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 June 30, 2023

OR

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

For the Transition Period From _____ to _____

Commission file number: 001-37792

NantHealth, Inc.

(Exact name of registrant as specified in its charter)

Delaware	**27-3019889**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**
760 W Fire Tower Rd, Suite 107 Winterville, North Carolina	**28590**
(Address of principal executive offices)	**(Zip Code)**

(855) 949-6268
(Registrant's telephone number, including area code)

3000 RDU Drive, Suite 200 Morrisville, North Carolina	**27560**
(Former name or former address, if changed since last report)	**(Zip Code)**

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value $0.0001 per share	NHIQ	*

* The registrant's common stock began quoting on the OTCQB Venture Market on May 30, 2023.

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

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

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

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

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

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

As of August 18, 2023, the registrant had 7,703,304 shares of common stock, par value $0.0001 per share, outstanding.

NantHealth, Inc.
Form 10-Q
As of and for the quarterly period ended June 30, 2023
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SPECIAL NOTE REGARDING FORWARD LOOKING STATEMENTS

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

- our estimates regarding expenses, future revenues, capital requirements and our need to raise substantial additional capital to fund our operations for at least the next 12 months as a going concern;
- the result of the evaluation of strategic alternatives, including restructuring or refinancing our debt, seeking additional debt or equity capital, reducing or delaying our business activities and strategic initiatives, or sell assets, other strategic transactions and/or other measures, and the terms, value and timing of any transaction resulting from that process;
- our ability to increase cash flow to support our operating activities and fund our obligations and working capital needs;
- the structural change in the market for healthcare in the United States, including uncertainty in the healthcare regulatory framework and regulatory developments in the United States and foreign countries;
- general economic conditions including supply chain disruptions, labor shortages, wage pressures, rising inflation and the ongoing military conflict between Russia and Ukraine;
- security threats, catastrophic events and other disruptions that affect our information technology and related systems;
- physician, payer and pharmaceutical business needs for clinical decision support, payer/provider collaboration and data analytics solutions and any perceived advantage of our solutions over those of our competitors, including the ability of our platforms to help physicians treat their patients;
- our ability to increase the commercial success and to accelerate commercial growth of our clinical decision support, payer/provider collaboration, network monitoring and management, and data analytics solutions and our other products and services;
- our plans or ability to develop, implement and commercialize a cloud/SaaS-based version of our network monitoring and management solutions;
- our ability to effectively implement, offer and manage delegated entity services to health plans in a compliant and timely manner in connection with our decision support solutions;
- our ability to effectively manage our growth, including the rate and degree of market acceptance of our solutions;
- our ability to offer new and innovative products and services, including new features and functionality for our existing products and services;
- our ability to attract new partners and customers and our ability to retain or renew contracts with partners and customers;
- the impact of cost-savings measures;
- current and future debt financings placing restrictions on our operating and financial flexibility;
- our inability to generate sufficient cash to service all of our indebtedness or our ability to access additional capital;
- our ability to maintain the quotation of our shares on the OTCQB® Venture Market;
- our ability to estimate the size of our target market;
- our ability to maintain and enhance our reputation and brand recognition;
- consolidation in the healthcare industry;
- competition which could limit our ability to maintain or expand market share within our industry;
- restrictions and penalties as a result of privacy and data protection laws;
- our use of “open source” software;
- our ability to use, disclose, de-identify or license data and to integrate third-party technologies;
- data loss or corruption due to failures or errors in our systems and service disruptions at our data centers;
- breaches or failures of our security measures;
- our reliance on Internet infrastructure, bandwidth providers, data center providers, other third parties and our own systems for providing services to our users;
- risks related to future acquisition opportunities;
- the requirements of being a public company;

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

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

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

PART I — FINANCIAL INFORMATION

Item 1. Financial Statements

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

	June 30, 2023	December 31, 2022
	(Unaudited)	
Assets		
Current assets		
Cash and cash equivalents	$ 6,174	$ 1,759
Accounts receivable, net	5,556	5,948
Related party receivables, net	476	476
Prepaid expenses and other current assets	2,783	4,402
Total current assets	14,989	12,585
Property, plant, and equipment, net	11,067	12,383
Goodwill	98,333	98,333
Intangible assets, net	27,931	30,110
Related party receivable, net of current	937	937
Operating lease right-of-use assets	3,350	4,285
Other assets	811	918
Total assets	$ 157,418	$ 159,551
Liabilities and Stockholders' Equity		
Current liabilities		
Accounts payable	$ 6,202	$ 10,408
Accrued and other current liabilities	24,891	20,006
Deferred revenue	2,720	2,724
Related party payables, net	3,876	1,933
Related party notes payable	9,519	—
Notes payable	12,006	560
Total current liabilities	59,214	35,631
Deferred revenue, net of current	543	1,050
Notes payable	—	—
Related party liabilities	50,004	45,908
Related party promissory note	123,666	123,666
Related party convertible note, net	62,368	62,335
Convertible notes, net	74,298	74,683
Deferred income taxes, net	1,218	1,206
Operating lease liabilities	2,767	4,054
Other liabilities	36,575	36,411
Total liabilities	410,653	384,944
Commitments and Contingencies (Note 11)		
Stockholders' deficit		
Common stock, $0.0001 par value per share, 750,000,000 shares authorized; 7,703,304 and 7,703,306 shares issued and outstanding at June 30, 2023 and December 31, 2022, respectively	12	12
Additional paid-in capital	897,601	895,897
Accumulated deficit	(1,150,402)	(1,120,676)
Accumulated other comprehensive loss	(446)	(626)
Total stockholders' deficit	(253,235)	(225,393)
Total liabilities and stockholders' deficit	$ 157,418	$ 159,551

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

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	**2022**	**2023**	**2022**
Revenue				
Software-as-a-service related	$ 16,688	$ 15,861	$ 33,129	$ 31,632
Maintenance	536	428	1,111	892
Professional services	31	208	65	346
Total software-related revenue	17,255	16,497	34,305	32,870
Other	1	1	2	1
Total net revenue	17,256	16,498	34,307	32,871
Cost of Revenue				
Software-as-a-service related	4,935	5,621	10,564	11,184
Maintenance	668	469	1,361	838
Professional services	—	9	—	9
Amortization of developed technologies	104	1,247	208	2,494
Total software-related cost of revenue	5,707	7,346	12,133	14,525
Other	—	1	—	1
Total cost of revenue	5,707	7,347	12,133	14,526
Gross Profit	11,549	9,151	22,174	18,345
Operating Expenses				
Selling, general and administrative	12,630	14,017	29,335	28,997
Research and development	6,663	5,861	11,827	11,576
Amortization of acquisition-related assets	985	986	1,971	1,971
Total operating expenses	20,278	20,864	43,133	42,544
Gain (loss) from operations	(8,729)	(11,713)	(20,959)	(24,199)
Interest expense, net	(4,799)	(3,470)	(8,952)	(6,920)
Other income (expense), net	(4,051)	2,642	164	2,648
Income (loss) before income taxes	(17,579)	(12,541)	(29,747)	(28,471)
Provision for (benefit from) income taxes	(94)	(29)	(20)	(9)
Net income (loss)	$ (17,485)	$ (12,512)	$ (29,727)	$ (28,462)
Basic and diluted net income (loss) per share:				
Total net income (loss) per share - common stock	$ (2.27)	$ (1.62)	$ (3.86)	$ (3.70)
Weighted average shares outstanding				
Basic and diluted - common stock	7,703,304	7,703,349	7,703,304	7,702,388

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

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Net income (loss)	$ (17,485)	$ (12,512)	$ (29,727)	$ (28,462)
Other comprehensive income (loss), net of tax				
Foreign currency translation adjustments	99	(278)	180	(374)
Total other comprehensive income (loss)	99	(278)	180	(374)
Comprehensive income (loss)	$ (17,386)	$ (12,790)	$ (29,547)	$ (28,836)

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

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

	Common Stock		Additional Paid-In Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	Total NantHealth Stockholders' Deficit
	Shares	Amount				
Balance at December 31, 2022	7,703,306	$ 12	$ 895,897	$ (1,120,676)	$ (626)	$ (225,393)
Stock-based compensation cost	—	—	908	—	—	908
Share repurchase	(2)	—	—	—	—	—
Other comprehensive income (loss)	—	—	—	—	81	81
Net income (loss)	—	—	—	(12,241)	—	(12,241)
Balance at March 31, 2023	7,703,304	$ 12	$ 896,805	$ (1,132,917)	$ (545)	$ (236,645)
Stock-based compensation cost	—	—	796	—	—	796
Shares issued in connection with employee stock plans, net of shares withheld for employee taxes	—	—	—	—	—	—
Other comprehensive income (loss)	—	—	—	—	99	99
Net income (loss)	—	—	—	(17,485)	—	(17,485)
Balance at June 30, 2023	7,703,304	$ 12	$ 897,601	$ (1,150,402)	$ (446)	$ (253,235)

