Permitted Refinancing may constitute a portion of an issuance of Indebtedness in excess of the amount of such Permitted Refinancing; provided that such excess amount is otherwise permitted to be incurred under Section 7.2.

“Permitted Transfers” means (a) Dispositions of inventory in the ordinary course of business; (b) Dispositions of property to the Borrower or any Subsidiary; provided, that if the transferor of such property is a Loan Party then the transferee thereof must be a Loan Party; (c) Dispositions of accounts receivable in connection with the collection or compromise thereof, (d) the sale or disposition of Cash Equivalents, and (e) lease, sublease, non-exclusive license and non-exclusive sublicenses of property of the Borrower or any Subsidiary in the ordinary course of business and consistent with past practice.

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

“Plan” means any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Plan), maintained for employees of the Borrower or any ERISA Affiliate or any such Plan to which the Borrower or any ERISA Affiliate is required to contribute on behalf of any of its employees.

“Platform” means Debt Domain, Intralinks, Syndtrak, DebtX or a substantially similar electronic transmission system.

“Pledged Equity” has the meaning specified in the Security Agreement.

“Prepayment Fee” shall mean a fee due and payable to each Lender on each Loan Payment Date in an amount equal to 1.00% of the principal balance of the Loans of such Lender being repaid or prepaid.

“Pro Forma Basis” and “Pro Forma Effect” means, for any Disposition of all or substantially all of a division or a line of business or for any Acquisition, whether actual or proposed, for purposes of determining compliance with the financial covenant set forth in Section 7.11, each such transaction or proposed transaction shall be deemed to have occurred on and as of the first day of the relevant Measurement Period, and the following pro forma adjustments shall be made:

(a) in the case of an actual or proposed Disposition, all income statement items (whether positive or negative) attributable to the line of business or the Person subject to such Disposition shall be excluded from the results of the Borrower and its Subsidiaries for such Measurement Period;

(b) in the case of an actual or proposed Acquisition, income statement items (whether positive or negative) attributable to the property, line of business or the Person subject to such Acquisition shall be included in the results of the Borrower and its Subsidiaries for such Measurement Period;

(c) interest accrued during the relevant Measurement Period on, and the principal of, any Indebtedness repaid or to be repaid or refinanced in such transaction shall be excluded from the results of the Borrower and its Subsidiaries for such Measurement Period; and

(d) any Indebtedness actually or proposed to be incurred or assumed in such transaction shall be deemed to have been incurred as of the first day of the applicable Measurement Period, and interest thereon shall be deemed to have accrued from such day on such Indebtedness at the applicable rates provided therefor (and in the case of interest that does or would accrue at a formula or floating rate, at the rate in effect at the time of determination) and shall be included in the results of the Borrower and its Subsidiaries for such Measurement Period.

“QFC” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

“QFC Credit Support” has the meaning assigned to it in Section 10.22.

“Qualifying Control Agreement” means an agreement, among a Loan Party, a depository institution or securities intermediary and the Collateral Agent, which agreement is in form and substance reasonably acceptable to the Collateral Agent and the Required Lenders and which provides the Collateral Agent, for the benefit of the Secured Parties, with “control” (as such term is used in Article 9 of the UCC) over the deposit account(s) or securities account(s) described therein.

“Real Estate” means all real property at any time owned by the Borrower or any Subsidiary in the United States.

“Recipient” means (a) the Administrative Agent and (b) any Lender.

“Reinvestment Quantum” means, as of the Closing Date, \$0; provided, that such amount is subject to modification in accordance with Schedule 6.17.

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person’s Affiliates.

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA, other than events for which the thirty (30) day notice period has been waived.

“Required Lenders” means, at any time, Lenders having or holding more than 66 ⅔% of the aggregate outstanding principal amount of the Loans at such time.

“Resolution Authority” means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

“Responsible Officer” means the chief executive officer, president, chief financial officer, treasurer, assistant treasurer or controller of a Loan Party, and solely for purposes of the delivery of incumbency certificates pursuant to Article IV, the secretary or any assistant secretary of a Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party. To the extent requested by the Administrative Agent or the Required Lenders, each Responsible Officer will provide an incumbency certificate and to the extent requested by the Administrative Agent or the Required Lenders, appropriate authorization documentation, in form and substance satisfactory to the Administrative Agent.

“Restricted Payment” means (a) any dividend or other distribution, direct or indirect, on account of any shares (or equivalent) of any class of Equity Interests of the Borrower or any of its Subsidiaries, now or hereafter outstanding, (b) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares (or equivalent) of any class of Equity Interests of the Borrower or any of its Subsidiaries, now or hereafter outstanding and (c) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of Equity Interests of any Loan Party or any of its Subsidiaries, now or hereafter outstanding.

“S&P” means Standard & Poor’s Rating Services, a Standard & Poor’s Financial Services LLC business, and any successor thereto.

“Sale and Leaseback Transaction” means, with respect to any Loan Party or any Subsidiary, any arrangement, directly or indirectly, with any Person whereby such Loan Party or such Subsidiary shall sell or transfer any property used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property being sold or transferred.

“Sanction(s)” means any sanction administered or enforced by the United States Government (including, without limitation, OFAC), the United Nations Security Council, the European Union, His Majesty’s Treasury of the United Kingdom (“HMT”) or other relevant sanctions authority.

“SEC” means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

“Secured Obligations” means (a) in the case of the Borrower, all Obligations and (b) in the case of any Guarantor, such Guarantor’s Guaranteed Obligations.

“Secured Parties” means, collectively, the Agents, the Lenders and the Indemnitees.

“Securities Act” means the Securities Act of 1933, including all amendments thereto and regulations promulgated thereunder.

“Security Agreement” means the security and pledge agreement, dated as of the Closing Date, executed in favor of the Collateral Agent by each of the Loan Parties.

“Securitization Transaction” means, with respect to any Person, any financing transaction or series of financing transactions (including factoring arrangements) pursuant to which such Person or any Subsidiary of such Person may sell, convey or otherwise transfer, or grant a security interest in, accounts, payments, receivables, rights to future lease payments or residuals or similar rights to payment to a special purpose subsidiary or affiliate of such Person.

“Shared Services Agreements” means (a) the Shared Services Agreement dated February 10, 2023, by and between the Borrower and Airstrip Technologies, Inc., a Delaware corporation and (b) the Shared Services Agreement dated November 19, 2012, by and between the Borrower and NantWorks, LLC, a Delaware limited liability company.

[***]

“Subordinated Indebtedness” of a Person means Indebtedness that, by its terms, (a) is expressly subordinated to the Indebtedness under the Loan Documents pursuant to “Acceptable Subordination Terms” (as such term is defined in the Convertible Senior Notes Documents as of the Closing Date) and (b) does not have principal scheduled to mature (or subject to mandatory repurchase or put rights) earlier than the date that is 181 days after the Maturity Date.

“Subordination Agreement” means (i) the Subordination Agreement dated March 2, 2023, by and among the Borrower, NaviNet, Nant Capital, LLC, a Delaware limited liability company, and Airstrip Technologies, Inc., a Delaware corporation, and (ii) any other subordination agreement applicable to any Indebtedness that is required to be subordinated to the Secured Obligations (which may be included directly as part of the terms of such Indebtedness).

“Subsidiary” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of Voting Stock is at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Borrower.

“Supported QFC” has the meaning assigned to it in Section 10.22.

“Swap Contract” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement.

“Swap Termination Value” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include any Lender or any Affiliate of such Lender).

“Synthetic Debt” means, with respect to any Person as of any date of determination thereof, all obligations of such Person in respect of transactions entered into by such Person that are intended to function primarily as a borrowing of funds but are not otherwise included in the definition of “Indebtedness” or as a liability on the Consolidated balance sheet of such Person and its Subsidiaries in accordance with GAAP.

“Synthetic Lease Obligation” means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property (including Sale and Leaseback Transactions), in each case, creating obligations that do not appear on the balance sheet of such Person but which, upon the application of any Debtor Relief Laws to such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

“Target” has the meaning set forth in the definition of “Permitted Acquisition.”

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Threshold Amount” means \$1,000,000.

“UCC” means the Uniform Commercial Code as in effect in the State of New York; provided that, if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, “UCC” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

“UK Financial Institutions” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“UK Resolution Authority” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

“United States” and “U.S.” mean the United States of America.

“U.S. Special Resolution Regime” has the meaning assigned to it in Section 10.22.

“Voting Stock” means, with respect to any Person, Equity Interests issued by such Person the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or persons performing similar functions) of such Person, even if the right to so vote has been suspended by the happening of such contingency.

“Weighted Average Life to Maturity” means, when applied to any Indebtedness at any date, the number of years obtained by dividing (a) the sum of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment, by (b) the then outstanding principal amount of such Indebtedness.

“Withholding Agent” means any Loan Party and the Administrative Agent.

“Write-Down and Conversion Powers” means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

1.2 Other Interpretive Provisions.

With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including the Loan Documents and any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, amended and restated, modified, extended, restated, replaced or supplemented from time to time (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “hereto,” “herein,” “hereof” and “hereunder,” and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Preliminary Statements, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Preliminary Statements, Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory rules, regulations, orders and provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified, extended, restated, replaced or supplemented from time to time, and (vi) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including;” the words “to” and “until” each mean “to but excluding;” and the word “through” means “to and including.”

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

1.3 Accounting Terms.

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Borrower and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 on financial liabilities shall be disregarded.

(b) Changes in GAAP. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, with notice to the Administrative Agent, the Required Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP; provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower shall provide to the Lenders financial statements and other documents required under this Agreement or as reasonably

requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

(c) Pro Forma Treatment. Each Disposition of all or substantially all of a line of business, and each Acquisition, by the Borrower and its Subsidiaries that is consummated during any Measurement Period shall, for purposes of determining compliance with the financial covenants set forth in Section 7.11, be given Pro Forma Effect as of the first day of such Measurement Period.

1.4 Rounding.

Any financial ratios required to be maintained by the Borrower pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

1.5 Times of Day.

Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

1.6 UCC Terms.

Terms defined in the UCC and not otherwise defined herein shall, unless the context otherwise indicates, have the meanings provided by those definitions.

1.7 Divisions.

For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time defined in the UCC and not otherwise defined herein shall, unless the context otherwise indicates, have the meanings provided by those definitions.

ARTICLE II COMMITMENTS AND BORROWINGS

2.1 The Loans. Subject to the terms and conditions set forth herein, each Lender, severally and not jointly, agrees to make Loans to the Borrower in a single drawing, in Dollars, on the Closing Date in an amount equal to the Commitment of such Lender to make such Loans and as provided further in Section 2.3 below. The Loans made on the Closing Date shall be made by the Lenders on a ratable basis in accordance with their respective Commitments. The unused Commitments shall automatically terminate on the Closing Date immediately after the making of the Loans on the Closing Date. Once repaid or prepaid, the Loans may not be reborrowed.

2.2 Advances. Subject to the borrowing procedures set forth in Section 2.3 and upon satisfaction of the conditions set forth in Article IV, each Lender shall make the requested funds

available to the Borrower on the Closing Date¹ by wire transfer of such funds in accordance with instructions provided to (and reasonably acceptable to) such Lender by the Borrower.

2.3 Borrowing Procedures; Closing Date Mechanics. The Borrowing shall be made by a Notice of Borrowing delivered to the Administrative Agent (for distribution to the Lenders) and received by Administrative Agent no later than 3:00 p.m. on the Business Day prior to Closing Date (or such later time as the Lenders may agree in their sole discretion). After receipt of the Notice of Borrowing, the Administrative Agent shall promptly notify the Lenders by telecopy, telephone, email, or other electronic form of transmission acceptable to the Lenders, of the requested Borrowing. Each Lender shall make such Loans to be made by it hereunder on the Closing Date by wire transfer of immediately available funds by 11:00 a.m. on the Business Day that is the Closing Date to the applicable account in accordance with the Notice of Borrowing. The Administrative Agent will make the Loans available to the Borrower by promptly crediting the amounts so received, in like funds, to the applicable account set forth in the Notice of Borrowing. Nothing herein shall be deemed to obligate any Lender to obtain the funds for its Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for its Loan in any particular place or manner. Notwithstanding anything to the contrary contained herein (and without affecting any other provisions hereof), the funded portion of each Loan to be made on the Closing Date shall be equal to 99.00% of the principal amount of such Loan (it being agreed that the full principal amount of each such Loan shall be the “initial” principal amount of such Loan and deemed outstanding on the Closing Date and the Borrower shall be obligated to repay 100% of the principal amount of each such Loan as provided hereunder). Notwithstanding the foregoing, no Lender shall have an obligation to make any Loan if one or more of the applicable conditions precedent set forth in Article IV has not been or will not be satisfied on the Closing Date unless such condition has been waived in accordance with the applicable provisions of Article IV.

2.4 [Reserved].

2.5 Prepayments.

(a) Optional. The Borrower may, by delivery to the Administrative Agent of a Notice of Loan Prepayment, at any time or from time to time on or after the Existing Convertible Senior Notes Security Date, voluntarily prepay the Loans in whole or in part together with the applicable Loan Payment Fees; provided that, (A) such notice must be received by the Administrative Agent not later than 11:00 a.m. (1) one (1) Business Days prior to any date of prepayment; and (B) any prepayment of the Loans shall be in a principal amount of \$1,000,000 or a whole multiple of \$500,000 in excess thereof; or if less, the entire principal amount thereof then outstanding, and shall be accompanied by the applicable Loan Payment Fees. Each such notice shall specify the date and amount of such prepayment and the applicable Loan Payment Fees. The Administrative Agent will promptly notify each Lender of its receipt of any such Notice of Loan Prepayment, and of the amount of such Lender’s ratable portion of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such Notice of Loan Prepayment shall be due and payable on the date specified therein. Any prepayment shall be accompanied by all accrued interest on the amount prepaid, the applicable Loan Payment Fees and if such prepayment shall be for all outstanding Obligations, all amounts owed to the Agents hereunder as of the date of such prepayment shall be included.

¹ The parties hereto acknowledge and agree that notwithstanding the Notice of Borrowing delivered in connection herewith requesting a Borrowing on the Closing Date and the Closing Date being March 2, 2023, the date hereof, any Loans funded on March 3, 2023 shall be deemed to have been funded on the Closing Date for all purposes of the Credit Agreement and all other Loan Documents.

(b) Mandatory.

(i) Dispositions. If the Loan Parties and their Subsidiaries (x) Dispose (in any transaction or series of related transactions) of all or any portion of the [***] or (y) realize any Net Cash Proceeds resulting from an Involuntary Disposition of all or any portion of the [***] (any of the foregoing described in clause (x) or clause (y), a “Disposition Prepayment Event”), within five (5) Business Days after any such Disposition or Involuntary Disposition the Borrower shall prepay the Loans in an aggregate amount equal to 100% of the Net Cash Proceeds received in respect of such Disposition or Involuntary Disposition, but only to the extent such Net Cash Proceeds, together with all other Net Cash Proceeds received from such Dispositions and Involuntary Dispositions exceeds the then-applicable Reinvestment Quantum.

2.6 [Reserved].

2.7 Repayment of the Loans.

The Borrower hereby unconditionally promises to pay to the Administrative Agent, for the account of each Lender, the aggregate principal amount of the Loans outstanding on the Maturity Date, or if earlier, the date of acceleration of the Loans pursuant to Section 8.2. For the avoidance of doubt, any repayment pursuant to this Section 2.7, on or after the Maturity Date or following an acceleration, shall be accompanied by the Loan Payment Fees and all amounts owed to the Agents hereunder as of the date of such payment.

2.8 Interest and Default Rate.

(a) Interest. Each Loan shall bear interest on the outstanding principal amount thereof from the Closing Date at a rate per annum equal to the Applicable Rate.

(b) Default Rate.

(i) If any amount of principal of the Loans is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(ii) If any amount (other than principal of the Loans) payable by the Borrower under any Loan Document is not paid when due (after giving effect to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, then upon the request of the Required Lenders such amount shall thereafter, until paid, bear interest at rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iii) Upon the request of the Required Lenders, while any Event of Default exists (including a payment default), all other outstanding Obligations may bear interest, until paid, at a rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(c) Interest Payments. Interest on the Loans shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

2.9 Fees.

The Borrower shall pay to the Agents, for their own accounts, such fees as shall have been separately agreed upon in the Agent Fee Letter or otherwise in writing in the amounts and at the times so specified. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

2.10 Computation of Interest and Fees.

All computations of interest for the Loans shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365 day year). Interest shall accrue on each Loan for the day on which the Loans is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loans or such portion is paid, provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.11, bear interest for one (1) day. The computations of interest for the Loans for each Interest Payment Date shall be delivered by the Administrative Agent to the Borrower or any Lender within three (3) Business Days upon the request of the Borrower or any Lender. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

2.11 Payments; Pro Rata Treatment; Sharing Set-Offs Generally.

(a) Borrower Payments.

(i) All payments to be made by the Borrower shall be made free and clear of and without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent at the Administrative Agent's Office in Dollars and in immediately available funds not later than 11:00 a.m. on the date specified herein; provided that payments pursuant to Sections 3.1, 3.4 and 10.4 shall be made directly to the Persons entitled thereto. All payments received by the Administrative Agent after 2:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. The Administrative Agent shall distribute any such payments received by it for the account of any Lender to such Lender promptly following receipt thereof. Except as otherwise specifically provided for in this Agreement, if any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(ii) Unless the Administrative Agent receives written notice from the Borrower prior to the date on which any payment is due to the Lenders that Borrower will not make such payment in full as and when required, the Administrative Agent may assume that the Borrower has made (or will make) such payment in full to the Administrative Agent on such date in immediately available funds and the Administrative Agent may (but shall not be so required), in reliance upon such assumption, distribute to each Lender on such due date an amount equal to the amount then due such Lender. If and to the extent the Borrower does not make such payment in full to the Administrative Agent on the date when due, each Lender severally shall repay to the Administrative Agent on demand such amount distributed to such Lender, together with interest thereon at the Default Rate for each day from the date such amount is distributed to such Lender until the date repaid; provided that such interest shall be an obligation of the Borrower and shall be payable by the Borrower upon demand.

(b) Application of Insufficient Payments. If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, interest and fees then due hereunder, such funds shall be applied (i) first, any amounts owed to any Agent hereunder, (ii) second, towards payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (iii) third, towards payment of principal then due hereunder, pro rata among the parties entitled thereto in accordance with the amounts of principal then due to such parties.

(c) Sharing of Payments. If, at any time or times any Lender shall receive (i) by payment, foreclosure, setoff, or otherwise, any proceeds of Collateral or any payments with respect to the Secured Obligations, except for any such proceeds or payments received by such Lender from the Administrative Agent pursuant to the terms of this Agreement, or (ii) payments from the Administrative Agent in excess of such Lender's pro rata share of all such distributions by the Administrative Agent, such Lender promptly shall (A) turn the same over to the Administrative Agent, in kind, and with such endorsements as may be required to negotiate the same to the Administrative Agent, or in immediately available funds, as applicable, for the account of all of the Lenders and for application to the Secured Obligations in accordance with the applicable provisions of this Agreement, or (B) purchase, without recourse or warranty, an undivided interest and participation in the Secured Obligations owed to the other Lenders so that such excess payment received shall be applied ratably as among the Lenders in accordance with their pro rata shares; provided, that to the extent that such excess payment received by the purchasing party is thereafter recovered from it, those purchases of participations shall be rescinded in whole or in part, as applicable, and the applicable portion of the purchase price paid therefor shall be returned to such purchasing party, but without interest except to the extent that such purchasing party is required to pay interest in connection with the recovery of the excess payment.

(d) Deductions by Administrative Agent. If any Lender or the Borrower shall fail to make any payment required to be made by it hereunder, then the Administrative Agent may, in its reasonable discretion and notwithstanding any contrary provision hereof, (i) apply any amounts thereafter received by the Administrative Agent for the account of such Lender or the Borrower for the benefit of the Administrative Agent, to satisfy such Lender's or the Borrower's obligations to the Administrative Agent, as applicable, until all such unsatisfied obligations are fully paid or (ii) hold any such amounts in a segregated account as cash collateral for, and for application to, any future funding obligations of such Lender hereunder, in the case of each of clauses (i) and (ii) above, in any order as determined by the Administrative Agent in its reasonable discretion.

