

**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 December 31, 2021  
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: 001-39058

**Peloton Interactive, Inc.**  
(Exact name of registrant as specified in its charter)

**Delaware**  
*(State or other jurisdiction of  
incorporation or organization)*  
**441 Ninth Avenue, Sixth Floor**  
**New York, New York**  
*(Address of principal executive offices)*

**47-3533761**  
*(I.R.S. Employer  
Identification No.)*  
**10001**  
*(Zip Code)*

**(917) 671-9198**  
*(Registrant's telephone number, including area code)*  
Not Applicable  
*(former name, former address and former fiscal year, if changed since last report)*

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Class A common stock, \$0.000025 par value per share	PTON	The Nasdaq Stock Market LLC

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

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

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

As of January 31, 2022, the number of shares of the registrant's Class A common stock outstanding was 302,996,134 and the number of shares of the registrant's Class B common stock outstanding was 28,604,062.

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## SPECIAL NOTE REGARDING FORWARD LOOKING STATEMENTS

This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. We intend such forward-looking statements to be covered by the safe harbor provisions for forward-looking statements contained in Section 27A of the Securities Act of 1933, as amended (the "Securities Act") and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). All statements contained in this Quarterly Report on Form 10-Q other than statements of historical fact, including, without limitation, statements regarding our execution of and the expected benefits from our restructuring initiative and cost saving measures, our future operating results and financial position, our business strategy and plans, market growth, and our objectives for future operations, are forward-looking statements. The words "believe," "may," "will," "estimate," "potential," "continue," "anticipate," "intend," "expect," "could," "would," "project," "plan," "target," and similar expressions are intended to identify forward-looking statements, though not all forward-looking statements use these words or expressions.

We have based these forward-looking statements on our current expectations and projections about future events and trends that we believe may affect our financial condition, results of operations, business strategy, short-term and long-term business operations and objectives, and financial needs. These forward-looking statements are subject to a number of risks, uncertainties, and assumptions and other important factors that could cause actual results to differ materially from those stated, including, but not limited to:

- our ability to achieve and maintain future profitability;
- our ability to attract and maintain Subscribers;
- our ability to effectively manage our growth;
- our ability to accurately forecast consumer demand of our products and services and adequately maintain our inventory;
- our ability to execute and achieve the benefits of our restructuring initiative and other cost saving measures;
- our ability to anticipate consumer preferences and successfully develop and introduce new products and services;
- demand for our products and services and growth of the connected fitness products industry;
- our ability to predict our long-term performance and declines in our revenue growth as our business matures;
- the direct and indirect impacts to our business and financial performance from the COVID-19 pandemic;
- the effects of increased competition in our markets and our ability to compete effectively;
- our reliance on and our ability to partner with third parties such as music licensors, service providers, and suppliers;
- declines in sales of our Bike and Bike+;
- our reliance on and lack of control over third-party suppliers, contract manufacturers and logistics partners for our Connected Fitness Products;
- our dependence on third-party licenses for use of music in our content;
- actual or perceived defects in, or safety of, our products, including any impact of product recalls or legal or regulatory claims, proceedings or investigations involving our products;
- our ability to maintain, protect, and enhance our intellectual property;
- our ability to stay in compliance with laws and regulations that currently apply or become applicable to our business both in the United States and internationally; and
- those risks and uncertainties described in the sections titled "Management's Discussion and Analysis of Financial Condition and Results of Operations" in Part I, Item 2 and "Risk Factors" in Part II, Item 1A of this Quarterly Report on Form 10-Q, as such factors may be updated in our filings with the Securities and Exchange Commission (the "SEC").

Moreover, we operate in a very competitive and rapidly changing environment. New risks emerge from time to time. It is not possible for our management to predict all risks, nor can we assess the impact of all factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements we may make. In light of these risks, uncertainties, and assumptions, the future events and trends discussed in this Quarterly Report on Form 10-Q may not occur and actual results could differ materially and adversely from those anticipated or implied in the forward-looking statements.

You should not rely upon forward-looking statements as predictions of future events. The events and circumstances reflected in the forward-looking statements may not be achieved or occur. Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, performance, or achievements. Our forward-looking statements speak only as of the date of this Quarterly Report on Form 10-Q, and we undertake no obligation to update any of these forward-looking statements for any reason after the date of this Quarterly Report on Form 10-Q or to conform these statements to actual results or revised expectations, except as required by law.

You should read this Quarterly Report on Form 10-Q, and the documents that we reference in this Quarterly Report on Form 10-Q and have filed with the SEC, with the understanding that our actual future results, performance, and events and circumstances may be materially different from what we expect.

In this Quarterly Report on Form 10-Q, the words "we," "us," "our," and "Peloton" refer to Peloton Interactive, Inc. and its wholly owned subsidiaries, unless the context requires otherwise.

## RISK FACTOR SUMMARY

Our business is subject to numerous risks and uncertainties, including those described in Part II, Item 1A, "Risk Factors" in this Quarterly Report on Form 10-Q. You should carefully consider these risks and uncertainties when investing in our Class A common stock. Some of the principal risks and uncertainties include the following:

- We have incurred operating losses in the past, may incur operating losses in the future, and may not achieve or maintain profitability in the future.
- We may be unable to attract and retain Subscribers, which could have an adverse effect on our business and rate of growth.
- We have grown rapidly in recent years and have limited operating experience at our current scale of operations. If we are unable to manage our growth effectively, our brand, company culture, and financial performance may suffer.
- Our operating results have been, and could in the future be, adversely affected if we are unable to accurately forecast consumer demand for our products and services and adequately manage our inventory.
- We may not successfully execute or achieve the expected benefits of our restructuring initiative and other cost saving measures we may take in the future, and our efforts may result in further actions and/or additional asset impairment charges and adversely affect our business.
- If we are unable to anticipate consumer preferences, and successfully develop and introduce new, innovative, and updated products and services in a timely manner, or effectively manage the introduction of new or enhanced products and services, our business may be adversely affected.
- The connected fitness market is relatively new and, if the general market and specific demand for our products and services does not continue to grow, grows more slowly than we expect, or fails to grow as much as we expect, our business, financial condition, and operating results may be adversely affected.
- We have a limited operating history from which to predict our long-term performance, and our past financial results may not be indicative of our future performance. Further, our revenue growth rate is likely to slow as our business matures.
- The full impact of the COVID-19 pandemic is uncertain and cannot be predicted. The COVID-19 pandemic could worsen or its effects may be prolonged, including as a result of variants, which could have an adverse effect on our business, results of operations, and financial condition.
- We operate in a highly competitive market and we may be unable to compete successfully against existing and future competitors.
- We derive a significant majority of our revenue from sales of our Bike and Bike+. A decline in sales of our Bike and Bike+ would negatively affect our future revenue and operating results.
- We rely on a limited number of suppliers, contract manufacturers, and logistics partners for our Connected Fitness Products. A loss of any of these partners could negatively affect our business.
- We have limited control over our suppliers, contract manufacturers, and logistics partners, which may subject us to significant risks, including the potential inability to produce or obtain quality products and services on a timely basis or in sufficient quantity.
- We depend upon third-party licenses for the use of music in our content. An adverse change to, loss of, or claim that we do not hold necessary licenses may have an adverse effect on our business, operating results, and financial condition.
- Our success depends on our ability to maintain the value and reputation of the Peloton brand.

PART I. FINANCIAL INFORMATION

Item 1. Financial Statements

PELOTON INTERACTIVE, INC.  
CONDENSED CONSOLIDATED BALANCE SHEETS  
(in millions, except share and per share amounts)

	December 31, 2021 (unaudited)	June 30, 2021
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 1,606.9	\$ 1,134.8
Marketable securities	—	472.0
Accounts receivable, net	94.7	71.4
Inventories, net	1,541.3	937.1
Prepaid expenses and other current assets	213.7	202.8
Total current assets	3,456.6	2,818.1
Property and equipment, net	737.6	591.9
Intangible assets, net	229.2	247.9
Goodwill	224.4	210.1
Restricted cash	87.7	0.9
Operating lease right-of-use assets, net	705.5	580.1
Other assets	41.6	36.7
Total assets	\$ 5,482.5	\$ 4,485.6
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Accounts payable and accrued expenses	\$ 1,136.0	\$ 989.1
Customer deposits and deferred revenue	240.5	164.8
Operating lease liabilities, current	80.8	61.9
Other current liabilities	24.4	27.2
Total current liabilities	1,481.7	1,243.0
Convertible senior notes, net	846.7	829.8
Operating lease liabilities, non-current	743.7	620.4
Other non-current liabilities	41.5	38.3
Total liabilities	3,113.6	2,731.5
Commitments and contingencies (Note 8)		
Stockholders' equity		
Common stock, \$0.000025 par value; 2,500,000,000 and 2,500,000,000 Class A shares authorized, 302,778,818 and 270,855,356 shares issued and outstanding as of December 31, 2021 and June 30, 2021, respectively; 2,500,000,000 and 2,500,000,000 Class B shares authorized, 28,668,327 and 29,291,774 shares issued and outstanding as of December 31, 2021 and June 30, 2021, respectively.	—	—
Additional paid-in capital	4,048.8	2,618.9
Accumulated other comprehensive income	18.3	18.2
Accumulated deficit	(1,698.2)	(883.0)
Total stockholders' equity	2,368.9	1,754.1
Total liabilities and stockholders' equity	\$ 5,482.5	\$ 4,485.6

See accompanying notes to these unaudited condensed consolidated financial statements.

**PELOTON INTERACTIVE, INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE (LOSS) INCOME**  
**(unaudited)**  
**(in millions, except share and per share amounts)**

	Three Months Ended December 31,		Six Months Ended December 31,	
	2021	2020	2021	2020
<b>Revenue:</b>				
Connected Fitness Products	\$ 796.4	\$ 870.1	\$ 1,297.4	\$ 1,471.5
Subscription	337.5	194.7	641.7	351.2
Total revenue	1,133.9	1,064.8	1,939.1	1,822.7
<b>Cost of revenue:</b>				
Connected Fitness Products	745.5	562.8	1,186.2	927.0
Subscription	108.3	77.2	210.0	142.2
Total cost of revenue	853.7	640.0	1,396.2	1,069.2
Gross profit	280.2	424.8	543.0	753.5
<b>Operating expenses:</b>				
Sales and marketing	349.6	177.4	633.9	292.1
General and administrative	248.7	141.1	489.0	249.7
Research and development	100.0	47.5	197.7	84.1
Impairment expense	7.7	—	7.7	—
Total operating expenses	705.9	366.0	1,328.3	625.8
(Loss) income from operations	(425.7)	58.8	(785.4)	127.7
<b>Other (expense) income, net:</b>				
Interest expense	(8.8)	(0.4)	(17.4)	(0.8)
Interest income	0.3	2.3	0.9	5.1
Foreign exchange losses	(1.7)	(0.1)	(7.6)	(0.8)
Other expense, net	(0.4)	—	(0.4)	—
Total other (expense) income, net	(10.6)	1.8	(24.6)	3.5
(Loss) income before provision for income taxes	(436.3)	60.6	(809.9)	131.2
Income tax expense (benefit)	3.1	(3.0)	5.4	(1.7)
Net (loss) income	\$ (439.4)	\$ 63.6	\$ (815.3)	\$ 132.8
Net (loss) income attributable to Class A and Class B common stockholders	\$ (439.4)	\$ 63.6	\$ (815.3)	\$ 132.8
Net (loss) income per share attributable to common stockholders, basic	\$ (1.39)	\$ 0.22	\$ (2.64)	\$ 0.46
Net (loss) income per share attributable to common stockholders, diluted	\$ (1.39)	\$ 0.18	\$ (2.64)	\$ 0.39
Weighted-average Class A and Class B common shares outstanding, basic	317,110,297	292,462,184	309,119,648	290,591,037
Weighted-average Class A and Class B common shares outstanding, diluted	317,110,297	347,886,695	309,119,648	344,994,314
<b>Other comprehensive income:</b>				
Net unrealized losses on marketable securities	\$ (0.2)	\$ (1.3)	\$ (0.4)	\$ (2.6)
Change in foreign currency translation adjustment	1.9	5.3	2.1	9.1
Net unrealized loss on hedging derivatives	(0.5)	—	(1.5)	—
Total other comprehensive income	1.2	4.0	0.1	6.5
Comprehensive (loss) income	\$ (438.2)	\$ 67.5	\$ (815.2)	\$ 139.4

*See accompanying notes to these unaudited condensed consolidated financial statements.*

**PELTON INTERACTIVE, INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(unaudited)  
(in millions)

	<b>Six Months Ended December 31,</b>	
	<b>2021</b>	<b>2020</b>
<b>Cash Flows from Operating Activities:</b>		
Net (loss) income	\$ (815.3)	\$ 132.8
Adjustments to reconcile net (loss) income to net cash (used in) provided by operating activities:		
Depreciation and amortization expense	64.2	24.2
Stock-based compensation expense	124.8	67.1
Non-cash operating lease expense	41.7	28.2
Amortization of premium from marketable securities	3.4	3.5
Amortization of debt discount and issuance costs	17.1	0.2
Impairment expense	7.7	—
Net foreign currency adjustments	6.9	—
Loss (gain) on disposals	2.3	2.1
Changes in operating assets and liabilities:		
Accounts receivable	(23.4)	(18.0)
Inventories	(601.5)	(273.0)
Prepaid expenses and other current assets	(50.8)	(35.2)
Other assets	(8.4)	0.7
Accounts payable and accrued expenses	172.2	331.9
Customer deposits and deferred revenue	75.8	245.7
Operating lease liabilities, net	(24.9)	4.1
Other liabilities	0.6	(3.9)
Net cash (used in) provided by operating activities	<u>(1,007.6)</u>	<u>510.5</u>
<b>Cash Flows from Investing Activities:</b>		
Purchases of marketable securities	—	(449.1)
Maturities of marketable securities	211.0	300.6
Sales of marketable securities	306.7	—
Purchases of property and equipment	(178.4)	(119.4)
Business combinations, net of cash acquired	(11.0)	—
Asset acquisitions, net of cash acquired	(16.0)	(78.1)
Internal-use software costs and other	(12.7)	(0.7)
Net cash provided by (used in) investing activities	<u>299.6</u>	<u>(346.7)</u>
<b>Cash Flows from Financing Activities:</b>		
Proceeds from public offering, net of issuance costs	1,218.8	—
Proceeds from employee stock purchase plan withholdings	15.2	7.2
Proceeds from exercise of stock options	54.2	53.3
Taxes withheld and paid on employee stock awards	—	(16.5)
Principal repayments of finance leases	(1.0)	(0.5)
Net cash provided by financing activities	<u>1,287.2</u>	<u>43.6</u>
Effect of exchange rate changes	(20.3)	5.5
Net change in cash, cash equivalents, and restricted cash	558.9	212.9
Cash, cash equivalents, and restricted cash — Beginning of period	1,135.7	1,037.0
Cash, cash equivalents, and restricted cash — End of period	<u>\$ 1,694.6</u>	<u>\$ 1,249.9</u>
<b>Supplemental Disclosures of Cash Flow Information:</b>		
Cash paid for interest	<u>\$ 0.5</u>	<u>\$ 0.3</u>

PELOTON INTERACTIVE, INC.  
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS  
(unaudited)  
(in millions)

Cash paid for income taxes	\$ 9.1	\$ 1.3
<b>Supplemental Disclosures of Non-Cash Investing and Financing Information:</b>		
Property and equipment accrued but unpaid	\$ 36.0	\$ 47.2
Stock-based compensation capitalized for software development costs	\$ 5.1	\$ 1.8

*See accompanying notes to these unaudited condensed consolidated financial statements.*

PELTON INTERACTIVE, INC.  
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY  
(unaudited)  
(in millions)

	Class A and Class B Common Stock		Additional Paid-In Capital	Accumulated Other Comprehensive Income	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount				
<b>Balance - September 30, 2020</b>	291.8	\$ —	\$ 2,412.9	\$ 12.7	\$ (624.6)	\$ 1,801.0
Activity related to stock-based compensation	2.4	—	59.9	—	—	59.9
Other comprehensive income	—	—	—	4.0	—	4.0
Net income	—	—	—	—	63.6	63.6
<b>Balance - December 31, 2020</b>	<u>294.3</u>	<u>\$ —</u>	<u>\$ 2,472.7</u>	<u>\$ 16.6</u>	<u>\$ (561.0)</u>	<u>\$ 1,928.3</u>
<b>Balance - September 30, 2021</b>	302.8	\$ —	\$ 2,748.6	\$ 17.1	\$ (1,258.8)	\$ 1,506.9
Activity related to stock-based compensation	1.5	—	81.5	—	—	81.5
Issuance of common stock pursuant to public offering, net of issuance costs	27.2	—	1,218.7	—	—	1,218.7
Other comprehensive income	—	—	—	1.2	—	1.2
Net loss	—	—	—	—	(439.4)	(439.4)
<b>Balance - December 31, 2021</b>	<u>331.4</u>	<u>\$ —</u>	<u>\$ 4,048.8</u>	<u>\$ 18.3</u>	<u>\$ (1,698.2)</u>	<u>\$ 2,368.9</u>

	Class A and Class B Common Stock		Additional Paid-In Capital	Accumulated Other Comprehensive Income	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount				
<b>Balance - June 30, 2020</b>	288.1	\$ —	\$ 2,361.8	\$ 10.1	\$ (693.9)	\$ 1,678.0
Activity related to stock-based compensation	5.9	—	105.8	—	—	105.8
Issuance of common stock under employee stock purchase plan	0.2	—	5.1	—	—	5.1
Other comprehensive income	—	—	—	6.5	—	6.5
Net income	—	—	—	—	132.8	132.8
<b>Balance - December 31, 2020</b>	<u>294.3</u>	<u>\$ —</u>	<u>\$ 2,472.7</u>	<u>\$ 16.6</u>	<u>\$ (561.0)</u>	<u>\$ 1,928.3</u>
<b>Balance - June 30, 2021</b>	300.1	\$ —	\$ 2,618.9	\$ 18.2	\$ (883.0)	\$ 1,754.1
Activity related to stock-based compensation	3.8	—	199.5	—	—	199.5
Issuance of common stock under employee stock purchase plan	0.3	—	11.7	—	—	11.7
Issuance of common stock pursuant to public offering, net of issuance costs	27.2	—	1,218.7	—	—	1,218.7
Other comprehensive income	—	—	—	0.1	—	0.1
Net loss	—	—	—	—	(815.3)	(815.3)
<b>Balance - December 31, 2021</b>	<u>331.4</u>	<u>\$ —</u>	<u>\$ 4,048.8</u>	<u>\$ 18.3</u>	<u>\$ (1,698.2)</u>	<u>\$ 2,368.9</u>

See accompanying notes to these unaudited condensed consolidated financial statements.

PELOTON INTERACTIVE, INC.  
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS  
(unaudited)  
(in millions, except share and per share amounts)

**1. Description of Business and Basis of Presentation**

***Description and Organization***

Peloton Interactive, Inc. ("Peloton" or the "Company") is the largest interactive fitness platform in the world with a loyal community of Members, which we define as any individual who has a Peloton account through a paid Connected Fitness Subscription or a paid Peloton Digital Subscription. The Company pioneered connected, technology-enabled fitness with the creation of its interactive fitness equipment ("Connected Fitness Products") and the streaming of immersive, instructor-led boutique classes to its Members anytime, anywhere. The Company makes fitness entertaining, approachable, effective, and convenient while fostering social connections that encourage Members to be the best versions of themselves.

***Basis of Presentation and Consolidation***

The accompanying interim condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States ("GAAP") and applicable rules and regulations of the U.S. Securities and Exchange Commission ("SEC") regarding interim financial reporting. The condensed consolidated balance sheet as of June 30, 2021, included herein, was derived from the audited financial statements as of that date, but does not include all disclosures including certain notes required by GAAP on an annual reporting basis. Certain information and note disclosures normally included in the financial statements prepared in accordance with GAAP have been condensed or omitted pursuant to such rules and regulations. Therefore, these interim condensed consolidated financial statements should be read in conjunction with the consolidated financial statements and notes included in the Company's Annual Report on Form 10-K for the fiscal year ended June 30, 2021, filed with the SEC on August 27, 2021 (the "Form 10-K"). However, the Company believes that the disclosures provided herein are adequate to prevent the information presented from being misleading.

The condensed consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries. All significant intercompany balances and transactions have been eliminated in consolidation.

In the opinion of management, the accompanying interim condensed consolidated financial statements reflect all normal recurring adjustments necessary to present fairly the financial position, results of operations, cash flows, and the changes in equity for the interim periods. The results for the three and six months ended December 31, 2021 are not necessarily indicative of the results to be expected for any subsequent quarter, the fiscal year ending June 30, 2022, or any other period.

Certain monetary amounts, percentages, and other figures included elsewhere in these financial statements have been subject to rounding adjustments. Accordingly, figures shown as totals in certain tables may not be the arithmetic aggregation of the figures that precede them, and figures expressed as percentages in the text may not total 100% or, as applicable, when aggregated may not be the arithmetic aggregation of the percentages that precede them.

Except as described elsewhere in *Note 2 - Summary of Significant Accounting Policies* of the Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this Quarterly Report on Form 10-Q under the heading "*Recently Issued Accounting Pronouncements*", there have been no material changes to the Company's significant accounting policies as described in the Form 10-K.



## 2. Summary of Significant Accounting Policies

### **Use of Estimates**

The preparation of these financial statements requires the Company to make estimates and judgments that affect the reported amounts of assets, liabilities, revenue, expenses, and related disclosures. On an ongoing basis, the Company evaluates its estimates, including, among others, those related to revenue related reserves, the realizability of inventory, content costs for past use reserve, fair value measurements, the incremental borrowing rate associated with lease liabilities, impairment of long-lived and intangible assets, useful lives of long lived assets, including property and equipment and finite lived intangible assets, product warranty, goodwill, accounting for income taxes, stock-based compensation expense, transaction price estimates, the fair values of assets acquired and liabilities assumed in business combinations and asset acquisitions, valuation of the debt component of convertible senior notes, contingent consideration, and commitments and contingencies. Actual results may differ from these estimates.

### **Derivative Instruments and Hedging Activities**

Our Company, when deemed appropriate, uses derivatives as a risk management tool to mitigate the potential impact of foreign currency exchange risk. As required by ASC 815, the Company records all derivatives on the balance sheet at fair value in the following line items: Prepaid expenses and other current assets; and Other current liabilities.

The accounting for changes in the fair value of derivatives depends on the intended use of the derivative, whether the Company has elected to designate a derivative in a hedging relationship and apply hedge accounting and whether the hedging relationship has satisfied the criteria necessary to apply hedge accounting. Derivatives designated and qualifying as a hedge of the exposure to variability in expected future cash flows, or other types of forecasted transactions, are considered cash flow hedges. The Company does not currently have fair value or net investment hedges. Hedge accounting generally provides for the matching of the timing of gain or loss recognition on the hedging instrument with the recognition of the changes in the fair value of the hedged asset or liability that are attributable to the hedged risk in a fair value hedge or the earnings effect of the hedged forecasted transactions in a cash flow hedge.

In addition to our derivatives where we apply hedge accounting, the Company may enter into derivative contracts that are intended to economically hedge certain of its risk, even though hedge accounting does not apply or the Company elects not to apply hedge accounting. The Company made an accounting policy election to measure the credit risk of its derivative financial instruments that are subject to master netting agreements on a net basis by counterparty portfolio.

The Company evaluates its convertible instruments and other contracts to determine if those contracts or embedded components of those contracts qualify as derivatives requiring separate recognition in the Company's financial statements in accordance with the criteria under ASC 815-15. As of December 31, 2021, the Company did not have any material derivative contracts or contracts with material embedded derivative features requiring bifurcation.

### **Recently Issued Accounting Pronouncements**

#### *Accounting Pronouncements Recently Adopted*

##### ASU 2020-01

In January 2020, the FASB issued ASU 2020-01, *Investments-Equity Securities (Topic 321), Investments-Equity Method and Joint Ventures (Topic 323), and Derivatives and Hedging (Topic 815): Clarifying the Interactions between Topic 321, Topic 323, and Topic 815*. This guidance clarifies the interaction of the accounting for equity investments under Topic 321 and investments accounted for under the equity method of accounting in Topic 323 and the accounting for certain forward contracts and purchased options accounted for under Topic 815. This standard is effective for public companies for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2020. The Company has completed its assessment and adopted this standard on July 1, 2021. The adoption of this standard did not materially impact the Company's condensed consolidated financial statements.

##### ASU 2020-04 and ASU 2021-01

In March 2020, the FASB issued ASU 2020-04, *Reference Rate Reform (Topic 848): Facilitation of the Effects of Reference Rate Reform on Financial Reporting*. This guidance provides temporary optional expedients and exceptions to accounting guidance on contract modifications and hedge accounting to ease entities' financial reporting burdens as the market transitions from the London Interbank Offered Rate (LIBOR) and other interbank offered rates to alternative reference rates. In January 2021, the FASB issued ASU No. 2021-01, *Reference Rate Reform (Topic 848)*, which refines the scope of Topic ASC 848 and clarifies some of its guidance. The amendments in ASU 2021-01 are elective and apply to all entities that have derivative instruments that use an interest rate for margining, discounting, or contract price alignment that is modified as a result of reference rate reform. The guidance in both updates was effective upon issuance and generally can be applied through December 31, 2022. The Company adopted this standard after LIBOR was discontinued on December 31, 2021. The adoption of this standard did not materially impact the Company's condensed consolidated financial statements.

#### *Accounting Pronouncements Not Yet Adopted*

##### ASU 2020-06

In August 2020, the FASB issued ASU 2020-06, *Debt - Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging- Contracts in Entity's Own Equity (Subtopic 815-40): Accounting for Convertible Instruments and Contracts in an Entity's Own Equity*. The guidance will simplify the accounting for convertible instruments by reducing the number of accounting models for convertible debt instruments and convertible preferred stock, thereby limiting the accounting results in fewer embedded conversion features being separately recognized from the

host contract as compared with current GAAP. Convertible instruments that continue to be subject to separation models are (1) those with embedded conversion features that are not clearly and closely related to the host contract, that meet the definition of a derivative, and that do not qualify for a scope exception from derivative accounting and (2) convertible debt instruments issued with substantial premiums for which the premiums are recorded as paid-in capital. ASU 2020-06 also amends the guidance for the derivatives scope exception for contracts in an entity's own equity to reduce form-over-substance-based accounting conclusions. In addition, the guidance eliminates the treasury stock method to calculate diluted earnings per share for convertible instruments and requires the use of the if-converted method. ASU 2020-06 will be effective for public companies for fiscal years beginning after December 15, 2021, including interim periods within those fiscal years. Early adoption is permitted, but no earlier than fiscal years beginning after December 15, 2020, including interim periods within those fiscal years. Upon adoption, the Company expects a decrease to Additional paid-in capital to remove the equity component separately recorded for the conversion features associated with the Notes (as defined in *Note 7 - Debt* of the Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this Quarterly Report on Form 10-Q), an increase in the carrying value of its Notes to reflect the full principal amount of the Notes outstanding net of issuance costs, and an increase to Accumulated deficit. The Company expects the adoption of this standard to reduce its reported Interest expense.

#### ASU 2021-08

In October 2021, the Financial Accounting Standards Board issued ASU 2021-08, *Business Combinations (Topic 805): Accounting for Contract Assets and Contract Liabilities from Contracts with Customers*. The guidance requires that an acquirer recognize and measure contract assets and liabilities acquired in a business combination in accordance with ASC 606, *Revenue from Contracts with Customers*. This standard is effective for annual periods beginning after December 15, 2022, including interim periods therein, with early adoption permitted, and should be applied prospectively to acquisitions occurring on or after the effective date. The Company will continue to evaluate the impact of this guidance, which will depend on the contract assets and liabilities acquired in future business combinations.

### **3. Revenue**

The Company's primary source of revenue is from sales of its Connected Fitness Products and associated recurring Subscription revenues.

The Company determines revenue recognition through the following steps:

- Identification of the contract, or contracts, with a customer;
- Identification of the performance obligations in the contract;
- Determination of the transaction price;
- Allocation of the transaction price to the performance obligations in the contract; and
- Recognition of revenue when, or as, the Company satisfies a performance obligation.

Revenue is recognized when control of the promised goods or services is transferred to the Company's customers, in an amount that reflects the consideration the Company expects to be entitled to in exchange for those goods or services. The Company's revenue is reported net of sales returns, discounts, incentives, and rebates to commercial distributors as a reduction of the transaction price. Certain contracts include consideration payable that is accounted for as a payment for distinct goods or services. The Company estimates its liability for product returns and concessions based on historical trends by product category, impact of seasonality, and an evaluation of current economic and market conditions and records the expected customer refund liability as a reduction to revenue, and the expected inventory right of recovery as a reduction of cost of revenue. If actual return costs differ from previous estimates, the amount of the liability and corresponding revenue are adjusted in the period in which such costs occur.

Some of the Company's contracts with customers contain multiple performance obligations. For customer contracts that include multiple performance obligations, the Company accounts for individual performance obligations if they are distinct. The transaction price is then allocated to each performance obligation based on its standalone selling price. The Company generally determines the standalone selling price based on the prices charged to customers.

The Company applies the practical expedient as per ASC 606-10-50-14 and does not disclose information related to remaining performance obligations due to their original expected terms being one year or less.

The Company expenses sales commissions on its Connected Fitness Products when incurred because the amortization period would have been less than one year. These costs are recorded in Sales and marketing in the Company's condensed consolidated statements of operations and comprehensive (loss) income.

#### **Connected Fitness Products**

Connected Fitness Products include the Company's portfolio of Connected Fitness Products and related accessories, Precor branded fitness products, delivery and installation services, Peloton branded apparel, extended warranty agreements, and commercial service contracts. The Company recognizes Connected Fitness Product revenue net of sales returns and discounts when the product has been delivered to the customer, except for extended warranty revenue which is recognized over the warranty period and service revenue which is recognized over the term of the service contract. The Company allows customers to return Peloton branded Connected Fitness Products within thirty days of purchase, as stated in its return policy.

The Company records fees paid to third-party financing partners in connection with its consumer financing program as a reduction of revenue, as it considers such costs to be a customer sales incentive. The Company records payment processing fees for its credit card sales for

Connected Fitness Products within Sales and marketing in the Company's condensed consolidated statements of operations and comprehensive (loss) income.

#### Subscription

The Company's subscriptions provide unlimited access to content in its library of live and on-demand fitness classes. The Company's subscriptions are offered on a month-to-month basis.

Amounts paid for subscription fees, net of refunds are included within Customer deposits and deferred revenue on the Company's condensed consolidated balance sheets and recognized ratably over the subscription term. The Company records payment processing fees for its monthly subscription charges within cost of Subscription revenue in the Company's condensed consolidated statements of operations and comprehensive (loss) income.

Sales tax collected from customers and remitted to governmental authorities is not included in revenue and is reflected as a liability on the Company's condensed consolidated balance sheets.

#### Standard Product Warranty

The Company offers a standard product warranty that its Connected Fitness Products will operate under normal, non-commercial use for a period of one year covering the touchscreen and most original Bike, Bike+, Tread, and Tread+ components from the date of original delivery. The Company has the obligation, at its option, to either repair or replace the defective product. At the time revenue is recognized, an estimate of future warranty costs are recorded as a component of cost of revenue. Factors that affect the warranty obligation include historical as well as current product failure rates, service delivery costs incurred in correcting product failures, and warranty policies and business practices. The Company's products are manufactured both in-house and by contract manufacturers, and in certain cases, the Company may have recourse to such contract manufacturers.

Activity related to the Company's accrual for our estimated future product warranty obligation was as follows:

	Three Months Ended December 31,		Six Months Ended December 31,	
	2021	2020	2021	2020
	(in millions)			
Balance at beginning of period	\$ 44.4	\$ 38.6	\$ 51.5	\$ 34.2
Provision for warranty accrual	18.8	6.8	26.1	17.5
Warranty claims	(14.7)	(12.8)	(29.1)	(19.1)
Balance at end of period	\$ 48.5	\$ 32.6	\$ 48.5	\$ 32.6

The Company also offers the option for customers in some markets to purchase an extended warranty and service contract that extends or enhances the technical support, parts, and labor coverage offered as part of the base warranty included with the Connected Fitness Product for an additional period of 12 to 27 months.

Extended warranty revenue is recognized on a gross basis as the Company has a continuing obligation to perform over the service period. Extended warranty revenue is recognized ratably over the extended warranty coverage period and is included in Connected Fitness Product revenue in the condensed consolidated statements of operations and comprehensive (loss) income.

#### Disaggregation of Revenue

The Company's revenue from contracts with customers disaggregated by major product lines, excluding sales-based taxes, are included in Note 13- Segment Information of the Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this Quarterly Report on Form 10-Q.

The Company's revenue disaggregated by geographic region, were as follows:

	Three Months Ended December 31,		Six Months Ended December 31,	
	2021	2020	2021	2020
	(in millions)			
North America	\$ 1,035.0	\$ 1,007.8	\$ 1,763.8	\$ 1,729.7
International	98.9	57.0	175.3	93.0
Total revenue	\$ 1,133.9	\$ 1,064.8	\$ 1,939.1	\$ 1,822.7

During the three and six months ended December 31, 2021, the Company's revenue attributable to the United States was \$982.7 million and \$1,678.9 million or 87% and 87% of total revenue, respectively. During the three and six months ended December 31, 2020, the Company's revenue attributable to the United States was \$971.4 million and \$1,673.7 million or 91% and 92% of total revenue, respectively.

#### Customer Deposits and Deferred Revenue

As of December 31, 2021 and June 30, 2021, customer deposits of \$159.9 million and \$92.2 million, respectively, and deferred revenue of \$80.6 million and \$72.6 million, respectively, were included in Customer deposits and deferred revenue on the Company's condensed consolidated balance sheets.

In the six months ended December 31, 2021 and 2020, the Company recognized revenue of \$64.9 million and \$22.1 million, respectively, that was included in the deferred revenue balance as of June 30, 2021 and 2020, respectively.

Deferred revenue is recorded for nonrefundable cash payments received for the Company's performance obligation to transfer, or stand ready to transfer, goods or services in the future. Customer deposits represent payments received in advance before the Company transfers a good or service to the customer and are refundable.

#### 4. Fair Value Measurements

##### Fair Value Measurements of Other Financial Instruments

The following table presents the estimated fair values of the Company's financial instruments that are not recorded at fair value on the condensed consolidated balance sheets:

	As of December 31, 2021			
	Level 1	Level 2	Level 3	Total
	(in millions)			
Convertible Senior Notes	\$ —	\$ 852.3	\$ —	\$ 852.3

The fair value of the 0% Convertible Senior Notes due February 15, 2026 (the "Notes") is determined based on the closing price on the last trading day of the reporting period.

#### 5. Inventories

Inventories were as follows:

	December 31, 2021		June 30, 2021	
	(in millions)			
Raw materials	\$ 100.3	\$ 109.8		
Work-in-process	5.5	7.9		
Finished products <sup>(1)</sup>	1,522.0	879.5		
Total inventories	1,627.8	997.2		
Less: Reserves	(86.5)	(60.1)		
Total inventories, net	\$ 1,541.3	\$ 937.1		

(1) Includes \$572.3 million and \$249.9 million of finished goods inventory in transit, products owned by the Company that have not yet been received at a Company distribution center, as of December 31, 2021 and June 30, 2021, respectively.

#### 6. Acquisitions

##### Business Combination

###### Precor Incorporated

On April 1, 2021, the Company acquired the Precor business, which consisted of 15 legal entities ("Precor") from Amer Sports Corporation ("Amer") for a purchase price of approximately \$412.0 million, net of cash acquired, which was paid in cash. During the six months ended December 31, 2021, the purchase consideration was reduced by \$2.9 million associated with working capital adjustments, resulting in a revised purchase price of \$409.2 million. Upon completion of the transaction, Precor became wholly owned subsidiaries of the Company.

During the fourth quarter of fiscal 2021, the Company completed a preliminary analysis to determine the fair values of the assets acquired and liabilities assumed and the amounts recorded reflected management's initial assessment of fair value as of the closing date. Based on additional information obtained to date, the Company refined its initial assessment of fair value and, as a result, recognized the following adjustments to the Company's preliminary purchase price allocation during the first quarter of fiscal 2022: Inventory decreased \$4.0 million, Intangible assets, net increased \$1.0 million, and deferred tax liability increased \$3.4 million. The adjustments resulted in a corresponding increase to Goodwill of \$3.5 million, of which \$3.4 million relates to the deferred tax liability and \$0.1 million relates to the updated fair value assessment. The adjustments did not result in a material impact on the financial results of prior periods.

The Company expects to finalize its purchase price allocation after management has further analyzed and assessed a number of the factors used in establishing the fair values of assets acquired and liabilities assumed as of the acquisition date including, but not limited to, the working capital acquired. The final fair value determination could result in material adjustments to the values presented in the preliminary purchase price allocation.

#### *Other Acquisitions*

During the three and six months ended December 31, 2021, the Company completed two transactions to acquire certain developed software and assembled workforce for use in the development of the Company's data platform and content supply chain. The transactions were completed on November 1, 2021 and November 8, 2021, and were accounted for as a business combination and asset acquisition, respectively.

The acquisitions resulted in the recognition of \$12.0 million of Goodwill, and \$17.7 million of assets primarily consisting of developed software. The developed software was assigned a useful life of 3 years and is recorded in Property and equipment, net on the Company's condensed consolidated balance sheets.

## **7. Debt**

### ***Convertible Notes and the Indenture***

In February 2021, the Company issued \$1.0 billion aggregate principal amount of the Notes in a private offering, including the exercise in full of the over-allotment option granted to the initial purchasers of \$125.0 million. The Notes were issued pursuant to an Indenture (the "Indenture") between the Company and U.S. Bank National Association, as trustee. The Notes are senior unsecured obligations of the Company and do not bear regular interest, and the principal amount of the Notes does not accrete. The net proceeds from this offering were approximately \$977.2 million, after deducting the initial purchasers' discounts and commissions and the Company's offering expenses.

Each \$1,000 principal amount of the Notes is initially convertible into 4.1800 shares of the Company's Class A Common Stock, which is equivalent to an initial conversion price of approximately \$239.23 per share. The conversion rate is subject to customary adjustments under certain circumstances in accordance with the terms of the Indenture. In addition, if certain corporate events that constitute a make-whole fundamental change occur, then the conversion rate will, in certain circumstances, be increased for a specified period of time.

The Notes will mature on February 15, 2026, unless earlier converted, redeemed, or repurchased. The Notes will be convertible at the option of the holders at certain times and upon the occurrence of certain events in the future.

On or after August 15, 2025, until the close of business on the second scheduled trading day immediately preceding the maturity date, holders may convert all or any portion of their Notes, in multiples of \$1,000 principal amount, at the option of the holder regardless of the foregoing circumstances. Upon conversion, the Company may satisfy its conversion obligation by paying and/or delivering, as the case may be, cash, shares of the Class A Common Stock or a combination of cash and shares of the Class A Common Stock, at the Company's election, in the manner and subject to the terms and conditions provided in the Indenture. It is the Company's current intent to settle the principal amount of the Notes with cash.

The Company may redeem for cash all or any portion of the Notes, at its option, on or after February 20, 2024 and on or before the 20th scheduled trading day immediately before the maturity date, if the last reported sale price per share of the Class A Common Stock exceeds 130% of the conversion price then in effect on (1) each of at least 20 trading days (whether or not consecutive) during the 30 consecutive trading days ending on, and including, the trading day immediately preceding the date on which the Company provides notice of redemption and (2) the trading day immediately before the date the Company sends such notice at a redemption price equal to 100% of the principal amount of the Notes to be redeemed, plus any accrued and unpaid special interest, if any, to, but excluding, the redemption date. No sinking fund is provided for the Notes, which means that the Company is not required to redeem or retire the Notes periodically.

Upon the occurrence of a fundamental change (as defined in the Indenture), subject to certain conditions, holders may require the Company to repurchase all or a portion of the Notes for cash at a price equal to 100% of the principal amount of the Notes to be repurchased, plus any accrued and unpaid special interest, if any, to, but excluding, the fundamental change repurchase date.

The Notes are the Company's senior unsecured obligations and rank senior in right of payment to any of the Company's existing and future indebtedness that is expressly subordinated in right of payment to the Notes; equal in right of payment to any of the Company's existing and future unsecured indebtedness that is not so subordinated; effectively subordinated in right of payment to any of the Company's existing and future secured indebtedness to the extent of the value of the collateral securing such indebtedness; and structurally subordinated to all existing and future indebtedness and other liabilities of current or future subsidiaries of the Company (including trade payables and to the extent the Company is not a holder thereof, preferred equity, if any, of the Company's subsidiaries).

In accounting for the issuance of the Notes, the Company separated the Notes into liability and equity components, using an effective interest rate of 3.69% to determine the fair value of the liability component. The carrying amount of the equity component representing the conversion option was \$163.8 million and was determined by deducting the fair value of the liability component from the initial proceeds ascribed to the Notes as a whole. The equity component is not remeasured as long as it continues to meet the conditions for equity classification. The excess of the principal amount of the liability component over its carrying amount ("debt discount") is amortized to interest expense using the effective interest method over the contractual term of the Notes.

In accounting for the transaction costs related to the Notes, the Company allocated the total amount incurred to the liability and equity components of the Notes based on the proportion of the proceeds allocated to the debt and equity components. Issuance costs attributable to the liability component recorded as additional debt discount were \$19.0 million and will be amortized to interest expense using the effective

interest method over the contractual terms of the Notes. Issuance costs attributable to the equity component of \$3.7 million were netted with the equity component in stockholders' equity.

The net carrying amount of the liability component of the Notes was as follows:

	<b>December 31, 2021</b>	
	<b>(in millions)</b>	
Principal	\$	1,000.0
Unamortized debt discount		(137.1)
Unamortized debt issuance costs		(16.2)
Net carrying amount	\$	<u>846.7</u>

The following table sets forth the interest expense recognized related to the Notes:

	<b>Three Months Ended December 31, 2021</b>		<b>Six Months Ended December 31, 2021</b>	
	<b>(in millions)</b>			
Amortization of debt discount	\$	7.7	\$	15.3
Amortization of debt issuance costs		0.8		1.6
Less: Interest capitalized		(0.2)		(0.2)
Total interest expense related to the Notes	\$	<u>8.3</u>	\$	<u>16.7</u>

#### *Capped Call Transactions*

In connection with the offering of the Notes, the Company entered into privately negotiated capped call transactions with certain counterparties (the "Capped Call Transactions"). The Capped Call Transactions have an initial strike price of approximately \$239.23 per share, subject to adjustments, which corresponds to the approximate initial conversion price of the Notes. The cap price of the Capped Call Transactions will initially be approximately \$362.48 per share. The Capped Call Transactions cover, subject to anti-dilution adjustments substantially similar to those applicable to the Notes, 6.9 million shares of Class A Common Stock. The Capped Call Transactions are expected generally to reduce potential dilution to the Class A Common Stock upon any conversion of Notes and/or offset any potential cash payments the Company would be required to make in excess of the principal amount of converted Notes, as the case may be, with such reduction and/or offset subject to a cap based on the cap price. If, however, the market price per share of Class A Common Stock, as measured under the terms of the Capped Call Transactions, exceeds the cap price of the Capped Call Transactions, there would be dilution and/or there would not be an offset of such potential cash payments, in each case, to the extent that the then-market price per share of the Class A Common Stock exceeds the cap price of the Capped Call Transactions.

For accounting purposes, the Capped Call Transactions are separate transactions, and are not part of the terms of the Notes. The net cost of \$81.3 million incurred to purchase the Capped Call Transactions was recorded as a reduction to Additional paid-in capital on the Company's condensed consolidated balance sheets.

#### **Amended and Restated Credit Agreement**

In 2019, the Company entered into an amended and restated loan and security agreement ("Amended and Restated Credit Agreement"). The Amended and Restated Credit Agreement provided for a \$250.0 million secured revolving credit facility, including up to the lesser of \$150.0 million and the aggregate unused amount of the facility for the issuance of letters of credit.

On February 8, 2021, the Company entered into a First Amendment (the "First Amendment") to the Amended and Restated Credit Agreement to revise certain covenants that restricted the incurrence of indebtedness to permit the Capped Call Transactions and issuance of the Notes.

On March 18, 2021, the Company entered into a Joinder Agreement (the "Joinder") to the Amended and Restated Credit Agreement, as amended by the First Amendment, to provide for an increase of the commitments available under the revolving credit facility from \$250.0 million to \$285.0 million.

On December 10, 2021, the Company entered into a Second Amendment (the "Second Amendment") to the Amended and Restated Credit Agreement (as amended by the First Amendment, the Joinder and the Second Amendment, the "Credit Agreement"). The Second Amendment amends certain provisions of the Credit Agreement to, among other changes, increase the lenders' aggregate commitments to extend credit to the Company from an aggregate amount of \$285.0 million in revolving loans to an aggregate amount of \$500.0 million in revolving loans, extend the maturity date for \$465.0 million of the commitments to December 10, 2026 with \$35.0 million of the commitments expiring on June 20, 2024, and modify certain covenants contained therein. Interest on the Amended Credit Agreement is paid based on the Secured Overnight Financing Rate ("SOFR") plus 2.25% or an Alternative Base Rate plus 1.25% for revolving loans maturing on December 10, 2026, and is paid based on SOFR plus 2.75% or an Alternative Base Rate plus 1.75% for revolving loans maturing on June 20, 2024. The Company is required to pay an annual commitment fee of 0.325% and 0.375% on a quarterly basis based on the unused portion of the revolving credit facility for the revolving loans maturing on December 10, 2026 and June 20, 2024, respectively.

During the three and six months ended December 31, 2021, the Company incurred total commitment fees of \$0.3 million and \$0.6 million, respectively, and \$0.2 million and 0.5 million during the three and six months ended December 31, 2020, respectively, which are included in Interest expense in the condensed consolidated statements of operations and comprehensive (loss) income.

As of December 31, 2021, the Company had not drawn on the credit facility and did not have outstanding borrowings under the Credit Agreement.

In connection with the execution of the Second Amendment, the Company incurred debt issuance costs of \$1.1 million which are capitalized and presented as Other assets on the Company's condensed consolidated balance sheets. These costs are being amortized to interest expense using the effective interest method over the term of the Credit Agreement.

The Company has the option to repay its borrowings under the Credit Agreement without premium or penalty prior to maturity. The Credit Agreement contains customary affirmative covenants as well as customary covenants that restrict the Company's ability to, among other things, incur additional indebtedness, sell certain assets, guarantee obligations of third parties, declare dividends or make certain distributions, and undergo a merger or consolidation or certain other transactions. The Credit Agreement also contains certain financial condition covenants, including maintaining a total level of liquidity of not less than \$250.0 million and maintaining a minimum total four-quarter revenue level of \$3.0 billion (which are replaced with a covenant to maintain a minimum debt to adjusted EBITDA ratio upon the Company's meeting a specified adjusted EBITDA threshold). As of December 31, 2021, the Company was in compliance with the covenants under the Credit Agreement. At December 31, 2021, the Company was contingently liable for approximately \$4.8 million in standby letters of credit as security for an operating lease obligation. In addition, the Company is required to pledge or otherwise restrict a portion of cash and cash equivalents as collateral for standby letters of credit. As of December 31, 2021, the Company had \$86.8 million in letters of credit, which are classified as Restricted cash on its condensed consolidated balance sheets.

## 8. Commitments and Contingencies

The Company is subject to minimum guarantee royalty payments associated under certain music license agreements.

The following represents the Company's minimum annual guarantee payments under music license agreements for the next three years as of December 31, 2021:

Fiscal Year	Future Minimum Payments (in millions)
2022 (remaining)	\$ 8.6
2023	32.5
2024	24.6
2025	6.0
Total	<u>\$ 71.8</u>

### Content Costs for Past Use Reserve

To secure the rights to stream music on the Peloton platform, the Company must obtain licenses from, and pay royalties to, copyright owners of both sound recordings and musical compositions. The licensors have the right to audit our royalty calculations and routinely exercise those rights. The Company has entered into negotiations with various music rights holders, to pay for any and all uses of musical compositions and sound recordings to date and, at the same time, enter into go-forward license agreements for the use of music in the future.

Prior to the execution of go-forward music license agreements, the Company estimates and records expenses inclusive of estimated content costs for past use as well as normal and recurring music royalty expenses. The Company includes both of these components in its reserve. As of December 31, 2021 and 2020, the Company had previously recorded reserves of \$10.2 million and \$17.6 million, respectively, included in Accounts payable and accrued expenses in the accompanying condensed consolidated balance sheets.

### Product Recall Reserves

On May 5, 2021, the Company announced separate, voluntary recalls of its Tread+ and Tread products in collaboration with the U.S. Consumer Product Safety Commission ("CPSC") and halted sales of these products to work on product enhancements. As a result of these recalls, the Company accrued for a reduction to Connected Fitness Products revenue for actual and estimated future returns of \$7.4 million and \$18.9 million for the three and six months ended December 31, 2021, respectively, and a return reserve of \$26.7 million is included within Accounts payable and accrued expenses in the accompanying condensed consolidated balance sheets related to the impacts of the recall. The estimated returns reserve is primarily based on historical and expected product returns. The Company recorded costs associated with inventory write-downs and logistic costs of \$5.2 million and \$5.7 million in Connected Fitness Products cost of revenue for the three and six months ended, December 31, 2021, respectively.

### **Commitments to Suppliers**

We utilize contract manufacturers to build parts of our products. These contract manufacturers acquire components and build products based on demand forecast information we supply, which typically covers a rolling 12-month period. Consistent with industry practice, we acquire inventories from such manufacturers through blanket purchase orders against which orders are applied based on projected demand information and availability of goods. Such purchase commitments typically cover our forecasted product and manufacturing requirements for periods ranging from 30 to 90 days. In certain instances, these agreements allow us the option to cancel, reschedule and/or adjust our requirements based on our business needs. While our purchase orders are legally cancellable in most situations, there are some which are not cancellable in the event of a demand plan change or other specific circumstances, such as the procurement of unique, Peloton-specific designs, and/or specific non-cancellable, non-returnable components by our suppliers based on our provided forecasts. As the Company materially reduced its demand plan, we are assessing whether to agree to acquire certain inventory purchased by our suppliers under the original demand plan schedule, where appropriate, in an effort to maintain long-term supply continuity, flexibility, scalability perspective with our supply partners. As of December 31, 2021, our commitments to contract with third-party manufacturers for their inventory on-hand and component purchase commitments related to the manufacture of our products were estimated to be approximately \$550 million.

### **Legal and Regulatory Proceedings**

The Company is, or may become, a party to legal and regulatory proceedings with respect to a variety of matters in the ordinary course of business.

For example, we received reports of a number of injuries associated with our Tread+ product, one of which led to the death of a child. As a result of those reported Tread+ incidents, in April 2021, the CPSC unilaterally issued a warning to consumers about the safety hazards associated with the Tread+ and is continuing to investigate the matter. In addition to the CPSC investigation and other regulatory investigations, we are presently subject to class action litigation and private personal injury claims related to these perceived defects in the Tread+ and incidents reported to result from its use.

Additionally on April 29, 2021, Ashley Wilson filed a putative securities class action lawsuit against the Company and certain of its officers, captioned *Wilson v. Peloton Interactive, Inc., et al.*, Case No. 1:21-cv-02369-CBA-PK, in the United States District Court for the Eastern District of New York, purportedly on behalf of a class consisting of those individuals who purchased or otherwise acquired our common stock between September 11, 2020 and April 16, 2021 (the "Wilson Action"). Plaintiff Wilson amended her lawsuit on May 6, 2021 to expand the purported class to those who purchased or acquired our common stock between September 11, 2020 and May 5, 2021. On May 24, 2021, Leigh Drori filed a related putative securities class action lawsuit, captioned *Drori v. Peloton Interactive, Inc., et al.*, Case No. 1:21-cv-02925-CBA-PK, also in the United States District Court for the Eastern District of New York (the "Drori Action"). On November 16, 2021, the district judge consolidated the Wilson and Drori Actions under the caption *In re Peloton Interactive, Inc. Securities Litigation*, Master File No. 21-cv-02369-CBA-PK, and appointed Richard Neswick as lead plaintiff. On January 21, 2022, lead plaintiff filed an amended consolidated complaint in the action purportedly on behalf of a class consisting of those individuals who purchased or otherwise acquired our common stock between September 11, 2020 and May 5, 2021. Lead plaintiff alleges that the Company and certain of its officers made false or misleading statements in violation of Sections 10(b) and 20(a) of the Exchange Act of 1934 ("Exchange Act") regarding the Company's Tread and Tread+ products and the safety of those products. Defendants' motion to dismiss the amended consolidated complaint is due March 7, 2022.

On May 20, 2021, Alan Chu filed a verified shareholder derivative action lawsuit purportedly on behalf of the Company against certain of the Company's executive officers and the members of the board of directors, captioned *Chu v. Foley, et al.*, Case No. 1:21-cv-02862, in the United States District Court for the Eastern District of New York (the "Chu Action"). Plaintiff Chu alleges breaches of fiduciary duties, unjust enrichment, abuse of control, gross mismanagement, waste, and violations of Section 14(a) of the Securities and Exchange Act of 1934, as well as a claim for contribution under Sections 10(b) and 21D of the Securities Exchange Act of 1934 against the Company's Chief Executive Officer and Chief Financial Officer. On August 13, 2021 and August 19, 2021, two related verified shareholder derivative complaints were filed, captioned *Genack v. Foley, et al.*, Case No. 1:21-cv-04583 and *Liu v. Foley, et al.*, Case No. 1:21-cv-04687, also purportedly on behalf of the Company, in the United States District Court for the Eastern District of New York. On October 13, 2021, the parties in the three putative derivative actions filed a stipulation seeking to consolidate the actions, and agreeing to a schedule for plaintiffs to file motions to be appointed lead plaintiff. On October 26, 2021, the court entered the stipulation consolidating the three actions under the caption *In re Peloton Interactive, Inc. Derivative Litigation*, Master File No. 21-cv-02862-CBA-PK. On November 23, 2021, Anthony Franchi filed a shareholder derivative action in the United States District Court for the Eastern District of New York against certain of the Company's executive officers and members of the board of directors captioned *Franchi v. Blachford, et al.*, Case No. CV 21-06544 (the "Franchi Action"), which alleges breaches of fiduciary duty, unjust enrichment, and violations of Sections 14(a) and 20(a) of the Exchange Act. On January 24, 2022, the court entered a stipulation consolidating the Franchi Action into *In re Peloton Interactive, Inc. Derivative Litigation* and appointed each plaintiff a co-lead plaintiff. On February 3, 2022, the parties filed a stipulation to stay the consolidated derivative action, which the Court has not yet entered.

On November 18, 2021, the City of Hialeah Employees' Retirement System filed a putative securities class action lawsuit against the Company and certain of its officers in the United States District Court for the Southern District of New York, purportedly on behalf of a class consisting of those individuals who purchased or otherwise acquired our common stock between December 9, 2020 and November 4, 2021, captioned *City of Hialeah Employees' Retirement System v. Peloton Interactive, Inc.*, Case No. 21-cv-09582-ALC (the "Hialeah Action"). On December 2, 2021, Anastasia Deulina filed a related putative securities class action against the same defendants also in the United States District Court for the Southern District of New York captioned *Deulina v. Peloton Interactive, Inc.*, Case No. 21-cv-10266-ALC (the "Deulina Action"). The Hialeah and Deulina Actions allege that Defendants made false and misleading statements in violation of Sections 10(b) and 20(a) of the Exchange Act regarding demand for, and supply of, the Company's products. On January 18, 2022, several purported shareholders filed motions to consolidate the Hialeah and Deulina Actions and to be appointed lead plaintiff. The Court has not yet ruled on those motions. After the Court appoints a lead plaintiff and lead counsel, the parties will negotiate and submit a proposed schedule for lead plaintiff to file a consolidated amended complaint and for defendants to file a motion to dismiss.



In April 2021, DISH Technologies L.L.C., and Sling TV L.L.C. (DISH) filed a complaint in the United States District Court for the Eastern District of Texas. DISH, along with DISH DBS Corporation, also filed a complaint in the United States International Trade Commission (ITC) under Section 337 of the Tariff Act of 1930 against the Company, along with ICON Health & Fitness, Inc. (now iFIT Inc. f/k/a Icon Health & Fitness, Inc.), FreeMotion Fitness, Inc., NordicTrack, Inc., lululemon athletica, inc., and Curiouser Products Inc. d/b/a MIRROR. The complaints allege infringement of various patents related to fitness devices containing internet-streaming enabled video displays. In the ITC complaint, DISH seeks an exclusion order barring the importation of Peloton Connected Fitness devices, and streaming components and systems containing components thereof that infringe one or more of the asserted patents, as well as a cease and desist order preventing the Company from carrying out commercial activities within the United States related to those products. In the Eastern District of Texas complaint, DISH is seeking an order permanently enjoining the Company from infringing the asserted patents, an award of damages for the infringement of the asserted patents, and an award of damages for lost sales. The ITC investigation is ongoing and the Texas litigation remains stayed pending resolution to the ITC investigation.

On February 2, 2022, iFit Inc. ("iFit") filed a complaint with the United States International Trade Commission (ITC) under Section 337 of the Tariff Act of 1930 against the Company, along with Peloton Interactive, UK Ltd., Tonic Fitness Technology, Inc., and Rexon Industrial Corp., Ltd., alleging infringement of a continuation of a patent that is already at issue in a separate litigation between the Company and iFit, iFit Inc. v. Peloton Interactive Inc., C.A. No. 21-cv-0507-RGA (D. Del.), and that is related to an exercise system that includes a stationary bicycle having pedals, a free weight cradle, as well as a display with one or more processors and memory and programmed workouts. iFit seeks an exclusion order barring the importation of the Peloton exercise system and components that infringe the asserted patent, as well as a cease and desist order preventing the Company from carrying out certain commercial activities within the United States related to such imported products.

We dispute the allegations in the above-referenced matters, intend to defend the matters vigorously, and believe that the claims are without merit. Some of our legal and regulatory proceedings, such as the above-referenced matters and litigation that centers around intellectual property claims, may be based on complex claims involving substantial uncertainties and unascertainable damages. Accordingly, it is not possible to determine the probability of loss or estimate damages for any of the above matters, and therefore, the Company has not established reserves for any of these proceedings. When the Company determines that a loss is both probable and reasonably estimable, the Company records a liability, and, if the liability is material, discloses the amount of the liability reserved. Given that such proceedings are subject to uncertainty, there can be no assurance that such legal proceedings, either individually or in the aggregate, will not have a material adverse effect on our business, results of operations, financial condition or cash flows.

## **9. Stockholders' Equity**

On November 16, 2021, the Company entered into an underwriting agreement (the "Underwriting Agreement") with Goldman Sachs & Co. LLC and J.P. Morgan Securities LLC as representatives of the several underwriters named therein (collectively, the "Representatives") relating to the offer and sale by the Company (the "Offering") of 27,173,912 shares (the "Shares") of the Company's Class A common stock, par value \$0.000025 per share, which includes 3,260,869 shares of Class A common stock issued and sold pursuant to the exercise in full by the underwriters of their option to purchase additional shares of Class A common stock pursuant to the Underwriting Agreement. The Company sold the Shares to the underwriters at the public offering price of \$46.00 per share less underwriting discounts.

The net proceeds to the Company from the Offering were approximately \$1.2 billion after deducting the underwriters' discounts and commissions.

## **10. Equity-Based Compensation**

### **2019 Equity Incentive Plan**

In August 2019, the Board of Directors adopted the 2019 Equity Incentive Plan (the "2019 Plan"), which was subsequently approved by the Company's stockholders in September 2019. The 2019 Plan serves as the successor to the 2015 Stock Plan (the "2015 Plan"). The 2015 Plan continues to govern the terms and conditions of the outstanding awards previously granted thereunder. Any reserved shares not issued or subject to outstanding grants under the 2015 Plan on the effective date of the 2019 Plan became available for grant under the 2019 Plan and will be issued as Class A common stock. The number of shares reserved for issuance under the 2019 Plan will increase automatically on July 1 of each of 2020 through 2029 by the number of shares of the Company's Class A common stock equal to 5% of the total outstanding shares of all of the Company's classes of common stock as of each June 30 immediately preceding the date of increase, or a lesser amount as determined by the Board of Directors. On July 1, 2021, the number of shares of Class A common stock available for issuance under the 2019 Plan was automatically increased according to its terms by 15,007,356 shares. As of December 31, 2021, 59,172,230 shares of Class A common stock are available for future award under the 2019 Plan.

### Stock Options

The following summary sets forth the stock option activity under the 2019 Plan:

	Options Outstanding			
	Number of Stock Options	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Term (years)	Aggregate Intrinsic Value (in millions)
Outstanding — June 30, 2021	57,946,608	\$ 18.47	7.3	\$ 6,119.2
Granted	3,522,970	\$ 96.07		
Exercised	(3,157,764)	\$ 9.44		\$ 241.1
Forfeited	(684,266)	\$ 58.32		
Outstanding — December 31, 2021	57,627,548	\$ 23.23	7.0	\$ 1,226.5
Vested and Exercisable— December 31, 2021	33,141,759	\$ 11.10	6.2	\$ 891.2

Unvested option activity is as follows:

	Options	Weighted-Average Grant Date Fair Value
Unvested - June 30, 2021	28,160,034	\$ 13.52
Granted	3,522,970	\$ 43.15
Early exercised unvested	(13,501)	\$ 2.02
Vested	(6,511,747)	\$ 10.95
Forfeited or expired	(671,967)	\$ 25.87
Unvested - December 31, 2021	24,485,789	\$ 18.13

The aggregate intrinsic value of options outstanding and vested and exercisable, were calculated as the difference between the exercise price of the options and the fair value of the Company's common stock as of December 31, 2021. The fair value of the common stock is the closing stock price of the Company's Class A common stock as reported on the Nasdaq Global Select Market. The aggregate intrinsic value of exercised options was \$241.1 million and \$523.4 million for the six months ended December 31, 2021 and 2020, respectively.

For the six months ended December 31, 2021 and 2020, the weighted-average grant date fair value per option was \$43.15 and \$36.05, respectively. The fair value of each option was estimated at the grant date using the Black-Scholes method with the following assumptions:

	Six Months Ended December 31, 2021
Weighted average risk-free interest rate <sup>(1)</sup>	1.0%
Weighted average expected term (in years)	6.0
Weighted average expected volatility <sup>(2)</sup>	47.0%
Expected dividend yield	—

(1) Based on U.S. Treasury yield curve in effect at the time of grant.

(2) Expected volatility is based on a blended average of average historical stock volatilities of several peer companies over the expected term of the stock options, historical volatility of the Company's stock price, and implied stock price volatility derived from the price of exchange traded options on the Company's stock.

**Restricted Stock and Restricted Stock Units**

The following table summarizes the activity related to the Company's restricted stock and restricted stock units:

	Restricted Stock Units Outstanding	
	Number of Awards	Weighted-Average Grant Date Fair Value
Outstanding — June 30, 2021	1,785,946	\$ 99.43
Granted	2,667,778	\$ 96.09
Vested and converted to shares	(669,555)	\$ 99.46
Cancelled	(127,989)	\$ 105.80
Outstanding — December 31, 2021	3,656,180	\$ 96.77

**Employee Stock Purchase Plan**

In August 2019, the Board of Directors adopted, and in September 2019, the Company's stockholders approved, the 2019 Employee Stock Purchase Plan ("ESPP"), through which eligible employees may purchase shares of the Company's Class A common stock at a discount through accumulated payroll deductions. The ESPP became effective on the date the registration statement, in connection with the Company's IPO, was declared effective by the SEC (the "Effective Date"). The number of shares of the Company's Class A common stock that will be available for issuance and sale to eligible employees under the ESPP will increase automatically on the first day of each fiscal year of the Company beginning on July 1, 2020 through 2029, equal to 1% of the total number of outstanding shares of all classes of the Company's common stock on the immediately preceding June 30, or such lesser number as may be determined by the Board of Directors or applicable committee in its sole discretion. On July 1, 2021, the number of shares of Class A common stock available for issuance under the ESPP was automatically increased according to its terms by 3,001,471 shares. As of December 31, 2021, a total of 10,568,799 shares of Class A common stock were available for sale to employees under the ESPP.

Unless otherwise determined by the Board of Directors, each offering period will consist of four six-month purchase periods, provided that the initial offering period commenced on the Effective Date and ended on August 31, 2021, and the initial purchase period ended February 28, 2020. Thereafter, each offering period and each purchase period will commence on September 1 and March 1 and end on August 31 and February 28 of each two-year period or each six-month period, respectively, subject to a reset provision. If the closing stock price on the first day of an offering period is higher than the closing stock price on the last day of any applicable purchase period, participants will be withdrawn from the ongoing offering period immediately following the purchase of ESPP shares on the purchase date and would automatically be enrolled in the subsequent offering period, resulting in a modification under ASC 718.

Unless otherwise determined by the Board of Directors, the purchase price for each share of Class A common stock purchased under the ESPP will be 85% of the lower of the fair market value per share on the first trading day of the applicable offering period or the fair market value per share on the last trading day of the applicable purchase period. There was an ESPP reset in the six months ended December 31, 2021 that resulted in a total modification charge of \$3.5 million, which is recognized over the new two-year offering period ending August 31, 2023.

The Black-Scholes option pricing model assumptions used to calculate the fair value of shares estimated to be purchased at the commencement of the ESPP offering periods were as follows:

	Six Months Ended December 31, 2021
Weighted average risk-free interest rate	0.5%
Weighted average expected term (in years)	1.2
Weighted average expected volatility	64.9%
Expected dividend yield	—

The expected term assumptions were based on each offering period's respective purchase date. The expected volatility was derived from the blended average of historical stock volatilities of several unrelated public companies that the Company considers to be comparable to its business over a period equivalent to the expected terms of the stock options and the historical volatility of the Company's stock price. The risk-free rate assumptions were based on the U.S. treasury yield curve in effect at the time of the grants. The dividend yield assumption was zero as the Company has not historically paid any dividends and does not expect to declare or pay dividends in the foreseeable future.

During the three and six months ended December 31, 2021, the Company recorded stock-based compensation expense associated with the ESPP of \$4.6 million and \$8.2 million, respectively, and \$2.2 million and \$3.8 million for the three and six months ended December 31, 2020, respectively.

In connection with the offering period which ended on August 31, 2021, employees purchased 293,356 shares of Class A common stock at a weighted-average price of \$39.95 under the ESPP. As of December 31, 2021, total unrecognized compensation cost related to the ESPP was \$21.6 million, which will be amortized over a weighted-average remaining period of 1.5 years.

**Stock-Based Compensation Expense**

The Company's total stock-based compensation expense was as follows:

	Three Months Ended December 31,		Six Months Ended December 31,	
	2021	2020	2021	2020
	(in millions)			
Cost of revenue				
Connected Fitness Products	\$ 6.6	\$ 2.0	\$ 11.0	\$ 3.5
Subscription	5.1	5.1	8.7	9.5
Total cost of revenue	11.7	7.1	19.7	13.0
Sales and marketing	9.0	4.6	15.5	8.0
General and administrative	38.3	21.2	67.8	37.8
Research and development	12.9	4.6	21.7	8.2
Total stock-based compensation expense	\$ 71.9	\$ 37.5	\$ 124.8	\$ 67.1

As of December 31, 2021, the Company had \$738.1 million of unrecognized stock-based compensation expense related to unvested stock-based awards that is expected to be recognized over a weighted-average period of 3.0 years.

**11. Income Taxes**

The Company recorded a provision from income taxes of \$3.1 million and \$5.4 million for the three and six months ended December 31, 2021, respectively, and a benefit of \$3.0 million and \$1.7 million for the three and six months ended December 31, 2020, respectively. Furthermore, the Company's effective tax rates were (0.71)% and (0.67)% for the three and six months ended December 31, 2021, respectively, and (4.60)% and (1.24)% for the three and six months ended December 31, 2020, respectively. The income tax provision and the effective tax rate is primarily driven by state and international taxes.

The Company maintains a valuation allowance on the majority of its deferred tax assets as it has concluded that it is more likely than not that the deferred assets will not be utilized.

**12. Net (Loss) Income Per Share**

The computation of basic and diluted net (loss) income per share is as follows:

	Three Months Ended December 31,		Six Months Ended December 31,	
	2021	2020	2021	2020
	(in millions, except share and per share amounts)			
Basic net (loss) income per share:				
Net (loss) income attributable to common stockholders	\$ (439.4)	\$ 63.6	\$ (815.3)	\$ 132.8
Shares used in computation:				
Weighted-average common shares outstanding	317,110,297	292,462,184	309,119,648	290,591,037
Basic net (loss) income per share	\$ (1.39)	\$ 0.22	\$ (2.64)	\$ 0.46
Diluted net (loss) income per share:				
Net (loss) income attributable to common stockholders	\$ (439.4)	\$ 63.6	\$ (815.3)	\$ 132.8
Shares used in computation:				
Weighted-average common shares outstanding	317,110,297	292,462,184	309,119,648	290,591,037
Weighted-average effect of potentially dilutive securities:				
Employee stock options	—	54,271,831	—	53,426,104
Restricted stock units and awards	—	636,056	—	552,394
Shares estimated to be purchased under ESPP	—	516,624	—	424,779
Diluted weighted-average common shares outstanding	317,110,297	347,886,695	309,119,648	344,994,314
Diluted net (loss) income per share	\$ (1.39)	\$ 0.18	\$ (2.64)	\$ 0.39

The following potentially dilutive shares were not included in the calculation of diluted shares outstanding as the effect would have been anti-dilutive:

	Three Months Ended December 31,		Six Months Ended December 31,	
	2021	2020	2021	2020
Employee stock options	44,011,349	65,236	47,438,668	206,467
Restricted stock units and awards	104,006	590	252,433	6,761
Shares estimated to be purchased under ESPP	—	—	56,740	—

The Company expects to settle the principal amount of the Notes in cash upon conversion, and therefore, the Company uses the treasury stock method for calculating any potential dilutive effect of the conversion option on diluted net income per share, if applicable. The conversion option will have a dilutive impact on net loss per share of common stock when the average market price per share of the Company's Class A common stock for a given period exceeds the conversion price of the Notes of \$239.23 per share. During the three and six months ended December 31, 2021, the weighted average price per share of the Company's Class A common stock was below the conversion price of the Notes.

The denominator for basic and diluted (loss) income per share does not include any effect from the Capped Call Transactions the Company entered into concurrently with the issuance of the Notes as this effect would be anti-dilutive. In the event of conversion of the Notes, if shares are delivered to the Company under the Capped Call Transactions, they will offset the dilutive effect of the shares that the Company would issue under the Notes.

### 13. Segment Information

The Company applies ASC 280, *Segment Reporting*, in determining reportable segments. The Company has two reportable segments: Connected Fitness Products and Subscription. Segment information is presented in the same manner that the chief operating decision maker ("CODM") reviews the operating results in assessing performance and allocating resources. The CODM reviews revenue and gross profit for both of the reportable segments. Gross profit is defined as revenue less cost of revenue incurred by the segment.

No operating segments have been aggregated to form the reportable segments. The Company does not allocate assets at the reportable segment level as these are managed on an entity wide group basis and, accordingly, the Company does not report asset information by segment.

The Connected Fitness Product segment derives revenue from sale of the Company's portfolio of Connected Fitness Products and related accessories, delivery and installation services, branded apparel, and extended warranty agreements. The Subscription segment derives revenue from monthly Subscription fees. There are no internal revenue transactions between the Company's segments.

Key financial performance measures of the segments including Revenue, Cost of revenue, and Gross profit are as follows:

	Three Months Ended December 31,		Six Months Ended December 31,	
	2021	2020	2021	2020
(in millions)				
<b>Connected Fitness Products:</b>				
Revenue	\$ 796.4	\$ 870.1	\$ 1,297.4	\$ 1,471.5
Cost of revenue	745.5	562.8	1,186.2	927.0
Gross profit	\$ 51.0	\$ 307.3	\$ 111.3	\$ 544.5
<b>Subscription:</b>				
Revenue	\$ 337.5	\$ 194.7	\$ 641.7	\$ 351.2
Cost of revenue	108.3	77.2	210.0	142.2
Gross profit	\$ 229.3	\$ 117.5	\$ 431.7	\$ 209.0
<b>Consolidated:</b>				
Revenue	\$ 1,133.9	\$ 1,064.8	\$ 1,939.1	\$ 1,822.7
Cost of revenue	853.7	640.0	1,396.2	1,069.2
Gross profit	\$ 280.2	\$ 424.8	\$ 543.0	\$ 753.5

**Reconciliation of Gross Profit**

Operating expenditures, interest income and other expense, and taxes are not allocated to individual segments as these are managed on an entity wide group basis. The reconciliation between reportable Segment Gross Profit to consolidated (loss) income before tax is as follows:

	Three Months Ended December 31,		Six Months Ended December 31,	
	2021	2020	2021	2020
	(in millions)			
Segment Gross Profit	\$ 280.2	\$ 424.8	\$ 543.0	\$ 753.5
Sales and marketing	(349.6)	(177.4)	(633.9)	(292.1)
General and administrative	(248.7)	(141.1)	(489.0)	(249.7)
Research and development	(100.0)	(47.5)	(197.7)	(84.1)
Impairment expense	(7.7)	—	(7.7)	—
Total other (expense) income, net	(10.6)	1.8	(24.6)	3.5
(Loss) income before provision for income taxes	\$ (436.3)	\$ 60.6	\$ (809.9)	\$ 131.2

**14. Subsequent Events****February 2022 Restructuring Plan**

On February 1, 2022, following the Company's previous disclosure regarding market factors impacting the business, the Company's Board of Directors approved a restructuring plan to realign the Company's operational focus to support its multi-year growth, scale the business, and improve costs (the "Restructuring Plan"). The Restructuring Plan includes: (i) reducing the Company's headcount; (ii) closing several assembly and manufacturing plants, including the completion and subsequent sale of the shell facility for the Company's previously planned Peloton Output Park; (iii) closing and consolidating several distribution facilities, and (iv) shifting to third-party logistics providers in certain locations. The Company expects the Restructuring Plan to be substantially implemented by the end of fiscal 2024.

In connection with the Restructuring Plan, the Company estimates that it will incur total cash charges of approximately \$190 million composed of: (i) approximately \$90 million for severance and other related personnel reduction costs; (ii) approximately \$40 million related to closing and consolidating several assembly and manufacturing plants and distribution facilities; and (iii) approximately \$60 million in capital expenditures. Additionally, the Company expects to recognize approximately \$80 million of asset impairment charges in the third fiscal quarter of 2022 in connection with the Restructuring Plan.

The Company expects to achieve at least \$800 million in annualized run-rate cost savings as a result of the Restructuring Plan, with the majority expected to be realized by the end of fiscal 2024.

**CEO Transition**

On February 7, 2022, the Board appointed Barry McCarthy as the Chief Executive Officer and President of the Company to succeed John Foley, the Company's Co-Founder and former Chief Executive Officer, in this role, and appointed Mr. Foley as Executive Chair of the Board, in each case, as of February 9, 2022 (the "CEO Commencement Date"). Additionally, Mr. McCarthy has been designated as the Company's principal executive officer, effective as of the CEO Commencement Date. The Company and Mr. McCarthy have entered into an employment offer letter, dated February 7, 2022, in connection with Mr. McCarthy's appointment as Chief Executive Officer (the "Offer Letter"). As part of the Offer Letter, Mr. McCarthy was granted a stock option award to purchase 8,000,000 shares of the Company's Class A Common Stock (the "Option Award"). The Option Award will have an exercise price per share equal to the closing price of the Company's Class A common stock on the CEO Commencement Date and will vest and become exercisable over four years.