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

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

	Common Stock		Additional Paid-In Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	Total NantHealth Stockholders' Deficit
	Shares	Amount				
Balance at December 31, 2021	7,700,349	$ 12	$ 891,105	$(1,052,897)	$ (212)	$ (161,992)
Stock-based compensation cost	—	—	1,417	—	—	1,417
Shares issued in connection with employee stock plans, net of shares withheld for employee taxes	3,000	—	24	—	—	24
Other comprehensive income (loss)	—	—	—	—	(96)	(96)
Net income (loss)	—	—	—	(15,950)	—	(15,950)
Balance at March 31, 2022	7,703,349	$ 12	$ 892,546	$(1,068,847)	$ (308)	$ (176,597)
Stock-based compensation expense	—	—	—	—	—	—
Shares issued in connection with employee stock plans, net of shares withheld for employee taxes	—	—	1,289	—	—	1,289
Other comprehensive income (loss)	—	—	—	—	(278)	(278)
Net income (loss)	—	—	—	(12,512)	—	(12,512)
Balance at June 30, 2022	7,703,349	$ 12	$ 893,835	$(1,081,359)	$ (586)	$ (188,098)

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

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

	Six Months Ended June 30,	
	2023	**2022**
Cash flows from operating activities:		
Net income (loss)	$ (29,727)	$ (28,462)
Adjustments to reconcile net income (loss) to net cash used in operating activities:		
Depreciation and amortization	5,946	7,896
Amortization of debt discounts and deferred financing offering cost	437	73
Change in fair value of Bookings Commitment	193	(2,500)
Stock-based compensation	1,640	2,653
Deferred income taxes, net	34	(214)
Provision for bad debt expense	44	20
Gain on partial lease termination	(2)	—
Impairment of ROU asset	—	208
Changes in operating assets and liabilities:		
Accounts receivable, net	345	741
Related party receivables, net	—	1
Prepaid expenses and other current assets	1,563	226
Accounts payable	(4,210)	1,638
Accrued and other current liabilities	4,495	(3,069)
Deferred revenue	(508)	(384)
Related party payables, net	7,098	1,157
Change in operating lease right-of-use assets and liabilities	(230)	(228)
Other assets and liabilities	(58)	50
Net cash provided by (used in) operating activities	(12,940)	(20,194)
Cash flows from investing activities:		
Purchases of property and equipment, including internal-use software	(2,073)	(2,861)
Net cash provided by (used in) investing activities	(2,073)	(2,861)
Cash flows from financing activities:		
Repayments of insurance promissory note and notes payable	(560)	(782)
Proceeds from related party notes	10,125	—
Proceeds from promissory notes	12,375	—
Proceeds from exercises of stock options	—	24
Payment of deferred financing costs, related party	(767)	—
Payment of deferred financing costs	(997)	—
Net cash provided by (used in) financing activities	20,176	(758)
Effect of exchange rate changes on cash, cash equivalents and restricted cash	(748)	(78)
Net increase (decrease) in cash, cash equivalents and restricted cash	4,415	(23,891)
Cash, cash equivalents and restricted cash, beginning of period [(1)]	3,559	31,402
Cash, cash equivalents and restricted cash, end of period [(1)]	$ 7,974	$ 7,511

[(1)] Cash and cash equivalents included restricted cash of $1,800 and $1,800 at June 30, 2023 and December 31, 2022, respectively.

Restricted cash is included in the financial statement line items noted below at June 30, 2023 and 2022:

	June 30,	
Financial statement line item	**2023**	**2022**
Other current assets	$ 1,180	$ 1,180
Other assets	620	620
Total restricted cash	1,800	1,800

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

Note 1. Description of Business and Basis of Presentation

Nature of Business

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

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

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

As of June 30, 2023, the Company conducted the majority of its operations in the United States, Canada, and the United Kingdom.

Nasdaq Delisting and OTCQB Quotation

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

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

On May 2, 2023, the Company received written notice from Nasdaq stating that it had not complied with the Public Float Requirement prior to the expiration of the Compliance Period (the “Delisting Notice”). The Delisting Notice indicated that the Company's common stock would be suspended from trading on Nasdaq on May 11, 2023 unless the Company requested a hearing pursuant to the procedures set forth in the Nasdaq Listing Rule 5800 Series, by requesting a hearing before the Nasdaq Hearings Panel (the “Panel”) by 4:00 p.m. Eastern Time on May 9, 2023. On May 8, 2023, the Company timely requested a hearing before the Panel, which temporarily stayed the suspension of trading and delisting of the Company’s common stock from Nasdaq. The hearing was scheduled for June 8, 2023.

After additional consideration, the Company determined that it was no longer in its best interest to pursue continued listing of its common stock on the Nasdaq Global Select Market and withdrew its request for a hearing on May 19, 2023. On May 22, 2023, the Company received notice from Nasdaq that its shares would be suspended at the open of business on May 24, 2023, and the Company’s common stock began trading on the OTC Pink under a new symbol “NHIQ” on May 24, 2023. On May 30, 2023, the Company’s common stock began trading on the OTCQB Venture Market (the “OTCQB”), and Nasdaq filed a Form 25 Notification of Delisting with the Securities Exchange Commission (“SEC”) on July 27, 2023.

Basis of Presentation and Principles of Consolidation

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

The Company has incurred significant losses and negative cash flows from operations. As of June 30, 2023, the Company had cash and cash equivalents of $6,174 and an accumulated deficit of $1,150,402. The Company had a net loss of $29,727 and used cash of $12,940 for operating activities for the six month period ended June 30, 2023. In accordance with Accounting Standards Update ("ASU") 2014-15, Presentation of Financial Statements—Going Concern (Subtopic 205-40): Disclosure of Uncertainties about an Entity's Ability to Continue as a Going Concern, management is required to perform a two-step analysis over the Company's ability to continue as a going concern. Management must first evaluate whether there are conditions and events that raise substantial doubt about the Company's ability to continue as a going concern for a period of 12 months from the date the financial statements are issued. If management concludes that substantial doubt is raised, management is also required to consider whether its plans alleviate that doubt.

As a result of continuing anticipated operating cash outflows the Company believes that substantial doubt exists regarding our ability to continue as a going concern without additional funding or financing. The Company's ability to continue as a going concern is dependent upon its success in obtaining additional equity or debt financing, attaining further operating efficiencies, reducing expenditures and ultimately, generating significant revenue growth. The Company is evaluating strategies to obtain the required additional funding for future operations. The Company may also seek to sell additional equity, through one or more follow-on public offerings or in separate financings, or sell additional debt securities, or obtain a credit facility. However, the Company may not be able to secure such financing in a timely manner or on favorable terms. We may also consider delaying our business activities and strategic initiatives, or selling off components of our business. Additionally, the Company continues to consider all strategic alternatives. The Company is undertaking a number of actions in order to improve its financial position and stabilize its results of operations including but not limited to, cost cutting, lowering capital expenditures, and implementing hiring freezes. To date, the Company's primary sources of capital have been the private placement of membership interests prior to its IPO, debt financing agreements, including promissory notes with Nant Capital and affiliates, convertible notes, the sale of its common stock, and proceeds from the sale of components of its business. The accompanying financial statements do not include any adjustments related to the recoverability and classification of recorded asset amounts or the amounts and classification of liabilities that might be necessary should we be unable to continue as a going concern

Note 2. Summary of Significant Accounting Policies

Use of Estimates

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

Segment Reporting

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

Upcoming Accounting Standard Pronouncements

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

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

Note 3. Revenue Recognition

Contract Balances

The Company records deferred revenue when cash payments are received, or payment is due, in advance of its fulfillment of performance obligations. During the three months ended June 30, 2023 and 2022 there were $730 and $795, recognized, respectively, that were included in the deferred revenue balance at the beginning of the period. During the six months ended June 30, 2023 and 2022, there were revenues of $1,538 and $1,522 recognized, respectively.

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

The Company recognizes an asset for the incremental costs to obtain a contract with a customer, where the stated contract term, with expected renewals, is longer than one year. The Company amortizes these assets over the expected period of benefit. These costs are generally employee sales commissions, with amortization of the balance recorded in selling, general and administrative expenses. The value of these assets was $357 at June 30, 2023 and $686 at December 31, 2022. During the three months ended June 30, 2023 and 2022 the Company recorded amortization of $121 and $93, respectively. During the six months ended June 30, 2023 and 2022, the Company recorded amortization of $240 and $235, respectively.

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

Performance Obligations

As of June 30, 2023, the Company has allocated a total transaction price of $3,501 to unfulfilled performance obligations that are expected to be fulfilled within 8 years. Excluded from this amount are contracts of less than one year and variable consideration that relates to the value of services provided.

Note 4. Accounts Receivable, net

Accounts receivable are included in the Consolidated Balance Sheets, net of the allowance for doubtful accounts. The allowance for doubtful accounts at June 30, 2023 and December 31, 2022 was $52 and $15, respectively.