ARTICLE III TAXES, YIELD PROTECTION AND ILLEGALITY

3.1 Taxes.

(a) For purposes of this Section 3.1, the term "applicable law" includes FATCA. Any and all payments by or on account of any obligation of the Loan Parties under any Loan Document shall be made without deduction or withholding for any Taxes except as required by applicable law. If any such Taxes are imposed (as determined in the good faith discretion of the applicable Withholding Agent) on any payments made by a Withholding Agent (including payments under this paragraph), then such Withholding Agent will pay the Taxes and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary to preserve the after-tax yield each of the Lenders would have received if such Taxes had not been imposed.

- (b) The Loan Parties shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.
- (c) The Loan Parties shall jointly and severally indemnify each Recipient, within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to a Loan Party by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of such Lender, shall be conclusive absent manifest error.
- (d) Each Lender shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 10.6(c) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (d).
- (e) As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority, as provided in this Section 3.1, the Loan Party will deliver to the Administrative Agent, for distribution to the Lenders, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent. Each Loan Party will confirm that it has paid the Taxes required under this Section 3.1 by giving the Administrative Agent official tax receipts (or notarized copies) within thirty (30) days after the due date.
- (f) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to Borrower and the Administrative Agent, at the time or times reasonably requested by Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by Borrower or Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding; provided that the completion, execution and submission of such documentation (other than such documentation set forth in Section 3.1(f)(i) or Section 3.1(f)(ii)) shall not be required if in the Lender's reasonable judgement such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender. Without limiting the generality of the foregoing:
- (i) Prior to the date that any Lender that is not a "U.S. Person" within the meaning of Section 7701(a)(30) of the Code (a "Foreign Lender") becomes a party hereto, such Lender shall deliver to Borrower and the Administrative Agent such certificates, documents or other evidence, as required by the Code (including IRS Forms W-8ECI, W-8BEN-E, or W-8IMY

as applicable, or appropriate successor forms), properly completed, currently effective and duly executed by such Lender, along with any applicable attachments, to permit Borrower or the Administrative Agent to determine the withholding or deduction required to be made, if any.

(ii) Any Lender that is not a Foreign Lender shall deliver to Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or the Administrative Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding Tax.

(iii) Each Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made.

(iv) Each Lender shall promptly deliver further copies of such forms or other appropriate certifications if any such forms expire or become obsolete and after the occurrence of any event requiring a change in the most recent form delivered to Borrower or the Administrative Agent.

(v) Each Lender shall deliver to Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by Borrower or the Administrative Agent such documentation required under FATCA (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by Borrower or the Administrative Agent as may be necessary for Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment.

For purposes of this Section 3.1(f), a reference to a "Lender" shall include any participant to whom such Lender has sold a participation (it being understood that the documentation required under this Section 3.1(f) shall be delivered to the participating Lender). Notwithstanding anything to the contrary, the completion, execution and submission of the documentation described in Section 3.1(f)(iii) shall not be required if in a Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(g) If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 3.1 (including by the payment of additional amounts pursuant to this Section 3.1), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (f) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority.

Notwithstanding anything to the contrary in this paragraph (f), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (f) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any Lender to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to a Loan Party or any other Person.

(h) Each party's obligation under this Section 3.1 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

3.2 Illegality.

If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its lending office to perform any of its obligations hereunder or to make, maintain or fund or charge interest with respect to the Loans of such Lender, then, on notice thereof by such Lender to the Borrower, any obligation of such Lender to issue, make, maintain, fund or charge interest with respect to the Loans of such Lender shall be suspended until such Lender notifies the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrower shall, upon demand from such Lender, prepay such Loans immediately. Upon any such prepayment, the Borrower shall also pay accrued interest on the amount so prepaid.

3.3 [Reserved].

3.4 Increased Costs.

In the event any permitted assignee of any Lender is a bank:

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, such Lender;

(ii) subject any Recipient to any taxes (other than Indemnified Taxes, Excluded Taxes and Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on such Lender any other condition, cost or expense affecting this Agreement or Loans made by such Lender; and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making, continuing or maintaining the Loans (or of maintaining its obligation to make any such Loan), or to reduce the amount of any sum received or receivable by such Lender or other Recipient hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or other Recipient, the Borrower will pay to such Lender or other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender or other Recipient for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender determines that any Change in Law affecting such Lender or its lending office or such Lender's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by such Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

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

(d) [Reserved].

(e) Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this Section 3.4 shall not constitute a waiver of such Lender's right to demand such compensation, provided that the Borrower shall not be required to compensate such Lender pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine (9) months prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine (9) month period referred to above shall be extended to include the period of retroactive effect thereof).

3.5 [Reserved].

3.6 Survival.

All of the Borrower's obligations under this Article III shall survive termination of the Commitments, repayment of all other Obligations hereunder.

ARTICLE IV CONDITIONS PRECEDENT TO BORROWING

The obligation of the Lenders to make the Loans hereunder on the Closing Date is subject to satisfaction or waiver by all the Lenders of the following conditions precedent; provided that any matters addressed in Section 6.17 shall not be deemed closing conditions hereunder:

(a) Execution of Credit Agreement; Loan Documents. The Lenders and the Agents shall have received (i) counterparts of this Agreement, executed by the Agents, each Lender and a Responsible Officer of each Loan Party, (ii) counterparts of the Security Agreement and each other Collateral Document, executed by a Responsible Officer of the applicable Loan Parties and a duly authorized officer of each other Person party thereto, as applicable and (iii) counterparts of any other Loan Document, executed by a Responsible Officer of the applicable Loan Party and a duly authorized officer of each other Person party thereto.

(b) Officer's Certificate. The Lenders and the Agents shall have received a certificate of a Responsible Officer dated the Closing Date, certifying as to the Organization

Documents of each Loan Party (which, to the extent filed with a Governmental Authority, shall be certified as of a recent date by such Governmental Authority), the resolutions of the governing body of each Loan Party, the good standing, existence or its equivalent of each Loan Party and of the incumbency (including specimen signatures) of the Responsible Officers of each Loan Party.

(c) Legal Opinions of Counsel. The Lenders and the Agents shall have received an opinion or opinions (including, if requested by the Lenders, local counsel opinions) of counsel for the Loan Parties, dated the Closing Date and addressed to the Administrative Agent and the Lenders, in form and substance acceptable to the Lenders.

(d) Personal Property Collateral. The Lenders and the Agents shall have received, in form and substance satisfactory to the Lenders:

(i) (A) searches of UCC filings in the jurisdiction of incorporation or formation, as applicable, of each Loan Party and each jurisdiction where any Collateral is located or where a filing would need to be made in order to perfect the Collateral Agent's security interest in the Collateral, copies of the financing statements on file in such jurisdictions and evidence that no Liens exist other than Permitted Liens and (B) tax lien, judgment and bankruptcy searches;

(ii) searches of ownership of Intellectual Property in the appropriate governmental offices and such patent, trademark and copyright filings as requested by the Lenders in order to perfect the Collateral Agent's security interest in the Intellectual Property;

(iii) completed UCC financing statements for each appropriate jurisdiction as is necessary, in the Lenders' sole discretion, to perfect the Collateral Agent's security interest in the Collateral;

(iv) stock or membership certificates, if any, evidencing the Pledged Equity and undated stock or transfer powers duly executed in blank; in each case to the extent such Pledged Equity is certificated;

(v) to the extent required to be delivered, filed, registered or recorded pursuant to the terms and conditions of the Collateral Documents, all instruments, documents and chattel paper in the possession of any of the Loan Parties, together with allonges or assignments as may be necessary or appropriate to create and perfect the Collateral Agent's security interest in the Collateral; and

(vi) Qualifying Control Agreements satisfactory to the Lenders to the extent required to be delivered pursuant to Section 6.13.

(e) [Reserved].

(f) Notice of Borrowing. The Administrative Agent and the Lenders shall have received a duly completed Notice of Borrowing delivered in accordance with Section 2.3 and including therein an instruction of direction with respect to the Loans to be made on the Closing Date.

(g) Fees and Expenses. The Administrative Agent, the Collateral Agent and the Lenders shall have received all fees and expenses, if any, owing pursuant to this Agreement and the Agent Fee Letter, including the reasonable fees and expenses of Davis Polk & Wardwell LLP and Allen & Overy LLP.

(h) Other Documents. All other documents provided for herein or which the Lenders or an Agent may reasonably request or require.

(i) Additional Information. Such additional information and materials which the Lenders shall reasonably request or require, including the due diligence requests.

(j) Representations and Warranties. The representations and warranties of the Borrower and each other Loan Party contained in Article V or any other Loan Document shall (i) with respect to representations and warranties that contain a materiality qualification, be true and correct and (ii) with respect to representations and warranties that do not contain a materiality qualification, be true and correct in all material respects.

(k) Default. No Default or Event of Default shall exist or would result from the making of the Loans or from the application of the proceeds thereof.

(l) Liquidity. As of the Closing Date, and after giving effect to the Loans, the Liquidity shall not be less than \$5,000,000; provided that solely for purposes of this clause (l), Liquidity shall be determined without regard to clause (a) of the definition thereof.

(m) Cash Flow Projection. The Borrower shall have delivered to the Lenders a cash flow projection (the “Initial Cash Flow Projection”) for the fourteen (14) day period following the Closing Date.

ARTICLE V REPRESENTATIONS AND WARRANTIES OF THE LOAN PARTIES

Each Loan Party represents and warrants to the Administrative Agent and the Lenders, as of the Closing Date that:

5.1 Existence, Qualification and Power.

Except as set forth on Schedule 5, each Loan Party and each of its Subsidiaries (a) is duly organized or formed, validly existing and, as applicable, in good standing under the Laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, and (c) is duly qualified and is licensed and, as applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (b)(i) or (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect. The copy of the Organization Documents of each Loan Party provided to the Lenders pursuant to the terms of this Agreement is a true and correct copy of each such document as in effect on the Closing Date, each of which is valid and in full force and effect.

5.2 Authorization; No Contravention.

The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is or is to be a party have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of any of such Person’s Organization Documents; (b) conflict with or result in any breach or contravention of, or the creation of any Lien under, or require any payment to be made under (i) any material Contractual Obligation to which such Person is a party or affecting such Person or the properties

of such Person or any of its Subsidiaries, except as set forth on Schedule 5 or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (c) violate any material Law.

5.3 Governmental Authorization; Other Consents.

No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with (a) the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, (b) the grant by any Loan Party of the Liens granted by it pursuant to the Collateral Documents, (c) the perfection or maintenance of the Liens created under the Collateral Documents (including the first priority nature thereof) or (d) the exercise by the Agents and the Lenders of their respective rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Collateral Documents, other than (i) authorizations, approvals, actions, notices and filings which have been duly obtained and (ii) filings to perfect the Liens created by the Collateral Documents.

5.4 Binding Effect.

This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of each Loan Party that is a party thereto, enforceable against such Loan Party in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principals of equity.

5.5 Financial Statements; No Material Adverse Effect.

(a) Audited Financial Statements. The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present in all material respects the consolidated financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations, cash flows and changes in shareholders' equity for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) show all material indebtedness and other material liabilities, direct or contingent, of the Borrower and its Subsidiaries as of the date thereof, including material liabilities for taxes, commitments and Indebtedness.

(b) Unaudited Financial Statements. The unaudited Consolidated balance sheet of the Borrower and its Subsidiaries dated September 30, 2022, and the related condensed Consolidated statements of income or operations, shareholders' equity and cash flows for the fiscal quarter ended on that date (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present in all material respects the consolidated financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations, cash flows and changes in shareholders' equity for the period covered thereby; and (iii) show all material indebtedness and other material liabilities, direct or contingent, of the Borrower and its Subsidiaries as of the date thereof, including material liabilities for taxes, commitments and Indebtedness, subject, in each case, to the absence of footnotes and to normal year-end audit adjustments.

(c) Material Adverse Effect. Except as set forth on Schedule 5, since the date of the balance sheet included in the Audited Financial Statements, except as has been disclosed in materials filed with the SEC by the Borrower prior to the Closing Date (excluding any disclosures set forth

in any “risk factors” or “forward-looking statements” sections or any other disclosures that are not statements of facts or that are cautionary, predictive or forward-looking in nature), there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

(d) **No Undisclosed Liabilities.** Except as set forth on Schedule 5, except for the Indebtedness incurred under this Agreement and the Indebtedness permitted by Section 7.2, (i) as of the Closing Date (and after giving effect to the Loans), there are no liabilities or obligations (excluding current obligations incurred in the ordinary course of business) of the Borrower or its Subsidiaries of any nature whatsoever (whether absolute, accrued, contingent or otherwise and whether or not due and including obligations or liabilities for taxes, long-term leases and unusual forward or other long-term commitments), and (ii) the Borrower does not have knowledge of any basis for the assertion against any the Borrower or its Subsidiaries of any such liability or obligation which, in the case of clause (i) or (ii), either individually or in the aggregate, could reasonably be expected to have, a Material Adverse Effect.

5.6 Litigation.

Except as set forth on Schedule 5, there are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Loan Parties, threatened, at law, in equity, in arbitration or before any Governmental Authority, by or against any Loan Party or any Subsidiary or against any of their properties or revenues that (a) purport to affect or pertain to this Agreement or any other Loan Document or any of the transactions contemplated hereby, or (b) either individually or in the aggregate could reasonably be expected to have a Material Adverse Effect.

5.7 No Default.

Except as set forth on Schedule 5, neither any Loan Party nor any Subsidiary thereof is in default under or with respect to, or a party to, any Contractual Obligation that could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

5.8 Ownership of Property; Liens.

Each Loan Party and each of its Subsidiaries has good record and marketable title in fee simple to, or valid leasehold interests in, all real property necessary or used in the ordinary conduct of its business, except for such defects in title as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The property of each Loan Party and each of its Subsidiaries is subject to no Liens, other than as permitted by Section 7.1. No Loan Party or any of their respective Subsidiaries owns any Material Real Estate.

5.9 Environmental Compliance.

(a) The Loan Parties have no knowledge of any claims alleging potential liability or responsibility for violation of any Environmental Law on their respective businesses, operations and properties that could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Neither any Loan Party nor any of its Subsidiaries is undertaking, and has not in the year prior to the Closing Date completed, either individually or together with other potentially responsible parties, any investigation or assessment or remedial or response action relating to any actual or threatened release, discharge or disposal of Hazardous Materials at any site, location or

operation, either voluntarily or pursuant to the order of any Governmental Authority or the requirements of any Environmental Law; and all Hazardous Materials generated, used, treated, handled or stored at, or transported to or from, any property currently or formerly owned or operated by any Loan Party or any of its Subsidiaries have been disposed of in a manner not reasonably expected to result in material liability to any Loan Party or any of its Subsidiaries.

5.10 Maintenance of Insurance.

The properties of the Borrower and its Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of the Borrower, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the applicable Loan Party or the applicable Subsidiary operates.

5.11 Taxes.

Except as set forth on Schedule 5, each Loan Party and its Subsidiaries have timely filed all federal, state income and sales and other material Tax returns and reports required to be filed, and have paid all federal, state income and sales and other material Taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP. There is no proposed Tax assessment against any Loan Party or any Subsidiary that would, if made, have a Material Adverse Effect, nor is there any Tax sharing agreement applicable to the Borrower or any Subsidiary.

5.12 ERISA Compliance.

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other federal or state laws. Each Pension Plan that is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination letter or is subject to a favorable opinion letter from the IRS to the effect that the form of such Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the IRS to be exempt from federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the IRS. To the knowledge of the Loan Parties, nothing has occurred that would prevent or cause the loss of such tax-qualified status.

(b) There are no pending or, to the knowledge of the Loan Parties, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) (i) No ERISA Event has occurred, and no Loan Party nor any ERISA Affiliate is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event; (ii) the Borrower and each ERISA Affiliate has met all applicable requirements under the Pension Funding Rules in respect of each Pension Plan, and no waiver of the minimum funding standards under the Pension Funding Rules has been applied for or obtained; (iii) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is sixty percent (60%) or higher and no Loan Party nor any ERISA Affiliate knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage for any such plan to drop below sixty percent (60%) as of the most recent valuation date; (iv) no Loan Party nor any ERISA Affiliate has

incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid; (v) neither the Borrower nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA; and (vi) no Pension Plan has been terminated by the plan administrator thereof nor by the PBGC, and no event or circumstance has occurred or exists that could reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Pension Plan.

5.13 Margin Regulations; Investment Company Act.

(a) Margin Regulations. The Borrower is not engaged and will not engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock. Following the application of the proceeds of the Borrowing on the Closing Date, not more than twenty-five percent (25%) of the value of the assets (either of the Borrower only or of the Borrower and its Subsidiaries on a Consolidated basis) subject to the provisions of Section 7.1 or Section 7.5 or subject to any restriction contained in any agreement or instrument between the Borrower and the Lenders or any Affiliate of the Lenders relating to Indebtedness and within the scope of Section 8.1(e), will be margin stock.

(b) Investment Company Act. No Loan Party is required to be registered as an “investment company” under the Investment Company Act of 1940.

5.14 Disclosure.

The Borrower has disclosed to the Lenders all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries or any other Loan Party is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No report, financial statement, certificate or other information furnished (whether in writing or orally) by or on behalf of any Loan Party to the Lenders in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case as modified or supplemented by other information so furnished) contains any material misstatement of material fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading; provided that, with respect to projected financial information, each Loan Party represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

5.15 [Reserved].

5.16 Casualty, Etc.

Except as set forth on Schedule 5, neither the businesses nor the properties of any Loan Party or any of its Subsidiaries are affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy or other casualty (whether or not covered by insurance) that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

5.17 Sanctions Concerns and Anti-Corruption Laws.

(a) Sanctions Concerns. No Loan Party nor any of its Subsidiaries is (i) currently the subject or target of any Sanctions, (ii) included on OFAC’s List of Specially Designated Nationals, HMT’s Consolidated List of Financial Sanctions Targets and the Investment Ban List, or any

similar list enforced by any other relevant sanctions authority or (iii) located, organized or resident in a Designated Jurisdiction.

(b) Anti-Corruption Laws. The Loan Parties and their Subsidiaries have conducted their business in compliance in all material respects with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other similar anti-corruption legislation in other jurisdictions.

5.18 Subsidiaries; Joint Ventures, Partnerships and Equity Investments.

(a) Subsidiaries, Joint Ventures, Partnerships and Equity Investments. Set forth on Schedule 1 to the Perfection Certificate, is the following information which is true and complete as of the Closing Date or as of the last date such Schedule was required to be updated in accordance with Sections 6.2, 6.13 and 6.14: (i) a list of all Subsidiaries, joint ventures and partnerships and other equity investments of the Loan Parties, (ii) the number of outstanding shares of each class of Equity Interests in each Subsidiary, (iii) the number and percentage of outstanding shares of each class of Equity Interests owned by the Loan Parties and their Subsidiaries, (iv) the class or nature of such Equity Interests (i.e. common, preferred, etc.), (v) ownership information (e.g. publicly held or if private or partnership, the owners and partners of each of the Loan Parties), (vi) all subscriptions, options, warrants or calls relating to such Equity Interests, including any right of conversion or exchange and (vii) each stockholders' agreement, restrictive agreement, voting agreement or similar agreement relating to any such Equity Interests. The outstanding Equity Interests in all Subsidiaries are validly issued, fully paid and non-assessable and are owned free and clear of all Liens. There are no outstanding subscriptions, options, warrants, calls, rights or other agreements or commitments (other than stock options granted to employees or directors and directors' qualifying shares) of any nature relating to the Equity Interests of any Loan Party (other than Borrower) or any Subsidiary thereof, except as set forth in the Perfection Certificate or contemplated in connection with the Loan Documents.

(b) Loan Parties. Set forth on Schedule 2 to the Perfection Certificate is a complete and accurate list of all Loan Parties, showing as of the Closing Date, or as of the last date such Schedule was required to be updated in accordance with Sections 6.2, 6.13 and 6.14 (as to each Loan Party) (i) the exact legal name, (ii) any former legal names of such Loan Party in the four (4) months prior to the Closing Date, (iii) the jurisdiction of its incorporation or organization, as applicable, (iv) the type of organization, (v) the address of its chief executive office, (vi) its U.S. federal taxpayer identification number or, in the case of any non-U.S. Loan Party that does not have a U.S. taxpayer identification number, its unique identification number issued to it by the jurisdiction of its incorporation or organization, and (vii) the organization identification number.