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

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our interim condensed consolidated financial statements and related notes appearing elsewhere in this Quarterly Report on Form 10-Q and with our audited consolidated financial statements included in our Annual Report on Form 10-K for the fiscal year ended June 30, 2021, filed with the SEC on August 27, 2021 ("Form 10-K"). As discussed in the section titled "Special Note Regarding Forward Looking Statements," the following discussion and analysis contains forward looking statements that involve risks and uncertainties, as well as assumptions that, if they never materialize or prove incorrect, could cause our results to differ materially from those expressed or implied by such forward looking statements. Factors that could cause or contribute to these differences include, but are not limited to, those identified below and those discussed in the section titled "Risk Factors" in Part II, Item 1A of this Quarterly Report on Form 10-Q and in our Form 10-K.

### Overview

Peloton is the largest interactive fitness platform in the world with a loyal community of over 6.6 million Members as of December 31, 2021. We pioneered connected, technology-enabled fitness, and the streaming of immersive, instructor-led boutique classes to our Members anytime, anywhere. We make fitness entertaining, approachable, effective, and convenient, while fostering social connections that encourage our Members to be the best versions of themselves. We define a Member as any individual who has a Peloton account through a paid Connected Fitness Subscription, or a paid Peloton App subscription.

Our Connected Fitness Product portfolio includes the Peloton Bike, Bike+, and the Peloton Tread and Tread+. Our revenue is generated primarily from the sale of our Connected Fitness Products and associated recurring Subscription revenue. We have historically experienced significant growth in sales of our Connected Fitness Products, which, when combined with our low Average Net Monthly Connected Fitness Churn has led to significant growth in Connected Fitness Subscriptions. From the three months ended December 31, 2020 to the three months ended December 31, 2021, total revenue grew 6%, and our Connected Fitness Subscription base grew 66%.

Our financial profile has been characterized by strong growth, strong retention, recurring revenue, and efficient customer acquisition. Our low Average Net Monthly Connected Fitness Churn, together with our high Subscription Contribution Margin, has allowed us to generate value from our Connected Fitness Subscriptions. When we acquire new Connected Fitness Subscriptions, we are often able to offset a portion of our subscription acquisition costs with the gross profit earned on our Connected Fitness Products.

For the three months ended December 31, 2021 and 2020:

- We generated total revenue of \$1,133.9 million, and \$1,064.8 million, respectively;
- As of December 31, 2021 and 2020, we had 2,766,816 and 1,667,223 Connected Fitness Subscriptions, respectively;
- Our Average Net Monthly Connected Fitness Churn was 0.79% and 0.76%, respectively;
- We recognized net (loss) income of \$(439.4) million and \$63.6 million, respectively;
- Our Adjusted EBITDA was \$(266.5) million and \$116.9 million, respectively;
- Our Subscription Gross Margin was 67.9% and 60.3%, respectively; and
- Our Subscription Contribution Margin was 71.4% and 65.3%, respectively.

For a definition of Connected Fitness Subscriptions and Average Net Monthly Connected Fitness Churn, see the section titled "—Key Operational and Business Metrics".

See the section titled "—Non-GAAP Financial Measures" for definitions of and information regarding our use of Adjusted EBITDA, Adjusted EBITDA Margin, Subscription Contribution and Subscription Contribution Margin, and a reconciliation of each of net (loss) income to Adjusted EBITDA and Subscription Gross Profit to Subscription Contribution.

### Second quarter fiscal 2022 update and recent developments

As discussed last quarter, forecasting our business during the COVID-19 pandemic, particularly in its more recent stages, has proven to be very challenging. While we have been able to grow more than we anticipated just two years ago, fluctuations in demand and supply that we have been navigating during this time period have led us to grow our operations beyond what we believe is currently best suited to our business. Although our belief in the positive long-term outlook for Connected Fitness remains unchanged, the long-term cost demands of our business require us to recalibrate our near-term expectations. Additionally, while demand for our Connected Fitness products has continued to strongly outpace pre-pandemic levels, we have had significant difficulty in predicting near-term consumer demand and, as a result, our expected near-term operating performance. See "Risk Factors—Risks Related to Our Business—Our operating results have been, and could in the future be, adversely affected if we are unable to accurately forecast consumer demand for our products and services and adequately manage our inventory."

### February 2022 Restructuring Plan

On February 1, 2022, following our previous disclosure regarding market factors impacting our business, our board of directors approved a restructuring plan to realign our operational focus to support our multi-year growth, scale our business, and improve costs (the "Restructuring Plan"). The Restructuring Plan includes: (i) reducing our headcount by approximately 2,800 global positions; (ii) closing several assembly and manufacturing plants, including the completion and subsequent sale of the shell facility for our previously planned Peloton Output Park; (iii) closing and consolidating several distribution facilities; and (iv) shifting to third-party logistics providers in certain locations. We expect the Restructuring Plan to be substantially implemented by the end of fiscal 2024.

In connection with the Restructuring Plan, we estimate that we will incur total cash charges of approximately \$190 million composed of: (i) approximately \$90 million for severance and other related personnel reduction costs; (ii) approximately \$40 million related to closing and/or consolidating several assembly and/or manufacturing plants and distribution facilities; and (iii) approximately \$60 million in capital expenditures. We also intend to reduce our planned capital expenditures in fiscal 2022 by approximately \$150 million (net of anticipated restructuring expenditures). Additionally, we expect to recognize approximately \$80 million of asset impairment charges in the third fiscal quarter of 2022 in connection with the Restructuring Plan.

We expect to achieve at least \$800 million in annualized run-rate cost savings as a result of the Restructuring Plan, with the majority expected to be realized by the end of fiscal 2024.

However, we may not be able to fully realize the cost savings and benefits initially anticipated from the Restructuring Plan, and the expected costs may be greater than expected. See *"Risk Factors—Risks Related to Our Business—We may not successfully execute or achieve the expected benefits of our restructuring initiative, and our efforts may result in further actions and/or additional asset impairment charges and adversely affect our business."*

#### Introducing Peloton Guide

We are excited to officially announce the launch of Peloton Guide, our first connected fitness strength product, on or around April 9. The Peloton App already enables Members to stream great fitness workouts with world-class instructors on any screen in their home, including their TV. Priced at \$495, we believe Guide further enhances the full-body workout experience through a number of unique product features:

- Body activity features allow members to see what movements will be in a class, understand correct form, and see which muscles were worked each day to guide the next workout.
- Metric-driven accountability through a smart camera with Peloton's unique Movement Tracker pushes our Members to complete every strength movement in every class.
- Form matching via a picture-in-picture feature lets Members simultaneously see themselves side by side with the instructor.
- The all-new Peloton Heart Rate Band that comes with the Guide empowers Members to understand exertion levels and track effort.

Guide will be supported with dedicated content, including exclusive programs for all levels, live full-body training classes with instructors, and an extensive move library to help Members learn and perfect proper form. Guide represents a compelling value in the strength category and we will continue to add new features and content over the air to continuously improve the value proposition.

#### Content

Music has always been at the heart of the Peloton experience. Our sizable and growing Member base made us a sought-after partner for the music industry. During fiscal quarter ended December 31, 2021, we announced the newest installment of our Peloton x Beyoncé Artist Series, which featured 22 classes across nine modalities and three languages and our Ivy Park collaboration. We were also thrilled to feature our first ever Artist Series featuring Taylor Swift, a long-standing top Member request, as well as series centered around Queen, the Foo Fighters, ABBA, and The Beatles, among others. In total, Members took over 5 million Artist Series classes during the second quarter, an over 50% sequential increase compared to the first quarter.

In the second quarter of fiscal 2022, we launched Boxing, which represented the last leg of a two-year fitness modality development plan, totaling 14 fitness modalities. Boxing is an engaging and efficient full body workout that appeals to all fitness levels and has been on our Member wishlist for years. Our initial offering is a Boxing Program featuring 3 of our instructors and, based on Member response, we have already added to our class strategy and intend to continue expanding the content and instructor offering going forward.

During the second quarter of fiscal 2022, we also added our first adaptive athlete instructor, Logan Aldridge, in furtherance of our commitment to being one of the most inclusive fitness brands in the world. In addition to teaching classes, Logan also serves in an off-air training specialist role, assisting all of our instructors to help ensure their content is accessible and inclusive.

#### Software

In October 2021, we launched Guest Pass, a referral program enabling members to share extended Peloton App trials with their friends. Available on iOS and web, Guest Pass leverages our growing word of mouth flywheel to bring high-quality incremental users into our ecosystem. The early results are encouraging, with users referred via Guest Pass completing more workouts and converting to paid Digital and Connected Fitness Subscriptions at a higher rate than those acquired by other means.

#### Product recall update

On May 5, 2021, we announced separate, voluntary recalls of each of our Tread+ and Tread products in collaboration with the U.S. Consumer Product Safety Commission ("CPSC") and halted sales of these products to work on product enhancements. Members were notified that they could return their Tread or Tread+ for a full refund, or wait until a solution is available. Tread+ owners were also given the option to have Peloton move their Tread+ to a different location within their home. For the three and six months ended December 31, 2021, the Company accrued for a reduction to Connected Fitness Products revenue for actual and estimated future returns of \$7.4 million and \$18.9 million, respectively, and a return reserve of \$26.7 million is included within Accounts payable and accrued expenses in the accompanying condensed consolidated balance sheets related to the impacts of the recall as of December 31, 2021. We expect to continue to incur additional costs which could include costs for which we have not accrued or established adequate reserves, including increases to the return reserves, inventory write-downs, logistics costs associated with Member requests to return or move their hardware, subscription waiver variable costs of service, anticipated recall-related hardware development and repair costs, and related legal and advisory fees. Recall charges are based upon estimates associated with our expected and historical consumer response rates. We announced a repair for the Tread in August 2021, shortly before resuming sales. We continue to work on potential hardware enhancements for Tread+, which remains recalled. Our plans for the Tread+ recall is still being finalized and actual costs related to this matter may vary from the estimate, and may result in further impacts to our future results of operations and



business. See “Risk Factors—Risks Related to Our Connected Fitness Products and Members—We may be subject to warranty claims that could result in significant direct or indirect costs, or we could experience greater product returns than expected, either of which could have an adverse effect on our business, financial condition, and operating results.”

### Key Operational and Business Metrics

In addition to the measures presented in our interim condensed consolidated financial statements, we use the following key operational and business metrics to evaluate our business, measure our performance, develop financial forecasts, and make strategic decisions.

	Three Months Ended December 31,	
	2021	2020
Ending Connected Fitness Subscriptions	2,766,816	1,667,223
Average Net Monthly Connected Fitness Churn	0.79 %	0.76 %
Total Workouts (in millions)	123.2	98.1
Average Monthly Workouts per Connected Fitness Subscription	15.5	21.1
Subscription Gross Profit (in millions)	\$ 229.3	\$ 117.5
Subscription Contribution (in millions) <sup>(1)</sup>	\$ 240.9	\$ 127.2
Subscription Gross Margin	67.9 %	60.3 %
Subscription Contribution Margin <sup>(1)</sup>	71.4 %	65.3 %
Net (loss) income (in millions)	\$ (439.4)	\$ 63.6
Adjusted EBITDA (in millions) <sup>(2)</sup>	\$ (266.5)	\$ 116.9
Adjusted EBITDA Margin <sup>(2)</sup>	(23.5)%	11.0 %

(1) Please see the section titled “Non-GAAP Financial Measures—Subscription Contribution and Subscription Contribution Margin” for a reconciliation of Subscription Gross Profit to Subscription Contribution and an explanation of why we consider Subscription Contribution and Subscription Contribution Margin to be helpful metrics for investors.

(2) Please see the section titled “Non-GAAP Financial Measures—Adjusted EBITDA and Adjusted EBITDA Margin” for a reconciliation of net (loss) income to Adjusted EBITDA and an explanation of why we consider Adjusted EBITDA to be a helpful metric for investors.

#### Connected Fitness Subscriptions

Our ability to expand the number of Connected Fitness Subscriptions is an indicator of our market penetration and growth. We define a “Connected Fitness Subscription” as a person, household, or commercial property, such as a hotel or residential building, who has either paid for a subscription to a Connected Fitness Product (a Connected Fitness Subscription with a successful credit card billing or with prepaid subscription credits or waivers) or requested a “pause” to their subscription for up to three months. We do not include canceled or unpaid Connected Fitness Subscriptions in the Connected Fitness Subscription count.

#### Average Net Monthly Connected Fitness Churn

We use Average Net Monthly Connected Fitness Churn to measure the retention of our Connected Fitness Subscriptions. We define “Average Net Monthly Connected Fitness Churn” as Connected Fitness Subscription cancellations, net of reactivations, in the quarter, divided by the average number of beginning Connected Fitness Subscriptions in each month, divided by three months. This metric does not include data related to our Peloton Digital subscriptions for Members who pay a monthly fee for access to our content library on their own devices.

#### Total Workouts and Average Monthly Workouts per Connected Fitness Subscription

We review Total Workouts and Average Monthly Workouts per Connected Fitness Subscription to measure engagement, which is the leading indicator of retention for our Connected Fitness Subscriptions. We define “Total Workouts” as all workouts completed during a given period. We define a “Workout” as the completion of at least 50% of an instructor-led class or scenic ride or run, or ten or more minutes of “Just Ride” or “Just Run” mode by a Member associated with a Connected Fitness Subscription. We define “Average Monthly Workouts per Connected Fitness Subscription” as the Total Workouts completed in the quarter divided by the average number of Connected Fitness Subscriptions in each month, divided by three months.

### Components of our Results of Operations

#### Revenue

##### Connected Fitness Products

Connected Fitness Product revenue consists of sales of our portfolio of Connected Fitness Products and related accessories, delivery and installation services, branded apparel, extended warranty agreements, and the sale, service, installation, and delivery contracts of our commercial business. Connected Fitness Product revenue is recognized at the time of delivery, except for extended warranty revenue which is recognized over the warranty period and service revenue which is recognized over the term, and is recorded net of returns and discounts and third-party financing program fees, when applicable.

##### Subscription

Subscription revenue consists of revenue generated from our monthly Connected Fitness Subscription and Peloton Digital subscription.

As of December 31, 2021, 99% and 90% of our Connected Fitness Subscription and Peloton Digital subscription bases were paying month-to-month, respectively.

If a Connected Fitness Subscription owns both a Bike and Tread product in the same household, the price of the Subscription remains \$39.00 monthly. As of December 31, 2021, approximately 4% of our Connected Fitness Subscriptions owned both a Bike and Tread product.

#### **Cost of revenue**

##### **Connected Fitness Products**

Connected Fitness Product cost of revenue consists of our portfolio of Connected Fitness Products and branded apparel product costs, including manufacturing costs, duties and other applicable importing costs, shipping and handling costs, packaging, warranty replacement and service costs, fulfillment costs, warehousing costs, depreciation of property and equipment, and certain costs related to management, facilities, and personnel-related expenses associated with supply chain logistics.

##### **Subscription**

Subscription cost of revenue includes costs associated with content creation and costs to stream content to our Members. These costs consist of both fixed costs, including studio rent and occupancy, other studio overhead, instructor and production personnel-related expenses, depreciation of property and equipment as well as variable costs, including music royalty fees, content costs for past use, third-party platform streaming costs, and payment processing fees for our monthly subscription billings.

#### **Operating expenses**

##### **Sales and marketing**

Sales and marketing expense consists of performance marketing media spend, asset creation, and other brand creative, all showroom expenses and related lease payments, payment processing fees incurred in connection with the sale of our Connected Fitness Products, sales and marketing personnel-related expenses, expenses related to Peloton App, and depreciation of property and equipment.

##### **General and administrative**

General and administrative expense includes personnel-related expenses and facilities-related costs primarily for our executive, finance, accounting, legal, human resources, IT functions and member support. General and administrative expense also includes fees for professional services principally comprised of legal, audit, tax and accounting services, depreciation of property and equipment, and insurance, as well as litigation settlement costs.

##### **Research and development**

Research and development expense primarily consists of personnel and facilities-related expenses, consulting and contractor expenses, tooling and prototype materials, software platform expenses, and depreciation of property and equipment. We capitalize certain qualified costs incurred in connection with the development of internal-use software which may also cause research and development expenses to vary from period to period.

##### **Impairment expense**

Impairment expense consists of non-cash impairment charges relating to long-lived assets. Impairments are determined using management's judgment about our anticipated ability to continue to use fixed assets in-service and under development, current economic and market conditions and their effects based on information available as of the date of these consolidated financial statements. Management disposes of fixed assets during the regular course of business due to damage, obsolescence, strategic shifts, and loss.

#### **Non-operating income and expenses**

##### **Other (expense) income, net**

Other (expense) income, net consists of interest (expense) income, unrealized and realized gains (losses) on investments, and impacts from foreign exchange transactions.

##### **Income tax provision**

The provision for income taxes consists primarily of income taxes related to state and international taxes for jurisdictions in which we conduct business. We maintain a valuation allowance on the majority of our deferred tax assets as we have concluded that it is more likely than not that the deferred assets will not be utilized.

## Results of Operations

The following tables set forth our consolidated results of operations in dollars and as a percentage of total revenue for the periods presented. The period-to-period comparisons of our historical results are not necessarily indicative of the results that may be expected in the future.

	Three Months Ended December 31,		Six Months Ended December 31,	
	2021	2020	2021	2020
	(in millions)		(in millions)	
<b>Consolidated Statement of Operations Data:</b>				
<b>Revenue</b>				
Connected Fitness Products	\$ 796.4	\$ 870.1	\$ 1,297.4	\$ 1,471.5
Subscription	337.5	194.7	641.7	351.2
<b>Total revenue</b>	<b>1,133.9</b>	<b>1,064.8</b>	<b>1,939.1</b>	<b>1,822.7</b>
<b>Cost of revenue<sup>(1)(2)</sup></b>				
Connected Fitness Products	745.5	562.8	1,186.2	927.0
Subscription	108.3	77.2	210.0	142.2
<b>Total cost of revenue</b>	<b>853.7</b>	<b>640.0</b>	<b>1,396.2</b>	<b>1,069.2</b>
<b>Gross profit</b>	<b>280.2</b>	<b>424.8</b>	<b>543.0</b>	<b>753.5</b>
<b>Operating expenses</b>				
Sales and marketing <sup>(1)(2)</sup>	349.6	177.4	633.9	292.1
General and administrative <sup>(1)(2)</sup>	248.7	141.1	489.0	249.7
Research and development <sup>(4)(2)</sup>	100.0	47.5	197.7	84.1
Impairment expense	7.7	—	7.7	—
<b>Total operating expenses</b>	<b>705.9</b>	<b>366.0</b>	<b>1,328.3</b>	<b>625.8</b>
<b>(Loss) income from operations</b>	<b>(425.7)</b>	<b>58.8</b>	<b>(785.4)</b>	<b>127.7</b>
Other (expense) income, net	(10.6)	1.8	(24.6)	3.5
<b>(Loss) income before provision for income taxes</b>	<b>(436.3)</b>	<b>60.6</b>	<b>(809.9)</b>	<b>131.2</b>
Income tax expense (benefit)	3.1	(3.0)	5.4	(1.7)
<b>Net (loss) income</b>	<b>\$ (439.4)</b>	<b>\$ 63.6</b>	<b>\$ (815.3)</b>	<b>\$ 132.8</b>

(1) Includes stock-based compensation expense as follows:

	Three Months Ended December 31,		Six Months Ended December 31,	
	2021	2020	2021	2020
	(in millions)		(in millions)	
<b>Cost of revenue</b>				
Connected Fitness Products	\$ 6.6	\$ 2.0	\$ 11.0	\$ 3.5
Subscription	5.1	5.1	8.7	9.5
<b>Total cost of revenue</b>	<b>11.7</b>	<b>7.1</b>	<b>19.7</b>	<b>13.0</b>
<b>Sales and marketing</b>	<b>9.0</b>	<b>4.6</b>	<b>15.5</b>	<b>8.0</b>
<b>General and administrative</b>	<b>38.3</b>	<b>21.2</b>	<b>67.8</b>	<b>37.8</b>
<b>Research and development</b>	<b>12.9</b>	<b>4.6</b>	<b>21.7</b>	<b>8.2</b>
<b>Total stock-based compensation expense</b>	<b>\$ 71.9</b>	<b>\$ 37.5</b>	<b>\$ 124.8</b>	<b>\$ 67.1</b>

(2) Includes depreciation and amortization expense as follows:

	Three Months Ended December 31,		Six Months Ended December 31,	
	2021	2020	2021	2020
	(in millions)		(in millions)	
Cost of revenue				
Connected Fitness Products	\$ 4.6	\$ 1.6	\$ 8.2	\$ 2.9
Subscription	6.4	4.6	11.9	9.0
Total cost of revenue	11.0	6.2	20.0	11.8
Sales and marketing	8.0	3.3	12.4	6.2
General and administrative	11.9	2.0	21.7	4.8
Research and development	5.1	1.3	10.1	1.4
Total depreciation and amortization expense	\$ 36.1	\$ 12.8	\$ 64.2	\$ 24.2

**Comparison of the Three and Six Months Ended December 31, 2021 and 2020**

**Revenue**

	Three Months Ended December 31,		% Change	Six Months Ended December 31,		% Change
	2021	2020		2021	2020	
	(dollars in millions)					
Revenue:						
Connected Fitness Products	\$ 796.4	\$ 870.1	(8.5)%	\$ 1,297.4	\$ 1,471.5	(11.8)%
Subscription	337.5	194.7	73.4	641.7	351.2	82.7
Total revenue	\$ 1,133.9	\$ 1,064.8	6.5%	\$ 1,939.1	\$ 1,822.7	6.4%
Percentage of revenue						
Connected Fitness Products	70.2 %	81.7 %		66.9 %	80.7 %	
Subscription	29.8	18.3		33.1	19.3	
Total	100.0 %	100.0 %		100.0 %	100.0 %	

*Three and Six Months Ended December 31, 2021 and 2020*

Connected Fitness Products revenue decreased \$73.7 million and \$174.0 million for the three and six months ended December 31, 2021, respectively, compared to the three and six months ended December 31, 2020, respectively. This decrease was primarily attributable to fewer Bike and Tread+ deliveries, a price reduction on our Bike from \$1,895 to \$1,495 in August 2021, and charges associated with the voluntary product recalls, partially offset by increased Tread deliveries for the three and six months ended December 31, 2021. The decrease in Bike deliveries was primarily due to a return to our historical seasonality following the strong increase in demand for home fitness during the height of the COVID-19 pandemic during the three and six months ended December 31, 2020. The decrease was partially offset by revenues generated from Precor-branded commercial products of \$71.3 million and \$133.7 million for the three and six months ended December 31, 2021, respectively.

Subscription revenue increased \$142.9 million and \$290.5 million for the three and six months ended December 31, 2021, respectively, compared to the three and six months ended December 31, 2020, respectively. This increase was primarily attributable to the year-over-year growth in our Connected Fitness Subscriptions. The growth of our Connected Fitness Subscriptions was primarily driven by the number of Connected Fitness Products delivered over the past 12 months under new Subscriptions and our low Average Net Monthly Connected Fitness Churn of 0.79% and 0.81% for the three and six months ended December 31, 2021, respectively.

**Cost of Revenue, Gross Profit, and Gross Margin**

	Three Months Ended December 31,			Six Months Ended December 31,		
	2021	2020	% Change	2021	2020	% Change
(dollars in millions)						
<b>Cost of Revenue:</b>						
Connected Fitness Products	\$ 745.5	\$ 562.8	32.4%	\$ 1,186.2	\$ 927.0	28.0%
Subscription	\$ 108.3	\$ 77.2	40.2	210.0	142.2	47.7
Total cost of revenue	\$ 853.7	\$ 640.0	33.4%	\$ 1,396.2	\$ 1,069.2	30.6%
<b>Gross Profit:</b>						
Connected Fitness Products	\$ 51.0	\$ 307.3	(83.4)%	\$ 111.3	\$ 544.5	(79.6)%
Subscription	\$ 229.3	\$ 117.5	95.2	431.7	209.0	106.5
Total Gross profit	\$ 280.2	\$ 424.8	(34.0)%	\$ 543.0	\$ 753.5	(27.9)%
<b>Gross Margin:</b>						
Connected Fitness Products	6.4 %	35.3 %		8.6 %	37.0 %	
Subscription	67.9 %	60.3 %		67.3 %	59.5 %	

*Three Months Ended December 31, 2021 and 2020*

Connected Fitness Products cost of revenue for the three months ended December 31, 2021 increased \$182.6 million, or 32.4%, compared to the three months ended December 31, 2020. This increase was primarily driven by costs associated with Precor-branded commercial products of \$60.0 million, increased Tread costs of \$53.9 million driven by our launch of the Tread in the first quarter of fiscal 2022, and increased shipping and delivery costs of \$42.0 million, partially offset by fewer deliveries for the three months ended December 31, 2021 compared to the three months ended December 31, 2020.

Our Connected Fitness Product Gross Margin decreased to 6.4% for the three months ended December 31, 2021, compared to 35.3% for the three months ended December 31, 2020, which was primarily driven by the price reduction on our Bike from \$1,895 to \$1,495, fixed logistics cost deleveraging, increased material and component part costs, and charges associated with the voluntary recalls of Tread+ and Tread.

Subscription cost of revenue for the three months ended December 31, 2021 increased \$31.1 million, or 40.2%, compared to the three months ended December 31, 2020. This increase was primarily driven by an increase of \$25.0 million in music royalties and platform streaming costs and an increase of \$4.4 million in personnel-related expenses, including stock-based compensation expense, due to increased headcount and employee stock grants.

Subscription Gross Margin increased by 758 basis points for the three months ended December 31, 2021 compared to the three months ended December 31, 2020, primarily driven by fixed cost leverage with more Connected Fitness Subscriptions as well as modest efficiencies associated with certain variable costs.

*Six Months Ended December 31, 2021 and 2020*

Connected Fitness Products cost of revenue for the six months ended December 31, 2021 increased \$259.2 million or 28.0%, compared to the six months ended December 31, 2020. This increase was primarily driven by costs of \$103.7 million associated with Precor-branded commercial products, increased shipping and delivery costs of \$87.4 million, and increased Tread costs of \$45.8 million primarily driven by launch of Tread in the first quarter of fiscal 2022, partially offset by fewer deliveries for the six months ended December 31, 2021 compared to the six months ended December 31, 2020.

Our Connected Fitness Product Gross Margin decreased to 8.6% from 37.0% for the six months ended December 31, 2021 compared to the six months ended December 31, 2020 primarily driven by the price reduction on our Bike from \$1,895 to \$1,495, fixed logistics cost deleveraging, charges associated with the voluntary recalls of Tread+ and Tread, and increased materials and component part costs.

Subscription cost of revenue for the six months ended December 31, 2021 increased \$67.8 million, or 47.7%, compared to the six months ended December 31, 2020. This increase was primarily driven by an increase of \$52.5 million in music royalties and platform streaming costs and an increase of \$9.7 million in personnel-related expenses, excluding stock-based compensation expense, due to increased headcount.

Subscription Gross Margin increased by 776 basis points for the six months ended December 31, 2021 compared to the six months ended December 31, 2020, primarily driven by fixed cost leverage with more Connected Fitness Subscriptions as well as modest efficiencies associated with certain variable costs.

**Operating Expenses***Sales and Marketing*

	Three Months Ended December 31,			Six Months Ended December 31,		
	2021	2020	% Change	2021	2020	% Change
	(dollars in millions)					
Sales and marketing	\$ 349.6	\$ 177.4	97.0%	\$ 633.9	\$ 292.1	117.0%
As a percentage of total revenue	30.8 %	16.7 %		32.7 %	16.0 %	

*Three and Six Months Ended December 31, 2021 and 2020*

Sales and marketing expense increased \$172.1 million and \$341.9 million in the three and six months ended December 31, 2021, respectively, compared to the three and six months ended December 31, 2020. These increases were primarily due to an increase in spending on advertising and marketing programs of \$146.6 million and \$294.4 million during the three and six months ended December 31, 2021, respectively. We significantly reduced marketing spend in the three and six months ended December 31, 2020 due to the organic demand driven by the pandemic as well as ongoing supply chain challenges, and resumed in the second half of fiscal 2021 given our improved order-to-delivery position.

*General and Administrative*

	Three Months Ended December 31,			Six Months Ended December 31,		
	2021	2020	% Change	2021	2020	% Change
	(dollars in millions)					
General and administrative	\$ 248.7	\$ 141.1	76.3 %	\$ 489.0	\$ 249.7	95.8%
As a percentage of total revenue	21.9 %	13.2 %		25.2 %	13.7 %	

*Three and Six Months Ended December 31, 2021 and 2020*

General and administrative expense increased \$107.6 million and \$239.3 million in the three and six months ended December 31, 2021, respectively, when compared to the three and six months ended December 31, 2020. These increases were primarily due to an increase in professional services fees and IT costs associated with ongoing systems implementations of \$48.2 million and \$111.2 million during the three and six months ended December 31, 2021, respectively, which costs related primarily to the upgrading of our back-office systems and infrastructure as well as integration costs related to our acquisitions. These increases were also due to an increase in personnel-related expenses of \$43.0 million and \$90.5 million for the three and six months ended December 31, 2021, respectively, including stock-based compensation expense, due to increased headcount and employee stock grants, respectively.

*Research and Development*

	Three Months Ended December 31,			Six Months Ended December 31,		
	2021	2020	% Change	2021	2020	% Change
	(dollars in millions)					
Research and development	\$ 100.0	\$ 47.5	110.5%	\$ 197.7	\$ 84.1	135.1%
As a percentage of total revenue	8.8 %	4.5 %		10.2 %	4.6 %	

*Three and Six Months Ended December 31, 2021 and 2020*

Research and development expense increased \$52.5 million and \$113.6 million in the three and six months ended December 31, 2021, respectively, when comparing the three and six months ended December 31, 2020. This increase was primarily due to an increase in personnel-related expenses, which, including stock-based compensation expense, increased \$32.8 million and \$66.1 million in the three and six months ended December 31, 2021, respectively, due to increased headcount and employee stock grants, and an increase of \$13.0 million and \$33.3 million in product development and research costs in the three and six months ended December 31, 2021, respectively, associated with development of new software features and products.

Impairment expense

	Three Months Ended December 31,			Six Months Ended December 31,		
	2021	2020	% Change	2021	2020	% Change
	(dollars in millions)					
Impairment expense	\$ 7.7	\$ —	NM	\$ 7.7	\$ —	NM
As a percentage of total revenue	0.7 %	— %		0.4 %	— %	

Impairment expense comprised of the disposal of lease build out costs for the three and six months ended December 31, 2021.

The Company reviews goodwill for impairment annually on April 1 of each fiscal year or whenever events or changes in circumstances indicate that an impairment may exist ("a triggering event"). Coming out of holiday season, management identified various qualitative factors that collectively, indicated we had a triggering event, including (i) softening demand; (ii) increased costs of inventory and logistics; and (iii) sustained decrease in stock price. The Company performed a quantitative assessment and the fair value of the Connected Fitness reporting unit was determined by analyzing the expected present value of future cash flows, incorporating forecasts and assumptions. These forecasts and assumptions are highly subjective. See "Risk Factors—General Risk Factors—If our estimates or judgments relating to our critical accounting policies prove to be incorrect, our operating results could be adversely affected." Although the quantitative assessment as of December 31, 2021 indicated goodwill was not impaired, given the results of our quantitative assessment, the Connected Fitness reporting unit is at risk for future goodwill impairment because it is reasonably possible that, among other factors, continued softening demand, increased costs of inventory and continual stock price volatility and downward pressure on the Company's market cap could have a material impact on one or more of the estimates and assumptions used to evaluate goodwill.

Other (Expense) Income, Net and Income Tax Expense

	Three Months Ended December 31,			Six Months Ended December 31,		
	2021	2020	% Change	2021	2020	% Change
	(dollars in millions)					
Other (expense) income, net	\$ (10.6)	\$ 1.8	NM	\$ (24.6)	\$ 3.5	NM
Income tax expense (benefit)	\$ 3.1	\$ (3.0)	NM	\$ 5.4	\$ (1.7)	NM

\*NM - not meaningful

Other (expense), net, was comprised of the following for the three and six months ended December 31, 2021:

- Interest expense primarily related to the amortization of the convertible notes discount and deferred financing costs of \$(8.8) million and \$(17.4) million;
- Interest income from cash, cash equivalents, and short-term investments of \$0.3 million and \$0.9 million;
- Foreign exchange losses of \$(1.7) million and \$(7.6) million; and
- Unrealized losses on short-term investments of \$(0.4) million and \$(0.4) million, respectively.

Other income, net, was comprised of the following for the three and six months ended December 31, 2020:

- Interest expense primarily related to the secured revolving credit facility of \$(0.4) million and \$(0.8) million;
- Interest income from cash, cash equivalents, and short-term investments of \$2.3 million and \$5.1 million; and
- Foreign exchange losses of \$(0.1) million and \$(0.8) million.

Income tax expense for the three and six months ended December 31, 2021 of \$3.1 million and \$5.4 million, respectively, was primarily due to state and international taxes.

Non-GAAP Financial Measures

In addition to our results determined in accordance with accounting principles generally accepted in the United States, or GAAP, we believe the following non-GAAP financial measures are useful in evaluating our operating performance.

Adjusted EBITDA and Adjusted EBITDA Margin

We calculate Adjusted EBITDA as net (loss) income adjusted to exclude: other expense (income), net; income tax expense (benefit); depreciation and amortization expense; stock-based compensation expense; impairment expense; product recall costs; litigation and settlement expenses; transaction and integration costs; reorganization, severance, exit, disposal and other costs associated with restructuring plans; and other adjustment items that arise outside the ordinary course of our business. Adjusted EBITDA Margin is calculated by dividing Adjusted EBITDA by total revenue.

We use Adjusted EBITDA and Adjusted EBITDA Margin as measures of operating performance and the operating leverage in our business. We believe that these non-GAAP financial measures are useful to investors for period-to-period comparisons of our business and in understanding and evaluating our operating results for the following reasons:

- Adjusted EBITDA and Adjusted EBITDA Margin are widely used by investors and securities analysts to measure a company's operating performance without regard to items such as stock-based compensation expense, depreciation and amortization expense, other expense (income), net, and provision for income taxes that can vary substantially from company to company depending upon their financing, capital structures, and the method by which assets were acquired;
- Our management uses Adjusted EBITDA and Adjusted EBITDA Margin in conjunction with financial measures prepared in accordance with GAAP for planning purposes, including the preparation of our annual operating budget, as a measure of our core operating results and the effectiveness of our business strategy, and in evaluating our financial performance; and
- Adjusted EBITDA and Adjusted EBITDA Margin provide consistency and comparability with our past financial performance, facilitate period-to-period comparisons of our core operating results, and may also facilitate comparisons with other peer companies, many of which use similar non-GAAP financial measures to supplement their GAAP results.

Our use of Adjusted EBITDA and Adjusted EBITDA Margin have limitations as analytical tools, and you should not consider these measures in isolation or as substitutes for analysis of our financial results as reported under GAAP. Some of these limitations are, or may in the future be, as follows:

- Although depreciation and amortization expense are non-cash charges, the assets being depreciated and amortized may have to be replaced in the future, and Adjusted EBITDA and Adjusted EBITDA Margin do not reflect cash capital expenditure requirements for such replacements or for new capital expenditure requirements;
- Adjusted EBITDA and Adjusted EBITDA Margin exclude stock-based compensation expense, which has recently been, and will continue to be for the foreseeable future, a significant recurring expense for our business and an important part of our compensation strategy;
- Adjusted EBITDA and Adjusted EBITDA Margin do not reflect: (1) changes in, or cash requirements for, our working capital needs; (2) interest expense, or the cash requirements necessary to service interest or principal payments on our debt, which reduces cash available to us; or (3) tax payments that may represent a reduction in cash available to us;
- Adjusted EBITDA and Adjusted EBITDA Margin do not reflect certain litigation expenses, consisting of legal settlements and related fees for specific proceedings that we have determined arise outside of the ordinary course of business based on the following considerations which we assess regularly: (1) the frequency of similar cases that have been brought to date, or are expected to be brought within two years; (2) the complexity of the case; (3) the nature of the remedy(ies) sought, including the size of any monetary damages sought; (4) offensive versus defensive posture of us; (5) the counterparty involved; and (6) our overall litigation strategy;
- Adjusted EBITDA and Adjusted EBITDA Margin do not reflect transaction and integration costs related to acquisitions;
- Adjusted EBITDA and Adjusted EBITDA Margin do not reflect incremental costs associated with COVID-19, which consist of hazard pay for field operations employees;
- Adjusted EBITDA and Adjusted EBITDA Margin do not reflect impairment charges, and gains (losses) on disposals for fixed assets;
- Adjusted EBITDA and Adjusted EBITDA Margin do not reflect the impact of purchase accounting adjustments to inventory related to the Precor acquisition;
- Adjusted EBITDA and Adjusted EBITDA Margin do not reflect costs associated with Tread and Tread+ product recalls including increases to the return reserves, Tread+ inventory write-downs, logistics costs associated with Member requests on Tread and Tread+, the cost to move the Tread+ for those that elect the option, subscription waiver costs of service, and recall-related hardware development and repair costs;
- Adjusted EBITDA and Adjusted EBITDA Margin do not reflect reorganization, severance, exit, disposal and other costs associated with restructuring plans; and
- The expenses and other items that we exclude in our calculation of Adjusted EBITDA and Adjusted EBITDA Margin may differ from the expenses and other items, if any, that other companies may exclude from Adjusted EBITDA when they report their operating results and we may, in the future, exclude other significant, unusual or non-recurring expenses or other items from these financial measures. Because companies in our industry may calculate such measures differently than we do, their usefulness as comparative measures can be limited.

Because of these limitations, Adjusted EBITDA and Adjusted EBITDA Margin should be considered along with other operating and financial performance measures presented in accordance with GAAP.



The following table presents a reconciliation of Adjusted EBITDA to Net (loss) income, the most directly comparable financial measure prepared in accordance with GAAP, for each of the periods indicated:

**Adjusted EBITDA and Adjusted EBITDA Margin**

	Three Months Ended December 31,		Six Months Ended December 31,	
	2021	2020	2021	2020
	(dollars in millions)			
Net (loss) income	\$ (439.4)	\$ 63.6	\$ (815.3)	\$ 132.8
Adjusted to exclude the following:				
Other expense (income), net	10.6	(1.8)	24.6	(3.5)
Income tax expense (benefit)	3.1	(3.0)	5.4	(1.7)
Depreciation and amortization expense	36.1	12.8	64.2	24.2
Stock-based compensation expense	71.9	37.5	124.8	67.1
Impairment expense	7.7	—	7.7	—
Product recalls <sup>(1)</sup>	14.7	—	27.5	—
Litigation and settlement expenses <sup>(2)</sup>	25.3	4.4	51.8	7.5
Transaction and integration costs <sup>(3)</sup>	0.9	3.4	4.0	3.4
Other adjustment items <sup>(4)</sup>	2.7	—	5.2	5.9
Adjusted EBITDA	\$ (266.5)	\$ 116.9	\$ (500.1)	\$ 235.8
Adjusted EBITDA Margin	(23.5)%	11.0%	(25.8)%	12.9%

(1) Represents adjustments and charges associated with the Tread and Tread+ product recall, as well as accrual adjustments. These include a reduction to Connected Fitness Products revenue for actual and estimated future returns of \$7.4 million and \$18.9 million, recorded costs in Connected Fitness Products cost of revenue associated with inventory write-downs and logistic costs of \$5.2 million and \$5.7 million, and operating expenses of \$2.1 million and \$3.0 million associated with recall-related hardware development costs, in each case for the three and six months ended December 31, 2021, respectively.

(2) Includes litigation-related expenses for certain non-recurring patent infringement litigation, consumer arbitration, and product recalls for the three and six months ended December 31, 2021.

(3) Includes transaction and integration costs primarily associated with the acquisition and integration of Precor Fitness for the three and six months ended December 31, 2021 and December 31, 2020.

(4) Includes gains (losses) on disposal of fixed assets of \$1.7 million and costs associated with restructuring plans of \$1.0 million for the three months ended December 31, 2021 and gains (losses) on disposal of fixed assets of \$2.3 million, short-term non-cash purchase accounting adjustment amortization of \$1.9 million, and costs associated with restructuring plans of \$1.0 million for the six months ended December 31, 2021. Includes \$5.9 million of incremental costs associated with COVID-19 for the six months ended December 31, 2020.

**Subscription Contribution and Subscription Contribution Margin**

We define "Subscription Contribution" as Subscription revenue less cost of Subscription revenue, adjusted to exclude from cost of Subscription revenue, depreciation and amortization expense, and stock-based compensation expense. Subscription Contribution Margin is calculated by dividing Subscription Contribution by Subscription revenue.

We use Subscription Contribution and Subscription Contribution Margin to measure our ability to scale and leverage the costs of our Connected Fitness Subscriptions. We believe that these non-GAAP financial measures are useful to investors for period-to-period comparisons of our business and in understanding and evaluating our operating results because our management uses Subscription Contribution and Subscription Contribution Margin in conjunction with financial measures prepared in accordance with GAAP for planning purposes, including the preparation of our annual operating budget, as a measure of our core operating results and the effectiveness of our business strategy, and in evaluating our financial performance.

The use of Subscription Contribution and Subscription Contribution Margin as analytical tools has limitations, and you should not consider these in isolation or as substitutes for analysis of our financial results as reported under GAAP. Some of these limitations are as follows:

- Although depreciation and amortization expense are non-cash charges, the assets being depreciated and amortized may have to be replaced in the future, and Subscription Contribution and Subscription Contribution Margin do not reflect cash capital expenditure requirements for such replacements or for new capital expenditure requirements; and
- Subscription Contribution and Subscription Contribution Margin exclude stock-based compensation expense, which has recently been, and will continue to be for the foreseeable future, a significant recurring expense for our business and an important part of our compensation strategy.

Because of these limitations, Subscription Contribution and Subscription Contribution Margin should be considered along with other operating and financial performance measures presented in accordance with GAAP.

The following table presents a reconciliation of Subscription Contribution to Subscription Gross Profit, the most directly comparable financial measure prepared in accordance with GAAP, for each of the periods indicated:

	Three Months Ended December 31,		Six Months Ended December 31,	
	2021	2020	2021	2020
	(dollars in millions)			
Subscription Revenue	\$ 337.5	\$ 194.7	\$ 641.7	\$ 351.2
Less: Cost of Subscription	108.3	77.2	210.0	142.2
Subscription Gross Profit	<u>\$ 229.3</u>	<u>\$ 117.5</u>	<u>\$ 431.7</u>	<u>\$ 209.0</u>
Subscription Gross Margin	<u>67.9 %</u>	<u>60.3 %</u>	<u>67.3 %</u>	<u>59.5 %</u>
Add back:				
Depreciation and amortization expense	\$ 6.4	\$ 4.6	\$ 11.9	\$ 9.0
Stock-based compensation expense	5.1	5.1	8.7	9.5
Subscription Contribution	<u>\$ 240.9</u>	<u>\$ 127.2</u>	<u>\$ 452.3</u>	<u>\$ 227.6</u>
Subscription Contribution Margin	<u>71.4 %</u>	<u>65.3 %</u>	<u>70.5 %</u>	<u>64.8 %</u>

The continued growth of our Connected Fitness Subscription base will allow us to improve our Subscription Contribution Margin. While there are variable costs, including music royalties, associated with our Connected Fitness Subscriptions, a significant portion of our content creation costs are fixed given that we operate with a limited number of production studios and instructors. We expect the fixed nature of those expenses to scale over time as we grow our Connected Fitness Subscription base.

#### Liquidity and Capital Resources

Our operations have been funded primarily through net proceeds from the sales of our equity and convertible debt securities, as well as cash flows from operating activities. As of December 31, 2021, we had cash and cash equivalents of approximately \$1.6 billion.

We anticipate approximately \$240 million to \$280 million of capital expenditures over the next 12 months, which includes amounts related to the completion of the shell facility for our previously planned Peloton Output Park, as well as investments in product development and systems implementations.

We believe our existing cash and cash equivalent balances, cash flow from operations, and amounts available for borrowing under our Amended Credit Agreement (described below) will be sufficient to meet our working capital and capital expenditure needs for at least the next 12 months. Our future capital requirements may vary materially from those currently planned and will depend on many factors, including our rate of revenue growth, timing and amount of spending related to acquisitions, the timing and amount of spending on research and development and manufacturing initiatives, the timing and financial impact of product recalls, sales and marketing activities, the timing of new product introductions, market acceptance of our Connected Fitness Products, timing and investments needed for international expansion, and overall economic conditions. To the extent that current and anticipated future sources of liquidity are insufficient to fund our future business activities and requirements, we may be required to seek additional equity or debt financing. The sale of additional equity would result in additional dilution to our stockholders. The incurrence of debt financing would result in debt service obligations and the instruments governing such debt could provide for operating and financing covenants that would restrict our operations. There can be no assurances that we will be able to raise additional capital. The inability to raise capital would adversely affect our ability to achieve our business objectives.

#### February 2022 Restructuring Plan

On February 1, 2022, following our previous disclosure regarding market factors impacting our business, our board of directors approved a restructuring plan to realign our operational focus to support our multi-year growth, scale our business, and improve costs (the "Restructuring Plan"). The Restructuring Plan includes: (i) reducing our headcount by approximately 2,800 global positions; (ii) closing several assembly and manufacturing plants, including the completion and subsequent sale of the shell facility for our previously planned Peloton Output Park; (iii) closing and consolidating several distribution facilities; and (iv) shifting to third-party logistics providers in certain locations. We expect the Restructuring Plan to be substantially implemented by the end of fiscal 2024.

In connection with the Restructuring Plan, we estimate that we will incur total cash charges of approximately \$190 million composed of: (i) approximately \$90 million for severance and other related personnel reduction costs; (ii) approximately \$40 million related to closing and consolidating several assembly and manufacturing plants and distribution facilities; and (iii) approximately \$60 million in capital expenditures. We also intend to reduce our planned capital expenditures in fiscal 2022 by approximately \$150 million (net of anticipated restructuring expenditures). Additionally, we expect to recognize approximately \$80 million of asset impairment charges in the third fiscal quarter of 2022 in connection with the Restructuring Plan.

We expect to achieve at least \$800 million in annualized run-rate cost savings as a result of the Restructuring Plan, with the majority expected to be realized by the end of fiscal 2024.

We may not be able to realize the cost savings and benefits initially anticipated as a result of the Restructuring Plan, and the costs may be greater than expected. See *"Risk Factors—Risks Related to Our Business—We may not successfully execute or achieve the expected benefits of our restructuring initiative, and our efforts may result in further actions and/or additional asset impairment charges and adversely affect our business."*

#### **Convertible Notes**

In February 2021, we issued \$1.0 billion aggregate principal amount of 0% Convertible Senior Notes due 2026 (the "Notes") in a private offering, including the exercise in full of the over-allotment option granted to the initial purchasers of \$125.0 million. The Notes were issued pursuant to an Indenture (the "Indenture") between us and U.S. Bank National Association, as trustee. The Notes are our senior unsecured obligations and do not bear regular interest, and the principal amount of the Notes does not accrete. The net proceeds from the offering were approximately \$977.2 million, after deducting the initial purchasers' discounts and commissions and our offering expenses.

#### **Capped Call Transactions**

In connection with the offering of the Notes, we entered into privately negotiated capped call transactions with certain counterparties (the "Capped Call Transactions"). The Capped Call Transactions have an initial strike price of approximately \$239.23 per share, subject to adjustments, which corresponds to the approximate initial conversion price of the Notes. The cap price of the Capped Call Transactions will initially be approximately \$362.48 per share. The Capped Call Transactions cover, subject to anti-dilution adjustments substantially similar to those applicable to the Notes, 6.9 million shares of Class A Common Stock. The Capped Call Transactions are expected generally to reduce potential dilution to the Class A Common Stock upon any conversion of Notes and/or offset any potential cash payments we would be required to make in excess of the principal amount of converted Notes, as the case may be, with such reduction and/or offset subject to a cap based on the cap price. If, however, the market price per share of Class A Common Stock, as measured under the terms of the Capped Call Transactions, exceeds the cap price of the Capped Call Transactions, there would be dilution and/or there would not be an offset of such potential cash payments, in each case, to the extent that the then-market price per share of the Class A Common Stock exceeds the cap price of the Capped Call Transactions.

#### **Class A Common Stock Offering**

On November 16, 2021, we entered into an underwriting agreement (the "Underwriting Agreement") with Goldman Sachs & Co. LLC and J.P. Morgan Securities LLC as representatives of the several underwriters named therein (collectively, the "Representatives") relating to the offer and sale by the Company (the "Offering") of 27,173,912 shares (the "Shares") of the Company's Class A common stock, par value \$0.000025 per share, which includes 3,260,869 shares of Class A common stock issued and sold pursuant to the exercise in full by the underwriters of their option to purchase additional shares of Class A common stock pursuant to the Underwriting Agreement. We sold the Shares to the underwriters at the public offering price of \$46.00 per share less underwriting discounts. The net proceeds from the Offering were approximately \$1.2 billion, after deducting the underwriters' discounts and commissions and our offering expenses.

#### **Amended and Restated Credit Agreement**

In June 2019, we entered into an amended and restated loan and security agreement (the "Amended and Restated Credit Agreement"), with JPMorgan Chase Bank, N.A., as administrative agent, lead arranger and bookrunner and Bank of America, N.A., Barclays Bank PLC, Goldman Sachs Lending Partners LLC and Silicon Valley Bank, as joint syndication agents, which amended and restated our prior secured revolving credit facility.

On February 8, 2021, we entered into a First Amendment (the "First Amendment") to the Amended and Restated Credit Agreement to revise certain covenants that restricted the incurrence of indebtedness to permit the Capped Call Transactions and issuance of the Notes.

On March 18, 2021, we entered into a Joinder Agreement (the "Joinder") to the Amended and Restated Credit Agreement, as amended by the First Amendment, to provide for an increase of the commitments available under the revolving credit facility from \$250.0 million to \$285.0 million.

On December 10, 2021, we entered into a Second Amendment (the "Second Amendment") to the Amended and Restated Revolving Credit Agreement (as amended by the First Amendment, the Joinder and the Second Amendment, the "Credit Agreement"). The Second Amendment amends certain provisions of the Credit Agreement to, among other changes, increase the lenders' aggregate commitments to extend credit to us from an aggregate amount of \$285.0 million in revolving loans to an aggregate amount of \$500.0 million in revolving loans, extend the maturity date for \$465.0 million of the commitments to December 10, 2026 with \$35.0 million of the commitments expiring on June 20, 2024, and modify certain covenants contained therein.

The Credit Agreement provides for a \$500.0 million secured revolving credit facility, including up to the lesser of \$250.0 million and the aggregate unused amount of the facility for the issuance of letters of credit. Interest on the Amended Credit Agreement is paid based on SOFR plus 2.25% or an Alternative Base Rate plus 1.25% for revolving loans maturing on December 10, 2026, and is paid based on SOFR plus 2.75% or an Alternative Base Rate plus 1.75% for revolving loans maturing on June 20, 2024. We are required to pay an annual commitment fee of 0.325% and 0.375% on a quarterly basis based on the unused portion of the revolving credit facility for the revolving loans maturing on December 10, 2026 and June 20, 2024, respectively. As of December 31, 2021, we had not drawn on the credit facility and did not have outstanding borrowings under the Amended Credit Agreement. As of December 31, 2021, we had outstanding letters of credit totaling \$4.8 million issued primarily to cover security deposits for an operating lease obligation.

We have the option to repay our borrowings under the Credit Agreement without premium or penalty prior to maturity. The Credit Agreement contains customary affirmative covenants as well as customary covenants that restrict our ability to, among other things, incur additional indebtedness, sell certain assets, guarantee obligations of third parties, declare dividends or make certain distributions, and undergo a merger or consolidation or certain other transactions. The Credit Agreement also contains certain financial condition covenants, including maintaining a

total level of liquidity of not less than \$250.0 million and maintaining a minimum total four-quarter revenue level of \$3.0 billion (which are replaced with a covenant to maintain a minimum debt to adjusted EBITDA ratio upon the Company's meeting a specified adjusted EBITDA threshold). As of December 31, 2021, we were in compliance with the covenants under the Credit Agreement. At December 31, 2021, we were contingently liable for approximately \$4.8 million in standby letters of credit as security for an operating lease obligation. In addition, we are required to pledge or otherwise restrict a portion of cash and cash equivalents as collateral for standby letters of credit. As of December 31, 2021, we had \$86.8 million in letters of credit, which are classified as Restricted cash on its condensed consolidated balance sheets.

## Cash Flows

	Six Months Ended December 31,	
	2021	2020
	(in millions)	
Net cash (used in) provided by operating activities	\$ (1,007.6)	\$ 510.5
Net cash provided by (used in) investing activities	299.6	(346.7)
Net cash provided by financing activities	1,287.2	43.6

### Operating Activities

Net cash used in operating activities of \$1,007.6 million for the six months ended December 31, 2021 was primarily due to a net loss of \$815.3 million and a decrease in net change in operating assets and liabilities of \$460.4 million, partially offset by an increase in non-cash adjustments of \$265.7 million. The increase in net operating assets and liabilities was primarily due to a \$601.5 million increase in inventory levels as we ramped up supply to support anticipated demand ahead of the holiday season and prepared for the relaunch of Tread in the United States, Canada, U.K. and Germany, partially offset by a \$172.2 million increase in Accounts payable and accrued expenses related to increased inventory and other expenditures to support general business growth, and \$75.8 million increase in Customer deposits and deferred revenue driven by timing of sales and deliveries in the quarter. Non-cash adjustments primarily consisted of stock-based compensation expense, depreciation and amortization, and non-cash operating lease expense.

### Investing activities

Net cash provided by investing activities for the six months ended December 31, 2021 of \$299.6 million was primarily related to sales and maturities of marketable securities of \$517.7 million, partially offset by \$178.4 million used for capital expenditures primarily related to construction of Peloton Output Park in Troy Township, Ohio.

### Financing activities

Net cash provided by financing activities of \$1,287.2 million for the six months ended December 31, 2021 was primarily related to proceeds of \$1,218.8 million from the Offering, exercises of stock options of \$54.2 million, and \$15.2 million in net proceeds from withholdings under the 2019 Employee Stock Purchase Plan.

### Commitments

As of December 31, 2021, our contractual obligations were as follows:

Contractual obligations:	Payments due by period				
	Total	Less than 1 year	1-3 years	3-5 years	More than 5 years
	(in millions)				
Lease obligations <sup>(1)</sup>	\$ 1,125.9	\$ 125.1	\$ 249.1	\$ 214.1	\$ 537.5
Minimum guarantees <sup>(2)</sup>	71.8	26.7	45.1	—	—
Unused credit facility fee payments <sup>(3)</sup>	7.8	1.6	3.2	2.9	—
Other purchase obligations <sup>(4)</sup>	117.7	74.8	38.6	4.3	0.1
Convertible senior notes <sup>(5)</sup>	1,000.0	—	—	1,000.0	—
<b>Total</b>	<b>\$ 2,323.2</b>	<b>\$ 228.2</b>	<b>\$ 336.0</b>	<b>\$ 1,221.4</b>	<b>\$ 537.6</b>

(1) Lease obligations relate to our office space, warehouses, production studios, equipment, and retail showrooms and microstores. As of December 31, 2021, the Company had additional operating leases for real estate that have not yet commenced of \$41.9 million which has been included above. The lease terms are between one and twenty-one years, and the majority of the lease agreements are renewable at the end of the lease period. The Company has finance lease obligations of \$3.7 million, also included above.

(2) We are subject to minimum royalty payments associated with our license agreements for the use of licensed content. See "Risk Factors — Risks Related to Our Business— We are a party to many music license agreements that are complex and impose numerous obligations upon us that may make it difficult to operate our business, and a breach of such agreements could adversely affect our business, operating results, and financial condition."

(3) Pursuant to the Amended Credit Agreement, we are required to pay a commitment fee of 0.325% and 0.375% on a quarterly basis based on the unused portion of the revolving credit facility for the revolving loans maturing on December 10, 2026 and June 20, 2024, respectively. As of December 31, 2021, we were contingently liable for approximately \$4.8 million in standby letters of credit for our operating lease obligations.

(4) Other purchase obligations include all other non-cancelable contractual obligations. These contracts are primarily related to cloud computing costs.

(5) Refer to *Note 7 - Debt* in the Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this Quarterly Report on Form 10-Q for further details regarding our convertible senior notes obligations.

The commitment amounts in the table above are associated with contracts that are enforceable and legally binding and that specify all significant terms, including fixed or minimum services to be used, fixed, minimum or variable price provisions, and the approximate timing of the actions under the contracts.

We utilize contract manufacturers to build parts of our products. These contract manufacturers acquire components and build products based on demand forecast information we supply, which typically covers a rolling 12-month period. Consistent with industry practice, we acquire inventories from such manufacturers through blanket purchase orders against which orders are applied based on projected demand information and availability of goods. Such purchase commitments typically cover our forecasted product and manufacturing requirements for periods ranging from 30 to 90 days. In certain instances, these agreements allow us the option to cancel, reschedule and/or adjust our requirements based on our business needs. While our purchase orders are legally cancellable in most situations, there are some which are not cancellable in the event of a demand plan change or other specific circumstances, such as the procurement of unique, Peloton-specific designs, and/or specific non-cancellable, non-returnable components by our suppliers based on our provided forecasts. As the Company materially reduced its demand plan, we are assessing whether to agree to acquire certain inventory purchased by our suppliers under the original demand plan schedule, where appropriate, in an effort to maintain long-term supply continuity, flexibility, and scalability perspective with our supply partners. As of December 31, 2021, our commitments to contract with third-party manufacturers for their inventory on-hand and component purchase commitments related to the manufacture of our products were estimated to be approximately \$550.0 million. See *"Risk Factors—Risks Related to Our Business—Our operating results could be adversely affected if we are unable to accurately forecast consumer demand for our products and services and adequately manage our inventory."*

#### **Off-Balance Sheet Arrangements**

We did not have any undisclosed off-balance sheet arrangements as of December 31, 2021.

#### **Critical Accounting Policies and Estimates**

Our discussion and analysis of our financial condition and results of operations are based upon our condensed consolidated financial statements, which have been prepared in accordance with GAAP. In preparing the condensed consolidated financial statements, we make estimates and judgments that affect the reported amounts of assets, liabilities, stockholders' equity, revenue, expenses, and related disclosures. We re-evaluate our estimates on an on-going basis. Our estimates are based on historical experience and on various other assumptions that we believe to be reasonable under the circumstances. Because of the uncertainty inherent in these matters, actual results may differ from these estimates and could differ based upon other assumptions or conditions. The critical accounting policies that reflect our more significant judgments and estimates used in the preparation of our condensed consolidated financial statements include those described in *Note 2—Summary of Significant Accounting Policies* in the Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this Quarterly Report on Form 10-Q and in our Form 10-K.

#### **Recent Accounting Pronouncements**

See *Note 2 - Summary of Significant Accounting Policies* in the Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this Quarterly Report on Form 10-Q under the heading *"Recently Issued Accounting Pronouncements"* for a discussion about new accounting pronouncements adopted and not yet adopted as of the date of this Quarterly Report on Form 10-Q.

### Item 3. Quantitative and Qualitative Disclosure About Market Risk

#### ***Interest Rate Risk***

We had Cash and cash equivalents of \$1.6 billion as of December 31, 2021. The primary objective of our investment activities is the preservation of capital, and we do not enter into investments for trading or speculative purposes. We have not been exposed, nor do we anticipate being exposed, to material risks due to changes in interest rates. A hypothetical 10% increase in interest rates during any of the periods presented in this Quarterly Report on Form 10-Q would not have had a material impact on our consolidated financial statements.

We are primarily exposed to changes in short-term interest rates with respect to our cost of borrowing under our Amended Credit Agreement. We monitor our cost of borrowing under our facility, taking into account our funding requirements, and our expectations for short-term rates in the future. A hypothetical 10% change in the interest rate on our Amended Credit Agreement for all periods presented would not have a material impact on our consolidated financial statements.

#### ***Foreign Currency Risk***

Our international sales are primarily denominated in foreign currencies and any unfavorable movement in the exchange rate between U.S. dollars and the currencies in which we conduct sales in foreign countries could have an adverse impact on our revenue. We source and manufacture inventory primarily in U.S. dollars and Taiwanese dollars. A portion of our operating expenses are incurred outside the United States and are denominated in foreign currencies, which are also subject to fluctuations due to changes in foreign currency exchange rates. For example, we purchased Tonic, a contract manufacturer, and our operating expenses incurred in manufacturing our products in Tonic's facilities in Taiwan are denominated in foreign currencies and not in U.S. dollars. Further, certain of our manufacturing agreements provide for fixed costs of our Connected Fitness Products and hardware in Taiwanese dollars but provide for payment in U.S. dollars based on the then-current Taiwanese dollar to U.S. dollar spot rate. In addition, our suppliers incur many costs, including labor and supply costs, in other currencies. While we are not currently contractually obligated to pay increased costs due to changes in exchange rates, to the extent that exchange rates move unfavorably for our suppliers, they may seek to pass these additional costs on to us, which could have a material impact on our gross margins. Our operating results and cash flows are, therefore, subject to fluctuations due to changes in foreign currency exchange rates. We use derivative instruments, such as foreign currency forwards, and have the ability to use option contracts, to hedge certain exposures to fluctuations in foreign currency exchange rates. Our exposure to foreign currency exchange rates has historically been partially hedged as our foreign currency denominated inflows create a natural hedge against our foreign currency denominated expenses.

#### ***Inflation Risk***

We do not believe that inflation has had a material effect on our business, financial condition, or results of operations. If our costs become subject to significant inflationary pressures, we may not be able to fully offset such higher costs through price increases. Our inability or failure to do so could harm our business, financial condition, and operating results.

#### Item 4. Controls and Procedures

##### **Evaluation of Disclosure Controls and Procedures**

Under the supervision of our Chief Executive Officer and Chief Financial Officer, we evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of December 31, 2021.

Disclosure controls and procedures are designed to ensure that information required to be disclosed in our reports filed or submitted under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include controls and procedures designed to ensure that information required to be disclosed in our reports filed under the Exchange Act is accumulated and communicated to management, including our Chief Executive Officer and Chief Financial Officer, to allow timely decisions regarding required disclosure. Based on the evaluation of our disclosure controls and procedures, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were not effective as of December 31, 2021 due to the material weakness in our internal control over financial reporting described below. As permitted by related SEC staff interpretive guidance for newly acquired businesses, the internal control over financial reporting of Precor, Inc. was excluded from the evaluation of the effectiveness of our disclosure controls and procedures as of December 31, 2021. Precor, Inc., which we acquired in April 2021, represented approximately 11% of our consolidated total assets as of December 31, 2021, and 6% and 7% of our consolidated total revenue for the three and six months ended December 31, 2021, respectively.

##### **Previously Reported Material Weakness**

As disclosed in Item 9A. "Controls and Procedures" of our Form 10-K, we previously identified material weakness in our internal control over financial reporting related to controls around the identification and valuation of inventory:

- Controls were not effectively designed, documented, and maintained to verify that the existence of all inventories subject to physical inventory counts were correctly counted, and our process for compiling and communicating inventory data to ensure accurate reporting in our financial statements was not effective, including inadequate verification for completeness and accuracy of key reports used to review and monitor inventory balances.

This material weakness did not result in any material misstatement in our financial statements or disclosures. Based on additional procedures and post-closing review, management concluded that the condensed consolidated financial statements included in this Quarterly Report on Form 10-Q present fairly, in all material respects, our financial position, results of operations, and cash flows for the periods presented, in conformity with accounting principles generally accepted in the United States.

##### **Remediation**

We have commenced measures to remediate the identified material weakness, which include:

- Evaluating the effectiveness of our current cycle count program and controls, including IT general controls over systems facilitating cycle counts, to automate inventory count and reporting.
- Implementing a global inventory count policy and standard operating procedures to ensure consistent communication of the inventory count process and adherence to these policies at facilities managed by us and third party logistics service providers.
- Providing training of standard operating procedures and internal controls to key stakeholders within the supply chain, logistics, and inventory processes.
- Implementing enhanced documentation associated with management review controls and validation of the completeness and accuracy of key reports used across the inventory process.

The actions that we are taking are subject to ongoing senior management review, as well as oversight of the audit committee of our board of directors. We may also conclude that additional measures may be required to remediate the material weakness. We will not be able to conclude that we have remediated the material weakness until the applicable controls operate for a sufficient period of time and management has concluded, through formal testing, that these controls are operating effectively. We will continue to monitor the design and effectiveness of these and other processes, procedures and controls and make any further changes management deems appropriate.

##### **Changes in Internal Control over Financial Reporting**

Other than the remediation efforts described above, there were no changes in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during the quarter ended December 31, 2021 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

##### **Limitations on the Effectiveness of Disclosure Controls and Procedures**

Our management, including our Chief Executive Officer and Chief Financial Officer, does not expect that our disclosure controls and procedures or internal control over financial reporting will prevent all errors and all fraud. A control system, no matter how well designed and implemented, can provide only reasonable, not absolute, assurance that the control system's objectives will be met. Further, the design of a control system must reflect the fact that there are resource constraints and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues within a company are detected. The inherent limitations include the realities that judgments in decision-making can be faulty and that breakdowns can occur because of simple errors or mistakes. Controls can also be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of the controls. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions or that the degree of compliance with the policies or procedures may deteriorate. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and may not be detected.

## PART II

### Item 1. Legal Proceedings

From time to time, we may be involved in claims and proceedings arising in the ordinary course of our business. The outcome of any such claims or proceedings, regardless of the merits, is inherently uncertain.

For a discussion of legal proceedings in which we are involved, see *Note 8 - Commitments and Contingencies* in the Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this Quarterly Report on Form 10-Q.

In addition, as previously disclosed, we have received reports of a number of injuries associated with our Tread+ product, one of which led to the death of a child. In April 2021, the U.S. Consumer Product Safety Commission ("CPSC") issued a warning to consumers about the safety hazards associated with the Tread+ and is continuing to investigate the matter. We are also subject to investigations by the U.S. Department of Justice ("DOJ"), U.S. Department of Homeland Security ("DHS"), and the SEC related to this matter. We intend to cooperate fully with each of these investigations, and at this time, we are unable to predict the eventual scope, duration or outcome of the investigations. See also Part II, Item 1A. "Risk Factors — Risks Related to Laws, Regulation, and Legal Proceedings" for more information on these matters.

### Item 1A. Risk Factors

*Investing in our Class A common stock involves a high degree of risk. You should carefully consider the risks and uncertainties described below, together with all of the other information in this Quarterly Report on Form 10-Q, including the section titled "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our condensed consolidated financial statements and the accompanying notes and the information included elsewhere in this Quarterly Report on Form 10-Q and in our Form 10-K and our other public filings before deciding whether to invest in shares of our Class A common stock. These risks and uncertainties are not the only ones we face. Additional risks and uncertainties that we are unaware of or that we currently deem immaterial may also become important factors that adversely affect our business. If any of the following risks occur, our business, financial condition, operating results, and future prospects could be materially and adversely affected. In that event, the market price of our Class A common stock could decline, and you could lose part or all of your investment.*

#### **Risks Related to Our Business**

***We have incurred operating losses in the past, may incur operating losses in the future, and may not achieve or maintain profitability in the future.***

We had net (loss) income of \$(439.4) million and \$63.6 million for the three months ended December 31, 2021 and 2020, respectively, and we have incurred operating losses each year since our inception in 2012, including net losses of \$(189.0) million, \$(71.6) million, and \$(195.6) million for fiscal 2021, 2020, and 2019, respectively, and may continue to incur net losses in the future. We expect our operating expenses to increase in the future as we grow our business, including by continuing our sales and marketing efforts, continuing to invest in research and development, expanding our operating and retail infrastructure, adding content and software features to our platform, expanding into new geographies, developing new Connected Fitness Products, and in connection with legal, accounting, and other expenses related to operating as a public company. These efforts and additional expenses may be more costly than we expect, and we cannot guarantee that we will be able to increase our revenue to offset our operating expenses. Our revenue growth may slow or our revenue may decline for a number of other reasons, including reduced demand for our products and services, increased competition, a decrease in the growth or reduction in size of our overall market, the impacts to our business from the COVID-19 pandemic, or if we cannot capitalize on growth opportunities. If our revenue does not grow at a greater rate than our operating expenses, we will not be able to achieve and maintain profitability.

***We may be unable to attract and retain Subscribers, which could have an adverse effect on our business and rate of growth.***

We have experienced significant Subscriber growth over the past several years. Our continued business and revenue growth is dependent on our ability to continuously attract and retain Subscribers, and we cannot be sure that we will be successful in these efforts, or that Subscriber retention levels will not materially decline. There are a number of factors that could lead to a decline in Subscriber levels or that could prevent us from increasing our Subscriber levels, including:

- our failure to introduce new features, products, or services that Members find engaging or our introduction of new products or services, or changes to existing products and services that are not favorably received;
- harm to our brand and reputation;
- pricing and perceived value of our offerings;
- our inability to deliver quality products and functionality, content, and services;
- actual or perceived safety concerns regarding our products;
- unsatisfactory experiences with the delivery, installation, or servicing of our Connected Fitness Products, including due to delivery costs or prolonged delivery timelines and limitations on, cost of, or the suspension of, the in-home installation, return, and warranty servicing processes;
- our Members engaging with competitive products and services;
- technical or other problems preventing Members from accessing our content and services in a rapid and reliable manner or otherwise affecting the Member experience;
- a decline in the public's interest in indoor cycling or running, or other fitness disciplines that we invest most heavily in;



- deteriorating general economic conditions or a change in consumer spending preferences or buying trends;
- changes in consumer preferences regarding home fitness, whether as a result of the COVID-19 pandemic or otherwise; and
- interruptions in our ability to sell or deliver our Connected Fitness Products or to create content and services for our Members as a result of the COVID-19 pandemic or otherwise.

Additionally, with our expansion into international markets such as Canada, the United Kingdom, Germany and Australia we can face new challenges in attracting and retaining Subscribers that we may not successfully address. As a result of these factors, we cannot be sure that our Subscriber levels will be adequate to maintain or permit the expansion of our operations. A decline in Subscriber levels could have an adverse effect on our business, financial condition, and operating results.

***We have grown rapidly in recent years and have limited operating experience at our current scale of operations. If we are unable to manage our growth effectively, our brand, company culture, and financial performance may suffer.***

We have expanded our operations rapidly and have limited operating experience at our current size. As we mature and grow, our business becomes increasingly complex. During periods of rapid growth, we have had to manage costs while making investments such as expanding our sales and marketing, focusing on innovative product and content development, upgrading our management information systems and other processes, and obtaining more space, and in future periods of rapid growth we expect to have to similarly manage our costs while investing in the expansion of our business. Rapid growth strains our existing resources, and we could experience ongoing operating difficulties in managing our business across numerous jurisdictions, including difficulties in hiring, training, and managing a diffuse and at times growing employee base. Failure to scale and preserve our company culture with growth could harm our future success, including our ability to retain and recruit personnel and to effectively focus on and pursue our corporate objectives. Moreover, the vertically integrated nature of our business, where we design our own Connected Fitness Products, develop our own software, produce original fitness and wellness programming, sell our products exclusively through our own sales teams and e-commerce site, and in some cases assemble, deliver, and service our Connected Fitness Products, exposes us to risk and disruption at many points that are critical to successfully operating our business and may make it more difficult for us to scale our business. For example, as a result of and at the onset of the COVID-19 pandemic, we experienced difficulties in meeting consumer demand for our Connected Fitness Products and services due to our employees becoming ill, being unable to travel to our facilities, and constraints within our supply chain. Conversely, we have recently experienced lower demand for our Connected Fitness Products and services, including through the restructuring initiative we announced in February 2022. As we continue to develop our infrastructure, and particularly in light of the reduction in headcount that was announced as a part of our restructuring initiative, we may find it difficult to maintain valuable aspects of our culture. If we do not adapt to meet these evolving challenges, or if our management team does not effectively scale with our growth while managing costs, we may experience erosion to our brand, the quality of our products and services may suffer, and our company culture may be harmed.

Our growth strategy has at times contemplated and may in the future contemplate a significant increase in our advertising and other marketing spending and expanding our retail showroom presence. Many of our existing retail showrooms are relatively new and we cannot assure you that these showrooms or that future showrooms will generate revenue and cash flow comparable with those generated by our more mature locations, especially as we move to new geographic markets. Moreover, certain occurrences outside of our control may result in the closure of our retail showrooms. For example, as a result of the ongoing COVID-19 pandemic, we temporarily closed all of our retail showrooms and while we have reopened retail showrooms, it has at times been under new operating limitations such as shorter operating hours, mask guidelines for employees and customers, and other constraints on our historical retail sales strategies. We have also had to temporarily close certain showrooms due to employee illness and public health and safety measures, and may need to do so in the future. We are unable to predict whether consumer shopping behaviors will change as we make these changes to adjust to the COVID-19 pandemic. Further, many of our retail showrooms are leased pursuant to multi-year short-term leases, and our ability to negotiate favorable terms on an expiring lease or for a lease renewal option may depend on factors that are not within our control. We may also open additional production studios as we expand internationally, which will require significant additional investment. During periods of rapid growth, successful implementation of our growth strategy will require significant expenditures before any substantial associated revenue is generated and we cannot guarantee that these increased investments will result in corresponding and offsetting revenue growth. Additionally, we may not be able to realize the cost savings and benefits initially anticipated as a result of the restructuring initiative that we announced in February 2022 and the expected costs may be greater than expected. See *"We may not successfully execute or achieve the expected benefits of our restructuring initiative, and our efforts may result in further actions and/or additional asset impairment charges and adversely affect our business."*

Because we have a limited history operating our business at its current scale, it is difficult to evaluate our current business and future prospects, including our ability to plan for and model future growth. Our limited operating experience at this scale, combined with the rapidly evolving nature of the market in which we sell our products and services, substantial uncertainty concerning how these markets may develop, and other economic factors beyond our control, reduces our ability to accurately forecast quarterly or annual revenue. Failure to manage our future growth effectively could have an adverse effect on our business, financial condition, and operating results.

***Our operating results have been, and could in the future be, adversely affected if we are unable to accurately forecast consumer demand for our products and services and adequately manage our inventory.***

To ensure adequate inventory supply, we must forecast inventory needs and expenses and place orders sufficiently in advance with our suppliers and contract manufacturers, based on our estimates of future demand for particular products and services. Failure to accurately forecast our needs may result in manufacturing delays or increased costs. Our ability to accurately forecast demand could be affected by many factors, including changes in consumer demand for our products and services, changes in demand for the products and services of our competitors, unanticipated changes in general market conditions, and the weakening of economic conditions or consumer confidence in future economic conditions, such as those caused by the COVID-19 pandemic. This risk will be exacerbated by the fact that we may not carry a significant amount of inventory and may not be able to satisfy short-term demand increases, or at times will have an excess in inventory that we are unable to effectively utilize. For example, at the onset of the COVID-19 pandemic, we experienced an unexpected increase in demand for our

Connected Fitness Products as a result of government shelter-in-place orders and other stay-at-home dynamics, which resulted in inventory shortages, delayed delivery timelines and delays in fulfilling support requests. If we fail to accurately forecast consumer demand, we may experience excess inventory levels or a shortage of products available for sale.