(Dollars in thousands, except per share amounts)

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

Prepaid expenses and other current assets as of June 30, 2023 and December 31, 2022 consisted of the following:

	June 30, 2023	December 31, 2022
Prepaid expenses	$ 1,375	$ 1,574
Restricted cash	1,180	1,180
Securities litigation insurance receivable	—	1,250
Other current assets	228	398
Prepaid expenses and other current assets	$ 2,783	$ 4,402

Accrued and other current liabilities as of June 30, 2023 and December 31, 2022 consisted of the following:

	June 30, 2023	December 31, 2022
Payroll and related costs	$ 9,654	$ 7,949
Accrued liabilities	6,090	4,279
Bookings Commitment (see Note 9)	2,181	2,153
Interest payable	2,799	703
Operating lease liabilities	2,225	2,105
Securities litigation and cyber estimated liability	220	1,470
Other accrued and other current liabilities	1,722	1,347
Accrued and other current liabilities	$ 24,891	$ 20,006

Note 6. Property, Plant and Equipment, net

Property, plant and equipment, net as of June 30, 2023 and December 31, 2022 consisted of the following:

	June 30, 2023	December 31, 2022
Computer equipment and software	$ 7,539	$ 7,592
Furniture and equipment	1,038	1,054
Leasehold improvements	3,794	3,776
Property, plant, and equipment, excluding internal-use software, gross	12,371	12,422
Less: Accumulated depreciation and amortization	(11,835)	(11,073)
Property, plant and equipment, excluding internal-use software, net	536	1,349
Internal-use software	50,821	49,479
Construction in progress - Internal-use software	2,321	1,464
Less: Accumulated depreciation and amortization, internal-use software	(42,611)	(39,909)
Internal-use software, net	10,531	11,034
Property, plant and equipment, net	$ 11,067	$ 12,383

Depreciation expense was $1,790 and $3,530 for the three and six months ended June 30, 2023, of which $1,381 and $2,700, related to internal-use software costs, respectively. Depreciation expense was $1,559 and $3,196 for the three and six months ended June 30, 2022, respectively, of which $1,078 and $2,206 related to internal-use software costs.

Amounts capitalized to internal-use software related to continuing operations for the three and six months ended June 30, 2023 and 2022 were $1,212 and $1,713 and $2,521 and $2,919, respectively.

(Dollars in thousands, except per share amounts)

Note 7. Intangible Assets, net

The Company's definite-lived intangible assets as of June 30, 2023 and December 31, 2022 consisted of the following:

	June 30, 2023	December 31, 2022
Customer relationships	$ 53,000	$ 53,000
Developed technologies	34,500	34,500
Trade name	3,300	3,300
Installed user base	1,400	1,400
Intangible assets, gross	92,200	92,200
Less: Accumulated amortization	(64,269)	(62,090)
Intangible assets, net	$ 27,931	$ 30,110

Amortization of definite-lived intangible assets is provided over their estimated useful lives on a straight-line basis or the pattern in which economic benefits are consumed, if reliably determinable. The Company reviews its definite-lived intangible assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Amortization expense from continuing operations for the three and six months ended June 30, 2023 and 2022 was $1,089 and $2,233 and $2,179 and $4,465, respectively.

The estimated future amortization expense over the next five years and thereafter for the intangible assets that exist as of June 30, 2023 is as follows:

	Amounts
Remainder of 2023	$ 4,346
2024	4,283
2025	4,147
2026	3,467
2027	3,467
Thereafter	8,221
Total future intangible amortization expense	$ 27,931

Note 8. Debt

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

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

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

On April 27, 2021, the 2021 Convertible Notes were issued to the investors under an indenture (as amended and restated, the "2021 Indenture") dated April 27, 2021 entered into between the Company and U.S. Bank Trust Company, National Association (as successor in interest to U.S. Bank National Association) (the "Trustee").

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

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

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

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

As of June 30, 2023, the remaining life of the Convertible Notes is approximately 2.8 years.

Prior to May 17, 2023, the 2021 Convertible Notes were the Company’s general unsecured obligations and were initially guaranteed on a senior unsecured basis by NaviNet.

The Company may not redeem the 2021 Convertible Notes prior to April 20, 2024. The Company may redeem for cash all or any portion of the 2021 Convertible Notes, at its option, on or after April 20, 2024, if the last reported sale price of the common stock has been at least 130% of the conversion price then in effect for at least 20 trading days (whether or not consecutive) during any 30 consecutive trading day period (including the last trading day of such period) ending on and including, the trading day immediately preceding the date on which the Company provides notice of redemption at a redemption price equal to 100% of the principal amount of the 2021 Convertible Notes to be redeemed, plus any accrued and unpaid special interest up to, but excluding, the redemption date. No sinking fund is provided for the 2021 Convertible Notes, which means that the Company is not required to redeem or retire the 2021 Convertible Notes periodically. If the Company exercises this option to redeem the 2021 Convertible Notes owned by Highbridge and Highbridge is unable to convert such 2021 Convertible Notes as a result of the application of the beneficial ownership limitations, at the request of Highbridge, the Company shall convert such 2021 Convertible Notes into the number of shares of the Company’s Series 1 Preferred Stock equal to the number of shares that the 2021 Convertible Notes are convertible into pursuant to the Conversion Option (as defined in the 2021 Indenture) into common stock.

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

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

On May 17, 2023, pursuant to the terms of the Credit Agreement (as defined below), the Company amended and restated the 2021 Indenture to, among other things, cause the 2021 Convertible Notes to be (i) guaranteed by the Company’s subsidiaries that provided guarantees under the Credit Agreement, (ii) secured by second priority liens on the assets that secure borrowings made pursuant to the Credit Agreement, and (iii) governed by covenants that are substantially similar to the covenants in Articles VI and VII of the Credit Agreement. In connection with this post-closing covenant, the 2021 Indenture was also amended to add certain related events of default consistent with Article VIII of the Credit Agreement.

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

(Dollars in thousands, except per share amounts)

The following table summarizes how the issuance of the 2021 Convertible Notes is reflected in the Company's Consolidated Balance Sheets.

2021 Convertible Notes - Nant Capital	June 30, 2023	December 31, 2022
Gross proceeds	$ 62,500	$ 62,500
Unamortized debt discounts and deferred financing offering costs	(132)	(165)
Net carrying amount - related party convertible note	$ 62,368	$ 62,335
2021 Convertible Notes - Highbridge		
Gross proceeds	$ 75,000	$ 75,000
Unamortized debt discounts and deferred financing offering costs	(702)	(317)
Net carrying amount - convertible note	$ 74,298	$ 74,683

Promissory Notes

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

The holders have agreed to amend the Credit Agreement (a) to extend the Maturity Date to May 17, 2024 and (b) to defer cash interest payments that would otherwise have been payable pursuant to the Credit Agreement and the 2021 Notes until May 17, 2024.

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

On November 21, 2022, the Company entered into an unsecured subordinated promissory note (the “2022 Nant Capital Note”) with Nant Capital, whereby Nant Capital loaned $7,000 to the Company. Nant Capital is an entity affiliated with Dr. Patrick Soon-Shiong, our Chairman of the Board of Directors and Chief Executive Officer. The 2022 Nant Capital Note contains an interest rate equal to the Term Secured Overnight Financing Rate (“SOFR”) plus 8.5% per annum, compounded annually and a maturity date of October 31, 2026. The Nant Capital Note also contains semiannual interest payments due on April 15th and October 15th of each year. The payment of the 2022 Nant Capital Note shall be subordinated and subject in right of payment to the prior payment in full of the 2021 Convertible Notes, and, as disclosed above, is subordinated and subject in right of payment to the prior payment of the full Senior Secured Term Loan Facility so long as such Senior Secured Term Loan Facility is outstanding pursuant to the Subordination Agreement.

(Dollars in thousands, except per share amounts)

On October 3, 2022, the Company entered into an unsecured subordinated promissory note (the “Airstrip Note”) with Airstrip Technologies, Inc., a Delaware corporation (“Airstrip”), whereby AirStrip loaned $4,000 to the Company. AirStrip is an entity affiliated with Dr. Patrick Soon-Shiong, our Chairman of the Board of Directors (the "Board") and Chief Executive Officer. The Airstrip Note contains an 8.5% interest rate compounded annually and a maturity date of October 31, 2026. The payment of the Airstrip Note shall be subordinated and subject in right of payment to the prior payment in full of the 2021 Convertible Notes, and, as disclosed above, is subordinated and subject in right of payment to the prior payment of the full Senior Secured Term Loan Facility so long as such Senior Secured Term Loan Facility is outstanding pursuant to the Subordination Agreement.

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

The following tables summarize how the issuances of the Credit Agreement, Nant Capital Note, 2022, Nant Capital Note, Airstrip Note, and insurance promissory note are reflected in the Company's Consolidated Balance Sheets.

	June 30, 2023	December 31, 2022
Credit Agreement - Nant Capital		
Gross proceeds, related party promissory note	$ 10,125	$ —
Unamortized debt discounts and deferred financing offering costs	(606)	—
Total net carrying amount, related party notes payable	$ 9,519	$ —
Credit Agreement - Highbridge		
Gross proceeds, note payable	$ 12,375	$ —
Unamortized debt discounts and deferred financing offering costs	(369)	—
Total net carrying amount, Highbridge	$ 12,006	$ —
Insurance promissory note		560
Total net carrying amount, notes payable current	$ 12,006	$ 560

	June 30, 2023	December 31, 2022
Nant Capital Note		
Gross proceeds, related party promissory note	$ 112,666	$ 112,666
2022 Nant Capital Note		
Gross proceeds, related party promissory note	7,000	7,000
Airstrip Note		
Gross proceeds, related party promissory note	4,000	4,000
Total net carrying amount, related party promissory note	$ 123,666	$ 123,666

(Dollars in thousands, except per share amounts)

The accrued and unpaid interest on the Nant Capital Note and Airstrip Note was included as part of non-current related party liabilities in the Consolidated Balance Sheets.

	June 30, 2023	December 31, 2022
Nant Capital Note		
Accrued Interest	$ 49,753	$ 45,825
Airstrip Note		
Accrued Interest	251	83
Total related party liabilities	$ 50,004	$ 45,908

The accrued and unpaid interest on the 2021 Convertible Notes, Nant Capital Note, and Credit Agreement Note are included as part of related party payables in the Consolidated Balance Sheets.