5.19 Collateral Representations.

(a) Collateral Documents. The provisions of the Collateral Documents are effective to create in favor of the Collateral Agent, for the benefit of the Secured Parties, a legal, valid and enforceable first priority Lien (subject to Permitted Liens) on all right, title and interest of the respective Loan Parties in the Collateral described therein. Except for filings completed prior to the Closing Date and as contemplated hereby and by the Collateral Documents, no filing or other action will be necessary to perfect or protect such Liens.

(b) Intellectual Property. Set forth on Schedule 12 to the Perfection Certificate, as of the Closing Date or as of the last date such Schedule was required to be updated in accordance with Sections 6.2, 6.13 and 6.14, is a list of all Intellectual Property registered or pending for registration with the United States Copyright Office or the United States Patent and Trademark Office owned by each of the Loan Parties (including the name/title, current owner, registration or application number).

(c) Documents, Instruments, and Tangible Chattel Paper. Set forth on Schedule 11 to the Perfection Certificate, as of the Closing Date or as of the last date such Schedule was required to be updated in accordance with Sections 6.2, 6.13 and 6.14, is a description of each Document, Instrument, and Tangible Chattel Paper exceeding \$500,000 in value, individually, of the Loan Parties (including the Loan Party owning such Document, Instrument and Tangible Chattel Paper).

(d) Deposit Accounts, Electronic Chattel Paper, Letter-of-Credit Rights, and Securities Accounts.

(i) Set forth on Schedule 7 to the Perfection Certificate, as of the Closing Date or as of the last date such Schedule was required to be updated in accordance with Sections 6.2, 6.13 and 6.14, is a description of all Deposit Accounts and Securities Accounts of the Loan Parties, including the name of (A) the applicable Loan Party, (B) in the case of a Deposit Account, the depository institution, the account number and the purpose of the account, and (C) in the case of a Securities Account, the Securities Intermediary or issuer, the account number and the type of investments held in such account.

(ii) Set forth on Schedule 11 to the Perfection Certificate, as of the Closing Date or as of the last date such Schedule was required to be updated in accordance with Sections 6.2, 6.13 and 6.14, is a description of all Electronic Chattel Paper (as defined in the UCC) and Letter-of-Credit Rights (as defined in the UCC) of the Loan Parties, in each case exceeding \$500,000 in value, individually, including the name of (A) the applicable Loan Party, (B) in the case of Electronic Chattel Paper, the account debtor and (C) in the case of Letter-of-Credit Rights, the issuer or nominated person, as applicable.

(e) Commercial Tort Claims. Set forth on Schedule 3 to the Perfection Certificate, as of the Closing Date or as of the last date such Schedule was required to be updated in accordance with Sections 6.2, 6.13 and 6.14, is a description of each Commercial Tort Claim in excess of \$500,000, individually, of any of the Loan Parties (detailing such Commercial Tort Claim in reasonable detail).

(f) Pledged Equity Interests. Set forth on Schedule 14 to the Perfection Certificate, as of the Closing Date or as of the last date such Schedule was required to be updated in accordance with Sections 6.2, 6.13 and 6.14, is a list of all Pledged Equity and in each case, detailing the Grantor (as defined in the Security Agreement), the Person whose Equity Interests are pledged, the number of shares of each class of Equity Interests pledged, the certificate number, if any, of such Equity Interests and percentage ownership of outstanding shares of each class of Equity Interests pledged.

(g) Properties. Set forth on Schedule 13 to the Perfection Certificate, as of the Closing Date or as of the last date such Schedule was required to be updated in accordance with Sections 6.2, 6.13 and 6.14, is a list of all Mortgaged Properties (including (i) the name of the Loan Party owning such Mortgaged Property, (ii) the property address, (iii) the city, county, state and zip code which such Mortgaged Property is located and (iv) an indication if such location is leased or owned, and if leased, the name of the lessee). Set forth on Schedule 15 to the Perfection Certificate, as of the Closing Date or as of the last date such Schedule was required to be updated in accordance with Sections 6.2, 6.13 and 6.14, is a list of (A) each headquarter location of the Loan Parties, and (B) each location where any inventory is located at any premises owned or leased by a Loan Party with a Collateral value in excess of \$100,000 (in each case, including (1) an indication if such location is leased or owned, (2) if leased, the name of the lessor, and if owned, the name of the Loan Party owning such property, (3) the address of such property (including, the city, county, state and zip code) and (4) to the extent owned, the approximate Fair Market Value of such property).

5.20 Affected Financial Institutions.

No Loan Party is an Affected Financial Institution.

5.21 Designation as Non-Affiliate Debt.

As of the Closing Date, the Secured Obligations do not constitute Affiliate Debt or any similar designation under the Convertible Senior Notes Documents.

5.22 Intellectual Property; Licenses, Etc.

The Borrower and each of its Subsidiaries own, or possess the right to use, any and all material intellectual property or other similar proprietary rights throughout the world, including any and all trademarks, service marks, trade names, domain names, copyrights, design rights, patents, patent rights, licenses, technology, software, trade secrets, know-how, database rights and all related documentation, registrations, additions, improvements or accessions, and all goodwill associated with the foregoing (collectively, “IP Rights”) that are used in, held for use in or otherwise material to the operation of their respective businesses, without conflict with the rights of any other Person which, either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect. To the knowledge of the Borrower, the operation of the respective businesses of the Borrower or any of its Subsidiaries does not infringe upon, dilute, misappropriate or violate any rights held by any other Person, other than as, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect. No claim or litigation regarding any IP Rights is pending or, to the knowledge of the Borrower, threatened, which, either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

5.23 Labor Matters.

There are no (i) Multiemployer Plans covering the employees of the Loan Parties as of the Closing Date or (ii) collective bargaining agreements covering the employees of the Borrower or any of its Subsidiaries as of the Closing Date. Neither the Borrower nor any Subsidiary has suffered any strikes, walkouts, work stoppages or other material labor difficulty within the last five (5) years preceding the Closing Date. To the Borrower’s knowledge, the Borrower has not utilized nor does it currently utilize employees or contractors who fail to comply in all material respects with Form I-9, Employment Eligibility Verification, obligations relating to the employees of the Borrower or any of its Subsidiaries or who otherwise fail to comply in all material respects with U.S. immigration Laws. To the Borrower’s knowledge, neither the Borrower nor any of its Subsidiaries has received any written notices from the Social Security Administration or the U.S. Department of Homeland Security regarding a “mismatch” of employee names and Social Security Numbers or employee names and immigration-related documents.

5.24 Compliance with Laws.

Each Loan Party and each Subsidiary thereof is in compliance in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (i) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (ii) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

5.25 Affiliated Agreements.

Except as set forth on Schedule 5, neither the Borrower nor any of its Subsidiaries is party to an existing Affiliate Transaction.

ARTICLE VI AFFIRMATIVE COVENANTS

Each of the Loan Parties hereby covenants and agrees that on the Closing Date and thereafter until the Facility Termination Date, such Loan Party shall, and shall cause each of its Subsidiaries to:

6.1 Financial Statements.

Deliver to the Administrative Agent, for distribution to the Lenders, in form and detail satisfactory to the Required Lenders:

(a) Audited Financial Statements. As soon as available, but in any event within ninety (90) days after the end of each fiscal year of the Borrower, a Consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal year, and the related Consolidated statements of operations, comprehensive loss, stockholders' deficit and cash flows for such fiscal year, all in reasonable detail and prepared in accordance with GAAP, such Consolidated statements to be audited and accompanied by a report and opinion of an independent certified public accountant of nationally recognized standing, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any exception as to the scope of such audit, together with a management discussion and analysis of operating results inclusive of operating metrics in comparative form.

(b) Quarterly Financial Statements. As soon as available, but in any event within forty-five (45) days after the end of each of the first three (3) fiscal quarters of each fiscal year of the Borrower (commencing with the fiscal quarter ended March 31, 2023), a Consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal quarter, and the related Consolidated statements of operations, comprehensive loss, stockholders' deficit and cash flows for such fiscal quarter and for the portion of the Borrower's fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP and including a management discussion and analysis of operating results inclusive of operating metrics in comparative form, such Consolidated statements to be certified by a Responsible Officer of the Borrower as fairly presenting the financial condition, results of operations and cash flows of the Borrower and its Subsidiaries, subject only to normal year-end audit adjustments and the absence of footnotes.

As to any information contained in materials filed with the SEC or furnished pursuant to Section 6.2(f), the Borrower shall not be separately required to furnish such information under Section 6.1(a) or (b) above, but the foregoing shall not be in derogation of the obligation of the Borrower to furnish the information and materials described in Sections 6.1(a) and (b) above at the times specified therein.

6.2 Certificates; Other Information.

Deliver to the Administrative Agent, for distribution to the Lenders:

(a) [Reserved].

(b) Compliance Certificate. Concurrently with the delivery of the financial statements referred to in Sections 6.1(a) and (b) (commencing with the delivery of the financial statements for the fiscal year ended December 31, 2022), (i) a duly completed Compliance Certificate signed by the chief financial officer or Responsible Officer of the Borrower, and in the event of any change in generally accepted accounting principles used in the preparation of such financial statements, the Borrower shall also provide, if necessary for the determination of compliance with Section 7.11, a statement of reconciliation conforming such financial statements to GAAP, and (ii) a copy of a customary management's discussion and analysis with respect to such financial statements. Unless the applicable Lender requests executed originals, delivery of the Compliance Certificate may be by electronic communication including fax or email and shall be deemed to be an original and authentic counterpart thereof for all purposes.

(c) Updated Schedules to Credit Agreement and to Perfection Certificate. Updated Schedules to (i) this Agreement and the Perfection Certificate concurrently with the delivery of, and as set forth in, the Compliance Certificate referred to in Section 6.2(b) (or, alternatively, a certification from a Responsible Officer that there has been no changes to the Schedules to this Agreement or to the Perfection Certificate, as applicable, previously delivered to the Agents and the Lenders) and (ii) the Perfection Certificate as of the date required to be delivered pursuant to Section 6.13.

(d) [Reserved].

(e) Audit Reports; Management Letters; Recommendations. Copies of any material detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of any Loan Party by independent accountants in connection with the accounts or books of any Loan Party or any of its Subsidiaries, or any audit of any of them.

(f) Annual Reports; Etc. Copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of the Borrower, and copies of all annual, regular, periodic and special reports and registration statements which the Borrower may file or be required to file with the SEC under Section 13 or 15(d) of the Exchange Act, or with any national securities exchange, and in any case not otherwise required to be delivered to any Lender pursuant hereto.

(g) Debt Securities Statements and Reports. Copies of any statement or report furnished generally to holders of debt securities of any Loan Party or of any of its Subsidiaries pursuant to the terms of any indenture, loan or credit or similar agreement and not otherwise required to be furnished to any Lender pursuant to Section 6.1 or any other clause of this Section.

(h) SEC Notices. Copies of each notice or other correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation or possible investigation or other inquiry by such agency regarding financial or other operational results of any Loan Party or any Subsidiary thereof.

(i) Notices. Copies of all notices, requests and other documents (including amendments, waivers and other modifications) so given or received under or pursuant to any indenture, loan, credit or similar agreement and, from time to time upon reasonable request by any Lender, such information and reports regarding such indentures, loan, credit and similar agreements as any Lender may reasonably request.

(j) Environmental Notice. Notice of any action or proceeding filed against or of any noncompliance by any Loan Party or any of its Subsidiaries with any Environmental Law or Environmental Permit that could (i) reasonably be expected to have a Material Adverse Effect or (ii) cause any property described in the Mortgages to be subject to any restrictions on ownership, occupancy, use or transferability under any Environmental Law.

(k) Additional Information. Such additional information regarding the business, financial, legal or corporate affairs of any Loan Party or any Subsidiary thereof, or compliance with the terms of the Loan Documents, as such Lender may from time to time reasonably request.

Documents required to be delivered pursuant to Section 6.1(a) or (b) or Section 6.2(f) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (a) on which the Borrower posts such documents, or provides a link thereto on the Borrower's website on the Internet at the website address listed on Schedule 1.1(b); or (b) on which such documents are posted on the Borrower's behalf on the Platform or another relevant internet or intranet website, if any, to which the Administrative Agent and the Lenders have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent). The Administrative Agent shall have no responsibility to monitor compliance by the Borrower, and each Lender shall be solely responsible for timely accessing posted documents. The Borrower hereby acknowledges that the Administrative Agent will make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder ("Borrower Materials") by posting the Borrower Materials on the Platform.

6.3 Notices.

Promptly, but in any event within two (2) Business Days, notify the Administrative Agent (which shall make such notice available to the Lenders):

- (a) of the occurrence of any Default;
- (b) of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect, including, but not limited to, (i) breach or non-performance of, or any default under, a Contractual Obligation of the Borrower or any Subsidiary; (ii) any dispute, litigation, investigation, proceeding or suspension between the Borrower or any Subsidiary and any Governmental Authority; or (iii) the commencement of, or any material development in, any litigation or proceeding affecting the Borrower or any Subsidiary, including pursuant to any applicable Environmental Laws;
- (c) of the occurrence of any ERISA Event; and
- (d) of any material change in accounting policies or financial reporting practices by any Loan Party or any Subsidiary thereof.

Each notice pursuant to this Section 6.3 shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and to the extent applicable, stating what action the Borrower has taken and proposes to take with respect thereto. Each notice pursuant to Section 6.3(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

6.4 Payment of Obligations.

Pay and discharge as the same shall become due and payable, all its obligations and liabilities, including (i) all tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by the Borrower or such Subsidiary; (ii) all lawful claims which, if unpaid, would by law become a Lien upon its property; and (iii) all Indebtedness, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness; provided that such payment and discharge shall not be required where failure to make such payment would not reasonably be expected to have a Material Adverse Effect.

6.5 Preservation of Existence, Etc.

(a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization except in a transaction permitted by Section 7.4 or 7.5;

(b) take all reasonable action to maintain all rights, privileges, permits, governmental licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and

(c) preserve, protect, renew and, subject to the reasonable good faith judgment of the Borrower, obtain and enforce all of the IP Rights of the Borrower and its Subsidiaries, except to the extent that failure to do so could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

6.6 Maintenance of Properties.

(a) Maintain, preserve and protect all of its material tangible properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted; and

(b) make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

6.7 Maintenance of Insurance.

(a) Maintenance of Insurance. Maintain with financially sound and reputable insurance companies not Affiliates of the Borrower, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the applicable Loan Party or the applicable Subsidiary operates.

(b) Evidence of Insurance. Cause the Collateral Agent to be named as loss payee or mortgagee, as its interest may appear, and/or additional insured with respect of any such insurance providing liability coverage or coverage in respect of any Collateral, and cause, unless otherwise agreed to by the Required Lenders, each provider of any such insurance to agree, by endorsement upon the policy or policies issued by it or by independent instruments furnished to the Collateral Agent that it will give the Collateral Agent thirty (30) days prior written notice (which notice shall be promptly delivered to the Lenders) before any such policy or policies shall be cancelled (or ten (10) days prior notice in the case of cancellation due to the nonpayment of

premiums). Annually, upon expiration of current insurance coverage, the Loan Parties shall provide, or cause to be provided, to the Administrative Agent, for distribution to the Lenders, such evidence of insurance as required by the Lenders, including, but not limited to: (i) upon the Administrative Agent's request, copies of such insurance policies, (ii) declaration pages for each insurance policy and (iii) lender's loss payable endorsement if the Collateral Agent, for the benefit of the Secured Parties, is not on the declarations page for such policy. The Collateral Agent shall, upon receipt of any proceeds from any such insurance, deliver such proceeds to the Borrower unless an Event of Default shall exist.

6.8 Compliance with Laws.

Comply with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted; or (b) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

6.9 Books and Records.

Maintain proper books of record and account, in which full, true and correct in all material respects entries shall be made of all material financial transactions and matters involving the assets and business of such Loan Party or such Subsidiary, as the case may be.

6.10 Inspection Rights.

Permit representatives and independent contractors of the Administrative Agent or any Lender, no more than one (1) time during the term of this Agreement unless an Event of Default has occurred and is continuing, to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants, all at the expense of the Borrower and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Borrower; provided, however, that when an Event of Default exists the Administrative Agent (or any of its respective representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and without advance notice.

6.11 Use of Proceeds.

Use the proceeds of the Loans solely to finance the payment of fees and expenses under the Loan Documents and for other general corporate purposes not in contravention of any Law or of any Loan Document.

6.12 Covenant to Guarantee Obligations.

(a) The Loan Parties will cause each of their Material Subsidiaries (other than any CFC or any direct or indirect Subsidiary of a CFC) whether newly formed, after acquired or otherwise existing (within thirty (30) days after such Subsidiary is formed or acquired (or such longer period of time as agreed to by the Required Lenders in their reasonable discretion)) to become a Guarantor hereunder by way of execution of a Joinder Agreement; provided, however, no Foreign Subsidiary shall be required to become a Guarantor to the extent such Guaranty would result in a material adverse tax consequence for the Borrower. In connection therewith, the Loan Parties shall give notice to the Administrative Agent (for prompt distribution to the Lenders) not less than ten (10) days prior to creating a Subsidiary (or such shorter period of time as agreed to by the Required Lenders in their reasonable discretion), or acquiring the Equity Interests of any

other Person. In connection with the foregoing, the Loan Parties shall deliver to the Administrative Agent, for prompt distribution to the Lenders, with respect to each new Guarantor to the extent applicable, substantially the same documentation required pursuant to clauses (b)-(e) and (j) of Article IV and Section 6.13 and such other documents or agreements as the Lenders may reasonably request, including without limitation, updated schedules to the Perfection Certificate.

(b) Notwithstanding any provision of this Agreement or any other Loan Document to the contrary, unless otherwise agreed in writing by the Borrower, (a) no more than 65% of the voting stock in any CFC that is a direct (first-tier) Subsidiary of a Loan Party shall be directly or indirectly pledged or similarly hypothecated to guarantee or support any obligation of the Borrower (aggregating all arrangements that result in a direct or indirect pledge of such stock), (b) for the avoidance of doubt, no stock of any Subsidiary of a CFC shall be directly or indirectly pledged or similarly hypothecated to guarantee or support any obligation of the Borrower (aggregating all arrangements that result in a direct or indirect pledge of such stock), (c) no CFC (or any Subsidiary of a CFC) shall guarantee or support any obligation of the Borrower, and (d) no security or similar interest shall be granted in the assets of any CFC (or any Subsidiary of a CFC), which security or similar interest guarantees or supports any obligation of the Borrower. The parties hereto agree that any pledge, guaranty or security or similar interest made or granted in contravention of this Section 6.12(b) shall be void ab initio.

6.13 Covenant to Give Security.

Except with respect to Excluded Property:

(a) Equity Interests and Personal Property. Each Loan Party will cause the Pledged Equity and all of its tangible and intangible personal property now owned or hereafter acquired by it to be subject at all times to a first priority, perfected Lien (subject to Permitted Liens to the extent permitted by the Loan Documents) in favor of the Collateral Agent for the benefit of the Secured Parties to secure the Secured Obligations pursuant to the terms and conditions of the Collateral Documents. Each Loan Party shall provide opinions of counsel and any filings and deliveries reasonably necessary in connection therewith to perfect the security interests therein, all in form and substance reasonably satisfactory to the Collateral Agent and the Lenders.

(b) Real Property. If any Loan Party acquires any Real Estate after the Closing Date constituting Material Real Estate, it shall promptly provide to the Administrative Agent and the Lenders notice of such acquisition with details as to such Material Real Estate and within thirty (30) days thereafter, shall execute and deliver to the Collateral Agent a Mortgage and such other documentation as the Required Lenders may request to cause such Material Real Estate to be subject at all times to a first priority, perfected Lien (subject in each case to Permitted Liens) in favor of the Collateral Agent for the benefit of the Secured Parties to secure the Secured Obligations pursuant to the terms and conditions of the Collateral Documents together with (i) a policy of title insurance insuring the Lien of such Mortgage in an amount equal to 110% of the Fair Market Value as reasonably estimated by the Borrower in consultation with the Lenders, (ii) if requested by the Required Lenders, a current survey of such Material Real Estate and surveyor's certificate, (iii) a legal opinion relating to such Mortgage, which opinion shall be in form and substance, and from counsel, reasonably satisfactory to the Required Lenders. In connection with the foregoing and to the extent requested by any Lender, the Administrative Agent or the Collateral Agent, no later than twenty (20) Business Days prior to the date on which a Mortgage is executed and delivered pursuant to this Section 6.13, the applicable Loan Party shall deliver to the Administrative Agent, the Lenders and the Collateral Agent the flood insurance policy, the applicable Loan Party's application

for a flood insurance policy plus proof of premium payment, a declaration page confirming that flood insurance has been issued, or such other evidence of flood insurance that complies with the Flood Laws reasonably satisfactory to the Collateral Agent and the Required Lenders.