We have recently experienced a decrease in consumer demand and an increase in our inventory levels. Inventory levels in excess of consumer demand may result in inventory write-downs or write-offs and the sale of excess inventory at discounted prices, which would cause our gross margins to suffer and could impair the strength and premium nature of our brand. Further, lower than forecasted demand could also result in excess manufacturing capacity or reduced manufacturing efficiencies, which could result in lower margins. In periods when we experience a decrease in demand for our products and an increase in inventory, we may be unable to renegotiate our agreements with existing suppliers or partners on mutually acceptable terms and prevent us from fully utilizing firm purchase commitments. Although in certain instances our agreements allow us the option to cancel, reschedule, and adjust our requirements based on our business needs, our loss contingencies may include liabilities for contracts that we cannot cancel, reschedule or adjust with suppliers or partners. Further, we are required to evaluate goodwill impairment on an annual basis and between annual evaluations in certain circumstances, and future goodwill impairment evaluations may result in a charge to earnings. See “—*We may not successfully execute or achieve the expected benefits of our restructuring initiative, and our efforts may result in further actions and/or additional asset impairment charges and adversely affect our business.*” Conversely, if we underestimate consumer demand, our suppliers and manufacturers may not be able to deliver products to meet our requirements or we may be subject to higher costs in order to secure the necessary production capacity. See “—*Increases in component costs, long lead times, supply shortages, and supply changes could disrupt our supply chain and have an adverse effect on our business, financial condition, and operating results.*” An inability to meet consumer demand and delays in the delivery of our products to our customers could result in reputational harm and damaged customer relationships and have an adverse effect on our business, financial condition, and operating results.

***If we may not successfully execute or achieve the expected benefits of our restructuring initiative and other cost saving measures we may take in the future, and our efforts may result in further actions and/or additional asset impairment charges and adversely affect our business.***

In February 2022, we announced a restructuring plan, which primarily includes reducing our headcount, closing several assembly and manufacturing plants, including the completion and subsequent sale of the shell facility for our previously planned Peloton Output Park, closing and consolidating several distribution facilities, and shifting to third-party logistics providers in certain locations. Our restructuring initiative is intended to address the short-term health of our business as well as our long-term objectives and is based on our current estimates, assumptions and forecasts, which are subject to known and unknown risks and uncertainties, including whether we have targeted the appropriate areas for our cost-saving efforts and at the appropriate scale, and whether, if required in the future, we will be able to appropriately target any additional areas for our cost-saving efforts. As such, the actions we intend to take under the restructuring initiative and that we may decide to take in the future may not be successful in yielding our intended results and may not appropriately address either or both of the short-term and long-term strategy for our business. Additionally, implementation of the restructuring initiative and any other cost-saving initiatives may be costly and disruptive to our business, the expected costs and charges may be greater than we have forecasted, and the estimated cost savings may be lower than we have forecasted. In addition, our initiatives could result in personnel attrition beyond our planned reduction in headcount or reduce employee morale, which could in turn adversely impact productivity, including through a loss of continuity, loss of accumulated knowledge and/or inefficiency during transitional periods, or our ability to attract highly skilled employees. Unfavorable publicity about us or any of our strategic initiatives, including our restructuring initiative, could result in reputation harm and could diminish confidence in, and the use of, our products and services. See “—*Our success depends on our ability to maintain the value and reputation of the Peloton brand.*” The restructuring initiative has required, and may continue to require, a significant amount of management’s and other employees’ time and focus, which may divert attention from effectively operating and growing our business.

***If we are unable to anticipate consumer preferences and successfully develop and introduce new, innovative, and updated products and services in a timely manner, or effectively manage the introduction of new or enhanced products and services, our business may be adversely affected.***

Our success in maintaining and increasing our Subscriber base depends on our ability to identify and originate trends as well as to anticipate and react to changing consumer demands in a timely manner. Our products and services are subject to changing consumer preferences that cannot be predicted with certainty. If we are unable to introduce new or enhanced offerings in a timely manner, or our new or enhanced offerings are not accepted by our Subscribers, our competitors may introduce similar offerings faster than us, which could negatively affect our rate of growth. Moreover, our new offerings may not receive consumer acceptance as preferences could shift rapidly to different types of fitness and wellness offerings or away from these types of offerings altogether, and our future success depends in part on our ability to anticipate and respond to these changes. Failure to anticipate and respond in a timely manner to changing consumer preferences could lead to, among other things, lower subscription rates, lower sales, pricing pressure, lower gross margins, discounting of our existing Connected Fitness Products, and excess inventory levels. Even if we are successful in anticipating consumer preferences, our ability to adequately react to and address them will partially depend upon our continued ability to develop and introduce innovative, high-quality offerings. Development of new or enhanced products and services may require significant time and financial investment, which could result in increased costs and a reduction in our profit margins. For example, we have historically incurred higher levels of sales and marketing expenses accompanying each product and service introduction. Moreover, while we experienced a significant increase in our Subscriber base at the onset of the COVID-19 pandemic, the rate of the increase has since slowed down and, over the longer term, it remains uncertain how the COVID-19 pandemic will impact consumer demand for our products and services and consumer preferences generally. In addition, we have experienced and may continue to experience delays in the development and introduction of new or enhanced products and services due to the effects of the COVID-19 pandemic and other market constraints.

Moreover, we must successfully manage introductions of new or enhanced products and services, which could adversely impact the sales of our existing products and services. For instance, consumers may choose to forgo purchasing existing products or services in advance of new product and service launches, and we may experience higher returns from users of existing products. As we introduce new or enhanced products and services, we may face additional challenges managing a more complex supply chain and manufacturing process, including the time and cost associated with onboarding and overseeing additional suppliers, contract manufacturers, and logistics providers. We may also face challenges managing the inventory of new or existing products, which could lead to excess inventory and discounting of such products. In

addition, new or enhanced products or services may have varying selling prices and costs compared to legacy products and services, which could negatively impact our brand, gross margins and operating results.

***The connected fitness market is relatively new and, if the general market and specific demand for our products and services does not continue to grow, grows more slowly than we expect, or fails to grow as much as we expect, our business, financial condition, and operating results may be adversely affected.***

The connected fitness and wellness market is relatively new, rapidly growing, and largely unproven, and it is uncertain whether it will sustain high levels of demand and achieve wide market acceptance. Our success depends substantially on the willingness of consumers to widely adopt our products and services. We have had to educate consumers about our products and services through significant investment and provide quality content that is superior to the content and experiences provided by our competitors. Additionally, the fitness and wellness market at large is heavily saturated, and the demand for and market acceptance of new products and services in the market is uncertain. It is difficult to predict the future growth rates, if any, and size of our market. We cannot assure you that our market will develop or be sustained at current levels, that the public's interest in connected fitness and wellness will continue, or that our products and services will be widely adopted. If our market does not develop, develops more slowly than expected, or becomes saturated with competitors, or if our products and services do not achieve or sustain market acceptance, our business, financial condition, and operating results could be adversely affected.

***We have a limited operating history from which to predict our long-term performance, and our past financial results may not be indicative of our future performance. Further, our revenue growth rate is likely to slow as our business matures.***

We began operations in 2012, shipped our first Bike in 2014, and shipped our first Tread in 2018. We have a limited history of generating revenue. As a result of our short operating history, we have limited financial data that can be used to evaluate our current business. Therefore, our historical revenue growth should not be considered indicative of our future performance. In particular, we have experienced periods of high revenue growth since we began selling our Bike that we do not expect to continue as our business matures. Additionally, we experienced a significant increase in our Subscriber base at the onset of the COVID-19 pandemic which slowed as consumers were able to resume activity outside the home, and, it remains uncertain how the COVID-19 pandemic and other market constraints will impact consumer demand for our products and services over the long term. Estimates of future revenue growth are subject to many risks and uncertainties, and our future revenue may differ materially from our projections. We have encountered, and will continue to encounter, risks and difficulties frequently experienced by growing companies in rapidly changing industries, including market acceptance of our products and services, attracting and retaining Subscribers, and increasing competition and expenses as we expand our business. We cannot be sure that we will be successful in addressing these and other challenges we may face in the future, and our business may be adversely affected if we do not manage these risks successfully. In addition, we may not achieve sufficient revenue to attain or maintain positive cash flows from operations or profitability in any given period, or at all.

***The full impact of the COVID-19 pandemic is uncertain and cannot be predicted. The COVID-19 pandemic could worsen or its effects may be prolonged, including as a result of variants, which could have an adverse effect on our business, results of operations, and financial condition.***

COVID-19 has caused significant volatility in financial markets and has caused what could be an extended global recession. Public health problems resulting from COVID-19 and precautionary measures instituted by governments and businesses to mitigate its spread, including travel restrictions and quarantines, have and could continue to contribute to a general slowdown in the global economy, adversely impact our Members, employees, third-party suppliers, contract manufacturers, logistics providers and other business partners, and otherwise disrupt our operations. Changes in our operations in response to COVID-19 or employee illnesses resulting from the pandemic has resulted in inefficiencies or delays, including in sales, delivery, and product development efforts, and additional costs related to business continuity initiatives, that cannot be fully prevented or mitigated through succession and business continuity planning, employees working remotely or teleconferencing technologies.

COVID-19 and related reactions from governments and members of the public have had and may continue to have a negative impact on our business, liquidity, results of operations, and stock price due to the occurrence of some or all of the following events or circumstances, among others:

- our inability to manage our business effectively due to employees, including key employees, becoming ill, working from home inefficiently, and being unable to travel to our facilities;
- our and our third-party suppliers', contract manufacturers', logistics providers', and other business partners' inability to operate worksites, including manufacturing facilities, shipping and fulfillment centers, and our retail showrooms and production studios, due to employee illness or reluctance to appear at work, or "stay-at-home" regulations or recommendations;
- our inability to provide our Members with high-quality Member support due to changes to the delivery experience and our inability to provide in-home servicing of Connected Fitness Products due to safety risks and local government regulations related to COVID-19;
- a temporary suspension in sales of our Tread due to the Tread installation process requiring our delivery teams to enter the residences of our Members;
- prolonged delivery timelines and the implementation of curbside and "threshold" delivery, which requires our Members to self-install and set up their Bikes, due to work restrictions related to COVID-19;
- our inability to meet consumer demand and delays in the delivery of our products to our customers, resulting in reputational harm and damaged customer relationships;
- increased rates of post-purchase order cancellation, or consumer or consumer protection agency claims and litigation as a result of long delivery lead times and delivery reschedules;

- decreased sales and increased return rates due to a decrease in consumer discretionary spending or a decrease in consumer demand for our products;
- temporary inventory shortages caused by a combination of increased demand for our Connected Fitness Products that were difficult to predict with accuracy, and longer lead-times and component shortages in the manufacturing of our Connected Fitness Products, due to work restrictions related to COVID-19, import/export conditions such as port congestion, and local government orders;
- interruptions in our ability to offer live studio classes and produce new content;
- interruptions in manufacturing (including the sourcing of key components), shipment and delivery of our products; for example, in certain instances, we have temporarily closed certain of our field operations warehouses for short periods of time for the safety of our personnel and the implementation of safety measures such as deep cleanings following confirmed cases of COVID-19;
- disruptions of the operations of our third-party suppliers, which could impact our ability to purchase components at efficient prices and in sufficient amounts;
- reduced demand for our Connected Fitness Products and services, including due to any prolonged economic downturn that may occur;
- our inability to raise additional capital or the dilution of our common stock if we raise capital by issuing equity securities;
- volatility in the market price of our Class A common stock; and
- incurrence of significant increases to employee health care and benefits costs.

Sales of our Connected Fitness Products increased with the onset of the pandemic as we saw consumers invest in at-home fitness equipment with the imposition of government mandated stay-at-home orders. As a result of our increased sales, the price of our Class A common stock increased significantly with the onset of the COVID-19 pandemic, but has also fluctuated based on developments surrounding COVID-19. For example, when the effectiveness of the first COVID-19 vaccination was announced in November 2020, the stock price of our Class A common stock dropped, and as reports of COVID-19 increased during the 2020 holiday season, the stock price of our Class A common stock rose. It remains uncertain how the COVID-19 pandemic will impact our stock price over the long term.

The full extent of the impact of COVID-19 on our business and financial results will depend largely on future developments, including, without limitation, the duration, severity and trajectory of the pandemic (including the potential impact of variants of the virus), the development, availability, distribution, uptake and effectiveness of vaccines and treatments, guidance regarding and the imposition of protective public safety measures, companies' remote work policies, the impact on capital and financial markets and global supply chains, and the related impact on the financial circumstances of our Members (which may include consumer discretionary spending decreases, or upon the removal of lockdowns may cause consumers to go back to their pre-COVID routines), all of which are highly uncertain and cannot be predicted. See "*—Our operating results could be adversely affected if we are unable to accurately forecast consumer demand for our products and services and adequately manage our inventory.*" This situation is changing rapidly, and additional impacts may arise that we currently view as immaterial or that we are not aware of currently.

***We operate in a highly competitive market and we may be unable to compete successfully against existing and future competitors.***

Our products and services are offered in a highly competitive market. We face significant competition in every aspect of our business, including at-home fitness equipment and content, fitness clubs, in-studio fitness classes, and health and wellness apps. Moreover, we expect the competition in our market to intensify in the future as new and existing competitors introduce new or enhanced products and services that compete with ours.

Our competitors may develop, or have already developed, products, features, content, services, or technologies that are similar to ours or that achieve greater acceptance, may undertake more successful product development efforts, be more efficient at meeting consumer demand, create more compelling employment opportunities, or marketing campaigns, or may adopt more aggressive pricing policies. Our competitors may develop or acquire, or have already developed or acquired, intellectual property rights that significantly limit or prevent our ability to compete effectively in the public marketplace. In addition, our competitors may have significantly greater resources than us, allowing them to identify and capitalize more efficiently upon opportunities in new markets and consumer preferences and trends, quickly transition and adapt their products and services, devote greater resources to marketing and advertising or music licensing rights, or be better positioned to withstand substantial price competition. Due to the highly volatile and competitive nature of the industry in which we compete, we may face pressure to continually introduce new products, services and technologies, enhance existing products and services, effectively stimulate customer demand for new and upgraded products and services, and successfully manage the transition to these new and upgraded products and services. If we are not able to compete effectively against our competitors, they may acquire, engage and retain customers or generate revenue at the expense of our efforts, which could have an adverse effect on our business, financial condition, and operating results.

***We derive a significant majority of our revenue from sales of our Bike and Bike+. A decline in sales of our Bike and Bike+ would negatively affect our future revenue and operating results.***

Our Connected Fitness Products are sold in highly competitive markets with limited barriers to entry. Changes to our price structure, including with respect to delivery and installation pricing, product mix, the introduction by competitors of comparable products at lower price points, a maturing product lifecycle, a decline in consumer spending, or other factors (including factors disclosed herein) could result in a decline in our revenue derived from our Connected Fitness Products, which may have an adverse effect on our business, financial condition, and operating results. Because we derive a significant majority of our revenue from the sales of our Bike and Bike+, any material decline in sales of our Bike would have a pronounced impact on our future revenue and operating results.

***We rely on a limited number of suppliers, contract manufacturers, and logistics partners for our Connected Fitness Products. A loss of any of these partners could negatively affect our business.***

We manufacture certain components of our Connected Fitness Products in-house, and we also rely on a limited number of contract manufacturers and suppliers to manufacture and transport our Connected Fitness Products. If our internal manufacturing abilities are compromised in any way, we would be reliant on a limited number of contract manufacturers for all of our manufacturing needs. Our reliance on a limited number of contract manufacturers for each of our Connected Fitness Products also increases our risks, since we do not currently have alternative or replacement contract manufacturers beyond these key parties. In the event of interruption from any of our contract manufacturers, our own manufacturing capabilities, or suppliers, we may not be able to increase capacity from other sources or develop alternate or secondary sources without incurring material additional costs and substantial delays. Furthermore, a large portion of both our own and our contract manufacturers' primary facilities are located in Taiwan and China. Thus, our business could be adversely affected if one or more of our suppliers is impacted by a natural disaster, an epidemic such as the current COVID-19 pandemic, or other interruption at a particular location. In particular, the current COVID-19 pandemic has caused, and will likely continue to cause, interruptions in the development, manufacturing (including the sourcing of key components), and shipment of our Connected Fitness Products, which could adversely impact our revenue, gross margins, and operating results. Such interruptions may be due to, among other things, temporary closures of our facilities or those of our contract manufacturers, and other vendors in our supply chain; restrictions on or delays surrounding travel or the import/export of goods and services from certain ports that we use; and local quarantines or other public safety measures. Additionally, we may increase our reliance on third-party suppliers, manufacturers and other logistics partners. For example, in February 2022, we announced that, as part of our restructuring plan, we intend to close and consolidate several distribution facilities and shift to third-party logistics providers in certain locations. Our primary last mile partner currently relies on a network of independent contractors to perform last mile services for us in many markets. If any of these independent contractors, or the last mile partner as a whole, do not perform their obligations or meet the expectations of us or our Members, our brand, reputation and business could suffer. See *"—We have limited control over our suppliers, contract manufacturers, and logistics partners, which may subject us to significant risks, including the potential inability to produce or obtain quality products and services on a timely basis or in sufficient quantity."*

If we experience a significant increase in demand for our Connected Fitness Products that cannot be satisfied adequately through our existing supply channels, if we need to replace an existing supplier, manufacturer or partner, or if we find we need to engage additional suppliers, manufacturers and partners to support our operations, we may be unable to supplement or replace them under our required timing, at a quality standard to our satisfaction, or on market terms that are acceptable to us, which may undermine our ability to deliver our products to Members in a timely manner and otherwise impact our Members' experience. For example, if we require additional manufacturing support, it may take a significant amount of time to identify a manufacturer that has the capability and resources to build our products to our specifications in sufficient volume. See *"—Our operating results could be adversely affected if we are unable to accurately forecast consumer demand for our products and services and adequately manage our inventory."* Identifying suitable suppliers, manufacturers, and logistics partners is an extensive process that requires us to become satisfied with their quality control, technical capabilities, responsiveness and service, financial stability, regulatory compliance, and labor and other ethical practices. Accordingly, a loss of any of our significant suppliers, contract manufacturers, or logistics partners could have an adverse effect on our business, financial condition and operating results.

***We have limited control over our suppliers, contract manufacturers, and logistics partners, which may subject us to significant risks, including the potential inability to produce or obtain quality products and services on a timely basis or in sufficient quantity.***

We have limited control over our suppliers, contract manufacturers, and logistics partners, which subjects us to the following risks:

- inability to satisfy demand for our Connected Fitness Products;
- reduced control over delivery timing and related customer experience and product reliability;
- reduced ability to monitor the manufacturing process and components used in our Connected Fitness Products;
- limited ability to develop comprehensive manufacturing specifications that take into account any materials shortages or substitutions;
- variance in the manufacturing capability of our third-party manufacturers;
- price increases;
- failure of a significant supplier, manufacturer, or logistics partner to perform its obligations to us for technical, market, or other reasons;
- variance in the quality of services provided by our third-party last mile partners;
- difficulties in establishing additional supplier, manufacturer, or logistics partner relationships if we experience difficulties with our existing suppliers, manufacturers, or logistics partners;
- shortages of materials or components;
- misappropriation of our intellectual property;
- exposure to natural catastrophes, epidemics such as the COVID-19 pandemic, political unrest, terrorism, labor disputes, and economic instability resulting in the disruption of trade from foreign countries in which our Connected Fitness Products are manufactured or the components thereof are sourced;
- changes in local economic conditions in the jurisdictions where our suppliers, manufacturers, and logistics partners are located;
- the imposition of new laws and regulations, including those relating to labor conditions, quality and safety standards, imports, duties, tariffs, taxes, and other charges on imports, as well as trade restrictions and restrictions on currency exchange or the transfer of funds; and
- insufficient warranties and indemnities on components supplied to our manufacturers or performance by our partners.

We also rely on our logistics partners, including last mile partners, to complete a substantial percentage of our deliveries to customers, with the rest of the deliveries handled by our own last mile team. The current COVID-19 pandemic has required us to rely more heavily on our last mile partners in certain markets where we have had to temporarily quarantine our in-house delivery teams due to employee illness or where our in-house delivery teams' capacity is otherwise constrained, and we may in the future continue to increase our reliance on last mile partners. In

February 2022, we announced that, as part of our restructuring initiative, we intend to close and consolidate several distribution facilities and shift to third-party logistics providers in certain locations. Our primary last mile partner currently relies on a network of independent contractors to perform last mile services for us in many markets. If any of these independent contractors, or the last mile partner as a whole, do not perform their obligations or meet the expectations of us or our Members, our brand, reputation and business could suffer.

The occurrence of any of these risks, especially during seasons of peak demand, could cause us to experience a significant disruption in our ability to produce and deliver our products to our customers and could harm our brand and reputation.

***We depend upon third-party licenses for the use of music in our content. An adverse change to, loss of, or claim that we do not hold necessary licenses may have an adverse effect on our business, operating results, and financial condition.***

Music is an important element of the overall content that we make available to our Members. To secure the rights to use music in our content, we enter into agreements to obtain licenses from rights holders such as record labels, music publishers, performing rights organizations, collecting societies, artists, and other copyright owners or their agents. We pay royalties to such parties or their agents around the world.

The process of obtaining licenses involves identifying and negotiating with many rights holders, some of whom are unknown or difficult to identify, and implicates a myriad of complex and evolving legal issues across many jurisdictions, including open questions of law as to when and whether particular licenses are needed. At times, while we may hold the applicable license for certain music in North America, it may be difficult to obtain the license for the same music from the applicable international rights holders outside of North America. In addition, our music licenses may not contemplate some of the features and content that we may wish to add to our service, or new service offerings or revenue models that we may wish to launch. Rights holders also may attempt to take advantage of their market power to seek onerous financial terms from us. Our relationship with certain rights holders may deteriorate. We may elect not to renew certain agreements with rights holders for any number of reasons, or we may decide to explore different licensing schemes or economic structures with certain or all rights holders. Artists and/or artist groups may object and may exert public or private pressure on rights holders to discontinue or to modify license terms, or we may elect to discontinue use of an artist's catalog based on a number of factors, including actual or perceived reputational damage. Additionally, there is a risk that aspiring rights holders, their agents, or legislative or regulatory bodies will create or attempt to create new rights that could require us to enter into new license agreements with, and pay royalties to, newly defined groups of rights holders, some of which may be difficult or impossible to identify.

With respect to musical compositions, in addition to obtaining publishing rights, we generally need to obtain separate public performance rights. In the United States, public performance rights are typically obtained through intermediaries known as performing rights organizations, or PROs, which (a) issue blanket licenses with copyright users for the public performance of compositions in their repertory, (b) collect royalties under those licenses, and (c) distribute such royalties to copyright owners. We have agreements with each of the following PROs in the United States: the American Society of Composers, Authors and Publishers, or ASCAP, and Broadcast Music, Inc., or BMI, Global Music Rights, and SESAC. The royalty rates available to us from the PROs today may not be available to us in the future. Licenses provided by ASCAP and BMI currently are governed by consent decrees, which were issued by the DOJ in an effort to curb anti-competitive conduct. Removal of or changes to the terms or interpretation of these agreements could affect our ability to obtain licenses from these PROs on current and/or otherwise favorable terms, which could harm our business, operating results, and financial condition.

In other parts of the world, including in Canada and Europe, we obtain licenses for musical compositions either through local collecting societies representing publishers, or from publishers directly, or a combination thereof. We cannot guarantee that our licenses with collecting societies and our direct licenses with publishers provide full coverage for all of the musical compositions we use in our service in the countries in which we operate, or that we may enter in the future. Publishers, songwriters, and other rights holders who choose not to be represented by major or independent publishing companies or collecting societies have, and could in the future, adversely impact our ability to secure licensing arrangements in connection with musical compositions that such rights holders own or control, and could increase the risk of liability for copyright infringement.

Although we expend significant resources to seek to comply with applicable contractual, statutory, regulatory, and judicial frameworks, we cannot guarantee that we currently hold, or will always hold, every necessary right to use all of the music that is used on our service now or that may be used in our products and services in the future, and we cannot assure you that we are not infringing or violating any third-party intellectual property rights, or that we will not do so in the future. See *"—Risks Related to Intellectual Property."*

These challenges, and others concerning the licensing of music on our platform, may subject us to significant liability for copyright infringement, breach of contract, or other claims. For additional information, see *Note 8 - Commitments and Contingencies* in the Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this Quarterly Report on Form 10-Q and the section titled "Legal Proceedings" in Part II, Item 1 of this Quarterly Report on Form 10-Q.

***Our success depends on our ability to maintain the value and reputation of the Peloton brand.***

We believe that our brand is important to attracting and retaining Members. Maintaining, protecting, and enhancing our brand depends on the success of a variety of factors, such as: our marketing efforts; our ability to provide consistent, high-quality products, services, features, content, and support, and our ability to successfully secure, maintain, and defend our rights to use the "Peloton" mark, our "P" logo, and other trademarks important to our brand. We believe that the importance of our brand will increase as competition further intensifies and brand promotion activities may require substantial expenditures. Our brand could be harmed if we fail to achieve these objectives or if our public image were to be tarnished by negative publicity. Unfavorable publicity about us, our strategic initiatives, such as our restructuring initiative or our products, services, technology, customer service, content, personnel, and suppliers could diminish confidence in, and the use of, our products and services. For example, we have received reports of a number of injuries associated with our Tread+ product, and as a result, on May 5, 2021, we decided to issue a voluntary product recall of our Tread+, which we are conducting in collaboration with the CPSC. On the same day we also

issued a voluntary product recall of our Tread. As discussed further in “— Risks Related to Our Connected Fitness Products and Members” and “— Risks Related to Laws, Regulation, and Legal Proceedings,” the legal proceedings in which we have been named, the regulators’ investigations, and any other claims or proceedings involving us or our products, actions we take to address these matters, and any further publicity regarding any of the foregoing could harm our brand. Such negative publicity also could have an adverse effect on the size, engagement and loyalty of our Member base and result in decreased revenue, which could have an adverse effect on our business, financial condition, and operating results.

***Increases in component costs, long lead times, supply shortages, and supply changes could disrupt our supply chain and have an adverse effect on our business, financial condition, and operating results.***

Accurately forecasting and meeting customer demand partially depends on our ability to obtain timely and adequate delivery of components for our Connected Fitness Products. All of the components that go into the manufacturing of our Connected Fitness Products are sourced from a limited number of third-party suppliers, and some of these components are provided by a single supplier. Our contract manufacturers generally purchase these components on our behalf, subject to certain approved supplier lists, and we do not have long-term arrangements with most of our component suppliers. We are therefore subject to the risk of shortages and long lead times in the supply of these components and the risk that our suppliers discontinue or modify components used in our Connected Fitness Products. In addition, the lead times associated with certain components are lengthy and preclude rapid changes in design, quantities, and delivery schedules. Our ability to meet temporary unforeseen increases or decreases in demand has been, and may in the future be, impacted by our reliance on the availability of components from these sub-suppliers. We may in the future experience component shortages, and the predictability of the availability of these components may be limited. In the event of a component shortage or supply interruption from suppliers of these components, we may not be able to develop alternate sources in a timely manner. Developing alternate sources of supply for these components may be time-consuming, difficult, and costly and we may not be able to source these components on terms that are acceptable to us, or at all, which may undermine our ability to fill our orders in a timely manner. Any interruption or delay in the supply of any of these parts or components, or the inability to obtain these parts or components from alternate sources at acceptable prices and within a reasonable amount of time, would harm our ability to meet our scheduled Connected Fitness Product deliveries to our customers. Conversely, in periods when we experience a decrease in demand for our products and an increase in inventory, we may be unable to renegotiate our agreements or purchase commitments with existing suppliers or partners on mutually acceptable terms. See “—Our operating results could be adversely affected if we are unable to accurately forecast consumer demand for our products and services and adequately manage our inventory.”

Moreover, volatile economic conditions may make it more likely that our suppliers and logistics providers may be unable to timely deliver supplies, or at all, and there is no guarantee that we will be able to timely locate alternative suppliers of comparable quality at an acceptable price. In addition, international supply chains may be impacted by events outside of our control and limit our ability to procure timely delivery of supplies or finished goods and services. Since the beginning of 2018, importing and exporting has involved more risk, as there has been increasing rhetoric, in some cases coupled with legislative or executive action, from several U.S. and foreign leaders regarding tariffs against foreign imports of certain materials. Several of the components that go into the manufacturing of our Connected Fitness Products are sourced internationally, including from China, from where imports on specified products are subject to tariffs by the United States following the U.S. Trade Representative Section 301 Investigation. These issues appear to have been and could be further exacerbated by the continuation of the COVID-19 pandemic. We have seen, and may continue to see, increased congestion and/or new import/export restrictions implemented at ports that we rely on for our business. In many cases, we have had to secure alternative transportation, such as air freight, or use alternative routes, at increased costs to run our supply chain. These tariffs and other supply chain issues have an impact on our component costs and have the potential to have an even greater impact depending on the outcome of the current trade negotiations, which have been protracted and recently resulted in increases in U.S. tariff rates on specified products from China. Increases in our component costs could have a material effect on our gross margins. The loss of a significant supplier, an increase in component costs, or delays or disruptions in the delivery of components, could adversely impact our ability to generate future revenue and earnings and have an adverse effect on our business, financial condition, and operating results.

***Our business could be adversely affected from an accident, safety incident, or workforce disruption.***

Our internal manufacturing processes and related activities, as well as our in-house warehousing and last-mile logistics activities, could expose us to significant personal injury claims that could subject us to substantial liability. Health pandemics increase our exposure to these risks. For example, in connection with the COVID-19 pandemic, we have had to secure personal protective equipment, such as face masks and gloves, for our delivery teams, institute vaccination and testing policies and otherwise implement new methods of monitoring employee health, such as temperature checks. Our inability to timely adapt to changing norms and requirements around maintaining a safe workplace could cause employee illness, accidents, may not successfully prevent outbreaks, or may result in team discontent if we fail or if it is perceived that we are failing to protect the health and safety of our employees. Our liability insurance may not be adequate to cover fully all claims, and we may be forced to bear substantial losses from an accident or safety incident resulting from our manufacturing, warehousing, or last-mile activities. Additionally, if our employees decide to join or form a labor union, we may become party to a collective bargaining agreement, which could result in higher employee costs and increased risk of work stoppages. It is also possible that a union seeking to organize one subset of our employee population, such as the employees in our manufacturing facility, could also mount a corporate campaign, resulting in negative publicity and reputational harm or other impacts that require attention by our management team and our employees. Negative publicity, work stoppages, or strikes by unions could have an adverse effect on our business, prospects, financial condition, and operating results.

***Our business is affected by seasonality.***

Our business has historically been influenced by seasonal trends common to traditional retail selling periods, and we generate a disproportionate amount of sales activity related to our Connected Fitness Products during the period from November through February due in large part to seasonal holiday demand, New Year’s resolutions, and cold weather. For example, in fiscal 2018 and 2019, our second and third quarters combined each represented 63% of our total revenue. In fiscal 2020, we saw a significant increase in demand in the fourth quarter

related to the onset of COVID-19, and therefore only 54% of our total revenue was generated in our second and third quarters. In fiscal 2021, the ongoing COVID-19 pandemic and the recalls of our Tread products in the fourth quarter impacted our historical seasonal patterns, with the second and third fiscal quarters accounting for 58% of fiscal 2021 sales (excluding Precor sales which were consolidated beginning in the fourth fiscal quarter only of 2021). Over time, we expect the seasonality of our business to return, with pronounced increases in demand during our second and third quarters. Moreover, as a result of higher sales during the period from November through February, our working capital needs are typically greater during the second and third quarters of the fiscal year. As a result of quarterly fluctuations caused by these and other factors, comparisons of our operating results across different fiscal quarters may not be accurate indicators of our future performance. Furthermore, our rapid growth in recent years may obscure the extent to which seasonality trends have affected our business and may continue to affect our business. Accordingly, yearly or quarterly comparisons of our operating results may not be useful and our results in any particular period will not necessarily be indicative of the results to be expected for any future period. See “—Our quarterly operating results and other operating metrics may fluctuate from quarter to quarter, which makes these metrics difficult to predict.” Seasonality in our business can also be affected by introductions of new or enhanced products and services, including the costs associated with such introductions, as well as external factors beyond our control, such as the duration and trajectory of the COVID-19 pandemic.

***Our quarterly operating results and other operating metrics may fluctuate from quarter to quarter, which makes these metrics difficult to predict.***

Our quarterly operating results and other operating metrics have fluctuated in the past and may continue to fluctuate from quarter to quarter. Additionally, our limited operating history makes it difficult to forecast our future results. As a result, you should not rely on our past quarterly operating results as indicators of future performance. You should take into account the risks and uncertainties frequently encountered by companies in rapidly evolving markets. Our financial condition and operating results in any given quarter can be influenced by numerous factors, many of which we are unable to predict or are outside of our control, including:

- the continued market acceptance of, and the growth of the connected fitness and wellness market;
- evolving consumer demand and our ability to maintain and attract new Subscribers;
- our development and improvement of the quality of the Peloton experience, including, enhancing existing and creating new Connected Fitness Products, services, technology, features, and content;
- the continued development and upgrading of our proprietary technology platform;
- the timing and success of new product, service, feature, and content introductions by us or our competitors or any other change in the competitive landscape of our market;
- pricing pressure as a result of competition or otherwise;
- the timing and our ability to develop certain product solutions to enhance the safety of our Tread+ product to the satisfaction of the CPSC in connection with our voluntary product recall, which we are conducting in collaboration with the CPSC;
- delays or disruptions in our supply chain;
- errors in our forecasting of the demand for our products and services, which could lead to lower revenue or increased costs, or both;
- increases in marketing, sales, and other operating expenses that we may incur to grow and expand our operations and to remain competitive;
- short-term expenditures and initiatives we may undertake in furtherance of long-term cost savings, including our restructuring initiative announced in February 2022;
- the ability to maintain and open new showrooms;
- the continued maintenance and expansion of last mile delivery and maintenance services for our Connected Fitness Products, including through our reliance on last mile partners;
- successful expansion into international markets, including Canada, the United Kingdom, Germany, and Australia;
- seasonal fluctuations in subscriptions and usage of Connected Fitness Products by our Members, each of which may change as our products and services evolve or as our business grows;
- the diversification and growth of our revenue sources;
- our ability to maintain gross margins and operating margins;
- constraints on the availability of consumer financing or increased down payment requirements to finance purchases of our Connected Fitness Products;
- system failures or breaches of security or privacy;
- adverse litigation judgments, settlements, or other litigation-related costs, including content costs for past use;
- changes in the legislative or regulatory environment, including with respect to privacy, consumer product safety, and advertising, or enforcement by government regulators, including fines, orders, or consent decrees;
- fluctuations in currency exchange rates and changes in the proportion of our revenue and expenses denominated in foreign currencies;
- changes in our effective tax rate, including as a result of potential changes in tax laws proposed by the Biden administration and Democratic controlled Congress;
- changes in accounting standards, policies, guidance, interpretations, or principles; and
- changes in business or macroeconomic conditions, including the impact of the COVID-19 pandemic, lower consumer confidence, recessionary conditions, increased unemployment rates, or stagnant or declining wages.

Any one of the factors above or the cumulative effect of some of the factors above may result in significant fluctuations in our operating results.



The variability and unpredictability of our quarterly operating results or other operating metrics could result in our failure to meet our expectations or those of analysts that cover us or investors with respect to revenue or other operating results for a particular period. If we fail to meet or exceed such expectations, the market price of our Class A common stock could fall substantially, and we could face costly lawsuits, including securities class action suits. See “*Risks Related to the Ownership of our Class A Common Stock.*”

***Our passion and focus on delivering a high-quality and engaging Peloton experience may not maximize short-term financial results, which may yield results that conflict with the market's expectations and could result in our stock price being negatively affected.***

We are passionate about continually enhancing the Peloton experience with a focus on driving long-term Member engagement through innovation, immersive content, technologically advanced Connected Fitness Products, and community support, which may not necessarily maximize short-term financial results. We frequently make business decisions that may reduce our short-term financial results if we believe that the decisions are consistent with our goals to improve the Peloton experience, which we believe will improve our financial results over the long term. Additionally, in February 2022, we committed to a restructuring plan, which we anticipate will require short-term charges of approximately \$270 million. These decisions may not be consistent with the expectations of our stockholders and may not produce the long-term benefits that we expect, in which case our membership growth and Member engagement, and our business, financial condition, and operating results could be harmed.

***We rely on access to our production studios and the creativity of our fitness instructors to generate our class content. If we are unable to access or use our studios or if we are unable to attract and retain high-quality fitness instructors, we may not be able to generate interesting and attractive content for our classes.***

Most of the fitness and wellness content offered on our platform is produced in one of our four production studios, three of which are located in New York City, with some content produced outdoors or in non-Peloton studios. Due to our reliance on a limited number of studios in a concentrated location, any incident involving our studios, or affecting New York City at-large, including COVID-19 related public health and safety measures or other restrictions, could render our studios inaccessible or unusable and could inhibit our ability to produce and deliver new fitness and wellness content for our Members. For example, in April 2020, we decided to temporarily pause live production at both our New York and London studios to reduce the risk of exposure to our employees and their families to COVID-19. While we have since reopened our studios for live production, and taken a number of health and safety precautions in doing so, there is no guarantee that the COVID-19 pandemic or other incidents beyond our control will not result in future pauses to live production from our studios or other locations. Production of the fitness and wellness content on our platform is further reliant on the creativity of our fitness instructors who, with the support of our production team, plan and lead our classes. Our standard employment contract with our fitness instructors has a fixed, multi-year term, however, our instructors may leave Peloton prior to the end of their contracts. If we are unable to attract or retain creative and experienced instructors, we may not be able to generate content on a scale or of a quality sufficient to grow our business. If we fail to produce and provide our Members with interesting and attractive content led by instructors who engage them and who they can relate to, then our business, financial condition, and operating results may be adversely affected.

***Our acquisition of Precor presents risks, and we may not realize our anticipated strategic and financial goals from the acquisition.***

Risks we may face in connection with our acquisition and integration of Precor include:

- We may not realize the benefits we expect to receive from the transaction, such as anticipated synergies;
- We may have difficulties managing Precor's technologies and lines of business or retaining key personnel from Precor;
- The acquisition may not further our business strategy as we expected, we may not successfully integrate Precor as planned, there could be unanticipated adverse impacts on Precor's business, or we may otherwise not realize the expected return on our investments, which could adversely affect our business or operating results and potentially cause impairment to assets that we record as a part of an acquisition including intangible assets and goodwill;
- Our operating results or financial condition may be adversely impacted by (i) claims or liabilities related to Precor's business including, among others, claims from government agencies, terminated employees, current or former customers, consumers or business partners, or other third parties; (ii) pre-existing contractual relationships or lines of business of Precor that we would not have otherwise entered into, the termination or modification of which may be costly or disruptive to our business; (iii) unfavorable accounting treatment as a result of Precor's practices; and (iv) intellectual property claims or disputes;
- Precor has not been required to maintain an internal control infrastructure that would meet the standards of a public company, including the requirements of the Sarbanes-Oxley Act of 2002 (the "Sarbanes Oxley Act"). The costs that we may incur to implement such controls and procedures may be substantial and we could encounter unexpected delays and challenges in this integration. In addition, we may discover significant deficiencies or material weaknesses in the quality of Precor's financial and disclosure controls and procedures;
- As a result of the acquisition, we may have difficulty incorporating Precor's manufacturing and supply chain operations into our existing manufacturing and supply chain infrastructure, potentially resulting in new and unexpected operational complexities and costs;
- Precor operates in segments of the commercial market that we have less experience with, including traditional gyms, multifamily residences, hotels and college and corporate campuses, and expansion of our operations in these segments through the acquisition could present various integration challenges and result in increased costs and other unforeseen challenges;
- Precor serves customers in more than 100 countries worldwide, and as a result of the acquisition our operations have expanded into new jurisdictions, which could present significant integration challenges and result in significant increased risks and costs inherent in doing business in international markets (see “*We plan to continue our expansion into international markets, which will expose us to significant risks*”);

- Precor's employees in a number of countries around the world are now Peloton employees, and we may face new and unanticipated challenges in employing this significant workforce, including integrating these employees into our existing business units, providing benefits and working conditions that comply with the laws in jurisdictions in which we haven't operated before, and maintaining our One Peloton culture; and
- We may have failed to identify or assess the magnitude of certain liabilities, shortcomings or other risks in Precor's business prior to closing our acquisition of Precor, which could result in unexpected litigation or regulatory exposure, unfavorable accounting treatment, a diversion of management's attention and resources, and other adverse effects on our business, financial condition, and operating results.

The occurrence of any of these risks could have a material adverse effect on our business, financial condition, and operating results. See *"—We have engaged and in the future may engage in acquisition and disposition activities, which could require significant management attention, disrupt our business, fail to achieve the intended benefit, dilute stockholder value, and adversely affect our operating results."*

***We may experience delays and disruptions in the development and construction of Peloton Output Park and, once complete, we may not be successful in selling the facility, which could adversely impact our business and financial condition.***

In May 2021, we announced our plans to build a U.S.-based manufacturing facility in Troy Township, Ohio, which we named "Peloton Output Park." As of December 31, 2021, we have invested approximately \$30 million to build the facility, which we previously intended to use to manufacture our Connected Fitness Products in addition to our existing manufacturing facilities in Taiwan and our recently acquired Precor manufacturing facilities in North Carolina and Washington state. We currently anticipate investing an additional \$60 million to build the Peloton Output Park, which we intend to sell and currently expected to sell at a loss upon completion of the construction. The process of developing, constructing, and selling Peloton Output Park, is inherently complex. The development and construction of the new facility and its sale may cause significant disruption to our operations, divert management's attention and resources and will require significant capital expenditure, all of which could have a material adverse effect on our business, financial condition and operating results. If we encounter significant delays, cost overruns, engineering problems, equipment supply constraints, difficulty obtaining licenses and permits, or other serious challenges in developing and constructing Peloton Output Park, we may be unable to sell it or may be forced to sell it at a greater loss than we currently expect. Additionally, we previously anticipated using Peloton Output Park to manufacture our Connected Fitness Products in addition to our other manufacturing facilities. If we sell Peloton Output Park upon its completion, in the future we may not be successful in producing the amount and quality of Connected Fitness Products we anticipate across our manufacturing facilities and our operating results may suffer as a result. Our experience operating and manufacturing Connected Fitness Products at scale continues to evolve, and any delays or disruptions could result in interruptions in the development, manufacturing, and shipment of our Connected Fitness Products. We can give no assurance that the development of Peloton Output Park will be completed as planned or within the anticipated timeframe, or that we will recoup any of our investment in its development or realize the expected benefits of its sale, if any, or any additional manufacturing facilities that we seek to develop, construct, sell, or open and operate.

***We plan to continue our expansion into international markets, which will expose us to significant risks.***

We are continuing to expand our operations to other countries, which requires significant resources and management attention and subjects us to regulatory, economic, and political risks in addition to those we already face in the United States. There are significant risks and costs inherent in doing business in international markets, including:

- difficulty establishing and managing international operations and the increased operations, travel, infrastructure, including establishment of local delivery service and customer service operations, and legal compliance costs associated with locations in different countries or regions;
- the need to vary pricing and margins to effectively compete in international markets;
- the need to adapt and localize products for specific countries, including obtaining rights to third-party intellectual property, including music, used in each country;
- increased competition from local providers of similar products and services;
- the ability to protect and enforce intellectual property rights abroad;
- the need to offer engaging content and customer support in various languages and across various cultures;
- difficulties in understanding and complying with local laws, regulations, and customs in other jurisdictions;
- compliance with anti-bribery laws, such as the U.S. Foreign Corrupt Practices Act (the "FCPA"), and the U.K. Bribery Act 2010 (the "U.K. Bribery Act"), by us, our employees, and our business partners;
- complexity and other risks associated with current and future legal requirements in other countries, including legal requirements related to consumer protection, consumer product safety, and data privacy frameworks, such as the General Data Protection Regulation 2016/679 ("GDPR");
- varying levels of internet technology adoption and infrastructure, and increased or varying network and hosting service provider costs;
- tariffs and other non-tariff barriers, such as quotas and local content rules, as well as tax consequences;
- fluctuations in currency exchange rates and the requirements of currency control regulations, which might restrict or prohibit conversion of other currencies into U.S. dollars; and
- political or social unrest or economic instability in a specific country or region in which we operate, including, for example, the effects of "Brexit," which could have an adverse impact on our operations in that location.

In addition to expanding our operations into international markets through the sale of our Connected Fitness Products and the production of our platform content, we have, and may in the future, expand our international operations through acquisitions of, or investments in, foreign entities, which may result in additional operational costs and risks. For example, as a result of our October 2019 acquisition of Tonic, one of our manufacturing partners and a Taiwanese entity, we own and are responsible for managing manufacturing plants in Taiwan. This acquisition has required us to, among other things, fulfill Tonic's obligations under existing service contracts that are unrelated to our current business, address the difficulties of managing a workforce in a foreign country with different labor laws, customs, and language barriers, and successfully maintain relationships with Tonic's current suppliers and contract partners. Additionally, in April 2021, we completed our acquisition of Precor which serves customers in more than 100 countries worldwide. As a result, we need to increase our operations and efforts abroad, which could result in various integration challenges and amplify the various risks and costs of doing business in international markets described above.

We have limited experience with international regulatory environments and market practices and may not be able to penetrate or successfully operate in the markets we choose to enter. In addition, we may incur significant expenses as a result of our international expansion, and we may not be successful. In February 2022, we announced our restructuring initiative, pursuant to which we intend to further invest in our Tonic manufacturing facilities in Taiwan with the goal of increasing manufacturing efficiency of our core cardio products. We may not be able to realize the cost savings and benefits initially anticipated as a result of the restructuring initiative and the expected costs may be greater than expected. See *"—We may not successfully execute or achieve the expected benefits of our restructuring initiative, and our efforts may result in further actions and/or additional asset impairment charges and adversely affect our business."* We may face limited brand recognition in certain parts of the world that could lead to non-acceptance or delayed acceptance of our products and services by consumers in new markets. We may also face challenges to acceptance of our fitness and wellness content in new markets. Our failure to successfully manage these risks could harm our international operations and our plans for expansion into international markets, and have an adverse effect on our business, financial condition, and operating results.

***We have engaged and in the future may engage in acquisition and disposition activities, which could require significant management attention, disrupt our business, fail to achieve the intended benefit, dilute stockholder value, and adversely affect our operating results.***

As part of our business strategy, we have made and, in the future, may make investments in other companies, products, or technologies, including acquisitions that may result in our entering markets or lines of business in which we do not currently have expertise. For example, in June 2018, we acquired Neurotic Media to develop a proprietary music platform that our instructors use to curate class playlists, and in October 2019, we acquired Tonic, one of our manufacturing partners. In addition, in April 2021, we acquired Precor in order to establish U.S. manufacturing capacity, boost research and development capabilities, and accelerate our penetration of the commercial market.

We may not be able to find suitable acquisition candidates and we may not be able to complete acquisitions on favorable terms, if at all, in the future. If we do complete acquisitions, we may not ultimately strengthen our competitive position or achieve our goals, and any acquisitions we complete could be viewed negatively by Members, prospective Members, employees, or investors. Moreover, an acquisition, investment, or business relationship may result in unforeseen operating difficulties and expenditures, including disrupting our ongoing operations, diverting management from their primary responsibilities, subjecting us to additional liabilities, increasing our expenses, and adversely impacting our business, financial condition, and operating results. Some acquisitions may require us to spend considerable time, effort, and resources to integrate employees from the acquired business into our teams, and acquisitions of companies in lines of business in which we lack expertise may require considerable management time, oversight, and research before we see the desired benefit of such acquisitions. Therefore, we may be exposed to unknown liabilities and the anticipated benefits of any acquisition, investment, or business relationship may not be realized, if, for example, we fail to successfully integrate such acquisitions, or the technologies associated with such acquisitions, into our company. For example, in February 2022, we announced our restructuring initiative, pursuant to which intend to further invest in our Tonic manufacturing facilities in Taiwan with the goal of increasing manufacturing efficiency of our core cardio products. We may not be able to realize the cost savings and benefits initially anticipated as a result of the restructuring initiative and the expected costs may be greater than expected. See *"—We may not successfully execute or achieve the expected benefits of our restructuring initiative, and our efforts may result in further actions and/or additional asset impairment charges and adversely affect our business."*

To pay for any such acquisitions, we would have to use cash, incur debt, or issue equity securities, each of which may affect our financial condition or the value of our capital stock and could result in dilution to our stockholders. If we incur more debt it would result in increased fixed obligations and could also subject us to covenants or other restrictions that would impede our ability to manage our operations. Additionally, we may receive indications of interest from other parties interested in acquiring some or all of our business. The time required to evaluate such indications of interest could require significant attention from management, disrupt the ordinary functioning of our business, and could have an adverse effect on our business, financial condition, and operating results.

Further, in connection with our restructuring initiative we intend to divest some of our assets through site closures and the sale of Peloton Output Park. We may in the future decide to divest other assets or a business. In connection with these activities, it may be difficult to find or complete divestiture opportunities or alternative exit strategies under the desired timeline and on acceptable terms, if at all. These circumstances could delay the achievement of our strategic objectives or cause us to incur additional expenses with respect to the desired divestiture, or the price or terms of the divestiture may be less favorable than we had anticipated. Even following a divestiture or other exit strategy, we may have certain continuing obligations to former employees, customers, vendors, landlords or other third parties. We may also have continuing liabilities related to former employees, assets or businesses. Such obligations may have a material adverse impact on our results of operations and financial condition.

***Any major disruption or failure of our information technology systems or websites, or our failure to successfully implement upgrades and new technology effectively, could adversely affect our business and operations.***

Certain of our information technology systems are designed and maintained by us and are critical for the efficient functioning of our business, including the manufacture and distribution of our Connected Fitness Products, online sales of our Connected Fitness Products, and the ability of

our Members to access content on our platform. Our rapid growth has, in certain instances, strained these systems. As we grow, we continue to implement modifications and upgrades to our systems, and these activities subject us to inherent costs and risks associated with replacing and upgrading these systems, including, but not limited to, impairment of our ability to fulfill customer orders and other disruptions in our business operations. Further, our system implementations may not result in productivity improvements at a level that outweighs the costs of implementation, or at all. If we fail to successfully implement modifications and upgrades or expand the functionality of our information technology systems, we could experience increased costs associated with diminished productivity and operating inefficiencies related to the flow of goods through our supply chain.

In addition, any unexpected technological interruptions to our systems or websites would disrupt our operations, including our ability to timely ship and track product orders, project inventory requirements, manage our supply chain, sell our Connected Fitness Products online, provide services to our Members, and otherwise adequately serve our Members.

Online sales of our Connected Fitness Products through [www.onepeloton.com](http://www.onepeloton.com) represented a majority of our units sold in the United States for fiscal 2021. The operation of our direct to consumer e-commerce business through our website depends on our ability to maintain the efficient and uninterrupted operation of online order-taking and fulfillment operations. Any system interruptions or delays could prevent potential customers from purchasing our Connected Fitness Products.

Moreover, the ability of our Members to access the content on our platform could be diminished by a number of factors, including Members' inability to access the internet, the failure of our network or software systems, security breaches, or variability in Member traffic for our platform. Platform failures would be most impactful if they occurred during peak platform use periods, which generally occur before and after standard work hours. During these peak periods, there are a significant number of Members concurrently accessing our platform and if we are unable to provide uninterrupted access, our Members' perception of our platform's reliability and enjoyment of our products and services may be damaged, our revenue could be reduced, our reputation could be harmed, and we may be required to issue credits or refunds, or risk losing Members.

In the event we experience significant disruptions, we may be unable to repair our systems in an efficient and timely manner which could have a material adverse effect on our business, financial condition, and operating results.

***We are subject to payment processing risk.***

Our customers pay for our products and services using a variety of different payment methods, including credit and debit cards, gift cards, and online wallets. We rely on internal systems as well as those of third parties to process payment. Acceptance and processing of these payment methods are subject to certain rules and regulations and require payment of interchange and other fees. To the extent there are disruptions in our payment processing systems, increases in payment processing fees, material changes in the payment ecosystem, such as large re-issuances of payment cards, delays in receiving payments from payment processors, or changes to rules or regulations concerning payment processing, our revenue, operating expenses and results of operation could be adversely impacted. We leverage our third-party payment processors to bill Subscribers on our behalf. If these third parties become unwilling or unable to continue processing payments on our behalf, we would have to find alternative methods of collecting payments, which could adversely impact Subscriber acquisition and retention. In addition, from time to time, we encounter fraudulent use of payment methods, which could impact our results of operation and if not adequately controlled and managed could create negative consumer perceptions of our service.

***Cybersecurity risks could adversely affect our business and disrupt our operations.***

Threats to network and data security are increasingly diverse and sophisticated. Despite our efforts and processes to prevent breaches, our products and services, as well as our servers, computer systems, and those of third parties that we use in our operations are vulnerable to cybersecurity risks, including cyber-attacks such as viruses and worms, phishing attacks, denial-of-service attacks, physical or electronic break-ins, third-party or employee theft or misuse, and similar disruptions from unauthorized tampering with our servers and computer systems or those of third parties that we use in our operations, which could lead to interruptions, delays, loss of critical data, unauthorized access to Member data, a negative impact on our Members' experience, and loss of consumer confidence. In addition, we may be the target of email scams that attempt to acquire personal data or company assets. Despite our efforts to create security barriers to such threats, we may not be able to entirely mitigate these risks. Additionally, due to the current COVID-19 pandemic, there is an increased risk that we may experience cybersecurity related incidents as a result of our employees, service providers, and third parties working remotely on less secure systems for public health and safety reasons, including during government mandated shelter-in-place orders or otherwise as a result of pandemic conditions. Any cyber-attack that attempts to obtain our or our Members' data and assets, disrupt our service, or otherwise access our systems, or those of third parties we use, if successful, could adversely affect our business, and financial condition and operating results, be expensive to remedy, and damage our reputation. In addition, any such breaches may result in negative publicity, and adversely affect our brand, impacting demand for our products and services, and could have an adverse effect on our business, financial condition, and operating results.

***Our Member engagement on mobile devices depends upon effective operation with mobile and streaming device operating systems, networks, and standards that we do not control.***

A significant and growing portion of our Members access our platform through the Peloton App, and there is no guarantee that popular mobile devices or television streaming devices will continue to support the Peloton App or that device users will use the Peloton App rather than competing products. We are dependent on the interoperability of the Peloton App with popular mobile and television streaming operating systems that we do not control, such as Android and iOS, and any changes in such systems that degrade the functionality of our app offering or give preferential treatment to competitors could adversely affect our platform's usage on mobile devices and televisions. Additionally, in order to deliver high-quality content, it is important that the Peloton App offering is designed effectively and works well with a range of mobile and streaming technologies, systems, networks, and standards that we do not control. We may not be successful in developing relationships with

key participants in the mobile and streaming industry or in developing products that operate effectively with these technologies, systems, networks, or standards. In the event that it is more difficult for our Members to access and use our platform on their mobile devices or televisions, or Members find the Peloton App does not effectively meet their needs, our competitors develop products and services that are perceived to operate more effectively on mobile devices or televisions, or if our Members choose not to access or use our platform on their mobile devices or televisions or use products that do not offer access to our platform, our Member growth and Member engagement could be adversely impacted.

***If we are unable to anticipate appropriate pricing levels for our Connected Fitness Products and subscriptions, our business could be adversely affected.***

If we are unable to anticipate appropriate pricing levels for our portfolio of Connected Fitness Products and subscription services, whether due to consumer sentiment and spending power, brand perception, competitive pressure, or otherwise, our revenues and/or gross margins could be significantly reduced. Further, our decisions around the development of new products and services are in part based upon assumptions around pricing levels. If there is price compression in the market after these decisions are made, it could have a negative effect on our business.

***Changes in how we market our products and services could adversely affect our marketing expenses and subscription levels.***

We use a broad mix of marketing and other brand-building measures to attract Members. We use traditional television and online advertising, as well as third-party social media platforms such as Facebook, Twitter, and Instagram, as marketing tools. As television advertising, online, and social media platforms continue to rapidly evolve or grow more competitive, we must continue to maintain a presence on these platforms and establish a presence on new or emerging popular social media and advertising and marketing platforms. If we cannot use these marketing tools in a cost effective manner, if we fail to promote our products and services efficiently and effectively, or if our marketing campaigns attract negative media attention, our ability to acquire new Members and our financial condition may suffer and the price of our Class A common stock could decline. In addition, an increase in the use of television, online, and social media for product promotion and marketing may increase the burden on us to monitor compliance of such materials and increase the risk that such materials could contain problematic product or marketing claims in violation of applicable regulations.

***An economic downturn or economic uncertainty may adversely affect consumer discretionary spending and demand for our products and services.***

Our products and services may be considered discretionary items for consumers. Factors affecting the level of consumer spending for such discretionary items include general economic conditions, and other factors, such as consumer confidence in future economic conditions, fears of recession, the availability and cost of consumer credit and spending power, levels of unemployment, and tax rates. In recent years, the United States and other significant economic markets have experienced cyclical downturns and worldwide economic conditions remain uncertain. As global economic conditions continue to be volatile or economic uncertainty remains, including due to the COVID-19 pandemic, trends in consumer discretionary spending also remain unpredictable and subject to reductions and fluctuations. To date, our business has operated almost exclusively in a relatively strong economic environment and, therefore, we cannot be sure the extent to which we may be affected by recessionary conditions. Unfavorable economic conditions may lead consumers to delay or reduce purchases of our products and services and consumer demand for our products and services may not grow as we expect. For example, in the quarter ended December 31, 2021, we experienced reduced consumer demand, partially contributing to a decrease in Connected Fitness Products revenue relative to the same period last year. Our sensitivity to economic cycles and any related fluctuation in consumer demand for our products and services could have an adverse effect on our business, financial condition, and operating results.

***Our revenue could decline due to changes in credit markets and decisions made by credit providers.***

Historically, a majority of our customers have financed their purchase of our Connected Fitness Products through third-party credit providers with whom we have existing relationships. If we are unable to maintain our relationships with our financing partners, there is no guarantee that we will be able to find replacement partners who will provide our customers with financing on similar terms, and our ability to sell our Connected Fitness Products may be adversely affected. Further, reductions in consumer lending and the availability of consumer credit could limit the number of customers with the financial means to purchase our products. Higher interest rates could increase our costs or the monthly payments for consumer products financed through other sources of consumer financing. In the future, we cannot be assured that third-party financing providers will continue to provide consumers with access to credit or that available credit limits will not be reduced. Such restrictions or reductions in the availability of consumer credit, or the loss of our relationship with our current financing partners, could have an adverse effect on our business, financial conditions, and operating results.

***We have a limited operating history with which to predict the profitability of our subscription model. Additionally, we may introduce new revenue models in the future.***

The majority of our Subscribers are on month-to-month subscription terms and may cancel their subscriptions at any time. In addition, subscription renewals can fluctuate based on a variety of factors such as consumer preferences, competitive products and services and macroeconomic conditions. We have limited historical data with respect to subscription renewals, so we may be unable to accurately predict customer renewal rates. Additionally, prior renewal rates may not accurately predict future Subscriber renewal rates for a variety of reasons, such as Subscribers' dissatisfaction with our offerings and the cost of our subscriptions, macroeconomic conditions, or new offering introductions by us or our competitors. If our Subscribers do not renew their subscriptions, our revenue may decline and our business will suffer. Moreover, while we have experienced a significant increase in our Subscriber base since the outbreak of COVID-19, it remains uncertain how the COVID-19 pandemic will ultimately impact Subscriber renewal rates in the long-term.

Furthermore, in the future, we may offer new subscription products, implement promotions, or replace or modify current subscription models, any of which could result in additional costs. It is unknown how our Subscribers will react to new models and whether the costs or logistics of implementing these models will adversely impact our business. If the adoption of new revenue models adversely impacts our Subscriber relationships, then Subscriber growth, Subscriber engagement, and our business, financial condition, and operating results could be harmed.

***We track certain operational and business metrics with internal methods that are subject to inherent challenges in measurement, and real or perceived inaccuracies in such metrics may harm our reputation and negatively affect our business.***

We track certain operational and business metrics, including Total Workouts and Average Monthly Workouts per Connected Fitness Subscription, with internal methods, which are not independently verified by any third party and, in particular for the Peloton App, are often reliant upon an interface with mobile operating systems, networks and standards that we do not control. Our internal methods have limitations and our process for tracking these metrics may change over time, which could result in unexpected changes to our metrics, including the metrics we report. If the internal methods we use under-count or over-count metrics related to our Total Workouts, Average Monthly Workouts per Connected Fitness Subscription or other metrics as a result of algorithmic or other technical errors, the operational and business metrics that we report may not be accurate. In addition, limitations or errors with respect to how we measure certain operational and business metrics may affect our understanding of certain details of our business, which could affect our longer term strategies. If our operational and business metrics are not accurate representations of our business, market penetration, retention or engagement; if we discover material inaccuracies in our metrics; or if the metrics we rely on to track our performance do not provide an accurate measurement of our business, our reputation may be harmed, and our operating and financial results could be adversely affected.

***The forecasts of market growth may prove to be inaccurate, and even if the market in which we compete achieves the forecasted growth, we cannot assure you that our business will grow at a similar rate, if at all.***

Growth forecasts are subject to significant uncertainty and are based on assumptions and estimates that may not prove to be accurate. The forecasts relating to the expected growth in the connected fitness and wellness market, including estimates based on our own internal survey data, may prove to be inaccurate. Even if the market experiences the growth we forecast, we may not grow our business at a similar rate, or at all. Our growth is subject to many factors, including consumer demand and our success in implementing our business strategy, which are subject to many risks and uncertainties. See “—Our operating results could be adversely affected if we are unable to accurately forecast consumer demand for our products and services and adequately manage our inventory.”

***We or our Subscribers may be subject to sales and other taxes, and we may be subject to liabilities on past sales for taxes, surcharges, and fees.***

The application of indirect taxes, such as sales and use tax, subscription sales tax, value-added tax, provincial taxes, goods and services tax, business tax, and gross receipt tax, to businesses like ours and to our Subscribers is a complex and evolving issue. Significant judgment is required to evaluate applicable tax obligations. In many cases, the ultimate tax determination is uncertain because it is not clear how existing statutes apply to our business. One or more states, the federal government, or other countries may seek to impose additional reporting, record-keeping, or indirect tax collection obligations on businesses like ours that offer subscription services and other fitness offerings. New taxes could also require us to incur substantial costs to capture data and collect and remit taxes. If such obligations were imposed, the additional costs associated with tax collection, remittance, and audit requirements could have an adverse effect on our business, financial condition, and operating results.

***Covenants in the loan and security agreement governing our revolving credit facility may restrict our operations, and if we do not effectively manage our business to comply with these covenants, our financial condition could be adversely impacted.***

Our term loan and revolving credit facility contains various restrictive covenants, including, among other things, minimum liquidity and revenue requirements, restrictions on our ability to dispose of assets, make acquisitions or investments, incur debt or liens, make distributions to our stockholders, or enter into certain types of related party transactions. In particular, in addition to customary affirmative covenants, as well as customary covenants that restrict our ability to, among other things, incur additional indebtedness, sell certain assets, guarantee obligations of third parties, declare dividends or make certain distributions, and undergo a merger or consolidation or certain other transactions, our credit agreement, as recently amended, requires us to maintain a total level of liquidity of not less than \$250.0 million and maintain a minimum total four-quarter revenue level of \$3.0 billion (which are replaced with a covenant to maintain a minimum debt to adjusted EBITDA ratio upon our meeting a specified adjusted EBITDA threshold). These restrictions may restrict our current and future operations, particularly our ability to respond to certain changes in our business or industry, or take future actions. Pursuant to the agreement, we granted the parties thereto a security interest in substantially all of our assets. See *Note 7 - Debt* in the Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this Quarterly Report on Form 10-Q and the section titled “*Management’s Discussion and Analysis of Financial Condition and Results of Operations - Liquidity and Capital Resources - Amended Credit Agreement*” in Part I, Item 2 of this Quarterly Report on Form 10-Q.

Our ability to meet these restrictive covenants can be impacted by events beyond our control and we may be unable to do so. Our loan and security agreement provide that our breach or failure to satisfy certain covenants constitutes an event of default. Upon the occurrence of an event of default, our lenders could elect to declare all amounts outstanding under its debt agreements to be immediately due and payable. In addition, our lenders would have the right to proceed against the assets we provided as collateral pursuant to the loan and security agreement. If the debt under our loan and security agreement was to be accelerated, we may not have sufficient cash on hand or be able to sell sufficient collateral to repay it, which would have an immediate adverse effect on our business and operating results. This could potentially cause us to cease operations and result in a complete loss of your investment in our Class A common stock.

***We have identified a material weakness in our internal control over financial reporting, and if our remediation of such material weakness is not effective, or if we fail to develop and maintain an effective system of disclosure controls and internal control over financial reporting, our ability to produce timely and accurate financial statements or comply with applicable laws and regulations could be impaired.***

In the course of preparing our financial statements for fiscal 2021, we identified a material weakness in our internal control over financial reporting. A material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the annual or interim financial statements will not be prevented or detected on a timely basis. The material weakness identified related to reporting involving inventory. We have concluded that this material weakness arose because our controls were not effectively designed, documented and maintained to verify that our physical inventory counts were correctly counted and communicated for reporting in our financial statements.

To address our material weakness, we have made changes to our program and controls to automate inventory count and reporting, implementing a global inventory count policy and standard operating procedures, training on these standard operating procedures and implementing enhanced document review for validating the accuracy of key reports used in the inventory process. We will not be able to fully remediate this material weakness until these steps have been completed and have been operating effectively for a sufficient period of time. See Part II, Item 9A "Controls and Procedures" for additional information about this material weakness and our remediation efforts.

If we are unable to further implement and maintain effective internal control over financial reporting or disclosure controls and procedures, our ability to record, process and report financial information accurately, and to prepare financial statements within required time periods could be adversely affected, which could subject us to litigation or investigations requiring management resources and payment of legal and other expenses, negatively affect investor confidence in our financial statements and adversely impact our stock price. If we are unable to assert that our internal control over financial reporting is effective, or if our independent registered public accounting firm is unable to express an unqualified opinion as to the effectiveness of our internal control over financial reporting, investors may lose confidence in the accuracy and completeness of our financial reports, the market price of our Class A common stock could be adversely affected and we could become subject to litigation or investigations by the stock exchange on which our securities are listed, the SEC or other regulatory authorities, which could require additional financial and management resources.

Furthermore, we cannot assure you that the measures we have taken to date, and actions we may take in the future, will be sufficient to remediate the control deficiencies that led to our material weakness in our internal control over financial reporting or that they will prevent or avoid potential future material weaknesses. Our current controls and any new controls that we develop may become inadequate because of changes in conditions in our business. For example, as we expand our reliance on last mile partners, we may face additional challenges in accurately verifying physical inventory counts. Further, weaknesses in our disclosure controls and internal control over financial reporting may be discovered in the future. Any failure to develop or maintain effective controls or any difficulties encountered in their implementation or improvement could harm our operating results or cause us to fail to meet our reporting obligations and may result in a restatement of our financial statements for prior periods.

Any failure to implement and maintain effective internal control over financial reporting could adversely affect the results of periodic management evaluations and annual independent registered public accounting firm attestation reports regarding the effectiveness of our internal control over financial reporting that we are required to include in our periodic reports that are filed with the SEC. Ineffective disclosure controls and procedures and internal control over financial reporting could also cause investors to lose confidence in our reported financial and other information, which would likely have a negative effect on the trading price of our Class A common stock. In addition, if we are unable to continue to meet these requirements, we may not be able to remain listed on the Nasdaq Global Select Market.

***We are exposed to foreign currency exchange rate fluctuations.***

While we have historically transacted in U.S. dollars with the majority of our Subscribers and suppliers, we have transacted in some foreign currencies, such as the Euro, Canadian Dollar and U.K. Pound Sterling, and may transact in more foreign currencies in the future. Further, certain of our manufacturing agreements provide for fixed costs of our Connected Fitness Products and hardware in Taiwanese dollars but provide for payment in U.S. dollars based on the then-current Taiwanese dollar to U.S. dollar spot rate. Accordingly, changes in the value of foreign currencies relative to the U.S. dollar can affect our revenue and operating results. As a result of such foreign currency exchange rate fluctuations, it could be more difficult to detect underlying trends in our business and operating results. In addition, to the extent that fluctuations in currency exchange rates cause our operating results to differ from our expectations or the expectations of our investors, the trading price of our Class A common stock could be lowered. We use derivative instruments, such as foreign currency forward and option contracts, to hedge certain exposures to fluctuations in foreign currency exchange rates. The use of such hedging activities may not offset any or more than a portion of the adverse financial effects of unfavorable movements in foreign exchange rates over the limited time the hedges are in place and may introduce additional risks if we are unable to structure effective hedges with such instruments.

***Stockholder activism could disrupt our business, cause us to incur significant expenses, hinder execution of our business strategy, and impact our stock price.***

We have been and may in the future be subject to stockholder activism, which can arise in a variety of predictable or unpredictable situations, and can result in substantial costs and divert management's and our board's attention and resources from our business. Additionally, such stockholder activism could give rise to perceived uncertainties as to our long-term business, financial forecasts, future operations and strategic planning, harm our reputation, adversely affect our relationships with our Members and business partners, and make it more difficult to attract and retain qualified personnel. We may also be required to incur significant fees and other expenses related to activist matters, including for third-party advisors retained by us to assist in navigating activist situations. Our stock price could fluctuate due to trading activity associated with various announcements, developments, and share purchases over the course of an activist campaign or otherwise be adversely affected by the events, risks and uncertainties related to any such stockholder activism.

## **Risks Related to Our Connected Fitness Products and Members**

***Our products and services may be affected from time to time by design and manufacturing defects, real or perceived, that could adversely affect our business and result in harm to our reputation.***

We offer complex hardware and software products and services that can be affected by design and manufacturing defects. Sophisticated operating system software and applications, such as those offered by us, often have issues that can unexpectedly interfere with the intended operation of hardware or software products. Defects may also exist in components and products that we source from third parties, or may arise from upgrades or changes to hardware that we or our third party manufacturing partners may make in the ordinary course of a product's lifecycle. Actual or perceived defects may not be identified until after a product is in market. Any defects could impact our customer experience, tarnish our brand reputation or make our products and services unsafe and create a risk of environmental or property damage and/or personal injury. We may also become subject to the hazards and uncertainties of product liability claims and related litigation. For example, we have received reports of injuries associated with our Tread+ product, one of which led to the death of a child. As a result of the aforementioned injuries associated with these reported Tread+ incidents, in April 2021, the CPSC unilaterally issued a warning to consumers about the safety hazards associated with the Tread+ and is continuing to investigate the matter. While we do not agree with all of the assertions in the CPSC's warning, we initiated a voluntary recall of our Tread+ product in collaboration with the CPSC. The recall, the possibility that the CPSC or other regulators could assess penalties or fines against us, and the risk that the CPSC or we could determine to recall any other product now or in the future, may adversely impact our operating results, brand reputation, and business. In connection with the voluntary recall of the Tread+, we developed and released additional safety features, such as a passcode to protect against unauthorized use, and we are working to develop additional physical hardware to further enhance the safety of the product. If we are unable to develop a product solution to further enhance the safety of our Tread+ product, we may not be able to sell that product for a significant period of time, if ever, and may face substantial costs associated with the development of such features and implementation of the recall. In addition to the CPSC investigation, we are presently subject to class action litigation, private personal injury claims, and regulatory proceedings related to the Tread+ and Tread recalls that, regardless of their merits, could harm our reputation, divert management's attention from our operations, and result in substantial legal fees, judgments, fines, penalties, and other costs. Given that such proceedings are subject to uncertainty, there can be no assurance that such legal and regulatory proceedings, either individually or in the aggregate, will not have a material adverse effect on our stock price, business, results of operations, financial condition or cash flows. Furthermore, the occurrence of real or perceived defects in any of our products, now or in the future, could result in additional negative publicity, regulatory investigations, recalls, or lawsuits filed against us, particularly if Members or others who use or purchase our Connected Fitness Products are injured. Even if injuries are not the result of any defects, if they are perceived to be, we may incur expenses to defend or settle any claims or government inquiries and our brand and reputation may be harmed.

In addition, from time to time we may experience outages, service slowdowns, hardware issues, or software errors that affect our ability to deliver our fitness and wellness programming through our Connected Fitness platform. As a result, our services may not perform as anticipated and may not meet our expectations, or legal or regulatory requirements, or the expectations of our Members. There can be no assurance that we will be able to timely detect and fix all issues and defects in the hardware, software, and services we offer. Failure to do so could result in widespread technical and performance issues affecting our products and services and could lead to claims or investigations against us.

Design and manufacturing defects, real or perceived, and claims related thereto, may subject us to judgments or settlements that result in damages materially in excess of the limits of our insurance coverage. In addition, we may be exposed to recalls, product replacements or modifications, write-offs of inventory, property and equipment, or intangible assets, and significant warranty and other expenses such as litigation costs and regulatory fines. If we cannot successfully defend any large claim, maintain our general liability insurance on acceptable terms, or maintain adequate coverage against potential claims, our financial results could be adversely impacted. Further, quality problems could adversely affect the experience for users of our products and services, and result in harm to our reputation, loss of competitive advantage, poor market acceptance, reduced demand for our products and services, delay in new product and service introductions, and lost revenue.

***Our Members use their Connected Fitness Products, subscriptions, and fitness accessories to track and record their workouts. If our products fail to provide accurate metrics and data to our Members, our brand and reputation could be harmed and we may be unable to retain our Members.***

Our Members use their Connected Fitness Products, subscriptions, and fitness accessories, such as our heart rate monitor, to track and record certain metrics related to their workouts. Examples of metrics tracked on our platform includes heart rate, calories burned, distance traveled and Strive Score, and, in the case of the Bike, cadence, resistance, and output, and, in the case of the Tread, pace, speed, and elevation. Taken together, these metrics assist our Members in tracking their fitness journey and understanding the effectiveness of their Peloton workouts, both during and after a workout. We anticipate introducing new metrics and features in the future. If the software used in our Connected Fitness Products or on our platform malfunctions and fails to accurately track, display, or record Member workouts and metrics, it could negatively impact our Members' experience, and we could face claims alleging that our products and services do not operate as advertised. Such reports and claims could result in negative publicity, product liability and/or product safety claims, and, in some cases, may require us to expend time and resources to refute such claims and defend against potential litigation. If our products and services fail to provide accurate metrics and data to our Members, or if there are reports or claims of inaccurate metrics and data or claims of inaccuracy regarding the overall health benefits of our products and services in the future, our Members' experience may be negatively impacted, we may become the subject of negative publicity, litigation, regulatory proceedings, and warranty claims, and our brand, operating results, and business could be harmed.