	June 30, 2023	December 31, 2022
2021 Convertible Notes - Nant Capital		
Accrued interest	$ 1,992	$ 586
2022 Nant Capital Note		
Accrued interest	557	103
Credit Agreement - Nant Capital		
Accrued interest	331	—
Total accrued interest	$ 2,880	$ 689

The accrued and unpaid interest on the 2021 Convertible Notes and Credit Agreement Note are included as part of accrued and other current liabilities in the Consolidated Balance Sheets.

	June 30, 2023	December 31, 2022
2021 Convertible Notes - Highbridge		
Accrued interest	$ 2,394	$ 703
Credit Agreement - Highbridge		
Accrued interest	404	—
Total accrued interest	$ 2,798	$ 703

(Dollars in thousands, except per share amounts)

The following tables set forth the Company's interest expense recognized in the Company's Consolidated Statements of Operations for the three months ended June 30, 2023 and 2022 and for the six months ended June 30, 2023 and 2022. The amounts below are gross interest expense and do not reflect interest income which is also included in the interest expense, net amount in the Company's Consolidated Statements of Operations.

	Related-Party	Other	Total
Three Months Ended June 30, 2023			
Nant Capital Note			
Accrued coupon interest	$ 1,977	$ —	$ 1,977
Amortization of deferred financing offering costs	—	—	—
Total notes interest expense	$ 1,977	$ —	$ 1,977
2021 Convertible Notes			
Accrued coupon interest	$ 706	$ 847	$ 1,552
Amortization of deferred financing offering costs	17	20	37
Total notes interest expense	$ 722	$ 867	$ 1,589
Credit Agreement			
Accrued coupon interest	$ 331	$ 404	$ 734
Amortization of deferred financing offering costs	122	154	276
Total notes interest expense	$ 452	$ 558	$ 1,010
2022 Nant Capital Note			
Accrued coupon interest	$ 229	$ —	$ 229
Amortization of deferred financing offering costs	—	—	—
Total notes interest expense	$ 229	$ —	$ 229
Airstrip Note			
Accrued coupon interest	$ 85	$ —	$ 85
Amortization of deferred financing offering costs	—	—	—
Total notes interest expense	$ 85	$ —	$ 85
Total interest expense	$ 3,465	$ 1,425	$ 4,890

(Dollars in thousands, except per share amounts)

	Related-Party	Other	Total
Three Months Ended June 30, 2022			
Nant Capital Note			
Accrued coupon interest	$ 1,883	$ —	$ 1,883
Amortization of deferred financing offering costs	—	—	—
Total notes interest expense	$ 1,883	$ —	$ 1,883
2021 Convertible Notes			
Accrued coupon interest	$ 703	$ 844	$ 1,547
Amortization of deferred financing offering costs	17	19	36
Total notes interest expense	$ 720	$ 863	$ 1,583
Total interest expense	$ 2,603	$ 863	$ 3,466

(Dollars in thousands, except per share amounts)

Six Months Ended June 30, 2023	**Related-Party**	**Other**	**Total**
Nant Capital Note			
Accrued coupon interest	$ 3,928	$ —	$ 3,928
Amortization of deferred financing offering costs	—	—	—
Total notes interest expense	$ 3,928	$ —	$ 3,928
2021 Convertible Notes			
Accrued coupon interest	$ 1,409	$ 1,690	$ 3,099
Amortization of deferred financing offering costs	33	40	73
Total notes interest expense	$ 1,442	$ 1,730	$ 3,172
Credit Agreement			
Accrued coupon interest	$ 435	$ 532	$ 967
Amortization of deferred financing offering costs	161	203	364
Total notes interest expense	$ 596	$ 735	$ 1,330
2022 Nant Capital Note			
Accrued coupon interest	$ 454	$ —	$ 454
Amortization of deferred financing offering costs	—	—	—
Total notes interest expense	$ 454	$ —	$ 454
Airstrip Note			
Accrued coupon interest	$ 169	$ —	$ 169
Amortization of deferred financing offering costs	—	—	—
Total notes interest expense	$ 169	$ —	$ 169
Total interest expense	$ 6,588	$ 2,465	$ 9,053

Six Months Ended June 30, 2022	**Related-Party**	**Other**	**Total**
Nant Capital Note			
Accrued coupon interest	$ 3,741	$ —	$ 3,741
Amortization of deferred financing offering costs	—	—	—
Total notes interest expense	$ 3,741	$ —	$ 3,741
2021 Convertible Notes			
Accrued coupon interest	$ 1,406	$ 1,688	$ 3,094
Amortization of deferred financing offering costs	34	39	73
Total notes interest expense	$ 1,440	$ 1,727	$ 3,167
Total interest expense	$ 5,181	$ 1,727	$ 6,908

(Dollars in thousands, except per share amounts)

On March 3, 2017, NantHealth Labs (formerly Liquid Genomics, Inc.), executed a promissory note with NantWorks. The principal amount of the advance made by NantWorks totaled $250 as of June 30, 2023 and December 31, 2022. On June 30, 2017, the promissory note was amended and restated to provide that all outstanding principal and accrued and unpaid interest is due on demand. The note bears interest at a per annum rate of 5.0%, compounded annually. As of June 30, 2023 and December 31, 2022, the total interest outstanding on this note amounted to $91 and $82, respectively, and is included in related party payables, net.

Note 9. Fair Value Measurements

Liabilities measured at fair value on a recurring basis as of June 30, 2023 and December 31, 2022 consisted of the following:

	June 30, 2023			
	Total fair value	Quoted price in active markets for identical assets (Level 1)	Significant other observable inputs (Level 2)	Significant unobservable inputs (Level 3)
Liabilities				
Bookings Commitment	$ 37,056	$ —	$ —	$ 37,056

	December 31, 2022			
	Total fair value	Quoted price in active markets for identical assets (Level 1)	Significant other observable inputs (Level 2)	Significant unobservable inputs (Level 3)
Liabilities				
Bookings Commitment	$ 36,863	$ —	$ —	$ 36,863

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

Level 3 Inputs

Bookings Commitment

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

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

(Dollars in thousands, except per share amounts)

The Company values the Bookings Commitment, assumed upon the disposal of the provider/patient engagement solutions business, using a Monte Carlo Simulation model to calculate average payments due under the Bookings Commitment, based on management's estimate of its performance in securing bookings and resulting annual payments, discounted at the cost of debt based on a yield curve. The cost of debt used for discounting was between 13% and 14% at June 30, 2023 and between 12% and 13% at December 31, 2022. The change in fair value is recorded within other income (expense), net in the Company's Consolidated Statements of Operations.

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

Management believes the assumptions used on projected financial information is reasonable, but those assumptions require judgment and are forward looking in nature. However, actual results may differ materially from those projections. The fair value of the Bookings Commitment is most sensitive to management's estimate of the discount rate applied to present value the liability. If the discount rate applied was 2% lower at June 30, 2023, the fair value of the liability would increase by $3,044.

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

The following tables set forth a summary of changes in the fair value of Level 3 liabilities for the six months ended June 30, 2023:

	December 31, 2022	Transfers in (out) [1]	Change in fair value recognized in earnings	June 30, 2023
Liabilities				
Bookings Commitment	36,863	—	193	37,056
	$ 36,863	$ —	$ 193	$ 37,056

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

Fair Value of Convertible Notes held at amortized cost

As of June 30, 2023 and December 31, 2022, the fair value and carrying value of the Company's 2021 Convertible Notes were:

	Fair value	Carrying value	Face value
2021 Convertible Notes			
Balance as of June 30, 2023			
Related party	$ 47,469	$ 62,368	$ 62,500
Others	56,963	74,298	75,000
	$ 104,432	$ 136,666	$ 137,500
Balance as of December 31, 2022			
Related party	$ 48,125	$ 62,335	$ 62,500
Others	57,750	74,683	75,000
	$ 105,875	$ 137,018	$ 137,500

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

(Dollars in thousands, except per share amounts)

Note 10. Leases

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

Future minimum lease payments under the Company's operating leases at June 30, 2023 were:

Maturity Analysis	**Amounts**
Remainder of 2023	$ 1,335
2024	2,436
2025	573
2026	541
2027	427
2028	438
Thereafter	222
Total future minimum lease payments	5,972
Less: imputed interest	(980)
Total	$ 4,992
As reported in the Consolidated Balance Sheet	
Accrued and other current liabilities	$ 2,225
Operating lease liabilities	2,767
	$ 4,992

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

Note 11. Commitments and Contingencies

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

Related Party Promissory Note

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

Indenture Obligations Under Convertible Notes

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

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

(1) the Company defaults in any payment of interest on the 2021 Convertible Notes when due and payable and the default continues for a period of 30 days;

(2) the Company defaults in the payment of principal on the 2021 Convertible Notes when due and payable at the stated maturity, upon redemption, upon any required repurchase, upon declaration of acceleration or otherwise;

(3) failure by the Company to comply with its obligation to convert the 2021 Convertible Notes in accordance with the 2021 Indenture upon exercise of a holder’s conversion right and such failure continues for a period of five business days;

(4) failure by the Company to give a fundamental change notice or notice of a specified corporate transaction when due with respect to the 2021 Convertible Notes;

(5) failure by the Company to comply with its obligations under the 2021 Indenture with respect to consolidation, merger and sale of assets of the Company;

(6) failure by the Company to comply with any of its other agreements contained in the 2021 Convertible Notes or the 2021 Indenture, for a period 60 days after written notice from the Trustee or the holders of at least 25% in principal amount of the 2021 Convertible Notes then outstanding has been received;

(7) default by the Company or any of its significant subsidiaries (as defined in the 2021 Indenture) with respect to any mortgage, agreement or other instrument under which there may be outstanding, or by which there may be secured or evidenced, any indebtedness for money borrowed in excess of $17,500 (or its foreign currency equivalent) in the aggregate of the Company and/or any such subsidiary, whether such indebtedness now exists or shall hereafter be created (i) resulting in such indebtedness becoming or being declared due and payable or (ii) constituting a failure to pay the principal of any such indebtedness when due and payable at its stated maturity, upon required repurchase, upon declaration of acceleration or otherwise, and, in the case of clauses (i) and (ii), such default is not rescinded or annulled or such failure to pay or default shall not have been cured or waived, such acceleration is not rescinded or such indebtedness is not discharged, as the case may be, within 30 days after notice to the Company by the Trustee or to the Company and the Trustee by holders of at least 25% in aggregate principal amount of 2021 Convertible Notes then outstanding in accordance with the 2021 Indenture; or

(8) certain events of bankruptcy, insolvency, or reorganization of the Company or any of its significant subsidiaries (as defined in the 2021 Indenture).