(c) Landlord Waivers. The Loan Parties shall use commercially reasonable efforts to secure a landlord waiver with respect to the facility located on Nancy Ridge in San Diego, California in form and substance satisfactory to the Collateral Agent and the Required Lenders within one hundred eighty (180) days of the Closing Date.

(d) Account Control Agreements. Subject to Section 6.17, each of the Loan Parties shall not open, maintain or otherwise have any deposit or other accounts (including securities accounts) at any bank or other financial institution, or any other account where money or securities are or may be deposited or maintained with any Person, other than (a) deposit accounts that are maintained at all times with depository institutions as to which the Collateral Agent shall have received a Qualifying Control Agreement, (b) securities accounts that are maintained at all times with financial institutions as to which the Collateral Agent shall have received a Qualifying Control Agreement, (c) deposit accounts established solely as payroll and other zero balance accounts and (d) other deposit accounts, so long as at any time the aggregate balance in all such accounts does not exceed \$1,000,000.

(e) Updated Schedules. Concurrently with the delivery of any Collateral pursuant to the terms of this Section, the Borrower shall provide the Agents with the applicable updated Schedules to the Perfection Certificate and Schedules to the Credit Agreement.

(f) Further Assurances. At any time upon request of the Collateral Agent or the Required Lenders through the Collateral Agent, promptly execute and deliver any and all further instruments and documents and take all such other action as the Required Lenders deem necessary or reasonably advisable to maintain in favor of the Collateral Agent, for the benefit of the Secured Parties, Liens and insurance rights on the Collateral that are duly perfected in accordance with the requirements of, or the obligations of the Loan Parties under, the Loan Documents and all applicable Laws.

6.14 Further Assurances.

Promptly upon request by the Collateral Agent, or the Required Lenders through the Collateral Agent, (a) correct any material defect or error that may be discovered in any Loan Document or in the execution, acknowledgment, filing or recordation thereof, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Collateral Agent or the Required Lenders may reasonably require from time to time in order to (i) carry out more effectively the purposes of the Loan Documents, (ii) to the fullest extent permitted by applicable Law, subject any Loan Party's properties, assets, rights or interests that constitute (or are intended to constitute) Collateral to the Liens now or hereafter intended to be covered by any of the Collateral Documents, (iii) perfect and maintain the validity, effectiveness and priority of any of the Collateral Documents and any of the Liens intended to be created thereunder and (iv) assure, convey, grant, assign, transfer, preserve, protect and confirm more effectively unto the Secured Parties the rights granted or now or hereafter intended to be granted to the Secured Parties under any Loan Document or under any other instrument executed in connection with any Loan Document.

6.15 Compliance with Environmental Laws.

Comply, and cause all lessees and other Persons operating or occupying its properties to comply, in all material respects, with all applicable Environmental Laws and Environmental Permits; obtain and renew all Environmental Permits necessary for its operations and properties; and conduct any investigation, study, sampling and testing, and undertake any cleanup, removal, remedial or other action necessary to remove and clean up all Hazardous Materials from any of its properties, in accordance with the requirements of all Environmental Laws; provided, however, that neither the Borrower nor any of its Subsidiaries shall be required to undertake any such cleanup, removal, remedial or other action to the extent that its obligation to do so is being contested in good faith and by proper proceedings and appropriate reserves are being maintained with respect to such circumstances in accordance with GAAP.

6.16 Anti-Corruption Laws.

Conduct its business in compliance in all material respects with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other similar anti-corruption legislation in other jurisdictions and maintain policies and procedures designed to promote and achieve compliance with such laws.

6.17 Post-Closing Obligations and Milestones.

As promptly as practicable, and in any event within the time periods after the Closing Date specified in Schedule 6.17 (or such later date as the Required Lenders may agree) the Loan Parties shall deliver the documents or take the actions specified on Schedule 6.17.

6.18 Compliance Certificate.

As promptly as practicable, and in any event no later than five (5) days after each calendar month, provide an officer's certificate that the Loan Parties are in compliance with the negative covenants set forth in Sections 7.2 and 7.8.

ARTICLE VII NEGATIVE COVENANTS

Each of the Loan Parties hereby covenants and agrees that on the Closing Date and thereafter until the Facility Termination Date, no Loan Party shall, nor shall it permit any Subsidiary to, directly or indirectly:

7.1 Liens.

Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, except for the following (the "Permitted Liens"):

- (a) Liens pursuant to any Loan Document;
- (b) Liens existing on the Closing Date and listed on Schedule 7.1 and any renewals or extensions thereof, provided that (i) the property covered thereby is not changed, (ii) the amount secured or benefited thereby to the extent constituting Indebtedness is not increased except as contemplated by Section 7.2(b), (iii) the direct or any contingent obligor with respect thereto is not changed, and (iv) any renewal or extension of the obligations secured or benefited thereby is permitted by Section 7.2(b);

- (c) Liens for taxes not yet due or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;
- (d) Statutory Liens such as carriers', warehousemen's, mechanics', materialmen's, repairmen's, landlord's, supplier's, laborer's or other like Liens arising in the ordinary course of business which are not overdue for a period of more than thirty (30) days or which are being contested in good faith and by appropriate proceedings diligently conducted; provided adequate reserves with respect thereto are maintained on the books of the applicable Person;
- (e) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation, other than any Lien imposed by ERISA;
- (f) deposits to secure the performance of bids, trade contracts (including with suppliers) and leases (other than Indebtedness), statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, including reimbursement and indemnification obligations, incurred in the ordinary course of business;
- (g) easements, rights-of-way, restrictions and other similar encumbrances affecting real property which, individually or in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Person;
- (h) Liens securing Indebtedness permitted under Section 7.2(c); provided that (i) such Liens do not at any time encumber any property other than the property financed by such Indebtedness and (ii) the Indebtedness secured thereby does not exceed the cost or Fair Market Value, whichever is lower, of the property being acquired on the date of acquisition;
- (i) bankers' Liens, rights of setoff and other similar Liens existing solely with respect to cash and Cash Equivalents on deposit in one or more accounts maintained by the Borrower or any of its Subsidiaries, in each case in the ordinary course of business in favor of the bank or banks with which such accounts are maintained, securing solely the customary amounts owing to such bank with respect to cash management and operating account arrangements; provided, that in no case shall any such Liens secure (either directly or indirectly) the repayment of any Indebtedness;
- (j) Liens arising out of judgments or awards not resulting in an Event of Default; provided the applicable Loan Party or Subsidiary shall in good faith be prosecuting an appeal or proceedings for review;
- (k) any interest or title of a lessor, licensor, sublicensor or sublessor under any lease, license, sublicense or sublease entered into by any Loan Party or any Subsidiary thereof in the ordinary course of business, consistent with past practice and covering only the assets so leased, licensed, sublicensed or subleased;
- (l) Liens on property of a Person existing at the time of a Permitted Acquisition or such Person is merged into or consolidated with the Borrower or any Subsidiary of the Borrower or becomes a Subsidiary of the Borrower; provided that such Liens were not created in contemplation of such Permitted Acquisition or merger, consolidation or Investment and do not extend to any assets other than those of the Person merged into or

consolidated with the Borrower or such Subsidiary or acquired by the Borrower or such Subsidiary, and the applicable Indebtedness secured by such Lien is permitted under Section 7.2(f);

(m) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(n) Liens on the Collateral securing the Existing Convertible Senior Notes, so long as such Liens are junior to the Liens securing the Obligations pursuant to an intercreditor agreement as contemplated by Schedule 6.17; and

(o) other Liens securing Indebtedness outstanding in an aggregate principal amount not to exceed \$250,000.

7.2 Indebtedness.

Create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness under the Loan Documents;

(b) the Indebtedness outstanding on the Closing Date (and the commitments therefor in an aggregate amount not to exceed the amount of such commitments as of the Closing Date) and listed on Schedule 7.2 and any Permitted Refinancing thereof;

(c) Indebtedness in respect of Capitalized Leases, Synthetic Lease Obligations and purchase money obligations for fixed or capital assets within the limitations set forth in Section 7.1(h); provided, however, that the aggregate amount of all such Indebtedness at any one time outstanding shall not exceed \$2,500,000 (inclusive of Indebtedness in respect of Capitalized Leases, Synthetic Lease Obligations and purchase money obligations listed on Schedule 7.2);

(d) unsecured Indebtedness of the Borrower or a Subsidiary of the Borrower owed to the Borrower or a Subsidiary of the Borrower, which Indebtedness shall (i) to the extent in an amount in excess of \$1,000,000 in the aggregate, be evidenced by promissory notes which shall be pledged to the Collateral Agent as Collateral for the Secured Obligations in accordance with the terms of the Security Agreement, (ii) be on terms (including subordination terms) reasonably acceptable to the Required Lenders and (iii) be otherwise permitted under the provisions of Section 7.3 ("Intercompany Debt");

(e) Guarantees of the Borrower or any Guarantor in respect of Indebtedness otherwise permitted hereunder of the Borrower or any other Guarantor;

(f) Indebtedness of any Person that becomes a Subsidiary of the Borrower after the date hereof in a transaction permitted hereunder in an aggregate principal amount not to exceed \$750,000; provided that such Indebtedness is existing at the time such Person becomes a Subsidiary of the Borrower and was not incurred solely in contemplation of such Person's becoming a Subsidiary of the Borrower);

(g) Past Due Accounts Payable not to exceed \$250,000 at any one time outstanding; provided that any Indebtedness in respect of Past Due Accounts Payable shall only be permitted pursuant to this Section 7.2(g).

(h) [Reserved];

- (i) Indebtedness of any Subsidiary that is not a Loan Party not to exceed \$250,000 at any one time outstanding;
- (j) obligations under corporate credit cards, netting services and similar services incurred in the ordinary course of business;
- (k) [Reserved];
- (l) Indebtedness evidenced by the Existing Convertible Senior Notes in an aggregate principal amount at any time outstanding not to exceed \$137,500,000;
- (m) other unsecured Indebtedness in an aggregate principal amount not to exceed \$250,000 at any time outstanding;
- (n) letters of credit outstanding in favor of suppliers and landlords in an amount at any one time outstanding not to exceed \$1,000,000, including any Permitted Refinancing thereof; and
- (o) Indebtedness consisting of the financing of insurance premiums in the ordinary course of business in a principal amount not to exceed at any time the amount of insurance premiums to be paid by the Loan Parties or their Subsidiaries.

7.3 Investments.

Make or hold any Investments, except:

- (a) Investments held by the Borrower and its Subsidiaries in the form of cash or Cash Equivalents, bank deposits in the ordinary course of business, negotiable instruments deposited in the ordinary course of business;
- (b) advances made in connection with the purchase of goods or services in the ordinary course of business;
- (c) (i) Investments by the Borrower and its Subsidiaries in their respective Subsidiaries outstanding on the date hereof, (ii) additional Investments by the Borrower and its Subsidiaries in Loan Parties, (iii) additional Investments by Subsidiaries of the Borrower that are not Loan Parties in other Subsidiaries that are not Loan Parties and (iv) so long as no Default has occurred and is continuing or would result from such Investment, additional Investments by the Loan Parties in Subsidiaries that are not Loan Parties in an aggregate amount invested after the date hereof not to exceed \$250,000;
- (d) Guarantees permitted by Section 7.2 and Liens permitted by Section 7.1 to the extent constituting an Investment;
- (e) Permitted Acquisitions, and Investments held by the target of any Permitted Acquisition (other than of CFCs and Subsidiaries held directly or indirectly by a CFC which Investments are covered by Section 7.3(c)(iv));
- (f) Investments consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the ordinary course of business, and (ii) loans to employees, officers or directors relating to the purchase of equity securities of Borrower or its Subsidiaries pursuant to employee stock purchase plans or agreements approved by Borrower's Board of Directors; provided, however, that the aggregate amount of all such Investments shall not exceed \$2,000,000 at any time outstanding;

- (g) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the ordinary course of business;
- (h) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of suppliers and customers and in settlement of delinquent obligations of, and other disputes with, customers and suppliers arising in the ordinary course of business;
- (i) Investments by the Borrower in Subsidiaries that are not Loan Parties for payments of employee salaries and rent of such Subsidiaries, in each case in the ordinary course of business, in an aggregate amount not to exceed \$1,000,000 in any calendar month; provided that for the calendar month of April 2023, this amount shall not exceed \$1,700,000; and
 - (j) other Investments in an aggregate principal amount not to exceed \$250,000 at any time outstanding.

Notwithstanding any provision of this Agreement or any other Loan Document to the contrary, no Loan Party shall, nor shall it permit any Subsidiary to, directly or indirectly, make any Investment using or consisting of any of the [***].

7.4 Fundamental Changes.

Merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except that, so long as no Default exists or would result therefrom:

- (a) any Subsidiary may merge, dissolve or liquidate into or consolidate with (i) the Borrower; provided that the Borrower shall be the continuing or surviving Person, or (ii) any one or more other Subsidiaries, provided that when any Loan Party is merging with another Subsidiary, such Loan Party shall be the continuing or surviving Person;
- (b) any Loan Party may Dispose of any of its assets (upon voluntary liquidation or otherwise) to the Borrower or to another Loan Party;
- (c) any Subsidiary that is not a Loan Party may dispose any of its assets (including any Disposition that is in the nature of a liquidation) to (i) another Subsidiary that is not a Loan Party or (ii) to a Loan Party;
- (d) in connection with any Permitted Acquisition, any Subsidiary of the Borrower may merge, dissolve or liquidate into or consolidate with any other Person (other than the Borrower) or permit any other Person (other than the Borrower) to merge, liquidate or dissolve into or consolidate with it; provided that (i) the Person surviving such merger shall be a wholly-owned Subsidiary of the Borrower and (ii) in the case of any such merger, dissolution, liquidation or consolidation to which any Subsidiary of the Borrower that is a Loan Party is a party, such Loan Party is the surviving Person; and
- (e) so long as no Default has occurred and is continuing or would result therefrom, each of the Borrower and any of its Subsidiaries may merge into or consolidate with any other Person or permit any other Person to merge into or consolidate with it; provided, however, that in each case, immediately after giving effect thereto (i) in the case of any such merger or consolidation to which the Borrower is a party, the Borrower is the

surviving Person and (ii) in the case of any such merger or consolidation to which any Loan Party (other than the Borrower) is a party, such Loan Party is the surviving Person.

7.5 Dispositions.

Make any Disposition or enter into any agreement to make any Disposition, except:

- (a) Permitted Transfers;
- (b) Dispositions of obsolete, surplus, damaged or worn out property, whether now owned or hereafter acquired, in the ordinary course of business;
- (c) Dispositions of equipment or real property for Fair Market Value to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are reasonably promptly applied to the purchase price of such replacement property;
- (d) non-exclusive licenses, non-exclusive sublicenses, leases or subleases for Fair Market Value granted to third parties in the ordinary course of business and consistent with past practice; and Liens permitted under Section 7.1(k);
- (e) the lapse, abandonment or other dispositions of intellectual property, in the ordinary course of business and consistent with past practice, that is, in the reasonable good faith judgment of a Loan Party, no longer economically practicable or commercially desirable to maintain or necessary for the conduct of the business of the Loan Parties or any of their Subsidiaries;
- (f) Dispositions permitted by Sections 7.1, 7.3, 7.4 or 7.6;
- (g) the sale or issuance of Equity Interests (i) of the Borrower to any Person and (ii) of any Subsidiary of the Borrower to the Borrower or any other wholly-owned Subsidiary of the Borrower; and
- (h) other Dispositions for Fair Market Value so long as (x) at least seventy-five percent (75%) of the consideration paid in connection therewith shall be cash or Cash Equivalents paid contemporaneously with consummation of such Disposition, (y) such transaction does not involve the sale or other Disposition of a minority Equity Interest in any Subsidiary and (z) except with respect to any Disposition of [***], the aggregate net book value of all of the assets sold or otherwise Disposed of by the Loan Parties and their Subsidiaries pursuant to this Section 7.5(h) shall not exceed \$1,000,000 for all such transactions in any fiscal year of the Borrower; provided that any Disposition of [***] shall be subject to Section 2.5(b).

Notwithstanding any provision of this Agreement or any other Loan Document to the contrary, no Loan Party shall, nor shall it permit any Subsidiary to, directly or indirectly, make any Disposition of any of the [***].

7.6 Restricted Payments.

Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except that:

- (a) each Subsidiary may make Restricted Payments to any Person that owns Equity Interests in such Subsidiary, ratably according to their respective holdings of the type of Equity Interest in respect of which such Restricted Payment is being made;
- (b) the Borrower and each Subsidiary may declare and make dividend payments or other distributions payable solely in common Equity Interests of such Person;
- (c) payments to redeem or otherwise acquire existing stock of the Borrower so long as any consideration used to make such payments is delivered solely from the issuance of new Equity Interests by the Borrower after the Closing Date;
- (d) so long as no Default shall have occurred and be continuing at the time of any action described below or would result therefrom, payments of interest on the Existing Convertible Senior Notes in accordance with their terms as in effect on the Closing Date; and
- (e) Borrower may issue common Equity Interests in connection with the conversion, repurchase, exchange or other acquisition of the Existing Convertible Senior Notes;
- (f) Borrower may make de minimis payments of cash in lieu of fractional shares;
- (g) Borrower may convert any of its convertible securities into other securities pursuant to the terms of such convertible securities or otherwise in exchange thereof;
- (h) [Reserved];
- (i) so long as no Event of Default has occurred and is continuing or would occur or result from such Restricted Payment, any purchase, redemption, retirement or other acquisition of Equity Interests of the Borrower held by consultants, agents, officers, directors and employees or former consultants, agents, officers, directors or employees (or their transferees, estates, or beneficiaries under their estates) of the Borrower and its Subsidiaries not to exceed \$500,000 in the aggregate during the term of this Agreement;
- (j) cashless repurchases of Equity Interests of Borrower deemed to occur upon exercises of options and warrants or the settlement or vesting of other equity awards if such Equity Interests represent a portion of the exercise price of such options or warrants or similar equity incentive awards; and
- (k) Borrower may acquire (or withhold) its respective Equity Interests pursuant to any employee equity option or grant or similar plan to pay withholding taxes for which Borrower is liable in respect of a current or former officer, director, employee, member of management or consultant upon such grant or award (or upon vesting or exercise thereof) and Borrower may make deemed repurchases in connection with the exercise of equity options or grants.

Notwithstanding any provision of this Agreement or any other Loan Document to the contrary, no Loan Party shall, nor shall it permit any Subsidiary to, directly or indirectly, make any Restricted Payment using, or in the form of, any of the [***].

7.7 Change in Nature of Business.

Engage in any material line of business substantially different from those lines of business conducted by the Borrower and its Subsidiaries on the date hereof or any business substantially related or incidental thereto. Without limitation of the foregoing, neither the

Borrower nor any of its Subsidiaries will become a “passive foreign investment company” as such term is defined in Section 1297 of the Code.