***If we fail to offer high-quality Member support, our business and reputation will suffer.***

Once our Connected Fitness Products are purchased, our Members rely on our high-touch delivery and set up service to deliver and install their equipment in a professional and efficient manner. Our Members also rely on our support services to resolve any issues related to the use of our Connected Fitness Products and content. Providing a high-quality Member experience is vital to our success in generating word-of-mouth referrals to drive sales and for retaining existing Members. Due to the COVID-19 pandemic, our ability to provide high-quality Member support



has been significantly impacted. For example, due to COVID-19, we have at times been unable to provide in-home servicing of our Connected Fitness Products, we have at times had to pause and temporarily suspend the sale, delivery, and installation of the Tread, and delivery procedures for the Bike have been limited in some locations where we are unable to provide in-home delivery and set up services. Additionally, our increasing reliance on third-party last mile partners for in-home delivery and set up services may challenge our ability to control Members' experience of such services. In addition, the closure of our offices has forced our Member support staff to work from home, which may result in work-productivity issues or a decrease in efficiencies, particularly during times of high call volume as we have seen when delivery lead times get longer. The importance of high-quality support will increase as we expand our business and introduce new products and services. If we do not help our Members quickly resolve issues and provide effective ongoing support, our reputation may suffer and our ability to retain and attract Members, or to sell additional products and services to existing Members, could be harmed.

***We may be subject to warranty claims that could result in significant direct or indirect costs, or we could experience greater product returns than expected, either of which could have an adverse effect on our business, financial condition, and operating results.***

We generally provide a minimum 12-month limited warranty on all of our Connected Fitness Products. In addition, we permit returns of our Bikes or Treads by first-time purchasers for a full refund within 30 days of delivery. The occurrence of any defects, real or perceived, in our Connected Fitness Products could result in an increase in returns or make us liable for damages and warranty claims in excess of our current reserves, which could result in an adverse effect on our business prospects, liquidity, financial condition, and cash flows if returns or warranty claims were to materially exceed anticipated levels. We have experienced and may in the future experience higher product returns during periods where there are actual or perceived defects in our products or services or if there are changes in home fitness demand as consumers go back to their pre-COVID routines. Moreover, in light of changes we made to our delivery procedures in connection with the COVID-19 pandemic, it is possible that warranty claims may increase above historical rates, and we may be unable to satisfactorily validate and resolve warranty claims where the COVID-19 pandemic or other factors prevent us from performing in-home deliveries and/or service appointments. For example, if we are unable to resolve warranty claims through in-home service appointments, in some cases we have sent the Member a replacement Bike frame and have requested that they hold the impaired Bike frame until a later date when we can safely retrieve it.

In addition, we have been, and in the future could be, subject to costs related to product recalls, and we could incur significant costs to correct any defects, warranty claims, or other problems. Any negative publicity related to the perceived quality and safety of our products could affect our brand image, decrease consumer and Member confidence and demand, and adversely affect our financial condition and operating results. Also, while our warranty is limited to repairs and returns, warranty claims may result in litigation, the occurrence of which could have an adverse effect on our business, financial condition, and operating results. For example, we have received reports of a number of injuries associated with our Tread+ product, one of which led to the death of a child. As a result of the aforementioned injuries associated with these reported Tread+ incidents, in April 2021, the CPSC unilaterally issued a warning to consumers about the safety hazards associated with the Tread+ and is continuing to investigate the matter. After further discussion with the CPSC, in May 2021, we decided to issue a voluntary product recall of our Tread+, which we are conducting in collaboration with the CPSC. The Tread+ recall, the possibility that the CPSC could assess penalties or fines against us, and the risk that the CPSC or we could determine to recall any other product now or in the future, may adversely impact our operating results, brand reputation, and business. Furthermore, we are presently, and may in the future be, subject to warranty claims and lawsuits related to injuries sustained by Members or their friends and family members, or others who use or purchase the Tread+ and other Connected Fitness Products that, regardless of their merits, could harm our reputation, divert management's attention from our operations and result in substantial legal fees and other costs. See "*Our products and services may be affected from time to time by design and manufacturing defects, real or perceived, that could adversely affect our business and result in harm to our reputation.*"

In addition to warranties supplied by us, we also offer the option for customers to purchase third-party extended warranty and services contracts in some markets, which creates an ongoing performance obligation over the warranty period. Extended warranties are regulated in the United States on a state level and are treated differently by state. Outside the United States, regulations for extended warranties vary from country to country. Changes in interpretation of the insurance regulations or other laws and regulations concerning extended warranties on a federal, state, local, or international level may cause us to incur costs or have additional regulatory requirements to meet in the future. Our failure to comply with past, present, and future similar laws could result in reduced sales of our products, reputational damage, penalties, and other sanctions, which could have an adverse effect on our business, financial condition, and operating results.

***Regulations related to conflict minerals may cause us to incur additional expenses and could limit the supply and increase the costs of certain metals used in the manufacturing of our products.***

We are subject to requirements under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, which will require us to conduct due diligence on and disclose whether or not conflict minerals originating from certain geographic regions are necessary for the manufacture or functionality of our products contain. The implementation of these requirements could adversely affect the sourcing, availability, and pricing of the materials used in the manufacture of components used in our products. In addition, we will incur additional costs to comply with the potential disclosure requirements, including costs related to conducting diligence procedures to determine the sources of minerals that may be used or necessary to the production of our products and, if applicable, potential changes to products, processes, or sources of supply as a consequence of such due diligence activities. It is also possible that we may face reputational harm if we determine that certain of our products contain minerals not determined to be conflict free or if we are unable to alter our products, processes, or sources of supply to avoid such materials.

#### **Risks Related to Laws, Regulation, and Legal Proceedings**

***From time to time, we may be subject to legal proceedings, regulatory investigations or disputes, and governmental inquiries that could cause us to incur significant expenses, divert our management's attention, and materially harm our business, financial condition, and operating results.***

From time to time, we may be subject to claims, lawsuits, government investigations, and other proceedings involving products liability, competition and antitrust, intellectual property, privacy, consumer protection, securities, tax, labor and employment, commercial disputes, and

other matters that could adversely affect our business operations and financial condition. As we have grown, we have seen a rise in the number and significance of these disputes and inquiries. Injuries sustained by Members or their friends and family members, or others who use or purchase our Connected Fitness Products, have, and could in the future, subject us to regulatory proceedings and litigation by governance agencies and private litigants brought against us, that regardless of their merits, could harm our reputation, divert management's attention from our operations and result in substantial legal fees and other costs. Additionally, we have in the past been subject to intense media scrutiny, which exposes us to increasing regulation, government investigations, legal actions and penalties. For example, we are presently subject to a CPSC investigation and other litigation related to injuries sustained by Members and others who use or purchased the Tread+, and we have reporting obligations to safety regulators in all jurisdictions where we sell Connected Fitness Products, where reporting may trigger further regulatory investigations. See *"—Risks Related to Our Connected Fitness Products and Members—Our products and services may be affected from time to time by design and manufacturing defects, real or perceived, that could adversely affect our business and result in harm to our reputation."* In addition, the DOJ and DHS have subpoenaed us for documents and other information related to our reporting of the injuries associated with our products and the SEC is also investigating our public disclosures concerning these matters. We have also been named in several lawsuits related to these recalls. For example, the Company and certain of its officers have been named in a consolidated securities class action on behalf of a class consisting of individuals who purchased or otherwise acquired our Class A common stock between September 11, 2020 and May 5, 2021, alleging that the defendants made false and/or misleading statements in violation of Sections 10(b) and 20(a) of the Exchange Act and Rule 10b-5 promulgated thereunder related to the Tread+ recall. In addition, between May and November 2021, four shareholders filed verified shareholder derivative action lawsuits purportedly on behalf of the Company against certain of our executive officers and the members of our board of directors alleging breaches of fiduciary duties and violations of Section 14(a) of the Securities Exchange Act, and, for certain of the lawsuits, unjust enrichment, abuse of control, gross mismanagement, waste, and a claim for contribution under Sections 10(b) and 21D of the Exchange Act against our Chief Executive Officer and Chief Financial Officer. See *"—Risks Related to the Ownership of Our Class A Common Stock—The stock price of our Class A common stock has been, and will likely continue to be, volatile and you could lose all or part of your investment."* Separately, we have been named in putative securities class actions related to demand for our Connected Fitness Products. In particular, plaintiffs City of Hialeah Employees' Retirement System and Anastasia Deulina filed putative securities class action lawsuits purportedly on behalf of a class consisting of individuals who purchased or otherwise acquired our common stock between December 9, 2020 and November 4, 2021, alleging that the Company and certain of its officers made false and/or misleading statements in violation of Sections 10(b) and 20(a) of the Exchange Act and Rule 10b-5 promulgated thereunder.

Litigation, regulatory proceedings, such as the investigations described above, as well as related personal injury or class action claims and lawsuits, and securities and intellectual property infringement matters that we are currently facing or could face, can be protracted and expensive, and have results that are difficult to predict. Certain of these matters include speculative claims for substantial or indeterminate amounts of damages and include claims for injunctive relief. Additionally, our legal costs for any of these matters, either alone or in the aggregate could be significant. Adverse outcomes with respect to any of these legal or regulatory proceedings may result in significant settlement costs or judgments, penalties and fines, or require us to modify our products or services, make content unavailable, or require us to stop offering certain products, components, or features, all of which could negatively affect our membership and revenue growth. Even if these proceedings are resolved in our favor, the time and resources necessary to resolve them could divert the resources of our management and require significant expenditures. See *Note 8 - Commitments and Contingencies* in the Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this Quarterly Report on Form 10-Q and the section titled *"—Legal Proceedings"* in Part II, Item 1 of this Quarterly Report on Form 10-Q.

The results of litigation, investigations, claims, and regulatory proceedings cannot be predicted with certainty, and determining reserves for pending litigation and other legal and regulatory matters requires significant judgment. There can be no assurance that our expectations will prove correct, and even if these matters are resolved in our favor or without significant cash settlements, these matters, and the time and resources necessary to litigate or resolve them, could harm our business, financial condition, and operating results.

***We collect, store, process, and use personal data and other Member data, which subjects us to legal obligations and laws and regulations related to security and privacy, and any actual or perceived failure to meet those obligations could harm our business.***

We collect, process, store, and use a wide variety of data from current and prospective Members, including personal data, such as home addresses and geolocation. U.S. Federal, state, and international laws and regulations governing privacy, data protection, and e-commerce transactions impose obligations on what we can do with our Members' personal data. These obligations include heightened transparency about data collection, use and sharing practices, new data privacy rights, and rules in respect to cross-border data transfers, which carry significant enforcement penalties for non-compliance. These laws and regulations also require us to safeguard our Members' personal data. Although we have established security procedures to protect Member information, our or our third-party service providers' security and testing measures may not prevent security breaches. Further, advances in computer capabilities, new discoveries in the field of cryptography, inadequate facility security, or other developments may result in a compromise or breach of the technology we use to protect Member data. Any compromise of our security or breach of our Members' privacy could harm our reputation or financial condition and, therefore, our business.

In addition, a party who circumvents our security measures or exploits inadequacies in our security measures, could, among other effects, misappropriate Member data or other proprietary information, cause interruptions in our operations, or expose Members to computer viruses or other disruptions. Actual or perceived vulnerabilities may lead to claims against us. To the extent that the measures we or our third-party business partners have taken prove to be insufficient or inadequate, we may become subject to litigation, breach notification obligations, or regulatory or administrative sanctions, which could result in significant fines, penalties, or damages and harm to our reputation. Depending on the nature of the information compromised, in the event of a data breach or other unauthorized access to our Member data, we may also have obligations to notify Members about the incident and we may need to provide some form of remedy, such as a subscription to a credit monitoring service, for the individuals affected by the incident. A growing number of legislative and regulatory bodies have adopted consumer notification requirements in the event of unauthorized access to or acquisition of certain types of personal data. Such breach notification laws continue to evolve and may be inconsistent from one jurisdiction to another. Complying with these obligations could cause us to incur substantial costs and could increase negative publicity surrounding any incident that compromises Member data.

Furthermore, we may legally be required to disclose personal data pursuant to demands from individuals, privacy advocates, regulators, government agencies, and law enforcement agencies in various jurisdictions with conflicting privacy and security laws. This disclosure or refusal to disclose personal data may result in a breach of privacy and data protection policies, notices, laws, rules, court orders, and regulations and could result in proceedings or actions against us in the same or other jurisdictions, damage to our reputation and brand, and inability to provide our products and services to consumers in certain jurisdictions. Additionally, changes in the laws and regulations that govern our collection, use, and disclosure of Member data could impose additional requirements with respect to the retention and security of Member data, could limit our marketing activities, and have an adverse effect on our business, financial condition, and operating results.

Violations of applicable privacy laws or cybersecurity incidents could impact our business in a number of ways, such as a temporary suspension of some or all of our operating and/or information systems, damage our reputation, our relationships with customers, suppliers, vendors, and service providers and the Peloton brand and could result in lost data, lost sales, increased insurance premiums, substantial breach-notification and other remediation costs and lawsuits, as well as adversely affect results of operations. In addition, we may also face regulatory investigations with corresponding fines, civil claims including representative actions, and other class action type litigation (where individuals have suffered harm), potentially amounting to significant compensation or damages liabilities, as well as associated costs, diversion of internal resources, and reputational harm. We may also incur additional costs in the future related to the implementation of additional security measures to protect against new or enhanced data security and privacy threats, to comply with state, federal, and international laws that may be enacted to address personal data processing risks and data security threats, or to investigate or address potential or actual data security or privacy breaches.

***We are subject to governmental export and import controls and economic sanction laws that could subject us to liability and impair our ability to compete in international markets.***

The United States and various foreign governments have imposed controls, export license requirements, and restrictions on the import or export of certain technologies. Our products may be subject to U.S. export controls and compliance with applicable regulatory requirements regarding the export of our products and services may create delays in the introduction of our products and services in international markets, prevent our international Members from accessing our products and services, and, in some cases, prevent the export of our products and services to some countries altogether.

Furthermore, U.S. export control laws and economic sanctions prohibit the provision of products and services to countries, governments, and persons targeted by U.S. sanctions. Even though we take precautions to prevent our products from being provided to targets of U.S. sanctions, our products and services, including our firmware updates, could be provided to those targets or provided by our Members. Our failure to comply with these laws and regulations could have negative consequences, including government investigations, penalties, reputational harm and could harm our international and domestic sales and adversely affect our revenue.

We could be subject to future enforcement action with respect to compliance with governmental export and import controls and economic sanctions laws that result in penalties, costs, and restrictions on export privileges that could have an adverse effect on our business, financial condition, and operating results.

***Failure to comply with anti-corruption and anti-money laundering laws, including the FCPA and similar laws associated with our activities outside of the United States, could subject us to penalties and other adverse consequences.***

We operate a global business and may have direct or indirect interactions with officials and employees of government agencies or state-owned or affiliated entities. We are subject to the FCPA, the U.S. domestic bribery statute contained in 18 U.S.C. § 201, the U.S. Travel Act, the USA PATRIOT Act, the U.K. Bribery Act, and possibly other anti-bribery and anti-money laundering laws in countries in which we conduct activities. These laws that prohibit companies and their employees and third-party intermediaries from corruptly promising, authorizing, offering, or providing, directly or indirectly, improper payments or anything of value to foreign government officials, political parties, and private-sector recipients for the purpose of obtaining or retaining business, directing business to any person, or securing any advantage. In addition, U.S. public companies are required to maintain records that accurately and fairly represent their transactions and have an adequate system of internal accounting controls. In many foreign countries, including countries in which we may conduct business, it may be a local custom that businesses engage in practices that are prohibited by the FCPA or other applicable laws and regulations. We face significant risks if we or any of our directors, officers, employees, agents or other partners or representatives fail to comply with these laws and governmental authorities in the United States and elsewhere could seek to impose substantial civil and/or criminal fines and penalties which could have a material adverse effect on our business, reputation, operating results and financial condition.

We have implemented an anti-corruption compliance program and policies, procedures and training designed to foster compliance with these laws, however, our employees, contractors, and agents, and companies to which we outsource certain of our business operations, may take actions in violation of our policies or applicable law. Any such violation could have an adverse effect on our reputation, business, operating results and prospects.

Any violation of the FCPA, other applicable anti-corruption laws, or anti-money laundering laws could result in whistleblower complaints, adverse media coverage, investigations, loss of export privileges, severe criminal or civil sanctions and, in the case of the FCPA, suspension or debarment from U.S. government contracts, any of which could have a materially adverse effect on our reputation, business, operating results, and prospects. In addition, responding to any enforcement action may result in a significant diversion of management's attention and resources and significant defense costs and other professional fees.

***Changes in legislation in U.S. and foreign taxation of international business activities or the adoption of other tax reform policies, as well as the application of such laws, could adversely impact our financial position and operating results.***

Recent or future changes to U.S., U.K. and other foreign tax laws could impact the tax treatment of our earnings. For example, the U.S. government may enact significant changes to the taxation of business entities including, among others, the imposition of minimum taxes or surtaxes on certain types of income. We generally conduct our international operations through wholly owned subsidiaries, branches, or representative offices and report our taxable income in various jurisdictions worldwide based upon our business operations in those jurisdictions. Further, we are in the process of implementing an international structure that aligns with our financial and operational objectives as evaluated based on our international markets, expansion plans, and operational needs for headcount and physical infrastructure outside the United States. The intercompany relationships between our legal entities are subject to complex transfer pricing regulations administered by taxing authorities in various jurisdictions. Although we believe we are compliant with applicable transfer pricing and other tax laws in the United States, the United Kingdom, and other relevant countries, changes in such laws and rules may require the modification of our international structure in the future, which will incur costs, may increase our worldwide effective tax rate, and may adversely affect our financial position and operating results. In addition, significant judgment is required in evaluating our tax positions and determining our provision for income taxes.

During the ordinary course of business, there are many transactions and calculations for which the ultimate tax determination is uncertain. For example, our effective tax rates could be adversely affected by earnings being lower than anticipated in countries where we have lower statutory rates and higher than anticipated in countries where we have higher statutory rates, by changes in foreign currency exchange rates, or by changes in the relevant tax, accounting, and other laws, regulations, principles, and interpretations. As we operate in numerous taxing jurisdictions, the application of tax laws can be subject to diverging and sometimes conflicting interpretations by tax authorities of these jurisdictions. It is not uncommon for taxing authorities in different countries to have conflicting views with respect to, among other things, the manner in which the arm's-length standard is applied for transfer pricing purposes, or with respect to the valuation of intellectual property.

If U.S., U.K., or other jurisdictions' tax laws further change, if our current or future structures and arrangements are challenged by a taxing authority, or if we are unable to appropriately adapt the manner in which we operate our business, we may have to undertake further costly modifications to our international structure and our tax liabilities and operating results may be adversely affected.

#### **Risks Related to Our Intellectual Property**

***Our intellectual property rights are valuable, and any inability to protect them could reduce the value of our products, services, and brand.***

Our success depends in large part on our proprietary technology and our patents, trade secrets, trademarks, and other intellectual property rights. We rely on, and expect to continue to rely on, a combination of trademark, trade dress, domain name, copyright, trade secret and patent laws, as well as confidentiality and license agreements with our employees, contractors, consultants, and third parties with whom we have relationships, to establish and protect our technology brand and other intellectual property. However, our efforts to protect our intellectual property rights may not be sufficient or effective, especially as incidents of infringement on the Peloton brand increase, and any of our intellectual property rights may be challenged, which could result in them being narrowed in scope or declared invalid or unenforceable. There can be no assurance that our intellectual property rights will be sufficient to protect against others offering products, services, or technologies that infringe on our rights or are substantially similar to ours and that compete with our business.

Effective protection of patents, trademarks, and domain names is expensive and difficult to maintain, both in terms of application and registration costs as well as the costs of defending and enforcing those rights. As we have grown, we have sought to obtain and protect our intellectual property rights in an increasing number of countries, a process that can be expensive and may not always be successful. For example, the U.S. Patent and Trademark Office and various foreign governmental patent agencies require compliance with a number of procedural requirements to complete the patent application process and to maintain issued patents, and noncompliance or non-payment could result in abandonment or lapse of a patent or patent application, resulting in partial or complete loss of patent rights in a relevant jurisdiction. Further, intellectual property protection may not be available to us in every country in which our products and services are available. For example, some foreign countries have compulsory licensing laws under which a patent owner must grant licenses to third parties. In addition, many countries limit the enforceability of patents against certain third parties, including government agencies or government contractors. In these countries, patents may provide limited or no benefit.

In order to protect our brand and intellectual property rights, we spend significant resources to monitor and protect these rights. Litigation brought to protect and enforce our intellectual property rights can be costly, time-consuming, and distracting to management and could result in the impairment or loss of portions of our intellectual property. Furthermore, our efforts to enforce our intellectual property rights may be met with defenses, counterclaims, and countersuits attacking the validity and enforceability of our intellectual property rights. Accordingly, we may not be able to prevent third parties from infringing upon or misappropriating our intellectual property. Our failure to secure, protect, and enforce our intellectual property rights could seriously damage our brand and our business.

***We have been, and in the future may be, sued by third parties for alleged infringement of their proprietary rights.***

There is considerable patent and other intellectual property development activity in our market, and litigation, based on allegations of infringement or other violations of intellectual property, is frequent in the fitness and technology industries. Furthermore, it is common for individuals and groups to purchase patents and other intellectual property assets for the purpose of making claims of infringement to extract settlements from companies like ours. Our use of third-party content, including music content, software, and other intellectual property rights may be subject to claims of infringement or misappropriation. We cannot guarantee that our internally developed or acquired technologies and content do not or will not infringe the intellectual property rights of others. From time to time, our competitors or other third parties may claim that we are infringing upon or misappropriating their intellectual property rights, and we may be found to be infringing upon such rights. For additional information, see *Note 8 – Commitments and Contingencies* in the Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this Quarterly Report on Form 10-Q. Any claims or litigation could cause us to incur significant expenses and, if successfully asserted

against us, could require that we pay substantial damages or ongoing royalty payments, prevent us from offering our platform or services or using certain technologies, force us to implement expensive work-arounds, or impose other unfavorable terms. We expect that the occurrence of infringement claims is likely to grow as the market for fitness products and services grows and as we introduce new and updated products and offerings. Accordingly, our exposure to damages resulting from infringement claims could increase and this could further exhaust our financial and management resources. Further, during the course of any litigation, we may make announcements regarding the results of hearings and motions, and other interim developments. If securities analysts and investors regard these announcements as negative, the market price of our Class A common stock may decline. Even if intellectual property claims do not result in litigation or are resolved in our favor, these claims, and the time and resources necessary to resolve them, could divert the resources of our management and require significant expenditures. See "*Risks Related to Laws, Regulation, and Legal Proceedings*." Any of the foregoing could prevent us from competing effectively and could have an adverse effect on our business, financial condition, and operating results.

***We cannot compel third parties to license their music to us, and our business may be adversely affected if our access to music is limited. The concentration of control of content by major music licensors means that the actions of one or a few licensors may adversely affect our ability to provide our service.***

We enter into license agreements to obtain rights to use music in our service, including with major record companies (Sony Music Entertainment, Universal Music Group, and Warner Music Group), independent record labels, major music publishers (Sony/ATV Music Publishing, Universal Music Publishing Group, and Warner/Chappell Music), and independent music publishers and administrators who collectively hold the rights to a significant number of sound recordings and musical compositions.

Comprehensive and accurate ownership information for the musical compositions embodied in sound recordings is sometimes unavailable, or in some cases, impossible to obtain if withheld by the owners or administrators of such rights. In some cases, we obtain ownership information directly from music publishers, and in other cases we rely on the assistance of third parties to determine ownership information.

If the information provided to us or obtained by such third parties does not comprehensively or accurately identify the ownership of musical compositions, if we are unable to determine which musical compositions correspond to specific sound recordings, or if the same party does not own, administer, control or own all rights on a worldwide basis, it becomes difficult or impossible to identify the appropriate rights holders to whom to pay royalties. This may make it difficult to comply with the obligations of any agreements with those rights holders or to secure the appropriate licenses with all necessary parties.

Given the high level of content concentration in the music industry, the market power of a few licensors, and the lack of transparent ownership information for compositions, including on a worldwide basis, we may be unable to license a large amount of music or the music of certain popular artists, and our business, financial condition, and operating results could be materially harmed.

***We are a party to many music license agreements that are complex and impose numerous obligations upon us that may make it difficult to operate our business, and a breach of such agreements could adversely affect our business, operating results, and financial condition.***

Our license agreements are complex and impose numerous obligations on us, including obligations to, among other things:

- calculate and make payments based on complex royalty structures, which requires tracking usage of content in our service that may have inaccurate or incomplete metadata necessary for such calculation;
- provide periodic reports on the exploitation of the content in specified formats;
- represent that we will obtain all necessary publishing licenses and consents and pay all associated fees, royalties, and other amounts due for the licensing of musical compositions;
- comply with certain marketing and advertising restrictions;
- grant the licensor the right to audit our compliance with the terms of such agreements; and
- comply with certain security and technical specifications.

Certain of our license agreements also contain minimum guarantees or require that we make minimum guarantee or advance payments, which are not always tied to our number of Subscribers or stream counts for music used in our service. Accordingly, our ability to achieve and sustain profitability and operating leverage in part depends on our ability to increase our revenue through increased sales of Subscriptions on terms that maintain an adequate gross margin. Our license agreements that contain minimum guarantees typically have terms of between one and three years, but our Subscribers may cancel their subscriptions at any time. We rely on estimates to forecast whether such minimum guarantees and advances against royalties could be recouped against our actual content costs incurred over the term of the license agreement. To the extent that our estimates underperform relative to our expectations, and our content costs do not exceed such minimum guarantees and advance payments, our margins may be adversely affected.

Some of our license agreements also include so-called "most-favored nations" provisions, which require that certain terms (including material financial terms) are no less favorable than those provided to any similarly situated licensor. If agreements are amended or new agreements are entered into on more favorable terms, these most-favored nations provisions could cause our payment or other obligations to escalate substantially. Additionally, some of our license agreements require consent to undertake new business initiatives utilizing the licensed content (e.g., alternative distribution models), and without such consent, our ability to undertake new business initiatives may be limited and our competitive position could be impacted.

If we breach any obligations in any of our license agreements, or if we use content in ways that are found to exceed the scope of such agreements, we could be subject to monetary penalties or claims of infringement, and our rights under such agreements could be terminated.

In the past, we have entered into agreements that required us to make substantial payments to licensors to resolve instances of past use at the same time that we enter into go-forward licenses. These agreements may also include most-favored nations provisions. If triggered, these most favored nations provisions could cause our payments or other obligations under those agreements to escalate substantially. If we need to enter into additional similar agreements in the future, it could have a material adverse effect on our business, financial condition, and operating results.

***We face risks, such as unforeseen costs and potential liability in connection with content we produce, license, and distribute through our platform.***

As a producer and distributor of content, we face potential liability for negligence, copyright, and trademark infringement, or other claims based on the nature and content of materials that we produce, license, and distribute. We also may face potential liability for content used in promoting our service, including marketing materials. We may decide to remove content from our service, not to place certain content on our service, or to discontinue or alter our production of certain types of content if we believe such content might not be well received by our Members or could be damaging to our brand and business.

To the extent we do not accurately anticipate costs or mitigate risks, including for content that we obtain but ultimately does not appear on or is removed from our service, or if we become liable for content we produce, license or distribute, our business may suffer. Litigation to defend these claims could be costly and the expenses and damages arising from any liability could harm our results of operations. We may not be indemnified against claims or costs of these types and we may not have insurance coverage for these types of claims.

***Some of our products and services contain open source software, which may pose particular risks to our proprietary software, technologies, products, and services in a manner that could harm our business.***

We use open source software in our products and services and anticipate using open source software in the future. Some open source software licenses require those who distribute open source software as part of their own software product to publicly disclose all or part of the source code to such software product or to make available any derivative works of the open source code on unfavorable terms or at no cost. The terms of many 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 conditions or restrictions on our ability to provide or distribute our products or services. Additionally, we could face claims from third parties claiming ownership of, or demanding release of, the open source software or derivative works that we developed using such software, which could include our proprietary source code, or otherwise seeking to enforce the terms of the applicable open source license. These claims could result in litigation and could require us to make our software source code freely available, purchase a costly license, or cease offering the implicated products or services unless and until we can re-engineer them to avoid infringement. This re-engineering process could require us to expend significant additional research and development resources, and we cannot guarantee that we will be successful.

Additionally, the use of certain open source software can lead to greater risks than use of third-party commercial software, as open source licensors generally do not provide warranties or controls on the origin of software. There is typically no support available for open source software, and we cannot ensure that the authors of such open source software will implement or push updates to address security risks or will not abandon further development and maintenance. Many of the risks associated with the use of open source software, such as the lack of warranties or assurances of title or performance, cannot be eliminated, and could, if not properly addressed, negatively affect our business. We have processes to help alleviate these risks, including a review process for screening requests from our developers for the use of open source software, but we cannot be sure that all open source software is identified or submitted for approval prior to use in our products and services. Any of these risks could be difficult to eliminate or manage, and, if not addressed, could have an adverse effect on our business, financial condition, and operating results.

#### **Risks Related to Service Providers and Our Employees**

***We rely heavily on third parties for most of our computing, storage, processing, and similar services, and intend to increase our reliance on certain third parties such as last mile partners. Any disruption of or interference with our use of these third-party services could have an adverse effect on our business, financial condition, and operating results.***

We have outsourced our cloud infrastructure to third-party providers, and we currently use these providers to host and stream our services and content. We are therefore vulnerable to service interruptions experienced by these providers and we expect to experience interruptions, delays, or outages in service availability in the future due to a variety of factors, including infrastructure changes, human, hardware or software errors, hosting disruptions, and capacity constraints. Outages and capacity constraints could arise from a number of causes such as technical failures, natural disasters and global pandemics, fraud, or security attacks. Additionally, we currently rely and expect to increase our reliance on last mile partners for the delivery and installation of our products. The level or quality of service provided by these providers and partners, or regular or prolonged delays or interruptions in that service, could also affect the use of, and our Members' satisfaction with, our products and services and could harm our business and reputation. In addition, hosting costs will increase as membership engagement grows, which could harm our business if we are unable to grow our revenue faster than the cost of using these services or the services of similar providers.

Furthermore, our providers have broad discretion to change and interpret the terms of service and other policies with respect to us, and those actions may be unfavorable to our business operations. Our providers may also take actions beyond our control that could seriously harm our business, including discontinuing or limiting our access to one or more services, increasing pricing terms, terminating or seeking to terminate our contractual relationship altogether, or altering how we are able to process data in a way that is unfavorable or costly to us. Although we expect that we could obtain similar services from other third parties, if our arrangements with our current providers were terminated, we could experience interruptions on our platform and in our ability to make our content available to Members, as well as delays and additional expenses in arranging for alternative cloud infrastructure services.

Any of these factors could further reduce our revenue, subject us to liability, and cause our Subscribers to decline to renew their subscriptions, any of which could have an adverse effect on our business, financial condition, and operating results.

In addition, customers of certain of our providers have been subject to litigation by third parties claiming that the service and basic HTTP functions infringe their patents. If we become subject to such claims, although we expect our provider to indemnify us with respect to at least a portion of such claims, the litigation may be time consuming, divert management's attention, and, if our provider failed to indemnify us, adversely impact our operating results.

***Our future success depends on the continuing efforts of our key employees and our ability to attract and retain highly skilled personnel and senior management.***

Our future success depends, in part, on our ability to continue to identify, attract, develop, integrate, and retain qualified and highly skilled personnel, including senior management, engineers, producers, designers, product managers, logistics and supply chain personnel, retail managers, and fitness instructors. In particular, we are highly dependent on the services of our leadership team to the development of our business, future vision, and strategic direction. In February 2022, Barry McCarthy was appointed as our Chief Executive Officer and President, succeeding our co-founder John Foley, who became our Executive Chair. In addition, in connection with our restructuring plan, we announced the departure of other members of management. Our future performance will depend, in part, on the successful transition of the Chief Executive Officer position. If we do not successfully manage the transition, it could be viewed negatively by our customers, employees, investors, suppliers and other third-party partners, and could have an adverse impact on our business and results of operations. We also heavily rely on the continued service and performance of our senior management team, which provides leadership, contributes to the core areas of our business and helps us to efficiently execute our business, including with respect to strategic initiatives such as our restructuring plan. If members of our senior management team, including our executive leadership, become ill, or if we are otherwise unable to retain them, we may not be able to manage our business effectively and, as a result, our business and operating results could be harmed. If the senior management team, including any new hires that we make, fails to work together effectively and to execute our plans and strategies on a timely basis then our business and future growth prospects could be harmed.

Also imperative to our success are our fitness instructors, who we rely on to bring new, exciting, and innovative fitness and wellness content to our platform, and who act as brand ambassadors. The loss of any key personnel could make it more difficult to manage our brand, operations and research and development activities, could reduce our employee retention and revenue, and impair our ability to compete. Although we have entered into employment offer letters with our key personnel, these agreements have no specific duration and constitute at-will employment. We do not maintain key person life insurance policies on any of our employees.

Competition for highly skilled personnel is often intense, especially in New York City, where we have a substantial presence and need for highly skilled personnel. We may not be successful in attracting, integrating, or retaining qualified personnel to fulfill our current or future needs. We have from time to time experienced, and we expect to continue to experience, difficulty in hiring and retaining highly skilled employees with appropriate qualifications. In addition, job candidates and existing employees often consider the value of the equity awards they receive in connection with their employment. If the perceived value of our Class A common stock declines, it may adversely affect our ability to hire or retain highly skilled employees. In addition, we may periodically change our equity compensation practices, which may include reducing the number of employees eligible for equity awards or reducing the size of equity awards granted per employee. If we are unable to attract, integrate, or retain the qualified and highly skilled personnel required to fulfill our current or future needs, our business and future growth prospects could be harmed.

***If we cannot maintain our "One Peloton" culture, we could lose the innovation, teamwork, and passion that we believe contribute to our success and our business may be harmed.***

We believe that a critical component of our success has been our corporate culture. We have invested substantial time and resources in building our "One Peloton" culture, which is based on the idea that if we work together, we will be more efficient and perform better because of one another. As we continue to grow, including geographically expanding our presence outside of our headquarters in New York City we will need to maintain our "One Peloton" culture among our employees, dispersed across various geographic regions. Impacts resulting from the COVID-19 pandemic have also required us to make substantial changes to the way that the vast majority of our employee population does their work, and we have faced new and unforeseen challenges arising from the management of remote, geographically dispersed teams. Our response to the changing work environment has included a number of employee-focused benefits initiatives, such as child care and work from home technology reimbursements, which are aimed at increasing productivity and employee morale and which have increased our costs. As we continue to develop our infrastructure, and particularly in light of the reduction in headcount as part of our restructuring initiative that was announced in February 2022, we may find it difficult to maintain valuable aspects of our culture, to prevent a negative effect on employee morale or attrition beyond our planned reduction in headcount, and to attract competent personnel who are willing to embrace our culture. Any failure to preserve our culture could negatively affect our future success, including our ability to retain and recruit personnel and to effectively focus on and pursue our corporate objectives.

**Risks Related to the Ownership of Our Class A Common Stock**

***The stock price of our Class A common stock has been, and will likely continue to be, volatile and you could lose all or part of your investment.***

The market price of our Class A common stock has been, and will likely continue to be, volatile. Since shares of our Class A common stock were sold in our IPO in September 2019 at a price of \$29.00 per share, our stock price has ranged from \$17.70 to \$171.09 through January 31, 2022. In addition, the trading prices of securities of technology companies in general have been highly volatile. Moreover, while the market price of the common stock of many technology companies have fallen significantly since the outbreak of the COVID-19 pandemic, the trading price of our Class A common stock will have fluctuated and initially increased. There are no assurances that the trading price of our Class A common stock will

increase, decrease, or will continue at this level for any period of time and the extent to which, and for how long, the COVID-19 pandemic may impact the market price of our Class A common stock is unclear. Moreover, the trading price of our Class A common stock could experience a significant decrease once the longer-term scope and impact of COVID-19 is better understood, the public returns to their pre-COVID-19 pandemic routines, or due to other factors beyond our control.

In addition to the factors discussed in this Quarterly Report on Form 10-Q, the market price of our Class A common stock may fluctuate significantly in response to numerous factors, many of which are beyond our control, including:

- our ability to execute and realize the benefits of strategic plans, such as the restructuring initiative we announced in February 2022;
- impacts from the COVID-19 pandemic, for example, consumer demand and economic volatility or uncertainty;
- overall performance of the equity markets and the performance of technology companies in particular;
- variations in our operating results, cash flows, and other financial metrics and non-financial metrics, and how those results compare to analyst expectations;
- changes in the financial projections we may provide to the public or our failure to meet these projections;
- the timing and our ability to develop certain product solutions to enhance the safety of our Tread+ product to the satisfaction of the CPSC in connection with the Company's voluntary safety recall, which it is conducting in collaboration with the CPSC;
- failure of securities analysts to initiate or maintain coverage of us, changes in financial estimates by any securities analysts who follow our company, or our failure to meet these estimates or the expectations of investors;
- recruitment, satisfaction or departure of key personnel;
- the economy as a whole and market conditions in our industry;
- our acquisition of Precor or other future investments, acquisitions or dispositions;
- negative publicity related to problems in our manufacturing or the real or perceived quality of our products, as well as the failure to timely launch new products or services that gain market acceptance;
- rumors and market speculation involving us or other companies in our industry;
- announcements by us or our competitors of new products, services, features and content, significant technical innovations, acquisitions, dispositions, strategic partnerships, joint ventures, or capital commitments;
- new laws or regulations or new interpretations of existing laws or regulations applicable to our business;
- lawsuits threatened or filed against us, litigation involving our industry, or both;
- developments or disputes concerning our or other parties' products, services, or intellectual property rights;
- other events or factors, including those resulting from war, incidents of terrorism, or responses to these events;
- the expiration of contractual lock-up or market standoff agreements; and
- sales of shares of our Class A common stock by us or our stockholders.

In addition, the stock markets have experienced extreme price and volume fluctuations that have affected and continue to affect the market prices of equity securities of many companies. Stock prices of many companies have fluctuated in a manner unrelated or disproportionate to the operating performance of those companies. In the past, stockholders have instituted securities class action litigation following periods of market volatility. In April and May 2021, two shareholders filed putative class actions against the Company, our Chief Executive Officer, and our Chief Financial Officer, purportedly on behalf of a class consisting of those individuals who purchased or otherwise acquired our Class A common stock between September 11, 2020 and May 5, 2021, alleging that the defendants made false and/or misleading statements in violations of Sections 10(b) and 20(a) of the Exchange Act and Rule 10b-5 promulgated thereunder. In addition, in May, August, and November 2021, four shareholders filed verified shareholder derivative action lawsuits purportedly on behalf of the Company against certain of our executive officers and the members of our board of directors alleging breaches of fiduciary duties and violations of Section 14(a) of the Securities Exchange Act, and, for three of the lawsuits, unjust enrichment, abuse of control, gross mismanagement, waste, and a claim for contribution under Sections 10(b) and 21D of the Exchange Act against our Chief Executive Officer and Chief Financial Officer. In November and December 2021, two purported shareholders filed putative class actions against the Company, our Chief Executive Officer, President, and Chief Financial Officer, purportedly on behalf of a class consisting of those individuals who purchased or otherwise acquired our common stock between December 9, 2020 and November 4, 2021, alleging that the defendants made false and/or misleading statements in violation of Sections 10(b) and 20(a) of the Exchange Act and Rule 10b-5 promulgated thereunder. These lawsuits and any other securities litigation actions could subject us to substantial costs, divert resources and the attention of management from our business, and adversely affect our business. See "*Risks Related to Laws, Regulation, and Legal Proceedings.*"

***Sales of a substantial amount of our Class A common stock in the public markets, or the perception that such sales might occur, could cause the price of our Class A common stock to decline.***

The market price of our Class A common stock could decline as a result of sales of a substantial number of shares of our Class A common stock in the public market in the near future, or the perception that these sales might occur. Many of our existing security holders have substantial unrecognized gains on the value of the equity they hold, and may take, or attempt to take, steps to sell, directly or indirectly, their shares or otherwise secure, or limit the risk to, the value of their unrecognized gains on those shares.

There were a total of 331,447,145 shares of our Class A common stock and Class B common stock outstanding as of December 31, 2021. All shares of our Class A common stock and Class B common stock are freely tradable, except for certain limitations, including with respect to holding periods, on any shares purchased by our "affiliates" as defined in Rule 144 under the Securities Act of 1933, as amended, or the Securities Act.



Further, certain holders of our common stock have rights, subject to some conditions, to require us to file registration statements for the public resale of the Class A common stock issuable upon conversion of such shares or to include such shares in registration statements that we may file for us or other stockholders. Sales of our shares pursuant to registration rights may make it more difficult for us to sell equity securities in the future at a time and at a price that we deem appropriate. These sales also could cause the trading price of our Class A common stock to fall and make it more difficult for you to sell shares of our Class A common stock.

In addition, as of December 31, 2021, we had 3,656,180 shares of Class A common stock underlying restricted stock units that were awarded but not yet vested, and stock options outstanding that, if fully exercised, would result in the issuance of 40,724,871 shares of Class B common stock and 16,902,677 shares of Class A common stock. Subject to the satisfaction of applicable vesting requirements, and limitations applicable to shares held by our affiliates, the vested restricted stock and shares issued upon exercise of outstanding stock options will be available for immediate resale in the open market.

***The dual class structure of our common stock has the effect of concentrating voting control with our directors, executive officers, and certain other holders of our Class B common stock; this will limit or preclude your ability to influence corporate matters, including the election of directors and the approval of any change of control transaction.***

Our Class B common stock has 20 votes per share and our Class A common stock has one vote per share. As of December 31, 2021, our directors, executive officers, and holders of more than 5% of our common stock, and their respective affiliates, held a majority of the voting power of our capital stock. Because of the twenty-to-one voting ratio between our Class B and Class A common stock, the holders of our Class B common stock collectively control a substantial majority of the combined voting power of our common stock and therefore are able to control all matters submitted to our stockholders for approval until the earlier of (i) the date specified by a vote of the holders of 66 2/3% of the then outstanding shares of Class B common stock, (ii) ten years from the closing of the IPO, and (iii) the date the shares of Class B common stock cease to represent at least 1% of all outstanding shares of our common stock. This concentrated control limits or precludes your ability to influence corporate matters for the foreseeable future, including the election of directors, amendments of our organizational documents, and any merger, consolidation, sale of all or substantially all of our assets, or other major corporate transaction requiring stockholder approval. In addition, this may prevent or discourage unsolicited acquisition proposals or offers for our capital stock that you may feel are in your best interest as one of our stockholders.

Future transfers by holders of Class B common stock will generally result in those shares converting to Class A common stock, subject to limited exceptions, such as certain permitted transfers effected for estate planning purposes. The conversion of Class B common stock to Class A common stock will have the effect, over time, of increasing the relative voting power of those holders of Class B common stock who retain their shares in the long term.

***The dual class structure of our common stock may adversely affect the trading market for our Class A common stock.***

Certain stock index providers, such as S&P Dow Jones, exclude companies with multiple classes of shares of common stock from being added to certain stock indices, including the S&P 500. In addition, several stockholder advisory firms and large institutional investors oppose the use of multiple class structures. As a result, the dual class structure of our common stock may prevent the inclusion of our Class A common stock in such indices, may cause stockholder advisory firms to publish negative commentary about our corporate governance practices or otherwise seek to cause us to change our capital structure, and may result in large institutional investors not purchasing shares of our Class A common stock. Any exclusion from stock indices could result in a less active trading market for our Class A common stock. Any actions or publications by stockholder advisory firms or institutional investors critical of our corporate governance practices or capital structure could also adversely affect the value of our Class A common stock.

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

We have never declared or paid any cash dividends on our common stock and do not intend to pay any cash dividends in the foreseeable future. Additionally, our ability to pay dividends on our common stock is limited by the restrictions under the terms of our loan and security agreement. We anticipate that for the foreseeable future we will retain all of our future earnings for use in the development of our business and for general corporate purposes. Any determination to pay dividends in the future will be at the discretion of our Board of Directors. Accordingly, investors must rely on sales of their Class A common stock after price appreciation, which may never occur, as the only way to realize any future gains on their investments.

***Provisions in our charter documents and under Delaware law could make an acquisition of us, which may be beneficial to our stockholders, more difficult and may limit attempts by our stockholders to replace or remove our current management.***

Provisions in our restated certificate of incorporation and amended and restated bylaws may have the effect of delaying or preventing a merger, acquisition or other change of control of our company that the stockholders may consider favorable. In addition, because our Board of Directors is responsible for appointing the members of our management team, these provisions may frustrate or prevent any attempts by our stockholders to replace or remove our current management by making it more difficult for stockholders to replace members of our Board of Directors. Among other things, our restated certificate of incorporation and amended and restated bylaws include provisions that:

- provide that our Board of Directors is classified into three classes of directors with staggered three-year terms;
- permit the Board of Directors to establish the number of directors and fill any vacancies and newly-created directorships;
- require super-majority voting to amend some provisions in our restated certificate of incorporation and restated bylaws;
- authorize the issuance of "blank check" preferred stock that our Board of Directors could use to implement a stockholder rights plan;

- provide that only the chairman of our Board of Directors, our chief executive officer, or a majority of our Board of Directors will be authorized to call a special meeting of stockholders;
- eliminate the ability of our stockholders to call special meetings of stockholders;
- prohibit cumulative voting;
- provide that directors may only be removed “for cause” and only with the approval of two-thirds of our stockholders;
- provide for a dual class common stock structure in which holders of our Class B common stock may have the ability to control the outcome of matters requiring stockholder approval, even if they own significantly less than a majority of the outstanding shares of our common stock, including the election of directors and significant corporate transactions, such as a merger or other sale of our company or its assets;
- prohibit stockholder action by written consent, which requires all stockholder actions to be taken at a meeting of our stockholders;
- provide that the Board of Directors is expressly authorized to make, alter, or repeal our bylaws; and
- establish advance notice requirements for nominations for election to our Board of Directors or for proposing matters that can be acted upon by stockholders at annual stockholder meetings.

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

***Our restated certificate of incorporation and amended and restated bylaws contain exclusive forum provisions for certain claims, which may limit our stockholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers, or employees.***

Our restated certificate of incorporation provides that the Court of Chancery of the State of Delaware, to the fullest extent permitted by law, will be the exclusive forum for any derivative action or proceeding brought on our behalf, any action asserting a breach of fiduciary duty, any action asserting a claim against us arising pursuant to the DGCL, our restated certificate of incorporation, or our amended and restated bylaws, or any action asserting a claim against us that is governed by the internal affairs doctrine.

Moreover, Section 22 of the Securities Act creates concurrent jurisdiction for federal and state courts over all claims brought to enforce any duty or liability created by the Securities Act or the rules and regulations thereunder. In April 2020, we amended and restated our restated bylaws to provide that the federal district courts of the United States of America will, to the fullest extent permitted by law, be the exclusive forum for resolving any complaint asserting a cause of action arising under the Securities Act (a Federal Forum Provision). Our decision to adopt a Federal Forum Provision followed a decision by the Supreme Court of the State of Delaware holding that such provisions are facially valid under Delaware law. While there can be no assurance that federal or state courts will follow the holding of the Delaware Supreme Court or determine that the Federal Forum Provision should be enforced in a particular case, application of the Federal Forum Provision means that suits brought by our stockholders to enforce any duty or liability created by the Securities Act must be brought in federal court and cannot be brought in state court.

Section 27 of the Exchange Act creates exclusive federal jurisdiction over all claims brought to enforce any duty or liability created by the Exchange Act or the rules and regulations thereunder. In addition, neither the exclusive forum provision nor the Federal Forum Provision applies to suits brought to enforce any duty or liability created by the Exchange Act. Accordingly, actions by our stockholders to enforce any duty or liability created by the Exchange Act or the rules and regulations thereunder must be brought in federal court.

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

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

***Short sellers of our stock may be manipulative and may drive down the market price of our Class A common stock.***

Short selling is the practice of selling securities that the seller does not own, but rather has borrowed or intends to borrow from a third party with the intention of buying identical securities at a later date to return to the lender. A short seller hopes to profit from a decline in the value of the securities between the sale of the borrowed securities and the purchase of the replacement shares, as the short seller expects to pay less in that purchase than it received in the sale. It is therefore in the short seller's interest for the price of the stock to decline, and some short sellers publish, or arrange for the publication of, opinions or characterizations regarding the relevant issuer, often involving misrepresentations of the issuer's business prospects and similar matters calculated to create negative market momentum, which may permit them to obtain profits for themselves as a result of selling the stock short.

As a public entity, we may be the subject of concerted efforts by short sellers to spread negative information in order to gain a market advantage. In addition, the publication of misinformation may also result in lawsuits, the uncertainty and expense of which could adversely impact our business, financial condition, and reputation. There are no assurances that we will not face short sellers' efforts or similar tactics in the future, and the market price of our Class A common stock may decline as a result of their actions.

## **Risks Related to the Ownership of Our Convertible Senior Notes**

***The Notes are effectively subordinated to our existing and future secured indebtedness and structurally subordinated to the liabilities of our subsidiaries.***

Our 0% Convertible Senior Notes due 2026 (the "Notes") are our senior, unsecured obligations and rank equal in right of payment with our existing and future senior, unsecured indebtedness, senior in right of payment to our existing and future indebtedness that is expressly subordinated to the Notes and effectively subordinated to our existing and future secured indebtedness, to the extent of the value of the collateral securing that indebtedness. In addition, because none of our subsidiaries guarantee the Notes, the Notes are structurally subordinated to all existing and future indebtedness and other liabilities, including trade payables, and (to the extent we are not a holder thereof) preferred equity, if any, of our subsidiaries. As of December 31, 2021, we had approximately \$1.0 billion in total indebtedness and approximately \$495.2 million of available borrowing capacity under our Amended Credit Agreement (after deducting \$4.8 million of outstanding letters of credit). Our subsidiaries had no outstanding indebtedness as of December 31, 2021. The indenture governing the Notes does not prohibit us or our subsidiaries from incurring additional indebtedness, including senior or secured indebtedness, in the future.

If a bankruptcy, liquidation, dissolution, reorganization or similar proceeding occurs with respect to us, then the holders of any of our secured indebtedness may proceed directly against the assets securing that indebtedness. Accordingly, those assets will not be available to satisfy any outstanding amounts under our unsecured indebtedness, including the Notes, unless the secured indebtedness is first paid in full. The remaining assets, if any, would then be allocated pro rata among the holders of our senior, unsecured indebtedness, including the Notes. There may be insufficient assets to pay all amounts then due.

If a bankruptcy, liquidation, dissolution, reorganization or similar proceeding occurs with respect to any of our subsidiaries, then we, as a direct or indirect common equity owner of that subsidiary (and, accordingly, holders of our indebtedness, including the Notes), will be subject to the prior claims of that subsidiary's creditors, including trade creditors and preferred equity holders. We may never receive any amounts from that subsidiary to satisfy amounts due under the Notes.

***We may be unable to raise the funds necessary to repurchase the Notes for cash following a fundamental change or to pay any cash amounts due upon conversion, and our other indebtedness limits our ability to repurchase the Notes or pay cash upon their conversion.***

Noteholders may require us to repurchase their Notes following a fundamental change at a cash repurchase price generally equal to the principal amount of the Notes to be repurchased, plus accrued and unpaid special interest, if any. In addition, upon conversion, we will satisfy part or all of our conversion obligation in cash unless we elect to settle conversions solely in shares of our Class A common stock. We may not have enough available cash or be able to obtain financing at the time we are required to repurchase the Notes or pay the cash amounts due upon conversion. In addition, applicable law, regulatory authorities and the agreements governing our other indebtedness may restrict our ability to repurchase the Notes or pay the cash amounts due upon conversion. Our failure to repurchase Notes or to pay the cash amounts due upon conversion when required will constitute a default under the indenture.

A default under the indenture or the fundamental change itself could also lead to a default under agreements governing our other indebtedness, which may result in that other indebtedness becoming immediately payable in full. We may not have sufficient funds to satisfy all amounts due under the other indebtedness and the Notes.

***Our indebtedness and liabilities could limit the cash flow available for our operations, expose us to risks that could adversely affect our business, financial condition and results of operations and impair our ability to satisfy our obligations under the Notes.***

As of December 31, 2021, we had \$1.0 billion of indebtedness. We may also incur additional indebtedness to meet future financing needs. Our indebtedness could have significant negative consequences for our security holders and our business, results of operations and financial condition by, among other things:

- increasing our vulnerability to adverse economic and industry conditions;
- limiting our ability to obtain additional financing;
- requiring the dedication of a substantial portion of our cash flow from operations to service our indebtedness, which will reduce the amount of cash available for other purposes;
- limiting our flexibility to plan for, or react to, changes in our business;
- diluting the interests of our existing stockholders as a result of issuing shares of our Class A common stock upon conversion of the notes; and
- placing us at a possible competitive disadvantage with competitors that are less leveraged than us or have better access to capital.

Our business may not generate sufficient funds, and we may otherwise be unable to maintain sufficient cash reserves, to pay amounts due under our indebtedness, including the notes, and our cash needs may increase in the future. In addition, our existing \$500.0 million revolving credit facility contains, and any future indebtedness that we may incur may contain, financial and other restrictive covenants that limit our ability to operate our business, raise capital or make payments under our other indebtedness. If we fail to comply with these covenants or to make payments under our indebtedness when due, then we would be in default under that indebtedness, which could, in turn, result in that and our other indebtedness becoming immediately payable in full.

***The accounting method for the Notes could adversely affect our reported financial condition and results.***

The accounting method for reflecting the Notes on our balance sheet, accruing interest expense for the Notes and reflecting the underlying shares of our Class A common stock in our reported diluted earnings per share may adversely affect our reported earnings and financial condition.

Under applicable accounting principles, the initial liability carrying amount of the Notes is the fair value of a similar debt instrument that does not have a conversion feature, valued using our cost of capital for straight, non-convertible debt. We reflected the difference between the net proceeds from our offering of the Notes and the initial carrying amount as a debt discount for accounting purposes, which will be amortized into interest expense over the term of the Notes. As a result of this amortization, the interest expense that we expect to recognize for the Notes for accounting purposes will be greater than the cash interest payments we will pay on the Notes, which will result in lower reported income or higher reported loss. The lower reported income or higher reported loss resulting from this accounting treatment could depress the trading price of our Class A common stock and the Notes. However, in August 2020, the Financial Accounting Standards Board published an Accounting Standards Update, which we refer to as ASU 2020-06, that in certain cases will eliminate the separate accounting for the debt and equity components as described above. ASU 2020-06 will be effective for SEC-reporting entities for fiscal years beginning after December 15, 2021 (or, in the case of smaller reporting companies, December 15, 2023), including interim periods within those fiscal years. However, early adoption is permitted in certain circumstances for fiscal years beginning after December 15, 2020, including interim periods within those fiscal years. When effective, we expect to qualify for the elimination of the separate accounting described above which, as a result, will reduce the interest expense that we expect to recognize for the Notes for accounting purposes.

In addition, because we intend to settle conversions by paying the conversion value in cash up to the principal amount being converted and any excess in shares, we expect to be eligible to use the treasury stock method to reflect the shares underlying the Notes in our diluted earnings per share. Under this method, if the conversion value of the Notes exceeds their principal amount for a reporting period, then we will calculate our diluted earnings per share assuming that all the Notes were converted and that we issued shares of our Class A common stock to settle the excess. However, if reflecting the Notes in diluted earnings per share in this manner is anti-dilutive, or if the conversion value of the Notes does not exceed their principal amount for a reporting period, then the shares underlying the Notes will not be reflected in our diluted earnings per share. In addition, when accounting standards change in the future and we are not permitted to use the treasury stock method, then our diluted earnings per share may decline. ASU 2020-06 amends these accounting standards, effective as of the dates referred to above, to eliminate the treasury stock method for convertible instruments and instead require application of the "if-converted" method. Under that method, diluted earnings per share would generally be calculated assuming that all the Notes were converted solely into shares of Class A common stock at the beginning of the reporting period, unless the result would be anti-dilutive. The application of the if-converted method may reduce our reported diluted earnings per share.

Furthermore, if any of the conditions to the convertibility of the Notes is satisfied, then we may be required under applicable accounting standards to reclassify the liability carrying value of the Notes as a current, rather than a long-term, liability. This reclassification could be required even if no noteholders convert their Notes and could materially reduce our reported working capital.

***The capped call transactions may affect the value of the Notes and our Class A common stock.***

In connection with the Notes, we entered into capped call transactions with certain financial institutions (the option counterparties). The capped call transactions are expected generally to reduce the potential dilution to our Class A common stock upon any conversion of the Notes and/or offset any potential cash payments we are required to make in excess of the principal amount upon conversion of any Notes, with such reduction and/or offset subject to a cap.

In connection with establishing their initial hedges of the capped call transactions, the option counterparties and/or their respective affiliates purchased shares of our Class A common stock and/or entered into various derivative transactions with respect to our Class A common stock. This activity could have increased (or reduced the size of any decrease in) the market price of our Class A common stock or the Notes at that time.

In addition, the option counterparties and/or their respective affiliates may modify their hedge positions by entering into or unwinding various derivatives with respect to our Class A common stock and/or purchasing or selling our Class A common stock in secondary market transactions (and are likely to do so following any conversion of Notes, any repurchase of the Notes by us on any fundamental change repurchase date, any redemption date or any other date on which the Notes are retired by us). This activity could also cause or avoid an increase or a decrease in the market price of our Class A common stock or the Notes.

The potential effect, if any, of these transactions and activities on the market price of our Class A common stock or the Notes will depend in part on market conditions and cannot be ascertained at this time. Any of these activities could adversely affect the value of our Class A common stock.

***We are subject to counterparty risk with respect to the capped call transactions, and the capped call may not operate as planned***

The option counterparties are financial institutions, and we will be subject to the risk that they might default under the capped call transactions. Our exposure to the credit risk of the option counterparties will not be secured by any collateral. Global economic conditions have from time to time resulted in the actual or perceived failure or financial difficulties of many financial institutions, including the bankruptcy filing by Lehman Brothers Holdings Inc. and its various affiliates. If an option counterparty becomes subject to insolvency proceedings, we will become an unsecured creditor in those proceedings with a claim equal to our exposure at that time under our transactions with that option counterparty. Our exposure will depend on many factors, but, generally, the increase in our exposure will be correlated with increases in the market price or the

volatility of our Class A common stock. In addition, upon a default by an option counterparty, we may suffer adverse tax consequences and more dilution than we currently anticipate with respect to our Class A common stock. We can provide no assurances as to the financial stability or viability of any option counterparty.

In addition, the capped call transactions are complex, and they may not operate as planned. For example, the terms of the capped call transactions may be subject to adjustment, modification or, in some cases, renegotiation if certain corporate or other transactions occur. Accordingly, these transactions may not operate as we intend if we are required to adjust their terms as a result of transactions in the future or upon unanticipated developments that may adversely affect the functioning of the capped call transactions.

### **General Risk Factors**

***We may require additional capital to support business growth and objectives, and this capital might not be available to us on reasonable terms, if at all, and may result in stockholder dilution.***

We intend to continue to make investments to support our business growth and may require additional capital to fund our business and to respond to competitive challenges, including the need to promote our products and services, develop new products and services, enhance our existing products, services, and operating infrastructure, and potentially to acquire complementary businesses and technologies. Accordingly, we may need to engage in equity or debt financings to secure additional funds. There can be no assurance that such additional funding will be available on terms attractive to us, or at all. Our inability to obtain additional funding when needed could have an adverse effect on our business, financial condition, and operating results. If additional funds are raised through the issuance of equity or convertible debt securities, holders of our Class A common stock could suffer significant dilution, and any new shares we issue could have rights, preferences, and privileges superior to those of our Class A common stock. Any debt financing secured by us in the future could involve restrictive covenants relating to our capital raising activities and other financial and operational matters, which may make it more difficult for us to obtain additional capital and to pursue business opportunities, including potential acquisitions.

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

As of June 30, 2021, we had U.S. federal net operating loss carryforwards, or NOLs, and state NOLs of approximately \$1,086.5 million and \$706.2 million, respectively, due to prior period losses which if not utilized will begin to expire for federal and state tax purposes beginning in 2036 and 2021, respectively. Realization of these NOLs depends on future income, and there is a risk that our existing NOLs could expire unused and be unavailable to offset future income tax liabilities, which could adversely affect our operating results.

In general, under Section 382 of the Internal Revenue Code of 1986, as amended, or the Code, a corporation that undergoes an "ownership change" is subject to limitations on its ability to utilize its NOLs to offset future taxable income. We have undergone three ownership changes on November 30, 2015 and April 18, 2017 and February 24, 2020 and our NOLs arising before those dates are subject to one or more Section 382 limitations which may materially limit the use of such NOLs to offset our future taxable income. Our NOLs may also be impaired under state laws. In addition, under the 2017 Tax Cuts and Jobs Act, or Tax Act, tax losses generated in taxable years beginning after December 31, 2017 may be utilized to offset no more than 80% of taxable income annually. This change may require us to pay federal income taxes in future years despite generating a loss for federal income tax purposes. On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security, or CARES Act, was signed into law. The CARES Act changes certain provisions of the Tax Act. Under the CARES Act, NOLs arising in taxable years beginning after December 31, 2017 and before January 1, 2021 may be carried back to each of the five taxable years preceding the tax year of such loss, but NOLs arising in taxable years beginning after December 31, 2020 may not be carried back. In addition, the CARES Act eliminates the limitation on the deduction of NOLs to 80% of current year taxable income for taxable years beginning before January 1, 2021. For these reasons, we may not be able to realize a tax benefit from the use of our NOLs, whether or not we attain profitability.

In addition, future changes in our stock ownership, the causes of which may be outside of our control, could result in an additional ownership change under Section 382 of the Code. There is also a risk that due to regulatory changes, such as further limitations or suspensions on the use of NOLs, or other unforeseen reasons, our existing NOLs could expire or otherwise be unavailable to offset future income tax liabilities. Our NOLs may also be limited under state laws. For these reasons, we may not be able to realize a tax benefit from the use of our NOLs, whether or not we attain profitability.

***Failure to maintain effective internal control over our financial and management systems, may strain our resources, divert management's attention, and impact our ability to attract and retain executive management and qualified board members.***

We are subject to the reporting requirements of the Exchange Act, the Sarbanes-Oxley Act, the rules and regulations promulgated thereunder by the SEC and any rules and regulations subsequently implemented by the SEC, the rules and regulations of the listing standards of The Nasdaq Stock Market LLC and other applicable securities rules and regulations. Compliance with these rules and regulations has increased our legal and financial compliance costs and strains our financial and management systems, internal controls, and employees.

The Exchange Act requires, among other things, that we file annual, quarterly, and current reports with respect to our business and operating results. Moreover, the Sarbanes-Oxley Act requires, among other things, that we maintain effective disclosure controls and procedures, and internal control over financial reporting. In order to maintain and, if required in the future, improve our disclosure controls and procedures, and internal control over financial reporting to meet this standard, significant resources and management oversight may be required. In the course of preparing our financial statements for fiscal 2021, we identified a material weakness in our internal control over financial reporting. If, in the future, we have a material weakness or deficiencies in our internal control over financial reporting, we may not detect errors on a timely basis and our consolidated financial statements may be materially misstated. Effective internal control is necessary for us to produce reliable financial reports and is important to prevent fraud. See "*We have identified a material weakness in our internal control over financial reporting, and if our remediation of such material weakness is not effective, or if we fail to develop and maintain an effective system of disclosure controls and internal*

control over financial reporting, our ability to produce timely and accurate financial statements or comply with applicable laws and regulations could be impaired."

Pursuant to Sections 302 and 404 of the Sarbanes-Oxley Act, our independent registered public accounting firm has provided an attestation report regarding our internal control over financial reporting. We have incurred and expect to continue to incur significant expenses and devote substantial management effort toward ensuring compliance with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act. As a result of the complexity involved in complying with the rules and regulations applicable to public companies, our management's attention may be diverted from other business concerns, which could harm our business, operating results, and financial condition. Although we have already hired additional employees to assist us in complying with these requirements, our finance team is small for a company of our size, and we may need to hire more employees in the future, or engage outside consultants, which will increase our operating expenses.

***If our estimates or judgments relating to our critical accounting policies prove to be incorrect, our operating results could be adversely affected.***

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and accompanying notes. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances, as provided in the section titled "Management's Discussion and Analysis of Financial Condition and Results of Operations—Critical Accounting Policies and Estimates" in Part II, Item 2 of this Quarterly Report on Form 10-Q. The results of these estimates form the basis for making judgments about the carrying values of assets, liabilities, and stockholders' equity/deficit, and the amount of revenue and expenses that are not readily apparent from other sources. Significant assumptions and estimates used in preparing our consolidated financial statements include those related to revenue related reserves, the realizability of inventory, content costs for past use reserve, fair value measurements including common stock valuations, the incremental borrowing rate associated with lease liabilities, useful lives of property and equipment, product warranty, goodwill and finite-lived intangible assets, accounting for income taxes, stock-based compensation expense and commitments and contingencies. Our operating results may be adversely affected if our assumptions change or if actual circumstances differ from those in our assumptions, which could cause our operating results to fall below the expectations of securities analysts and investors, resulting in a decline in the price of our Class A common stock.

***Our business is subject to the risk of earthquakes, fire, power outages, floods, public health crises, including the current COVID-19 pandemic, ransomware and other cybersecurity attacks, labor disputes, and other catastrophic events, and to interruption by man-made problems such as terrorism.***

Our business is vulnerable to damage or interruption from earthquakes, fires, floods, power losses, telecommunications failures, ransomware and other cybersecurity attacks, labor disputes, terrorist attacks, acts of war, human errors, break-ins, industrial accidents, public health crises, including the COVID-19 pandemic, and other unforeseen events or events that we cannot control. The third-party providers, systems and operations and contract manufacturers we rely on are subject to similar risks. Our insurance policies may not cover losses from these events or may provide insufficient compensation that does not cover our total losses. For example, a significant natural disaster, such as an earthquake, fire, or flood, could have an adverse effect on our business, financial condition and operating results, and our insurance coverage may be insufficient to compensate us for losses that may occur. Another example is the effect of the COVID-19 pandemic on major construction projects, including our New York headquarters and London studio projects, both of which were delayed due to local government orders. Acts of terrorism, which may be targeted at metropolitan areas that have higher population density than rural areas, could also cause disruptions to our or our suppliers' and contract manufacturers' businesses or the economy as a whole. We may not have sufficient protection or recovery plans in some circumstances, such as natural disasters affecting locations that store significant inventory of our products, that house our servers, or from which we generate content. As we rely heavily on our computer and communications systems, and the internet to conduct our business and provide high-quality customer service, these disruptions could negatively impact our ability to run our business and either directly or indirectly disrupt suppliers' and our contract manufacturers' businesses, which could have an adverse effect on our business, financial condition, and operating results.

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

None.

## **Item 3. Defaults Upon Senior Securities**

None.

## **Item 4. Mine Safety Disclosures**

Not applicable.

## **Item 5. Other Information**

We are reporting the following information in lieu of reporting on a Current Report on Form 8-K under Item 2.05 Costs Associated with Exit or Disposal Activities and under Item 2.06 Material Impairments.

### **February 2022 Restructuring Plan; Asset Impairments**

On February 1, 2022, following previous disclosure by Peloton Interactive, Inc. (the "Company") regarding market factors impacting the business, the Company's Board of Directors (the "Board") approved a restructuring plan to realign the Company's operational focus to support its multi-year growth, scale the business, and improve costs (the "Restructuring Plan"). The Restructuring Plan includes: (i) reducing the Company's headcount by approximately 2,800 global positions; (ii) closing several assembly and manufacturing plants, including the completion and

subsequent sale of the shell facility for the Company's previously planned Peloton Output Park; (iii) closing and consolidating several distribution facilities, and (iv) shifting to third-party logistics providers in certain locations. The Company expects the Restructuring Plan to be substantially implemented by the end of fiscal 2024.

In connection with the Restructuring Plan, the Company estimates that it will incur total cash charges of approximately \$190 million composed of: (i) approximately \$90 million for severance and other related personnel reduction costs; (ii) approximately \$40 million related to closing and consolidating several assembly and manufacturing plants and distribution facilities; and (iii) approximately \$60 million in capital expenditures. Additionally, the Company expects to recognize approximately \$80 million of asset impairment charges in the third fiscal quarter of 2022 in connection with the Restructuring Plan.

The Company expects to achieve at least \$800 million in annualized cost savings as a result of the Restructuring Plan, with the majority expected to be realized by the end of fiscal 2024.

Item 6. Exhibits

Exhibit Number	Exhibit Title	Incorporated by Reference				Filed or Furnished Herewith
		Form	File No.	Exhibit	Filing Date	
10.1	<a href="#">Second Amendment to the Amended and Restated Revolving Credit Agreement, dated as of December 10, 2021 by and among the Registrant, JPMorgan Chase Bank, N.A., as administrative agent, and the other parties thereto.</a>					X
31.1	<a href="#">Certification of Principal Executive Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Exchange Act, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>					X
31.2	<a href="#">Certification of Principal Financial Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Exchange Act, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>					X
32.1	<a href="#">Certification of Principal Executive Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>					XX
32.2	<a href="#">Certification of Principal Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>					XX
101.INS	Inline 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	Inline XBRL Taxonomy Extension Schema Document.					X
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document.					X
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document.					X
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document.					X
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document.					X
104	Cover Page Interactive Data File (formatted in iXBRL and contained in Exhibit 101).					X

X Filed herewith.  
XX Furnished herewith.



**SIGNATURES**

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

Date: February 8, 2022

By: /s/ John Foley  
John Foley  
Chief Executive Officer  
*(Principal Executive Officer)*

By: /s/ Jill Woodworth  
Jill Woodworth  
Chief Financial Officer  
*(Principal Financial Officer)*

## EXECUTION VERSION

## SECOND AMENDMENT TO CREDIT AGREEMENT

SECOND AMENDMENT (this “Amendment”), dated as of December 10, 2021, to the Amended and Restated Revolving Credit Agreement, dated as of June 20, 2019 (as amended by the First Amendment, dated as of February 8, 2021, and as further amended, supplemented, amended and restated or otherwise modified from time to time, the “Credit Agreement”, and the Credit Agreement as amended by this Amendment, the “Amended Credit Agreement”), among Peloton Interactive, Inc. (the “Borrower”), the several banks and other financial institutions or entities from time to time party thereto (the “Lenders”), and JPMorgan Chase Bank, N.A., as Administrative Agent (in such capacity, the “Administrative Agent”).

## WITNESSETH:

WHEREAS, the parties hereto are parties to the Credit Agreement;

WHEREAS, the Borrower requests that the Lenders agree to certain amendments to the Loan Documents; and

WHEREAS, pursuant to Section 2.21 of the Amended Credit Agreement (after giving effect to the Section 2.21 Amendments (as defined below)), the Borrower has requested that the lenders set forth on the Commitment Schedule under the heading “Consenting Commitments” (in such capacity, the “Consenting Lenders”) extend the maturity date of their Commitments (such extended commitments, the “2021 Consenting Commitments”) as set forth in and in accordance with this Amendment and in the Amended Credit Agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

SECTION 1. DEFINITIONS. Unless otherwise defined herein, capitalized terms which are defined in the Amended Credit Agreement are used herein as therein defined.

SECTION 2. AMENDMENTS. On the Effective Date, the Credit Agreement and the Security Agreement are hereby amended as follows:

(a) The Credit Agreement is hereby amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in the pages of the Credit Agreement attached as Exhibit A hereto; provided that it is understood and agreed that the addition of Section 2.21 to the Credit Agreement and the changes relating thereto (collectively, the “Section 2.21 Amendments”) shall take effect immediately prior to the amendments necessary to establish the 2021 Consenting Commitments and the changes relating thereto.

(b) The existing Schedule 2.01 to the Credit Agreement is hereby amended and restated in its entirety as set forth in Exhibit B hereto (the “Commitment Schedule”).

(c) The existing Schedule 6.01 to the Credit Agreement is hereby amended and restated in its entirety as set forth in Exhibit C hereto.

(d) The existing Exhibit F to the Credit Agreement is hereby amended and restated in its entirety as set forth in Exhibit D hereto.

(e) The Security Agreement is hereby amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the double-underlined

text (indicated textually in the same manner as the following example: double-underlined text) as set forth in the pages of the Security Agreement attached as Exhibit E hereto.

(f) The existing Schedule 3.06 to the Credit Agreement is hereby amended and restated in its entirety as set forth in Exhibit F hereto.

(g) The existing Schedule 3.10 to the Credit Agreement is hereby amended and restated in its entirety as set forth in Exhibit G hereto.

SECTION 3. CONDITIONS PRECEDENT TO EFFECTIVENESS. This Amendment shall become effective on the date hereto on which all of the following conditions have been satisfied or waived (the "Effective Date"):

(a) Execution and Delivery. The Administrative Agent shall have received counterparts of this Amendment duly executed by (i) the Borrower, (ii) Lenders constituting the Required Lenders as of the Effective Date and (iii) each Consenting Lender.

(b) The Administrative Agent shall have received (i) a reaffirmation agreement in respect of the Security Agreement, executed and delivered by the Borrower and in form and substance reasonably acceptable to the Administrative Agent, and (ii) a Note executed by the Borrower in favor of each Lender requesting a Note in advance of the Effective Date.

(c) The Administrative Agent shall have received favorable written opinions (addressed to the Administrative Agent and the Lenders and dated the Restatement Effective Date) of Fenwick & West LLP, counsel for the Borrower, in form and substance reasonably satisfactory to the Administrative Agent. The Borrower hereby requests each such counsel to deliver such opinion.

(d) The Administrative Agent shall have received (i) certified copies of the resolutions of the board of directors of the Borrower and the Guarantors approving the transactions contemplated by the Loan Documents to which each such Loan Party is a party and the execution and delivery of such Loan Documents to be delivered by such Loan Party on the Effective Date, and all documents evidencing other necessary organizational action and governmental approvals, if any, with respect to the Loan Documents and (ii) all other documents reasonably requested by the Administrative Agent relating to the organization, existence and good standing of the Guarantors and the Borrower and authorization of the transactions contemplated hereby.

(e) The Administrative Agent shall have received a certificate of the Secretary or an Assistant Secretary of the Borrower and each Guarantor certifying the names and true signatures of the officers of such entity authorized to sign the Loan Documents to which it is a party, to be delivered by such entity on the Effective Date and the other documents to be delivered hereunder on the Effective Date.

(f) The Administrative Agent shall have received (i) a certificate, dated the Effective Date and signed on behalf of the Borrower by the President, a Vice President or a Financial Officer of the Borrower, confirming compliance with the conditions set forth in paragraphs (i) and (j) of this Section 3 as of the Effective Date, and (ii) a certificate, dated the Effective Date and signed on behalf of the Borrower by the chief financial officer of the Borrower, certifying

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that, as of the Effective Date, the Borrower is, individually and together with its Subsidiaries, and after giving effect to the incurrence of any Indebtedness and obligations being incurred in connection herewith will be, Solvent.

(g) The Lenders, the Administrative Agent and the Arranger shall have received all fees required to be paid by the Borrower on the Effective Date, and all expenses required to be reimbursed by the Borrower for which invoices have been presented at least three business days prior to the Effective Date, on or before the Effective Date.