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

On May 17, 2023, pursuant to the terms of the Credit Agreement (as defined below), the Company amended and restated the 2021 Indenture to, among other things, cause the 2021 Convertible Notes to be (i) guaranteed by the Company's subsidiaries that provided guarantees under the Credit Agreement, (ii) secured by second priority liens on the assets that secure borrowings made pursuant to the Credit Agreement and (iii) governed by covenants that are substantially similar to the covenants in Articles VI and VII of the Credit Agreement. In connection with this post-closing covenant, the 2021 Indenture was also amended to add certain related events of default consistent with Article VIII of the Credit Agreement.

Regulatory Matter

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

Legal Matters

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

Securities and Derivative Litigation

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

Insurance

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

The Company has reflected its right to insurance recoveries, limited to the extent of incurred or probable losses, as a receivable when such recoveries have been agreed to with the Company's third-party insurers and receipt is deemed probable. This includes instances where the Company's third-party insurers have agreed to pay, on the Company's behalf, certain legal defense costs and settlement amounts directly to applicable law firms and a settlement fund. The amount of such receivable related to the securities litigation recorded at June 30, 2023 and December 31, 2022 was $0 and $1,250, respectively, and is included in prepaid expenses and other current assets on the Consolidated Balance Sheets.

Cyber matters

In addition, we also purchase cyber liability insurance and crime insurance from third parties. In August 2022, the Company became aware of unauthorized activity in a customer's account. In January 2023, the Company became aware of unauthorized activity in another customer's account. Both of these incidents involved payments issued to fraudulent accounts, unauthorized access to certain protected health information, and caused us to incur costs to respond to the incident. Approximately $242 and $100 in legal and professional fees, respectively, have been incurred as part of our response and investigation into this incident and these costs are included in accrued and other current liabilities as of June 30, 2023 and December 31, 2022, respectively on the Consolidated Balance Sheets.

The Company cannot be certain of the magnitude of a particular outcome. The Company initially recorded an estimated liability of $220 for possible claims tied to this incident, which is included in accrued and other current liabilities on the Consolidated Balance Sheets at June 30, 2023 and December 31, 2022, but there is a reasonable possibility of losses in excess of that amount although the amount of such reasonably possible losses cannot be determined at this time. The Company maintains that it is not liable for losses associated with the incident and reserves all rights and claims to vigorously defend against allegations to the contrary.

Note 12. Income Taxes

The provision for income taxes for the three and six months ended June 30, 2023 was a benefit of $94 and $20. The provision for income taxes for the three and six months ended June 30, 2022 was a benefit of $29 and $9. The provision for income taxes for the three and six months ended June 30, 2023 and 2022 included an income tax provision for the consolidated group based on an estimated annual effective tax rate.

The effective tax rates for the three and six months ended June 30, 2023 was a benefit of 0.47% and 0.02%. The effective tax rates for the three and six months ended June 30, 2022 was a provision of 0.20% and 0.02%. The effective tax rates for the three and six months ended June 30, 2023 and 2022 differed from the U.S. federal statutory rates of 21% primarily as a result of a valuation allowance on the Company's deferred tax assets.

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

(Dollars in thousands, except per share amounts)

Note 13. Net Income (Loss) Per Share

The following table sets forth reconciliations of the numerators and denominators used to compute basic and diluted net loss per share of common stock attributable to NantHealth for the three and six months ended June 30, 2023 and 2022:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
	Common Stock	Common Stock	Common Stock	Common Stock
Net income (loss) per share numerator:				
Net income (loss) for basic and diluted net loss per share	$ (17,485)	$ (12,512)	$ (29,727)	$ (28,462)
Weighted-average shares for basic and diluted net loss per share	7,703,304	7,703,349	7,703,304	7,702,388
Basic and diluted net income (loss) per share:				
Total net income (loss) per share - common stock	$ (2.27)	$ (1.62)	$ (3.86)	$ (3.70)

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

	June 30,	
	2023	2022
Unvested and vested and unissued restricted stock units	7,980	7,980
Unexercised stock options	782,673	957,625
Convertible notes	2,382,190	2,382,190

Note 14. Related Party Transactions

NantWorks Shared Services Agreement

In October 2012, the Company entered into a shared services agreement with NantWorks that provides for ongoing services from NantWorks in areas such as public relations, information technology and cloud services, human resources and administration management, finance and risk management, environmental health and safety, sales and marketing services, facilities, procurement and travel, and corporate development and strategy (the " NantWorks Shared Services Agreement"). The Company is billed quarterly for such services at cost, without mark-up or profit for NantWorks, but including reasonable allocations of employee benefits, facilities and other direct or fairly allocated indirect costs that relate to the associates providing the services. NantHealth also bills NantWorks and affiliates for services such as information technology and cloud services, finance and risk management, and facilities management, on the same basis. During the three and six months ended June 30, 2023, the Company incurred $174 and $862 from selling, general and administrative expenses for services provided to the Company by NantWorks and affiliates, net of services provided to NantWorks and affiliates by the Company. During the three and six months ended June 30, 2022, the Company incurred $387 and $152 from selling, general and administrative expenses for services provided to the Company by NantWorks and affiliates, net of services provided to NantWorks and affiliates by the Company.

Airstrip Shared Services Agreement

In February 2023, the Company entered into a shared services agreement with Airstrip Technologies, Inc. ("Airstrip") that provides for ongoing services from the Company in areas such as information technology and cloud services, administration management, finance and risk management, environmental health and safety, and corporate development and strategy (the "Airstrip Shared Services Agreement"). During the three and six months ended June 30, 2023, the Company billed $671 and $992 for services provided to Airstrip. As of June 30, 2023 the Company has a related party receivable of $992 due from Airstrip.

Related Party Promissory Notes

See Notes 8 (Debt) and 11 (Commitments and Contingencies) for a description of our related party promissory notes.

Related Party Receivables and Payables

As of June 30, 2023 and December 31, 2022, the Company had related party receivables of $1,413 and $1,413, respectively, primarily consisting of a receivable from Ziosoft KK of $1,041 and $1,041, respectively, which was related to the sale of Qi Imaging.

Amended Reseller Agreement

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

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

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

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

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

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

As of June 30, 2023 and December 31, 2022, the Company had no outstanding related party payables under the Second Amended Reseller Agreement. During the three and six months ended June 30, 2023 and June 30, 2022, no direct costs were recorded as cost of revenue related to the Second Amended Reseller Agreement.

Related Party Share-based Payments

On December 21, 2020, ImmunityBio, Inc. (formerly known as NantKwest, Inc.) ("ImmunityBio"), NantCell, and Nectarine Merger Sub, Inc., a wholly owned subsidiary of ImmunityBio, entered into an Agreement and Plan of Merger, which was completed on March 9, 2021 (the "Merger"). The newly merged entity is majority owned by entities controlled by Dr. Soon-Shiong, Chairman and Chief Executive Officer of the Company. On March 4, 2021, prior to the Merger, NantCell awarded restricted stock units to its employees, including certain NantHealth employees working on behalf of ImmunityBio, which vest over defined service periods, subject to completion of a liquidity event. At the effective time of the Merger on March 9, 2021, the performance condition was met and each share of common stock of NantCell that was issued and outstanding immediately prior to the Merger was automatically converted into the right to receive as consideration newly issued common shares of ImmunityBio. The Company accounts for these awards as compensation cost at its estimated fair value over the vesting period with a corresponding credit to equity to reflect a capital contribution from, or on behalf of, the common controlling entity, to the extent that those services provided by its employees associated with these awards benefit NantHealth. The fair value is dependent on management's estimate of the benefit to NantHealth. The higher the estimate of benefit to the Company, the higher the fair value of compensation cost. The compensation cost attributed to NantHealth associated with these awards was an expense of $9 and $17 for the three and six months ended June 30, 2023.

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

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

Overview

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

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

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

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

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

Since our inception, we have devoted substantially all our resources to the development and commercialization of NantHealth solutions. To complement our internal growth and expertise, we have made several strategic acquisitions of companies, products and technologies. We have incurred significant losses since our inception and, as of June 30, 2023, our accumulated deficit was approximately $1.2 billion. We expect to continue to incur operating losses over the near term as we expand our commercial operations and invest further in NantHealth solutions.