7.8 Transactions with Affiliates.

Enter into or permit to exist any transaction or series of transactions with any officer, director or Affiliate of such Person (each, an “Affiliate Transaction”) other than (a) advances of working capital to any Loan Party, (b) transfers of cash and assets to any Loan Party, (c) intercompany transactions expressly permitted by this Agreement, (d) reasonable compensation and reimbursement of expenses of officers and directors, (e) Affiliate Transactions in existence on the Closing Date (and set forth on Schedule 5, to the extent such Affiliate Transactions require cash payments to be made by the Loan Parties), (f) transactions pursuant to the Shared Services Agreements; provided that (i) the aggregate consideration payable by the Borrower and its Subsidiaries during the period from the Closing Date to and including the Facility Termination Date shall not exceed \$420,000 and (ii) such transactions shall be permitted only pursuant to this clause (f), and (g) except as otherwise specifically limited in this Agreement, other transactions which are entered into in the ordinary course of such Person’s business on fair and reasonable terms and conditions substantially as favorable to such Person as would be obtainable by it in a comparable arms-length transaction with a Person other than an officer, director or Affiliate; provided that for purposes of this clause (g), for any such Affiliate Transaction involving aggregate consideration in excess of \$5,000,000 (i) other than for any financing that is provided by an Affiliate to the Borrower or its Subsidiaries and not secured by a Lien that is senior to the second-priority Lien securing the Existing Convertible Senior Notes, a fairness opinion shall have been provided by a nationally recognized appraisal or investment banking firm with respect to such Affiliate Transaction (with a copy thereof made available to the Lenders upon their request) and (ii) 100% of the aggregate consideration payable to such Loan Party with respect to such Affiliate Transaction shall be paid in cash or Cash Equivalents; provided further that notwithstanding the foregoing, no Loan Party shall, nor shall it permit any Subsidiary to, directly or indirectly, enter into any Affiliate Transaction with respect to any of the [***] unless (x) a fairness opinion shall have been provided by a nationally recognized appraisal or investment banking firm with respect to such Affiliate Transaction (with a copy thereof made available to the Lenders upon their request) and (y) 100% of the aggregate consideration payable to such Loan Party with respect to such Affiliate Transaction shall be paid in cash or Cash Equivalents. Other than amounts under the Shared Services Agreements, the Existing Convertible Senior Notes, and the Indebtedness referred to in the Subordination Agreements, the aggregate consideration payable by the Borrower and its Subsidiaries pursuant to all Affiliate Transactions during the period from the Closing Date to the Facility Termination Date shall not exceed \$10,500,000.

7.9 Burdensome Agreements.

With respect to the Loan Parties, enter into, or permit to exist, any Contractual Obligation (except for this Agreement and the other Loan Documents) that (a) encumbers or restricts the ability of any such Person to (i) to act as a Loan Party; (ii) make Restricted Payments to any Loan Party, (iii) pay any Indebtedness or other obligation owed to any Loan Party, (iv) make loans or advances to any Loan Party, or (v) create any Lien upon any of their properties or assets, whether now owned or hereafter acquired, except, in the case of any of the foregoing, for (A) any document or instrument governing Indebtedness incurred pursuant to Section 7.2(c), provided that any such restriction contained therein relates only to the asset or assets constructed or acquired in connection therewith, (B) any Permitted Lien, (C) customary restrictions and conditions contained in any agreement related to a disposition permitted by this Agreement, or in any merger or acquisition agreement, (D) applicable Laws, or (E) customary provisions in contracts prohibiting or restricting assignment or (b) requires the grant of any Lien on property or

securities for any obligation if a Lien on such property is given as security for the Secured Obligations.

7.10 Use of Proceeds.

Use the proceeds of the Loans, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

7.11 Financial Covenant.

Minimum Liquidity: Permit Liquidity to be less than \$5,000,000 at any time.

7.12 [Reserved].

7.13 Amendments of Organization Documents; Fiscal Year; Legal Name, State of Formation; Form of Entity and Accounting Changes.

- (a) Amend any of its Organization Documents in a manner materially adverse to the Agents or the Lenders;
- (b) change its fiscal year;
- (c) without providing ten (10) days prior written notice to the Collateral Agent for distribution to the Lenders (or such extended period of time as may be agreed to by the Required Lenders), change its name, state of formation, form of organization or principal place of business; or
- (d) make any change in accounting policies or reporting practices, except as required by GAAP.

7.14 Sale and Leaseback Transactions.

Enter into any Sale and Leaseback Transaction.

7.15 Payments, Etc. of Indebtedness.

Prepay, redeem, purchase, pay, defease or otherwise satisfy any Indebtedness prior to the scheduled maturity thereof in any manner (including by the exercise of any right of setoff), except (a) the prepayment of the Loans in accordance with the terms of this Agreement and (b) regularly scheduled or required repayments or redemptions of Indebtedness under the Indebtedness set forth on Schedule 7.2 and any Permitted Refinancing thereof. For the avoidance of doubt, the Existing Convertible Senior Notes may be converted, repurchased, exchanged or otherwise acquired for common Equity Interests of the Borrower in accordance with Section 7.6(e).

7.16 Amendment, Etc. of Indebtedness.

- (a) Amend, modify or change in any manner any term or condition of any Convertible Senior Notes Document, the Shared Services Agreements, the Subordination Agreement or any Affiliate Debt existing on the Closing Date or, in each case, any Permitted Refinancing of the Indebtedness referred to therein or give any consent, waiver or approval thereunder; provided that the Convertible Senior Notes Documents, any

Affiliate Debt existing on the Closing Date and the Existing Convertible Senior Notes may be amended or modified to extend the amortization or maturity of the indebtedness evidenced thereby, reduce the interest rate thereon, or otherwise amend or modify the terms thereof so long as the terms of any such amendment or modification are no more restrictive on the Loan Parties than the terms of such documents as in effect on the date hereof; provided further that the foregoing restrictions shall not apply to the amendment or modification of any Convertible Senior Notes Document, the Existing Convertible Senior Notes and the Shared Services Agreement, in each case, if in connection with the actions specified on Schedule 6.17;

(b) take any other action in connection with any Convertible Senior Notes Document, the Subordination Agreement or any Permitted Refinancing of the Indebtedness referred to therein that would impair the value of the interest or rights of any Loan Party thereunder or that would impair the rights or interests of any Agent or the Lenders; or

(c) amend, modify or change in any manner any term or condition of any Indebtedness (other than Indebtedness arising under the Loan Documents) if such amendment or modification would add or change any terms in a manner adverse to any Loan Party or any Subsidiary, or shorten the final maturity or average life to maturity or require any payment to be made sooner than originally scheduled or increase the interest rate applicable thereto; provided that the foregoing restrictions shall not apply to the amendment or modification of any Convertible Senior Notes Document in connection with the actions specified on Schedule 6.17.

7.17 Sanctions.

Directly or indirectly, use the Loans or the proceeds of the Loans, or lend, contribute or otherwise make available the Loans or the proceeds of the Loans to any Person, to fund any activities of or business with any Person, or in any Designated Jurisdiction, that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any Person of Sanctions.

7.18 Anti-Corruption Laws.

Directly or indirectly, use any proceeds of the Loans for any purpose which would breach the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other similar anti- corruption legislation in other jurisdictions.

7.19 Subordination Agreement.

Make any payment that is not in accordance with the terms of the Subordination Agreement.

ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES

8.1 Events of Default.

Any of the following shall constitute an “Event of Default”:

(a) Non-Payment. The Borrower or any other Loan Party fails to pay (i) when and as required to be paid herein, any amount of principal of any Loan, or (ii) within five (5)

days after the same becomes due, any interest on any Loan, or any fee due hereunder or any other amount payable hereunder or any amount payable under any other Loan Document; or

(b) Specific Covenants. Any Loan Party fails to perform or observe any term, covenant or agreement contained in any of Section 6.1, 6.2, 6.3, 6.5 (with respect to maintenance of such Loan Party's legal existence), 6.10, 6.11, 6.17 or Article VII; or

(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in Section 8.1(a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for thirty (30) days after the earlier of (i) any Loan Party receiving notice thereof from the Administrative Agent or any Lender or (ii) a Responsible Officer of any Loan Party becoming aware of the occurrence thereof; or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Borrower or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect in any material respect when made or deemed made; or

(e) Cross-Default. (i) Any Loan Party or any Subsidiary thereof (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness or Guarantee (other than Indebtedness hereunder and Indebtedness under Swap Contracts) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or Guarantee or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or require a Loan Party or any Subsidiary thereof to make an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, or such Guarantee to become payable or cash collateral in respect thereof to be demanded; (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which a Loan Party or any Subsidiary thereof is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which a Loan Party or any Subsidiary thereof is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by such Loan Party or Subsidiary thereof as a result thereof is greater than the Threshold Amount provided that with respect to a default under clause (i)(B), notwithstanding anything to the contrary herein, if at any time such default is cured or waived prior to the Agents or the Lenders exercising any remedies under Section 8.2, and such third party no longer has any right to exercise any rights or remedies in connection with such default at such time, then, as of such time, there shall be no Event of Default under such clause (i)(B) with respect to such default; provided further that, any default or event of default that would otherwise result under this Section 8.1(e) solely as a result of a Delisting Event shall not constitute an Event of Default under this Section 8.1(e); and (iii) notwithstanding anything to the contrary herein or in any other Loan Document, the final proviso in clause

(ii) above shall not apply in the event that any default or event of default arises under any other Indebtedness from a Delisting Event; or

(f) Insolvency Proceedings, Etc. Any Loan Party or any Subsidiary thereof institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for sixty (60) calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for sixty (60) calendar days, or an order for relief is entered in any such proceeding; or

(g) Inability to Pay Debts; Attachment. Any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any Loan Party or any of its Subsidiaries and is not released, vacated or fully bonded within thirty (30) days after its issue or levy; or

(h) Judgments. There is entered against any Loan Party or any Subsidiary thereof (i) one or more final judgments or orders for the payment of money in an aggregate amount (as to all such judgments and orders) exceeding \$500,000 (to the extent not covered by independent third-party insurance as to which the insurer has been notified of the potential claim and does not dispute coverage), or (ii) any one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of thirty (30) consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

(i) ERISA. (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of any Loan Party in an aggregate amount in excess of the Threshold Amount, or (ii) the Borrower or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of the Threshold Amount; or

(j) Invalidity of Loan Documents. Any material provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all Obligations arising under the Loan Documents, ceases to be in full force and effect; or any Loan Party contests in any manner the validity or enforceability of any provision of any Loan Document; or any Loan Party denies that it has any or further liability or obligation under any provision of any Loan Document, or purports to revoke, terminate or rescind any provision of any Loan Document or it is or becomes unlawful for a Loan Party to perform any of its obligations under the Loan Documents; or

(k) Collateral Documents. Any Collateral Document after delivery thereof pursuant to the terms of the Loan Documents shall for any reason cease to create a valid and perfected first priority Lien (subject to Permitted Liens) on the Collateral purported to be covered thereby, or any Loan Party shall assert the invalidity of such Liens;

- (l) Change of Control. There occurs any Change of Control;
- (m) Non-Performance. Any counterparty to any Shared Services Agreement fails to observe or perform any agreement or condition contained therein or related to the services contemplated thereby; or
- (n) Compliance Certificate. The Borrower or any Loan Party fails to perform the covenant or agreement contained in Section 6.18.

If a Default shall have occurred under the Loan Documents, then such Default will continue to exist until it either is cured (to the extent specifically permitted) in accordance with the Loan Documents or is otherwise expressly waived by Required Lenders as determined in accordance with Section 10.1; and once an Event of Default occurs under the Loan Documents, then such Event of Default will continue to exist until it is expressly waived by the Required Lenders, as required hereunder in Section 10.1.

8.2 Remedies upon Event of Default.

If any Event of Default occurs and is continuing, the Agents shall, at the request of, or may, with the consent of, the Required Lenders take any or all of the following actions:

- (a) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document, including the Loan Payment Fees, to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower; and
- (b) exercise all rights and remedies available to it under the Loan Documents or applicable Law or equity; provided, however, that upon the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code of the United States the unpaid principal amount of the Loans and all interest and other amounts as aforesaid, including the Loan Payment Fees, shall automatically become due and payable without further act of any Person.

8.3 Application of Funds.

After the exercise of remedies provided for in Section 8.2 (or after the Loans has automatically become immediately due and payable) or if at any time insufficient funds are received by and available to the Agents to pay fully all Secured Obligations then due hereunder, any amounts received on account of the Secured Obligations shall be applied:

- (a) first, to payment or reimbursement of that portion of the Secured Obligations constituting fees, expenses, indemnities and other amounts (including legal fees and expenses and amounts payable under Article III and amounts owing in respect of (x) the preservation of Collateral or the Collateral Agent's security interest in the Collateral or (y) with respect to enforcing the rights of the Secured Parties under the Loan Documents) payable to the Agents in their capacities as such;
- (b) second, pro rata to payment or reimbursement of that portion of the Secured Obligations constituting fees (other than the Loan Payment Fees), expenses and indemnities payable to the Lenders;

- (c) third, pro rata to payment of accrued and unpaid interest on the Loans and the Loan Payment Fees;
- (d) fourth, pro rata to payment of principal outstanding on the Loans;
- (e) fifth, pro rata to any other Secured Obligations; and
- (f) sixth, any excess, after all of the Secured Obligations shall have been paid in full in cash, shall be paid to the Borrower or as otherwise required by applicable Law.

ARTICLE IX CONTINUING GUARANTY

9.1 Guaranty.

Each Guarantor hereby absolutely and unconditionally, jointly and severally, guarantees, as primary obligor and as a guaranty of payment and performance and not merely as a guaranty of collection, prompt payment when due, whether at stated maturity, by required prepayment, upon acceleration, demand or otherwise, and at all times thereafter, of any and all of the Secured Obligations, whether for principal, interest, premiums, fees, indemnities, damages, costs, expenses or otherwise, of the Borrower to the Secured Parties, arising hereunder or under any other Loan Document (including all renewals, extensions, amendments, refinancings and other modifications thereof and all costs, attorneys' fees and expenses incurred by the Secured Parties in connection with the collection or enforcement thereof to the extent not the result of any dispute among the parties hereto in which the Loan Parties are the prevailing party) (for each Guarantor, subject to the proviso in this sentence, its "Guaranteed Obligations"); provided that the liability of each Guarantor individually with respect to this Guaranty shall be limited to an aggregate amount equal to the largest amount that would not render its obligations hereunder subject to avoidance under Section 548 of the Bankruptcy Code of the United States or any comparable provisions of any applicable state law or other applicable Law. The Administrative Agent's and the Lenders' books and records showing the amount of the Secured Obligations shall be admissible in evidence in any action or proceeding, and shall be binding upon each Guarantor, and conclusive, absent manifest error, for the purpose of establishing the amount of the Secured Obligations. This Guaranty shall not be affected by the genuineness, validity, regularity or enforceability of the Secured Obligations or any instrument or agreement evidencing any Secured Obligations, or by the existence, validity, enforceability, perfection, non-perfection or extent of any collateral therefor, or by any fact or circumstance relating to the Secured Obligations which might otherwise constitute a defense to the obligations of the Guarantors, or any of them, under this Guaranty, and each Guarantor hereby irrevocably waives any defenses it may now have or hereafter acquire in any way relating to any or all of the foregoing.

9.2 Rights of Lenders.

Each Guarantor consents and agrees that the Secured Parties may, at any time and from time to time, without notice or demand, and without affecting the enforceability or continuing effectiveness hereof: (a) amend, extend, renew, compromise, discharge, accelerate or otherwise change the time for payment or the terms of the Secured Obligations or any part thereof; (b) take, hold, exchange, enforce, waive, release, fail to perfect, sell, or otherwise dispose of any security for the payment of this Guaranty or any Secured Obligations; (c) apply such security and direct the order or manner of sale thereof as the Lenders in their sole discretion may determine; and (d) release or substitute one or more of any endorsers or other guarantors of any of the Secured Obligations. Without limiting the generality of the foregoing, to the fullest extent permitted by applicable law, each Guarantor consents to the taking of, or failure to take, any action which

might in any manner or to any extent vary the risks of such Guarantor under this Guaranty or which, but for this provision, might operate as a discharge of such Guarantor.

9.3 Certain Waivers.

Each Guarantor waives (a) any defense arising by reason of any disability or other defense of the Borrower or any other guarantor, or the cessation from any cause whatsoever (including any act or omission of any Secured Party) of the liability of the Borrower or any other Loan Party; (b) any defense based on any claim that such Guarantor's obligations exceed or are more burdensome than those of the Borrower or any other Loan Party; (c) the benefit of any statute of limitations affecting any Guarantor's liability hereunder; (d) any right to proceed against the Borrower or any other Loan Party, proceed against or exhaust any security for the Secured Obligations, or pursue any other remedy in the power of any Secured Party whatsoever; (e) any benefit of and any right to participate in any security now or hereafter held by any Secured Party; and (f) to the fullest extent permitted by law, any and all other defenses or benefits that may be derived from or afforded by applicable Law limiting the liability of or exonerating guarantors or sureties. Each Guarantor expressly waives all setoffs and counterclaims and all presentments, demands for payment or performance, notices of nonpayment or nonperformance, protests, notices of protest, notices of dishonor and all other notices or demands of any kind or nature whatsoever with respect to the Secured Obligations, and all notices of acceptance of this Guaranty or of the existence, creation or incurrence of new or additional Secured Obligations.

9.4 Obligations Independent.

The obligations of each Guarantor hereunder are those of primary obligor, and not merely as surety, and are independent of the Secured Obligations and the obligations of any other guarantor, and a separate action may be brought against each Guarantor to enforce this Guaranty whether or not the Borrower or any other person or entity is joined as a party.

9.5 Subrogation.

No Guarantor shall exercise any right of subrogation, contribution, indemnity, reimbursement or similar rights with respect to any payments it makes under this Guaranty until all of the Secured Obligations and any amounts payable under this Guaranty have been paid and performed in full in cash and the Facility is terminated. If any amounts are paid to a Guarantor in violation of the foregoing limitation, then such amounts shall be held in trust for the benefit of the Secured Parties and shall forthwith be paid to the Secured Parties to reduce the amount of the Secured Obligations, whether matured or unmatured.

9.6 Termination; Reinstatement.

This Guaranty is a continuing and irrevocable guaranty of all Secured Obligations now or hereafter existing and shall remain in full force and effect until the Facility Termination Date. Notwithstanding the foregoing, this Guaranty shall continue in full force and effect or be revived, as the case may be, if any payment by or on behalf of the Borrower or a Guarantor is made, or any of the Secured Parties exercises its right of setoff, if any, in respect of the Secured Obligations and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by any of the Secured Parties in their discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Laws or otherwise, all as if such payment had not been made or such setoff had not occurred and whether or not the Secured Parties are in possession of or have released this Guaranty and

regardless of any prior revocation, rescission, termination or reduction. The obligations of each Guarantor under this paragraph shall survive termination of this Guaranty.

9.7 Stay of Acceleration.

If acceleration of the time for payment of any of the Secured Obligations is stayed, in connection with any case commenced by or against a Guarantor or the Borrower under any Debtor Relief Laws, or otherwise, all such amounts shall nonetheless be payable by each Guarantor, jointly and severally, immediately upon demand by the Secured Parties.

9.8 Condition of Borrower.

Each Guarantor acknowledges and agrees that it has the sole responsibility for, and has adequate means of, obtaining from the Borrower and any other guarantor such information concerning the financial condition, business and operations of the Borrower and any such other guarantor as such Guarantor requires, and that none of the Secured Parties has any duty, and such Guarantor is not relying on the Secured Parties at any time, to disclose to it any information relating to the business, operations or financial condition of the Borrower or any other guarantor (each Guarantor waiving any duty on the part of the Secured Parties to disclose such information and any defense relating to the failure to provide the same).

9.9 Appointment of Borrower.

Each of the Loan Parties hereby appoints the Borrower to act as its agent for all purposes of this Agreement, the other Loan Documents and all other documents and electronic platforms entered into in connection herewith and agrees that (a) the Borrower may execute such documents and provided such authorizations on behalf of such Loan Parties as the Borrower deems appropriate in its sole discretion and each Loan Party shall be obligated by all of the terms of any such document and/or authorization executed on its behalf, (b) any notice or communication delivered by any Agent or any Lender to the Borrower shall be deemed delivered to each Loan Party and (c) any Agent or any Lender may accept, and be permitted to rely on, any document, authorization, instrument or agreement executed by the Borrower on behalf of each of the Loan Parties.

9.10 Right of Contribution.

The Guarantors agree among themselves that, in connection with payments made hereunder, each Guarantor shall have contribution rights against the other Guarantors as permitted under applicable Law.