(h) (i) The Administrative Agent shall have received, to the extent reasonably requested by any of the Lenders at least five Business Days prior to the Effective Date, all



documentation and other information required by bank regulatory authorities under applicable “know-your-customer” and anti-money laundering rules and regulations, including the USA Patriot Act and (ii) to the extent the Borrower qualifies as a “legal entity customer” under the Beneficial Ownership Regulation, at least five days prior to the Effective Date, any Lender that has requested, in a written notice to the Borrower at least 10 days prior to the Effective Date, a Beneficial Ownership Certification in relation to the Borrower shall have received such Beneficial Ownership Certification (provided that, upon the execution and delivery by such Lender of its signature page to this Agreement, the condition set forth in this clause (ii) shall be deemed to be satisfied).

(i) **No Default.** Both prior to and after giving effect to this Amendment, no Default or Event of Default shall have occurred and be continuing on the Effective Date.

(j) **Representations and Warranties.** As of the Effective Date (both prior to and after giving effect to this Amendment) all representations and warranties contained in Section 4 and in Article 3 of the Credit Agreement shall be true and correct in all material respects, except that (i) for purposes of this clause (j), the representations and warranties contained in Section 3.04(a) of the Credit Agreement shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b) (subject, in the case of unaudited financial statements furnished pursuant to clause (b), to year-end audit adjustments and the absence of footnotes), respectively, of Section 5.01 of the Credit Agreement, (ii) to the extent that such representations and warranties specifically refer to an earlier date, they shall be true and correct in all material respects as of such earlier date and (iii) to the extent that such representations and warranties are already qualified or modified by materiality in the text thereof, they shall be true and correct in all respects.

For the purpose of determining compliance with the conditions specified in this Section 3, each Lender that has signed this Amendment shall be deemed to have accepted, and to be satisfied with, each document or other matter required under this Section 3.

**SECTION 4. REPRESENTATIONS AND WARRANTIES.** In order to induce the Required Lenders to enter into this Amendment, the Borrower hereby represents and warrants to the Required Lenders that (a) this Amendment has been duly authorized by all necessary organizational actions and, if required, actions by equity holders of the Borrower and (b) this Amendment has been duly executed and delivered by the Borrower and constitutes a legal, valid and binding obligation of the Borrower, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors’ rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

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**SECTION 5. CONTINUING EFFECT.** Except as expressly amended, waived or modified hereby, the Loan Documents shall continue to be and shall remain in full force and effect in accordance with their respective terms. This Amendment shall not constitute an amendment, waiver or modification of any provision of any Loan Document not expressly referred to herein and shall not be construed as an amendment, waiver or modification of any action on the part of the Borrower or the other Loan Parties that would require an amendment, waiver or consent of the Administrative Agent or the Lenders except as expressly stated herein, or be construed to indicate the willingness of the Administrative Agent or the Lenders to further amend, waive or modify any provision of any Loan Document amended, waived or modified hereby for any other period, circumstance or event. Except as expressly modified by this Amendment, the Credit Agreement and the other Loan Documents are ratified and confirmed and are, and shall continue to be, in full force and effect in accordance with their respective terms. Except as expressly set forth herein, each Lender and the Administrative Agent reserves all of its rights, remedies, powers and privileges under the Credit Agreement, the other Loan Documents, applicable law and/or equity. Any reference to the “Credit Agreement” in any Loan Document or any related documents shall be deemed to be a reference to the Credit Agreement as amended by this Amendment and the term “Loan Documents” in the Credit Agreement and the other Loan Documents shall include this Amendment.

**SECTION 6. GOVERNING LAW.** THIS AMENDMENT SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

SECTION 7. SUCCESSORS AND ASSIGNS. This Amendment shall be binding upon and inure to the benefit of the Borrower, the other Loan Parties, the Administrative Agent, the other Agents and the Lenders, and each of their respective successors and assigns, and shall not inure to the benefit of any third parties. The execution and delivery of this Amendment by any Lender prior to the Effective Date shall be binding upon its successors and assigns and shall be effective as to any Loans or Commitments assigned to it after such execution and delivery.

SECTION 8. ENTIRE AGREEMENT. This Amendment, the Credit Agreement and the other Loan Documents represent the entire agreement of the Loan Parties, the Administrative Agent, the Agents, the Lenders and the Lenders, as applicable, with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by the Administrative Agent, any other Agent or any Lender relative to the subject matter hereof not expressly set forth or referred to herein or in the Credit Agreement or the other Loan Documents.

SECTION 9. LOAN DOCUMENT. This Amendment is a Loan Document executed pursuant to the Amended Credit Agreement and shall (unless otherwise expressly indicated herein) be construed, administered and applied in accordance with the terms and provisions of the Amended Credit Agreement. Each of the Administrative Agent, the Borrower and each Consenting Lender, by executing and delivering its signature page to this Amendment, acknowledges and agrees that this Amendment is an Extension Amendment executed pursuant to, and in accordance with the terms and conditions set forth in, Section 2.21 of the Amended Credit Agreement.

SECTION 10. COUNTERPARTS. This Amendment may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Delivery of an executed counterpart of a signature page of this Amendment by telecopy, emailed pdf. or any other electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed counterpart of this Amendment. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to this Amendment, any document to be signed in connection herewith and the transactions contemplated hereby shall be deemed to include Electronic Signatures (as defined below), electronic

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deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be; provided that nothing herein shall require the Administrative Agent to accept electronic signatures in any form or format without its prior written consent. “Electronic Signatures” means any electronic symbol or process attached to, or associated with, any contract or other record and adopted by a person with the intent to sign, authenticate or accept such contract or record. Without limiting the generality of the foregoing, the Borrower hereby (i) agrees that, for all purposes, including without limitation, in connection with any workout, restructuring, enforcement of remedies, bankruptcy proceedings or litigation among the Administrative Agent, the Lenders and the Loan Parties, electronic images of this Amendment or any other Loan Documents (in each case, including with respect to any signature pages thereto) shall have the same legal effect, validity and enforceability as any paper original, and (ii) waives any argument, defense or right to contest the validity or enforceability of the Loan Documents based solely on the lack of paper original copies of any Loan Documents, including with respect to any signature pages thereto.

SECTION 11. HEADINGS. Section headings used in this Amendment are for convenience of reference only, are not part of this Amendment and are not to affect the construction of, or to be taken into consideration in interpreting, this Amendment.

executed and delivered by their duly authorized officers as of the date first written above.

PELTON INTERACTIVE, INC.,  
as the Borrower

By: Jill Woodworth  
Name: Jill Woodworth  
Title: Chief Financial Officer

[Signature Page to Second Amendment]

JPMORGAN CHASE BANK, N.A., as  
Administrative Agent and a Lender

By: Lauren Daley  
Name: Lauren Daley  
Title: Authorized Officer

[Signature Page to Second Amendment]

GOLDMAN SACHS LENDING PARTNERS LLC,  
as a Lender


By: *RK*  
Name: Rebecca Kratz  
Title: Authorized Signatory



[Signature Page to Second Amendment]

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Citibank, N.A.,  
as a Lender

By:  \_\_\_\_\_  
Name: Jonathan Weiner  
Title: Senior Vice President

[Signature Page to Second Amendment]

as a Lender

By:  \_\_\_\_\_

Name: Sean Duggan

Title: Vice President

[Signature Page to Revolving Credit Agreement]

Bank of America, N.A.,  
as a Lender

By:  \_\_\_\_\_

Name: Jeannette Lu

Title: Managing Director

EXHIBIT A



CONFORMED COPY  
through the First Amendment (dated as of February 8, 2021)  
Exhibit A to Amendment No. 2

This Composite Copy has been prepared solely for convenience of reference and is not a legal document. Reference should be made to the Amended and Restated Revolving Credit Agreement as originally executed, the First Amendment, (dated as of February 8, 2021) and the Joinder Agreements entered into from time to time, as it is those documents, and not this Composite Copy, that set forth the rights and obligations of the parties thereto with respect to the Amended and Restated Revolving Credit Agreement.

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AMENDED AND RESTATED REVOLVING CREDIT AGREEMENT

dated as of

June 20, 2019

among

PELTON INTERACTIVE, INC.,

The Lenders Party Hereto

and

JPMORGAN CHASE BANK, N.A.,  
as Administrative Agent

---

JPMORGAN CHASE BANK, N.A.,  
as Lead Arranger and Bookrunner

BARCLAYS BANK OF AMERICA PLC, CITIBANK, N.A., AND GOLDMAN SACHS  
LENDING PARTNERS LLC  
~~BARCLAYS BANK PLC,~~  
~~GOLDMAN SACHS LENDING PARTNERS LLC~~  
and  
~~SILICON VALLEY BANK,~~  
as Joint Syndication Agents

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AMENDED AND RESTATED REVOLVING CREDIT AGREEMENT dated as of June 20, 2019 among PELOTON INTERACTIVE, INC., as Borrower, the LENDERS party hereto and JPMORGAN CHASE BANK, N.A., as Administrative Agent.

The Borrower (such term and each other capitalized term used and not otherwise defined herein having the meaning assigned to it in Article 1) is a party to the Revolving Credit Agreement, dated as of November 3, 2017 (the "Existing Credit Agreement"), with the several banks and other financial institutions or entities parties as lenders and agents thereto and JPMorgan Chase Bank, N.A., as administrative agent. The signatories hereto have agreed to amend the Existing Credit Agreement in certain respects and to restate the Existing Credit Agreement as so amended as provided in this Agreement (and, in connection therewith, certain lenders not currently party to the Existing Credit Agreement shall become a party as lenders hereunder), effective upon the satisfaction of certain conditions precedent set forth in Section 4.01. Accordingly, the signatories hereto agree that on the Restatement Effective Date (as defined below) the Existing Credit Agreement shall be amended and restated as follows:

## ARTICLE 1 DEFINITIONS

### Section 1.01 Defined Terms

As used in this Agreement, the following terms have the meanings specified below:

"2021 Consenting Commitments" means the Commitments of the Consenting Lenders, as defined in the Second Amendment. The initial amount of each Lender's 2021 Consenting Commitment as of the Second Amendment Effective Date is set forth on Schedule 2.01. The initial aggregate amount of the Lenders' 2021 Consenting Commitments as of the Second Amendment Effective Date is \$465,000,000.

"2021 Non-Consenting Commitments" means the Commitments of the Lenders that are not Consenting Lenders, as defined in the Second Amendment. The initial amount of each Lender's 2021 Non-Consenting Commitment as of the Second Amendment Effective Date is set forth on Schedule 2.01. The initial aggregate amount of the Lenders' 2021 Non-Consenting Commitments as of the Second Amendment Effective Date is \$35,000,000.

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

"Acknowledging Party" has the meaning set forth in Section 9.20.

"Adjusted Daily Simple SOFR" means an interest rate per annum equal to (a) the Daily Simple SOFR, plus (b) 0.10%; provided that, if the Adjusted Daily Simple SOFR Rate as so determined would be less than the Floor, such rate shall be deemed to be equal to the Floor for the purposes of this Agreement.

~~"Adjusted LIBO Term SOFR Rate" means, for any Interest Rate Determination Date with respect to an Interest Period for a Eurodollar Borrowing, the rate per annum (rounded~~



amount equal to (a) one minus (b) the Statutory Reserve Rate. Period, an interest rate per annum equal to (a) the Term SOFR Rate for such Interest Period, plus (b) 0.10%; provided that if the Adjusted Term SOFR Rate as so determined would be less than the Floor, such rate shall be deemed to be equal to the Floor for the purposes of this Agreement.

“Administrative Agent” means JPMorgan Chase Bank, N.A. (or any of its designated branch offices or affiliates), in its capacity as administrative agent for the Lenders hereunder, or any successor administrative agent.

“Administrative Questionnaire” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

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

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

“Agent Fee Letter” means that certain Fee Letter, dated as of May 20, 2019, by and among the Borrower and the Administrative Agent.

“Agent Parties” has the meaning set forth in Section 9.01.

“Agents” means the Administrative Agent, the Arranger and the Syndication Agents.

“Agreed Currency” means Dollars and any Alternative Currency.

“Agreement” means this Amended and Restated Revolving Credit Agreement, as the same may hereafter be modified, supplemented, extended, amended, restated or amended and restated from time to time.

“Alternate Base Rate” means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the NYFRB Rate in effect on such day plus ½ of 1% and (c) the Adjusted LIBO Term SOFR Rate for a one month Interest Period ~~on~~ as published two U.S. Government Securities Business Days prior to such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1%; provided that for the purpose of this definition, the Adjusted LIBO Term SOFR Rate for any day shall be based on the ~~LIBO Screen Rate (or if the LIBO Screen Rate is not available for such one month Interest Period, the Interpolated Rate)~~ Term SOFR Reference Rate at approximately ~~11:00~~ 11:00:00 a.m. ~~London~~ Chicago time on such day (or any amended publication time for the Term SOFR Reference Rate, as specified by the CME Term SOFR Administrator in the Term SOFR Reference Rate methodology). Any change in the Alternate Base Rate due to a change in the Prime Rate, the NYFRB Rate or the Adjusted LIBO Term SOFR Rate shall be effective from and including the effective date of such change in the Prime Rate, the NYFRB Rate or the Adjusted LIBO Term SOFR Rate, respectively. If the Alternate Base Rate is being used as an alternate rate of interest pursuant to Section 2.11 (for the avoidance of doubt, only until the Benchmark Replacement has

been determined pursuant to Section 2.11 hereof), then the Alternate Base Rate shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above. For the avoidance of doubt, if the Alternate Base Rate as determined pursuant to the foregoing would be less than 1.00%, such rate shall be deemed to be 1.00% for purposes of this Agreement.

“Ancillary Document” has the meaning assigned to it in Section 9.06(b).

“Alternative Currency” means Pounds Australian Dollars, Sterling, Euros, Canadian Dollars, New Taiwan Dollars, ~~Yen~~ and any additional currencies determined after the



Dollars, New Taiwan Dollars, Yen and any additional currencies determined after the Restatement Second Amendment Effective Date by mutual agreement of the Borrower, Lenders, Issuing Banks and Administrative Agent; provided that each such currency is a lawful currency that is readily available, freely transferable and not restricted, able to be converted into Dollars and available in the London interbank deposit market.

“Alternative Currency Payment Office” of the Administrative Agent means, for each Alternative Currency, the office, branch, affiliate or correspondent bank of the Administrative Agent for such currency as specified from time to time by notice to the Borrower and each Lender.

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

“Anti-Terrorism Laws” has the meaning set forth in Section 3.15(a).

“Applicable Class Percentage” means, with respect to any Lender of any Class, the percentage of the total Commitments of such Class represented by such Lender’s Commitment of such Class. If the Commitments of such Class have terminated or expired, the Applicable Percentages shall be determined based upon the Commitments of such Class most recently in effect, giving effect to any assignments.

“Applicable Rate Percentage” means, for any day, with respect to any Eurodollar Loan, any ABR Loan or the commitment fees payable hereunder, as the case may be, the applicable rate per annum set forth across from the caption “Applicable Rate for Eurodollar Loans”, “Applicable Rate for ABR Loans” or “Commitment Fee” in the table below, as the case may be. Lender, the percentage of the total Commitments represented by such Lender’s Commitment. If the Commitments have terminated or expired, the Applicable Percentages shall be determined based upon the Commitments most recently in effect, giving effect to any assignments.

“Applicable Rate” means (a) with respect to the 2021 Non-Consenting Commitments, for any day, (i) with respect to any ABR Loan, 1.75%, (ii) with respect to any Term Benchmark Loan, 2.75% and (iii) with respect to the Commitment Fees, 0.375% and (b) with respect to the 2021 Consenting Commitments, (i) with respect to any ABR Loan, 1.25%, (ii) with respect to any Term Benchmark Loan, 2.25% and (iii) with respect to the Commitment Fee, 0.325%; provided that, with respect to this clause (b) only, from and after the delivery of the financial statements and related Compliance Certificate for the first full fiscal quarter of the Borrower completed after the Conversion Date pursuant to Section 5.01, the Applicable Rate for ABR

Loans, Term Benchmark Loans and the Commitment Fee shall be based on the Senior Secured Net Leverage Ratio set forth in the most recent Compliance Certificate in accordance with the pricing grid below:

Senior Secured Net Leverage Ratio	Applicable Margin for Term Benchmark Loans	Applicable Margin for ABR Loans	Rate Commitment Fee
< 2.00:1.00	1.50%	Commitment Fee 0.50%	0.3750.225%
Applicable Rate for Eurodollar Loans			2.750%
> 2.00:1.00 and < 3.00:1.00	1.75%	Applicable Rate for ABR Loans 0.75%	1.7500.275%
> 3.00:1.00 and < 4.00:1.00	2.00%	1.00%	0.30%
> 4.00:1.00	2.25%	1.25%	0.325%

“Approved Fund” means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of its activities and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“Arranger” means JPMorgan Chase Bank, N.A., in its capacity as lead arranger and bookrunner, and any successor thereto.

“ASR Agreement” has the meaning set forth in Section 6.05(vi).

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

“Australian Dollars” refers to the lawful money of Australia.

“Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, any tenor for such Benchmark (or component thereof) or payment period for interest calculated with reference to such Benchmark (or component thereof), as applicable, that is or may be used for determining the length of an Interest Period for any term rate or otherwise, for determining any frequency of making payments of interest calculated pursuant to this Agreement as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to clause (e) of Section 2.11.



“Availability Period” means, with respect to any Class of Commitments, the period from and including the Effective Date to but excluding the earlier of the applicable Maturity Date and the date of termination of thesuch Commitments.

“Bail-In Action” means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA 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” means Chapter 11 of Title 11 of the United States Code, as amended from time to time and any successor statute and all rules and regulations promulgated thereunder.

“Benchmark” means, initially, with respect to any (i) RFR Loan, the Daily Simple SOFR or (ii) Term Benchmark Loan, the Term SOFR Rate; provided that if a Benchmark Transition Event, and the related Benchmark Replacement Date have occurred with respect to the Daily Simple SOFR or Term SOFR Rate, as applicable, or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to clause (b) of Section 2.11.

“Benchmark Replacement” means, for any Available Tenor:

the sum of: (a) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for dollar-denominated syndicated credit facilities at such time in the United States and (b) the related Benchmark Replacement Adjustment;

If the Benchmark Replacement as determined pursuant to the above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

“Benchmark Replacement Adjustment” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Interest Period and Available Tenor for any setting of such Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may



the Borrower for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body on the applicable Benchmark Replacement Date and/or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for dollar-denominated syndicated credit facilities at such time.

“Benchmark Replacement Conforming Changes” means, with respect to any Benchmark Replacement and/or any Term Benchmark Revolving Loan, any technical, administrative or operational changes (including changes to the definition of “Alternate Base Rate,” the definition of “Business Day,” the definition of “U.S. Government Securities Business Day,” the definition of “Interest Period,” timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of such Benchmark and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of such Benchmark exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

“Benchmark Replacement Date” means, with respect to any Benchmark, the earliest to occur of the following events with respect to such then-current Benchmark:

(1) in the case of clause (1) or (2) of the definition of “Benchmark Transition Event,” the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

(2) in the case of clause (3) of the definition of “Benchmark Transition Event,” the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be no longer representative; provided, that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, (i) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the

Reference Time for such determination and (ii) the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (1) or (2) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Transition Event” means, with respect to any Benchmark, the occurrence of one or more of the following events with respect to such then-current Benchmark:

(1) a public statement or publication of information by or on behalf of the



(1) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(2) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the NYFRB, the CME Term SOFR Administrator, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), in each case, which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(3) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer, or as of a specified future date will no longer be, representative.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Unavailability Period” means, with respect to any Benchmark, the period (if any) (x) beginning at the time that a Benchmark Replacement Date pursuant to clauses (1) or (2) of that definition has occurred if, at such time, no Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Loan Document in accordance

with Section 2.11 and (y) ending at the time that a Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder.

“Beneficial Ownership Certification” means a certification regarding beneficial ownership or control as required by the Beneficial Ownership Regulation.

“Beneficial Ownership Regulation” means 31 C.F.R. § 1010.230.

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

“Borrower” means Peloton Interactive, Inc., a Delaware corporation.

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

“Borrowing Request” means a request by the Borrower for a Borrowing in accordance



“Business Day” means any day ~~that is not~~ (other than a Saturday; or a Sunday ~~or other day)~~ on which ~~commercial banks are open for business~~ in New York City ~~are authorized or required by law to remain closed~~ or Chicago; provided that, ~~when used in connection with a Eurodollar Loan, the term “Business Day” shall also exclude any day on which banks are not open for dealings in Dollar deposits in the London interbank market.~~ in relation to RFR Loans and any interest rate settings, fundings, disbursements, settlements or payments of any such RFR Loan, or any other dealings of such RFR Loan, any such day that is only an U.S. Government Securities Business Day.

“Canadian Dollars” or “CA\$” refers to lawful money of Canada.

“Capital Lease Obligations” of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP; provided that, for the avoidance of doubt, any obligations relating to a lease that was accounted for by such Person as an operating lease as of the Effective Date and any similar lease entered into after the Effective Date by such Person shall be accounted for as obligations relating to an operating lease and not as Capital Lease Obligations.

“Cash Collateralize” means, in respect of an Obligation, to provide and pledge (as a first priority perfected security interest) cash collateral in Dollars, at a location and pursuant to documentation in form and substance satisfactory to the Administrative Agent and the applicable Issuing Bank (and “Cash Collateralization” has a corresponding meaning). “Cash Collateral” shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

“Cash Equivalents” means any investment product set forth under the heading “Permitted Investments” in the Investment Policy.

“CFC” has the meaning assigned to it in the definition of “Excluded Subsidiary.”

“CFC Holdco” has the meaning assigned to it in the definition of “Excluded Subsidiary.”

“Change in Control” means ~~(a) prior to an IPO, the failure by the holders of the Borrower’s Equity Interests as of the Effective Date to continue to own, beneficially and of record, Equity Interests in the Borrower representing a majority of the aggregate voting power represented by the issued and outstanding Equity Interests (on an as-converted-to-Common-Stock basis) in the Borrower; or (b) after an IPO, the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group (within the meaning of the Securities Exchange Act and the rules of the Securities and Exchange Commission thereunder), of Equity Interests in the Borrower representing more than 40% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests in the Borrower. The consummation of an IPO shall not be deemed a Change in Control.~~

“Change in Law” means the occurrence, after the date of this Agreement, 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; provided that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law,” regardless of the date enacted, adopted or issued.

“Charges” has the meaning set forth in [Section 9.13](#).

“Class” when used in reference to (a) any Commitment, refers to whether such Commitment is an Extended Commitment or a Non-Extended Commitment, (b) any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Loans in respect of Extended Commitments or Non-Extended Commitments and (c) any Lender, refers to whether such Lender has a Commitment or Loan with respect to a particular Class of Commitments or Loans.

“CME Term SOFR Administrator” means CME Group Benchmark Administration Limited as administrator of the forward-looking term Secured Overnight Financing Rate (SOFR) (or a successor administrator).

“Code” means the U.S. Internal Revenue Code of 1986, as amended from time to time.

“Collateral” means all property and rights of the Loan Parties, now owned or hereafter



acquired, upon which a Lien is purported to be created by any Security Document.

“Consolidated Adjusted EBITDA” means, for any Measurement Period, the sum of:

(a) Consolidated Net Income for such Measurement Period; plus  
(b) without duplication and to the extent reflected as a charge in the statement of such Consolidated Net Income for such Measurement Period, the sum of:

- (i) interest expense, amortization or writeoff of debt discount and debt issuance costs and commissions, discounts and other fees and charges associated with Indebtedness (including the Loans);
- (ii) income tax expense;
- (iii) depreciation and amortization expense;
- (iv) amortization of intangibles (including, but not limited to, goodwill);
- (v) stock option and other equity-based compensation expense;
- (vi) any transaction and/or integration expenses from acquisitions and other investments permitted by Section 6.04 and Dispositions permitted by Section 6.09;
- (vii) restructuring charges and other exit and disposal costs during such period; provided that cash payments in respect of such restructuring charges and exit and disposal costs shall be deducted from Consolidated Adjusted EBITDA when such payments are made; provided, further, that the aggregate amount of cash charges and costs permitted to be added back to Consolidated Adjusted EBITDA for any Measurement Period pursuant to this clause (vii) shall not exceed 25% of Consolidated Adjusted EBITDA for such Measurement Period (calculated after giving effect to such addbacks);
- (viii) extraordinary, unusual or non-recurring losses or expenses including, without limitation, losses related to product recalls and litigation and settlement expenses;
- (ix) adjustments permitted or required by Article 11 of Regulation S-X of the Securities Act of 1933 and the rules and regulations of the SEC promulgated thereunder;
- (x) all expenses or charges (including deferred financing costs written off and premiums paid) in connection with any early extinguishment of debt, including hedging obligations or other derivative instruments; and

(xi) charges resulting from purchase price adjustments with respect to acquisitions permitted by Section 6.04 (including accruals and payments of earn-out obligations); minus

(c) the following to the extent included in calculating such Consolidated Net Income:

(i) any extraordinary, unusual or non-recurring cash gains for such Measurement Period; and

(ii) any reversals of non-cash restructuring charges or other non-cash exit and



any reversals or non-cash restructuring charges or other non-cash exit and disposal costs during such period.

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

"Commitment" means, with respect to each Lender, the commitment of such Lender to make Loans and to acquire participations in Letters of Credit hereunder, expressed as an amount representing the maximum aggregate amount of such Lender's Revolving Credit Exposure hereunder, as such commitment may be (a) reduced from time to time pursuant to Section 2.06 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 9.04. ~~The initial amount of each Lender's Commitment as of the Restatement Effective Date is set forth on Schedule 2.01. The initial aggregate amount of the Lenders' Commitments as of the Restatement Effective Date is \$250,000,000.~~

"Commitment Fee" has the meaning set forth in Section 2.09(a).

"Communications" has the meaning set forth in Section 9.01.

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

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

"Control Account Agreement" means any tri-party agreement by and among a Loan Party, the Administrative Agent and a depository bank or securities intermediary at which such Loan Party maintains a Controlled Account, in each case in form and substance reasonably satisfactory to the Administrative Agent.

"Controlled Account" has the meaning set forth in Section 5.11.

"Conversion Date" shall mean, the first date after the Second Amendment Effective Date on which (a) the Borrower's Consolidated Adjusted EBITDA shall have been greater than \$0 for at least two consecutive fiscal quarters and (b) the Total Net Leverage Ratio is not greater than 4.00 to 1.00.

"Corresponding Tenor" with respect to any Available Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

"Covered Liabilities" has the meaning set forth in Section 9.20.

“Daily Simple SOFR” means, for any day (a “SOFR Rate Day”), a rate per annum equal SOFR for the day (such day “SOFR Determination Date”) that is five (5) U.S. Government Securities Business Day prior to (i) if such SOFR Rate Day is a U.S. Government Securities Business Day, such SOFR Rate Day or (ii) if such SOFR Rate Day is not a U.S. Government Securities Business Day, the U.S. Government Securities Business Day immediately preceding such SOFR Rate Day, in each case, as such SOFR is published by the SOFR Administrator on the SOFR Administrator’s Website. Any change in Daily Simple SOFR due to a change in SOFR shall be effective from and including the effective date of such change in SOFR without notice to the Borrower.

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

“Deemed LC Issuance” has the meaning set forth in Section 2.19(l).

“Deemed LC Request” has the meaning set forth in Section 2.19(l).

“Deemed LC Termination” has the meaning set forth in Section 2.19(l).

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

“Defaulting Lender” means, subject to Section 2.17(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder, unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s good faith determination that one or more conditions precedent to such funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been



satisfied, (ii) fund any portion of its participation in Letters of Credit hereunder within two Business Days of the date when due or (iii) pay to the Administrative Agent, any Issuing Bank or any other Lender any other amount required to be paid by it hereunder within two Business Days of the date when due, (b) has notified the Borrower or the Administrative Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's good faith determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender, or (e) has become the subject of a Bail-In Action. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under clauses (a) through (e) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.17(b)) upon delivery of written notice of such determination to the Borrower and each Lender.

"Disposition" means, with respect to any property or right, any sale, lease, sale and leaseback, assignment, license, conveyance, transfer or other disposition thereof (in one transaction or in a series of transactions and whether effected pursuant to a Division or otherwise). "Dispose" and "Disposed of" have meanings correlative thereto.

"Dividing Person" has the meaning assigned to it in the definition of "Division".

"Division" means the division of the assets, liabilities and/or obligations of a Person (the "Dividing Person") among two or more Persons (whether pursuant to a "plan of division" or similar arrangement), which may or may not include the Dividing Person and pursuant to which the Dividing Person may or may not survive.

~~"Dollar Equivalent" means, for any amount, at the time of determination thereof, (a) if such amount is expressed in Dollars, such amount, (b) if such amount is expressed in an Alternative Currency, the equivalent of such amount in Dollars determined by using the rate of exchange for the purchase of Dollars with the Alternative Currency last provided (either by~~



~~Reuters Corp. (“Reuters”) source on the Business Day (New York City time) immediately preceding the date of determination or if such service ceases to be available or ceases to provide a rate of exchange for the purchase of Dollars with the Alternative Currency, as provided by such other publicly available information service which provides that rate of exchange at such time in place of Reuters chosen by the Administrative Agent in its sole discretion (or if such service ceases to be available or ceases to provide such rate of exchange, the equivalent of such amount in Dollars as determined by the Administrative Agent using any method of determination it deems appropriate in its sole discretion) and (c) if such amount is denominated in any other currency, the equivalent of such amount in Dollars as determined by the Administrative Agent using any method of determination it deems appropriate in its sole discretion.~~

“Dollars” or “\$” refers to lawful money of the United States of America.

“Domestic Subsidiary” means any Subsidiary that is organized under the laws of any political subdivision of the United States, excluding (x) any such Subsidiary substantially all of the assets of which consist of Equity Interests in one or more Subsidiaries that are “controlled foreign corporations” within the meaning of Section 957 of the Code and (y) any such Subsidiary that is owned (directly or indirectly, in whole or in part) by one or more Subsidiaries that are “controlled foreign corporations” within the meaning of Section 957 of the Code.

“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 Affected Financial Institution](#).

“Effective Date” means November 3, 2017.

[“Electronic Signature” means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or record.](#)

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

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



“Equity Interests” means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any such equity interest; provided that Equity Interests shall not include any debt securities that are convertible into or exchangeable for any combination of Equity Interests and/or cash, but excluding any debt securities convertible into or referencing any of the foregoing.

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

“ERISA Affiliate” means any person that for purposes of Title I or Title IV of ERISA or Section 412 of the Code would be deemed at any relevant time to be a single employer or otherwise aggregated with the Borrower or a Subsidiary under Section 414(b), (c), (m) or (o) of the Code or Section 4001 of ERISA.

“ERISA Event” means any one or more of the following: (a) any reportable event, as defined in Section 4043 of ERISA, with respect to a Plan, as to which the PBGC has not waived under subsection .22, .23, .25, .26, .27, .28, .29, .30, .31, .32, .34 or .35 of PBGC Regulation Section 4043 the requirement of Section 4043(a) of ERISA that it be notified of such event; (b) the termination of any Plan under Section 4041(c) of ERISA; (c) the institution of proceedings by the PBGC under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan; (d) the failure to make a required contribution to any Plan that would result in the imposition of a lien or other encumbrance or the provision of security under Section 430 of the Code or Section 303 or 4068 of ERISA, or the arising of such a lien or encumbrance; (e) the failure to satisfy the minimum funding standard under Section 412 of the Code or Section 302 of ERISA, whether or not waived; or a determination that any Plan is considered an at-risk plan within the meaning of Section 430 of the Code or Section 303 of ERISA; (f) engaging in a non-exempt prohibited transaction within the meaning of Section 4975 of the Code or Section 406 of ERISA with respect to a Plan; (g) the complete or partial withdrawal of any Borrower, Subsidiary or any ERISA Affiliate from a Multiemployer Plan which results in the imposition of Withdrawal Liability or the insolvency under Title IV of ERISA of any Multiemployer Plan or (h) a determination that any Multiemployer Plan is in endangered or critical status under Section 432 of the Code or Section 305 of ERISA.

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

“Euro” and “EUR” mean the single currency of the participating member states of the European Union.

~~“Eurodollar”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted LIBO Rate.~~

“Event of Default” has the meaning set forth in Article 7.

“Excluded Subsidiary” means (a) each Immaterial Subsidiary, (b) any Subsidiary that is a “controlled foreign corporation” within the meaning of the Code (a “CFC”), (c) any Subsidiary substantially all the assets of which consist of Equity Interests of one or more CFCs (a “CFC Holdco”), and (d) any Subsidiary of a CFC.



“Excluded Swap Obligation” with respect to any Guarantor, (a) any Swap Obligation if, and to the extent that, and only for so long as, all or a portion of the guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, as applicable, such Swap Obligation (or any guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor’s failure to constitute an “eligible contract participant,” as defined in the Commodity Exchange Act and the regulations thereunder, at the time the guarantee of (or grant of such security interest by, as applicable) such Guarantor becomes or would become effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one Swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to Swaps for which such guarantee or security interest is or becomes illegal.

“Excluded Taxes” means, with respect to the Administrative Agent, any Issuing Bank, any Lender or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, (a) Taxes imposed on (or measured by) its net income (however denominated), franchise Taxes, and branch profits Taxes, in each case (i) imposed by the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located or (ii) that otherwise are Other Connection Taxes, (b) in the case of a Lender, any U.S. federal withholding Tax that is imposed on amounts payable to such Lender at the time such Lender becomes a party to this Agreement (other than pursuant to an assignment request by Borrower under Section 2.16(b)) or designates a new lending office, except to the extent that such Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office or assignment, to receive additional amounts from the Borrower with respect to such withholding tax pursuant to Section 2.14(a), (c) Taxes attributable to such recipient’s failure to comply with Section 2.14(f) and (d) any U.S. federal withholding Taxes imposed under FATCA.

“Executive Order” has the meaning set forth in Section 3.15(a).

“Existing Credit Agreement” has the meaning set forth in the recitals hereto.

“Existing Maturity Date” has the meaning assigned to such term in Section 2.21(a).

“Extended Commitments” means one or more Classes of extended Commitments that result from an Extension Amendment.

“Extending Lender” has the meaning assigned to such term in Section 2.21(b)(ii).

“Extension Amendment” means an amendment to this Agreement pursuant to Section 2.21.

“Extension Request” means a written request from the Borrower to the Administrative Agent requesting an extension of the Maturity Date pursuant to Section 2.21.

“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) and any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code or any published intergovernmental agreement and any fiscal or regulatory legislation, rules or official practices adopted pursuant to any published intergovernmental agreement entered into in connection with the implementation of such Sections of the Code.

“Federal Funds Effective Rate” means, for any day, the rate calculated by the NYFRB based on such day’s federal funds transactions by depository institutions, as determined in such manner as ~~the NYFRB~~ shall be set forth on ~~its public~~the NYFRB’s wWebsite from time to time, and published on the next succeeding Business Day by the NYFRB as the effective federal funds ~~effective rate;~~ provided that if the Federal Funds Effective Rate ~~shall~~as so determined would be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

“Fiduciary Account” means (i) any account maintained in the ordinary course of business by the Borrower or any of its Subsidiaries in order to hold, as a fiduciary or on a contractual basis, funds owned by another Person or (ii) any escrow account.

“Financial Officer” means the chief financial officer, principal accounting officer, vice president of finance or corporate controller of the Borrower.

“Floor” means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to the Adjusted Term SOFR Rate or the Adjusted Daily Simple SOFR, as applicable. For the avoidance of doubt the initial Floor for each of Adjusted Term SOFR Rate or the Adjusted Daily Simple SOFR shall be zero.

“Foreign IP Subsidiary” means any foreign Subsidiary to which the Borrower or any



U.S. Subsidiary transfers intellectual property rights, including pursuant to an investment in accordance with Section 6.04(e) or a Disposition in accordance with Section 6.09(e).

“Foreign Lender” means any Lender that is organized under the laws of a jurisdiction other than that in which the Borrower is located. For purposes of this definition, the United States of America, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

“Fronting Exposure” means, at any time there is a Defaulting Lender, with respect to any Issuing Bank, such Defaulting Lender’s Applicable Percentage of the outstanding Obligations with respect to Letters of Credit issued by such Issuing Bank other than such Obligations as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof.

“GAAP” means generally accepted accounting principles in the United States of America.

“Governmental Authority” means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“Guarantee” of or by any Person (the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided, that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business, or customary indemnification obligations entered into in connection with any acquisition or disposition of assets or of other entities (other than to the extent that the primary obligations that are the subject of such indemnification obligation would be considered Indebtedness hereunder).

“Guarantor” means any Domestic Subsidiary (not including an Excluded Subsidiary) of the Borrower that has delivered a Guaranty or a joinder agreement to a Guaranty pursuant to Section 5.10 hereof, and, other than with respect to its own Obligations, the Borrower.

“Guaranty” has the meaning set forth in Section 5.10.

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

“IBA” has the meaning set forth in [Section 1.05](#).

“Immaterial Subsidiary” means any Subsidiary that (a) did not, as of the last day of the fiscal quarter of the Borrower most recently ended for which financials have been delivered



fiscal quarter of the Borrower most recently ended for which financials have been delivered pursuant to Section 5.01(a) or (b), have (i) total assets with a value in excess of 5% of the Total Assets of the Borrower and its Subsidiaries, on a consolidated basis in accordance with GAAP, or (ii) revenues representing in excess of 5% of the Total Revenues of the Borrower and its Subsidiaries, on a consolidated basis in accordance with GAAP, for the four fiscal quarters ended as of such date and (b) taken together with all Immaterial Subsidiaries as of the last day of the fiscal quarter of the Borrower most recently ended for which financials have been delivered pursuant to Section 5.01(a) or (b), did not have (i) total assets with a value in excess of 10% of the Total Assets of the Borrower and its Subsidiaries, on a consolidated basis in accordance with GAAP, or (ii) revenues representing in excess of 10% of the Total Revenues of the Borrower and its Subsidiaries on a consolidated basis in accordance with GAAP for the four fiscal quarters ended as of such date. Each Immaterial Subsidiary shall be set forth in Schedule ~~3.15~~3.13(b), and the Borrower shall update such Schedule from time to time after the Closing Date as necessary to reflect all Immaterial Subsidiaries at such time.

~~“Impacted Interest Period” has the meaning set forth in the definition of “LIBO Rate”.~~

“Increased Amount Date” has the meaning set forth in Section 2.18.

“Incremental Amount” means ~~\$100,000,000; provided that, upon the consummation of an IPO, the Incremental Amount shall be \$150,000,000~~250,000,000.

“Indebtedness” of any Person at any date means, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person for the deferred purchase price of property or services (other than current trade payables incurred in the ordinary course of such Person’s business), (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (e) all Capital Lease Obligations of such Person, (f) any earn-out obligation except to the extent such obligation is (or is required to be) listed as a liability on the balance sheet of such Person in accordance with GAAP, has not been paid when due and is not disputed in good faith, (g) all obligations of such Person, contingent or otherwise, as an account party or applicant under or in respect of bankers’ acceptances, letters of credit, surety bonds or similar arrangements, (g) all Guarantees of such Person in respect of obligations of the kind referred to in clauses (a) through (f) above, and (h) all obligations of the kind referred to in clauses (a) through (g) above secured by (or for which the holder of such obligation has an existing right, contingent or otherwise, to be secured

by) any Lien on property (including accounts and contract rights) owned or acquired by such Person, whether or not such Person has assumed or become liable for the payment of such obligation. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person’s ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness expressly provide that such Person is not liable therefor.

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

“Indemnitee” has the meaning set forth in Section 9.03(b).

“Information” has the meaning set forth in Section 9.12(a).

“Intellectual Property” has the meaning set forth in the Security Agreement, as in effect on the Effective Date.

“Interest Election Request” has the meaning set forth in Section 2.05(b).

“Interest Payment Date” means (a) with respect to any ABR Loan, the last day of each March, June, September and December and (b) with respect to any ~~Eurodollar~~ Term Benchmark Loan, the last day of ~~the~~ each Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a ~~Eurodollar~~ Term Benchmark Borrowing with an Interest Period of more than three months’ duration, each day prior to the last day of such Interest Period that occurs at intervals of three months’ duration after the first day of such Interest Period, and the Maturity Date and (c) with respect to any RFR Loan, (1) each date that is on the numerically corresponding day in each calendar month that is one month after the Borrowing of such Loan (or, if there is no such numerically corresponding day in such month, then the last day of such month) and (2) the Maturity Date.

“Interest Period” means, with respect to any ~~Eurodollar~~ Term Benchmark Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, ~~two,~~ three or six months ~~(or, with the consent of each Lender, twelve months)~~ thereafter (in each case, subject to the availability for the Benchmark applicable to the relevant Loan or Commitment), as the Borrower may elect; provided, that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day ~~and~~, (ii) any Interest Period ~~pertaining to a Eurodollar Borrowing~~ that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period and (iii) no tenor that has been removed from this definition pursuant to Section 2.11(e) shall be available for specification in such Borrowing Request or Interest Election Request. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and



thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

“Interest Rate Determination Date” means, with respect to any Interest Period, the date that is two Business Days prior to the first day of such Interest Period.

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

“Investment Policy” means the Investment Policy of the Borrower dated ~~October 29~~November 1, 2018~~2019~~, as amended or modified; provided that, for purposes of the definition of “Cash Equivalents”, any amendment or modification shall become effective only if, and after, it has been provided to the Administrative Agent; provided, further, that, for purposes of the definition of “Cash Equivalents”, the consent of the Administrative Agent shall be required for any changes that add types of investments not similar to those already included in the Investment Policy immediately prior to such amendment or modification.

~~“IPO” means a bona fide underwritten sale to the public of common stock of the Borrower pursuant to a registration statement (other than on Form S-8 or any other form relating to securities issuable under any benefit plan of the Borrower or any of its Subsidiaries, as the case may be) that is declared effective by the Securities and Exchange Commission.~~

“IRS” means the U.S. Internal Revenue Service.

“ISDA Definitions” means the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time by the International Swaps and Derivatives Association, Inc. or such successor thereto.

“Issuing Bank” means, with respect to a particular Letter of Credit, (a) JPMorgan Chase Bank, N.A. in its capacity as the issuer of such Letter of Credit, and its successors in such capacity as provided in Section 2.19(j), (b) Silicon Valley Bank, (c) such other Lender selected by the Borrower from time to time to issue such Letter of Credit hereunder upon receipt by the Administrative Agent of documentation in form and substance satisfactory to the Administrative Agent pursuant to which such Lender agrees to assume the rights and obligations of an Issuing Bank hereunder (provided that no Lender shall be required to become an Issuing Bank pursuant to this subclause (b) without such Lender’s consent), or any successor in such capacity as provided in Section 2.19(j), or (d) any Lender selected by the Borrower (with the prior consent of the Administrative Agent) to replace a Lender who is a Defaulting Lender at the time of such Lender’s appointment as an Issuing Bank (provided that no Lender shall be required to become



in such capacity as provided in Section 2.19(j). Any Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates or branches of such Issuing Bank, in which case the term "Issuing Bank" shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate or branch.

"Joinder Agreement" means a joinder agreement in form and substance reasonably satisfactory to the Administrative Agent.

"Latest Maturity Date" means, at any date of determination, the latest maturity or expiration date applicable to any Loan or Commitment hereunder at such time.

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

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

"LC Sublimit" means the lesser of (a) (i) ~~\$150,000,000~~250,000,000 (or such greater amount as may be agreed by the applicable Issuing Bank from time to time in its sole discretion) and (b) the aggregate unused amount of the Commitments then in effect; provided that no Issuing Bank shall be required to issue Letters of Credit in an aggregate amount outstanding at any time in excess of an amount to be agreed by such Issuing Bank in its sole discretion.

"Lender-Related Person" has the meaning assigned to it in Section 9.03(b).

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

"Letter of Credit" means any letter of credit issued (or deemed to be issued) under and pursuant to this Agreement.

"Letter of Credit Request" means a request by the Borrower for a Letter of Credit in accordance with Section 2.19.

~~"LIBO Rate" means, with respect to any Eurodollar Borrowing for any Interest Period, the LIBO Screen Rate at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period; provided that if the LIBO Screen Rate shall not be available at such time for such Interest Period (an "Impacted Interest Period") then the LIBO Rate shall be the Interpolated Rate.~~

~~"LIBO Screen Rate" means, for any day and time, with respect to any Eurodollar Borrowing for any Interest Period, the London interbank offered rate as administered by ICE~~

~~Benchmark Administration (or any other Person that takes over the administration of such rate for Dollars for a period equal in length to such Interest Period as displayed on such day and time on pages LIBOR01 or LIBOR02 of the Reuters screen that displays such rate (or, in the event such rate does not appear on a Reuters page or screen, on any successor or substitute page on such screen that displays such rate, or on the appropriate page of such other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion, provided that if the LIBO Screen Rate shall be less than zero, such rate shall be deemed to zero for the purposes of this Agreement.~~



“Lien” means, with respect to any asset or right, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset or right, and (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset or right.

“LLC” means any Person that is a limited liability company under the laws of its jurisdiction of formation.

“Loan Documents” means this Agreement (including any amendment hereto or waiver hereunder), the Notes (if any), any Joinder Agreement, any Guaranty, any instrument of joinder to any Guaranty delivered pursuant to [Section 5.10](#) hereof, the Security Documents, the Agent Fee Letter and any other agreement, instrument or document executed after the Effective Date and designated by its terms as a Loan Document.

“Loan Parties” means the Borrower and the Guarantors.

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

“Local Time” means (a) in the case of a Loan, Borrowing or LC Disbursement denominated in Dollars, New York City time, and (b) in the case of a Loan, Borrowing or LC Disbursement denominated in an Alternative Currency, local time (it being understood that such local time shall mean London, England time unless otherwise notified by the Administrative Agent).

“Material Adverse Effect” means a material adverse effect on (a) the business, property, financial condition or results of operations of the Borrower and Subsidiaries taken as a whole, (b) the ability of the Borrower to perform any of its payment obligations under this Agreement or any other Loan Document or (c) the rights of or remedies available to the Agents and the Lenders under this Agreement or any other Loan Document.

“Material Indebtedness” means Indebtedness (other than any Indebtedness under the Loan Documents and Letters of Credit hereunder), or obligations in respect of one or more Swap Agreements, of any one or more of the Borrower and its Subsidiaries in a principal amount exceeding ~~\$10,000,000~~ [75,000,000](#). For purposes of determining Material Indebtedness, the “principal amount” of the obligations of the Borrower or any Subsidiary in respect of any Swap Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that the Borrower or such Subsidiary would be required to pay if such Swap

Agreement were terminated at such time. For the avoidance of doubt, the term “Material Indebtedness” shall not include any obligations under any Permitted Warrant Transaction.

“Maturity Date” means [as of the Second Amendment Effective Date \(a\) with respect to 2021 Non-Consenting Commitments, June 20, 2024, and \(b\) with respect to 2021 Consenting Commitments, December 10, 2026.](#)

“Maximum ASR Amount” has the meaning set forth in [Section 6.05\(vi\)](#).

“Maximum Rate” has the meaning set forth in [Section 9.13](#).

“Measurement Period” means, at any date of determination, the most recently completed four consecutive fiscal quarters of the Borrower ended on or prior to such date.

“Minimum Collateral Amount” means, at any time, (i) with respect to Cash Collateral consisting of cash or deposit account balances, an amount equal to 103% of the Fronting Exposure of an Issuing Bank with respect to Letters of Credit issued and outstanding at such time and (ii) otherwise, an amount determined by the Administrative Agent and the applicable



Issuing Bank in their sole discretion.

“Multiemployer Plan” means any multiemployer plan as defined in Section 4001(a)(3) of ERISA, which is contributed to by (or to which there is or would be an obligation to contribute of) the Borrower or a Subsidiary or an ERISA Affiliate, and each such plan for the five- year period immediately following the latest date on which the Borrower, or a Subsidiary or an ERISA Affiliate contributed to or had an obligation to contribute to such plan.

“New Commitments” has the meaning set forth in Section 2.18.

“New Lender” has the meaning set forth in Section 2.18.

“New Loans” has the meaning set forth in Section 2.18.

“New Taiwan Dollars” or “NT\$” refers to lawful money of the Republic of China (Taiwan).

“New York UCC” has the meaning set forth in the Security Agreement.

“Non-Consenting Lender” means any Lender that does not approve any consent, waiver or amendment that (i) requires the approval of all Lenders or all affected Lenders in accordance with the terms of Section 9.02 and (ii) has been approved by the Required Lenders.

“Non-Defaulting Lender” means, at any time, each Lender that is not a Defaulting Lender at such time.

“Non-U.S. Plan” means any plan, fund (including, without limitation, any superannuation fund) or other similar program established, contributed to (regardless of whether through direct contributions or through employee withholding) or maintained outside the United States by the Borrower or one or more Subsidiaries primarily for the benefit of employees of the

Borrower or such Subsidiaries residing outside the United States, which plan, fund or other similar program provides, or results in, retirement income, a deferral of income in contemplation of retirement or payments to be made upon termination of employment, and which plan is not subject to ERISA or the Code.

“Non-Extended Commitments” means the Commitments hereunder of any Non-extending Lender.

“Non-Extending Lender” has the meaning assigned to such term in Section 2.21(a).

“Note” has the meaning set forth in Section 2.07.

“NYFRB” means the Federal Reserve Bank of New York.

“NYFRB’s Website” means the website of the NYFRB at <http://www.newyorkfed.org>, or any successor source.

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

“Obligations” means all amounts owing by any Loan Party (or, in the case of Specified Cash Management Agreements, any Loan Party or Subsidiary thereof) to the Administrative Agent, any Issuing Bank or any Lender (or, in the case of (x) Specified Cash Management Agreements, any Affiliate of any Lender and (y) Specified Swap Agreements, any Person that was a Lender or an Affiliate of a Lender at the time the relevant Swap Agreement was entered into) pursuant to the terms of this Agreement or any other Loan Document, including any obligation to provide Cash Collateral, or in respect of any Letter of Credit, any Specified Swap Agreement or any Specified Cash Management Agreement (including all interest which accrues after the commencement of any case or proceeding in bankruptcy after the insolvency of, or for the reorganization of the Borrower or any of its Subsidiaries, whether or not allowed in such case or proceeding).

“Other Connection Taxes” means, with respect to the Administrative Agent, any Issuing Bank, any Lender or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, Taxes imposed as a result of a present or former connection between such Administrative Agent, Issuing Bank, Lender or other recipient and the jurisdiction imposing such Tax (other than connections arising solely from such Administrative Agent, Issuing Bank, Lender or recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan, Letter of Credit or Loan Document).

“Other Taxes” means any and all present or future stamp, court or documentary taxes or



any other excise, property, intangible, recording, filing or similar Taxes which arise from any payment made, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, this Agreement and the other Loan Documents; excluding, however, such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than such Taxes imposed with respect to an assignment that occurs as a result of the Borrower's request pursuant to Section 2.16(b)).

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

"Participant" has the meaning set forth in Section 9.04(c)(i).

"Participant Register" has the meaning set forth in Section 9.04(c)(iii).

"Payment" has the meaning assigned to it in Section 9.15.

"Payment Notice" has the meaning assigned to it in Section 9.15.

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

"Pension Plan" means any "employee pension benefit plan" within the meaning of Section 3(2) of ERISA, other than a Multiemployer Plan, that is subject to Title IV of ERISA, Section 412 of the Code or Section 302 of ERISA and is maintained in whole or in part by the Borrower, any Subsidiary or any ERISA Affiliate or with respect to which any of the Borrower, any Subsidiary or any ERISA Affiliate has actual or contingent liability.

"Permitted Bond Hedge Transaction" means any call or capped call option (or substantively equivalent derivative transaction) relating to the Borrower's common stock (or other securities or property following a merger event or other change of the common stock of the Borrower) purchased by the Borrower in connection with the issuance of any Permitted Convertible Indebtedness; provided that the purchase price for such Permitted Bond Hedge Transaction, less the proceeds received by the Borrower from the sale of any related Permitted Warrant Transaction, does not exceed the net proceeds received by the Borrower from the sale of such Permitted Convertible Indebtedness issued in connection with such Permitted Bond Hedge Transaction.

"Permitted Convertible Indebtedness" means senior, unsecured Indebtedness of the Borrower that is convertible into shares of common stock of the Borrower (or other securities or property following a merger event or other change of the common stock of the Borrower) (and

cash in lieu of fractional shares) and/or cash (in an amount determined by reference to the price of such common stock or such other securities).

"Permitted Encumbrances" means:

(a) Liens imposed by law for taxes, assessments or governmental charges or levies that are not yet delinquent or are being contested in compliance with Section 5.04;

(b) carriers', warehousemen's, mechanics', materialmen's, landlord's, supplier's, repairmen's and other like liens imposed by law, arising in the ordinary course of business and

repairs and other like items imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than 90 days or are being contested in compliance with Section 5.04;

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

(d) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case incurred in the ordinary course of business and to secure surety and appeal bonds in respect of judgments that do not constitute an Event of Default under clause (k) of Article 7;

(e) judgment liens in respect of judgments that do not constitute an Event of Default under clause (k) of Article 7;

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

(g) Uniform Commercial Code financing statements filed (or similar filings under applicable law) solely as a precautionary measure in connection with operating leases.

"Permitted Third Party Bank" means any bank or other financial institution, other than the Lenders, with whom any Loan Party, with the written consent of the Administrative Agent, maintains a Controlled Account and with whom a Control Account Agreement has been executed.

"Permitted Warrant Transaction" means any call option, warrant or right to purchase (or substantively equivalent derivative transaction) relating to the Borrower's common stock (or other securities or property following a merger event or other change of the common stock of the Borrower) and/or cash (in an amount determined by reference to the price of such common stock) sold by the Borrower substantially concurrently with any purchase by the Borrower of a Permitted Bond Hedge Transaction.

"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" as defined in Section 3 of ERISA (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA maintained or contributed to by the Borrower, a Subsidiary or any ERISA Affiliate or to which the Borrower, a Subsidiary or an ERISA Affiliate has or would have an obligation to contribute, and each such plan subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA for the five-year period immediately following the latest date on which the Borrower, a Subsidiary or an ERISA Affiliate maintained, contributed to or had an obligation to contribute to (or is deemed under Section 4069 of ERISA to have maintained or contributed to or to have had an obligation to contribute to, or otherwise to have liability with respect to) such plan.

"Platform" has the meaning set forth in Section 9.01.

~~"Pounds Sterling" and "£" mean the lawful currency of the United Kingdom.~~

"POP Facility" means the manufacturing and logistics facility being developed by the Borrower in Troy Township, Ohio, referred to as "Peloton Output Park".



“Prime Rate” means the rate of interest last quoted by The Wall Street Journal as the “Prime Rate” in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent) or any similar release by the Board (as determined by the Administrative Agent). Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective.

“Principal Office” means the office of the Administrative Agent as set forth in Section 9.01, or such other office or office of a third party or sub-agent, as appropriate, as the Administrative Agent may from time to time designate in writing to Borrower and each Lender.

“Purchase Money Indebtedness” means Indebtedness incurred to finance the acquisition, construction or improvement of any fixed or capital asset to the extent incurred prior to or within 180 days following such acquisition, construction or improvement.

“Reference Time” with respect to any setting of the then-current Benchmark means (1) if such Benchmark is the Term SOFR Rate, 5:00 a.m. (Chicago time) on the day that is two Business Days preceding the date of such setting, (2) if the RFR for such Benchmark is Daily Simple SOFR, then four Business Days prior to such setting or (3) if such Benchmark is none of the Term SOFR Rate or Daily Simple SOFR, the time determined by the Administrative Agent in its reasonable discretion.

“Register” has the meaning set forth in Section 9.04(b).

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

“Relevant Governmental Body” means, the Federal Reserve Board and/or the NYFRB, the CME Term SOFR Administrator, as applicable, or a committee officially endorsed or convened by the Federal Reserve Board and/or the NYFRB or, in each case, any successor thereto.

“Relevant Rate” means (i) with respect to any Term Benchmark Borrowing, the Adjusted Term SOFR Rate or (ii) with respect to any RFR Borrowing, the Adjusted Daily Simple SOFR, as applicable.

“Replacement Lender” has the meaning assigned to such term in Section 2.21(c).

“Required Additional Debt Terms” means, with respect to any Indebtedness, such Indebtedness (i) shall not mature prior to the Latest Maturity Date, (ii) either (x) shall not require any payment of principal prior to the Latest Maturity Date or (y) shall not require payments of principal in an aggregate amount per annum in excess of 2.5% of the principal amount thereof and (iii) contains terms customary for similar issuances of Indebtedness at such time (as determined in good faith by the Borrower) (it being understood that, other than in the case of any issuance of a debt security, such terms shall be no more restrictive, taken as a whole (as determined in good faith by the Borrower), than the Loans, and in any event no such Indebtedness (including any debt securities) shall contain a financial maintenance covenant more restrictive than any financial maintenance covenant contained herein)).

“Required Lenders” means, at any time, at least two unaffiliated Lenders (a) having Revolving Credit Exposures and unused Commitments representing more than 50% of the sum of the total Revolving Credit Exposures and unused Commitments of all Lenders at such time, or (b) at any time after the Commitments of all Lenders shall have been terminated, holding more than 50% of the total Revolving Credit Exposures at such time; provided that, for purposes of this definition of “Required Lenders”, a Lender and its Affiliates shall be deemed to be one Lender. The Revolving Credit Exposure and Commitment of any Defaulting Lender shall be disregarded in determining Required Lenders at any time.

“Resolution Authority” means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

“Response Date” has the meaning assigned to such term in Section 2.21(a).

“Responsible Officer” means any of the President, Chief Executive Officer, Chief Financial Officer and Vice President of Finance of the applicable Loan Party, or any person designated by any such Loan Party in writing to the Administrative Agent from time to time, acting singly.

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

“Restricted Cash” means, at any time, the cash and Cash Equivalents of the Borrower to the extent (a) classified (or required to be classified) as restricted cash or restricted cash equivalents on the balance sheet of the Borrower in accordance with GAAP or (b) such cash or Cash Equivalents are subject to any Lien (including, without limitation, Liens permitted by



Documents (including pursuant to any Control Account Agreement).

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests in the Borrower or any Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Equity Interests in the Borrower. For the avoidance of doubt, the receipt or acceptance by the Borrower or any Subsidiary of the return of Equity Interests issued by the Borrower or any Subsidiary to the seller of a Person, business or division as consideration for the purchase of such Person, business or division, which return is in settlement of indemnification claims owed by such seller in connection with such acquisition, shall not be deemed to be a Restricted Payment.

“Reuters” ~~has the meaning set forth in the~~ means, as applicable, Thomson Reuters Corp., dRefinity of Dollar Equivalent, or any successor thereto.

~~“Revaluation Date” means (a) with respect to any Letter of Credit denominated in an Alternative Currency, each of the following: (i) the date on which such Letter of Credit is issued, (ii) the first Business Day of each calendar month and (iii) the date of any amendment of such Letter of Credit that has the effect of increasing the face amount thereof; and (b) any additional date as the Administrative Agent may determine at any time when an Event of Default exists.~~

“RFR Borrowing” means, as to any Borrowing, the RFR Loans comprising such Borrowing.

“RFR Loan” means a Loan that bears interest at a rate based on the Adjusted Daily Simple SOFR.

“Revolving Credit Exposure” means, with respect to any Lender at any time, the sum of the outstanding principal amount of such Lender’s Loans and its LC Exposure at such time.

“Sanctioned Country” means, at any time, a country, region or territory which is the subject or target of any Sanctions (and, as of the Effective Date, Crimea, Cuba, Iran, North Korea, and Syria).

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

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

the U.S. Department of State, or (b) the United Nations Security Council, the European Union, Her Majesty’s Treasury of the United Kingdom.

“SEC” means the Securities and Exchange Commission or any Governmental Authority succeeding to any of its principal functions.

“Second Amendment” means the Second Amendment, dated as of the Second Amendment Effective Date, to this Agreement.

“Second Amendment Effective Date” means December 10, 2021.



“Secured Parties” has the meaning assigned to such term in the Security Agreement.

“Security Agreement” means the Security Agreement, dated as of the Effective Date, between the Borrower and the Administrative Agent for the benefit of the Secured Parties, as amended, supplemented or otherwise modified from time to time, including by each joinder agreement thereto.

“Security Documents” means the collective reference to the Security Agreement, the Control Account Agreements and all other security documents hereafter delivered to the Administrative Agent by a Loan Party granting or perfecting a Lien on any property or right of any person to secure the obligations and liabilities of any Loan Party under any Loan Document.

“Senior Secured Net Leverage Ratio” means, as of any date of determination, the ratio of (a) Senior Secured Indebtedness as of such date to (b) Consolidated Adjusted EBITDA for the most recently completed Measurement Period.

“Senior Secured Indebtedness” means the aggregate principal amount of Total Net Indebtedness that is secured by a Lien on any asset of the Borrower or any of its Subsidiaries.

“SOFR” means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

“SOFR Administrator” means the NYFRB (or a successor administrator of the secured overnight financing rate).

“SOFR Administrator’s Website” means the NYFRB’s website, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

“SOFR Determination Date” has the meaning specified in the definition of “Daily Simple SOFR”.

“SOFR Rate Day” has the meaning specified in the definition of “Daily Simple SOFR”.

“Solvent” means, with respect to the Borrower and its Subsidiaries on a particular date, that on such date (a) the fair value of the present assets of the Borrower and its Subsidiaries, taken as a whole, is greater than the total amount of liabilities, including, without limitation,

contingent liabilities, of the Borrower and its Subsidiaries, taken as a whole, (b) the present fair saleable value of the assets of the Borrower and its Subsidiaries, taken as a whole, is not less than the amount that will be required to pay the probable liability of the Borrower and its Subsidiaries, taken as a whole, on their debts as they become absolute and matured, (c) the Borrower and its Subsidiaries, taken as a whole, do not intend to, and do not believe that they will, incur debts or liabilities (including current obligations and contingent liabilities) beyond their ability to pay such debts and liabilities as they mature in the ordinary course of business and (d) the Borrower and its Subsidiaries, taken as a whole, are not engaged in business or a transaction, and are not about to engage in business or a transaction, in relation to which their property would constitute an unreasonably small capital. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standard No. 5 (ASC 450)).

“Specified Cash Management Agreement” means any agreement providing for treasury, depository, purchasing card or cash management services, including in connection with any automated clearing house transfers of funds or any similar transactions between the



any automated clearing house transfers or funds or any similar transactions between the Borrower or any Guarantor Subsidiary and any Lender or affiliate thereof, which is in effect as of the Second Amendment Effective Date or which has been designated by such Lender and the Borrower, by notice to the Administrative Agent ~~not later than~~ upon the earlier of (i) 90 days after Second Amendment Effective Date and (ii) the execution and delivery by the Borrower or such Guarantor Subsidiary, as a "Specified Cash Management Agreement".

"Specified Swap Agreement" means any Swap Agreement in respect of interest rates or currency exchange rates entered into by the Borrower or any Guarantor and any Person that is a Lender or an Affiliate of a Lender at the time such Swap Agreement is entered into; ~~provided that such Swap Agreement is entered into to hedge or mitigate risks, and not for speculative purposes, in the ordinary course of the Borrower or such Guarantor's business or in order to effectively cap, collar or exchange interest rates (from floating to fixed rates, from one floating rate to another floating rate or otherwise) with respect to any interest bearing liability or investment of the Borrower or such Guarantor.~~ (regardless of whether such Person subsequently ceases to be a Lender or Affiliate of a Lender).

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

“Sterling” and “£” mean the lawful currency of the United Kingdom.

“Subsidiary” means any subsidiary of the Borrower.

“subsidiary” means, with respect to any Person (the “parent”) at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent’s consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent and which is required by GAAP to be consolidated in the consolidated financial statements of the parent.

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

“Syndication Agents” means Barclays Bank of America PLC, Citibank, N.A., Barclays Bank PLC, and Goldman Sachs Lending Partners LLC and Silicon Valley Bank, in their capacity as joint syndication agents, and any successors thereto.

“Taxes” means any and all present or future taxes, levies, imposts, duties, deductions, charges, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Term Benchmark” when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted Term SOFR Rate.

“Term SOFR Determination Day” has the meaning assigned to it under the definition of Term SOFR Reference Rate.

“Term SOFR Rate” means, with respect to any Term Benchmark Borrowing and for any tenor comparable to the applicable Interest Period, the Term SOFR Reference Rate at approximately 5:00 a.m., Chicago time, two U.S. Government Securities Business Days prior to the commencement of such tenor comparable to the applicable Interest Period, as such rate is published by the CME Term SOFR Administrator.

“Term SOFR Reference Rate” means, for any day and time (such day, the “Term



SOFR Determination Day”), with respect to any Term Benchmark Borrowing denominated in Dollars and for any tenor comparable to the applicable Interest Period, the rate per annum determined by the Administrative Agent as the forward-looking term rate based on SOFR. If by 5:00 pm (New York City time) on such Term SOFR Determination Day, the “Term SOFR Reference Rate” for the applicable tenor has not been published by the CME Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Rate has not occurred, then the Term SOFR Reference Rate for such Term SOFR Determination Day will be the Term SOFR Reference Rate as published in respect of the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate was published by the CME Term SOFR Administrator, so long as such first preceding Business Day is not more than five (5) Business Days prior to such Term SOFR Determination Day.

“Total Assets” means the total assets of the Borrower and its Subsidiaries on a consolidated basis in accordance with GAAP, as shown on the most recent balance sheet of the Borrower delivered pursuant to Section 5.01(a) or (b).

~~“Total Indebtedness” means the aggregate principal amount of Indebtedness of the Borrower and its Subsidiaries, as determined on a consolidated basis in accordance with GAAP.~~

“Total Liquidity” means, at any time, the sum of (a) all cash and Cash Equivalents (except, for the avoidance of doubt, any Restricted Cash) held by the Borrower at such time and (b) the aggregate unused amount of the Commitments then in effect.

“Total ~~Revenues~~Net Indebtedness” means (a) the ~~gross revenues~~aggregate principal amount of Indebtedness of the Borrower and its Subsidiaries, ~~as determined on a consolidated basis in accordance with GAAP, as shown on the most recent income statement of the Borrower delivered~~ less (b) the aggregate amount of cash and Cash Equivalents (in each case, free and clear of all liens other than Liens permitted pursuant to Section ~~5.01(a) or (b)~~6.02), excluding cash and Cash Equivalents which are listed as “restricted” on the consolidated balance sheet of the Borrower as of such date.

“Total Net Leverage Ratio” means, as of any date of determination, the ratio of (a) Total Net Indebtedness as of such date to (b) Consolidated Adjusted EBITDA for the most recently completed Measurement Period.

~~“Total Revenues” means the gross revenues of the Borrower and its Subsidiaries, determined on a consolidated basis in accordance with GAAP, as shown on the most recent income statement of the Borrower delivered pursuant to Section 5.01(a) or (b).~~

“Transactions” means the execution, delivery and performance by the Loan Parties of each Loan Document to which it is a party, the borrowing of Loans and the issuance of Letters of Credit hereunder.

“Type”, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted ~~LIBOR~~Term SOFR Rate or the Alternate Base Rate or Adjusted Daily Simple SOFR.

“UK Financial Institutions” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“UK Resolution Authority” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.



“Unadjusted Benchmark Replacement” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

“Unfunded Pension Liability” means the excess of a Pension Plan’s benefit liabilities under Section 4001(a)(16) of ERISA, over the current value of that Pension Plan’s assets, determined in accordance with the assumptions used for funding the Pension Plan pursuant to Section 412 of the Code for the applicable plan year.

“Unrestricted Account” has the meaning set forth in Section 5.11.

“USA Patriot Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. No. 107-56 (signed into law October 26, 2001)), as amended from time to time.

“U.S. Government Securities Business Day” means any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

“U.S. Person” means any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

“Withdrawal Liability” means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Title IV of ERISA.

“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.

“Yen” or “¥” mean the lawful currency of Japan.

#### Section 1.02 Classification of Loans and Borrowings

For purposes of this Agreement, Loans may be classified and referred to by Type (e.g., a “Eurodollar Term Benchmark Loan”). Borrowings also may be classified and referred to by Type (e.g., a “Eurodollar Term Benchmark Borrowing”).

#### Section 1.03 Terms Generally

The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise

(a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, amended and restated, supplemented or otherwise modified (subject to any restrictions on such amendments, amendments and restatements, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person's successors and assigns, (c) the words "herein," "hereof" and "hereunder," and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (e) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights and (f) any reference to any law shall include all statutory and regulatory 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 or supplemented from time to time.

#### Section 1.04 Accounting Terms; GAAP

Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided that, if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Effective Date in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith. Notwithstanding the foregoing, all financial covenants contained herein shall be



calculated (1) without giving effect to any election under the Statement of Financial Accounting Standards No. 159 (ASC 825) (or any similar accounting principle) permitting or requiring a Person to value its financial liabilities or Indebtedness at the fair value thereof and (2) without giving effect to any treatment of Indebtedness in respect of convertible debt instruments under Accounting Standards Codification 470-20 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof. Prior to the first delivery of financial statements pursuant to Section 5.01(a) or (b) on or after the Restatement Effective Date, any reference in this Agreement to the financial statements delivered pursuant to Section 5.01(a) or (b) or similar reference to the same effect shall be deemed to refer to the most recently delivered financial statements pursuant to Section 5.01(a) or (b) of the Existing Credit Agreement.

#### Section 1.05 Interest Rates; LIBOR Benchmark Notification

~~The interest rate on Eurodollar Loans is determined by reference to the LIBO Rate, which is derived from the London interbank offered rate. The London interbank offered rate is intended to represent the rate at which contributing banks may obtain short-term borrowings from each other in the London interbank market. In July 2017, the U.K. Financial Conduct Authority announced that, after the end of 2021, it would no longer persuade or compel contributing banks to make rate submissions to the ICE Benchmark Administration (together with any successor to the ICE Benchmark Administrator, the "IBA") for purposes of the IBA setting the London interbank offered rate. As a result, it is possible that commencing in 2022, the London interbank offered rate may no longer be available or may no longer be deemed an appropriate reference rate upon which to determine the interest rate on Eurodollar Loans. In light of this eventuality, public and private sector industry initiatives are currently underway to identify new or alternative reference rates to be used in place of the London interbank offered rate. In the event that the London interbank offered rate is no longer available or in certain other circumstances as set forth in Section 2.11 of this Agreement, such a Loan denominated in dollars may be derived from an interest rate benchmark that may be discontinued or is, or may in the future become, the subject of regulatory reform. Upon the occurrence of a Benchmark Transition Event, Section 2.11 provides a mechanism for determining an alternative rate of interest. The Administrative Agent will notify the Borrower, pursuant to Section 2.11, in advance of any change to the reference rate upon which the interest rate on Eurodollar Loans is based. However, the Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, the administration, submission, performance or any other matter related to ~~the London interbank offered rate or other rates in the definition of "LIBO Rate"~~ any interest rate used in this Agreement, or with respect to any alternative or successor rate thereto, or replacement rate thereof, including, without limitation, whether the composition or characteristics of any such alternative, successor or replacement reference rate, ~~as it may or may not be adjusted pursuant to Section 2.11~~, will be similar to, or produce the same value or economic equivalence of, the LIBO existing interest R rate being replaced or have the same volume or liquidity as did ~~the London interbank offered~~ any existing interest rate prior to its discontinuance or unavailability. The Administrative Agent and its affiliates and/or other related entities may engage in transactions that affect the calculation of any interest rate used in this Agreement or any alternative, successor or alternative rate (including any Benchmark Replacement) and/or any relevant adjustments thereto, in each case, in a manner adverse to the~~



reasonable discretion to ascertain any interest rate used in this Agreement, any component thereof, or rates referenced in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

#### Section 1.06 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 and acquired on the first date of its existence by the holders of its Equity Interests at such time.

### ARTICLE 2 THE CREDITS

#### Section 2.01 Commitments

Subject to the terms and conditions set forth herein, each Lender severally agrees to make Loans in Dollars to the Borrower from time to time during the applicable Availability Period in an aggregate principal amount that will not result in (a) the Dollar Equivalent of such Lender's Revolving Credit Exposure exceeding such Lender's Commitment or (b) the sum of the Dollar Equivalents of the total Revolving Credit Exposures of all Lenders exceeding the total Commitments of all Lenders. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Loans.

#### Section 2.02 Loans and Borrowings

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

(b) Subject to Section 2.11, each Borrowing shall be comprised entirely of ABR Loans or Eurodollar Term Benchmark Loans or RFR Loans as the Borrower may request in accordance herewith. Each Lender at its option may make any Eurodollar-Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that any

exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement.

(c) At the commencement of each Interest Period for any Eurodollar Term Benchmark Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of \$1,000,000 and not less than \$5,000,000. At the time that each ABR Borrowing and/or RFR Borrowing is made, such Borrowing shall be in an aggregate amount that is an integral multiple of \$1,000,000 and not less than \$5,000,000; provided that an ABR Borrowing may be in an aggregate amount that is equal to the entire unused balance of the total Commitments of the



applicable Class or that is required to finance the reimbursement of an LC Disbursement as contemplated by Section 2.19(e). Borrowings of more than one Type may be outstanding at the same time; provided that there shall not at any time be more than a total of ten Eurodollar Term Benchmark Borrowings or RFR Borrowings outstanding.

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

### Section 2.03 Requests for Borrowings

To request a Borrowing, the Borrower shall notify the Administrative Agent of such request by telephone or telecopy (a) in the case of a Eurodollar Term Benchmark Borrowing, not later than 12:00 noon, New York City time, three Business Days before the date of the proposed Borrowing or in the case of an RFR Borrowing, not later than 11:00 a.m., New York City time, five Business Days before the date of the proposed Borrowing or (b) in the case of an ABR Borrowing, not later than 12:00 noon, New York City time, one Business Day prior to the date of the proposed Borrowing; provided that any such notice of an ABR Borrowing to finance the reimbursement of an LC Disbursement as contemplated by Section 2.19(e) may be given not later than 10:00 a.m. New York City time, on the date of the proposed Borrowing. Each such telephonic Borrowing Request shall be confirmed promptly by delivery to the Administrative Agent of a written Borrowing Request in substantially the form of Exhibit B-1 attached hereto and signed by the Borrower. Each such telephonic and written Borrowing Request shall specify the following information in compliance with Section 2.02:

- (i) the Class of such Borrowing;
- (ii) the aggregate amount of the requested Borrowing;
- (iii) the date of such Borrowing, which shall be a Business Day;
- (iiiiv) whether such Borrowing is to be an ABR Borrowing or a Eurodollar Term Benchmark Borrowing or an RFR Borrowing;
- (ivv) in the case of a Eurodollar Term Benchmark Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period"; and

(vvi) the location and number of the account or accounts to which funds are to be disbursed, which shall comply with the requirements of Section 2.04.

If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested Eurodollar Term Benchmark Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one month's duration. Promptly following receipt of a Borrowing Request in accordance with this Section, the Administrative Agent shall advise each applicable Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing. Except as otherwise provided herein, a Borrowing Notice for a Eurodollar Term Benchmark Borrowing shall be irrevocable on and after the related Interest Rate Determination Date, and the Borrower shall be bound to make a borrowing in accordance therewith. As soon as practicable after 10:00 a.m., New York City time, on each Interest Rate Determination Date, Administrative Agent shall determine (which determination shall, absent manifest error, be final, conclusive and binding upon all parties) the interest rate that shall apply to the Eurodollar Term Benchmark Borrowing for which an interest rate is then being determined for the applicable Interest Period and shall promptly give notice thereof (in writing or by telephone confirmed in writing) to the Borrower and each applicable Lender.

writing) to the Borrower and each applicable Lender.