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

Senior Secured Term Loan Facility

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

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

The holders have agreed to amend the Credit Agreement to (a) to extend the Maturity Date to May 17, 2024 and (b) to defer cash interest payments that would otherwise have been payable pursuant to the Credit Agreement and the 2021 Notes until May 17, 2024.

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

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

2022 Nant Capital Promissory Note

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

Airstrip Promissory Note

On October 3, 2022, we entered into an unsecured subordinated promissory note (the "Airstrip Note") with Airstrip Technologies, Inc., a Delaware corporation ("Airstrip"), whereby AirStrip loaned $4.0 million to us. The Airstrip Note contains an 8.5% interest rate compounded annually and a maturity date of October 31, 2026. The payment of the Airstrip Note shall be subordinated and subject in right of payment to the prior payment in full of the 2021 Convertible Notes.

2021 Convertible Notes

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

On May 17, 2023, pursuant to the terms of the Credit Agreement (as defined below), the Company amended and restated the 2021 Indenture to, among other things, cause the 2021 Convertible Notes to be (i) guaranteed by the Company's subsidiaries that provided guarantees under the Credit Agreement, (ii) secured by second priority liens on the assets that secure borrowings made pursuant to the Credit Agreement and (iii) governed by covenants that are substantially similar to the covenants in Articles VI and VII of the Credit Agreement. In connection with this post-closing covenant, the 2021 Indenture was also amended to add certain related events of default consistent with Article VIII of the Credit Agreement.

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

Nasdaq Delisting and OTCQB Quotation

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

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

On May 2, 2023, we received written notice from Nasdaq stating that we have not complied with the Public Float Requirement prior to the expiration of the Compliance Period (the "Delisting Notice"). The Delisting Notice indicated that our common stock would be suspended from trading on Nasdaq on May 11, 2023 unless we requested a hearing pursuant to the procedures set forth in the Nasdaq Listing Rule 5800 Series, by requesting a hearing before the Nasdaq Hearings Panel (the "Panel") by 4:00 p.m. Eastern Time on May 9, 2023. On May 8, 2023, we timely requested a hearing before the Panel, which temporarily stayed the suspension of trading and delisting of our common stock from Nasdaq. The hearing was scheduled for June 8, 2023.

After additional consideration, we determined that it was no longer in our best interest to pursue continued listing of its common stock on the Nasdaq Global Select Market and withdrew its request for a hearing on May 19, 2023. On May 22, 2023, the Company received notice from Nasdaq that its shares would be suspended at the open of business on May 24, 2023, and the Company's common stock began trading on the OTC Pink under a new symbol "NHIQ" on May 24, 2023. On May 30, 2023, the Company's common stock began trading on the OTCQB Venture Market (the "OTCQB"), and Nasdaq filed a Form 25 Notification of Delisting with the Securities Exchange Commission ("SEC") on July 27, 2023.

2017 Asset Purchase Agreement with Allscripts

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

Allscripts conveyed to us 1,000,000 shares of our common stock at par value of $0.0001 per share that were previously owned by Allscripts as consideration for the transaction. We retired the shares of stock. Allscripts also paid $1.7 million of cash consideration to us as an estimated working capital payment, and we recorded a receivable of $1.0 million related to final working capital adjustments. We are also responsible for paying Allscripts for fulfilling certain customer service obligations of the business post-closing.

Concurrent with the closing and as contemplated by the APA, we and Allscripts modified the amended and restated mutual license and reseller agreement dated June 26, 2015, which was further amended on December 30, 2017, such that, among other things, we committed to deliver a minimum of $95.0 million of total bookings over a ten-year period ("Bookings Commitment") from referral transactions and sales of certain Allscripts products under this agreement (see Note 9 of the Consolidated Financial Statements). We also agreed that Allscripts shall receive at least $0.5 million per year in payments from bookings (the "Annual Minimum Commitment"). If the total payments received by Allscripts from bookings during such period are less than the Annual Minimum Commitment, we shall pay to Allscripts the difference between the Annual Minimum Commitment and the total amount received by Allscripts from bookings during such period. In the event of a Bookings Commitment shortfall at the end of the ten-year period, we may be obligated to pay 70% of the shortfall, subject to certain credits. We will earn 30% commission from Allscripts on each software referral transaction that results in a booking with Allscripts. We account for the Bookings Commitment at its estimated fair value over the life of the agreement. The total estimated liability was $40.5 million and $38.6 million as of June 30, 2023 and December 31, 2022, respectively.

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

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

The following table reconciles Net loss from continuing operations attributable to NantHealth to Net loss from continuing operations attributable to NantHealth - Non-GAAP for the three and six months ended June 30, 2023 and 2022 (Unaudited).

(Dollars in thousands, except per share amounts)	**Three Months Ended June 30,**		**Six Months Ended June 30,**	
	2023	**2022**	**2023**	**2022**
Net income (loss)	$ (17,485)	$ (12,512)	$ (29,727)	$ (28,462)
Adjustments to GAAP net income (loss):				
Stock-based compensation expense	764	1,263	1,640	2,653
Impairment of ROU asset	—	208	—	208
Change in fair value of Bookings Commitment	4,430	(2,594)	597	(2,500)
Gain on partial lease termination	—	—	(2)	—
Noncash interest expense related to convertible notes	312	36	437	73
Intangible amortization expense	1,089	2,233	2,179	4,465
Litigation settlement	—	—	(400)	—
Tax provision (benefit) resulting from certain noncash tax items	(31)	(4)	(31)	(44)
Total adjustments to GAAP net income (loss)	6,564	1,142	4,420	4,855
Net income (loss) - Non-GAAP	$ (10,921)	$ (11,370)	$ (25,307)	$ (23,607)
Weighted average basis common shares outstanding	7,703,304	7,703,349	7,703,304	7,702,388
Net income (loss) per common share - Non-GAAP	**$ (1.42)**	**$ (1.48)**	**$ (3.29)**	**$ (3.06)**

The following table reconciles Net loss per common share from continuing operations attributable to NantHealth to Net loss per common share from continuing operations attributable to NantHealth - Non-GAAP for the three and six months ended June 30, 2023 and 2022 (Unaudited):

(Dollars in thousands, except per share amounts)	**Three Months Ended June 30,**		**Six Months Ended June 30,**	
	2023	**2022**	**2023**	**2022**
Net income (loss) per common share attributable to NantHealth	$ (2.27)	$ (1.62)	$ (3.86)	$ (3.70)
Adjustments to GAAP net income (loss) per common share:				
Stock-based compensation expense	0.1	0.16	0.21	0.35
Impairment of ROU asset	—	0.03	—	0.03
Change in fair value of Bookings Commitment	0.58	(0.35)	0.07	(0.32)
Gain on partial lease termination	—	—	—	—
Noncash interest expense related to convertible notes	0.04	—	0.06	0.01
Intangible amortization expense	0.14	0.29	0.28	0.58
Litigation settlement	—	—	(0.05)	—
Tax provision (benefit) resulting from certain noncash tax items	—	—	—	(0.01)
Total adjustments to GAAP net income (loss) per common share	0.86	0.13	0.57	0.64
Net income (loss) per common share - Non-GAAP	**$ (1.41)**	**$ (1.49)**	**$ (3.29)**	**$ (3.06)**

Components of Our Results of Operations

Revenue

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

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

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

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

Cost of Revenue

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

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

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

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

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

Operating Expenses

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

Selling, general and administrative

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

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

Research and development

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

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

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

Amortization of acquisition related assets

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

Interest Expense, Net

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

Other Income (Expense), Net

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

Provision for (Benefit from) Income Taxes

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

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

Results of Operations

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

(Dollars in thousands)	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Revenue				
Software-as-a-service related	$ 16,688	$ 15,861	$ 33,129	$ 31,632
Software and hardware related	—	—	—	—
Maintenance	536	428	1,111	892
Professional services	31	208	65	346
Total software-related revenue	17,255	16,497	34,305	32,870
Other	1	1	2	1
Total net revenue	17,256	16,498	34,307	32,871
Cost of Revenue				
Software-as-a-service related	4,935	5,621	10,564	11,184
Maintenance	668	469	1,361	838
Professional services	—	9	—	9
Amortization of developed technologies	104	1,247	208	2,494
Total software-related cost of revenue	5,707	7,346	12,133	14,525
Other	—	1	—	1
Total cost of revenue	5,707	7,347	12,133	14,526
Gross Profit	11,549	9,151	22,174	18,345
Operating Expenses				
Selling, general and administrative	12,630	14,017	29,335	28,997
Research and development	6,663	5,861	11,827	11,576
Amortization of acquisition-related assets	985	986	1,971	1,971
Total operating expenses	20,278	20,864	43,133	42,544
Gain (loss) from operations	(8,729)	(11,713)	(20,959)	(24,199)
Interest expense, net	(4,799)	(3,470)	(8,952)	(6,920)
Other income (expense), net	(4,051)	2,642	164	2,648
Income (loss) from related party equity method investment	—	—	—	—
Income (loss) before income taxes	(17,579)	(12,541)	(29,747)	(28,471)
Provision for (benefit from) income taxes	(94)	(29)	(20)	(9)
Net income (loss)	$ (17,485)	$ (12,512)	$ (29,727)	$ (28,462)
Basic and diluted net income (loss) per share:				
Total net (loss) income per share - common stock	$ (2.27)	$ (1.62)	$ (3.86)	$ (3.70)
Weighted average shares outstanding				
Basic and diluted - common stock	7,703,304	7,703,349	7,703,304	7,702,388