ARTICLE X MISCELLANEOUS

10.1 Amendments, Etc.

No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders and the Borrower or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent or the Collateral Agent, as the case may be, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however that no such amendment, waiver or consent shall:

- (a) waive any condition set forth in Article IV without the written consent of each Lender;
- (b) extend or increase the Commitment of any Lender without the written consent of such Lender;
- (c) postpone any date fixed by this Agreement or any other Loan Document for any payment (excluding mandatory prepayments) of principal, interest, fees (including the Loan Payment Fees) or other amounts due to the Lenders (or any of them) hereunder or under such other Loan Document without the written consent of each Lender entitled to such payment;
- (d) reduce the principal of, or the rate of interest specified herein on, the Loans or any fees (including the Loan Payment Fees) or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender entitled to such amount; provided, however, that only the consent of the Required Lenders shall be necessary to amend the definition of “Default Rate” or to waive any obligation of the Borrower to pay interest at the Default Rate;
- (e) change (i) Section 8.3 or 2.11(c) or (ii) the order of application of any prepayment of the Loans from the application thereof set forth in the applicable provisions of Section 2.11 in any manner that adversely affects any Lender without the written consent of such Lender;
- (f) change any provision of this Section 10.1 or the definition of “Required Lenders” or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender;
- (g) release all or substantially all of the Collateral in any transaction or series of related transactions, without the written consent of each Lender;
- (h) release all or substantially all of the value of the Guaranty, without the written consent of each Lender, except to the extent the release of any Subsidiary from the Guaranty is permitted pursuant to Article XI (in which case such release may be made by the Administrative Agent acting alone); or
- (i) amend, modify or waive any provision under this Agreement that expressly requires the consent or other agreement of all the Lenders, in each case without the consent of each Lender;

and provided, further, that (i) no amendment, waiver or consent shall, unless in writing and signed by the applicable Agent in addition to the Lenders required above, affect the rights or duties of such Agent under this Agreement or any other Loan Document and (ii) the Agent Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the definition of “Reinvestment Quantum” may be amended in accordance with the terms of Schedule 6.17.

10.2 Notices; Effectiveness; Electronic Communications.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by fax transmission or e-mail transmission as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, to the address, fax number, e-mail address or telephone number specified for the Borrower or any other Loan Party, the Agents or the Lenders on Schedule 1.1(b) or in the applicable Administrative Questionnaire.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by fax transmission or e-mail transmission shall be deemed to have been received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement).

(b) Change of Address, Etc. Each of the Loan Parties, the Agents and the Lenders may change its address, fax number or telephone number or e-mail address for notices and other communications hereunder by notice to the other parties hereto.

10.3 No Waiver; Cumulative Remedies; Enforcement.

No failure by any Lender or Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or under any other Loan Document preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Agents in accordance with Article XI for the benefit of all the Lenders and the Secured Parties; provided, however, that the foregoing shall not prohibit (a) any Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as an Agent) hereunder and under the other Loan Documents, (b) any Lender from exercising setoff rights in accordance with this Agreement (subject to the terms of Section 2.11(c)) or (c) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; provided, further, that if at any time there is no Person acting as Administrative Agent or Collateral Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Agents pursuant to Article XI and (ii) in addition to the matters set forth in clauses (b) and (c) of the preceding proviso and subject to Section 2.11(c), any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

10.4 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. The Loan Parties shall pay (i) all reasonable out-of-pocket expenses incurred by the Lenders, the Agents and their respective Affiliates (including the reasonable fees, charges and disbursements of (x) one primary firm of counsel for the Lenders, (y) one primary firm of counsel to the Agents and (z) one firm of local counsel to the Lenders and the Agents in each applicable jurisdiction), in connection with the preparation, negotiation, execution and delivery of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated) and (ii) all out-of-pocket expenses incurred by the Lenders, the Agents and their respective Affiliates (including the fees, charges and disbursements of any counsel for the Lenders, the Agents and their respective Affiliates), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the Loans made hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of the Loans; provided that nothing herein shall require any Loan Party to pay any of the foregoing in connection with a dispute solely among the Lenders, the Agents and their respective Affiliates (other than such disputes involving claims against an Agent in its capacity as such) that does not involve an act or omission by the Borrower or any of its Subsidiaries.

(b) Indemnification by the Loan Parties. The Loan Parties shall indemnify each Agent, the Lenders and each Related Party of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities or related expenses (including the fees, charges and disbursements of any counsel for any Indemnitee), incurred by any Indemnitee or asserted against any Indemnitee by any Person (including the Borrower or any other Loan Party) arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument executed in connection herewith, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, or the administration of this Agreement and the other Loan Documents (including in respect of any matters addressed in Section 3.1), (ii) the Loans or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by a Loan Party or any of its Subsidiaries, or any Environmental Liability related in any way to a Loan Party or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any other Loan Party, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (y) arise from a dispute solely among Indemnitees (other than such disputes involving claims against an Agent in its capacity as such) that does not involve an act or omission by the Borrower or any of its Subsidiaries). This Section 10.4(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable Law, no party to this Agreement shall assert, and each such party hereby waives, and acknowledges that no other Person shall have, any claim against any other party to this Agreement, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, the Loans or the use of the proceeds thereof.

(d) Payments. All amounts due under this Section shall be payable not later than ten (10) Business Days after demand therefor.

(e) Survival. The agreements in this Section shall survive the termination of the Commitments and the repayment, satisfaction or discharge of all the other Secured Obligations.

10.5 Payments Set Aside.

To the extent that any payment by or on behalf of the Borrower is made to any Agent or any Lender, or such Agent or such Lender exercises its right of setoff, if any, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by such Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred.

10.6 Successors and Assigns.

(a) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assignees. Each Loan Party agrees that it may not assign this Agreement without each Lender's prior consent. Each Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of the Loans owing to it) and the other Loan Documents to another Person (other than the Borrower or any of its Subsidiaries); provided that (x) the principal outstanding balance of the Loans of the assigning Lender subject to any assignment (other than (i) the assignment of the entire remaining amount of the assigning Lender's Loans at the time owing to it or (ii) assignments to another Lender, an Affiliate of such assigning Lender or an Approved Fund), determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent, or, if a "Trade Date" is specified in such Assignment and Assumption, as of such Trade Date, shall not be less than \$2,500,000 and (y) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to another Lender, an Affiliate of such assigning Lender or an Approved Fund; provided further that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to such assigning Lender within five (5) Business Days after having received written notice thereof.

(b) Each Lender may at any time, without the consent of, or notice to, the Borrower, sell participations to any Person (other than a natural Person, or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural Person in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Loans); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement.

(c) The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices in the United States a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and

the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower, each Agent and any Lender, at any reasonable time and from time to time upon reasonable prior notice. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each participant and the principal amounts (and stated interest) of each participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligations to disclose all or any portion of the Participant Register (including the identity of any participant or any information relating to a participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations (and any successor provisions). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. This Section 10.6(c) shall be construed so that the Commitment and/or the Loans are at all times maintained in "registered form" within the meanings of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code and any Treasury Regulations (and any successor provisions) promulgated thereunder, including, without limitation, Treasury Regulations Sections 5f.103-1(c) and 1.871-14.

10.7 Confidentiality.

Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (i) to its Affiliates, its auditors and to its Related Parties on a "need to know" basis (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (ii) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners) (in which case such parties agree, to the extent practicable and not prohibited by applicable law, to inform the Borrower promptly thereof prior to disclosure), (iii) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process (in which case such parties agree, to the extent practicable and not prohibited by applicable law, to inform the Borrower promptly thereof prior to disclosure), (iv) to any other party to this Agreement, (v) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (vi) subject to an agreement containing provisions substantially the same as those of this Section, to any assignee of or participant in, or any prospective assignee of or participant in, any of its rights and obligations under this Agreement, (vii) on a confidential basis to any rating agency in connection with rating any Loan Party or its Subsidiaries or the credit facilities provided hereunder, (viii) with the written consent of the Borrower or to the extent such Information (1) becomes publicly available other than as a result of a breach of this Section or (2) becomes available to the Administrative Agent or any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower. For purposes of this Section, "Information" means all information received from any Loan Party or any Subsidiary relating to any Loan Party or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent and the Lenders on a nonconfidential basis prior to disclosure by any Loan Party or any Subsidiary.

10.8 Right of Setoff.

If an Event of Default shall have occurred and be continuing, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held (in whatever currency) against any and all of the obligations of the Borrower or such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender, provided that none of any Lender nor any of its Affiliates shall be entitled to exercise any such set off with respect to any payroll account that is used exclusively for such purposes. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender may have. Each Lender agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

10.9 Interest Rate Limitation.

Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, the Administrative Agent or such Lender may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

10.10 Counterparts; Integration; Effectiveness.

This Agreement and each of the other Loan Documents may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents, the Agent Fee Letter, and any separate letter agreements with respect to fees payable to the Agents or the Lenders, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Article IV, this Agreement shall become effective when it shall have been executed by each Lender and when the Lenders shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement or any other Loan Document, or any certificate delivered thereunder, by fax transmission or e-mail transmission (e.g. "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Agreement or such other Loan Document or certificate. Without limiting the foregoing, to the extent a manually executed counterpart is not specifically required to be delivered under the terms of any Loan Document, upon the request of any party, such fax transmission or e-mail transmission shall be promptly followed by such manually executed counterpart.

10.11 Survival of Representations and Warranties.

All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall

survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf, and shall continue in full force until the Facility Termination Date.

10.12 Severability.

If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

10.13 Governing Law; Jurisdiction; Etc.

(a) GOVERNING LAW. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) SUBMISSION TO JURISDICTION. THE BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST ANY AGENT, ANY LENDER OR ANY RELATED PARTY OF THE FOREGOING IN ANY WAY RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO, IN ANY FORUM OTHER THAN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT ANY AGENT OR ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. THE BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (b) OF THIS SECTION. THE BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.2. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

10.14 Waiver of Jury Trial.

EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (a) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (b) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

10.15 [Reserved].

10.16 Subordination.

Each Loan Party (a “Subordinating Loan Party”) hereby subordinates the payment of all obligations and indebtedness of any other Loan Party owing to it, whether now existing or hereafter arising, including but not limited to any obligation of any such other Loan Party to the Subordinating Loan Party as subrogee of the Secured Parties or resulting from such Subordinating Loan Party’s performance under the Guaranty, to the indefeasible payment in full in cash of all Secured Obligations. If the Secured Parties so request, any such obligation or indebtedness of any such other Loan Party to the Subordinating Loan Party shall be enforced and performance received by the Subordinating Loan Party as trustee for the Secured Parties and the proceeds thereof shall be paid over to the Secured Parties on account of the Secured Obligations, but without reducing or affecting in any manner the liability of the Subordinating Loan Party under this Agreement. Without limitation of the foregoing, so long as no Default has occurred and is continuing, the Loan Parties may make and receive payments with respect to Intercompany Debt; provided, that in the event that any Loan Party receives any payment of any Intercompany Debt at a time when such payment is prohibited by this Section, such payment shall be held by such Loan Party in trust for the benefit of, and shall be paid forthwith over and delivered, upon written request to, the Administrative Agent for distribution to the Lenders.

10.17 No Advisory or Fiduciary Responsibility.

In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower and each other Loan Party acknowledges and agrees that: (a) (i) the services regarding this Agreement provided by the Agents, the Lenders and the Affiliates of the foregoing Persons are arm's-length commercial transactions between the Borrower, each other Loan Party, on the one hand, and the Agents, the Lenders and their respective Affiliates, on the other hand, (ii) each of the Borrower and the other Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) the Borrower and each other Loan Party is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (b) (i) each of the Administrative Agent, the Lenders and their respective Affiliates is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary, for Borrower, any other Loan Party and (ii) neither the Administrative Agent, nor any Lender, nor any of their respective Affiliates has any obligation to the Borrower, any other Loan Party with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (c) the Administrative Agent, the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, the other Loan Parties, and neither the Administrative Agent, nor any Lender, nor any of their respective Affiliates has any obligation to disclose any of such interests to the Borrower, any other Loan Party. To the fullest extent permitted by law, each of the Borrower and each other Loan Party hereby waives and releases any claims that it may have against each Agent, each Lender or any of their respective Affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transactions contemplated hereby.

10.18 Electronic Execution.

The words "delivery," "execute," "execution," "signed," "signature," and words of like import in any Loan Document or any other document executed in connection herewith shall be deemed to include electronic signatures, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act or any other similar state laws based on the Uniform Electronic Transactions Act; provided that notwithstanding anything contained herein to the contrary, neither the Administrative Agent, nor any Lender is under any obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by such Person pursuant to procedures approved by it; provided further without limiting the foregoing, upon the request of the Administrative Agent or any Lender, any electronic signature shall be promptly followed by such manually executed counterpart.

10.19 USA PATRIOT Act Notice.

Each Lender hereby notifies the Borrower and the other Loan Parties that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act"), it may be required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender to identify each Loan Party in accordance with the Act. The Borrower and the Loan Parties agree to, promptly following a request by any Lender, provide all such other documentation and information that such Lender requests in order to

comply with its ongoing obligations under applicable “know your customer” and anti-money laundering rules and regulations, including the Act.

10.20 Credit Bid Rights Preserved.

In the event of any bankruptcy proceeding involving a Loan Party in the United States, whether voluntary or otherwise, each Loan Party expressly agrees that each Agent and each Lender is hereby granted an irrevocable right to credit bid any or all amounts owed pursuant to this Agreement in any sales process as provided by Section 363(k) of the Bankruptcy Code, whether such sale is conducted pursuant to a plan of reorganization under Chapter 11 of the Bankruptcy Code or outside of a plan pursuant to Section 363 of the Bankruptcy Code. The right of each Agent and each Lender to credit bid as set forth herein is an express element of the consideration being offered by the Loan Parties to induce the Lenders to enter into this Agreement.

10.21 Acknowledgement and Consent to Bail-In of Affected Financial Institutions.

Solely to the extent any Lender is an Affected Financial Institution and is a party to this Agreement and notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

- (a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and
- (b) the effects of any Bail-In Action on any such liability, including, if applicable:
 - (i) a reduction in full or in part or cancellation of any such liability;
 - (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or
 - (iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

10.22 Acknowledgement Regarding Any Supported QFCs.

To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Swap Contracts or any other agreement or instrument that is a QFC (such support “QFC Credit Support” and each such QFC a “Supported QFC”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “U.S. Special Resolution Regimes”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

In the event a Covered Entity that is party to a Supported QFC (each, a “Covered Party”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

ARTICLE XI THE AGENTS

11.1 Appointment; Powers.

Each of the Lenders hereby irrevocably (subject to Section 11.6) appoints GLAS USA LLC as its Administrative Agent and GLAS Americas LLC as its Collateral Agent. Each Lender authorizes the Agents to take such actions on its behalf and to exercise such powers as are delegated to such Agent by the terms hereof and the other Loan Documents, together with all powers as are reasonably incidental thereto.

11.2 Duties and Obligations of the Agents.

The Agents shall have no duties or obligations except those expressly set forth in the Loan Documents. Without limiting the generality of the foregoing, (a) no Agent shall be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing (the use of the term “Administrative Agent”, “Collateral Agent” or “Agent” herein and in the other Loan Documents with reference to the Administrative Agent or the Collateral Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law; rather, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties), (b) no Agent shall have any duty to take any discretionary action or exercise any discretionary powers, except as provided in Section 11.3, and (c) except as expressly set forth herein, no Agent shall have a duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Subsidiaries that is communicated to or obtained by such Agent or any of its Affiliates in any capacity. The Agents shall be deemed not to have knowledge of any Default or Event of Default unless and until written notice thereof is given to a responsible officer of such Agent by the Borrower or a Lender, and shall not be responsible for or have any duty to ascertain or inquire into:

- (a) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document,
- (b) the contents of any certificate, report or other document delivered hereunder or under any other Loan Document or in connection herewith or therewith,

- (c) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or in any other Loan Document,
- (d) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document,
- (e) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to such Agent or as to those conditions precedent expressly required to be to such Agent's satisfaction,
- (f) the existence, value, perfection or priority of any collateral security or the financial or other condition of the Borrower and its Subsidiaries, or
- (g) any failure by the Borrower, any Guarantor or any other Person (other than itself) to perform any of its obligations hereunder or under any other Loan Document or the performance or observance of any covenants, agreements or other terms or conditions set forth herein or therein.

Each Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees, or attorneys-in-fact and is entitled to advice of counsel and other consultants or experts concerning all matters pertaining to those duties. The Agents shall not be responsible for the negligence or misconduct of any such agent or attorney-in-fact except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the applicable Agent acted with gross negligence or willful misconduct in the selection of such agent or attorney-in-fact.

Beyond the exercise of reasonable care in the custody thereof, no Agent shall have any duty as to any Collateral in its possession or control or in the possession or control of any agent or bailee or any income thereon or as to preservation of rights against prior parties or any other rights pertaining thereto and no Agent shall be responsible for filing any financing or continuation statements or recording any documents or instruments in any public office at any time or times or otherwise perfecting or maintaining the perfection of any security interest in the Collateral, in each case, except to the extent expressly set forth in the Loan Documents. Each Agent shall be deemed to have exercised reasonable care in the custody of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which it accords similar collateral and shall not be liable or responsible for any loss or diminution in the value of any of the Collateral, by reason of the act or omission of any carrier, forwarding agency or other agent or bailee.

11.3 Action by Agents.

Each Agent shall have no duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that such Agent is required to exercise in writing as directed by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 10.1) and in all cases each Agent shall be fully justified in failing or refusing to act hereunder or under any other Loan Documents unless it shall (a) receive written instructions from the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 10.1) specifying the action to be taken and (b) be indemnified to its satisfaction by the Lenders against any and all liability claims, losses, fees and expenses which may be incurred by it by reason of taking or continuing to take any such action. The instructions as aforesaid and any action taken or failure to act pursuant thereto by an Agent shall be binding on all of the Lenders. If a Default has occurred and is continuing, then an Agent shall take such action with respect to such Default

as shall be directed by the requisite Lenders in the written instructions (with indemnities satisfactory to it) described in this Section 11.3; provided that, unless and until such Agent shall have received such directions, such Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default as it shall deem advisable in the interests of the Lenders. In no event, however, shall an Agent be required to take any action which exposes such Agent to a risk of personal liability or which is contrary to this Agreement, the Loan Documents or applicable law. If a Default has occurred and is continuing, no Agent shall have any obligation to perform any act in respect thereof. Each Agent shall not be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 10.1), and otherwise such Agent shall not be liable for any action taken or not taken by it hereunder or under any other Loan Document or under any other document or instrument referred to or provided for herein or therein or in connection herewith or therewith including its own ordinary negligence, except for its own gross negligence or willful misconduct.

11.4 Reliance by Agents.

Each Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing believed by it to be genuine and to have been signed or sent by the proper Person. Each Agent also may rely upon any statement made to it orally or by telephone and believed by it to be made by the proper Person, and shall not incur any liability for relying thereon, except in the case of gross negligence or willful misconduct by such Agent and each of the Loan Parties and the Lenders hereby waives the right to dispute such Agent's record of such statement absent manifest error. Each Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

11.5 Sub-Agents.

Each Agent may perform any and all its duties and exercise its rights and powers by or through any one or more sub-Agents appointed by such Agent. Each Agent and any such sub-Agent may perform any and all its duties and exercise its rights and powers through their respective Related Parties. The exculpatory provisions of the preceding Sections of this Article XI shall apply to any such sub-Agent and to the Related Parties of such Agent and any such sub-Agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as such Agent. The Agents shall not be responsible for the negligence or misconduct of any sub-agent except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the applicable Agent acted with gross negligence or willful misconduct in the selection of any such sub-agent.

11.6 Resignation or Removal of Agents.

Subject to the appointment and acceptance of a successor agent as provided in this Section 11.6, each Agent may resign at any time by notifying the Lenders and the Borrower, and such Agent may be removed at any time with or without cause by the Required Lenders. Upon any such resignation or removal, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor agent. If no successor agent shall have been so appointed and accepted such appointment by the Required Lenders within thirty (30) days after such retiring Agent gives notice of its resignation, then such retiring Agent may, on behalf of the Lenders and at the expense of the Borrower, appoint a successor agent, which may be an Affiliate of any existing Lender approved by the Required Lenders (such consent not to be

unreasonably withheld, delayed or conditioned). If no such successor agent shall be appointed by the retiring Agent as aforesaid, the Required Lenders shall thereafter perform all of the duties of the retiring Agent hereunder (and the retiring Agent shall be discharged from its duties and obligations hereunder and such resignation shall become effective in accordance with this Section on the applicable date) until such appointment by the Required Lenders is made and accepted. Upon the acceptance of its appointment as successor agent hereunder, the Person acting as such successor agent shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent, and the retiring Agent shall be discharged from its duties and obligations hereunder and the term "Administrative Agent" or "Collateral Agent," as applicable, shall mean such successor agent in such capacities. The fees payable by the Borrower to a successor agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor agent. After an Agent's resignation hereunder, the provisions of this Article XI and Section 10.4 shall continue in effect for the benefit of such retiring Agent, its sub-Agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while it was acting as Agent.