#### Section 2.04 Funding of Borrowings

(a) Each Lender of the applicable Class specified in the Borrowing Request for such Borrowing shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 12:00 noon, New York City time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders. The Administrative Agent will make such Loans available to the Borrower by promptly crediting the amounts so received, in like funds, to an account or accounts designated by the Borrower in the applicable Borrowing Request; provided that ABR Loans made to finance the reimbursement of an LC Disbursement as provided in Section 2.19(e) shall be remitted by the Administrative Agent to the applicable Issuing Bank.

(b) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's Applicable Class Percentage of such Borrowing, the Administrative Agent may assume that such Lender has made such Applicable Class Percentage available on such date in accordance with paragraph (a) of this Section and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its Applicable Class Percentage of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or (ii) in the case of the Borrower, the interest rate applicable to ABR Loans. If such Lender pays



such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such Borrowing.

#### Section 2.05 Interest Elections

(a) Each Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Eurodollar Term Benchmark Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Eurodollar Term Benchmark Borrowing, may elect Interest Periods therefor, all as provided in this Section. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated among the Lenders holding the Loans comprising such Borrowing in accordance with their respective Applicable Class Percentages, and the Loans comprising each such portion shall be considered a separate Borrowing.

(b) To make an election pursuant to this Section, the Borrower shall notify the Administrative Agent of such election by telephone by the time that a Borrowing Request would be required under Section 2.03 if the Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such telephonic request shall be irrevocable and shall be confirmed promptly by hand delivery or telecopy to the Administrative Agent of a written request (an "Interest Election Request") in substantially the form of Exhibit C attached hereto and signed by the Borrower.

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

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

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

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

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

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

Agent shall advise each applicable Lender of the details thereof and of such Lender's portion of each resulting Borrowing. Except as otherwise provided herein, an Interest Election Request for conversion to, or continuation of, any Eurodollar Term Benchmark Borrowing shall be irrevocable on and after the related Interest Rate Determination Date, and the Borrower shall be bound to effect a conversion or continuation in accordance therewith.

(e) If the Borrower fails to deliver a timely Interest Election Request with respect to a Eurodollar Term Benchmark Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be continued as a Eurodollar Term Benchmark Borrowing with an Interest Period of one month's duration. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing, (i) no outstanding Borrowing may be converted to or continued as a Eurodollar Term Benchmark Borrowing and (ii) unless repaid, (a) each Eurodollar Term Benchmark Borrowing and (B) each RFR Borrowing shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

#### Section 2.06 Termination and Reduction of Commitments

(a) Unless previously terminated, the Commitments shall terminate on the applicable Maturity Date.

(b) The Borrower may at any time terminate, or from time to time reduce, the Commitments of any Class; provided that (i) each reduction of ~~the~~ Commitments shall be in an amount that is an integral multiple of \$1,000,000 and not less than \$5,000,000 and (ii) the Borrower shall not terminate or reduce ~~the~~ any Class of Commitments if, after giving effect to any concurrent prepayment of the Loans of such Class in accordance with Section 2.08, the sum of the Dollar Equivalents of the Revolving Credit Exposures with respect to such Class would exceed the total Commitments of such Class.

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

#### Section 2.07 Repayment of Loans; Evidence of Debt

(a) The Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Loan on the applicable Maturity Date.

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

(c) The Administrative Agent shall maintain accounts in which it shall record (i) the



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

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

(e) Any Lender may request that Loans made by it be evidenced by a promissory note (each such promissory note being called a "Note" and all such promissory notes being collectively called the "Notes"). In such event, the Borrower shall prepare, execute and deliver to such Lender a Note payable to the order of such Lender (or, if requested by such Lender, to such Lender and its registered assigns) in substantially the form of Exhibit D attached hereto. Thereafter, the Loans evidenced by such Note and interest thereon shall at all times (including after assignment pursuant to Section 9.04) be represented by one or more promissory notes in such form payable to the order of the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).

#### Section 2.08 Prepayment of Loans

(a) The Borrower shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, without premium or penalty (subject to the requirements of Section 2.13), subject to prior notice in accordance with paragraph (b) of this Section.

(b) The Borrower shall notify the Administrative Agent by telephone (confirmed by telecopy or delivery of written notice) or telecopy of any prepayment hereunder (i) in the case of prepayment of (1) a Eurodollar Term Benchmark Borrowing, not later than 12:00 noon, New York City time, three Business Days before the date of prepayment or (2) an RFR Revolving Borrowing, not later than 11:00 a.m., New York City time, four Business Days before the date of prepayment, or (ii) in the case of prepayment of an ABR Borrowing, not later than 12:00 noon, New York City time, one Business Day before the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing or

portion thereof to be prepaid; provided that, if a notice of prepayment is given in connection with a conditional notice of termination of the Commitments as contemplated by Section 2.06, then such notice of prepayment may be revoked if such notice of termination is revoked in accordance with Section 2.06. Promptly following receipt of any such notice relating to a Borrowing, the Administrative Agent shall advise the applicable Lenders of the contents thereof. Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of an advance of a Borrowing of the same Type as provided in Section 2.02. Each prepayment of a Borrowing shall be applied ratably to the Loans of the applicable Lenders in accordance with their respective Applicable Class Percentages. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.10 and any costs incurred as contemplated by Section 2.13.

(c) The Borrower shall from time to time prepay the Loans to the extent necessary so that the aggregate principal amount of all outstanding Loans shall not at any time exceed the Commitments of such Class then in effect.

(d) If at any time, (i) other than as a result of fluctuations in currency exchange rates, the Dollar Equivalent of the relevant Lenders' aggregate Revolving Credit Exposures in respect

the Dollar Equivalent of the relevant Lenders' aggregate Revolving Credit Exposures in respect of any Class (calculated, with respect to any LC Exposure denominated in an Alternative Currency, as of the most recent Revaluation Date with respect to such LC Exposure) exceeds the aggregate Commitments of such Class then in effect, or (ii) solely as a result of fluctuations in currency exchange rates, the Dollar Equivalent of the relevant Lenders' aggregate Revolving Credit Exposures in respect of any Class (so calculated), as of the most recent Revaluation Date, exceeds one hundred ten percent (110%) of the aggregate Commitments of such Class then in effect, the Borrower shall immediately repay Borrowings and/or cash collateralize LC Exposure in accordance with the procedures set forth in Section 2.17(d) in an aggregate principal amount sufficient to cause the Dollar Equivalent of the relevant Lenders' aggregate Revolving Credit Exposures in respect of such Class (so calculated) to be less than or equal to the aggregate Commitments of such Class then in effect.

#### Section 2.09 Fees

(a) The Borrower agrees to pay to the Administrative Agent for the account of each Lender (other than any Defaulting Lender) a commitment fee (the "Commitment Fee"), which shall accrue at the relevant percentage set forth in the row entitled "Commitment Fee" in the definition of "Applicable Rate" on the average daily amount of the unused Commitment of such Lender during the period from and including the Restatement Effective Date to but excluding the date on which such Commitment terminates. Accrued commitment fees shall be payable in arrears on the last day of March, June, September and December of each year and on the date on which the Commitments terminate, commencing on June 30, 2019; provided that any commitment fees accruing after the date on which the Commitments terminate shall be payable on demand. All commitment fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(b) The Borrower agrees to pay (i) to the Administrative Agent for the account of each Lender a participation fee with respect to its participations in Letters of Credit, which shall



accrue at the same Applicable Rate used to determine the interest rate applicable to Eurodollar Term Benchmark Loans on the average daily amount of such Lender's LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Restatement Effective Date to but excluding the later of the date on which such Lender's Commitment terminates and the date on which such Lender ceases to have any LC Exposure, and (ii) to the applicable Issuing Bank a fronting fee, which shall accrue at the rate or rates per annum separately agreed upon between the Borrower and such Issuing Bank on the average daily amount of the LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Restatement Effective Date to but excluding the later of the date of termination of the Commitments and the date on which there ceases to be any LC Exposure, as well as such Issuing Bank's standard fees with respect to the issuance, amendment, renewal or extension of any Letter of Credit or processing of drawings thereunder. Accrued participation fees and fronting fees shall be payable on the last day of March, June, September and December of each year, commencing on the first such date to occur after the Restatement Effective Date; provided that all such fees shall be payable on the date on which the Commitments terminate and any such fees accruing after the date on which the Commitments terminate shall be payable on demand. Any other fees payable to any Issuing Bank pursuant to this paragraph shall be payable within 10 days after demand. All participation fees and fronting fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

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

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

#### Section 2.10 Interest

(a) The Loans comprising each ABR Borrowing shall bear interest at the Alternate Base Rate plus the Applicable Rate.

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

(c) Each RFR Loan shall bear interest at a rate per annum equal to the Adjusted Daily Simple SOFR plus the Applicable Rate.

(ed) Notwithstanding the foregoing, at all times when an Event of Default listed in paragraph (a) or (b) of Article 7 has occurred hereunder and is continuing, all overdue amounts outstanding hereunder shall bear interest, after as well as before judgment, at a rate per annum equal to (i) in the case of overdue principal of any Loan, 2% plus the rate otherwise applicable to



overdue amount, 2% plus the rate applicable to ABR Loans as provided in paragraph (a) of this Section.

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

(ef) All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to the Alternate Base Rate at times when the Alternate Base Rate is based on the Prime Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate, Adjusted LIBO Term SOFR Rate or LIBO Rate, Term SOFR Rate, Adjusted Daily Simple SOFR or Daily Simple SOFR shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

#### Section 2.11 Alternate Rate of Interest

If (a) Subject to clauses (b), (c), (d), (e) and (f) of this Section 2.11, if prior to the commencement of any Interest Period for a Eurodollar Term Benchmark Borrowing:

(ai) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Term SOFR Rate or the LIBO Rate, as applicable, Term SOFR for such Interest Period (including, without limitation, because the LIBO Screen Term SOFR Reference Rate is not available or published on a current basis); or

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

then the Administrative Agent shall give notice thereof to the Borrower and the Lenders by telephone or telecopy as promptly as practicable thereafter and, until (x) the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (i) with respect to the relevant Benchmark and (y) the Borrower delivers a new Interest Election Request in accordance with the terms of Section 2.10 or a new Borrowing Request in accordance with the terms of Section 2.03, (1) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Term Benchmark Borrowing shall be ineffective, and (ii) if any Borrowing Request

that requests a Eurodollar Borrowing, such Borrowing shall be made as an ABR Borrowing. Term Benchmark Borrowing shall instead be deemed to be an Interest Election Request or a Borrowing Request, as applicable, for (x) an RFR Borrowing so long as the Adjusted Daily Simple SOFR is not also the subject of Section 2.11(a)(i) or (ii) above or (y) an ABR Borrowing if the Adjusted Daily Simple SOFR also is the subject of Section 2.11(a)(i) or (ii) above and (2) any Borrowing Request that requests an RFR Borrowing shall instead be deemed to be a Borrowing Request, as applicable, for an ABR Borrowing, provided that if the circumstances giving rise to such notice affect only one Type of Borrowings, then all other Types of Borrowings shall be permitted. Furthermore, if any Term Benchmark Loan or RFR Loan is



outstanding on the date of the Borrower's receipt of the notice from the Administrative Agent referred to in this Section 2.11(a) with respect to a Relevant Rate applicable to such Term Benchmark Loan or RFR Loan, then until (x) the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist with respect to the relevant Benchmark and (y) the Borrower delivers a new Interest Election Request in accordance with the terms of Section 2.10 or a new Borrowing Request in accordance with the terms of Section 2.03, (1) any Term Benchmark Loan shall on the last day of the Interest Period applicable to such Loan (or the next succeeding Business Day if such day is not a Business Day), be converted by the Administrative Agent to, and shall constitute, (x) an RFR Borrowing so long as the Adjusted Daily Simple SOFR is not also the subject of Section 2.11(a)(i) or (ii) above or (y) an ABR Loan if the Adjusted Daily Simple SOFR also is the subject of Section 2.11(a)(i) or (ii) above, on such day, and (2) any RFR Loan shall on and from such day be converted by the Administrative Agent to, and shall constitute an ABR Loan.

(b) Notwithstanding anything to the contrary herein or in any other Loan Document (and any Swap Agreement shall be deemed not to be a "Loan Document" for purposes of this Section 2.11), if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders.

~~If at any time the Administrative Agent determines (which determination shall be conclusive absent manifest error) that (i) the circumstances set forth in clause (a) of the preceding paragraph have arisen and such circumstances are unlikely to be temporary or (ii) the circumstances set forth in clause (a) of the preceding paragraph have not arisen but (a) the supervisor for the administrator of the LIBO Screen Rate has made a public statement that the administrator of the LIBO Screen Rate is insolvent (and there is no successor administrator that will continue publication of the LIBO Screen Rate), (b) the administrator of the LIBO Screen Rate has made a public statement identifying a specific date after which the LIBO Screen Rate will permanently or indefinitely cease to be published by it (and there is no successor administrator that will continue publication of the LIBO Screen Rate), (c) the supervisor for the administrator of the LIBO Screen Rate has made a public statement identifying a specific date after which the LIBO Screen Rate will permanently or indefinitely cease to be published or (d)~~

~~the supervisor for the administrator of the LIBO Screen Rate or a Governmental Authority having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which the LIBO Screen Rate may no longer be used for determining interest rates for loans, then, in any such case, the Administrative Agent and the Borrower shall endeavor to establish an alternate rate of interest to the LIBO Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for syndicated loans in the United States at such time, and shall enter into an amendment to this Agreement to reflect such alternate rate of interest and such other related changes to this Agreement as may be applicable (but, for the avoidance of doubt, such related changes shall not include a reduction of the Applicable Rate); provided that, if such alternate rate of interest as so determined would be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.~~ (c) Notwithstanding anything to the contrary in Section 9.02, such amendment as agreed to between the Borrower and herein or in any other Loan Document, the Administrative Agent shall will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement so long as the Administrative Agent shall not have received, within five Business Days of the date that such amendment is provided to the



~~not have received, within five Business Days of the date that such amendment is provided to the Lenders, a written notice from the Required Lenders stating that such Required Lenders object to such amendment. Until an alternate rate of interest shall be determined in accordance with this paragraph (but, in the case of the circumstances described in clause (ii)(a), (ii)(b) or (ii)(c) of the first sentence of this paragraph, only to the extent the LIBO Screen Rate for such Interest Period is not available or published at such time on a current basis), (x) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective, and (y) if any Borrowing Request requests a Eurodollar Borrowing, such Borrowing shall be made as an ABR Borrowing or any other Loan Document.~~

(d) The Administrative Agent will promptly notify the Borrower and the Lenders of (i) any occurrence of a Benchmark Transition Event, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes, (iv) the removal or reinstatement of any tenor of a Benchmark pursuant to clause (f) below and (v) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.11, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2.11.

(e) Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including the Term SOFR Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public



statement or publication of information announcing that any tenor for such Benchmark is or will be no longer representative, then the Administrative Agent may modify the definition of "Interest Period" for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of "Interest Period" for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(f) Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for a Term Benchmark Borrowing or RFR Borrowing, or conversion to or continuation of Term Benchmark Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any request for a Term Benchmark Borrowing into a request for a Borrowing of or conversion to (A) an RFR Borrowing so long as the Adjusted Daily Simple SOFR is not the subject of a Benchmark Transition Event or (B) an ABR Borrowing if the Adjusted Daily Simple SOFR is the subject of a Benchmark Transition Event. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of ABR based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of ABR. Furthermore, if any Term Benchmark Loan or RFR Loan is outstanding on the date of the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period with respect to a Relevant Rate applicable to such Term Benchmark Loan or RFR Loan, then until such time as a Benchmark Replacement is implemented pursuant to this Section 2.11, (1) any Term Benchmark Loan shall on the last day of the Interest Period applicable to such Loan (or the next succeeding Business Day if such day is not a Business Day), be converted by the Administrative Agent to, and shall constitute, (x) an RFR Borrowing so long as the Adjusted Daily Simple SOFR is not the subject of a Benchmark Transition Event or (y) an ABR Loan if the Adjusted Daily Simple SOFR is the subject of a Benchmark Transition Event, on such day and (2) any RFR Loan shall on and from such day be converted by the Administrative Agent to, and shall constitute an ABR Loan.

#### Section 2.12 Increased Costs

(a) 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 by, any Lender (except any such reserve requirement reflected in the Adjusted ~~LIBO~~Term SOFR Rate) or any Issuing Bank;

(ii) subject the Administrative Agent, any Issuing Bank or any Lender or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes, but excluding any capital or other non-income taxes) on its loans, loan principal, letters of



attributable thereto; or

(iii) impose on any Lender or Issuing Bank or the London applicable offshore interbank market any other condition, cost or expense (other than Indemnified Taxes and Excluded Taxes) affecting this Agreement or Eurodollar Term Benchmark Loans made by such Lender or any Letter of Credit or participation therein; and the result of any of the foregoing shall be to increase the cost to such Lender or Issuing Bank of making, continuing, converting to or maintaining any Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender or Issuing Bank of participating in, issuing or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by such Lender or Issuing Bank hereunder (whether of principal, interest or otherwise), then the Borrower will pay to such Lender or Issuing Bank such additional amount or amounts as will compensate such Lender or Issuing Bank for such additional costs incurred or reduction suffered.

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

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

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

### Section 2.13 Break Funding Payments

In(a) With respect to Loans that are not RFR Loans, in the event of (a) the payment or prepayment of any principal of any Eurodollar Term Benchmark Loan other than on the last day of an Interest Period applicable thereto (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise), (b) the conversion of any Eurodollar Term Benchmark Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Eurodollar Term Benchmark Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under



Section 2.08(b) and is revoked in accordance therewith), or (civ) the assignment of any Eurodollar Term Benchmark Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.16, then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event. ~~In the case of a Eurodollar Loan, such loss, cost or expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBO Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for Dollar deposits of a comparable amount and period from other banks in the eurodollar market.~~ A certificate of any Lender setting forth in reasonable detail any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

(b) With respect to RFR Loans, in the event of (i) the payment of any principal of any RFR Loan other than on the Interest Payment Date applicable thereto (including as a result of an Event of Default or an optional or mandatory prepayment of Loans), (ii) the failure to borrow or prepay any RFR Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.11(b) and is revoked in accordance therewith) or (iii) the assignment of any RFR Loan other than on the Interest Payment Date applicable thereto as a result of a request by the Borrower pursuant to Section 2.19, then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

#### Section 2.14 Taxes

(a) Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made free and clear of and without deduction or withholding for any Taxes, except as required by law. If any applicable law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax

from any such payment by a Withholding Agent, then the applicable Withholding Agent shall make such deduction or withholding and timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the Borrower shall be increased as necessary so that after making such deduction or withholding for Indemnified Taxes (including such deductions and withholdings for Indemnified Taxes applicable to additional sums payable under this Section) the Administrative Agent, Issuing Bank or Lender (as the case may be) receives an amount equal to the sum it would have received had no such deduction or withholding for Indemnified Taxes been made.

(b) In addition, 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 the Administrative Agent, each Issuing Bank and each Lender, within 10 days after demand therefore, for the full amount of any Indemnified Taxes paid by the Administrative Agent, such Issuing Bank or such Lender, as the case may be, or required to be withheld or deducted from any payment to such recipient by or on account of any obligation of the Borrower hereunder (including Indemnified Taxes imposed



on account of any obligation of the Borrower hereunder (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by an Issuing Bank or a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of an Issuing Bank or a 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 Loan Parties have not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 9.04 relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are 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, such Loan Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment,



a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(f) Any Foreign Lender, if it is legally entitled to do so, shall deliver to the Borrower and the Administrative Agent (in such number of copies as shall be required by law or 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 as required by law or upon the reasonable request of the Borrower or the Administrative Agent, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable:

(i) executed originals of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, claiming eligibility for benefits of an income tax treaty to which the United States of America is a party;

(ii) executed originals of IRS Form W-8ECI;

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate to the effect that such Foreign Lender is not (A) a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (B) a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or (C) a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code and (y) executed originals of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable;

(iv) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, IRS Form W-8BEN-E, a portfolio interest certificate in compliance with Section 2.14(f)(iii), IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a certificate in compliance with Section 2.14(f)(iii) on behalf of such direct or indirect partner or partners; or

(v) 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 to determine the withholding or deduction required to be made unless, in the Foreign Lender's reasonable determination, such completion would subject such Foreign Lender to any material cost or expense or would materially prejudice the legal or commercial position of such Foreign Lender.

In addition, any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter as required by law or upon the reasonable request of the Borrower or the Administrative Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding. In addition, each Lender shall deliver such forms (including those forms required pursuant to Section 2.14(g)) promptly upon



notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(g) If a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender failed to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such other documentation reasonably requested by the Borrower and the Administrative Agent sufficient for the Administrative Agent and the Borrower to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this Section 2.14(g), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(h) If any Lender, any Issuing Bank or the Administrative Agent 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 by any Loan Party pursuant to this Section (including by the payment of additional amounts pursuant to this Section), it shall pay to the applicable Loan 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); provided, however, that (w) any Lender, any Issuing Bank or the Administrative Agent may determine, in its sole discretion exercised in good faith consistent with the policies of such Lender, such Issuing Bank or the Administrative Agent, whether to seek a refund for any Taxes; (x) any Taxes that are incurred by a Lender, a Issuing Bank or the Administrative Agent as a result of a disallowance or reduction of any Tax refund with respect to which such Lender, such Issuing Bank or the Administrative Agent has made a payment to the Loan Party pursuant to this Section shall be treated as an Indemnified Tax for which the Loan Party is obligated to indemnify such Lender, such Issuing Bank or the Administrative Agent pursuant to this Section without any exclusions or defenses; (y) nothing in this Section shall require any Lender, any Issuing Bank or the Administrative Agent to disclose any confidential information to a Loan Party (including, without limitation, its tax returns); and (z) neither any Lender, any Issuing Bank nor the Administrative Agent shall be required to pay any amounts pursuant to this Section for so long as a Default or Event of Default exists. Notwithstanding anything to the contrary in this paragraph (h), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (h), 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.

(i) Each party's obligations under this Section 2.14 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.

#### Section 2.15 Payments Generally; Pro Rata Treatment; Sharing of Set-offs

(a) The Borrower shall make each payment required to be made by it hereunder (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Sections 2.12, 2.13 or 2.14, or otherwise) in Dollars prior to 12:00 noon, Local Time, on the date when due, in immediately available funds, without set off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be



received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent (i) in the case of payments denominated in Dollars, at its Principal Office and (ii) in the case of payments denominated in an Alternative Currency, at its Alternative Currency Payment Office for such Alternative Currency; provided that payments pursuant to Sections 2.12, 2.13 or 2.14 and Section 9.03 shall be made directly to the Persons entitled thereto. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment or performance hereunder shall be due on a day that is not a Business Day, the date for payment or performance shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder of principal or interest in respect of any Loan or LC Disbursement shall, except as otherwise expressly provided herein, be made in the currency of such Loan or LC Disbursement, and all other payments hereunder and under each other Loan Document shall be made in Dollars. Notwithstanding the foregoing provisions of this Section, if, after the making of any LC Disbursement in any Alternative Currency, currency control or exchange regulations are imposed in the country which issues such Alternative Currency with the result that such Alternative Currency no longer exists or the Borrower is not able to make payment to the Administrative Agent for the account of the Lenders in such Alternative Currency, then all payments to be made by the Borrower hereunder in such Alternative Currency shall instead be made when due in a currency that replaced such Alternative Currency or, if no such replacement currency exists, in Dollars in an amount equal to the Dollar Equivalent (as of the date of repayment) of such payment due, it being the intention of the parties hereto that the Borrower takes all risks of the imposition of any such currency control or exchange regulations.

(b) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, unreimbursed LC Disbursements, interest and fees then due hereunder, such funds shall be applied (i) first, 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 (ii) second, towards payment of principal and unreimbursed LC Disbursements then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and unreimbursed LC Disbursements then due to such parties.

(c) If any Lender shall, by exercising any right of set off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans of a given Class or participations in LC Disbursements resulting in such Lender receiving payment of a

greater proportion of the aggregate amount of its Loans of such Class and participations in LC Disbursements and accrued interest thereon than the proportion received by any other Lender with outstanding Loans of the same Class, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Loans of such Class and participations in LC Disbursements of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans of such Class and participations in LC Disbursements; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender) or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in LC Disbursements to any assignee or participant, other than to the Borrower or any Subsidiary or Affiliate thereof (as to which the provisions of this paragraph shall apply). The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that each lender acquiring a participation pursuant to the foregoing arrangements

applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(d) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the applicable Issuing Bank hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or the applicable Issuing Bank, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or Issuing Bank with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the ~~greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation~~ NY FRB Rate.

(e) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.04(b), paragraph (d) or (e) of Section 2.19, or paragraph (d) of this Section, then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

#### Section 2.16 Mitigation Obligations; Replacement of Lenders

(a) If any Lender requests compensation under Section 2.12, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.14, then such Lender shall use reasonable efforts to



designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.12 or Section 2.14, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If (i) any Lender requests compensation under Section 2.12, (ii) the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.14 or (iii) any Lender is a Defaulting Lender or a Non-Consenting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights and obligations under this Agreement and the other Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (i) the Borrower shall have received the prior written consent of the Administrative Agent (and if a Commitment is being assigned, the Issuing Banks), which consent shall not unreasonably be withheld, (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in LC Disbursements, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents, from the assignee (to the extent of such outstanding principal and accrued interest and fees so assigned) or the Borrower (in the case of all other amounts so assigned), (iii) in the case of any such assignment resulting from a claim for compensation under Section 2.12 or payments required to be made pursuant to Section 2.14, such assignment will result in a reduction in such compensation or payments, (iv) such assignment does not conflict with applicable law and (v) in the case of any assignment resulting from a Lender becoming a Non-Consenting Lender, (x) the applicable assignee shall have consented to, or shall consent to, the applicable amendment, waiver or consent and (y) the Borrower exercises its rights pursuant to this clause (b) with respect to all Non-Consenting Lenders relating to the applicable amendment, waiver or consent; provided, further, that in the event such Lender shall have received payment of the amount referred to in clause (ii) above, such Lender shall be deemed to have so assigned and delegated all its interests, rights and obligations under this Agreement and the other Loan Documents pursuant to the terms set forth in Exhibit A hereto. A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

#### Section 2.17 Defaulting Lenders

(a) Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:



amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of Required Lenders and in Section 9.02.

(ii) Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article 7 or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 9.08 shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to the Issuing Banks hereunder; third, to Cash Collateralize each Issuing Bank's Fronting Exposure with respect to such Defaulting Lender in accordance with Section 2.17(d); fourth, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; fifth, if so determined by the Administrative Agent and the Borrower, to be held in a non-interest bearing deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) Cash Collateralize each Issuing Bank's future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with Section 2.17(d); sixth, to the payment of any amounts owing to the Lenders or the Issuing Banks as a result of any judgment of a court of competent jurisdiction obtained by any Lender or any Issuing Bank against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; seventh, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and eighth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or reimbursement obligations with respect to Letters of Credit in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and reimbursement obligations with respect to Letters of Credit owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or reimbursement obligations with respect to Letters of Credit owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in Letters of Credit are held by the Lenders pro rata in accordance with the Commitments without giving effect to Section 2.17(a)(iv). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.17(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) (A) No Defaulting Lender shall be entitled to receive any commitment fee pursuant to Section 2.09(a) or participation fees pursuant to Section 2.09(b)(i) for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be

required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender); provided that such Defaulting Lender shall be entitled to receive participation fees pursuant to Section 2.09(b)(i) for any period during which that Lender is a Defaulting Lender only to extent allocable to its Applicable Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 2.17(d); and (B) with respect to any fees not required to be paid to any Defaulting Lender pursuant to clause (A) above, the Borrower shall (x) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in Letters of Credit that has been reallocated to such Non-Defaulting



Lender pursuant to clause (iv) below, (y) pay to each Issuing Bank the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such Issuing Bank's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(iv) So long as no Event of Default shall have occurred and be continuing, all or any part of such Defaulting Lender's participation in Letters of Credit shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Applicable Percentages (calculated without regard to such Defaulting Lender's Commitment) but only to the extent that such reallocation does not cause the Dollar Equivalent of the aggregate Revolving Credit Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Commitment. No reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(v) If the reallocation described in clause (iv) above cannot, or can only partially, be effected, the Borrower shall, without prejudice to any right or remedy available to it hereunder or under law, Cash Collateralize each Issuing Bank's Fronting Exposure in accordance with the procedures set forth in Section 2.17(d).

(b) If the Borrower, the Administrative Agent and each Issuing Bank agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit to be held on a pro rata basis by the Lenders in accordance with their respective Applicable Percentages (without giving effect to Section 2.17(a)(iv)), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(c) So long as any Lender is a Defaulting Lender, each Issuing Bank shall not be required to issue, extend, renew or increase any Letter of Credit unless it is satisfied that the participations in any then existing Letters of Credit as well as the new, extended, renewed or increased Letter of Credit has been or will be fully allocated among the Non-Defaulting Lenders in a manner consistent with clause (a)(iv) above and such Defaulting Lender shall not participate therein except to the extent such Defaulting Lender's participation has been or will be fully Cash Collateralized in accordance with Section 2.17(d).

(d) At any time that there shall exist a Defaulting Lender, within one Business Day following the written request of the Administrative Agent or any Issuing Bank (with a copy to the Administrative Agent), the Borrower shall Cash Collateralize such Issuing Bank's Fronting Exposure with respect to such Defaulting Lender (determined after giving effect to Section 2.17(a)(iv) and any Cash Collateral provided by such Defaulting Lender) in an amount not less than the Minimum Collateral Amount.

(i) The Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to the Administrative Agent, for the benefit of the Issuing Banks and agrees to maintain a first priority security interest in all such Cash

fronting banks, and agreed to maintain a first priority security interest in all Cash Collateral as security for the Defaulting Lenders' obligation to fund participations in respect of Letters of Credit, to be applied pursuant to clause (ii) below. If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent and the Issuing Banks as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, the Borrower will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (after giving effect to any Cash Collateral provided by the Defaulting Lender).

(ii) Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under this Section 2.17 in respect of Letters of Credit shall be applied to the satisfaction of the Defaulting Lender's obligation to fund participations in respect of Letters of Credit (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(iii) Cash Collateral (or the appropriate portion thereof) provided to reduce each Issuing Bank's Fronting Exposure shall no longer be required to be held as Cash Collateral pursuant to this Section 2.17 following (i) the elimination of the applicable Fronting Exposure (including by the termination of Defaulting Lender status of the applicable Lender) or (ii) the determination by the Administrative Agent and such Issuing Bank that there exists excess Cash Collateral; provided that, subject to the other provisions of this Section 2.17, the Person providing Cash Collateral and such Issuing Bank may agree that Cash Collateral shall be held to support future anticipated Fronting Exposure or other obligations.

#### Section 2.18 Incremental Facility

(a) The Borrower may by written notice to the Administrative Agent elect to request prior to the Maturity Date, one or more increases to ~~the~~an existing Class of Commitments (any



such increase, the "New Commitments"), by an amount not in excess of the Incremental Amount in the aggregate and not less than \$10,000,000 individually (or such lesser amount which shall be approved by the Administrative Agent or such lesser amount that shall constitute the difference between the Incremental Amount and all such New Commitments obtained prior to such date), and integral multiples of \$5,000,000 in excess of that amount. Each such notice shall specify (A) the date (each, an "Increased Amount Date") on which the Borrower proposes that the New Commitments shall be effective, which shall be a date not less than 10 Business Days after the date on which such notice is delivered to the Administrative Agent (unless otherwise agreed by the Administrative Agent in its sole discretion) and (B) the identity of each Lender or other Person that is an eligible assignee under Section 9.04(b), subject to approval thereof by the Administrative Agent in the case of a Person that is not a Lender (such approval not to be unreasonably withheld or delayed) (each, a "New Lender"), to whom the Borrower proposes any portion of such New Commitments be allocated and the amounts of such allocations; provided that the Administrative Agent may elect or decline to arrange such New Commitments in its sole discretion and any Lender approached to provide all or a portion of the New Commitments may elect or decline, in its sole discretion, to provide a New Commitment. Such New Commitments shall become effective as of such Increased Amount Date; provided that (1) on such Increased Amount Date before or after giving effect to such New Commitments, each of the conditions set forth in Section 4.02 shall be satisfied; (2) the New Commitments shall be effected pursuant to one or more Joinder Agreements executed and delivered by the Borrower, the New Lenders and the Administrative Agent, and each of which shall be recorded in the Register and each New Lender shall be subject to the requirements set forth in Section 2.14; (3) the Borrower shall make any payments required pursuant to Sections 2.12 and 2.13 in connection with the New Commitments; and (4) the Borrower shall deliver or cause to be delivered any legal opinions or other documents reasonably requested by the Administrative Agent in connection with any such transaction.

(b) On any Increased Amount Date on which New Commitments are effected, subject to the satisfaction of the foregoing terms and conditions, (i) each of the Lenders of the applicable Class shall assign to each of the New Lenders, and each of the New Lenders shall purchase from each of the Lenders of such Class, at the principal amount thereof (together with accrued interest), such interests in the Loans of such Class outstanding on such Increased Amount Date as shall be necessary in order that, after giving effect to all such assignments and purchases, such Loans will be held by existing Lenders of such Class and New Lenders ratably in accordance with their Commitments after giving effect to the addition of such New Commitments to the Commitments, (ii) each New Commitment shall be deemed for all purposes a Commitment and each Loan made thereunder (a "New Loan") shall be deemed, for all purposes, a Loan and (iii) each New Lender shall become a Lender for all purposes hereunder.

(c) The Administrative Agent shall notify Lenders promptly upon receipt of the Borrower's notice of each Increased Amount Date and in respect thereof (i) the New Commitments and the New Lenders, and (ii) the respective interests in such Lender's Loans, in each case subject to the assignments contemplated by this Section 2.18.

(d) The terms and provisions (including pricing) of the New Loans shall be identical to the existing Loans of the applicable Class. Notwithstanding anything in Section 9.02 to the contrary, each Joinder Agreement may, without the consent of any other Lenders, effect such



appropriate in the opinion of the Administrative Agent to effect the provision of this Section 2.18.

#### Section 2.19 Letters of Credit

(a) General. Subject to the terms and conditions set forth herein, the Borrower may request the issuance of (and subject to the terms of this Section 2.19, the Issuing Bank shall issue) Letters of Credit as the applicant thereof for the support of its or its Subsidiaries' obligations, in a form reasonably acceptable to the Administrative Agent and the applicable Issuing Bank, at any time and from time to time during the Availability Period. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by the Borrower to, or entered into by the Borrower with, the applicable Issuing Bank relating to any Letter of Credit, the terms and conditions of this Agreement shall control. Notwithstanding anything herein to the contrary, (i) the Borrower shall not request, and no Issuing Bank shall issue, any Letter of Credit the proceeds of which would be made to any Person (A) to fund any activity or business of or with any Sanctioned Person, or in any country, region or territory, that at the time of such funding is a Sanctioned Country or (B) in any manner that would result in a violation of any Sanctions by any party to this Agreement, (ii) no Issuing Bank shall have any obligation hereunder to issue any Letter of Credit if the issuance of such Letter of Credit would violate one or more policies of such Issuing Bank now or hereafter in effect applicable to letters of credit generally, (iii) the Borrower shall not request, and no Issuing Bank shall issue, any Letter of Credit if (A) the Dollar Equivalent of the aggregate outstanding amount of Letters of Credit issued by such Issuing Bank would exceed such amount as has been agreed by such Issuing Bank in its sole discretion (or \$50,000,000, in the case of JPMorgan Chase Bank, N.A. in its capacity as an Issuing Bank) or (B) after giving effect to such issuance of a Letter of Credit, (1) the Dollar Equivalent of any Lender's Revolving Credit Exposure would exceed such Lender's Commitment or (2) the sum of the Dollar Equivalents of the total Revolving Credit Exposures of all Lenders would exceed the total Commitments of all Lenders and (iv) in no event shall Goldman Sachs Lending Partners LLC be required to issue any Letters of Credit denominated in New Taiwan Dollars.

(b) Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions. To request the issuance of a Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), the Borrower shall hand deliver or telecopy (or transmit by electronic communication, if arrangements for doing so have been approved by the applicable Issuing Bank) to the applicable Issuing Bank and the Administrative Agent (reasonably in advance of the requested date of issuance, amendment, renewal or extension, but in any event no less than three Business Days) a written Letter of Credit Request in substantially the form of Exhibit B-2 attached hereto and signed by the Borrower requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, renewed or extended, and specifying the date of issuance, amendment, renewal or extension (which shall be a Business Day), the date on which such Letter of Credit is to expire (which shall comply with paragraph (c) of this Section), the amount of such Letter of Credit, the Agreed Currency applicable thereto, the name and address of the beneficiary thereof and such other information as shall be necessary to prepare, amend, renew or extend such Letter of Credit. If requested by the applicable Issuing

Bank, the Borrower also shall submit a letter of credit application on such Issuing Bank's standard form in connection with any request for a Letter of Credit. A Letter of Credit shall be issued, amended, renewed or extended only if (and upon issuance, amendment, renewal or extension of each Letter of Credit, the Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, renewal or extension (i) the Dollar Equivalent of the LC Exposure shall not exceed the LC Sublimit, (ii) the sum of the Dollar Equivalents of the total Revolving Credit Exposures shall not exceed the total Commitments, (iii) the Dollar Equivalent of the LC Exposure of the applicable Issuing Bank shall not exceed the LC Sublimit applicable to such Issuing Bank and (iv) the Dollar Equivalent of the Revolving Credit Exposure



of the applicable Issuing Bank shall not exceed the Commitment of such Issuing Bank.

(c) Expiration Date. Each Letter of Credit shall expire (or be subject to termination by notice from the applicable Issuing Bank to the beneficiary thereof) at or prior to the close of business on the earlier of (i) the date one year after the date of the issuance of such Letter of Credit (or, in the case of any renewal or extension thereof, one year after such renewal or extension); provided that any Letter of Credit issued in connection with a lease by the Borrower in respect of real property that provides for annual payments in an amount greater than or equal to \$5,000,000 may have a longer tenor as agreed upon by the Borrower and the applicable Issuing Bank, and (ii) the date that is five Business Days prior to the Maturity Date.

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

(e) Reimbursement. If any Issuing Bank shall make any LC Disbursement in respect of a Letter of Credit, the Borrower shall reimburse such LC Disbursement by paying to the Administrative Agent an amount equal to such LC Disbursement in the applicable Agreed Currency (i) not later than 12:00 noon, Local Time, on the date that such LC Disbursement is made, if the Borrower shall have received notice of such LC Disbursement prior to 10:00 a.m., Local Time, on such date, or (ii) if such notice has not been received by the Borrower prior to such time on such date, then not later than 12:00 noon, Local Time, on the Business Day immediately following the day that the Borrower receives such notice, if such notice is not

received prior to such time on the day of receipt; provided that the Borrower may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.03 that such payment be financed with an ABR Borrowing in an amount equal to the Dollar Equivalent of such LC Disbursement and, to the extent so financed, the Borrower's obligation to make such payment shall be discharged and replaced by the resulting ABR Borrowing. If the Borrower fails to make such payment when due, (x) any LC Disbursement denominated in an Alternative Currency shall automatically be converted to an LC Disbursement denominated in Dollars in an amount equal to the Dollar Equivalent of such LC Disbursement at such time and (y) the Administrative Agent shall notify each Lender of the applicable LC Disbursement, the payment then due from the Borrower in respect thereof and such Lender's Applicable Percentage thereof. Promptly following receipt of such notice, each Lender shall pay to the Administrative Agent its Applicable Percentage of the payment then due from the Borrower, in the same manner as provided in Section 2.04 with respect to Loans made by such Lender (and Section 2.04 shall apply, mutatis mutandis, to the payment obligations of the Lenders), and the Administrative Agent shall promptly pay to the applicable Issuing Bank the amounts so received by it from the Lenders. Promptly following receipt by the Administrative Agent of any payment from the Borrower pursuant to this paragraph, the Administrative Agent shall distribute such payment to the applicable Issuing Bank or, to the extent that Lenders have made payments pursuant to this



the applicable Issuing Bank or, to the extent that Lenders have made payments pursuant to this paragraph to reimburse such Issuing Bank, then to such Lenders and such Issuing Bank as their interests may appear. Any payment made by a Lender pursuant to this paragraph to reimburse any Issuing Bank for any LC Disbursement (other than the funding of ABR Loans as contemplated above) shall not constitute a Loan and shall not relieve the Borrower of its obligation to reimburse such LC Disbursement. If the Borrower's reimbursement of, or obligation to reimburse, any amounts in any Alternative Currency would subject the Administrative Agent, any Issuing Bank or any Lender to any stamp duty, ad valorem charge or similar tax that would not be payable if such reimbursement were made or required to be made in Dollars, the Borrower shall, at its option, either (x) pay the amount of any such tax requested by the Administrative Agent, such Issuing Bank or such Lender or (y) reimburse each LC Disbursement made in such Alternative Currency in Dollars, in an amount equal to the Dollar Equivalent of such LC Disbursement on the date such LC Disbursement is made.

(f) Obligations Absolute. The Borrower's obligation to reimburse LC Disbursements as provided in paragraph (e) of this Section shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by any Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit, or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrower's obligations hereunder. Neither the Administrative Agent, the Lenders nor the Issuing Banks, nor any of their Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery

of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of any Issuing Bank; provided that the foregoing shall not be construed to excuse any Issuing Bank from liability to the Borrower to the extent of any direct damages (as opposed to special, indirect, consequential or punitive damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by applicable law) suffered by the Borrower that are caused by such Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of any Issuing Bank (as finally determined by a court of competent jurisdiction), such Issuing Bank shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, any Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

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

(h) Interim Interest. If any Issuing Bank shall make any LC Disbursement, then, unless the Borrower shall reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the reimbursement is due and payable at the rate per annum then applicable to ABR Loans; provided that, if the Borrower fails to reimburse such LC Disbursement when due pursuant to paragraph (e) of this Section, then Section 2.10(c) shall apply. Interest accrued pursuant to this paragraph shall be for the account of such Issuing Bank, except that interest accrued on and after the date of payment by any Lender pursuant to paragraph (e) of this Section to reimburse such Issuing Bank shall be for the account of such Lender to the extent of such payment.

(i) Cash Collateralization. If any Event of Default shall occur and be continuing, on the Business Day that the Borrower receives notice from the Administrative Agent, any Issuing Bank or the Required Lenders (or, if the maturity of the Loans has been accelerated, Lenders with LC Exposure representing greater than 50.0% of the total LC Exposure) demanding the deposit of Cash Collateral pursuant to this paragraph, the Borrower shall provide Cash Collateral in an amount equal to the LC Exposure as of such date plus any accrued and unpaid interest thereon; provided that the obligation to deposit such Cash Collateral shall become effective



other notice of any kind, upon the occurrence of any Event of Default with respect to the Borrower described in clause (h) or (i) of Article 7. Such Cash Collateral shall be held by the Administrative Agent as collateral for the payment and performance of the obligations of the Borrower under this Agreement. The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Administrative Agent and at the Borrower's risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Administrative Agent to reimburse the applicable Issuing Bank for LC Disbursements for which it has not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrower for the LC Exposure at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of each Issuing Bank), be applied to satisfy other obligations of the Borrower under this Agreement. If the Borrower is required to provide an amount of Cash Collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to the Borrower within three Business Days after all Events of Default have been cured or waived.

(j) Replacement of an Issuing Bank. Any Issuing Bank may be replaced at any time by written agreement among the Borrower, the Administrative Agent, the replaced Issuing Bank and the successor Issuing Bank. The Administrative Agent shall notify the Lenders of any such replacement of any Issuing Bank. At the time any such replacement shall become effective, the Borrower shall pay all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 2.09(b). From and after the effective date of any such replacement, (i) the successor Issuing Bank shall have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (ii) references herein to the term "Issuing Bank" shall be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous Issuing Banks, as the context shall require. After the replacement of an Issuing Bank hereunder, the replaced Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit.

(k) Resignation of an Issuing Bank. Any Issuing Bank may resign at any time that such Issuing Bank (or its applicable Affiliate) ceases to hold a Commitment hereunder. The Administrative Agent shall notify the Lenders of any such resignation of any Issuing Bank. After the resignation of an Issuing Bank hereunder, the resigning Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit issued by it prior to such resignation, but shall not be required to issue additional Letters of Credit.

(l) Deemed Letter of Credit Requests. The Borrower may, from time to time, request (a "Deemed LC Request") that (i) any undrawn Letter of Credit issued hereunder be deemed to be terminated and issued under a separate letter of credit facility with the applicable Issuing Bank (a "Deemed LC Termination") or (ii) any undrawn letter of credit issued under a separate letter of credit facility with an Issuing Bank be deemed to be terminated and issued hereunder as

a Letter of Credit (a "Deemed LC Issuance"). Any such Deemed LC Request shall identify the applicable Letter of Credit, and the Deemed LC Termination or Deemed LC Issuance specified therein shall, subject to the prior written consent of each of the Administrative Agent and the applicable Issuing Bank (which consent may be withheld in its sole discretion) and, in the case of any Deemed LC Issuance, the satisfaction of the conditions set forth in Section 4.02, be effective upon receipt of such written consent.



7-11, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due from the Borrower hereunder in the currency expressed to be payable herein (the "specified currency") into another currency, the parties hereto agree, to the fullest extent that they may effectively do so, that the rate of exchange used shall be that at which the Administrative Agent could, in accordance with normal banking procedures applicable to arm's length transactions, purchase the specified currency with such other currency at the Administrative Agent's Principal Office on the Business Day immediately preceding that on which final, non-appealable judgment is given. The obligations of the Borrower in respect of any sum due to the Administrative Agent, any Issuing Bank or any Lender hereunder shall, notwithstanding any judgment in a currency other than the specified currency, be discharged only to the extent that on the Business Day following receipt by the Administrative Agent, such Issuing Bank or such Lender of any sum adjudged to be so due in such other currency, the Administrative Agent, such Issuing Bank or such Lender may in accordance with normal, reasonable banking procedures purchase the specified currency with such other currency. If the amount of the specified currency so purchased is less than the sum originally due to the Administrative Agent, such Issuing Bank or such Lender in the specified currency, the Borrower agrees, to the fullest extent that it may effectively do so, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent, such Issuing Bank or such Lender against such loss, and if the amount of the specified currency so purchased exceeds (a) the sum originally due to the Administrative Agent, such Issuing Bank or such Lender in the specified currency and (b) any amounts shared with other Lenders as a result of allocations of such excess as a disproportionate payment to such Lender under Section 2.15(c), the Administrative Agent, such Issuing Bank or such Lender agrees to remit such excess to the Borrower.

#### Section 2.21 Extension of Maturity Date

(a) The Borrower may, by delivering an Extension Request to the Administrative Agent (who shall promptly deliver a copy to each of the Lenders), not less than 60 days in advance of the Maturity Date in effect with respect to any Class of Commitments at such time (the "Existing Maturity Date"), request that the Lenders of such Class extend the Existing Maturity Date. Each such Lender, acting in its sole discretion, shall, by written notice to the Administrative Agent given not later than the date that is the 20th day after the date of the Extension Request, or if such date is not a Business Day, the immediately following Business Day (the "Response Date"), advise the Administrative Agent in writing whether or not such Lender agrees to the requested extension. Each Lender that advises the Administrative Agent that it will not extend the Existing Maturity Date is referred to herein as a "Non-Extending Lender"; provided that any Lender that does not advise the Administrative Agent of its consent to such requested extension by the Response Date and any Lender that is a Defaulting Lender on

the Response Date shall be deemed to be a Non-Extending Lender. The Administrative Agent shall notify the Borrower, in writing, of the Lenders' elections promptly following the Response Date. The election of any Lender to agree to such an extension shall not obligate any other Lender to so agree. The Maturity Date may be extended no more than two times pursuant to this Section 2.21.

(b) (i) If, by the Response Date, Lenders holding Commitments of the applicable Class that aggregate to 50% or more of the total Commitments of such Class shall constitute Non-Extending Lenders, then the Existing Maturity Date shall not be extended and the outstanding principal balance of all Loans and other amounts payable in respect of such Class hereunder shall be payable, and the applicable Commitments shall terminate, on the Existing Maturity Date in effect prior to such extension.

(ii) If (and only if), by the Response Date, Lenders holding Commitments of the applicable Class that aggregate to more than 50% of the total Commitments of such Class shall have agreed to extend the Existing Maturity Date (each such consenting Lender, an "Extending Lender"), then effective as of the Existing Maturity Date, the Maturity Date for such Extending Lenders shall be extended to the date set forth in the applicable Extension



Request (subject to satisfaction of the conditions set forth in Section 2.21(d)). In the event of such extension, the Commitment of such Class of each Non-Extending Lender shall terminate on the Existing Maturity Date in effect for such Non-Extending Lender prior to such extension and the outstanding principal balance of all Loans and other amounts payable in respect of such Class hereunder to such Non-Extending Lender shall become due and payable on such Existing Maturity Date and, subject to Section 2.21(c) below, the total Commitments of such Class hereunder shall be reduced by the applicable Commitments of the Non-Extending Lenders so terminated on such Existing Maturity Date.

(c) In the event of any extension of the Existing Maturity Date pursuant to Section 2.21(b)(ii), the Borrower shall have the right on or before the Existing Maturity Date, at its own expense, to require any Non-Extending Lender to transfer and assign without recourse (in accordance with and subject to the restrictions contained in Section 9.04) all its interests, rights (other than its rights to payments pursuant to Section 2.12, Section 2.13, Section 2.14 or Section 9.03 arising prior to the effectiveness of such assignment) and obligations in respect of such Class under this Agreement to one or more banks or other financial institutions identified to the Non-Extending Lender by the Borrower, which may include any existing Lender (each a "Replacement Lender"); provided that (i) such Replacement Lender, if not already a Lender hereunder, shall be subject to the approval of the Administrative Agent and each Issuing Bank (such approvals to not be unreasonably withheld) to the extent the consent of the Administrative Agent or the Issuing Banks would be required to effect an assignment under Section 9.04(b), (ii) such assignment shall become effective as of a date specified by the Borrower (which shall not be later than the Existing Maturity Date in effect for such Non-Extending Lender prior to the effective date of the requested extension) and (iii) the Replacement Lender shall pay to such Non-Extending Lender in immediately available funds on the effective date of such assignment the principal of and interest accrued to the date of payment on the outstanding principal amount Loans of such Class made by it hereunder and all other amounts accrued and unpaid for its account or otherwise owed to it hereunder on such date.



(d) As a condition precedent to each such extension of the Existing Maturity Date pursuant to Section 2.21(b)(ii), the Borrower shall (i) deliver to the Administrative Agent a certificate of the Borrower dated as of the Existing Maturity Date signed by a Responsible Officer of the Borrower certifying that, as of such date, both before and immediately after giving effect to such extension, (A) the representations and warranties of the Borrower set forth in this Agreement shall be true and correct and (B) no Default shall have occurred and be continuing and (ii) first make such prepayments of the outstanding Loans of such Class and second provide such cash collateral (or make such other arrangements satisfactory to the applicable Issuing Bank) with respect to the outstanding Letters of Credit as shall be required such that, after giving effect to the termination of the Commitments of such Class of the Non-Extending Lenders pursuant to Section 2.21(b) and any assignment pursuant to Section 2.21(c), the aggregate Revolving Credit Exposure less the face amount of any Letter of Credit supported by any such cash collateral (or other satisfactory arrangements) so provided does not exceed the aggregate amount of Commitments being extended.

(e) For the avoidance of doubt, (i) no consent of any Lender (other than the existing Lenders participating in the extension of the Existing Maturity Date) shall be required for any extension of the Maturity Date pursuant to this Section 2.21 and (ii) the operation of this Section 2.21 in accordance with its terms is not an amendment subject to Section 9.02.

### ARTICLE 3 REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Lenders that:

#### Section 3.01 Organization; Powers

Each of the Borrower and its Subsidiaries is duly organized, validly existing and (to the extent the concept is applicable in such jurisdiction) in good standing under the laws of the jurisdiction of its organization, has all requisite power and authority to carry on its business as now conducted and, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required.

#### Section 3.02 Authorization; Enforceability

The Transactions are within the Borrower's and each Guarantor's corporate or other organizational powers and have been duly authorized by all necessary corporate or other organizational and, if required, equity holder action. Each of the Borrower and the Guarantors has duly executed and delivered each of the Loan Documents to which it is party, and each of such Loan Documents constitute its legal, valid and binding obligations, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.



The Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except (i) such as have been obtained or made and are in full force and effect and (ii) those approvals, consents, registrations, filings or other actions, the failure of which to obtain or make would not reasonably be expected to have a Material Adverse Effect, (b) except as would not reasonably be expected to have a Material Adverse Effect, will not violate any applicable law or regulation or any order of any Governmental Authority, (c) will not violate any charter, by-laws or other organizational document of the Borrower or any of its Subsidiaries, (d) except as would not reasonably be expected to have a Material Adverse Effect, will not violate or result in a default under any indenture, agreement or other instrument (other than the agreements and instruments referred to in clause (c)) binding upon the Borrower or any of its Subsidiaries or its assets, or give rise to a right thereunder to require any payment to be made by the Borrower or any of its Subsidiaries, and (e) will not result in the creation or imposition of any Lien on any asset of the Borrower or any of its Subsidiaries (other than liens arising pursuant to the Security Documents).

#### Section 3.04 Financial Condition; No Material Adverse Change

(a) The Borrower has heretofore furnished to the Administrative Agent (i) its consolidated balance sheet and statements of income, stockholders equity and cash flows as of and for the fiscal years ended June 30, 2018 and June 30, 2017, reported on by Ernst & Young LLP, independent public accountants and (ii) its consolidated balance sheet and related statements of operations, stockholders' equity and cash flows as of the end of and for the fiscal quarters ended September 30, 2018 and December 31, 2018 and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year. Such financial statements present fairly, in all material respects, the financial position and results of operations and cash flows of the Borrower and its consolidated Subsidiaries as of such dates and for such periods in accordance with GAAP.

(b) Since June 30, 2018, no event, development or circumstance exists or has occurred that has had or would reasonably be expected to have a Material Adverse Effect.

#### Section 3.05 Properties

(a) Each of the Borrower and its Subsidiaries has good title to, or valid leasehold interests in or rights to use, all its real and personal property material to its business, except for minor defects in title that do not interfere with its ability to conduct its business as currently conducted or to utilize such properties for their intended purposes.

(b) Each of the Borrower and its Subsidiaries owns, or has the valid and enforceable right to use, all Intellectual Property material to its business as currently conducted, free and clear of all Liens other than Liens permitted by Section 6.02, and the operation of such business or the use of such Intellectual Property rights by the Borrower and its Subsidiaries does not infringe upon, misappropriate, or otherwise violate the rights of any other Person, except for any

such infringements, misappropriations, or violations that, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

#### Section 3.06 Litigation and Environmental Matters

Except as set forth on Schedule 3.06, there are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of the Borrower, threatened in writing (including "cease and desist" letters and invitations to take a patent license) against or affecting the Borrower or any of its Subsidiaries (i) that would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect or



reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect or (ii) that involve this Agreement, any other Loan Document or the Transactions.

(a) Except with respect to any matter that, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, neither the Borrower nor any of its Subsidiaries (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, or (iii) has received notice of any claim with respect to any Environmental Liability.

#### Section 3.07 Compliance with Laws and Agreements; No Default

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

#### Section 3.08 Investment Company Status

None of the Borrower or any Subsidiary is or is required to be registered as an "investment company" under the Investment Company Act of 1940.

#### Section 3.09 Margin Stock

None of the Borrower or any Subsidiary is engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U issued by the Board), and no proceeds of any Loan will be used to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock in violation of Regulation U or Regulation X issued by the Board and all official rulings and interpretations thereunder or thereof.

#### Section 3.10 Taxes

Except as set forth on Schedule 3.10 or as would not reasonably be expected to result in a Material Adverse Effect, (i) each of the Borrower and its Subsidiaries has timely filed or caused to be filed all Tax returns and reports required to have been filed with respect to income, properties or operations of the Borrower and its Subsidiaries, (ii) such returns accurately reflect in all material respects all liability for Taxes of the Borrower and its Subsidiaries as a whole for

the periods covered thereby and (iii) each of the Borrower and its Subsidiaries has paid or caused to be paid all Taxes required to have been paid by it, except Taxes that are being contested in good faith by appropriate proceedings and, to the extent required by GAAP, for which the Borrower or such Subsidiary, as applicable, has set aside on its books adequate reserves in accordance with GAAP.

#### Section 3.11 ERISA

(a) Each Plan is in compliance in form and operation with its terms and with ERISA and the Code (including without limitation the Code provisions compliance with which is necessary for any intended favorable tax treatment) and all other applicable laws and regulations, except where any failure to comply would not reasonably be expected to result in any Material Adverse Effect. Each Plan (and each related trust, if any) which is intended to be qualified under Section 401(a) of the Code has received a favorable determination letter from the IRS to the effect that it meets the requirements of Sections 401(a) and 501(a) of the Code covering all applicable tax law changes or is comprised of a master or prototype plan that has received a favorable opinion letter from the IRS, and, nothing has occurred since the date of such determination that would adversely affect such determination (or, in the case of a Plan with no

determination that would adversely affect such determination (or, in the case of a determination determination, nothing has occurred that would materially adversely affect the issuance of a favorable determination letter or otherwise materially adversely affect such qualification). No ERISA Event has occurred, or is reasonably expected to occur, other than as would not, individually or in the aggregate, reasonably be expected to result in any Material Adverse Effect).

(b) There exists no Unfunded Pension Liability with respect to any Plan, except as would not reasonably be expected to result in a Material Adverse Effect.

(c) None of the Borrower, any Subsidiary or any ERISA Affiliate is making or accruing an obligation to make contributions, or has within any of the five calendar years immediately preceding the date this assurance is given or deemed given, made or accrued an obligation to make contributions to any Multiemployer Plan.

(d) There are no actions, suits or claims pending against or involving a Plan (other than routine claims for benefits) or, to the knowledge of the Borrower, any Subsidiary or any ERISA Affiliate, threatened, which would reasonably be expected to be asserted successfully against any Plan and, if so asserted successfully, would reasonably be expected either singly or in the aggregate to result in any Material Adverse Effect.

(e) The Borrower, its Subsidiaries and its ERISA Affiliates have made all contributions to or under each Plan and Multiemployer Plan required by law within the applicable time limits prescribed thereby, the terms of such Plan or Multiemployer Plan, respectively, or any contract or agreement requiring contributions to a Plan or Multiemployer Plan save where any failure to comply, individually or in the aggregate, would not reasonably be expected to result in any Material Adverse Effect.

(f) No Plan which is subject to Section 412 of the Code or Section 302 of ERISA has applied for or received an extension of any amortization period, within the meaning of



Section 412 of the Code or Section 302 or 304 of ERISA. The Borrower, any Subsidiary, and any ERISA Affiliate have not ceased operations at a facility so as to become subject to the provisions of Section 4062(e) of ERISA, withdrawn as a substantial employer so as to become subject to the provisions of Section 4063 of ERISA or ceased making contributions to any Plan subject to Section 4064(a) of ERISA to which it made contributions. None of the Borrower, any Subsidiary or any ERISA Affiliate have incurred or reasonably expect to incur any liability to PBGC except as would not reasonably be expected to result in a Material Adverse Effect, save for any liability for premiums due in the ordinary course or other liability which would not reasonably be expected to result in a Material Adverse Effect, and no lien imposed under the Code or ERISA on the assets of the Borrower or any Subsidiary or any ERISA Affiliate exists or, to the knowledge of the Borrower, is likely to arise on account of any Plan. None of the Borrower, any Subsidiary or any ERISA Affiliate has engaged in a transaction that would reasonably be expected to be subject to Section 4069 or 4212(c) of ERISA.

(g) Each Non-U.S. Plan has been maintained in compliance with its terms and with the requirements of any and all applicable laws, statutes, rules, regulations and orders and has been maintained, where required, in good standing with applicable regulatory authorities, except as would not reasonably be expected to result in a Material Adverse Effect. All contributions required to be made with respect to a Non-U.S. Plan have been timely made, except as would not reasonably be expected to result in a Material Adverse Effect. Neither the Borrower nor any of its Subsidiaries has incurred any obligation in connection with the termination of, or withdrawal from, any Non-U.S. Plan, except as would not reasonably be expected to result in a Material Adverse Effect. The present value of the accrued benefit liabilities (whether or not vested) under each Non-U.S. Plan, determined as of the end of the Borrower's most recently ended fiscal year on the basis of actuarial assumptions, each of which is reasonable, did not exceed the current value of the assets of such Non-U.S. Plan allocable to such benefit liabilities, except as would not reasonably be expected to result in a Material Adverse Effect.

#### Section 3.12 Disclosure

(a) All written information provided by any Responsible Officer of the Borrower in formal presentations or in any formal meeting or conference call (other than any projected financial information and other than information of a general economic or industry specific nature) to the Administrative Agent or any Lender in connection with the negotiation of this Agreement or delivered hereunder, as modified or supplemented by other information so furnished and when taken as a whole and together with any information disclosed in the Borrower's public filings with the Securities and Exchange Commission, does not contain any material misstatement of fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not materially misleading; provided that, with respect to any projected financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time furnished (it being understood that such projected financial information and all information concerning future proposed and intended activities are forward-looking statements by their nature and are subject to significant uncertainties and contingencies, any of which are beyond the Borrower's control, that no assurance can be given that any particular projections will be realized and that actual results during the period or periods covered by any

differences may be material).

(b) As of the Restatement Effective Date, to the best knowledge of the Borrower, the information included in the Beneficial Ownership Certification provided on or prior to the Restatement Effective Date to any Lender in connection with this Agreement is true and correct in all respects.

### Section 3.13 Subsidiaries

Schedule 3.13(a) sets forth as of the Restatement Effective Date a list of all Subsidiaries, together with (a) the percentage ownership (directly or indirectly) of the Borrower therein and (b) whether such Subsidiary is a Guarantor or an Excluded Subsidiary. Except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, the shares of capital stock or other ownership interests of all Subsidiaries of the Borrower are fully paid and non-assessable and are owned by the Borrower, directly or indirectly, free and clear of all Liens other than Liens permitted under Section 6.02.

### Section 3.14 Solvency

As of the Restatement Effective Date, the Borrower is, individually and together with its Subsidiaries, and after giving effect to the incurrence of any Indebtedness and obligations being incurred in connection herewith will be, Solvent.

### Section 3.15 Anti-Terrorism Law

(a) To the extent applicable, neither the Borrower nor any of its Subsidiaries, nor, to the knowledge of the Borrower, any of its Affiliates, is in violation of any legal requirement relating to Sanctions or any laws with respect to terrorism or money laundering (collectively, "Anti-Terrorism Laws"), including Executive Order No. 13224 on Terrorist Financing effective September 24, 2001 (the "Executive Order") and the USA Patriot Act.

(b) None of (x) the Borrower, any of its Subsidiaries or any of their respective directors, officers or employees, or (y) to the knowledge of the Borrower, any agent or Affiliate of the Borrower or any Subsidiary that will act in any capacity in connection with or benefit from the credit facility established hereby, is any of the following:

(i) a Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(ii) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(iii) a Person with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;

(iv) a Person that commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order; or

(v) a Sanctioned Person.

(c) Neither the Borrower nor any of its Subsidiaries, nor, to the knowledge of the Borrower, any of its Affiliates, (i) conducts any business with, or engages in making or receiving any contribution of funds, goods or services to or for the benefit of, a Person described in Section 3.15(b)(i)-(v) above, except as permitted under U.S. law, (ii) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to



engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order, or (iii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

(d) The Borrower will not use, and will not permit any of its Subsidiaries or Affiliates to use, the proceeds of the Loans or Letters of Credit or otherwise make available such proceeds to any Person described in Section 3.15(b)(i)-(v) above, for the purpose of financing the activities of any Person described in Section 3.15(b)(i)-(v) above, in any Sanctioned Country or in any other manner that would violate any Anti-Terrorism Laws or Sanctions by any party hereto.

#### Section 3.16 Anti-Corruption Laws and Sanctions

(a) No part of the proceeds of the Loans or Letters of Credit will be used by the Borrower or any of its Subsidiaries, or, to the knowledge of the Borrower, any of its Affiliates, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended, or any applicable Anti-Corruption Law.

(b) The Borrower has implemented and maintains in effect policies and procedures designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees, Affiliates and agents with Anti-Corruption Laws and applicable Sanctions, and the Borrower, its Subsidiaries and their respective directors, officers and employees, and, to the knowledge of the Borrower, its Affiliates and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects.

#### Section 3.17 Security Documents

The Security Documents are effective to create in favor of the Administrative Agent, for the benefit of the Lenders, a legal, valid and enforceable security interest (subject to Liens permitted by Section 6.02) in the Collateral described therein and proceeds thereof. In the case of the Pledged Stock described in the Security Agreement, when stock certificates representing such Pledged Stock are delivered to the Administrative Agent (together with a properly completed and signed stock power or endorsement), and in the case of the other Collateral described in the Security Agreement, when financing statements and other filings specified on Schedule 3 to the Security Agreement in appropriate form are filed in the offices specified on

Schedule 3 to the Security Agreement, the Security Agreement shall constitute a fully perfected Lien on, and security interest (subject to Liens permitted by Section 6.02) in, all right, title and interest of the Loan Parties in such Collateral and the proceeds thereof, as security for the Obligations, in each case prior and superior in right to any other Person (except, in the case of Collateral other than Pledged Stock, Liens permitted by Section 6.02).

### ARTICLE 4 CONDITIONS

#### Section 4.01 Restatement Effective Date

—The obligations of the Lenders to make Loans hereunder shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 9.02):

(a) The Administrative Agent (or its counsel) shall have received from each party hereto either (i) a counterpart of this Agreement signed on behalf of such party or (ii) written evidence satisfactory to the Administrative Agent (which may include telecopy or electronic



transmission of a signed signature page of this Agreement) that such party has signed a counterpart of this Agreement.

(b) The Administrative Agent shall have received (i) a reaffirmation agreement in respect of the Security Agreement, executed and delivered by the Borrower and in form and substance reasonably acceptable to the Administrative Agent, and (ii) a Note executed by the Borrower in favor of each Lender requesting a Note in advance of the Restatement Effective Date.

(c) The Administrative Agent shall have received favorable written opinions (addressed to the Administrative Agent and the Lenders and dated the Restatement Effective Date) of Fenwick & West LLP, counsel for the Borrower, in form and substance reasonably satisfactory to the Administrative Agent. The Borrower hereby requests each such counsel to deliver such opinion.

(d) The Administrative Agent shall have received (i) certified copies of the resolutions of the board of directors of the Borrower and the Guarantors approving the transactions contemplated by the Loan Documents to which each such Loan Party is a party and the execution and delivery of such Loan Documents to be delivered by such Loan Party on the Restatement Effective Date, and all documents evidencing other necessary organizational action and governmental approvals, if any, with respect to the Loan Documents and (ii) all other documents reasonably requested by the Administrative Agent relating to the organization, existence and good standing of the Guarantors and the Borrower and authorization of the transactions contemplated hereby.

(e) The Administrative Agent shall have received a certificate of the Secretary or an Assistant Secretary of the Borrower and each Guarantor certifying the names and true signatures of the officers of such entity authorized to sign the Loan Documents to which it is a party, to be

delivered by such entity on the Restatement Effective Date and the other documents to be delivered hereunder on the Restatement Effective Date.

(f) The Administrative Agent shall have received (i) a certificate, dated the Restatement Effective Date and signed on behalf of the Borrower by the President, a Vice President or a Financial Officer of the Borrower, confirming compliance with the conditions set forth in paragraphs (a) and (b) of Section 4.02 as of the Restatement Effective Date, and (ii) a certificate, dated the Restatement Effective Date and signed on behalf of the Borrower by the chief financial officer of the Borrower, certifying that, as of the Restatement Effective Date, the Borrower is, individually and together with its Subsidiaries, and after giving effect to the incurrence of any Indebtedness and obligations being incurred in connection herewith will be, Solvent.

(g) The Lenders, the Administrative Agent and the Arranger shall have received all fees required to be paid by the Borrower on the Restatement Effective Date, and all expenses required to be reimbursed by the Borrower for which invoices have been presented at least three business days prior to the Restatement Effective Date, on or before the Restatement Effective Date.

(h) (i) The Administrative Agent shall have received, to the extent reasonably requested by any of the Lenders at least five Business Days prior to the Restatement Effective Date, all documentation and other information required by bank regulatory authorities under applicable "know-your-customer" and anti-money laundering rules and regulations, including the USA Patriot Act and (ii) to the extent the Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, at least five days prior to the Restatement Effective Date, any Lender that has requested, in a written notice to the Borrower at least 10 days prior to the Restatement Effective Date, a Beneficial Ownership Certification in relation to the Borrower shall have received such Beneficial Ownership Certification (provided that, upon the execution and delivery by such Lender of its signature page to this Agreement, the condition set forth in this clause (ii) shall be deemed to be satisfied).

(i) The Administrative Agent shall have received (i) audited consolidated financial statements of the Borrower for the two most recent fiscal years ended at least 90 days prior to the Restatement Effective Date as to which such financial statements are available, (ii) unaudited interim consolidated financial statements of the Borrower for each quarterly period ended subsequent to the date of the latest financial statements delivered pursuant to clause (i) of this paragraph and at least 30 days prior to the Restatement Effective Date as to which such financial statements are available and (iii) reasonably detailed projections of the Borrower for its fiscal years ending June 30, 2019, June 30, 2020, June 30, 2021 and June 30, 2022.

(j) All outstanding Equity Interests owned by or on behalf of any Loan Party shall have been pledged pursuant to the Security Agreement, and the Administrative Agent shall have received certificates or other instruments representing all such Equity Interests (if any), together with undated stock powers or other instruments of transfer with respect thereto endorsed in blank.

(k) The Administrative Agent shall have received the results of a recent Lien search



with respect to each Loan Party, and such search shall reveal no Liens on any of the assets of the Loan Parties except for Liens permitted by Section 6.02 or discharged on or prior to the Closing Date pursuant to documentation satisfactory to the Administrative Agent.

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

The Administrative Agent shall notify the Borrower and the Lenders of the Restatement Effective Date, and such notice shall be conclusive and binding. Without limiting the generality of the provisions of Article 8, for purposes of determining compliance with the conditions specified in this Section, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Restatement Effective Date specifying its objection thereto.

#### Section 4.02 Each Credit Event

The obligation of each Lender to make a Loan on the occasion of any Borrowing (provided that a conversion or a continuation shall not constitute a "Borrowing" for purposes of this Section 4.02), and of the applicable Issuing Bank to issue, amend, renew or extend any Letter of Credit, is subject to the satisfaction of the following conditions:

(a) The representations and warranties of the Borrower set forth in this Agreement and the other Loan Documents shall be true and correct in all material respects on and as of the date of such Borrowing or the date of issuance, amendment, renewal or extension of such Letter of Credit, as applicable, except that (i) for purposes of this Section, the representations and warranties contained in Section 3.04(a) shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b) (subject, in the case of unaudited financial statements furnished pursuant to clause (b), to year-end audit adjustments and the absence of footnotes), respectively, of Section 5.01, (ii) to the extent that such representations and warranties specifically refer to an earlier date, they shall be true and correct in all material respects as of such earlier date and (iii) to the extent that such representations and warranties are already qualified or modified by materiality in the text thereof, they shall be true and correct in all respects; **and**

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

(c) In the case of any Borrowing or any issuance, amendment, renewal or extension of a Letter of Credit prior to the Conversion Date, the Borrower shall be in compliance with the

covenant set forth in Section 6.10(a)(i) on the date of, and after giving pro forma effect to, such Borrowing or such issuance, amendment, renewal or extension of such Letter of Credit.

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



Until the Commitments have expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full and all Letters of Credit shall have expired or terminated, in each case, without any pending draw, or shall have been Cash Collateralized in an amount not less than the Minimum Collateral Amount, and all LC Disbursements shall have been reimbursed, the Borrower covenants and agrees with the Lenders that:

Section 5.01 Financial Statements; Ratings Change and Other Information

The Borrower will furnish to the Administrative Agent (for distribution to each Lender):

(a) on or before the date on which such financial statements are required to be filed with the SEC (or, if such financial statements are not required to be filed with the SEC, within 120 days after the end of each fiscal year of the Borrower), its audited consolidated balance sheet and related statements of operations, stockholders' equity and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by Ernst & Young LLP or other independent public accountants of recognized national standing (without a "going concern" or like qualification or exception (other than a qualification related to the maturity of the Commitments and the Loans at the Maturity Date) and without any qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied;

(b) on or before the date on which such financial statements are required to be filed with the SEC (or, if such financial statements are not required to be filed with the SEC, within 45 days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower), its consolidated balance sheet and related statements of operations, stockholders' equity and cash flows as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by one of its Financial Officers as presenting fairly in all material respects the financial condition and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes;

(c) concurrently with any delivery of financial statements under clause (a) or (b) above, a certificate of a Financial Officer of the Borrower in substantially the form of Exhibit F attached hereto (i) certifying as to whether a Default has occurred and is continuing as of the date thereof and, if a Default has occurred and is continuing as of the date thereof, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (ii) setting forth the amount of investments and acquisitions made pursuant to Section 6.04(hi) during the respective period and demonstrating compliance with such Section 6.04(hi), (iii) setting forth the amount of Restricted Payments made pursuant to Section 6.05(viii) during the respective period and demonstrating compliance with such Section 6.05(viii), (iv) demonstrating compliance with Sections 6.10(a) and (b), (v) if and to the extent that any change in GAAP that has occurred since the date of the audited financial statements referred to in Section 3.04 had an impact on such financial statements, specifying the effect of such change on the financial statements accompanying such certificate and (vi) setting forth a description of any registered patents, registered trademarks or registered copyrights acquired, exclusively licensed or developed by the Borrower and its Subsidiaries since the Restatement Effective Date or the date of the most recent certificate delivered pursuant to this Section 5.01(c) prior to the date thereof, as applicable;

~~(d) prior to an IPO, as soon as available, and in any event no later than 60 days after the end of each fiscal year of the Borrower, a detailed consolidated budget for the following fiscal year (including a projected consolidated balance sheet of the Borrower and its Subsidiaries as of the end of the following fiscal year, the related consolidated statements of projected cash flow and projected income and a description of the underlying assumptions applicable thereto); and, as soon as available, significant revisions, if any, of such budget and projections with respect to such fiscal year;~~

~~(e) prior to an IPO, as soon as available, and within 45 days after the end of each fiscal quarter of the Borrower (or 120 days, in the case of the fourth fiscal quarter of each fiscal year), the narrative discussion and analysis of the business of the Borrower and its Subsidiaries for such fiscal quarter that is distributed to the holders of Equity Interests in the Borrower;~~

(fd) promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed by the Borrower or any Subsidiary with the Securities and Exchange Commission, or any Governmental Authority succeeding to any or all of the functions of said Commission, or with any national securities exchange, as the case may be, in each case that is not otherwise required to be delivered to the Administrative Agent pursuant hereto; and

(ee) promptly following any request in writing (including any electronic message) therefor, (i) such other information regarding the operations, business affairs and financial condition of the Borrower or any Subsidiary, or compliance with the terms of this Agreement or any other Loan Document, as the Administrative Agent or any Lender (through the Administrative Agent) may reasonably request and (ii) information and documentation reasonably requested by the Administrative Agent or any Lender for purposes of compliance with applicable "know your customer" and anti-money laundering rules and regulations, including the USA Patriot Act and the Beneficial Ownership Regulation.