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Revenue				
Software-as-a-service related	96.7 %	96.1 %	96.6 %	96.2 %
Maintenance	3.1 %	2.6 %	3.2 %	2.7 %
Professional services	0.2 %	1.3 %	1.0 %	1.1 %
Total net revenue	100.0 %	100.0 %	100.0 %	100.0 %
Cost of Revenue				
Software-as-a-service related	28.6 %	34.1 %	30.8 %	34.0 %
Maintenance	3.9 %	2.8 %	4.0 %	2.5 %
Professional services	— %	— %	— %	0.1 %
Amortization of developed technologies	0.6 %	7.6 %	0.6 %	7.6 %
Total software-related cost of revenue	33.1 %	44.5 %	35.4 %	44.2 %
Gross Profit	66.9 %	55.5 %	64.6 %	55.8 %
Operating Expenses				
Selling, general and administrative	73.2 %	85.0 %	85.5 %	88.2 %
Research and development	38.6 %	35.5 %	34.5 %	35.2 %
Amortization of acquisition-related assets	5.7 %	6.0 %	5.7 %	6.0 %
Total operating expenses	117.5 %	126.5 %	125.7 %	129.4 %
Gain (loss) from operations	(50.6)%	(71.0)%	(61.1)%	(73.6)%
Interest expense, net	(27.8)%	(21.0)%	(26.1)%	(21.1)%
Other income (expense), net	(23.5)%	16.0 %	0.5 %	8.1 %
Income (loss) before income taxes	(101.9)%	(76.0)%	(86.7)%	(86.6)%
Provision for (benefit from) income taxes	(0.5)%	(0.2)%	(0.1)%	— %
Net income (loss)	(101.3)%	(75.8)%	(86.6)%	(86.6)%

Comparison of the Three and Six Months Ended June 30, 2023 and 2022 (Unaudited)

Revenue

(Dollars in thousands)	Three Months Ended June 30,		Six Months Ended June 30,		Period-To-Period Change			
					Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022	Amount	Percent	Amount	Percent
Software-as-a-service related	$ 16,688	$ 15,861	$ 33,129	$ 31,632	$ 827	5.2 %	$ 1,497	4.7 %
Maintenance	536	428	1,111	892	108	25.2 %	219	24.6 %
Professional services	31	208	65	346	(177)	(85.1)%	(281)	(81.2)%
Total software-related revenue	17,255	16,497	34,305	32,870	758	4.6 %	1,435	4.4 %
Other	1	1	2	1	—	— %	1	100.0 %
Total net revenue	$ 17,256	$ 16,498	$ 34,307	$ 32,871	$ 758	4.6 %	$ 1,436	4.4 %

Comparison of the three month periods ended June 30, 2023 and 2022 (Unaudited)

Total revenue increased $0.8 million, or 4.6%, for the three months ended June 30, 2023, compared to the prior year period, due to increased SaaS revenue of $0.8 million from SaaS Payor go-lives. These increases were partially offset by a decrease in OpenNMS professional services revenue.

One of our NaviNet customers representing approximately 9% of our total revenue for the year ended December 31, 2022, and approximately 9% of our total revenue for the six months ended June 30, 2023, does not plan to renew its contract. The contract expires in July 2024. In addition, another of our NaviNet customers representing approximately 13% of our total revenue for the year ended December 31, 2022, and approximately 15% of our total revenue for the six months ended June 30, 2023, has announced a transition from NaviNet to a competitor, which we expect will result in a reduction of the level of service this customer has historically generated with us. However, we continue to engage in discussions with both customers regarding supplemental services and business opportunities that may extend beyond the service termination date or transition, respectively. Customer churn is a natural part of our business and, while there is no guarantee that we will be able to offset the loss of these customers in the short term, we continue to develop new product enhancements and offerings to help drive customer acquisition and expansion opportunities to replace this lost revenue in the long term.

Comparison of the six month periods ended June 30, 2023 and 2022 (Unaudited)

Total revenue increased $1.4 million or 4.4%, for the six months ended June 30, 2023, compared to the prior year period, due to increased SaaS revenue of $1.5 million related to increased revenue from SaaS Payor go-lives. The increase was partially offset by a decrease of OpenNMS professional services revenue.

Cost of Revenue

(Dollars in thousands)	Three Months Ended June 30,		Six Months Ended June 30,		Period-To-Period Change			
					Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022	Amount	Percent	Amount	Percent
Software-as-a-service related	$ 4,935	$ 5,621	$ 10,564	$ 11,184	$ (686)	(12.2)%	$ (620)	(5.5)%
Software and hardware related	—	—	—	—	—	— %	—	— %
Maintenance	668	469	1,361	838	199	42.4 %	523	62.4 %
Amortization of developed technologies	104	1,247	208	2,494	(1,143)	(91.7)%	(2,286)	(91.7)%
Total software-related cost of revenue	5,707	7,346	12,133	14,525	(1,639)	(22.3)%	(2,392)	(16.5)%
Other	—	1	—	1	(1)	(100.0)%	(1)	(100.0)%
Total cost of revenue	$ 5,707	$ 7,347	$ 12,133	$ 14,526	$ (1,640)	(22.3)%	$ (2,393)	(16.5)%

Comparison of the three month periods ended June 30, 2023 and 2022 (Unaudited)

Total cost of revenue decreased $1.6 million, or 22.3%, for the three months ended June 30, 2023, compared to the prior year period. The primary cause of the decrease was a decline in the amortization of developed technologies due to some assets being fully amortized and further cost reductions.

Comparison of the six month periods ended June 30, 2023 and 2022 (Unaudited)

Total cost of revenue decreased $2.4 million, or 16.5%, for the six months ended June 30, 2023, compared to the prior year period. The primary cause of the decrease was a decline in the amortization of developed technologies due to some assets being fully amortized.

Selling, General and Administrative

(Dollars in thousands)	Three Months Ended June 30,		Six Months Ended June 30,		Period-To-Period Change			
					Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022	Amount	Percent	Amount	Percent
Selling, general and administrative	$ 12,630	$ 14,017	$ 29,335	$ 28,997	$ (1,387)	(9.9)%	$ 338	1.2 %

Comparison of the three month periods ended June 30, 2023 and 2022 (Unaudited)

Selling, general and administrative expenses decreased $1.4 million, or 9.9% for the three months ended June 30, 2023, compared to the prior year period. The decrease was driven by $1.1 million in lower vendor software costs due to overall cost reductions. The remaining decrease totaling $0.3 million in aggregate came from other expense reductions.

Comparison of the six month periods ended June 30, 2023 and 2022 (Unaudited)

Selling, general and administrative expenses increased $0.3 million, or 1.2% for the six months ended June 30, 2023, compared to the prior year period. The increase was driven by higher legal and outside services costs totaling $1.8 million, which was mostly offset by lower vendor software costs due to overall cost reductions totaling $1.5 million.

Research and Development

(Dollars in thousands)	Three Months Ended June 30,		Six Months Ended June 30,		Period-To-Period Change			
					Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022	Amount	Percent	Amount	Percent
Research and development	$ 6,663	$ 5,861	$ 11,827	$ 11,576	$ 802	13.7 %	$ 251	2.2 %

Comparison of the three month periods ended June 30, 2023 and 2022 (Unaudited)

Research and development expenses increased $0.8 million, or 13.7%, for the three months ended June 30, 2023, compared to the prior year period. The increase was primarily driven by lower labor capitalization of $0.8 million and higher vendor software costs and outside services totaling $0.2 million. This was partially offset by lower overall headcount supporting R&D initiatives at the Company totaling $0.2 million.

Comparison of the six month periods ended June 30, 2023 and 2022 (Unaudited)

Research and development expenses increased $0.3 million, or 2.2%, for the six months ended June 30, 2023, compared to the prior year period. The increase was primarily driven by lower labor capitalization of $0.6 million and higher vendor software costs and outside services totaling $0.7 million. This was partially offset by lower overall headcount supporting R&D initiatives at the Company totaling $0.1 million.

Amortization of Acquisition-related Assets

(Dollars in thousands)	Three Months Ended June 30,		Six Months Ended June 30,		Period-To-Period Change			
					Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022	Amount	Percent	Amount	Percent
Amortization of acquisition-related assets	$ 985	$ 986	$ 1,971	$ 1,971	$ (1)	(0.1)%	$ —	— %

Comparison of the three month periods ended June 30, 2023 and 2022 (Unaudited)

Amortization of acquisition-related assets was flat at $1.0 million for the three months ended June 30, 2023 compared to $1.0 million for the three months ended June 30, 2022.

Comparison of the six month periods ended June 30, 2023 and 2022 (Unaudited)

Amortization of acquisition-related assets was flat at $2.0 million for the six months ended June 30, 2023 compared to $2.0 million for the year ago period.

Interest Expense, net

(Dollars in thousands)	Three Months Ended June 30,		Six Months Ended June 30,		Period-To-Period Change			
					Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022	Amount	Percent	Amount	Percent
Interest expense, net	$ 4,799	$ 3,470	$ 8,952	$ 6,920	$ 1,329	38.3 %	$ 2,032	29.4 %

Comparison of the three month periods ended June 30, 2023 and 2022 (Unaudited)

Interest expense, net increased by $1.3 million, or 38.3%, for the three months ended June 30, 2023, compared to the prior year period. The increase was primarily due to the interest on the new notes entered into during the fourth quarter of 2022 and the first quarter of 2023.