11.7 Agents as Lenders.

Each Lender serving as an Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not an Agent, and such Lender and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with the Borrower or any of its Subsidiaries or other Affiliates as if it were not an Agent hereunder.

11.8 Funds Held by Agents.

The Agents shall have no responsibility for interest or income on any funds held by it hereunder. Funds held by any Agent pursuant to this Agreement need not be segregated from other funds except to the extent required by law.

11.9 No Reliance.

Each Lender acknowledges that it has, independently and without reliance upon any Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement and each other Loan Document to which it is a party. Each Lender also acknowledges that it will, independently and without reliance upon any Agent or any other Lender and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document, any related agreement or any document furnished hereunder or thereunder. No Agent shall be required to keep itself informed as to the performance or observance by the Borrower or any of its Subsidiaries of this Agreement, the Loan Documents or any other document referred to or provided for herein or to inspect the property or books of the Borrower or its Subsidiaries. Except for notices, reports and other documents and information expressly required to be furnished to the Lenders by an Agent hereunder, no Agent shall have any duty or responsibility to provide any Lender with any credit or other information concerning the affairs, financial condition or business of the Borrower (or any of their Affiliates) which may come into the possession of such Agent or any of its Affiliates. Each party hereto will consult with its own legal counsel to the extent that it deems necessary in connection with the Loan Documents and the matters contemplated therein.

11.10 Agents May File Proofs of Claim.

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Borrower, the Guarantors or any of their Subsidiaries, each Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether an Agent shall have made any demand on the Borrower or the Guarantors) shall be entitled and empowered, by intervention in such proceeding or otherwise:

- (a) to file a proof-of-claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Indebtedness that are owing and unpaid and to file such other documents as may be necessary and directed by the Required Lenders in order to have the claims of the Lenders and the Agents (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Agents and their respective agents and counsel and all other amounts due the Lenders and the Agents under Section 10.4) allowed in such judicial proceeding;
- (b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same; and
- (c) any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized and directed by each Lender to make such payments to the Agents and, in the event that the Agents shall consent to the making of such payments directly to the Lenders, to pay to the Agents any amount due for the reasonable compensation, expenses, disbursements and advances of the Agents and their agents and counsel, and any other amounts due the Agents under Section 10.4.

Nothing contained herein shall be deemed to authorize any Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Indebtedness or the rights of any Lender or to authorize any Agent to vote in respect of the claim of any Lender in any such proceeding.

11.11 Authority of the Agents to Release Collateral and Liens.

Each Lender hereby authorizes the Collateral Agent to release any Collateral or any Guarantor that is permitted to be sold or released pursuant to the terms of this Section 11.11 and the other Loan Documents. Each Lender hereby authorizes the Collateral Agent to execute and deliver to the Borrower, at the Borrower's sole cost and expense, any and all releases of Liens, termination statements, assignments or other documents reasonably requested by the Borrower in connection with (x) the termination of the Facility on the Facility Termination Date or (y) any sale or other Disposition of property to the extent such sale or other Disposition is authorized by the terms of this Agreement and the other Loan Documents and complies with the Security Agreement, as evidenced in a certificate delivered by a Responsible Officer to the Collateral Agent (which shall be promptly distributed to the Lenders); provided that, prior to the Facility Termination Date, the Liens on any Collateral securing the Secured Obligations shall not be released upon a sale, transfer or other Disposition of such Collateral to any Person that is, or that is required to be, in each case at the time of such sale, transfer or other Disposition, and after giving effect thereto, a Loan Party (but in each case disregarding the grace period provided for in Section 6.12). Upon the request of the Borrower, in connection with any transaction otherwise permitted by this Agreement and the other Loan Documents, the Administrative Agent and/or the Collateral Agent is authorized to release Collateral that is Disposed of to any Person (other than to a Person that is, or that is required to be, in each case at the time of such Disposition, and after

giving effect thereto, a Loan Party (but in each case disregarding the grace period provided for in Section 6.12)), or to any Person that ceases to be a Subsidiary of the Borrower at the time of such Disposition, and after giving effect thereto.

11.12 Merger, Conversion or Consolidation of Agents.

Any corporation into which the Agents may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Agents shall be a party, or any corporation succeeding to the corporate trust and loan agency business of the Agents, shall be the successor of the Agents hereunder, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

11.13 Erroneous Payments.

(a) If the Administrative Agent (x) notifies a Lender or any Person who has received funds on behalf of a Lender (any such Lender or other recipient (and each of their respective successors and assigns), a “Payment Recipient”) that the Administrative Agent has determined in its reasonable sole discretion (whether or not after receipt of any notice under immediately succeeding clause (b)) that any funds (as set forth in such notice from the Administrative Agent) received by such Payment Recipient from the Administrative Agent or any of its Affiliates were erroneously or mistakenly transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender or other Payment Recipient on its behalf) (any such funds, whether transmitted or received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an “Erroneous Payment”) and (y) demands in writing the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of the Administrative Agent pending its return or repayment as contemplated below in this Section 11.13 and held in trust for the benefit of the Administrative Agent, and such Lender shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall use commercially reasonable efforts to cause such Payment Recipient to) promptly, but in no event later than two Business Days thereafter (or such later date as the Administrative Agent may, in its sole discretion, specify in writing), return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received). A notice of the Administrative Agent to any Payment Recipient under this clause (a) shall be conclusive, absent manifest error.

(b) Without limiting immediately preceding clause (a), each Lender or any Person who has received funds on behalf of a Lender (and each of their respective successors and assigns), agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in this Agreement or in a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates), or (z) that such Lender or other such recipient, otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part), then in each such case:

(i) it acknowledges and agrees that (A) in the case of immediately preceding clauses (x) or (y), an error and mistake shall be presumed to have been made (absent written confirmation from the Administrative Agent to the contrary) or (B) an error and mistake has been made (in the case of immediately preceding clause (z)), in each case, with respect to such payment, prepayment or repayment; and

(ii) such Lender shall use commercially reasonable efforts to (and shall use commercially reasonable efforts to cause any other recipient that receives funds on its respective behalf to) (and, in all events, within two Business Days of its knowledge of the occurrence of any of the circumstances described in immediately preceding clauses (x), (y) and (z)) notify the Administrative Agent of its receipt of such payment, prepayment or repayment and that it is so notifying the Administrative Agent pursuant to this Section 11.13(b).

For the avoidance of doubt, the failure to deliver a notice to the Administrative Agent pursuant to this Section 11.13 shall not have any effect on a Payment Recipient's obligations pursuant to Section 11.13(a) or on whether or not an Erroneous Payment has been made.

(c) Each Lender hereby authorizes the Administrative Agent to set off, net and apply any and all amounts at any time owing to such Lender under any Loan Document, or otherwise payable or distributable by the Administrative Agent to such Lender under any Loan Document with respect to any payment of principal, interest, fees or other amounts, against any amount that the Administrative Agent has demanded to be returned under immediately preceding clause (a).

(d) The parties hereto agree that (x) irrespective of whether the Administrative Agent may be equitably subrogated, in the event that an Erroneous Payment (or portion thereof) is not recovered from any Payment Recipient that has received such Erroneous Payment (or portion thereof) for any reason, the Administrative Agent shall be subrogated to all the rights and interests of such Payment Recipient (and, in the case of any Payment Recipient who has received funds on behalf of a Lender, to the rights and interests of such Lender under the Loan Documents with respect to such amount (the "Erroneous Payment Subrogation Rights") and (y) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower; provided that this Section 11.13 shall not be interpreted to increase (or accelerate the due date for), or have the effect of increasing (or accelerating the due date for), the Obligations of the Borrower relative to the amount (or timing for payment) of the Obligations that would have been payable had such Erroneous Payment not been made by the Administrative Agent; provided, further, that for the avoidance of doubt, immediately preceding clauses (x) and (y) shall not apply to the extent any such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from, or on behalf of (including through the exercise of remedies under any Loan Document), the Borrower for the purpose of a payment on the Obligations.

(e) To the extent permitted by applicable Law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payment received, including, without limitation, any defense based on "discharge for value" or any similar doctrine.

Each party's obligations, agreements and waivers under this Section 11.13 shall survive the resignation, removal or replacement of the Administrative Agent or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

11.14 Indemnification.

Whether or not the transactions contemplated by this Agreement are consummated, each Lender shall indemnify upon demand each Agent and its directors, officers, employees and agents (to the extent not reimbursed by or on behalf of the Loan Parties and without limiting the obligation of the Loan Parties to do so), according to its applicable pro rata share, from and against any and all actions, causes of action, suits, losses, liabilities, damages, and expenses, except that no Lender will be liable for any payment to any such Person of any portion of such indemnified liabilities to the extent determined by a final, non-appealable judgment by a court of

competent jurisdiction to have resulted from the applicable Person's own gross negligence or willful misconduct. No action taken in accordance with the directions of the Required Lenders will be deemed to constitute gross negligence or willful misconduct for purposes of this Section 11.14. Without limitation of the foregoing, each Lender shall reimburse each Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including attorney costs and Taxes) incurred by such Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to in this Agreement, to the extent that such Agent is not reimbursed for any such expenses by or on behalf of the Loan Parties. The undertaking in this Section 11.14 will survive repayment of the Loans, any foreclosure under, or modification, release or discharge of, any or all of the Collateral Documents, termination of this Agreement and the resignation or replacement of any Agent.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

BORROWER: NANTHEALTH, INC.

By: /s/ Bob Petrou
Name: Bob Petrou
Title: Chief Financial Officer, Treasurer and Secretary

GUARANTORS: NAVINET, INC.

By: /s/ Bob Petrou
Name: Bob Petrou
Title: Chief Financial Officer, Treasurer and Secretary

THE OPENNMS GROUP, INC.

By: /s/ Bob Petrou
Name: Bob Petrou
Title: Chief Financial Officer

ADMINISTRATIVE AGENT: GLAS USA LLC

By: /s/ Katie Fischer
Name: Katie Fischer
Title: Vice President

COLLATERAL AGENT: GLAS AMERICAS LLC

By: /s/ Katie Fischer
Name: Katie Fischer
Title: Vice President

LENDERS:

Highbridge Tactical Credit Master Fund, L.P.

By: Highbridge Capital Management, LLC, its trading manager

By: /s/ Jonathan Segal
Name: Jonathan Segal
Title: Managing Director, Co-CIO

Highbridge Convertible Dislocation Fund, L.P.

By: Highbridge Capital Management, LLC, its trading manager

By: /s/ Jonathan Segal
Name: Jonathan Segal
Title: Managing Director, Co-CIO

NANT CAPITAL, LLC

By: /s/ Charles Kenworthy
Name: Charles Kenworthy
Title: Manager

Subordination Agreement

March 2, 2023
Morrisville, North Carolina

This Subordination Agreement (this "Agreement"), dated March 2, 2023, is made between NantHealth, Inc., a Delaware corporation, with offices at 3000 RDU Center Drive, Suite 200, Morrisville, North Carolina 27500 (the "Company"), NaviNet, Inc., a Delaware corporation (the "Subsidiary Guarantor"), Nant Capital, LLC, a Delaware limited liability company, and Airstrip Technologies, Inc., a Delaware corporation (together with Nant Capital, Inc. and any transferee of the Existing Debt held by Nant Capital, LLC or Airstrip Technologies, Inc., the "Holders").

WHEREAS, the Company previously (i) entered into a Third Amended and Restated Promissory Note, dated April 27, 2021, with Nant Capital, LLC, (ii) entered into a Second Amended and Restated Promissory Note, dated April 27, 2021, with Nant Capital, LLC, (iii) entered into a Subordinated Promissory Note, dated October 3, 2022, with AirStrip Technologies, Inc. and (iv) entered into a Subordinated Promissory Note, dated November 21, 2022, with Nant Capital, LLC ((i) through (iv), the "Promissory Notes" and the indebtedness issued pursuant thereto, the "Existing Debt").

WHEREAS, the Company wishes to enter into a Credit Agreement, dated on or about March 2, 2023 (the "Credit Agreement"), by and among the Company, the guarantors party thereto (including the Subsidiary Guarantor), the lenders party thereto, GLAS USA LLC, as administrative agent, and GLAS Americas LLC, as collateral agent.

NOW, THEREFORE, for good and valuable consideration, the Company, the Subsidiary Guarantor and the Holders do hereby agree as follows:

1. Subordination.

(a) Agreement of Subordination. The Company, the Subsidiary Guarantor and Holders each covenant and agree that the Existing Debt shall be subject to the provisions of this Section 1; and each Holder, whether upon original issue or upon transfer, assignment or exchange thereof, accepts and agrees to be bound by such provisions. The payment of the principal of, premium, if any, or interest on the Existing Debt shall, to the extent and in the manner hereinafter set forth, be subordinated and subject in right of payment to the prior payment in full of all Senior Debt (as defined below), whether outstanding at the date of this Agreement or thereafter incurred. For purposes of this Agreement, "Senior Debt" shall mean the principal of, premium, if any, interest (including all interest accruing subsequent to the commencement of any bankruptcy or similar proceeding, whether or not a claim for post-petition interest is allowed or allowable as a claim in any such proceeding) on, and all fees, premiums, costs, expenses and other amounts accrued or due on or in connection with the Credit Agreement, whether outstanding on the date of this Agreement or thereafter created, incurred, assumed, guaranteed or in effect guaranteed by the Company or any of its subsidiaries (including all deferrals, renewals, extensions or refundings of, or amendments, modifications or supplements to, the foregoing).

(b) Payments to Holders.

(i) No payment shall be made with respect to the interest on the Existing Debt until the obligations in respect of the Senior Debt are paid in full in cash or other payment satisfactory to the holders of Senior Debt. Additionally, no payment shall be made with respect to the principal of, or premium, if any, or interest on the Existing Debt if a default in the payment of principal, premium, if any, interest or other obligations due on any Senior Debt occurs and is continuing (a "Payment Default"), unless and until such default shall have been cured or waived or the obligations in respect of the Senior Debt are paid in full in cash or other payment satisfactory to the holders of Senior Debt.

(ii) In the case of a Payment Default, the Company may and shall resume payments on and distributions in respect of the Existing Debt upon the earlier of the date upon which the Payment Default is cured or waived or the obligations in respect of the Senior Debt are paid in full in cash

or other payment satisfactory to the holders of Senior Debt, in each case unless this Section 1 otherwise prohibits the payment or distribution at such time.

(iii) Upon any payment or distribution of assets of the Company or the Subsidiary Guarantor of any kind or character, whether in cash, property or securities, to creditors upon any dissolution or winding-up or liquidation or reorganization of the Company or the Subsidiary Guarantor, whether voluntary or involuntary or in bankruptcy, insolvency, reorganization, liquidation, receivership or other proceedings, or upon an assignment for the benefit of creditors or any marshalling of the assets and liabilities of the Company, or otherwise, all amounts due or to become due upon all Senior Debt shall first be paid in full in cash or other payment satisfactory to the holders of such Senior Debt before any payment or other distribution is made with respect to or on account of the principal of, interest or premium, if any, on the Existing Debt; and upon any such dissolution, winding-up, liquidation, reorganization, assignment for the benefit of creditors or marshalling of assets and liabilities of the Company or the Subsidiary Guarantor or bankruptcy, insolvency, receivership or other proceeding, any payment by the Company or the Subsidiary Guarantors, or distribution of assets of the Company or the Subsidiary Guarantor of any kind or character, whether in cash, property or securities, to which the Holders would be entitled, except for the provision of this Section 1, shall (except as aforesaid) be paid by the Company or the Subsidiary Guarantor, as applicable, or by any receiver, trustee in bankruptcy, liquidating trustee, agent or other person making such payment or distribution, or by the Holders if received by them or it, directly to the holders of Senior Debt (pro rata to such holders on the basis of the respective amounts of Senior Debt held by such holders, or as otherwise required by law or a court order), or to the agent or agents under the Credit Agreement, as their respective interests may appear, to the extent necessary to pay all Senior Debt in full, in cash or other payment satisfactory to the holders of such Senior Debt, after giving effect to any concurrent payment or distribution to or for the holders of Senior Debt, before any payment or distribution or provision therefor is made to the Holders.

(iv) For purposes of this Section 1, the words, "cash, property or securities" shall not be deemed to include shares of stock of the Company or the Subsidiary Guarantor as reorganized or readjusted, or securities of the Company or the Subsidiary Guarantor or any other corporation provided for by a plan of reorganization or readjustment, the payment of which is subordinated at least to the extent provided in this Section 1 with respect to the Existing Debt to the payment of all Senior Debt which may at the time be outstanding; provided that (i) the Senior Debt is assumed by the new corporation, if any, resulting from any reorganization or readjustment, and (ii) the rights of the holders of Senior Debt are not, without the consent of such holders, altered by such reorganization or readjustment. The consolidation of the Company with, or the merger of the Company into, another corporation or the liquidation or dissolution of the Company following the conveyance or transfer of its property as an entirety, or substantially as an entirety, to another corporation shall not be deemed a dissolution, winding-up, liquidation or reorganization for the purposes of this Section 1(b).

(v) In the event of the acceleration of any Existing Debt in accordance with its terms, (i) no payment or distribution shall be made to the Holders in respect of the principal of, interest or premium, if any, on such Existing Debt and (ii) no payment or distribution shall be made to any Holder in respect of any guarantee on such Existing Debt until all Senior Debt has been paid in full in cash or other payment satisfactory to the holders of Senior Debt or such acceleration is rescinded by the Holder.

(vi) In the event that, notwithstanding the foregoing provisions, any payment or distribution of assets of the Company or the Subsidiary Guarantor of any kind or character, whether in cash, property or securities (including, without limitation, by way of setoff or otherwise), prohibited by the foregoing, shall be received by the Holders (or any agent, trustee or other representative thereof) before all Senior Debt is paid in full in cash or other payment satisfactory to the holders of such Senior Debt, or provision is made for such payment thereof in accordance with its terms in cash or other payment satisfactory to the holders of such Senior Debt, such payment or distribution shall be held in trust for the benefit of and shall be paid over or delivered to the holders of Senior Debt, or to the trustee or trustees or agent or agents, as applicable, under the Credit Agreement, as their respective interests may appear, as calculated by the Company, for application to the payment of all Senior Debt remaining unpaid to the extent necessary to pay all Senior Debt in full in cash or other payment satisfactory to the holders of such Senior Debt, after giving effect to any concurrent payment or distribution to or for the holders of such Senior Debt.

(c) Subrogation of the Existing Debt.

(i) Subject to the payment in full of all Senior Debt, the rights of the Holders shall be subrogated to the extent of the payments or distributions made to the holders of such Senior Debt pursuant to the provisions of this Section 1 (equally and ratably with the holders of all indebtedness of the Company which by its express terms is subordinated to other indebtedness of the Company to substantially the same extent as the Existing Debt is subordinated and is entitled to like rights of subrogation) to the rights of the holders of Senior Debt to receive payments or distributions of cash, property or securities of the Company applicable to the Senior Debt until the principal and premium, if any, on the Existing Debt shall be paid in full; and, for the purposes of such subrogation, no payments or distributions to the holders of Senior Debt of any cash, property or securities to which the Holders would be entitled except for the provisions of this Section 1, and no payment over pursuant to the provisions of this Section 1, to or for the benefit of the holders of Senior Debt by the Holders, shall, as between the Company, its creditors other than holders of Senior Debt, and the Holders, be deemed to be a payment by the Company to or on account of the Senior Debt; and no payments or distributions of cash, property or securities to or for the benefit of the Holders pursuant to the subrogation provisions of this Section 1, which would otherwise have been paid to the holders of Senior Debt shall be deemed to be a payment by the Company to or for the account of the Existing Debt. It is understood that the provisions of this Section 1 are and are intended solely for the purposes of defining the relative rights of the Holders, on the one hand, and the holders of Senior Debt, on the other hand.