Information required to be delivered pursuant to Section 5.01(a) or Section 5.01(b) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which such information is posted on the Borrower's behalf on an Internet or intranet website, if any, to which the Lenders and the Administrative Agent have been granted access (whether a commercial, third-party website or whether sponsored by the Administrative Agent).

#### Section 5.02 Notices of Material Events

The Borrower will furnish to the Administrative Agent (for distribution to each Lender) prompt written notice of the following:

- (a) the occurrence of any Default;
- (b) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or affecting the Borrower or any Subsidiary thereof that would reasonably be expected to result in a Material Adverse Effect;
- (c) any other development that results in, or would reasonably be expected to result in, a Material Adverse Effect; and
- (d) any change in the information provided in the Beneficial Ownership Certification delivered to such Lender that would result in a change to the list of beneficial owners identified in such certification.

Each notice delivered under this Section (i) shall be in writing, (ii) shall contain a heading or a reference line that reads "Notice under Section 5.02 of Second Amendment and Restated Revolving Credit Agreement dated May 31, 2019" and (iii) shall be accompanied by a statement of a Responsible Officer or other executive officer of the Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

#### Section 5.03 Existence; Conduct of Business

The Borrower will, and will cause each of its Subsidiaries to, do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence in its jurisdiction of organization and the rights, licenses, permits, privileges and franchises material to the conduct of its business; provided that (i) the foregoing shall not prohibit any merger, consolidation, liquidation or dissolution permitted under Section 6.03 and (ii) none of the Borrower or any of its Subsidiaries shall be required to preserve, renew or keep in full force and effect its rights, licenses, permits, privileges or franchises where failure to do so would not reasonably be expected to result in a Material Adverse Effect.

#### Section 5.04 Payment of Taxes

The Borrower will, and will cause each of its Subsidiaries to, pay all Tax liabilities, including all Taxes imposed upon it or upon its income or profits or upon any properties belonging to it that, if not paid, would reasonably be expected to result in a Material Adverse Effect, before the same shall become delinquent or in default, and all lawful claims other than



of its Subsidiaries not otherwise permitted under Section 6.02, in both cases except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings and (b) to the extent required by GAAP, the Borrower or such Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP.

#### Section 5.05 Maintenance of Properties; Insurance

The Borrower will, and will cause each of its Subsidiaries to, (a) keep and maintain all property used in the conduct of its business in good working order and condition, ordinary wear and tear and casualty events excepted, except to the extent that failure to do so would not reasonably be expected to have a Material Adverse Effect, and (b) maintain insurance with financially sound and reputable insurance companies in such amounts and against such risks as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations.

#### Section 5.06 Books and Records; Inspection Rights

The Borrower will, and will cause each of its Subsidiaries to, keep proper books of record and account in which entries full, true and correct in all material respects are made and are sufficient to prepare financial statements in accordance with GAAP. The Borrower will, and will cause each of its Subsidiaries to, permit any representatives designated by the Administrative Agent or any Lender (pursuant to the request made through the Administrative Agent), upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records to the extent reasonably necessary, and to discuss its affairs, finances and condition with its officers and independent accountants (provided that the Borrower or such Subsidiary shall be afforded the opportunity to participate in any discussions with such independent accountants), all at such reasonable times and as often as reasonably requested (but no more than once annually if no Event of Default exists). Notwithstanding anything to the contrary in this Section, none of the Borrower or any of its Subsidiaries shall be required to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter that (i) constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives) is prohibited by applicable law or any third party contract legally binding on the Borrower or its Subsidiaries or (iii) is subject to attorney, client or similar privilege or constitutes attorney work-product.

#### Section 5.07 ERISA Events

The Borrower will furnish to the Administrative Agent and each Lender prompt written notice of the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, would reasonably be expected to result in a Material Adverse Effect.

#### Section 5.08 Compliance with Laws and Agreements

The Borrower will, and will cause each of its Subsidiaries to, comply with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property and rights and all indentures, agreements, and other instruments binding upon it or its property and rights,

except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect. The Borrower will maintain in effect and enforce policies and procedures designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws, Anti-Terrorism Laws and applicable Sanctions.

#### Section 5.09 Use of Proceeds

The proceeds of the Loans and Letters of Credit will be used only for working capital and general corporate purposes, including, without limitation, for debt redemptions under debt



general corporate purposes, including, without limitation, for stock repurchases under stock repurchase programs approved by the Borrower and for acquisitions not prohibited hereunder. No part of the proceeds of any Loan or Letter of Credit will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board, including Regulations T, U and X.

#### Section 5.10 Guarantors; Additional Collateral

(a) If, as of the date of the most recently available financial statements delivered pursuant to Section 5.01(a) or (b), as the case may be, any Person shall have become a Domestic Subsidiary (other than an Excluded Subsidiary), then the Borrower shall, within 30 days (or such longer period of time as the Administrative Agent may agree in its sole discretion) after delivery of such financial statements, cause such Domestic Subsidiary to (i) enter into a guaranty agreement (a "Guaranty") in substantially the form of Exhibit E hereto, or, if a Guaranty has previously been entered into by a Domestic Subsidiary (and remains in effect), a joinder agreement in form and substance reasonably satisfactory to the Administrative Agent to such Guaranty and (ii) (A) enter into a joinder agreement in form and substance reasonably satisfactory to the Administrative Agent to the Security Agreement and (B) take such actions necessary or advisable to grant to the Administrative Agent for the benefit of the Lenders a perfected first priority security interest (subject to Liens permitted by Section 6.02) in the Collateral described in the Security Agreement with respect to such Domestic Subsidiary, including the filing of Uniform Commercial Code financing statements in such jurisdictions, and filings with the United States Copyright Office, as may be required by the Security Agreement or by law or as may be requested by the Administrative Agent and (iii) if requested by the Administrative Agent, deliver to the Administrative Agent legal opinions consistent with the legal opinions delivered on the Effective Date, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Administrative Agent; provided that the Borrower and its Subsidiaries shall not be required to take any action under this Section 5.10(a) if prior to the end of such 30 day period (or such longer period of time as the Administrative Agent may agree in its sole discretion) such Person ceases to be a Domestic Subsidiary as a result of a transfer of assets from such Person to the Borrower in a transaction or transactions permitted under this Agreement.

(b) If, as of the date of the most recently available financial statements delivered pursuant to Section 5.01(a) or (b), as the case may be, any foreign Subsidiary (not including any Immaterial Subsidiary) that is a direct Subsidiary of any Loan Party shall have been created or acquired after the Restatement Effective Date by any Loan Party, the Borrower will, or will cause the applicable Guarantor to, within 30 days (or such longer period of time as the Administrative

Agent may agree in its sole discretion) after delivery of such financial statements, (i) execute and deliver to the Administrative Agent such amendments to the Security Agreement as the Administrative Agent deems necessary or advisable to grant to the Administrative Agent, for the benefit of the Lenders, a perfected first priority security interest (subject to Liens permitted by Section 6.02) in 66% of the total outstanding voting Equity Interests of any such foreign Subsidiary, (ii) deliver to the Administrative Agent any certificates representing such Equity Interests, together with undated stock powers, in blank, executed and delivered by a duly authorized officer of the relevant Loan Party, and take such other action as may be necessary or, in the opinion of the Administrative Agent, desirable to perfect the Administrative Agent's security interest therein, and (iii) if requested by the Administrative Agent, deliver to the Administrative Agent legal opinions consistent with the legal opinions delivered on the Effective Date, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Administrative Agent.

(c) If, as of the date of the most recently available financial statements delivered pursuant to Section 5.01(a) or (b), as the case may be, any property shall be acquired by any Loan Party (other than (x) any property described in paragraphs (a) or (b) above or paragraph (d) below and (y) any property subject to a Lien expressly permitted by Section 6.02) as to which the

below and (y) any property subject to a Lien expressly permitted by Section 6.02 as to which the Administrative Agent, for the benefit of the Lenders, does not have a perfected Lien, the Borrower will, or will cause the applicable Loan Party to, within 30 days (or such longer period of time as the Administrative Agent may agree in its sole discretion) after the delivery of such financial statements (i) execute and deliver to the Administrative Agent such amendments to the Security Agreement or such other documents as the Administrative Agent deems necessary or advisable to grant to the Administrative Agent, for the benefit of the Lenders, a security interest in such property and (ii) take all actions necessary or advisable to grant to the Administrative Agent, for the benefit of the Lenders, a perfected first priority security interest in such property, including the filing of Uniform Commercial Code financing statements in such jurisdictions as may be required by the Security Agreement or by law or as may be requested by the Administrative Agent.

(d) If, as of the date of the most recently available financial statements delivered pursuant to Section 5.01(a) or (b), as the case may be, any fee interest in any real property having a value (together with improvements thereof) of at least \$500,000 shall be acquired by any Loan Party (other than any such real property subject to a Lien expressly permitted by Section 6.02), the Borrower will, or will cause the applicable Loan Party to, within 30 days (or such longer period of time as the Administrative Agent may agree in its sole discretion) after the delivery of such financial statements (i) execute and deliver a first priority mortgage, in favor of the Administrative Agent, for the benefit of the Lenders, covering such real property, (ii) if requested by the Administrative Agent, provide the Lenders with (x) title and extended coverage insurance covering such real property in an amount at least equal to the purchase price of such real property (or such other amount as shall be reasonably specified by the Administrative Agent) as well as a current ALTA survey thereof, together with a surveyor's certificate and (y) any consents or estoppels reasonably deemed necessary or advisable by the Administrative Agent in connection with such mortgage, each of the foregoing in form and substance reasonably satisfactory to the Administrative Agent and (iii) if requested by the Administrative Agent, deliver to the Administrative Agent legal opinions relating to the matters described above, which opinions



shall be in form and substance, and from counsel, reasonably satisfactory to the Administrative Agent.

(e) Notwithstanding the foregoing, none of the Borrower or its Subsidiaries shall be required to take any action outside of the United States to create or perfect any security interest in the Collateral (including the registration of Intellectual Property in, and the execution of any agreement, document or other instrument governed by the law of, any jurisdiction other than the United States, any State thereof or the District of Columbia).

#### Section 5.11 Cash Management

The Borrower shall, and shall cause each Guarantor to:

(a) maintain all cash management and treasury business with the Lenders and Permitted Third Party Banks, including, without limitation, all deposit accounts, disbursement accounts, investment accounts and lockbox accounts (other than (i) any account in which the aggregate average daily maximum balance over a 30-day period does not at any time exceed \$250,000, provided that the aggregate average daily maximum balance over a 30-day period of all such accounts described in this clause (i) shall not at any time exceed \$3,000,000, (ii) zero-balance accounts solely for the purpose of managing local disbursements, payroll and withholding, (iii) Fiduciary Accounts (collectively, the "Unrestricted Accounts"), all of which the Loan Parties may maintain without restriction (with the exception of those restrictions permitted under 6.02(n)), and (iv) accounts specified in Schedule 5.11, for the period stated therein, in each case subject to the terms of any Control Account Agreement) (each such deposit account, disbursement account, investment account and lockbox account, a "Controlled Account"); each Controlled Account shall be a cash collateral account, with all cash, checks and other similar items of payment in such account securing payment of the Obligations, in which the Borrower and each of its Subsidiaries shall have granted a first priority Lien to the Administrative Agent, on behalf of the Secured Parties, and which shall be subject to a Control Account Agreement; if any Default or Event of Default has occurred and is continuing, the Administrative Agent may in its reasonable discretion, and is hereby authorized to, cause the applicable depository bank or securities intermediary to honor the instructions of the Administrative Agent with respect to any Controlled Account in accordance with the terms of the applicable Control Account Agreement; and

(b) deposit, no later than 10 Business Days after the date of receipt thereof, all cash, checks, drafts or other similar items of payment relating to or constituting payments made in respect of any and all accounts and other Collateral into Controlled Accounts, in each case except for (i) cash and Cash Equivalents the aggregate value of which does not exceed, collectively with any amounts held in Unrestricted Accounts (other than amounts described in clause (ii) of this sentence), \$3,000,000 at any time, (ii) amounts held in any Unrestricted Account solely for the purposes of managing local disbursements, payroll and withholding and any amounts held in a Fiduciary Account and (iii) accounts specified in Schedule 5.11, for the period stated therein.

Promptly upon request by the Administrative Agent, or any Lender through the Administrative Agent, the Borrower will (a) correct any 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 Administrative Agent, or any Lender through the Administrative Agent, may reasonably require from time to time in order to (i) perfect and maintain the validity, effectiveness and priority of any of the Security Documents and any of the Liens created thereunder and (ii) assure, preserve, protect and confirm more effectively unto the Lenders, or the Administrative Agent for the benefit of the Lenders, the rights granted to the Lenders, or the Administrative Agent for the benefit of the Lenders, under any Loan Document or under any other instrument executed in connection with any Loan Document to which any Loan Party or any of its Subsidiaries is or is to be a party.

## ARTICLE 6 NEGATIVE COVENANTS

Until the Commitments have expired or terminated and the principal of and interest on each Loan and all fees payable hereunder have been paid in full and all Letters of Credit have expired or terminated, in each case, without any pending draw, or shall have been Cash Collateralized in an amount not less than the Minimum Collateral Amount, and all LC Disbursements shall have been reimbursed, the Borrower covenants and agrees with the Lenders that:

### Section 6.01 Indebtedness

The Borrower will not, and will not permit any Subsidiary to, create, incur, assume or permit to exist any Indebtedness other than:

(a) Indebtedness existing on the Second Amendment Effective d~~Date hereof~~ and set forth in Schedule 6.01 and extensions, renewals and replacements of any such Indebtedness that do not increase the outstanding principal amount thereof;

(b) Indebtedness of the Borrower to any Subsidiary and of any Subsidiary to the Borrower or any other Subsidiary;

(c) Guarantees by the Borrower of Indebtedness of any Subsidiary and by any Subsidiary of Indebtedness of the Borrower or any other Subsidiary;

(d) Indebtedness of the Borrower or any Subsidiary (other than any Foreign IP Subsidiary) constituting Capital Lease Obligations and Purchase Money Indebtedness; provided that the aggregate principal amount of Indebtedness pursuant to this clause (d) shall not exceed the greater of (i) \$15,000,000 and (ii) 2.5% of the Total Assets of the Borrower and its Subsidiaries at any time outstanding;

(e) Indebtedness constituting letters of credit not to exceed ~~\$150,000,000~~500,000,000 at any time outstanding;

(f) Indebtedness of the Borrower or any Subsidiary (other than any Foreign IP Subsidiary) in an aggregate principal amount at any time outstanding not to exceed the greater of (i) \$75,000,000 and (ii) 10% of the Total Assets of the Borrower and its Subsidiaries (provided that such Indebtedness ~~(i) shall not mature prior to the Maturity Date, (ii) either (x) shall not require any payment of principal prior to the Maturity Date or (y) shall not require payments of principal in an aggregate amount per annum in excess of 1.0% of the principal amount thereof~~



~~and (iii) contains terms customary for similar issuances of indebtedness at such time (as determined in good faith by the Borrower) (it being understood that, other than in the case of any issuance of a debt security, such terms shall be no more restrictive, taken as a whole (as determined in good faith by the Borrower), than the Loans, and in any event no such Indebtedness (including any debt securities) shall contain a financial maintenance covenant more restrictive than any financial maintenance covenant contained herein)); shall be subject to the Required Additional Debt Terms;~~

(g) Obligations under the Loan Documents;

~~Notwithstanding the foregoing, any Indebtedness owed by a Loan Party to a Subsidiary that is not a Loan Party shall be permitted only to the extent subordinated to the Obligations on customary terms reasonably satisfactory to the Administrative Agent; and~~

~~(h) Indebtedness of the Borrower or any Subsidiary constituting Capital Lease Obligations and/or Purchase Money Indebtedness, in each case in respect of the POP Facility and in an aggregate amount not to exceed \$325,000,000; and~~

~~(hi) any Permitted Convertible Indebtedness and replacements or refinancings thereof in an of the Borrower or any Subsidiary that is unsecured; provided that, (x) the aggregate principal amount not to exceed \$1,000,000,000 at the time of issuance; provided that (i) no Default or Event of Default has occurred and is continuing at the time of issuance of such Indebtedness and (ii) at the time of issuance of such Indebtedness, shall not exceed, (i) prior to the Conversion Date, \$1,000,000,000, and (ii) on and after the Conversion Date, the amount that may be incurred without causing the Total Net Leverage Ratio to exceed 4.50 to 1.00 after giving effect to the incurrence of such Indebtedness (as if such Indebtedness had been incurred on the last day of the most recently completed fiscal quarter of the Borrower ending prior to such date); the Borrower is in pro forma compliance with the covenant set forth in Section 6.10; and (y) such Indebtedness shall be subject to the Required Additional Debt Terms;~~

~~Notwithstanding the foregoing, any Indebtedness owed by a Loan Party to a Subsidiary that is not a Loan Party shall be permitted only to the extent subordinated to the Obligations on customary terms reasonably satisfactory to the Administrative Agent.~~

## Section 6.02 Liens

The Borrower will not, and will not permit any Subsidiary to, create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by it except:

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(a) Permitted Encumbrances;

(b) any Lien on any property or asset of the Borrower or any Subsidiary existing on the Effective Date and set forth in Schedule 6.02 and any modifications, renewals and extensions thereof and any Lien granted as a replacement or substitute therefor; provided that (i) such Lien shall not apply to any other property or asset of the Borrower or any Subsidiary other than improvements thereon or proceeds thereof and (ii) such Lien shall secure only those obligations which it secures on the Effective Date and any refinancing, extension, renewal or replacement thereof that does not increase the outstanding principal amount thereof except by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such refinancing, extensions, renewals or replacements;

(c) any Lien existing on any property or asset prior to the acquisition thereof by the Borrower or any Subsidiary or existing on any property or asset of any Person that becomes a Subsidiary after the Effective Date prior to the time such Person becomes a Subsidiary; provided that (i) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Subsidiary, as the case may be, (ii) such Lien shall not apply to any other property or assets of the Borrower or any Subsidiary and (iii) such Lien shall secure only



other property or assets of the Borrower or any Subsidiary and (iii) such Lien shall secure only those obligations which it secures on the date of such acquisition or the date such Person becomes a Subsidiary, as the case may be, and any refinancing, extension, renewal or replacement thereof that does not increase the outstanding principal amount thereof except by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such refinancing, extensions, renewals or replacements;

(d) Liens on fixed or capital assets acquired, constructed or improved by the Borrower or any Subsidiary; provided that (i) such security interests secure Indebtedness that is not prohibited by Section 6.01, (ii) such security interests and the Indebtedness secured thereby are initially incurred prior to or within 180 days after such acquisition or the completion of such construction or improvement, (iii) the Indebtedness secured thereby does not exceed 100% of the cost of acquiring, constructing or improving such fixed or capital assets and (iv) such security interests shall not apply to any other property or assets of the Borrower or any Subsidiary other than additions, accessions, parts, attachments or improvements thereon or proceeds thereof;

(e) licenses, sublicenses, leases or subleases granted to others in the ordinary course of business not interfering in any material respect with the business of the Borrower and its Subsidiaries, taken as a whole;

(f) the interest and title of a lessor under any lease or sublease entered into by the Borrower or any Subsidiary in the ordinary course of its business and other statutory and common law landlords' Liens under leases;

(g) in connection with the sale or transfer of any assets in a transaction not prohibited hereunder, customary rights and restrictions contained in agreements relating to such sale or transfer pending the completion thereof;

(h) Liens securing Indebtedness to finance insurance premiums owing in the ordinary course of business to the extent such financing is not prohibited hereunder;

(i) Liens on earnest money deposits of cash or cash equivalents made in connection with any acquisition not prohibited hereunder;

(j) 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 Subsidiary, in each case granted in the ordinary course of business in favor of the banks, securities intermediaries or other depository institutions with which such accounts are maintained, securing amounts owing to such institutions with respect to cash management and operating account arrangements;

(k) Liens in the nature of the right of setoff in favor of counterparties to contractual agreements not otherwise prohibited hereunder with the Borrower or any of its Subsidiaries in the ordinary course of business;

(l) Liens created pursuant to the Security Documents;

(m) other Liens securing obligations (other than Indebtedness of any Foreign IP Subsidiary) in an aggregate amount at any time outstanding (A) prior to the Conversion Date, not to exceed the greater of (i) \$15,000,000 and (ii) 2.5% of the Total Assets of the Borrower and its Subsidiaries at any time outstanding and (B) on an after the Conversion Date, in an amount not to exceed the greater of (i) \$100,000,000 and (ii) 2.5% of the Total Assets of the Borrower and its Subsidiaries at any time outstanding;

(n) Liens on cash and Cash Equivalents securing letters of credit in an aggregate face amount at any time outstanding not to exceed ~~\$150,000,000~~250,000,000; provided that the aggregate amount of Liens at any time outstanding pursuant to this clause (n) shall not exceed 103% (or, in the case of any letters of credit issued in a currency other than Dollars and cash collateralized in Dollars, 110%) of the aggregate face amount of the letters of credit so secured; and

(o) Any customary encumbrance or restriction (including put and call arrangements) with respect to capital stock of any joint venture or similar customary arrangement pursuant to any joint venture or similar agreement.

### Section 6.03 Fundamental Changes

(a) The Borrower will not, and will not permit any Subsidiary to, (x) merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, (y) otherwise Dispose of (in one transaction or in a series of transactions) all or substantially all of its assets, or all or substantially all of the stock of any of its Subsidiaries (in each case, whether now owned or hereafter acquired), or (z) liquidate or dissolve, except that, if at the time thereof and immediately after giving effect thereto no Default shall have occurred and be continuing:

(i) any Subsidiary or any other Person may merge into or consolidate with the Borrower in a transaction in which the Borrower is the surviving corporation;

(ii) any Person (other than the Borrower) may merge into or consolidate



with any Subsidiary in a transaction in which the surviving entity is a Subsidiary (provided that any such merger or consolidation involving a Guarantor must result in a Guarantor as the surviving entity or the surviving entity becoming a Guarantor as part of the transaction);

(iii) any Subsidiary that is not a Loan Party may Dispose of its assets to the Borrower or to another Subsidiary;

(iv) any Loan Party may Dispose of its assets to any other Loan Party;

(v) in connection with any investment permitted under Section 6.04, any Subsidiary may merge into or consolidate with any other Person, so long as the Person surviving such merger or consolidation shall be a Subsidiary (provided that any such merger or consolidation involving a Guarantor must result in a Guarantor as the surviving entity or the surviving entity becoming a Guarantor as part of the transaction);

(vi) subject to compliance with Section 6.04(d), any Loan Party may Dispose of its assets in order to effect any investment permitted under Section 6.04(d); and

(vii) any Subsidiary may liquidate or dissolve if the Borrower determines in good faith that such liquidation or dissolution is in the best interests of the Borrower and is not materially disadvantageous to the Lenders; and

(viii) any Subsidiary may consummate a Division as the Dividing Person if, immediately upon the consummation of the Division, all the assets of the applicable Dividing Person are held by one or more Subsidiaries at such time; provided that, if the applicable Dividing Person is a Loan Party, all of the assets of such Dividing Person shall be held by one or more Loan Parties at such time;

provided that any such any such merger involving a Person that is not a wholly owned Subsidiary immediately prior to such merger shall not be permitted unless also permitted by Section 6.04.

(b) The Borrower will not, and will not permit any of its Subsidiaries to, engage to any material extent in any business other than businesses of the type conducted by the Borrower and its Subsidiaries on the date of execution of this Agreement and businesses reasonably related thereto.

#### Section 6.04 Investments, Loans, Advances, Guarantees and Acquisitions

The Borrower will not, and will not permit any of its Subsidiaries to, purchase, hold or acquire (including pursuant to any merger with any Person that was not a wholly owned Subsidiary prior to such merger) any capital stock, evidences of indebtedness or other securities (including any option, warrant or other right to acquire any of the foregoing) of, make or permit to exist any loans or advances to, Guarantee any obligations of, or make or permit to exist any investment or any other interest in, any other Person, or purchase or otherwise acquire (in one

transaction or a series of transactions) any assets of any other Person constituting a business unit, except:

(a) investments in cash and Cash Equivalents;

(b) investments by the Borrower existing on the date hereof in the capital stock of its Subsidiaries;

(c) loans or advances made by the Borrower to any Subsidiary and made by any Subsidiary to the Borrower or any other Subsidiary;



Subsidiary to the Borrower or any other Subsidiary,

(d) investments made by the Borrower in any Subsidiary, or by any Subsidiary in any other Subsidiary, provided that the aggregate of such investments made by the Loan Parties in Subsidiaries that are not Loan Parties shall not exceed the greater of (i) \$10,000,000 and (ii) 5% of the Total Assets of the Borrower and its Subsidiaries at any time outstanding;

(e) investments in the form of Indebtedness of, or equity interests in, foreign Subsidiaries that are not Loan Parties representing consideration for licenses of (i) any non-U.S. Intellectual Property and (ii) any Intellectual Property rights covering or relating solely to jurisdictions outside the United States; provided that the Equity Interests in the foreign Subsidiary to which such license is granted (or in the parent company of such foreign subsidiary, if such parent company does not have any assets other than Indebtedness of, or equity interests in, such foreign Subsidiary) have been pledged to the Administrative Agent in accordance with Section 5.10(b) and the Loan Parties retain ownership of such Intellectual Property and all rights required for or material to the operation of their businesses in the United States;

(f) investments received in settlement of debts, claims or disputes owed to the Borrower or any Subsidiary that arose out of transactions in the ordinary course of business;

(g) advances and extensions of credit in the nature of accounts receivable arising from the sale or lease of goods or services or the licensing of property in the ordinary course of business;

(h) Guarantees constituting Indebtedness permitted by Section 6.01;

(i) so long as no Default or Event of Default then exists or would result therefrom, the Borrower may make investments and other acquisitions ~~(i) in an unlimited amount (i) prior to the Conversion Date,~~ if Total Liquidity immediately prior to the consummation of such investment or acquisition and after giving pro forma effect to such investment or acquisition is equal to or greater than ~~\$175,000,000, in an unlimited amount or (ii) if Total Liquidity~~ 500,000,000 and (ii) on and after the Conversion Date, if, immediately prior to the consummation of such investment or acquisition and after giving pro forma effect to such investment or acquisition ~~is less than \$175,000,000, in an amount not to exceed \$20,000,000 in the aggregate for any fiscal year of the Borrower; and,~~ the Senior Secured Net Leverage Ratio is not greater than 3.00 to 1.00;

(j) investments in the form of Swap Agreements permitted under Section 6.11; and

(k) so long as no Default or Event of Default then exists or would result therefrom, the Borrower may make investments and other acquisitions in an amount not to exceed \$25,000,000 in the aggregate for any fiscal year of the Borrower.

#### Section 6.05 Restricted Payments

The Borrower will not, and will not permit any of its Subsidiaries to, declare or make any Restricted Payments with respect to the Borrower or any of its Subsidiaries, except:

(i) any Subsidiary of the Borrower may make Restricted Payments to the Borrower or to any direct or indirect wholly-owned Subsidiary of the Borrower, and any non-wholly-owned Subsidiary may make Restricted Payments to the Borrower or any of its other Subsidiaries and to each other owner of Equity Interests of such Subsidiary ratably based on their relative ownership interests of the relevant class of Equity Interests;

(ii) the Borrower may declare and make dividends payable solely in additional shares of the Borrower's Equity Interests;

(iii) the Borrower may repurchase fractional shares of its Equity Interests arising out of stock dividends, splits or combinations, business combinations or conversions of convertible securities or, so long as no Default or Event of Default then exists or would result therefrom, make cash settlement payments upon the exercise of warrants to purchase its Equity Interests, or “net exercise” or “net share settle” warrants;

(iv) the Borrower may redeem or otherwise cancel Equity Interests or rights in respect thereof granted to (or make payments on behalf of) directors, officers, employees or other providers of services to the Borrower and the Subsidiaries in an amount required to satisfy tax withholding obligations relating to the vesting, settlement or exercise of such Equity Interests or rights;

(v) following an IPO, the Borrower may make any Restricted Payment that has been declared by the Borrower, so long as (A) such Restricted Payment would be otherwise permitted under clause (ix) of this Section 6.05 at the time so declared (and shall be deemed to be a utilization of such capacity from and after such time) and (B) such Restricted Payment is made within 60 days of such declaration;

(vi) following an IPO, the Borrower may make any repurchase (or deemed repurchase) of Equity Interests pursuant to any accelerated stock repurchase or similar agreement (each, an “ASR Agreement”) publicly announced by the Borrower and specifying the maximum aggregate amount of the stock to be repurchased pursuant to such ASR Agreement (the “Maximum ASR Amount”); provided that, at the time such ASR Agreement is publicly announced, the Maximum ASR Amount would otherwise have been permitted as a Restricted Payment on such date under clause (ix) of this Section 6.05 and shall be deemed to be a utilization of such capacity from and after such time until the repurchases pursuant to such ASR Agreement shall have been completed (up to the Maximum ASR Amount) or such ASR Agreement is terminated prior to the completion thereof, at which time any unused



amount under such ASR Agreement shall be available to be used for other Restricted Payments under such clause;

(vii) the Borrower may make Restricted Payments pursuant to and in accordance with stock option plans or other benefit plans or agreements for directors, management, employees or other eligible service providers of the Borrower or its Subsidiaries, including the repurchase of Equity Interests or rights in respect thereof granted to directors, management, employees or other eligible service providers of the Borrower or its Subsidiaries pursuant to a right of repurchase set forth in any such stock option plans or other benefit plans or agreements in connection with a cessation of service;

(viii) so long as no Default or Event of Default then exists or would result therefrom, the Borrower may make Restricted Payments not otherwise permitted under this Section 6.05 in an amount not to exceed the amount of proceeds of any substantially concurrent issuance of Equity Interests;

(ix) so long as no Default or Event of Default then exists or would result therefrom, the Borrower may declare or make Restricted Payments ~~(a) if in an unlimited amount so long as (a) prior to the Conversion Date,~~ Total Liquidity immediately prior to the making declaration of such Restricted Payment and after giving pro forma effect to such Restricted Payment is equal to or greater than \$300,000,000, ~~in an unlimited amount or (b) if Total Liquidity~~ 500,000,000, and ~~(b) on and after the Conversion Date, the Senior Secured Net Leverage Ratio~~ immediately prior to the making declaration of such Restricted Payment and after giving pro forma effect to such Restricted Payment is ~~less than \$300,000,000, in an amount not to exceed \$20,000,000 in the aggregate for any fiscal year of the Borrower; and not greater than 2.75 to 1.00;~~

(x) the Borrower may make any Restricted Payments and/or payments or deliveries in shares of common stock (or other securities or property following a merger event or other change of the common stock of the Borrower) (and cash in lieu of fractional shares) and/or cash pursuant to the terms of, and otherwise perform its obligations under, any Permitted Convertible Indebtedness (including, without limitation, making payments of interest and principal there-on, making payments due upon required repurchase or redemption thereof and/or making payments and deliveries due upon conversion thereof);

(xi) the Borrower may pay the premium in respect of, and otherwise perform its obligations under, any Permitted Bond Hedge Transaction; ~~and~~

(xii) the Borrower may make any Restricted Payments and/or payments or deliveries required by the terms of, and otherwise perform its obligations under, any Permitted Warrant Transaction (including, without limitation, making payments and/or deliveries due upon exercise and settlement or termination thereof); ~~and~~

(xiii) so long as no Default or Event of Default then exists or would result therefrom, the Borrower may declare or make Restricted Payments with the proceeds from substantially concurrent issuances of Equity Interests and Permitted Convertible Indebtedness.



The Borrower will not, and will not permit any of its Subsidiaries to, directly or indirectly, enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon (a) the ability of the Borrower or any Subsidiary to create, incur or permit to exist any Lien upon any of its property or assets to secure the Obligations, or (b) the ability of any Subsidiary to pay dividends or other distributions with respect to any shares of its capital stock or to make or repay loans or advances to the Borrower or any other Subsidiary or of any Subsidiary to Guarantee Indebtedness of the Borrower or any other Subsidiary under the Loan Documents; provided that (i) the foregoing shall not apply to restrictions and conditions imposed by law or by this Agreement or any other Loan Document, (ii) the foregoing shall not apply to restrictions and conditions existing on the Effective Date identified on Schedule 6.06 (and shall apply to any extension or renewal of, or any amendment or modification materially expanding the scope of, any such restrictions or conditions taken as a whole), (iii) the foregoing shall not apply to customary restrictions and conditions contained in agreements relating to the sale of a Subsidiary or assets of the Borrower or any Subsidiary pending such sale, provided such restrictions and conditions apply only to the Subsidiary or assets to be sold and such sale is not prohibited hereunder, (iv) the foregoing shall not apply to any agreement or restriction or condition in effect at the time any Subsidiary becomes a Subsidiary of the Borrower, so long as such agreement was not entered into solely in contemplation of such Person becoming a Subsidiary of the Borrower, (v) the foregoing shall not apply to customary provisions in joint venture agreements and other similar agreements applicable to joint ventures, (vi) clause (a) of the foregoing shall not apply to restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness, (vii) clause (a) of the foregoing shall not apply to customary provisions in leases, licenses, subleases and sublicenses and other contracts restricting the assignment thereof, (viii) the foregoing shall not apply to restrictions or conditions set forth in any agreement governing Indebtedness not prohibited by Section 6.01; provided that such restrictions and conditions are customary for such Indebtedness, and (ix) the foregoing shall not apply to restrictions on cash or other deposits (including escrowed funds) imposed under contracts entered into in the ordinary course of business.

#### Section 6.07 Transactions with Affiliates

The Borrower will not, and will not permit any of its Subsidiaries to, sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates (other than between or among the Borrower and its Subsidiaries and not involving any other Affiliate except as otherwise permitted hereunder), except (a) on terms and conditions not less favorable to the Borrower or such Subsidiary than could be obtained on an arm's-length basis from unrelated third parties, (b) payment of customary directors' fees, reasonable out-of-pocket expense reimbursement, indemnities (including the provision of directors and officers insurance) and compensation arrangements for members of the board of directors, officers or other employees of the Borrower or any of its Subsidiaries, (c) transactions approved by a majority of the disinterested directors of the Borrower's board of directors, (d) any transaction involving

amounts less than \$250,000 individually and \$2,500,000 in the aggregate and (e) any Restricted Payment permitted by Section 6.05.

#### Section 6.08 Use of Proceeds

The Borrower will not request any Borrowing or Letter of Credit, and the Borrower shall not use, and shall procure that its Subsidiaries and its or their respective directors, officers, employees and agents shall not use, the proceeds of any Borrowing or Letter of Credit (a) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money or anything else of value to any Person in violation of any Anti-Corruption Law, (b) for

money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (b) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or (c) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

#### Section 6.09 Disposition of Property

The Borrower will not, and will not permit any of its Subsidiaries to, Dispose of any of its property, whether now owned or hereafter acquired, or, in the case of any Subsidiary, issue or sell any shares of such Subsidiary's Equity Interests to any Person, except:

- (a) the Disposition of obsolete or worn out property in the ordinary course of business;
- (b) the sale of inventory in the ordinary course of business;
- (c) Dispositions to a Loan Party;
- (d) Dispositions that constitute Investments that are permitted under Section 6.04;
- (e) Dispositions of (i) any non-U.S. Intellectual Property and (ii) any Intellectual Property rights covering or relating solely to jurisdictions outside the United States, in each case to any foreign Subsidiary so long as the Equity Interests in such foreign Subsidiary (or in the parent company of such foreign subsidiary, if such parent company does not have any assets other than Indebtedness of, or equity interests in, such foreign Subsidiary) have been pledged to the Administrative Agent in accordance with Section 5.10(b) and the Loan Parties retain all rights required for or material to the operation of their businesses in the United States;
- (f) Dispositions permitted by clause (iii) or (iv) of Section 6.03(a);
- (g) the grant in the ordinary course of business of any non-exclusive license of patents, trademarks, registrations therefor and other similar intellectual property;
- (h) the sale or issuance of any Subsidiary's Equity Interests to the Borrower or any Guarantor that is a wholly owned Subsidiary;
- (i) the Disposition of other property having a fair market value not to exceed \$10,000,000 in the aggregate for any fiscal year of the Borrower; and

(j) the issuance and sale of notes constituting Permitted Convertible Indebtedness pursuant to Section 6.01(h); and

(k) early unwind, settlement or termination of any Permitted Bond Hedge Transactions or Permitted Warrant Transactions.

#### Section 6.10 Financial Condition Covenants

~~The Borrower will not, and will not permit any of its Subsidiaries to:~~

~~(a)~~

~~(a) Prior to the Conversion Date, the Borrower will not, and will not permit any of its Subsidiaries to, permit Total Liquidity, at any time, to be less than \$125,000,000; or 250,000,000.~~

~~(b) permit Total Revenues for any Measurement Period ending on any date set forth below to be less than the amount set forth below opposite such date:~~



Date of Determination	Minimum Revenue
June 30, 2019	\$725,000,000
September 30, 2019	\$775,000,000
December 31, 2019	\$840,000,000
March 31, 2020	\$960,000,000
June 30, 2020	\$990,000,000
September 30, 2020	\$1,000,000,000
December 31, 2020	\$1,010,000,000
March 31, 2021	\$1,150,000,000
June 30, 2021	\$1,185,000,000
September 30, 2021	\$1,195,000,000
December 31, 2021	\$1,215,000,000
March 31, 2022	\$1,380,000,000
June 30, 2022	\$1,420,000,000
September 30, 2022	\$1,435,000,000
December 31, 2022	\$1,455,000,000
March 31, 2023	\$1,655,000,000
June 30, 2023	\$1,705,000,000
September 30, 2023	\$1,725,000,000
December 31, 2023	\$1,745,000,000
March 31, 2024	\$1,985,000,000

(ii) Prior to the Conversion Date, the Borrower will not, and will not permit any of its Subsidiaries to, permit Total Revenues for any Measurement Period to be less than \$3,000,000,000.

(iii) Notwithstanding anything to the contrary herein or in any other Loan Document, on and after the Conversion Date, the covenants set forth in the



foregoing clauses (a)(i) and (a)(ii) shall cease to be in effect for any purpose of the Loan Documents.

(b) With respect to each Measurement Period ending on or after the Conversion Date, the Borrower will not permit the Senior Secured Net Leverage Ratio as of the last day of such Measurement Period to be greater than 3.00 to 1.00.

#### Section 6.11 Swap Agreements

Neither the Borrower nor any other Guarantor will enter into any Swap Agreement, other than (a) any Swap Agreement in respect of interest rates that is entered into to hedge or mitigate risks, and not for speculative purposes, in the ordinary course of the Borrower or such Guarantor's business or in order to effectively cap, collar or exchange interest rates (from floating to fixed rates, from one floating rate to another floating rate or otherwise) with respect to any interest-bearing liability or investment of the Borrower or such Guarantor, (b) any Swap Agreement in respect of currency exchange rates that is not entered into for speculative purposes, (b)c any Permitted Bond Hedge Transaction and (ed) any Permitted Warrant Transaction.

### ARTICLE 7 EVENTS OF DEFAULT

If any of the following events (each, an "Event of Default") shall occur:

(a) the Borrower shall fail to pay any principal of any Loan or any reimbursement obligation in respect of any LC Disbursement when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise, or shall fail to Cash Collateralize any Obligation when and as required pursuant to the terms of this Agreement;

(b) the Borrower shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in clause (a) of this Article) payable under any of the Loan Documents, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of five Business Days;

(c) any representation or warranty made or deemed made by or on behalf of the Borrower or any Subsidiary in or in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof or waiver hereunder or thereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement, any other Loan Document or any amendment or modification hereof or thereof or waiver hereunder or thereunder, shall prove to have been incorrect in any material respect when made or deemed made;

(d) the Borrower shall fail to observe or perform any covenant, condition or agreement contained in Section 5.02, Section 5.03 (solely with respect to the Borrower's existence), Section 5.09 or in Article 6;

(e) the Borrower shall fail to observe or perform any covenant, condition or agreement contained in any of the Loan Documents (other than those specified in clause (a),



period of 30 days after notice thereof from the Administrative Agent to the Borrower (which notice will be given at the request of any Lender);

(f) the Borrower or any Subsidiary shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness, when and as the same shall become due and payable (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) and such failure shall have continued after the applicable grace period, if any;

(g) any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time or both, but with all applicable grace periods in respect of such event or condition under the documentation representing such Material Indebtedness having expired) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; provided that this clause (g) shall not apply to (w) any requirement to, or any offer, to repurchase, prepay or redeem Indebtedness of a Person acquired in an acquisition permitted hereunder, to the extent such offer is required as a result of, or in connection with, such acquisition, so long as such requirement is satisfied at the time of such acquisition, (x) secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, (y) any redemption, repurchase, conversion or settlement with respect to any convertible debt instrument (including any termination of any related Swap Agreement) pursuant to its terms unless such redemption, repurchase, conversion or settlement results from a default thereunder or an event of the type that constitutes an Event of Default or (z) an early payment requirement, unwinding or termination with respect to any Swap Agreement except (i) an early payment, unwinding or termination that results from a default or non-compliance thereunder by the Borrower or any Subsidiary, or another event of the type that would constitute an Event of Default or (ii) an early termination of such Swap Agreement by the counterparty thereto; provided further that this clause (g) shall not apply to any Permitted Convertible Indebtedness to the extent such event or condition occurs as a result of (x) the satisfaction of a conversion contingency, (y) the exercise by a holder of Permitted Convertible Indebtedness of a conversion right resulting from the satisfaction of a conversion contingency or (z) a required repurchase under such Permitted Convertible Indebtedness;

(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Borrower or any Subsidiary or its debts, or of a substantial part of its assets, under any Debtor Relief Law or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or any Subsidiary or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered;

(i) except as may otherwise be permitted under Section 6.03, the Borrower or any Subsidiary shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Debtor Relief Law, (ii) consent to the institution of, or

fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (h) of this Article, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or any Subsidiary or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing;

(j) the Borrower or any Subsidiary shall become unable, admit in writing its inability or fail generally to pay its debts as they become due;



(k) one or more judgments for the payment of money in excess of ~~\$10,000,000~~ 75,000,000 in the aggregate shall be rendered against the Borrower, any Subsidiary or any combination thereof (to the extent not paid or covered by a reputable and solvent independent third-party insurance company which has not disputed coverage) and the same shall remain undischarged for a period of 30 consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of the Borrower or any Subsidiary to enforce any such judgment and such action shall not be stayed;

(l) one or more ERISA Events shall have occurred, other than as would not reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect;

(m) a Change in Control shall occur; or

(n) 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 the obligations hereunder or thereunder, ceases to be in full force and effect; or any Loan Party contests in any manner the validity or enforceability of any Loan Document; or any Lien created by any of the Security Documents shall cease to be enforceable and of the same effect and priority (subject to Liens permitted by Section 6.02) to be created thereby,

then, and in every such event (other than an event with respect to the Borrower described in clause (h) or (i) of this Article), and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, by notice to the Borrower, take any or all of the following actions, at the same or different times: (i) terminate the Commitments, and thereupon the Commitments shall terminate immediately, (ii) cash collateralize any outstanding Letters of Credit in accordance with Section 2.10(i) and (iii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower; and in case of any event with respect to the Borrower described in clause (h) or (i) of this Article, the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder,

shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower.

## ARTICLE 8 THE AGENTS

### Section 8.01 Appointment of Administrative Agent

JPMorgan Chase Bank, N.A. is hereby appointed Administrative Agent hereunder and under the other Loan Documents and each Lender hereby authorizes JPMorgan Chase Bank, N.A. to act as Administrative Agent in accordance with the terms hereof and the other Loan Documents. Each Agent hereby agrees to act in its capacity as such upon the express conditions contained herein and the other Loan Documents, as applicable. The provisions of this Article 8 are solely for the benefit of the Agents and Lenders and no Loan Party shall have any rights as a third party beneficiary of any of the provisions thereof. In performing its functions and duties hereunder, each Agent shall act solely as an agent of Lenders and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for the Borrower or any of its Subsidiaries. As of the Effective Date, none of the Arranger or the



Syndication Agents in such capacity shall have any obligations but shall be entitled to all benefits of this Article 8. The Arranger and the Syndication Agents may resign from such role at any time, with immediate effect, by giving prior written notice thereof to the Administrative Agent and the Borrower.

#### Section 8.02 Powers and Duties

Each Lender irrevocably authorizes each Agent to take such action on such Lender's behalf and to exercise such powers, rights and remedies hereunder and under the other Loan Documents as are specifically delegated or granted to such Agent by the terms hereof and thereof, together with such powers, rights and remedies as are reasonably incidental thereto. Each Agent shall have only those duties and responsibilities that are expressly specified herein and the other Loan Documents. Each Agent may exercise such powers, rights and remedies and perform such duties by or through its agents or employees. No Agent shall have, by reason hereof or any of the other Loan Documents, a fiduciary relationship in respect of any Lender or any other Person; and nothing herein or any of the other Loan Documents, expressed or implied, is intended to or shall be so construed as to impose upon any Agent any obligations in respect hereof or any of the other Loan Documents except as expressly set forth herein or therein.

#### Section 8.03 General Immunity

(a) No Agent shall be responsible to any Lender for the execution, effectiveness, genuineness, validity, enforceability, collectability or sufficiency hereof or any other Loan Document or for any representations, warranties, recitals or statements made herein or therein or made in any written or oral statements or in any financial or other statements, instruments, reports or certificates or any other documents furnished or made by any Agent to Lenders or by or on behalf of any Loan Party to any Agent or any Lender in connection with the Loan Documents and the transactions contemplated thereby or for the financial condition or business affairs of any Loan Party or any other Person liable for the payment of any Obligations, nor shall

any Agent be required to ascertain or inquire as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained in any of the Loan Documents or as to the use of the proceeds of the Loans or as to the existence or possible existence of any Event of Default or Default or to make any disclosures with respect to the foregoing. Anything contained herein to the contrary notwithstanding, the Administrative Agent shall not have any liability arising from confirmations of the amount of outstanding Loans, the Revolving Credit Exposures or the component amounts thereof or any Dollar Equivalent.

(b) No Agent nor any of its officers, partners, directors, employees or agents shall be liable to Lenders for any action taken or omitted by any Agent under or in connection with any of the Loan Documents except to the extent caused by such Agent's gross negligence or willful misconduct, as determined by a final, non-appealable judgment of a court of competent jurisdiction. Each Agent shall be entitled to refrain from any act or the taking of any action (including the failure to take an action) in connection herewith or any of the other Loan Documents or from the exercise of any power, discretion or authority vested in it hereunder or thereunder unless and until such Agent shall have received instructions in respect thereof from Required Lenders (or such other Lenders as may be required to give such instructions under Section 9.02) and, upon receipt of such instructions from Required Lenders (or such other Lenders, as the case may be), such Agent shall be entitled to act or (where so instructed) refrain from acting, or to exercise such power, discretion or authority, in accordance with such instructions, including for the avoidance of doubt refraining from any action that, in its opinion or the opinion of its counsel, may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law. Without prejudice to the generality of the foregoing, (i) each Agent shall be entitled to rely, and shall be fully protected in relying, upon any communication, instrument or document believed by it to be genuine and correct and to have been signed or sent by the proper Person or Persons, and shall be entitled to rely and shall be protected in relying on opinions and judgments of attorneys (who may be attorneys for Borrower and its Subsidiaries), accountants, experts and other professional advisors selected by it; and (ii) no Lender shall have any right of action whatsoever against any Agent as a result of such Agent acting or (where so instructed) refraining from acting hereunder or any of the other Loan Documents in accordance with the instructions of Required Lenders (or such other Lenders as may be required to give such instructions under Section 9.02).

(c) The Administrative Agent may perform any and all of its duties and exercise its rights and powers under this Agreement or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Affiliates. The exculpatory, indemnification and other provisions of this Section 8.03 and of Section 8.06 shall apply to any the Affiliates of the Administrative 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 the Administrative Agent. All of the rights, benefits, and privileges (including the exculpatory and indemnification provisions) of this Section 8.03 and of Section 8.06 shall apply to any such sub-agent and to the Affiliates of any such sub-agent, and shall apply to their respective activities as sub-agent as if such sub-agent and Affiliates were named herein. Notwithstanding anything herein to the contrary, with respect to each sub-agent appointed by the Administrative Agent, (i) such sub-agent shall be a third party



(including exculpatory rights and rights to indemnification) and shall have all of the rights and benefits of a third party beneficiary, including an independent right of action to enforce such rights, benefits and privileges (including exculpatory rights and rights to indemnification) directly, without the consent or joinder of any other Person, against any or all of Loan Parties and the Lenders, (ii) such rights, benefits and privileges (including exculpatory rights and rights to indemnification) shall not be modified or amended without the consent of such sub-agent, and (iii) such sub-agent shall only have obligations to the Administrative Agent and not to any Loan Party, Lender or any other Person and no Loan Party, Lender or any other Person shall have any rights, directly or indirectly, as a third party beneficiary or otherwise, against such sub-agent.

#### Section 8.04 Administrative Agent Entitled to Act as Lender

The agency hereby created shall in no way impair or affect any of the rights and powers of, or impose any duties or obligations upon, any Agent in its individual capacity as a Lender hereunder. With respect to its participation in the Loans, each Agent shall have the same rights and powers hereunder as any other Lender and may exercise the same as if it were not performing the duties and functions delegated to it hereunder, and the term "Lender" shall, unless the context clearly otherwise indicates, include each Agent in its individual capacity. Any Agent and its Affiliates may accept deposits from, lend money to, own securities of, and generally engage in any kind of banking, trust, financial advisory or other business with the Borrower or any of its Affiliates as if it were not performing the duties specified herein, and may accept fees and other consideration from the Borrower for services in connection herewith and otherwise without having to account for the same to Lenders.

#### Section 8.05 Lenders' Representations, Warranties and Acknowledgment

(a) Each Lender represents and warrants that it has made its own independent investigation of the financial condition and affairs of the Borrower and its Subsidiaries in connection with Loans hereunder and that it has made and shall continue to make its own appraisal of the creditworthiness of the Borrower and its Subsidiaries. No Agent shall have any duty or responsibility, either initially or on a continuing basis, to make any such investigation or any such appraisal on behalf of Lenders or to provide any Lender with any credit or other information with respect thereto, whether coming into its possession before the making of the Loans or at any time or times thereafter, and no Agent shall have any responsibility with respect to the accuracy of or the completeness of any information provided to Lenders.

(b) Each Lender, by delivering its signature page to this Agreement, an Assignment and Assumption or a Joinder Agreement and funding its Loans on or after the Effective Date or by the funding of any New Loans, as the case may be, shall be deemed to have acknowledged receipt of, and consented to and approved, each Loan Document and each other document required to be approved by any Agent, Issuing Bank or Lender, as applicable on the Effective Date or as of the date of funding of such New Loans.

#### Section 8.06 Right to Indemnity

Each Lender, in proportion to its Applicable Percentage, severally agrees to indemnify each Agent, to the extent that such Agent shall not have been reimbursed by any Loan Party, for and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including counsel fees and disbursements) or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against such Agent in exercising its powers, rights and remedies or performing its duties hereunder or under the other Loan Documents or otherwise in its capacity as such Agent in any way relating to or arising out



or this Agreement or the other Loan Documents; provided, no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from such Agent's gross negligence or willful misconduct, as determined by a final, non-appealable judgment of a court of competent jurisdiction. If any indemnity furnished to any Agent for any purpose shall, in the opinion of such Agent, be insufficient or become impaired, such Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished; provided, in no event shall this sentence require any Lender to indemnify any Agent against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement in excess of such Lender's Applicable Percentage thereof; and provided further, this sentence shall not be deemed to require any Lender to indemnify any Agent against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement described in the proviso in the immediately preceding sentence.

#### Section 8.07 Successor Administrative Agent

The Administrative Agent shall have the right to resign at any time by giving prior written notice thereof to Lenders and the Borrower. The Administrative Agent shall have the right to appoint a financial institution to act as the Administrative Agent hereunder, subject to the reasonable satisfaction of the Borrower and the Required Lenders, and the Administrative Agent's resignation shall become effective on the earliest of (i) 30 days after delivery of the notice of resignation (regardless of whether a successor has been appointed or not), (ii) the acceptance of such successor Administrative Agent by the Borrower and the Required Lenders or (iii) such other date, if any, agreed to by the Required Lenders. Upon any such notice of resignation, if a successor Administrative Agent has not already been appointed by the retiring Administrative Agent, Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor Administrative Agent. If neither the Required Lenders nor the Administrative Agent have appointed a successor Administrative Agent, the Required Lenders shall be deemed to have succeeded to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, that successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent and the retiring Administrative Agent shall promptly (i) transfer to such successor Administrative Agent all sums held under the Loan Documents, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Administrative Agent under the Loan Documents, and (ii) take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Administrative Agent of the Loan Documents,

whereupon such retiring Administrative Agent shall be discharged from its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Article). After any retiring Administrative Agent's resignation hereunder as Administrative Agent, the provisions of this Article 8 and Section 9.03 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent hereunder.

#### Section 8.08 Guaranty and Security Documents

(a) Each Lender hereby further authorizes the Administrative Agent, on behalf of and for the benefit of the Lenders, to be the agent for and representative of the Lenders with respect to the Guaranty and the Loan Documents. Subject to Section 9.02, without further written consent or authorization from any Lender, the Administrative Agent may execute any documents or instruments necessary to release any Guarantor from the Guaranty pursuant to Section 9.17 or with respect to which Required Lenders (or such other Lenders as may be required to give such consent under Section 9.02) have otherwise consented.

(b) Anything contained in any of the Loan Documents to the contrary

notwithstanding, the Borrower, the Administrative Agent and each Lender hereby agree that no Lender shall have any right individually to enforce the Guaranty or the Security Documents, it being understood and agreed that all powers, rights and remedies hereunder and under any of the Loan Documents may be exercised solely by the Administrative Agent, for the benefit of the Lenders in accordance with the terms hereof and thereof.

(c) Notwithstanding anything to the contrary contained herein or any other Loan Document, when all Obligations (other than obligations under or in respect of Specified Swap Agreements or Specified Cash Management Agreements) have been paid in full and all Commitments have terminated or expired and no Letter of Credit shall be outstanding or subject to any pending draw, upon request of the Borrower, the Administrative Agent shall take such actions as shall be required to release all guarantee obligations provided for in and Liens created by any Loan Document. Any such release of guarantee obligations shall be deemed subject to the provision that such guarantee obligations shall be reinstated if after such release any portion of any payment in respect of the Obligations guaranteed thereby shall be rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Borrower or any Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Borrower or any Guarantor or any substantial part of its property, or otherwise, all as though such payment had not been made.

#### Section 8.09 Withholding Taxes

To the extent required by any applicable law, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. If the Internal Revenue Service or any other Governmental Authority asserts a claim that the Administrative Agent did not properly withhold Tax from amounts paid to or for the account of any Lender because the appropriate form was not delivered or was not properly executed or because such Lender failed to notify the Administrative Agent of a change in circumstance



which rendered the exemption from, or reduction of, withholding Tax ineffective or for any other reason, or if the Administrative Agent reasonably determines that a payment was made to a Lender pursuant to this Agreement without deduction of applicable withholding tax from such payment, such Lender shall indemnify the Administrative Agent fully for all amounts paid, directly or indirectly, by the Administrative Agent as Tax or otherwise, including any penalties or interest and together with all expenses (including legal expenses, allocated internal costs and out-of-pocket expenses) incurred.

Section 8.10 Administrative Agent May File Bankruptcy Disclosure and Proofs of Claim

In case of the pendency of any proceeding under any Debtor Relief Laws relative to any Loan Party, The Administrative Agent (irrespective of whether the principal of any Loan or Obligation under a Letter of Credit shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(a) to file a verified statement pursuant to rule 2019 of the Federal Rules of Bankruptcy Procedure that, in its sole opinion, complies with such rule's disclosure requirements for entities representing more than one creditor;

(b) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Issuing Banks and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its respective agents and counsel and all other amounts due Administrative Agent under Sections 2.09 and 9.03 allowed in such judicial proceeding; and

(c) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and Issuing Bank to make such payments to Administrative Agent and, in the event that Administrative Agent shall consent to the making of such payments directly to the Lenders and the Issuing Banks, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due to the Administrative Agent under Sections 2.09 and 9.03. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Administrative Agent, its agents and counsel, and any other amounts due to the Administrative Agent under Sections 2.09 and 9.03 out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Lenders or the Issuing Banks may be entitled to



arrangement or otherwise.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

## ARTICLE 9 MISCELLANEOUS

### Section 9.01 Notices

(a) Except in the case of notices and other communications expressly permitted to be given by telephone (and subject to paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy, as follows:

(i) if to the Borrower, to it at:

Peloton Interactive, Inc.  
~~125 West 25<sup>th</sup> Street, 11~~ 441 Ninth Avenue, 6th Floor  
New York, NY 10001  
Attention: Chief Financial Officer and Treasurer  
Email: jill.woodworth@onepeloton.com and  
dana.laidhold@onepeloton.com, with a copy to  
legal@onepeloton.com

(ii) if to the Administrative Agent, to it at:

JPMorgan Chase Bank, N.A.  
10 South Dearborn, Floor L2S  
Chicago, IL, 60603  
Attention: Briahna Amos  
Email: briahna.amos@jpmorgan.com,  
jpm.agency.cri@jpmorgan.com, and  
cb-nast@tls.ldsprod.com  
Reference: Peloton Interactive, Inc.  
Telephone: (312) 954-1388  
Fax: (844) 490-5663

(iii) if to any other Lender, to it at its address (or telecopy number) set forth in its Administrative Questionnaire.

(iv) if to JPMorgan Chase Bank, N.A., as an Issuing Bank, to it at:

JPMorgan Chase Bank, N.A.  
10 South Dearborn, Floor L2S

Chicago, IL, 60603  
Attention: Briahna Amos  
Email: briahna.amos@jpmorgan.com,  
jpm.agency.cri@jpmorgan.com, and  
cb-nast@tls.ldsprod.com  
Reference: Peloton Interactive, Inc.  
Telephone: (312) 954-1388  
Fax: (844) 490-5663

With a copy to:  
Lauren Daley  
237 Park Avenue, Floor 6  
New York, NY, 10017-3140  
Email: lauren.daley@chase.com  
Telephone: (212) 622-9563

(v) With respect to any other Issuing Bank, at its address provided by notice to the other parties hereto.

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 telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Notices and other communications to the Lenders and the Issuing Banks hereunder may be delivered or furnished by electronic communications pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices pursuant to Article 2 unless otherwise agreed by the Administrative Agent and the applicable Lender. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications. Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient, at its e-mail address as described in the foregoing clause (i), of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii) above, if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient.

(c) Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the other parties hereto.

(d) The Borrower agrees that the Administrative Agent may make the Communications (as defined below) available to the Lenders and the Issuing Banks by posting the Communications on Debt Domain, IntraLinks, Syndtrak, or another similar electronic system (the "Platform"). THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." The Agent Parties (as defined below) do not warrant the adequacy of the Platform and expressly disclaim liability for errors or omissions in the communications effected thereby (the "Communications"). No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the Communications or the Platform. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") be responsible or liable for damages arising from the unauthorized use by others of information or other materials obtained through internet, electronic, telecommunications or other information transmission, except to the extent that such damages have resulted from the willful misconduct or gross negligence of such Agent Party (as determined in a final, non-appealable judgment by a court of competent jurisdiction).



## Section 9.02 Waivers; Amendments

(a) No failure or delay by the Administrative Agent, any Issuing Bank or any Lender in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Issuing Banks and the Lenders hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or any other Loan Document or consent to any departure by the Borrower therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent, any Issuing Bank or any Lender may have had notice or knowledge of such Default at the time.

(b) Subject to Section 2.11(b) and Section 9.02(c) below, none of this Agreement, any other Loan Document or any provision hereof or thereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders or by the Borrower and the Administrative Agent with the consent of the Required Lenders; provided, however, that no such amendment, waiver or consent shall: (i) amend the definition of "Applicable Percentage" without the consent of each Lender, or extend or increase the Commitment of any Lender without the written consent of such Lender, (ii) reduce the principal amount of any Loan or LC Disbursement or reduce the rate of interest thereon, or reduce any fees payable hereunder, without the written consent of each Lender directly affected thereby, (iii) postpone the scheduled date of payment of the principal amount of any Loan or LC Disbursement, or any interest thereon, or any fees payable hereunder, or reduce



the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment, without the written consent of each Lender directly affected thereby; provided, however, that notwithstanding clause (ii) or (iii) of this [Section 9.02\(b\)](#), only the consent of the Required Lenders shall be necessary to waive any obligation of the Borrower to pay interest at the default rate set forth in [Section 2.10\(c\)](#), (iv) change [Section 2.15\(b\)](#), [Section 2.15\(c\)](#) or any other Section hereof providing for the ratable treatment of the Lenders, in each case in a manner that would alter the pro rata sharing of payments required thereby, without the written consent of each Lender, (v) release all or substantially all of the value of any Guaranty or release all or substantially all of the Collateral, without the written consent of each Lender, except to the extent the release of any Guarantor or the Collateral is permitted pursuant to [Article 8](#) or [Section 9.17](#) (in which case such release may be made by the Administrative Agent acting alone), (vi) change any of the provisions of this Section or the percentage referred to in the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender or (vii) waive any condition set forth in [Section 4.01](#) (other than as it relates to the payment of fees and expenses of counsel), or, in the case of any Loans made on the Restatement Effective Date, [Section 4.02](#), without the written consent of each Lender. Notwithstanding anything to the contrary herein, no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent or any Issuing Bank hereunder without the prior written consent of the Administrative Agent or such Issuing Bank, as the case may be.

(c) This Agreement may be amended as contemplated by [\(i\) Section 2.18](#) to effect New Commitments pursuant to a Joinder Agreement with the consent only of the Administrative Agent, the Borrower and the New Lenders providing New Commitments and [\(ii\) Section 2.21 to effect Extended Commitments pursuant to an Extension Amendment with the consent only of the Administrative Agent, the Borrower and the Extending Lenders providing such Extended Commitments](#). If the Administrative Agent and the Borrower acting together identify any ambiguity, omission, mistake, typographical error or other defect in any provision of this Agreement or any other Loan Document, then the Administrative Agent and the Borrower shall be permitted to amend, modify or supplement such provision to cure such ambiguity, omission, mistake, typographical error or other defect, and such amendment shall become effective without any further action or consent of any other party to this Agreement. [Any waiver, amendment or modification of this Agreement that by its terms affects the rights or duties under this Agreement of Lenders holding Loans or Commitments of a particular Class \(but not the Lenders holding Loans or Commitments of any other Class\) may be effected by an agreement or agreements in writing entered into solely by the Borrower, the Administrative Agent and the requisite percentage in interest of the affected Class of Lenders that would be required to consent thereto under this Section if such Class of Lenders were the only Class of Lenders hereunder at the time.](#)

#### Section 9.03 [Expenses; Indemnity; Damage Waiver](#)

(a) The Borrower shall pay (i) all reasonable out-of-pocket expenses incurred by the Administrative Agent and its Affiliates, including, without limitation, the reasonable fees, disbursements and other charges of counsel for the Administrative Agent in connection with the syndication of the credit facilities provided for herein, the preparation, execution, delivery and administration of this Agreement, any other Loan Document or any amendments, modifications



hereby or thereby shall be consummated), (ii) costs, expenses, Taxes, assessments and other charges incurred by any Lender in connection with any filing, registration, recording, or perfection of any security interest contemplated by this Agreement, (iii) all reasonable out-of-pocket expenses incurred by any Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iv) all out-of-pocket expenses incurred by the Administrative Agent, any Issuing Bank or any Lender, including, without limitation, the fees, disbursements and other charges of any counsel for the Administrative Agent, any Issuing Bank or any Lender, in connection with the enforcement or protection of its rights in connection with this Agreement or any other Loan Document, including its rights under this Section, or in connection with the Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) To the extent permitted by applicable law (i) the Borrower and any Loan Party shall not assert, and the Borrower and each Loan Party hereby waives, any claim against the Administrative Agent, any Arranger, any Syndication Agent, any Issuing Bank and any Lender, and any Related Party of any of the foregoing Persons (each such Person being called a "Lender-Related Person") for any Liabilities arising from the use by others of information or other materials (including, without limitation, any personal data) obtained through telecommunications, electronic or other information transmission systems (including the Internet), and (ii) no party hereto shall assert, and each such party hereby waives, any Liabilities against any other party hereto, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document, or any agreement or instrument contemplated hereby or thereby, the Transactions, any Loan or Letter of Credit or the use of the proceeds thereof; provided that, nothing in this Section 9.03(b) shall relieve the Borrower and each Loan Party of any obligation it may have to indemnify an Indemnitee, as provided in Section 9.03(c), against any special, indirect, consequential or punitive damages asserted against such Indemnitee by a third party.

(bc) The Borrower shall indemnify the Administrative Agent, the Arranger, any Issuing Bank and each Lender, and each Related Party, successor, partner, representative or assign of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the fees, charges and disbursements of any counsel for any Indemnitee, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the Transactions or any other transactions contemplated hereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents, (ii) any Loan or Letter of Credit or the use of the proceeds therefrom (including any refusal by any Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned, leased or operated by the Borrower or any of its

Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not such claim, litigation, investigation or proceeding is brought by the Borrower or its equity holders, Affiliates, creditors or any other third Person and whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available, (x) with respect to Taxes and amounts relating thereto (other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim), the indemnification for which shall be governed solely and exclusively by Section 2.14, or (y) to the extent that such losses,



claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the bad faith, gross negligence or willful misconduct of such Indemnitee.

(ed) To the extent that the Borrower fails to pay any amount required to be paid by it to the Administrative Agent or any Issuing Bank under paragraph (a) or (b) of this Section, each Lender severally agrees to pay to the Administrative Agent and the applicable Issuing Bank, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent or such Issuing Bank in their capacity as such; provided, further, that, notwithstanding anything to the contrary herein, no Lender shall be liable for any portion of any such unreimbursed expenses or indemnified loss, claim, damage, liability or related expense, as the case may be, of the Administrative Agent and/or the Issuing Banks (or, in each case, any Affiliate thereof) as a result of the bad faith, gross negligence or willful misconduct of the relevant Person or Persons, as determined by a court of competent jurisdiction by a final or non-appealable judgment.

(de) Without limiting in any way the indemnification obligations of the Borrower pursuant to Section 9.03(b) or of the Lenders pursuant to Section 8.06, to the extent permitted by applicable law, each party hereto shall not assert, and hereby waives, any claim against any Indemnitee or the Borrower or any of its Subsidiaries, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the Transactions or any Loan or Letter of Credit or the use of the proceeds thereof; provided that nothing in this clause (d) shall relieve the Borrower of any obligation it may have to indemnify an Indemnitee against special, indirect, consequential or punitive damages asserted against such Indemnitee by a third party. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and non-appealable judgment of a court of competent jurisdiction.

(ef) All amounts due under this Section shall be payable promptly after written demand therefor.

#### Section 9.04 Successors and Assigns

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (including any Affiliate of any Issuing Bank that issues any Letter of Credit), except that (i) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants (to the extent provided in paragraph (c) of this Section) and, to the extent expressly contemplated hereby (including any Affiliate of any Issuing Bank that issues any Letter of Credit), the Related Parties of each of the Administrative Agent, the Issuing Banks and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement



(b) (i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more assignees (but not to the Borrower or an Affiliate thereof) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment of any Class, participations in Letters of Credit and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld or delayed) of:

(A) the Borrower; provided that no consent of the Borrower shall be required for an assignment to a Lender, an Affiliate of a Lender, an Approved Fund or, if an Event of Default has occurred and is continuing, any other assignee; and provided further that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within 5 Business Days after having received notice thereof;

(B) the Administrative Agent; provided that no consent of the Administrative Agent shall be required for an assignment of any Commitment to an assignee that is a Lender with a Commitment immediately prior to giving effect to such assignment, an Affiliate of a Lender, or an Approved Fund; and

(C) each Issuing Bank.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender or an Affiliate of a Lender or an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$5,000,000 (or a greater amount that is an integral multiple of \$1,000,000) unless each of the Borrower and the Administrative Agent otherwise

consent; provided that no such consent of the Borrower shall be required if an Event of Default has occurred and is continuing;

(B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500;

(D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire in which the assignee designates one or more credit contacts to whom all syndicate-level information (which may contain material non-public information about the Borrower and its Related Parties or their respective securities) will be made available and who may receive such information in accordance with the assignee's compliance procedures and applicable laws, including Federal and state securities laws;

(E) no such assignment shall be made to (i) any Loan Party nor any Affiliate of a Loan Party, (ii) any Defaulting Lender or any of its subsidiaries, or any Person, who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (ii), or (iii) any natural person; and

(F) in connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent or any Lender hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full pro rata share of all Loans of each applicable Class in accordance with its Applicable Class Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(iv) of this Section, from and after the effective date specified in each Assignment and Assumption the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender



assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of [Section 2.12](#), [Section 2.13](#), [Section 2.14](#) and [Section 9.03](#)); provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (c) of this Section.

(iv) The Administrative Agent, acting for this purpose as an agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and amounts on the Loans and LC Disbursements owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive (absent manifest error), and the Borrower, the Administrative Agent, the Issuing Banks and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower, any Issuing Bank and any Lender, at any reasonable time and from time to time upon reasonable prior notice. The Borrower agrees to indemnify the Administrative Agent from and against any and all losses, claims, damages and liabilities of whatsoever nature which may be imposed on, asserted against or incurred by the Administrative Agent in performing its duties under this [Section 9.04\(b\)\(iv\)](#), except to the extent that such losses, claims, damages or liabilities are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of the Administrative Agent. The Loans (including principal and interest) are registered obligations and the right, title, and interest of any Lender or its assigns in and to such Loans shall be transferable only upon notation of such transfer in the Register.

(v) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section and any written consent to such assignment required by paragraph (b) of this Section, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register; provided that if either the assigning Lender or the assignee shall have failed to make any payment required to be made by it pursuant to [Section 2.04\(b\)](#), [Section 2.15\(d\)](#) or [Section 8.06](#), the Administrative Agent shall have no obligation to accept such Assignment and Assumption and record the information therein in the Register unless and until such payment shall have been made in full, together with all accrued interest thereon. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(c) (i) Any Lender may, without the consent of, or notice to, the Borrower or the Administrative Agent or any Issuing Bank, sell participations to one or more banks or other entities (but not to the Borrower or an Affiliate thereof) (a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitment [of any Class](#) and the Loans owing to it); provided that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the Administrative Agent, the Issuing Banks and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations



under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 9.02(b) that affects such Participant. Subject to paragraph (c)(ii) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.12, 2.13 and 2.14 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.15(c) as though it were a Lender.

(ii) A Participant shall not be entitled to receive any greater payment under Sections 2.12 or 2.14 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant except to the extent such entitlement to receive a greater payment results from a Change in Law requiring a payment under Section 2.12 that occurs after the Participant acquired the applicable participation. Participants entitled to the benefits of Sections 2.12, 2.13 and 2.14 are entitled to such benefits subject to the requirements and limitations therein, including the requirements under Section 2.14(f) (it being understood that the documentation required under Section 2.14(f) shall be delivered to the participating Lender).

(iii) Each Lender that sells a participation shall, acting solely for this purpose as a nonfiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(d) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including without limitation any pledge or assignment to secure obligations to a Federal Reserve Bank or any other central bank having jurisdiction over such Lender, and this Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

#### Section 9.05 Survival

. All covenants, agreements, representations and warranties made by the Borrower herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent, any Issuing Bank or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the

any amount to be paid by the Lender, and shall continue in full force and effect so long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding or subject to any pending draw and so long as the Commitments have not expired or terminated. The provisions of [Section 2.12](#), [Section 2.13](#), [Section 2.14](#) and [Section 9.03](#) and [Article 8](#) shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitments, the resignation of the Administrative Agent, the replacement of any Lender, or the termination of this Agreement or any provision hereof.

Section 9.06 [Counterparts; Integration; Effectiveness; Electronic Signatures](#)

This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Administrative Agent constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in [Section 4.01](#), this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or other electronic imaging means shall be effective as delivery of a manually executed counterpart of this Agreement.

[Delivery of an executed counterpart of a signature page of \(x\) this Agreement, \(y\) any other Loan Document and/or \(z\) any document, amendment, approval, consent, information, notice \(including, for the avoidance of doubt, any notice delivered pursuant to \[Section 9.01\]\(#\)\), certificate, request, statement, disclosure or authorization related to this Agreement, any other](#)



Loan Document and/or the transactions contemplated hereby and/or thereby (each an "Ancillary Document") that is an Electronic Signature transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement, such other Loan Document or such Ancillary Document, as applicable. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to this Agreement, any other Loan Document and/or any Ancillary Document shall be deemed to include Electronic Signatures, deliveries or the keeping of records in any electronic form (including deliveries by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page), each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be; provided that nothing herein shall require the Administrative Agent to accept Electronic Signatures in any form or format without its prior written consent and pursuant to procedures approved by it; provided, further, without limiting the foregoing, (1) to the extent the Administrative Agent has agreed to accept any Electronic Signature, the Administrative Agent and each of the Lenders shall be entitled to rely on such Electronic Signature purportedly given by or on behalf of the Borrower or any other Loan Party without further verification thereof and without any obligation to review the appearance or form of any such Electronic signature and (2) upon the request of the Administrative Agent or any Lender, any Electronic Signature shall be promptly followed by a manually executed counterpart. Without limiting the generality of the foregoing, the Borrower and each Loan Party hereby (a) agrees that, for all purposes, including without limitation, in connection with any workout, restructuring, enforcement of remedies, bankruptcy proceedings or litigation among the Administrative Agent, the Lenders, and the Borrower and the Loan Parties, Electronic Signatures transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page and/or any electronic images of this Agreement, any other Loan Document and/or any Ancillary Document shall have the same legal effect, validity and enforceability as any paper original, (b) the Administrative Agent and each of the Lenders may, at its option, create one or more copies of this Agreement, any other Loan Document and/or any Ancillary Document in the form of an imaged electronic record in any format, which shall be deemed created in the ordinary course of such Person's business, and destroy the original paper document (and all such electronic records shall be considered an original for all purposes and shall have the same legal effect, validity and enforceability as a paper record), (c) waives any argument, defense or right to contest the legal effect, validity or enforceability of this Agreement, any other Loan Document and/or any Ancillary Document based solely on the lack of paper original copies of this Agreement, such other Loan Document and/or such Ancillary Document, respectively, including with respect to any signature pages thereto and (d) waives any claim against any Lender-Related Person for any Liabilities arising solely from the Administrative Agent's and/or any Lender's reliance on or use of Electronic Signatures and/or transmissions by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page, including any Liabilities arising as a result of the failure of the Borrower and/or any Loan Party to use any available security measures in connection with the execution, delivery or transmission of any Electronic Signature.

#### Section 9.07 Severability



jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent, then such provisions shall be deemed to be in effect only to the extent not so limited.