(ii) Nothing contained in this Section 1 or elsewhere in this Agreement is intended to or shall impair, as among the Company, its creditors other than the holders of Senior Debt, and the Holders, the obligation of the Company, which is absolute and unconditional, to pay to the Holders the principal of (and premium, if any) and interest on the Existing Debt as and when the same shall become due and payable in accordance with its terms, or is intended to or shall affect the relative rights of the Holders and creditors of the Company other than the holders of Senior Debt, nor shall anything herein or therein prevent the Holders from exercising all remedies otherwise permitted by applicable law upon default under this Agreement, subject to the rights, if any, under this Section 1 of the holders of Senior Debt in respect of cash, property or securities of the Company received upon the exercise of any such remedy.

(iii) Upon any payment or distribution of assets of the Company or the Subsidiary Guarantor referred to in this Section 1, the Holders shall be entitled to rely upon any order or decree made by any court of competent jurisdiction in which such bankruptcy, dissolution, winding-up, liquidation or reorganization proceedings are pending, or a certificate of the receiver, trustee in bankruptcy, liquidating trustee, agent or other person making such payment or distribution, delivered to the Holders, for the purpose of ascertaining the persons entitled to participate in such distribution, the holders of Senior Debt and other indebtedness of the Company, the amount thereof or payable thereon and all other facts pertinent thereto or to this Section 1.

(d) This Agreement shall terminate upon the Facility Termination Date (as such term is defined in the Credit Agreement).

(e) Until the repayment in full of all Senior Debt, this Section 1 may not be amended in a manner adverse to the holders of Senior Debt without the consent of the Company, the Holders and the agent of the Senior Debt (with the consent of each of the Lenders (as defined in the Credit Agreement)).

2. Miscellaneous.

(a) Notice. Any notice, request or other communication required or permitted hereunder shall be in writing and shall be deemed to have been duly given if personally delivered or mailed by registered or certified mail, postage prepaid, or by recognized overnight courier or personal delivery at the respective addresses of the parties as set forth herein or on the register maintained by the Company. Any party hereto may by notice so given change its address for future notice hereunder. Notice shall conclusively be deemed to have been given where received.

(b) No Waiver. No failure or delay by any Holder to exercise any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude any other right, power or privilege.

(c) Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

(d) Entire Agreement. This Agreement, together with the Credit Agreement and the Promissory Notes, expresses the entire understanding of the parties with respect to the transactions contemplated hereby.

(e) Waiver by the Company. The Company and the Subsidiary Guarantor each hereby expressly waives presentment, protest, notice of protest, notice of default, notice of dishonor and all other demands and notices relating to this Agreement of any kind or nature whatsoever.

(f) Governing Law. **THIS AGREEMENT AND ALL ACTIONS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT APPLICATION OF CONFLICTS OF LAW PRINCIPLES.**

(Remainder of page intentionally left blank)

IN WITNESS WHEREOF, the parties are signing this Subordination Agreement as of the date first written above.
NANTHEALTH, INC.

By: /s/ Bob Petrou
Name: Bob Petrou
Title: Chief Financial Officer, Treasurer and Secretary

NAVINET, INC.

By: /s/ Bob Petrou
Name: Bob Petrou
Title: Chief Financial Officer, Treasurer and Secretary

AGREED AND ACCEPTED:

NANT CAPITAL, LLC

By: /s/ Charles Kenworthy
Name: Charles Kenworthy
Title: Manager

AIRSTRIP TECHNOLOGIES, INC.

By: /s/ Patrick Soon-Shiong
Name: Patrick Soon-Shiong, M.D.
Title:

LETTER AGREEMENT

This LETTER AGREEMENT (this “*Agreement*”) is made and entered into as of March 2, 2023 between NantHealth, Inc., a Delaware corporation (the “*Company*”), and the beneficial owners listed on Exhibit A (the “*Holder*s”).

RECITALS

WHEREAS, the Holders are collectively the beneficial owners of \$137,500,000 aggregate principal amount of the Company’s 4.50% Convertible Senior Notes due 2026 (the “*Notes*”) issued pursuant to the Indenture, dated as of April 27, 2021, among the Company, NaviNet, Inc., a Delaware corporation, and U.S. Bank Trust Company, National Association (as successor in interest to U.S. Bank National Association) (as amended from time to time, the “*Indenture*”);

WHEREAS, it is anticipated that the Company will enter into a first lien term loan credit facility in accordance with the Credit Agreement, dated on or around the date hereof, among the Company, certain subsidiaries of the Company, the lenders party thereto (the “*Lenders*”), GLAS USA LLC and GLAS AMERICAS LLC (as amended from time to time, the “*Credit Agreement*”), pursuant to which certain Lenders, including affiliates of the Holders and an entity affiliated with Dr. Patrick Soon-Shiong (such affiliated entity of Dr. Soon-Shiong, the “*Affiliated Lender*”), will agree to make certain term loans to the Company in an aggregate principal amount of \$22.5 million (the “*Transaction*”);

WHEREAS, Section 4.10 of the Indenture prohibits, subject to certain conditions, the Company’s incurrence of any Affiliate Debt (as defined in the Indenture); and

WHEREAS, the parties hereto desire that the Holders (i) irrevocably and permanently waive the Company’s compliance with the covenants set forth in Section 4.10 of the Indenture solely in connection with the Transaction, and (ii) agree not to exercise its right to require the Company to repurchase its Notes pursuant to Section 15.02 of the Indenture upon the occurrence any one or more Fundamental Change(s) (as defined in the Indenture) resulting from a Delisting Event (as defined below) on the terms and conditions contained herein.

AGREEMENT

NOW, THEREFORE, in consideration of the promises and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Waiver: Covenant to Approve Future Consent. Each Holder hereby agrees to irrevocably and permanently waive the Company’s compliance with Section 4.10 of the Indenture solely in connection with the Transaction and to permit the Company to incur borrowings from the Affiliated Lender in connection with the Transaction. Each Holder further agrees to waive any current or future Default or Event of Default arising from any breach of Section 4.10 of the Indenture arising from any borrowings made by the Affiliated Lender to the Company in accordance and solely in connection with the Transaction. Additionally, each Holder covenants to promptly take any action reasonably requested by the Company or the Trustee (or the Trustee on behalf of the Company) to vote all of its Notes to approve any future waiver, consent or amendment distributed to Holders pursuant to the terms of the Indenture that is consistent with the waivers and agreements described herein this Section 1 (such waiver, consent or amendment an “*Indenture Consent*”).

2. Waiver of Delisting Event Repurchase Right. For a period beginning on the Closing Date (as defined in the Credit Agreement) and ending on the date that is five months after the Closing Date, each Holder hereby covenants that such Holder shall not, directly or indirectly, in any manner, along or in concert with others, exercise any right to require the Company to repurchase any or all of the Notes pursuant to Section 15.02 of the Indenture upon the occurrence of any Fundamental Change resulting solely from a Delisting Event. For purposes of this Agreement only, a “*Delisting Event*” shall mean an event or series of events resulting in the Company ceasing to be listed or quoted on any of The

New York Stock Exchange, The NASDAQ Global Select Market, The NASDAQ Global Market or the NASDAQ Capital Market (or any of their respective successors); *provided, however*, that (x) if the cessation of the listing or quotation on such exchanges or markets is a result of the Company “going private” (a “Rule 13e-3 transaction” as defined in Rule 13e-3(a)(3) promulgated under the Securities and Exchange Act of 1934), then such cessation shall not be deemed to be a “Delisting Event” hereunder and each Holder shall retain all rights under the Notes, including with respect to Section 15.02 of the Indenture and (y) for the avoidance of doubt, the occurrence of any Fundamental Change of the type described in clause (a), (b) or (c) of such definition in the Indenture shall not constitute a “Delisting Event” for purposes of this Agreement, regardless of whether or not any such Fundamental Change also constitutes or causes a Fundamental Change of the type described in clause (d) of such definition in the Indenture.

3. Transfer Restrictions. Until the approval of the Indenture Consent, each Holder agrees that it shall not transfer, directly or indirectly, sell, transfer, pledge, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, transfer the economic risk of ownership of, or otherwise dispose of the Notes to any Person other than an Affiliate provided such Affiliate agrees in writing to be bound by and comply with all of the terms of this Agreement.

4. Further Covenants, Representations and Warranties. Each party hereto hereby covenants as follows, and makes the following representations and warranties, each of which is and shall be true and correct on the date hereof, and all such covenants, representations and warranties shall survive and remain until this Agreement is terminated in accordance with Section 7:

- (a) Power and Authorization. Each party hereto hereby covenants that it is duly organized, validly existing and in good standing under the laws of its jurisdiction of formation, and has the requisite power, authority and capacity to execute and deliver this Agreement, to perform its obligations hereunder.
- (b) Valid and Enforceable Agreement; No Violations. Each party hereto hereby covenants that this Agreement has been duly authorized, executed and delivered by such party and constitutes a legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms, except that such enforcement may be subject to (a) bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or other similar laws affecting or relating to enforcement of creditors’ rights generally, and (b) general principles of equity, whether such enforceability is considered in a proceeding at law or in equity (the “**Enforceability Exceptions**”). This Agreement will not violate, conflict with or result in a breach of or default under (i) such party’s organizational documents, (ii) any agreement or instrument to which such party is a party or by which such party or any of its respective assets are bound or (iii) any laws, regulations or governmental or judicial decrees, injunctions or orders applicable to such party, except for such violations, conflicts or breaches under clauses (ii) and (iii) above that would not, individually or in the aggregate, have a material adverse effect on the financial position, results of operations or prospects of such party or adversely and materially affect its performance of the obligations under this Agreement or on the consummation of the transactions contemplated hereby.
- (c) Title to the Notes. Each Holder is currently the sole legal and beneficial owner of the the Notes set forth opposite its name on Exhibit A hereto. Each Holder has good, valid and marketable title to its Notes, free and clear of any mortgage, lien, pledge, charge, security interest, encumbrance, title retention agreement, option, equity or other adverse claim thereto (collectively, “**Liens**”). Such Holder has not, in whole or in part (a) assigned, transferred, hypothecated, pledged, exchanged or otherwise disposed of any of its Notes or its rights in its Notes or (b) given any person or entity any transfer order, power of attorney or other authority of any nature whatsoever with respect to its Notes.

5. Entire Agreement. This Agreement contains the entire agreement between the parties hereto concerning the subject matter hereof and supersedes any and all prior oral or written agreements,

understandings or arrangements (whether or not binding) between the parties in respect of the subject matter hereof.

6. Amendments. No amendments to, or modification of, this Agreement, or waiver of the terms and conditions hereof, will be binding upon either party hereto unless and until approved in writing by each party hereto.

7. Termination. This Agreement shall continue in full force and effect until the earlier of (A) the later of (x) the date that is five months following the Closing Date and (y) the date on which an Indenture Consent shall have become effective and (B) a termination of the Agreement in writing by the Company.

8. Successors and Assigns. This Agreement will benefit and bind successors of the Company and the Holders. Any attempted assignment of this agreement by any Holder without the prior written consent of the Company will be void and of no effect.

9. Governing Law. This Agreement shall in all respects be construed in accordance with and governed by the substantive laws of the State of New York, without reference to its choice of law rules that would result in the application of the laws of any other jurisdiction.

10. Jurisdiction. Each party hereto hereby submits to the exclusive jurisdiction of any New York State court or Federal court sitting in the Borough of Manhattan in New York City in respect of any such suit, action, proceeding or counterclaim (whether based on contract, tort or otherwise) arising out of or relating to this Agreement (in each case, an "**Action**"), agrees not to commence any such Action except in such courts, and irrevocably agrees that all claims in respect of any such Action and the transactions contemplated hereby or the actions of the parties in the negotiation, performance or enforcement hereof may be heard and determined in such court (and any appellate court thereof).

11. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. Any counterpart or other signature hereon delivered by facsimile or any standard form of telecommunication or e-mail shall be deemed for all purposes as constituting good and valid execution and delivery of this Agreement by such party.

12. Defined terms; Construction. Capitalized terms not otherwise defined herein shall have the meaning set forth in the Indenture. References in the singular shall include the plural, and vice versa, unless the context otherwise requires. References in the masculine shall include the feminine and neuter, and vice versa, unless the context otherwise requires. Headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meanings of the provisions hereof. Neither party, nor its respective counsel, shall be deemed the drafter of this Agreement for purposes of construing the provisions of this Agreement, and all language in all parts of this Agreement shall be construed in accordance with its fair meaning, and not strictly for or against either party.

[Remainder of page intentionally left blank]

IN WITNESS THEREOF, each of the parties hereto has executed this Agreement or caused this Agreement to be executed by its duly authorized representative as of the date set forth above.

“Company”

NANTHEALTH, INC.

By: /s/ Bob Petrou

Name: Bob Petrou

Title: Chief Financial
Officer, Treasurer and Secretary

[SIGNATURE PAGE - LETTER AGREEMENT]

“Holder”

**HIGHBRIDGE CONVERTIBLE
DISLOCATION FUND, L.P.**

**By: Highbridge Capital
Management, LLC, as Trading Manager**

By: /s/ Jonathan Segal

Name: Jonathan Segal

Title: Managing Director, Co-CIO

“Holder”

**HIGHBRIDGE TACTICAL
CREDIT MASTER FUND, L.P.**

**By: Highbridge Capital
Management, LLC, as Trading Manager**

By: /s/ Jonathan Segal

Name: Jonathan Segal

Title: Managing Director, Co-
CIO

“Holder”

Nant Capital, LLC

By: /s/ Charles Kenworthy

Name: Charles Kenworthy

Title: Manager

EXHIBIT A

<u>Holder</u>	<u>Aggregate Principal Amount of Notes Beneficially Owned</u>
Highbridge Tactical Credit Master Fund, L.P.	\$42,600,000
Highbridge Convertible Dislocation Fund, L.P.	\$32,400,000
Nant Capital, LLC	\$62,500,000

**AMENDMENT NO. 1
TO SHARED SERVICES AGREEMENT**

This Amendment No. 1 (the “**Amendment**”) is made as of the date of the last signature below and shall be effective as of March 16, 2023 (the “**Amendment Effective Date**”), by and between NantHealth, Inc. (formerly Nant Health, LLC), a Delaware corporation (“**NantHealth**” or the “**Company**”), and NantWorks, LLC, a Delaware limited liability company (“**NantWorks**”).

RECITALS

Whereas, NantHealth and NantWorks are parties to that certain Shared Services Agreement, dated as of November 19, 2012 (the “**Agreement**”);

Whereas, NantHealth, as borrower, and certain of its subsidiaries, as guarantors, entered into that certain credit agreement dated as of March 2, 2023 (as amended, restated or otherwise modified from time to time, the “**Credit Agreement**”) with Nant Capital, LLC, an entity affiliated with Dr. Patrick Soon-Shiong, NantHealth’s Chief Executive Officer, Highbridge Tactical Credit Master Fund, L.P. and Highbridge Convertible Dislocation Fund, L.P., as the lenders, GLAS USA, LLC, as administrative agent, and GLAS Americas, LLC, as collateral agent, which provides, among other things, that the Company shall amend the Agreement to provide that (a) aggregate amounts payable by NantHealth and its subsidiaries pursuant to the Agreement and the Shared Services Agreement by and between NantHealth and Airstrip Technologies, Inc. dated 10 February 2023 (together with the Agreement, the “**Shared Services Agreements**”), shall not exceed \$420,000 (the “**Cap**”), (b) any amounts in excess of the Cap incurred pursuant to the Shared Services Agreements shall accrue but shall not be required to be paid in cash and (c) the counterparties to such Shared Services Agreements shall remain obligated to perform the services described therein; and

Whereas, pursuant to the Credit Agreement, NantHealth and NantWorks wish to amend the terms of the Agreement.

Now, Therefore, the parties hereto, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, intending to be legally bound, agree as follows:

AGREEMENT

1. The Agreement is hereby amended by amending the end of Article I (Definitions) therein to include the following:

The “**Amendment**” means Amendment No. 1 to Shared Services Agreement, effective as of the Amendment Effective Date, by and between the Company and NantWorks.

The “**Amendment Effective Date**” means March 16, 2023.

The “**Credit Agreement**” means the Credit Agreement dated as of March 2, 2023 (as amended, restated or otherwise modified from time to time) among the Company as borrower, certain subsidiaries of the Company party thereto as guarantors, Nant Capital, LLC, an entity affiliated with Dr. Patrick Soon-Shiong, NantHealth’s Chief Executive Officer, Highbridge Tactical Credit Master Fund, L.P. and Highbridge Convertible Dislocation Fund, L.P., as the lenders, GLAS USA, LLC, as administrative agent, and GLAS Americas, LLC, as collateral agent.

2. The Agreement is hereby amended by amending and restating Section 3.02 (Payments) thereof in its entirety to read as follows:

Section 3.02. Payments. In consideration of the Services to be rendered hereunder, the Company shall compensate NantWorks in accordance with Schedule A attached hereto. Each month, NantWorks shall deliver an invoice to the Company for Services provided to the Company or its subsidiaries during the preceding month, and each such invoice shall set forth a brief description

of each such Service and the calculation of the amounts charged for such Service (the "Service Costs"). Payment with respect to undisputed portions of an invoice shall be due thirty (30) days of the Company's receipt of an invoice; *provided, that*, prior to the Facility Termination Date (as such term is defined in the Credit Agreement), any cash amounts due and payable by the Company and its subsidiaries after the Amendment Effective Date pursuant to this Agreement and the Shared Services Agreement by and between the Company and Airstrip Technologies, Inc. dated 10 February 2023 (together with this Agreement, the "Shared Services Agreements"), shall not exceed \$420,000 in the aggregate (the "Cap"), and any amounts in excess of the Cap incurred pursuant to the Shared Services Agreements shall accrue but shall not be required to be paid in cash. Notwithstanding the foregoing or anything herein to the contrary, NantWorks shall remain obligated to perform the services described herein.

3. Except as set forth in this Amendment, the Agreement is unaffected and shall continue in full force and effect in accordance with its terms. Except as otherwise modified or defined herein, all capitalized terms in this Amendment have the same meanings as set forth in the Agreement. If there is conflict between this Amendment and the Agreement or any earlier amendment, the terms of this Amendment will prevail.
4. This Amendment and all actions arising out of or in connection with this Amendment shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to the conflicts of law provisions of the State of Delaware or of any other state.
5. This Amendment may be executed in counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Party. Electronic or facsimile signatures shall be deemed original signatures.

IN WITNESS HEREOF, the parties have agreed and fully executed this Amendment.

NantHealth, Inc.

NantWorks, LLC

By: /s/ Bob Petrou

By: /s/ Robert Morse

Name: Bob Petrou

Name: Robert Morse

Title: Chief Financial Officer

Title: NantWorks Chief Financial Officer

Date: 3/24/2023

Date: 3/24/2023

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Patrick Soon-Shiong, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of NantHealth, 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.

Date: May 15, 2023

By: /s/ Patrick Soon-Shiong

Dr. Patrick Soon-Shiong
Chairman, Chief Executive Officer and Director
(Principal Executive Officer)

**CERTIFICATION OF CHIEF FINANCIAL OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Bob Petrou, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of NantHealth, 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.

Date: May 15, 2023

By: /s/ Bob Petrou

Bob Petrou
Chief Financial Officer
(Principal Financial and Accounting Officer)

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER
PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

I, Patrick Soon-Shiong, the chief executive officer of NantHealth, Inc. (the "Company"), certify for purposes of 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

- (i) the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2023 (the "Report"), fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and
- (ii) that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: May 15, 2023

By: /s/ Patrick Soon-Shiong

Dr. Patrick Soon-Shiong
Chairman, Chief Executive Officer and Director
(Principal Executive Officer)

This certification accompanies the Quarterly Report on Form 10-Q to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of the Company under the Securities Act of 1933, as amended, or the Exchange Act (whether made before or after the date of the Form 10-Q), irrespective of any general incorporation language contained in such filing.

**CERTIFICATION OF CHIEF FINANCIAL OFFICER
PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

I, Bob Petrou, the chief financial officer of NantHealth, Inc. (the "Company"), certify for purposes of 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

- (i) the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2023 (the "Report"), fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and
- (ii) that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: May 15, 2023

By: /s/ Bob Petrou

Bob Petrou
Chief Financial Officer
(Principal Financial and Accounting Officer)

This certification accompanies the Quarterly Report on Form 10-Q to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of the Company under the Securities Act of 1933, as amended, or the Exchange Act (whether made before or after the date of the Form 10-Q), irrespective of any general incorporation language contained in such filing.