#### Section 9.08 Right of Setoff

If an Event of Default shall have occurred and be continuing, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held by, and other obligations (in whatever currency) at any time owing by such Lender or Affiliate to or for the credit or the account of the Borrower against any of and all the obligations of the Borrower now or hereafter existing under this Agreement held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement and although such obligations may be unmatured; provided that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.17 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff) which such Lender may have. 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. Notwithstanding the foregoing, to the extent prohibited by applicable law as described in the definition of "Excluded Swap Obligation," no amounts received from, or set off with respect to, any Guarantor shall be applied to any Excluded Swap Obligations of such Guarantor.

#### Section 9.09 Governing Law; Jurisdiction; Consent to Service of Process

(a) This Agreement shall be construed in accordance with and governed by the law of the State of New York.

(b) The Borrower hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any Federal court of the United States of America sitting in New York County, Borough of Manhattan (or, in the event such court lacks subject matter jurisdiction, the Supreme Court of the State of New York sitting in New York County, Borough of Manhattan) and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any

such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that the Administrative Agent, any Issuing Bank or any Lender may otherwise have to bring any action or proceeding relating to this Agreement against the Borrower or its properties in the courts of any jurisdiction.

(c) The Borrower hereby irrevocably and unconditionally waives, to the fullest extent



it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.01. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

#### Section 9.10 Waiver Of Jury Trial

EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

#### Section 9.11 Headings

Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

#### Section 9.12 Confidentiality

(a) Each of the Administrative Agent, the Issuing Banks and the Lenders agrees to maintain the confidentiality of the Information (as defined below) and to not use the Information for any purpose except in connection with the Loan Documents, except that Information may be disclosed (i) to its and its Affiliates' directors, officers, employees, and agents, including accountants, legal counsel and other professionals, experts or advisors, or to any credit insurance provider relating to the Borrower and its obligations, in each case whom it reasonably determines

needs to know such information in connection with this Agreement and the transactions contemplated hereby and who are informed of the confidential nature of such Information and instructed to keep such Information confidential, (ii) to the extent requested by any rating agency or regulatory authority, examiner regulating banks or banking, or other self-regulatory authority having or claiming oversight over the Administrative Agent, any Issuing Bank, any Lender or any of their respective Affiliates, (iii) pursuant to the order of any court or administrative agency or in any pending legal, judicial or administrative proceeding, or otherwise as required by applicable laws or regulations or by any subpoena or similar legal process based on the advice of counsel (in which case the Administrative Agent, such Issuing Bank or such Lender, as applicable, agrees, to the extent permitted by applicable law, to inform the Borrower promptly thereof), (iv) to any other party to this Agreement, (v) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder, (vi) subject to an agreement containing provisions substantially the same as those of this Section, to (A) any assignee of or Participant in, or any prospective assignee of or prospective Participant in, any of its rights or obligations under this Agreement or (B) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations, (vii) with the consent of the Borrower, (viii) to the extent such Information (A) becomes publicly available other than as a result of a breach of this

extent such information (A) becomes publicly available other than as a result of a breach of this Section, (B) becomes available to the Administrative Agent, any Issuing Bank or any Lender on a nonconfidential basis from a source other than the Borrower or (C) is independently developed by the Administrative Agent, an Issuing Bank or a Lender or (ix) for purposes of establishing a "due diligence" defense. In addition, the Administrative Agent, the Issuing Banks and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to the Administrative Agent, the Issuing Banks and the Lenders in connection with the administration of this Agreement, the other Loan Documents, the Letters of Credit and the Loans. For the purposes of this Section, "Information" means all memoranda or other information received from or on behalf of the Borrower relating to the Borrower or its business that is clearly identified by the Borrower as confidential, other than any such information that is available to the Administrative Agent, any Issuing Bank or any Lender on a nonconfidential basis prior to disclosure by the Borrower. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

(b) EACH LENDER ACKNOWLEDGES THAT INFORMATION AS DEFINED IN SECTION 9.12(A) FURNISHED TO IT PURSUANT TO THIS AGREEMENT MAY INCLUDE MATERIAL NON-PUBLIC INFORMATION CONCERNING THE BORROWER AND ITS RELATED PARTIES OR THEIR RESPECTIVE SECURITIES, AND CONFIRMS THAT IT HAS DEVELOPED COMPLIANCE PROCEDURES REGARDING THE USE OF MATERIAL NON-PUBLIC INFORMATION AND THAT IT WILL HANDLE SUCH MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH THOSE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.

(c) ALL INFORMATION, INCLUDING REQUESTS FOR WAIVERS AND AMENDMENTS, FURNISHED BY THE BORROWER OR THE ADMINISTRATIVE



AGENT PURSUANT TO, OR IN THE COURSE OF ADMINISTERING, THIS AGREEMENT WILL BE SYNDICATE-LEVEL INFORMATION, WHICH MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION ABOUT THE BORROWER AND ITS RELATED PARTIES OR ITS SECURITIES. ACCORDINGLY, EACH LENDER REPRESENTS TO THE BORROWER AND THE ADMINISTRATIVE AGENT THAT IT HAS IDENTIFIED IN ITS ADMINISTRATIVE QUESTIONNAIRE A CREDIT CONTACT WHO MAY RECEIVE INFORMATION THAT MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH ITS COMPLIANCE PROCEDURES AND APPLICABLE LAW.

#### Section 9.13 Interest Rate Limitation

Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which are treated as interest on such Loan under applicable law (collectively the "Charges"), shall exceed the maximum lawful rate (the "Maximum Rate") which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender.

#### Section 9.14 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 acknowledges and agrees, and acknowledges its Subsidiaries' understanding, that: (a) (i) the arranging and other services regarding this Agreement provided by the Administrative Agent, the Arranger, the Syndication Agents, the Issuing Banks and the Lenders are arm's-length commercial transactions between the Borrower and its Affiliates, on the one hand, and the Administrative Agent, the Arranger, the Syndication Agents, the Issuing Banks and the Lenders, on the other hand, (ii) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) the Borrower 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 Arranger, the Syndication Agents, the Issuing Banks and the Lenders 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 the Borrower or any of its Subsidiaries, or any other Person and (ii) neither the Administrative Agent, the Arranger, any Syndication Agent, any Issuing Bank, nor any Lender has any obligation to the Borrower or any of its Affiliates 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 Arranger, the Syndication Agents, the Issuing Banks and 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 and its Affiliates, and neither the



has any obligation to disclose any of such interests to the Borrower or its Affiliates. The Borrower, on behalf of itself and each of its Subsidiaries, agrees that nothing in the Loan Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between the Administrative Agent, the Arranger, the Syndication Agents, any Issuing Bank or any Lender, on the one hand, and the Borrower, any of its Subsidiaries, or their respective stockholders or affiliates, on the other.

Section 9.15 ~~Electronic Execution of Assignments and Certain Other Documents~~ Erroneous Payments

~~The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption or in any amendment or other modification hereof (including waivers and consents) 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 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.~~

(1) Each Lender hereby agrees that (x) if the Administrative Agent notifies such Lender that the Administrative Agent has determined in its sole discretion that any funds received by such Lender from the Administrative Agent or any of its Affiliates (whether as a payment, prepayment or repayment of principal, interest, fees or otherwise; individually and collectively, a "Payment") were erroneously transmitted to such Lender (whether or not known to such Lender), and demands the return of such Payment (or a portion thereof), such Lender shall promptly, but in no event later than one Business Day thereafter, return to the Administrative Agent the amount of any such Payment (or portion thereof) as to which such a demand was made in same day funds, together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Lender to the date such amount is repaid to the Administrative Agent at the greater of the NYFRB Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect, and (y) to the extent permitted by applicable law, such Lender shall not assert, and hereby waives, as to the Administrative Agent, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Payments received, including without limitation any defense based on "discharge for value" or any similar doctrine. A notice of the Administrative Agent to any Lender under this Section 8.06(c) shall be conclusive, absent manifest error.

Each Lender hereby further agrees that if it receives a Payment from the Administrative Agent or any of its Affiliates (x) that is in a different amount than, or on a different date from, that specified in a notice of payment sent by the Administrative Agent (or any of its Affiliates) with respect to such Payment (a "Payment Notice") or (y) that was not preceded or accompanied by a Payment Notice, it shall be on notice, in each such case, that an error has been made with respect to such Payment. Each Lender agrees that, in each such case, or if it otherwise becomes aware a Payment (or portion thereof) may have been sent in error, such Lender shall promptly notify the Administrative Agent of such occurrence and, upon demand from the Administrative

Agent, it shall promptly, but in no event later than one Business Day thereafter, return to the Administrative Agent the amount of any such Payment (or portion thereof) as to which such a demand was made in same day funds, together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Lender to the date such amount is repaid to the Administrative Agent at the greater of the NYFRB Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect.

The Borrower and each other Loan Party hereby agrees that (x) in the event an erroneous



Payment (or portion thereof) are not recovered from any Lender that has received such Payment (or portion thereof) for any reason, the Administrative Agent shall be subrogated to all the rights of such Lender with respect to such amount and (y) an erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower or any other Loan Party.

Each party's obligations under this Section 8.06(c) shall survive the resignation or replacement of the Administrative Agent or any transfer of rights or obligations by, or the replacement of, a Lender, the termination of the Commitments or the repayment, satisfaction or discharge of all Obligations under any Loan Document.

#### Section 9.16 USA PATRIOT Act

Each Lender and each Issuing Bank that is subject to the requirements of the USA Patriot Act hereby notifies the Borrower and each Guarantor that pursuant to the requirements of the USA Patriot Act, it is required to obtain, verify and record information that identifies the Borrower and each Guarantor, which information includes the name and address of the Borrower and each Guarantor and other information that will allow such Lender or such Issuing Bank to identify the Borrower and each Guarantor in accordance with the USA Patriot Act. The Borrower and each Guarantor shall, promptly following a request by the Administrative Agent, any Issuing Bank or any Lender, provide all documentation and other information that the Administrative Agent, such Issuing Bank or 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 USA Patriot Act.

#### Section 9.17 Releases of Guarantors and Liens

(a) In the event that all the Equity Interests in any Guarantor are sold, transferred or otherwise disposed of to a Person other than the Borrower or its Subsidiaries in a transaction permitted under this Agreement or in the event that a Guarantor ceases to be a Subsidiary, the Administrative Agent shall, at the Borrower's expense, promptly take such action and execute such documents as the Borrower may reasonably request to terminate the guarantee of such Guarantor and to release the Collateral owned by such Guarantor from the Liens created by the Security Documents.

(b) In the event that any of the Collateral shall be sold, transferred or otherwise disposed of by any Loan Party to a Person other than the Borrower or its Subsidiaries in a transaction permitted under Section 6.09 of this Agreement, the Administrative Agent shall, at

the Borrower's expense, promptly take such action and execute such documents as the Borrower may reasonably request to release the Liens created by the Security Documents on such Collateral.

(c) At such time as all Obligations (other than inchoate indemnity obligations and obligations under or in respect of Specified Swap Agreements or Specified Cash Management Agreements) have been paid in full and all Commitments have terminated or expired and no Letter of Credit shall be outstanding or subject to any pending draw, the Collateral shall be released from the Liens created by the Security Documents, and the Security Documents and all obligations (other than those expressly stated to survive such termination) of the Administrative Agent and each Loan Party under the Security Documents shall terminate, all without delivery of any instrument or performance of any act by any Person.

#### Section 9.18 Acknowledgement Regarding Any Supported QFCs

To the extent that the Loan Documents provide support, through a guarantee or otherwise, for any Swap Agreement or any other agreement or instrument that is a QFC (such support, "OFC Credit Support". and each such OFC, a "Supported OFC"). 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):

(a) 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.

(b) As used in this Section 9.18, the following terms have the following meanings:

“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.

“Covered Entity” means any of the following: (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“Default Right” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“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).

#### Section 9.19 Judgment Currency.

If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of the Borrower in respect of any such sum due from it to the Administrative Agent or any Lender hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the “Judgment Currency”) other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the “Agreement Currency”), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent or such Lender, as the case may be, of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent or such Lender, as the case may be, may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent or any Lender from the Borrower in the Agreement Currency, the Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or such Lender, as the case may be, against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent or any Lender in such Currency, the Administrative Agent or such Lender, as the case may be, agrees to return the amount of any excess to the Borrower (or to any other Person who may be entitled thereto under Applicable law).

#### Section 9.20 Acknowledgement and Consent to Bail-In of Affected Financial Institutions.

Notwithstanding anything to the contrary herein or in any other Loan Document, each Borrower, each Lender and the Administrative Agent (each, an “Acknowledging Party”)



hereunder or under any other Loan Document, to the extent such liability is unsecured and solely relates to the Loans and not to any other Person, including any other party hereto or any other Loan Document (and not to any other obligations), to such Acknowledging Party (all such liabilities, , the "Covered Liabilities") 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 to any Covered Liability arising hereunder or under any other Loan Document which may be payable to it by any Lender party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such Covered Liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such Covered Liability;

(ii) a conversion of all, or a portion of, such Covered Liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such Covered Liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such Covered Liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

Notwithstanding anything to the contrary herein, nothing contained in this Section 9.20 shall modify or otherwise alter the rights or obligations under this Agreement or any other Loan Document of any Person party hereto (other than an Acknowledging Party to the extent set forth in this Section 9.20) or with respect to any liability that is not a Covered Liability.

[Remainder of page intentionally left blank; signature pages follow]

EXHIBIT B

Consenting Commitments

JPMorgan Chase Bank, N.A. ....	\$127,800,000
Goldman Sachs Lending Partners LLC .....	\$127,200,000
Citibank, N.A. ....	\$100,000,000
Barclays Bank PLC .....	\$75,000,000
Bank of America, N.A. ....	\$35,000,000



Total .....	<u>\$465,000,000</u>
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Non-Consenting Commitments

Silicon Valley Bank .....	\$35,000,000
Total .....	<u>\$35,000,000</u>

EXHIBIT C



## SCHEDULE 6.01

### Indebtedness

- \$1,000,000,000 principal amount of 0.00% Convertible Senior Notes due 2026.
- Lease Recourse Guarantees by Precor Finland Oy and its subsidiaries on capital lease obligations of end customers to various equipment lessors in the amount of \$28,868,753.17 as of September 30, 2021.
- Capital Lease Obligations related to equipment leases and forklift leases in effect on the Second Amendment Effective Date in the amount of \$3,925,970.



EXHIBIT E

FORM OF COMPLIANCE CERTIFICATE

This Compliance Certificate is delivered to you pursuant to Section 5.01(c) of the Amended and Restated Revolving Credit Agreement, dated as of June 20, 2019 (as amended by the First Amendment, dated as of February 8, 2021, and the Second Amendment, dated as of December 10, 2021, and as further amended, supplemented, amended and restated or otherwise

December 10, 2021, and as further amended, supplemented, amended and restated or otherwise modified from time to time, the "Credit Agreement"), among Peloton Interactive, Inc. (the "Borrower"), the lenders from time to time party thereto and JPMorgan Chase Bank, N.A., as Administrative Agent. Terms defined in the Credit Agreement and not otherwise defined herein are used herein as therein defined.

1. I am the duly elected, qualified and acting [ \_\_\_\_\_ ]<sup>1</sup> of the Borrower.
2. I have reviewed and am familiar with the contents of this Compliance Certificate. I am providing this Compliance Certificate solely in my capacity as an officer of the Borrower.
3. I have reviewed the terms of the Credit Agreement and the other Loan Documents. The financial statements for the fiscal [quarter][year] of the Borrower ended [ \_\_\_\_\_, \_\_\_\_ ] attached hereto as ANNEX 1 or otherwise delivered to the Administrative Agent pursuant to the requirements of Section 5.01 of the Credit Agreement (the "Financial Statements") present fairly in all material respects as of the date of each such statement the financial condition and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied[, subject to normal year-end audit adjustments and the absence of footnotes].<sup>2</sup> No Default has occurred and is continuing as of the date hereof[, except for \_\_\_\_\_].<sup>3</sup> There has been no change in GAAP or in the application thereof applicable to the Borrower and its consolidated Subsidiaries since the date of the audited financial statements referred to in Section 3.04 of the Credit Agreement that has had an impact on the

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<sup>1</sup> Certificate may be signed by any Financial Officer of the Borrower (chief financial officer, principal accounting officer or vice president of finance or corporate controller of the Borrower).

<sup>2</sup> To be included only if the Compliance Certificate is certifying the quarterly financials.

<sup>3</sup> Specify the details of any Default, if any, and any action taken or proposed to be taken with respect thereto.

Financial Statements [, except for \_\_\_\_\_, the effect of which on the Financial Statements has been [ \_\_\_\_\_]].<sup>4</sup>

4. Attached hereto as ANNEX 2 are the computations showing (in reasonable detail) the information required by Sections 5.01(c)(ii), (iii) and (iv) of the Credit Agreement.
5. Attached hereto as ANNEX 3 is a description of any registered patents, registered trademarks or registered copyrights acquired, developed or exclusively licensed by the Borrower and its Subsidiaries since the [Effective Date][date of the most recent Compliance Certificate delivered pursuant to Section 5.01(c) of the Credit Agreement prior to the date hereof].

IN WITNESS WHEREOF, I have executed this Compliance Certificate as of the date first written above.

By: \_\_\_\_\_  
Name:  
Title:

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<sup>4</sup> If and to the extent that any change in GAAP that has occurred since the date of the audited financial statements referred to in Section 3.04 of the Credit Agreement had an impact on such financial statements, specify the effect of such change on the financial statements accompanying this Compliance Certificate.



ANNEX 1

[Applicable Financial Statements to be attached if applicable]

The information described herein is as of [\_\_\_\_\_, \_\_\_\_]<sup>1</sup>, (the “Computation Date”) and, except as otherwise indicated below, pertains to the period from [\_\_\_\_\_, \_\_\_\_]<sup>2</sup> to the Computation Date (the “Measurement Period”).

Section 2.06(d)	Amount
Consolidated Adjusted EBITDA for the Measurement Period ended on the Computation Date	
Sum of:	
1. Consolidated Net Income	\$
2. Interest expense, amortization or writeoff of debt discount and debt issuance costs and commissions, discounts and other fees and charges associated with Indebtedness (including the Loans)	\$
3. Income tax expense	\$
4. Depreciation and amortization expense	\$
5. Amortization of intangibles (including, but not limited to, goodwill)	\$
6. Stock option and other equity-based compensation expense	\$
7. Any transaction and/or integration expenses from acquisitions and other investments permitted by Section 6.04 of the Credit Agreement and Dispositions permitted by Section 6.09 of the Credit Agreement	\$
8. Restructuring charges and other exit and disposal costs during such period; provided that cash payments in respect of such restructuring charges and exit and disposal costs shall be deducted from Consolidated Adjusted EBITDA when such payments are made; provided, further, that the aggregate amount of cash charges and costs permitted to be added back to Consolidated Adjusted EBITDA for any Measurement Period pursuant to this clause (vii) shall not exceed 25% of Consolidated Adjusted EBITDA for such Measurement Period (calculated after giving effect to such addbacks)	\$
9. Extraordinary, unusual or non-recurring losses or expenses including, without limitation, losses related to product recalls and litigation and settlement expenses	\$
10. Adjustments permitted or required by Article 11 of Regulation S-X of the Securities Act of 1933 and the rules and regulations of the SEC promulgated thereunder	\$

1 Insert the last day of the respective fiscal quarter or fiscal year covered by the financial statements which are required to be accompanied by this Compliance Certificate.

2 Insert the first day of the most recently completed four consecutive fiscal quarters of the Borrower ended on the Computation Date.

11. All expenses or charges (including deferred financing costs written off and premiums paid) in connection with any early extinguishment of debt, including hedging obligations or other derivative instruments	\$
12. Charges resulting from purchase price adjustments with respect to acquisitions permitted by Section 6.04 (including accruals and payments of earn-out obligations)	\$
A.	\$
Less the sum of:	

1.	Any extraordinary, unusual or non-recurring cash gains for such Measurement Period increasing Consolidated Net Income	\$
2.	Any reversals of non-cash restructuring charges or other non-cash exit and disposal costs during such period	\$
B.		\$
	Consolidated Adjusted EBITDA (A-B)	\$

Negative Covenants	Amount
Aggregate amount of investments and acquisitions made pursuant to Section 6.04(i)	\$
Aggregate amount of Restricted Payments made pursuant to Section 6.05(ix)	\$

Financial Covenants	Amount
[Section 6.10(a)(i): Total Liquidity	\$
Section 6.10(a)(ii): Total Revenues	\$ ]3
[Section 6.10(b): Senior Secured Net Leverage Ratio	\$ ]4

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3 To be included prior to the Conversion Date.

4 To be included on and after the Conversion Date.





EXHIBIT E

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SECURITY AGREEMENT

made by

PELTON INTERACTIVE, INC.

and certain of its Subsidiaries

in favor of

JPMORGAN CHASE BANK, N.A.,  
as Administrative Agent

Dated as of November 3, 2017

[As Amended December 10, 2021](#)



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**SCHEDULES**

Schedule 1 Notice Addresses

Schedule 1	Notice Addresses
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## SECURITY AGREEMENT

SECURITY AGREEMENT, dated as of November 3, 2017, made by Peloton Interactive, Inc. (the "Borrower"), each Subsidiary of the Borrower that may become a party hereto as provided herein (the "Subsidiary Grantors"; the Subsidiary Grantors, together with the Borrower, the "Grantors"), in favor of JPMorgan Chase Bank, N.A., as Administrative Agent (in such capacity, the "Administrative Agent") for the banks and other financial institutions or entities (the "Lenders") from time to time parties to the Credit Agreement, dated as of November 3, 2017 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), among the Borrower, the Lenders and the Administrative Agent.

### W I T N E S S E T H:

WHEREAS, pursuant to the Credit Agreement, the Lenders have severally agreed to make extensions of credit to the Borrower upon the terms and subject to the conditions set forth therein; and

WHEREAS, it is a condition precedent to the obligation of the Lenders to make their respective extensions of credit to the Borrower under the Credit Agreement that the Borrower shall have executed and delivered this Agreement to the Administrative Agent for the ratable benefit of the Secured Parties.

[WHEREAS, the Borrower and the Administrative Agent have, as of December 10, 2021, amended this Agreement pursuant to that certain Second Amendment, dated as of December 10, 2021 to the Credit Agreement.](#)

NOW, THEREFORE, in consideration of the premises and to induce the Administrative Agent and the Lenders to enter into the Credit Agreement and to induce the Lenders to make their respective extensions of credit to the Borrower thereunder, each Grantor hereby agrees with the Administrative Agent, for the ratable benefit of the Secured Parties, as follows:

### SECTION 1. DEFINED TERMS

1.1 Definitions. (a) Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement, and the following terms are used herein as defined in the New York UCC: Accounts, Certificated Security, Chattel Paper, Commercial Tort Claims, Documents, Equipment, Fixtures, General Intangibles, Investment Property, Instruments, Inventory, Letter of Credit Rights and Supporting Obligations.

(b) The following terms shall have the following meanings:

"Agreement": this Security Agreement, as the same may be amended, amended and restated, supplemented or otherwise modified from time to time.

"Collateral": as defined in Section 2.

"Collateral Account": any collateral account established by the Administrative Agent as provided in Section 5.2.



country or any political subdivision thereof, whether registered or unregistered and whether published or unpublished (including, without limitation, those listed in Schedule 6), all registrations and recordings thereof, and all applications in connection therewith, including, without limitation, all registrations, recordings and applications in the United States Copyright Office, and (ii) the right to obtain all renewals thereof.

“Copyright Licenses”: any written agreement (including, without limitation, those listed in Schedule 6), providing for the grant by or to any Grantor of any right under any Copyright, including, without limitation, the grant of rights to manufacture, distribute, exploit and sell materials derived from any Copyright.

“Deposit Account”: as defined in the Uniform Commercial Code of any applicable jurisdiction and, in any event, including, without limitation, any demand, time, savings, passbook or like account maintained with a depository institution.

“Foreign Subsidiary”: any Subsidiary organized under the laws of any jurisdiction outside the United States of America.

“Foreign Subsidiary Voting Stock”: the voting Equity Interests of any Foreign Subsidiary.

“Intellectual Property”: the collective reference to all rights, priorities and privileges relating to intellectual property and proprietary rights, whether arising under United States, multinational or foreign laws or otherwise, including, without limitation, (i) all Copyrights, Patents, Trademarks, trade secrets, Licenses, and similar rights, (ii) all registrations and applications of any of the foregoing, (iii) rights in software, programs, applications, source code, object code, documentation, manuals, tools, algorithms, models, formulas, compilations, methodologies and databases (collectively, “Software”) not otherwise included in the foregoing, and (iv) the right to sue at law or in equity or otherwise recover for any past, present or future infringement, dilution, misappropriation, breaches or other violation or impairment thereof, and the right to receive all proceeds therefrom, including license fees, royalties, income, payments, claims, damages and proceeds of suit, now or hereafter due and/or payable with respect thereto.

“Intercompany Note”: any promissory note evidencing loans made by any Grantor to Borrower or any of its Subsidiaries.

“Investment Property”: the collective reference to (i) all “investment property” as such term is defined in Section 9-102(a)(49) of the New York UCC (other than any Foreign Subsidiary Voting Stock excluded from the definition of “Pledged Stock”) and (ii) whether or not constituting “investment property” as so defined, all Pledged Notes and all Pledged Stock.

“Issuers”: the collective reference to each issuer of any Pledged Stock.

“New York UCC”: the Uniform Commercial Code as from time to time in effect in the State of New York.

“Licenses”: the Copyright Licenses, Patent Licenses, Trademark Licenses, and trade secret licenses.

“Patents”: (i) all letters patent of the United States, any other country or any political subdivision thereof, all reissues and extensions thereof, including, without limitation, any of the foregoing referred to in Schedule 6, (ii) all applications for letters patent of the United States or any other country and all divisionals, provisionals, reexaminations, continuations and continuations-in-part thereof, including, without limitation, any of the foregoing referred to in Schedule 6, and (iii) all rights to obtain any reissues or extensions of the foregoing.

“Patent License”: all agreements, whether written or oral, providing for the grant by or to any Grantor of any right to manufacture, use or sell any invention covered in whole or in part by a Patent, including, without limitation, any of the foregoing referred to in Schedule 6.

“Pledged Notes”: all promissory notes listed on Schedule 2, all Intercompany Notes at any time issued to any Grantor and all other promissory notes issued to or held by any Grantor (other than promissory notes issued in connection with extensions of trade credit by any Grantor in the ordinary course of business).

“Pledged Stock”: the Equity Interests listed on Schedule 2, together with any other shares, stock certificates, options, interests or rights of any nature whatsoever in respect of the Equity Interests of any Person that may be issued or granted to, or held by, any Grantor while this Agreement is in effect; provided that in no event shall more than 66% of the total outstanding Foreign Subsidiary Voting Stock of any Foreign Subsidiary be required to be pledged hereunder.

“Proceeds”: all “proceeds” as such term is defined in Section 9-102(a)(64) of the New York UCC and, in any event, shall include, without limitation, all dividends or other income from the Investment Property, collections thereon or distributions or payments with respect thereto.

“Receivable”: any right to payment for goods sold or leased or for services rendered, whether or not such right is evidenced by an Instrument or Chattel Paper and whether or not it has been earned by performance (including, without limitation, any Account).

“Secured Parties”: the collective reference to the Administrative Agent, the Lenders ~~and~~ any affiliate of any Lender to which Obligations are owed, and with respect to Obligations arising under any Specified Swap Agreement, any Person who was a Lender or an Affiliate of a Lender at the time the relevant Swap Agreement was entered into.

“Securities Act”: the Securities Act of 1933, as amended.

“Software”: as defined in the definition of “Intellectual Property”.

“Trademarks”: (i) all trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos, domain names, social media and mobile identifiers and other source or business identifiers, and all goodwill associated therewith, now existing or hereafter adopted or acquired, all registrations and recordings thereof, and all applications in connection therewith, whether in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof or any other country or any political subdivision thereof, or otherwise, and all common-law rights related thereto, including, without limitation, any of the foregoing referred to in Schedule 6, and (ii) the right to obtain all renewals thereof.

“Trademark License”: any agreement, whether written or oral, providing for the grant by or to any Grantor of any right to use any Trademark, including, without limitation, any of the foregoing referred to in Schedule 6.

1.2 Other Definitional Provisions. (a) The words “hereof,” “herein,” “hereto” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section and Schedule references are to this Agreement unless otherwise specified.

(b) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

(c) Where the context requires, terms relating to the Collateral or any part thereof, when used in relation to a Grantor, shall refer to such Grantor’s Collateral or the relevant part thereof.

## SECTION 2. GRANT OF SECURITY INTEREST

Each Grantor hereby assigns and transfers to the Administrative Agent, and hereby grants to the Administrative Agent, for the ratable benefit of the Secured Parties, a security interest in, all



of the following property and rights now owned or at any time hereafter acquired by such Grantor or in which such Grantor now has or at any time in the future may acquire any right, title or interest (collectively, the "Collateral"), as collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of such Grantor's Obligations:

- (a) all Accounts;
- (b) all Chattel Paper;
- (c) all Deposit Accounts;
- (d) all Documents;
- (e) all Equipment;
- (f) all Fixtures;
- (g) all General Intangibles;
- (h) all Instruments;
- (i) all Intellectual Property;
- (j) all Inventory;
- (k) all Investment Property;
- (l) all Letter-of-Credit Rights;



(m) all other property not otherwise described above (except for any property specifically excluded from any clause in this section above, and any property specifically excluded from any defined term used in any clause of this section above);

(n) all books and records pertaining to the Collateral; and

(o) to the extent not otherwise included, all Proceeds, Supporting Obligations and products of any and all of the foregoing and all collateral security and guarantees given by any Person with respect to any of the foregoing;

provided, however, that notwithstanding any of the other provisions set forth in this Section 2, this Agreement shall not constitute a grant of a security interest in any property to the extent that such grant of a security interest (i) is prohibited by any requirement of law of a Governmental Authority, (ii) requires a consent not obtained of any Governmental Authority pursuant to such requirement of law or is prohibited by or (iii) constitutes a breach or default under or results in the termination of or requires any consent not obtained under, any contract, license, agreement, instrument or other document evidencing or giving rise to such property or, in the case of any Investment Property, Pledged Stock or Pledged Note (other than any of the foregoing issued by a Grantor), any applicable shareholder or similar agreement, except to the extent that such requirement of law or the term in such contract, license, agreement, instrument or other document or shareholder or similar agreement providing for such prohibition, breach, default or termination or requiring such consent is ineffective under applicable law. Notwithstanding anything herein to the contrary, in no event shall this Agreement constitute a grant of a security interest in any "intent-to-use" application for registration of a Trademark filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051, prior to the filing of a "Statement of Use" pursuant to Section 1(d) of the Lanham Act or an "Amendment to Allege Use" pursuant to Section 1(c) of the Lanham Act with respect thereto, solely to the extent, if any, that, and solely during the period, if any, in which, the grant of a security interest therein would impair the validity or enforceability of any registration that issues from such intent-to-use application under applicable federal law.

### SECTION 3. REPRESENTATIONS AND WARRANTIES

To induce the Administrative Agent and the Lenders to enter into the Credit Agreement and to induce the Lenders to make their respective extensions of credit to the Borrower thereunder, each Grantor hereby represents and warrants to the Administrative Agent and each Lender that:

3.1 Title; No Other Liens. Except for the security interest granted to the Administrative Agent for the ratable benefit of the Secured Parties pursuant to this Agreement and the other Liens permitted to exist on the Collateral by the Credit Agreement, such Grantor owns each item of the Collateral free and clear of any and all Liens or claims of others. No financing statement or other public notice with respect to all or any part of the Collateral is on file or of record in any public office, except such as have been filed in favor of the Administrative Agent, for the ratable benefit of the Secured Parties, pursuant to this Agreement or as are permitted by the Credit Agreement.

3.2 Perfected First Priority Liens. The security interests granted pursuant to this Agreement (a) upon completion of the filings and other actions specified on Schedule 3 (which, in the case of all filings and other documents referred to on said Schedule, have been delivered to the Administrative Agent in completed and duly executed form) will constitute valid perfected security interests in all of the Collateral in favor of the Administrative Agent, for the ratable benefit of the Secured Parties, as collateral security for such Grantor's Obligations, enforceable in accordance with the terms hereof against all creditors of such Grantor and any Persons purporting to purchase any Collateral from such Grantor and (b) are prior to all other Liens on the Collateral in existence on the date hereof except for

by operation of law.

3.3 Jurisdiction of Organization; Chief Executive Office. On the date hereof, such Grantor's jurisdiction of organization, identification number from the jurisdiction of organization (if any), and the location of such Grantor's chief executive office or sole place of business or principal residence, as the case may be, are specified on Schedule 4. Such Grantor has furnished to the Administrative Agent a certified charter, certificate of incorporation or other organization document and long-form good standing certificate as of a date which is recent to the date hereof.

3.4 Inventory and Equipment. On the date hereof, the Inventory and the Equipment (other than mobile goods) are kept at the locations listed on Schedule 5.

3.5 Investment Property. (a) The shares of Pledged Stock pledged by such Grantor hereunder constitute all the issued and outstanding shares of all classes of the Equity Interests of each Issuer owned by such Grantor or, in the case of Foreign Subsidiary Voting Stock, if less, 66% of the outstanding Foreign Subsidiary Voting Stock of each relevant Issuer.

(b) All the shares of the Pledged Stock have been duly and validly issued and are fully paid and nonassessable (to the extent such concepts are applicable in the relevant jurisdiction).

(c) Each of the Pledged Notes constitutes the legal, valid and binding obligation of the obligor with respect thereto, enforceable in accordance with its terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing.

(d) Such Grantor is the record and beneficial owner of, and has good and marketable title to, the Investment Property pledged by it hereunder, free of any and all Liens or options in favor of, or claims of, any other Person, except the security interest created by this Agreement.

3.6 Receivables. (a) No amount payable to such Grantor under or in connection with any Receivable is evidenced by any Instrument or Chattel Paper which has not been delivered to the Administrative Agent.

(b) None of the obligors on any Receivables is a Governmental Authority.

(c) The amounts represented by such Grantor to the Lenders from time to time as owing to such Grantor in respect of the Receivables will at such times be accurate.

3.7 Intellectual Property. (a) Schedule 6 lists all registered Copyrights, and applications and registrations for Patents and Trademarks owned or purported to be owned by such Grantor on the date hereof, and all Licenses under which such Grantor is an exclusive licensee of registered Copyrights, or applications or registrations for Patents and Trademarks.

(b) On the date hereof, all Intellectual Property listed on Schedule 6 has not been abandoned and is unexpired, and to each Grantor's knowledge, valid and enforceable. The conduct of the business of such Grantor does not infringe the Intellectual Property rights of any other Person, except as would not reasonably be expected to have a Material Adverse Effect.

(c) Except as set forth in Schedule 6, on the date hereof, none of the Intellectual Property owned by such Grantor is the subject of any franchise or exclusive licensing agreement pursuant to which such Grantor is the franchisor or exclusive licensor.

(d) No holding, decision or judgment has been rendered by any Governmental Authority which would limit, cancel or question the validity of, or such Grantor's rights in, any Intellectual Property owned by such Grantor in any respect that would reasonably be expected to have a Material Adverse Effect.

(e) Except as set forth in Schedule 6, on the date hereof, no action or proceeding (excluding



non-final, ordinary course office actions related to Intellectual Property registration efforts) is pending, or, to the knowledge of such Grantor, threatened, (i) seeking to limit, cancel or question the validity of any Intellectual Property owned by such Grantor or such Grantor's ownership interest therein, or (ii) which, if adversely determined, would have a Material Adverse Effect.

### 3.8 Commercial Tort Claims

(a) On the date hereof, no Grantor has rights in any Commercial Tort Claim with potential value in excess of \$100,000.

(b) Upon the filing of a financing statement covering any Commercial Tort Claim referred to in Section 4.9 hereof against such Grantor in the jurisdiction specified in Schedule 3 hereto, the security interest granted in such Commercial Tort Claim will constitute a valid perfected security interest in favor of the Administrative Agent, for the ratable benefit of the Secured Parties, as collateral security for such Grantor's Obligations, enforceable in accordance with the terms hereof against all creditors of such Grantor and any Persons purporting to purchase such Collateral from Grantor, which security interest shall be prior to all other Liens on such Collateral except for unrecorded liens permitted by the Credit Agreement which have priority over the Liens on such Collateral by operation of law.

## SECTION 4. COVENANTS

Each Grantor covenants and agrees with the Administrative Agent and the Lenders that, from and after the date of this Agreement until the Obligations shall have been paid in full, no Letter of Credit shall be outstanding and the Commitments shall have terminated:

4.1 Delivery of Instruments, Certificated Securities and Chattel Paper. If any amount payable under or in connection with any of the Collateral shall be or become evidenced by any Instrument, Certificated Security or Chattel Paper, such Instrument, Certificated Security or Chattel Paper shall be immediately delivered to the Administrative Agent, duly indorsed in a manner satisfactory to the Administrative Agent, to be held as Collateral pursuant to this Agreement.

4.2 [Reserved].

4.3 Payment of Obligations. Such Grantor will pay and discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all taxes, assessments and governmental charges or levies imposed upon the Collateral or in respect of income or profits therefrom, as well as all claims of any kind (including, without limitation, claims for labor, materials and supplies) against or with respect to the Collateral, except that no such charge need be paid if the amount or validity thereof is currently being contested in good faith by appropriate proceedings, reserves in conformity with GAAP with respect thereto have been provided on the books of such Grantor and such proceedings could

not reasonably be expected to result in the sale, forfeiture or loss of any material portion of the Collateral or any interest therein.

4.4 Maintenance of Perfected Security Interest; Further Documentation. (a) Such Grantor shall maintain the security interest created by this Agreement as a perfected security interest having at least the priority described in Section 3.2 and shall defend such security interest against the claims and demands of all Persons whomsoever, subject to the rights of such Grantor under the Loan Documents to dispose of the Collateral.

(b) Such Grantor will furnish to the Administrative Agent and the Lenders from time to time statements and schedules further identifying and describing the assets and property of such Grantor and such other reports in connection therewith as the Administrative Agent may reasonably request, all in reasonable detail.

(c) At any time and from time to time, upon the written request of the Administrative Agent, and at the sole expense of such Grantor, such Grantor will promptly and duly execute and deliver, and have recorded, such further instruments and documents and take such further actions as the Administrative Agent may reasonably request for the purpose of obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted, including, without limitation, (i) filing



any financing or continuation statements under the Uniform Commercial Code (or other similar laws) in effect in any jurisdiction with respect to the security interests created hereby, (ii) in the case of Intellectual Property, filing with the United States Patent and Trademark Office and the United States Copyright Office (or, in each case, any successor office), as applicable, such documents as may be reasonably necessary or advisable for the purposes of perfecting, confirming, continuing, enforcing or protecting the security interests created hereby, and (iii) in the case of Investment Property, Deposit Accounts, Letter of Credit Rights and any other relevant Collateral (including the Collateral Account), taking any actions necessary to enable the Administrative Agent to obtain "control" (within the meaning of the applicable Uniform Commercial Code) with respect thereto.

4.5 Changes in Name, etc. Such Grantor will not, except upon 15 days' prior written notice to the Administrative Agent and delivery to the Administrative Agent of all additional executed financing statements and other documents reasonably requested by the Administrative Agent to maintain the validity, perfection and priority of the security interests provided for herein, (i) change its jurisdiction of organization or the location of its chief executive office or sole place of business or principal residence from that referred to in Section 3.3 or (ii) change its name.

4.6 Notices. Such Grantor will advise the Administrative Agent and the Lenders promptly, in reasonable detail, of:

(a) any Lien (other than security interests created hereby or Liens permitted under the Credit Agreement) on any of the Collateral which would adversely affect the ability of the Administrative Agent to exercise any of its remedies hereunder; and

(b) of the occurrence of any other event which would reasonably be expected to have a Material Adverse Effect.

4.7 Investment Property. (a) If such Grantor shall become entitled to receive or shall receive any certificate (including, without limitation, any certificate representing a dividend or a distribution in connection with any reclassification, increase or reduction of capital or any certificate issued in connection with any reorganization), option or rights in respect of the pledged Equity Interests of any Issuer, whether in addition to, in substitution of, as a conversion of, or in exchange for, any shares

of the Investment Property, or otherwise in respect thereof, such Grantor shall accept the same as the agent of the Administrative Agent and the Lenders, hold the same in trust for the Administrative Agent and the Lenders and deliver the same forthwith to the Administrative Agent in the exact form received, duly indorsed by such Grantor to the Administrative Agent, if required, together with an undated stock power covering such certificate duly executed in blank by such Grantor and with, if the Administrative Agent so requests, signature guaranteed, to be held by the Administrative Agent, subject to the terms hereof, as additional collateral security for the Obligations. Any sums paid upon or in respect of the Investment Property upon the liquidation or dissolution of any Issuer shall be paid over to the Administrative Agent to be held by it hereunder as additional collateral security for the Obligations, and in case any distribution of capital shall be made on or in respect of the Investment Property or any property shall be distributed upon or with respect to the Investment Property pursuant to the recapitalization or reclassification of the capital of any Issuer or pursuant to the reorganization thereof, the property so distributed shall, unless otherwise subject to a perfected security interest in favor of the Administrative Agent, be delivered to the Administrative Agent to be held by it hereunder as additional collateral security for the Obligations. If any sums of money or property so paid or distributed in respect of the Investment Property shall be received by such Grantor, such Grantor shall, until such money or property is paid or delivered to the Administrative Agent, hold such money or property in trust for the Administrative Agent and the Lenders, segregated from other funds of such Grantor, as additional collateral security for the Obligations. Notwithstanding the provisions of this Section 4.7 or elsewhere in this Agreement, no Grantor shall be required to take any action with respect to the pledge of Equity Interests of Issuers that would be deemed to be a pledge of in excess of 66% of the Foreign Subsidiary Voting Stock.

(b) Without the prior written consent of the Administrative Agent, such Grantor will not (i) sell, assign, transfer, exchange, or otherwise dispose of, or grant any option with respect to, the Investment Property or Proceeds thereof (except pursuant to a transaction expressly permitted by the Credit Agreement), (ii) create, incur or permit to exist any Lien or option in favor of, or any claim of any Person with respect to, any of the Investment Property or Proceeds thereof (other than Liens permitted by the Credit Agreement with respect to Proceeds), or any interest therein, except for the security interests created by this Agreement or (iii) enter into any agreement or undertaking restricting the right or ability of such Grantor or the Administrative Agent to sell, assign or transfer any of the Investment Property or Proceeds thereof.

(c) In the case of each Grantor which is an Issuer, such Issuer agrees that (i) it will be bound by the terms of this Agreement relating to the Investment Property issued by it and will comply with such terms insofar as such terms are applicable to it, (ii) it will notify the Administrative Agent promptly in writing of the occurrence of any of the events described in Section 4.7(a) with respect to the Investment Property issued by it and (iii) the terms of Sections 5.1(c) and 5.5 shall apply to it, mutatis mutandis, with respect to all actions that may be required of it pursuant to Section 5.1(c) or 5.5 with respect to the Investment Property issued by it.

4.8 Intellectual Property. (a) Such Grantor (either itself or through licensees), solely with respect to material Trademarks owned by such Grantor, will (i) continue to use each Trademark in order to maintain such Trademark in full force, except to the extent that such Grantor determines in its reasonable business judgment that any such use of a Trademark is no longer necessary or beneficial to the conduct of such Grantor's business, (ii) maintain as in the past the quality of products and services offered under such Trademark, including by exercising appropriate quality control as may be required by applicable requirements of law over any licensees using such Trademark, (iii) use such Trademark with the appropriate notice of registration and all other notices and legends required by applicable requirements of law, and (iv) not (and not permit any licensee thereof to) knowingly do any act or



invalidated or impaired in any way.

(b) Such Grantor (either itself or through licensees) will not knowingly do any act, or knowingly omit to do any act, whereby any Patent material to its business may become forfeited, abandoned, compromised or dedicated to the public, or any trade secret material to its business may lose trade secret protection, and will use such Patent with all notices and legends required by applicable requirements of law, except to the extent that such Grantor determines in its reasonable business judgment that the maintenance thereof is no longer necessary or beneficial to the conduct of such Grantor's business.

(c) Such Grantor (either itself or through licensees) will not (and will not permit any licensee or sublicensee thereof to) knowingly do any act or knowingly omit to do any act whereby any material portion of any Copyright material to its business may become invalidated or otherwise impaired, except to the extent that such Grantor determines in its reasonable business judgment that the maintenance thereof is no longer necessary or beneficial to the conduct of such Grantor's business. Such Grantor will not (either itself or through licensees) knowingly do any act whereby any material portion of the Copyrights may fall into the public domain, except to the extent that such Grantor determines in its reasonable business judgment that the maintenance thereof is no longer necessary or beneficial to the conduct of such Grantor's business.

(d) Such Grantor (either itself or through licensees) will not knowingly do any act to infringe the Intellectual Property rights of any other Person.

(e) Such Grantor will notify the Administrative Agent and the Lenders promptly if any registration relating to any material Intellectual Property owned by such Grantor becomes forfeited, abandoned or dedicated to the public, or of any final adverse determination regarding such Grantor's ownership of, or the validity of, any material Intellectual Property owned by such Grantor or such Grantor's right to register the same or to own and maintain the same, except where such determination would not result in a Material Adverse Effect.

(f) Whenever such Grantor, either by itself or through any agent, employee, licensee or designee, shall file an application for the registration of any Copyright, Patent or Trademark with the United States Patent and Trademark Office, the United States Copyright Office or any similar office or agency in any other country or any political subdivision thereof, such Grantor shall report such filing to the Administrative Agent within fifteen Business Days after the last day of the fiscal quarter in which such filing occurs. Upon request of the Administrative Agent, such Grantor shall execute and deliver, and have recorded, any and all agreements, instruments, documents, and papers as the Administrative Agent may request to evidence the Administrative Agent's and the Lenders' security interest in any Copyright, Patent or Trademark and the goodwill and general intangibles of such Grantor relating thereto or represented thereby.

(g) Such Grantor will take reasonable and necessary steps in its reasonable business judgment, including, without limitation, in any proceeding before the United States Patent and Trademark Office, the United States Copyright Office or any similar office or agency in any other country or any political subdivision thereof, to maintain each registration of the Intellectual Property material to its business, including, without limitation, filing of applications for renewal, affidavits of use and affidavits of incontestability.

(h) In the event that any material Intellectual Property owned by such Grantor is infringed, misappropriated or diluted by a third party, such Grantor shall (i) take such actions as such Grantor shall

reasonably deem appropriate under the circumstances to protect such Intellectual Property and (ii) if such Intellectual Property is of material economic value, promptly notify the Administrative Agent after it learns thereof.

(i) Such Grantor shall not (and shall not knowingly permit or assist any person to) destroy or delete any proprietary Software that is material to Grantor's business.

4.9 Commercial Tort Claims. If such Grantor shall obtain an interest in any Commercial Tort Claim with a potential value in excess of \$100,000, such Grantor shall within 30 days of obtaining such interest sign and deliver documentation acceptable to the Administrative Agent granting a security



## SECTION 5. REMEDIAL PROVISIONS

5.1 Pledged Stock. (a) Unless an Event of Default shall have occurred and be continuing and the Administrative Agent shall have given notice to the relevant Grantor of the Administrative Agent's intent to exercise its corresponding rights pursuant to Section 5.1(b), each Grantor shall be permitted to receive all cash dividends paid in respect of the Pledged Stock and all payments made in respect of the Pledged Notes, in each case paid in the normal course of business of the relevant Issuer and consistent with past practice, to the extent permitted in the Credit Agreement, and to exercise all voting and corporate or other organizational rights with respect to the Investment Property; provided, however, that no vote shall be cast or corporate or other organizational right exercised or other action taken which, in the Administrative Agent's reasonable judgment, would impair the Collateral or which would be inconsistent with or result in any violation of any provision of the Credit Agreement, this Agreement or any other Loan Document.

(b) If an Event of Default shall occur and be continuing and the Administrative Agent shall give notice of its intent to exercise such rights to the relevant Grantor or Grantors, (i) the Administrative Agent shall have the right to receive any and all cash dividends, payments or other Proceeds paid in respect of the Investment Property and make application thereof to the Obligations in such order as the Administrative Agent may determine (but shall have no right to cause such dividends, payments or other Proceeds to occur, be made or transferred to Grantor), and (ii) in connection with the conduct of a commercially reasonable foreclosure sale and to the extent permitted by law, any or all of the Investment Property may be registered in the name of the Administrative Agent or its nominee, and the Administrative Agent or its nominee may thereafter exercise (x) all voting, corporate and other rights pertaining to such Investment Property at any meeting of shareholders of the relevant Issuer or Issuers or otherwise and (y) any and all rights of conversion, exchange and subscription and any other rights, privileges or options pertaining to such Investment Property as if it were the absolute owner thereof (including, without limitation, the right to exchange at its discretion any and all of the Investment Property upon the merger, consolidation, reorganization, recapitalization or other fundamental change in the corporate or other organizational structure of any Issuer, or upon the exercise by any Grantor or the Administrative Agent of any right, privilege or option pertaining to such Investment Property, and in connection therewith, the right to deposit and deliver any and all of the Investment Property with any committee, depository, transfer agent, registrar or other designated agency upon such terms and conditions as the Administrative Agent may determine), all without liability except to account for property actually received by it, but the Administrative Agent shall have no duty to any Grantor to exercise any such right, privilege or option and shall not be responsible for any failure to do so or delay in so doing.

(c) Each Grantor hereby authorizes and instructs each Issuer of any Investment Property pledged by such Grantor hereunder to (i) comply with any instruction received by it from the Administrative Agent in writing that (x) states that an Event of Default has occurred and is continuing and (y) is otherwise in accordance with the terms of this Agreement, without any other or further instructions from such Grantor, and each Grantor agrees that each Issuer shall be fully protected in so complying, and (ii) unless otherwise expressly permitted hereby, pay any dividends or other payments with respect to the Investment Property directly to the Administrative Agent (provided that the Administrative Agent shall have no ability to compel any such dividends or other payments to be made).

5.2 Proceeds to be Turned Over To Administrative Agent. If an Event of Default shall occur and be continuing, all Proceeds received by any Grantor consisting of cash, checks and other near-cash items shall be held by such Grantor in trust for the Administrative Agent and the Lenders, segregated from other funds of such Grantor, and shall, forthwith upon receipt by such Grantor, be turned over to the Administrative Agent in the exact form received by such Grantor (duly indorsed by such Grantor to the Administrative Agent, if required). All Proceeds received by the Administrative Agent hereunder shall be held by the Administrative Agent in a Collateral Account maintained under its sole dominion and control. All Proceeds while held by the Administrative Agent in a Collateral Account (or by such Grantor in trust for the Administrative Agent and the Lenders) shall continue to be held as collateral security for all the Obligations and shall not constitute payment thereof until applied as provided in

Section 5.3.

5.3 Application of Proceeds. At such intervals as may be agreed upon by the Borrower and the Administrative Agent, or, if an Event of Default shall have occurred and be continuing, at any time at the Administrative Agent's election, the Administrative Agent may apply all or any part of Proceeds constituting Collateral, whether or not held in any Collateral Account, in payment of the Obligations in the following order:

First, to pay incurred and unpaid fees and expenses of the Administrative Agent under the Loan Documents;

Second, to the Administrative Agent, for application by it towards payment of amounts then due and owing and remaining unpaid in respect of the Obligations (~~other than obligations under or in respect of Specified Swap Agreements or Specified Cash Management Agreements~~), pro rata among the Secured Parties according to the amounts of such Obligations then due and owing and remaining unpaid to the Secured Parties;

Third, to the Administrative Agent, for application by it towards prepayment of the Obligations (~~other than obligations under or in respect of Specified Swap Agreements or Specified Cash Management Agreements~~), pro rata among the Secured Parties according to the amounts of such Obligations then held by the Secured Parties; and

~~Fourth, to the Administrative Agent, for application by it towards payment of the Obligations under or in respect of Specified Swap Agreements or Specified Cash Management Agreements, pro rata among the Secured Parties according to the amounts of such Obligations then held by the Secured Parties; and~~

~~Fifth~~Fourth, any balance remaining after the Obligations shall have been paid in full, no Letters of Credit shall be outstanding and the Commitments shall have terminated shall be paid over to the Borrower or to whomsoever may be lawfully entitled to receive the same.



Notwithstanding the foregoing, no amounts received from any Subsidiary Grantor shall be applied to any Excluded Swap Obligations of such Subsidiary Grantor.

5.4 Code and Other Remedies. If an Event of Default shall occur and be continuing, the Administrative Agent, on behalf of the Lenders, may exercise, in addition to all other rights and remedies granted to them in this Agreement and in any other instrument or agreement securing, evidencing or relating to the Obligations, all rights and remedies of a secured party under the New York UCC or any other applicable law. Without limiting the generality of the foregoing, to the extent permitted by law, the Administrative Agent, without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by law referred to below) to or upon any Grantor or any other Person (all and each of which demands, defenses, advertisements and notices are hereby waived), may in such circumstances forthwith collect, receive, appropriate and realize upon the Collateral, or any part thereof, and/or may forthwith sell, lease, assign, give option or options to purchase, or otherwise dispose of and deliver the Collateral or any part thereof (or contract to do any of the foregoing), in one or more parcels at public or private sale or sales, at any exchange, broker's board or office of the Administrative Agent or any Lender or elsewhere upon such terms and conditions as it may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk. The Administrative Agent or any Lender shall have the right upon any such public sale or sales, and, to the extent permitted by law, upon any such private sale or sales, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption in any Grantor, which right or equity is hereby waived and released. Each Grantor further agrees, at the Administrative Agent's request, to assemble the Collateral and make it available to the Administrative Agent at places which the Administrative Agent shall reasonably select, whether at such Grantor's premises or elsewhere. In addition, with respect to any Collateral consisting of Intellectual Property, if an Event of Default shall occur and be continuing, to the extent permitted by law, the Administrative Agent, on behalf of the Lenders, may, on demand, cause the security interest granted in such Collateral hereunder to become an assignment, transfer and conveyance of any of or all such Collateral by the applicable Grantors to the Administrative Agent, for the benefit of the Secured Parties, or license or sublicense, whether on an exclusive or nonexclusive basis, any such Collateral throughout the world on such terms and conditions and in such manner as the Administrative Agent shall determine (other than in violation of any then-existing licensing arrangements to the extent that waivers cannot be obtained). The Administrative Agent shall apply the net proceeds of any action taken by it pursuant to this Section 5.4, after deducting all reasonable costs and expenses of every kind incurred in connection therewith or incidental to the care or safekeeping of any of the Collateral or in any way relating to the Collateral or the rights of the Administrative Agent and the Lenders hereunder, including, without limitation, reasonable attorneys' fees and disbursements, to the payment in whole or in part of the Obligations, in such order as the Administrative Agent may elect, and only after such application and after the payment by the Administrative Agent of any other amount required by any provision of law, including, without limitation, Section 9-615(a)(3) of the New York UCC, need the Administrative Agent account for the surplus, if any, to any Grantor. To the extent permitted by applicable law, each Grantor waives all claims, damages and demands it may acquire against the Administrative Agent or any Lender arising out of the exercise by them of any rights hereunder. If any notice of a proposed sale or other disposition of Collateral shall be required by law, such notice shall be deemed reasonable and proper if given at least 10 days before such sale or other disposition.

5.5 Registration Rights. (a) If the Administrative Agent shall determine to exercise its right to sell any or all of the Pledged Stock pursuant to Section 5.4, and if in the opinion of the Administrative Agent it is necessary or advisable to have the Pledged Stock, or that portion thereof to be sold, registered under the provisions of the Securities Act, the relevant Grantor will use commercially reasonable efforts to cause the Issuer thereof to (i) execute and deliver, and cause the directors and officers of such Issuer to execute and deliver, all such instruments and documents, and do or cause to be done all such other acts as



or that portion thereof to be sold, under the provisions of the Securities Act, (ii) use its best efforts to cause the registration statement relating thereto to become effective and to remain effective for a period of one year from the date of the first public offering of the Pledged Stock, or that portion thereof to be sold, and (iii) make all amendments thereto and/or to the related prospectus which, in the opinion of the Administrative Agent, are necessary or advisable, all in conformity with the requirements of the Securities Act and the rules and regulations of the Securities and Exchange Commission applicable thereto. Each Grantor agrees to cause such Issuer to comply with the provisions of the securities or "Blue Sky" laws of any and all jurisdictions which the Administrative Agent shall designate and to make available to its security holders, as soon as practicable, an earnings statement (which need not be audited) which will satisfy the provisions of Section 11(a) of the Securities Act.

(b) Each Grantor recognizes that the Administrative Agent may be unable to effect a public sale of any or all the Pledged Stock, by reason of certain prohibitions contained in the Securities Act and applicable state securities laws or otherwise, and may be compelled to resort to one or more private sales thereof to a restricted group of purchasers which will be obliged to agree, among other things, to acquire such securities for their own account for investment and not with a view to the distribution or resale thereof. Each Grantor acknowledges and agrees that any such private sale may result in prices and other terms less favorable than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner. The Administrative Agent shall be under no obligation to delay a sale of any of the Pledged Stock for the period of time necessary to permit the Issuer thereof to register such securities for public sale under the Securities Act, or under applicable state securities laws, even if such Issuer would agree to do so.

(c) Each Grantor agrees to use commercially reasonable efforts to do or cause to be done all such other acts as may be necessary to make such sale or sales of all or any portion of the Pledged Stock pursuant to this Section 5.5 valid and binding and in compliance with any and all other applicable requirements of law. Each Grantor further agrees that a breach of any of the covenants contained in this Section 5.5 will cause irreparable injury to the Administrative Agent and the Lenders, that the Administrative Agent and the Lenders have no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this Section 5.5 shall be specifically enforceable against such Grantor, and such Grantor hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants except for a defense that no Event of Default has occurred under the Credit Agreement.

5.6 Subordination. Each Grantor hereby agrees that, upon the occurrence and during the continuance of an Event of Default, unless otherwise agreed by the Administrative Agent, all Indebtedness owing by it to any Subsidiary of the Borrower shall be fully subordinated to the indefeasible payment in full in cash of such Grantor's Obligations.

5.7 Deficiency. Each Grantor shall remain liable for any deficiency if the proceeds of any sale or other disposition of the Collateral are insufficient to pay its Obligations and the fees and disbursements of any attorneys employed by the Administrative Agent or any Lender to collect such deficiency.

## SECTION 6. THE ADMINISTRATIVE AGENT

6.1 Administrative Agent's Appointment as Attorney-in-Fact, etc. (a) For the purpose of enabling the Administrative Agent to exercise the rights and remedies under this Agreement at such time as the Administrative Agent shall be lawfully entitled to exercise such right and remedies, each Grantor hereby irrevocably constitutes and appoints the Administrative Agent and any officer or agent thereof,

with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of such Grantor and in the name of such Grantor or in its own name, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Agreement, and, without limiting the generality of the foregoing, each Grantor hereby gives the Administrative Agent the power and right, on behalf of such Grantor, without notice to or assent by such Grantor, to do any or all of the following:

(i) in the name of such Grantor or its own name, or otherwise, take possession of and indorse and collect any checks, drafts, notes, acceptances or other instruments for the



payment of moneys due under or with respect to any Collateral and file any claim or take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by the Administrative Agent for the purpose of collecting any and all such moneys due under or with respect to any Collateral whenever payable;

(ii) in the case of any Intellectual Property, execute and deliver, and have recorded, any and all agreements, instruments, documents and papers as the Administrative Agent may request to evidence the Administrative Agent's and the Lenders' security interest in such Intellectual Property and the goodwill and general intangibles of such Grantor relating thereto or represented thereby;

(iii) pay or discharge taxes and Liens levied or placed on or threatened against the Collateral, effect any repairs or any insurance called for by the terms of this Agreement and pay all or any part of the premiums therefor and the costs thereof;

(iv) execute, in connection with any sale provided for in Section 5.4 or 5.5, any indorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral; and

(v) (1) direct any party liable for any payment under any of the Collateral to make payment of any and all moneys due or to become due thereunder directly to the Administrative Agent or as the Administrative Agent shall direct; (2) ask or demand for, collect, and receive payment of and receipt for, any and all moneys, claims and other amounts due or to become due at any time in respect of or arising out of any Collateral; (3) sign and indorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications, notices and other documents in connection with any of the Collateral; (4) commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral or any portion thereof and to enforce any other right in respect of any Collateral; (5) defend any suit, action or proceeding brought against such Grantor with respect to any Collateral; (6) settle, compromise or adjust any such suit, action or proceeding and, in connection therewith, give such discharges or releases as the Administrative Agent may deem appropriate; (7) assign any Intellectual Property (along with the goodwill of the business to which any such Intellectual Property pertains), throughout the world for such term or terms, on such conditions, and in such manner, as the Administrative Agent shall in its sole discretion determine; (8) assume any contracts relating to the Collateral to which such Grantor is a party in the name and stead of such Grantor and (9) generally, sell, transfer, pledge and make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Administrative Agent were the absolute owner thereof for all purposes, and do, at the Administrative Agent's option and such Grantor's expense, at any time, or from time to time, all acts and things which the Administrative Agent deems necessary to protect, preserve or realize upon the Collateral and the Administrative Agent's and the Lenders' security

interests therein and to effect the intent of this Agreement, all as fully and effectively as such Grantor might do.

Anything in this Section 6.1(a) to the contrary notwithstanding, the Administrative Agent agrees that it will not exercise any rights under the power of attorney provided for in this Section 6.1(a) (other than pursuant to clause (ii) thereof) unless an Event of Default shall have occurred and be continuing.

(b) If any Grantor fails to perform or comply with any of its agreements contained herein, the Administrative Agent, at its option, but without any obligation so to do, may perform or comply, or otherwise cause performance or compliance, with such agreement.

(c) The expenses of the Administrative Agent incurred in connection with actions undertaken as provided in this Section 6.1, together with interest thereon at a rate per annum equal to the highest rate per annum at which interest would then be payable on any category of past due ABR Loans under the Credit Agreement, from the date of payment by the Administrative Agent to the date reimbursed by the relevant Grantor, shall be payable by such Grantor to the Administrative Agent on demand.

(d) Each Grantor hereby ratifies all that said attorneys shall lawfully do or cause to be done

by virtue hereof. All powers, authorizations and agencies contained in this Agreement are coupled with an interest and are irrevocable until this Agreement is terminated and the security interests created hereby are released.

6.2 Duty of Administrative Agent. The Administrative Agent's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession, under Section 9-207 of the New York UCC or otherwise, shall be to deal with it in the same manner as the Administrative Agent deals with similar property for its own account. Neither the Administrative Agent, any Lender nor any of their respective officers, directors, employees or agents shall be liable for failure to demand, collect or realize upon any of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any Grantor or any other Person or to take any other action whatsoever with regard to the Collateral or any part thereof. The powers conferred on the Administrative Agent and the Lenders hereunder are solely to protect the Administrative Agent's and the Lenders' interests in the Collateral and shall not impose any duty upon the Administrative Agent or any Lender to exercise any such powers. The Administrative Agent and the Lenders shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor any of their officers, directors, employees or agents shall be responsible to any Grantor for any act or failure to act hereunder, except for their own gross negligence or willful misconduct.

6.3 Execution of Financing Statements. Pursuant to any applicable law, each Grantor authorizes the Administrative Agent to file or record financing statements and other filing or recording documents or instruments with respect to the Collateral without the signature of such Grantor in such form and in such offices as the Administrative Agent determines appropriate to perfect the security interests of the Administrative Agent under this Agreement. Each Grantor authorizes the Administrative Agent to use the collateral description "all personal property" in any such financing statements. Each Grantor hereby ratifies and authorizes the filing by the Administrative Agent of any financing statement with respect to the Collateral made prior to the date hereof.

6.4 Authority of Administrative Agent. Each Grantor acknowledges that the rights and responsibilities of the Administrative Agent under this Agreement with respect to any action taken by the Administrative Agent or the exercise or non-exercise by the Administrative Agent of any option, voting right, request, judgment or other right or remedy provided for herein or resulting or arising out of this



Agreement shall, as between the Administrative Agent and the Lenders, be governed by the Credit Agreement and by such other agreements with respect thereto as may exist from time to time among them, but, as between the Administrative Agent and the Grantors, the Administrative Agent shall be conclusively presumed to be acting as agent for the Lenders with full and valid authority so to act or refrain from acting, and no Grantor shall be under any obligation, or entitlement, to make any inquiry respecting such authority.

## SECTION 7. MISCELLANEOUS

7.1 Amendments in Writing. None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except in accordance with Section 9.02 of the Credit Agreement.

7.2 Notices. All notices, requests and demands to or upon the Administrative Agent or any Grantor hereunder shall be effected in the manner provided for in Section 9.01 of the Credit Agreement; provided that any such notice, request or demand to or upon any Subsidiary Grantor shall be addressed to such Subsidiary Grantor at its notice address set forth on Schedule 1.

7.3 No Waiver by Course of Conduct; Cumulative Remedies. No failure or delay by the Administrative Agent or any Lender in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent and the Lenders hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or any other Loan Document or consent to any departure by any Grantor therefrom shall in any event be effective unless the same shall be permitted by Section 7.1, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given.

7.4 Enforcement Expenses; Indemnification. (a) Each Grantor agrees to pay all reasonable out-of-pocket expenses incurred by the Administrative Agent, the Arrangers, any Issuing Bank, any Lender and their respective Affiliates, including, without limitation, the fees, disbursements and other charges of counsel for the Administrative Agent, the Arrangers, any Issuing Bank, any Lender or any of their respective Affiliates in connection with the enforcement or protection of their rights in connection with this Agreement.

(b) Each Grantor agrees to pay, and to save the Administrative Agent and the Lenders harmless from, any and all liabilities with respect to, or resulting from any delay in paying, any and all stamp, excise, sales or other taxes which may be payable or determined to be payable with respect to any of the Collateral or in connection with any of the transactions contemplated by this Agreement.

(c) Each Grantor agrees to pay, and to save the Administrative Agent and the Lenders harmless from, any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever with respect to the execution, delivery, enforcement, performance and administration of this Agreement to the extent the Borrower would be required to do so pursuant to Section 9.03 of the Credit Agreement.

(d) The agreements in this Section 7.4 shall survive repayment of the Obligations and all other amounts payable under the Credit Agreement and the other Loan Documents.



assigns of each Grantor and shall inure to the benefit of the Administrative Agent and the Lenders and their successors and assigns; provided that no Grantor may assign, transfer or delegate any of its rights or obligations under this Agreement without the prior written consent of the Administrative Agent.

7.6 Set-Off. If an Event of Default shall have occurred and be continuing, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held by, and other obligations at any time owing by such Lender or Affiliate to or for the credit or the account of any Grantor against any of and all the obligations of such Grantor now or hereafter existing under this Agreement or the Credit Agreement held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement or the Credit Agreement and although such obligations may be unmatured; provided that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.17 of the Credit Agreement and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender under this Section 7.6 are in addition to other rights and remedies (including other rights of setoff) which such Lender may have. Each Lender agrees to notify the relevant Grantor 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. Notwithstanding the foregoing, to the extent prohibited by applicable law as described in the definition of "Excluded Swap Obligation," no amounts received from, or set off with respect to, any Subsidiary Grantor shall be applied to any Excluded Swap Obligations of such Subsidiary Grantor.

7.7 Counterparts. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts (including by email or telecopy), and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

7.8 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

7.9 Section Headings. The Section headings used in this Agreement are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

7.10 Integration. This Agreement and the other Loan Documents represent the agreement of the Grantors, the Administrative Agent and the Lenders with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by the Administrative Agent or any Lender relative to subject matter hereof and thereof not expressly set forth or referred to herein or in the other Loan Documents.

7.11 GOVERNING LAW. THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAW OF THE STATE OF NEW YORK.

7.12 Submission To Jurisdiction; Waivers. (a) Each Grantor submits, for itself and its property, to the exclusive jurisdiction of any Federal court of the United States of America sitting in New York County, Borough of Manhattan (or, in the event such court lacks subject matter jurisdiction, the Supreme Court of the State of New York sitting in New York County, Borough of Manhattan) and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, and agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each Grantor agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that the Administrative Agent



or any Lender may otherwise have to bring any action or proceeding relating to this Agreement against any Grantor or its properties in the courts of any jurisdiction.

(b) Each Grantor hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any court referred to in paragraph (b) of this Section 7.12. Each Grantor hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(c) Each Grantor irrevocably consents to service of process to such Grantor at its address referred to in Section 7.2 or at such other address of which the Administrative Agent shall have been notified pursuant thereto and otherwise in the manner provided for notices in Section 9.01 of the Credit Agreement.

7.13 Acknowledgements. Each Grantor hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents to which it is a party;

(b) neither the Administrative Agent nor any Lender has any fiduciary relationship with or duty to any Grantor arising out of or in connection with this Agreement or any of the other Loan Documents, and the relationship between the Grantors, on the one hand, and the Administrative Agent and Lenders, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(c) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among the Lenders or among the Grantors and the Lenders.

7.14 Additional Grantors. Each Subsidiary of the Borrower that is required to become a party to this Agreement pursuant to Section 5.10 of the Credit Agreement shall become a Grantor for all purposes of this Agreement upon execution and delivery by such Subsidiary of a Joinder Agreement in the form of Annex 1 hereto.

7.15 Releases. (a) At such time as the Loans, the Reimbursement Obligations and the other Obligations (other than Obligations in respect of Specified Swap Agreements) shall have been paid in full, the Commitments have been terminated and no Letters of Credit shall be outstanding, the Collateral shall be released from the Liens created hereby, and this Agreement and all obligations (other than those expressly stated to survive such termination) of the Administrative Agent and each Grantor hereunder shall terminate, all without delivery of any instrument or performance of any act by any party, and all

rights to the Collateral shall revert to the Grantors. At the request and sole expense of any Grantor following any such termination, the Administrative Agent shall deliver to such Grantor any Collateral held by the Administrative Agent hereunder, and execute and deliver to such Grantor such documents as such Grantor shall reasonably request to evidence such termination.

(b) If any of the Collateral shall be sold, transferred or otherwise disposed of by any Grantor in a transaction permitted by the Credit Agreement, then the Administrative Agent, at the request and sole expense of such Grantor, shall execute and deliver to such Grantor all releases or other documents reasonably necessary or desirable for the release of the Liens created hereby on such Collateral. At the request and sole expense of the Borrower, a Subsidiary Grantor shall be released from its obligations hereunder in the event that all the Equity Interests of such Subsidiary Grantor shall be sold, transferred or otherwise disposed of in a transaction permitted by the Credit Agreement; provided that the Borrower shall have delivered to the Administrative Agent, at least ten Business Days prior to the date of the proposed release, a written request for release identifying the relevant Subsidiary Grantor and the terms of the sale or other disposition in reasonable detail, including the price thereof and any expenses in connection therewith, together with a certification by the Borrower stating that such transaction is in compliance with the Credit Agreement and the other Loan Documents.

7.16 WAIVER OF JURY TRIAL. EACH GRANTOR HEREBY WAIVES, TO THE



FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH GRANTOR (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 7.16.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, each of the undersigned has caused this Security Agreement to be duly executed and delivered as of the date first above written.

PELOTON INTERACTIVE, INC.

By: \_\_\_\_\_  
Name  
Title:

[Signature Page to Security Agreement]

JOINDER AGREEMENT, dated as of \_\_\_\_\_, 20\_\_\_, made by \_\_\_\_\_ (the "Additional Grantor"), in favor of \_\_\_\_\_, as administrative agent (in such capacity, the "Administrative Agent") for the banks and other financial institutions or entities (the "Lenders") parties to the Credit Agreement referred to below. All capitalized terms not defined herein shall have the meaning ascribed to them in such Credit Agreement.

W I T N E S S E T H :

WHEREAS, Peloton Interactive, Inc. (the "Borrower"), the Lenders and the Administrative Agent have entered into a Credit Agreement, dated as of November 3, 2017 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement");

WHEREAS, in connection with the Credit Agreement, the Borrower and certain of its Subsidiaries (other than the Additional Grantor) have entered into the Security Agreement, dated as of November 3, 2017 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Security Agreement") in favor of the Administrative Agent for the ratable benefit of the Secured Parties;

WHEREAS, the Credit Agreement requires the Additional Grantor to become a party to the Security Agreement; and

WHEREAS, the Additional Grantor has agreed to execute and deliver this Joinder Agreement in order to become a party to the Security Agreement;

NOW, THEREFORE, IT IS AGREED:

1. Security Agreement. By executing and delivering this Joinder Agreement, the Additional Grantor, as provided in Section 7.14 of the Security Agreement, hereby becomes a party to the Security Agreement as a Grantor thereunder with the same force and effect as if originally named therein as a Grantor and, without limiting the generality of the foregoing, hereby expressly assumes all obligations and liabilities of a Grantor thereunder. The information set forth in Annex 1-A hereto is hereby added to the information set forth in the Schedules hereto. The Additional Grantor hereby represents and warrants that each of the representations and warranties contained in Section 3 of the Security Agreement is true and correct on and as the date hereof (after giving effect to this Joinder Agreement) as if made on and as of such date.

2. Governing Law. THIS JOINDER AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAW OF THE STATE OF NEW YORK.

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IN WITNESS WHEREOF, the undersigned has caused this Joinder Agreement to be duly executed and delivered as of the date first above written.

[ADDITIONAL GRANTOR]

By: \_\_\_\_\_  
Name:  
Title:



Annex 1-A to  
Joinder Agreement

Supplement to Schedule 1 hereto

Supplement to Schedule 2 hereto

Supplement to Schedule 3 hereto

Supplement to Schedule 4 hereto

Supplement to Schedule 5 hereto

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EXHIBIT F



## Litigation and Environmental Matters

None.

SCHEDULE 3.10

Taxes

None.







**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER PURSUANT TO  
RULE 13a-14(a) OR 15d-14(a) OF THE SECURITIES EXCHANGE ACT OF 1934,  
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, John Foley, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Peloton Interactive, 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: February 8, 2022

/s/ John Foley

John Foley  
Chief Executive Officer  
(Principal Executive Officer)

**CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER PURSUANT TO  
RULE 13a-14(a) OR 15d-14(a) OF THE SECURITIES EXCHANGE ACT OF 1934,  
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Jill Woodworth, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Peloton Interactive, 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: February 8, 2022

/s/ Jill Woodworth

Jill Woodworth  
Chief Financial Officer  
(Principal Financial Officer)



**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER PURSUANT TO  
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

I, John Foley, Chief Executive Officer of Peloton Interactive, Inc. (the "Company"), do hereby certify, pursuant to 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:

1. the Quarterly Report on Form 10-Q of the Company for the fiscal quarter ended December 31, 2021 (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
2. the information contained in the Report fairly presents, in all material respects, the financial condition, and results of operations of the Company.

Date: February 8, 2022

/s/ John Foley

John Foley  
Chief Executive Officer  
(Principal Executive Officer)

**CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER PURSUANT TO  
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

I, Jill Woodworth, Chief Financial Officer of Peloton Interactive, Inc. (the "Company"), do hereby certify, pursuant to 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:

1. the Quarterly Report on Form 10-Q of the Company for the fiscal quarter ended December 31, 2021 (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
2. the information contained in the Report fairly presents, in all material respects, the financial condition, and results of operations of the Company.

Date: February 8, 2022

/s/ Jill Woodworth

Jill Woodworth  
Chief Financial Officer  
(Principal Financial Officer)