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

Comparison of the six month periods ended June 30, 2023 and 2022 (Unaudited)

Interest expense, net increased $2.0 million or 29.4% for the six months ended June 30, 2023 compared to the prior year period. The increase was primarily due to the interest on the new notes entered into during the fourth quarter of 2022 and the first quarter of 2023.

See the section entitled "Liquidity and Capital Resources" below and refer to Note 8 to the accompanying Consolidated Financial Statements for further discussion of our 2021 Convertible Notes and the new subordinated note

Other Income (Expense), net

(Dollars in thousands)	Three Months Ended June 30,		Six Months Ended June 30,		Period-To-Period Change			
					Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022	Amount	Percent	Amount	Percent
Other income (expense), net	$ (4,051)	$ 2,642	$ 164	$ 2,648	$ (6,693)	(253.3)%	$ (2,484)	(93.8)%

Comparison of the three month periods ended June 30, 2023 and 2022 (Unaudited)

Other income (expense), net increased $6.7 million, or 253.3% for the three months ended June 30, 2023 compared to the prior year period was primarily driven by the change in the fair value of the Bookings Commitment which resulted in a loss of $4.0 million in the current period.

Comparison of the six month periods ended June 30, 2023 and 2022 (Unaudited)

Other income (expense), net increased $2.5 million, or 93.8%, for the six months ended June 30, 2023 compared to the prior year period due to a loss of $0.2 million driven by the change in fair value of the Bookings Commitment but was partially offset by a $0.4 million gain due to a litigation settlement.

Liquidity and Capital Resources

Sources of Liquidity

As of June 30, 2023, we had cash and cash equivalents of $6.2 million, compared to $1.8 million as of December 31, 2022, of which $0.2 million and $0.8 million, respectively, related to foreign subsidiaries.

As a result of continuing anticipated operating cash outflows we believe that substantial doubt exists regarding our ability to continue as a going concern without additional funding or financing. We may also seek to sell additional equity, through one or more follow-on public offerings or in separate financings, or sell additional debt securities, or obtain a credit facility. However, we may not be able to secure such financing in a timely manner or on favorable terms. We may also consider delaying our business activities and strategic initiatives, or selling off components of our business. Additionally, we continue to consider all strategic alternatives. We are undertaking a number of actions in order to improve our financial position and stabilize our results of operations including but not limited to, cost cutting, lowering capital expenditures, and implementing hiring freezes.

Related Party Notes

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

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

As of June 30, 2023, the Company was in compliance with all covenants. See Note 8 for additional information on these and other Notes.

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

Open Market Sale Agreement

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

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

Capital Expenditures

There have been no material changes during the six months ended June 30, 2023 to our capital expenditure obligations disclosed in our "Management's Discussion and Analysis of Financial Condition and Results of Operations" included in our Annual Report on Form 10-K for the year ended December 31, 2022. Our principal material cash requirements consist of obligations under our outstanding debt obligations related to the Senior Secured Term Facility, Nant Capital Note, Airstrip Note, 2021 Convertible Notes, Bookings Commitment, and noncancellable leases for our office space. Refer to Note 8, Note 9, Note 10, and Note 14 to the accompanying Consolidated Financial Statements. As a result of continuing anticipated operating cash outflows we believe that substantial doubt exists regarding our ability to continue as a going concern without additional funding or financing, and our ability to continue as a going concern is dependent upon our ability to obtain additional equity or debt financing, attain further operating efficiencies, reduce expenditures and ultimately, generate significant revenue growth. Our plans to raise additional capital, including our ability to consummate any transaction as a result of our strategic review, or take other actions to address the doubt regarding our ability to continue as a going concern, may not be successful. There can be no assurance that the Company would be able to obtain additional liquidity when needed or under acceptable terms, if at all. Refer to "Risk Factors – Our recurring losses and negative cash flow from operations, as well as current cash and liquidity projections, raise substantial doubt about our ability to continue as a going concern."

Cash Flows

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

(Dollars in thousands)	**Six Months Ended June 30,**	
	2023	**2022**
Cash (used in) provided by:		
Operating activities	$ (12,940)	$ (20,194)
Investing activities	(2,073)	(2,861)
Financing activities	20,176	(758)
Effect of exchange rate changes on cash, cash equivalents and restricted cash	(748)	(78)
Net decrease in cash, cash equivalents and restricted cash	$ 4,415	$ (23,891)

Our net cash flows used in operating activities decreased $7.3 million during the six months ended June 30, 2023 compared to the prior year period primarily driven by an increase in working capital of $8.4 million from the six months ended June 30, 2023 compared to the six months ended June 30, 2022, partially offset by increased net losses of $1.3 million and an increase in fair value of our Bookings Commitment of $0.2 million.

Our net cash flows used in investing activities saw a decrease of $0.8 million compared to the prior year period primarily driven by lower investment in internally developed software and purchases of property and equipment for the six months ended June 30, 2023 compared to the six months ended June 30, 2022.

Our net cash flows from financing activities saw an increase of $20.9 million compared to the prior year period primarily due to related party note and promissory note proceeds, for the six months ended June 30, 2023 compared to the six months ended June 30, 2022.

See the accompanying Consolidated Statements of Cash Flows for additional details around sources and uses of cash.

New Accounting Pronouncements

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

Related Party Transactions

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

Critical Accounting Policies and Significant Judgments and Estimates

This Management's Discussion and Analysis of our Results of Operations and Liquidity and Capital Resources is based on our Consolidated Financial Statements, which we have prepared in accordance with U.S. GAAP. The preparation of our financial statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of our financial statements, as well as the reported revenues and expenses during the reported periods. We evaluate these estimates and judgments on an ongoing basis. We base our estimates on historical experience and on various other factors that we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions. We believe the critical accounting policies and estimates discussed in Note 2 to the Consolidated Financial Statements of our Annual Report on 10-K that was filed with the SEC on April 14, 2023, reflect our more significant judgments and estimates used in the preparation of the Consolidated Financial Statements. Refer to Note 2 to the accompanying Consolidated Financial Statements for a discussion of any significant changes to our critical accounting policies and estimates as disclosed in our 10-K.

Smaller Reporting Company Status

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

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

Item 3. Quantitative and Qualitative Disclosures About Market Risk

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

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

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

Changes in Internal Control Over Financial Reporting

There were no changes to our internal control over financial reporting identified in connection with the evaluation required by Rule 13a-15(d) and 15d-15(d) of the Exchange Act that occurred during the quarter ended June 30, 2023 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Inherent Limitations in the Effectiveness of Controls

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

PART II—OTHER INFORMATION

Item 1. Legal Proceedings

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

Item 1A. Risk Factors

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

Risk Factor Summary

Risks related to our business approach

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

Risks related to our financial condition and capital requirements

- Our recurring losses and negative cash flow from operations, as well as current cash and liquidity projections, raise substantial doubt about our ability to continue as a going concern.
- Our business would be adversely affected if we are unable to service our debt obligations.
- Our degree of leverage could adversely affect our ability to raise additional capital to fund our operations, limit our ability to react to changes in the economy or our industry and expose us to interest rate risk on our variable rate debt.
- We may need to raise additional capital to fund our existing operations, develop our solutions, commercialize new products and expand our operations.
- We have a history of significant losses, which we expect to continue, and we may never achieve or sustain profitability in the future.

Risks related to our capital structure

- The Credit Agreement governing our Senior Secured Term Loan Facility restricts our current and future operations, particularly our ability to respond to changes or to take certain actions.
- Servicing our debt requires a significant amount of cash, and we may not have sufficient cash flow from our business to pay our substantial debt or related interest.
- The convertible note holders will not be entitled to any rights with respect to our common stock, but will be subject to all changes made with respect to our common stock.

Risks related to our system infrastructure and software solutions business

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

Risks related to our OpenNMS open source business

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

Risks related to our relationships with our employee other companies

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

Risks related to our business generally

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

Risks related to intellectual property

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

Risks related to government regulation

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

Risks related to our common stock

- Dr. Soon-Shiong, our Chairman and Chief Executive Officer and our principal stockholder, and entities affiliated with him, collectively own a significant majority of our common stock and will exercise significant influence over matters requiring stockholder approval, regardless of the wishes of other stockholders.
- Dr. Soon-Shiong, has significant interests in other companies which may conflict with our interests.
- The trading price of our common stock has been and may continue to be volatile. This volatility may affect the price at which you could sell our common stock.
- The suspension and delisting of our common stock from Nasdaq could have a material adverse effect on our business and may prevent certain investors from investing or achieving a meaningful degree of liquidity.

Risks related to our business approach

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

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

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

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

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

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

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

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

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

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

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

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

Risks related to our financial condition and capital requirements

Our recurring losses and negative cash flow from operations, as well as current cash and liquidity projections, raise substantial doubt about our ability to continue as a going concern.

As disclosed in Note 1 of our consolidated unaudited financial statements, we believe that our current level of cash, cash equivalents and marketable securities, together with committed financing facilities, are not sufficient to fund ongoing operations for at least the twelve-month period after the financial statements are issued without additional funding or financing. The existence of these conditions raises substantial doubt about our ability to continue as a "going concern" for at least the twelve month period following the date the financial statements were issued.

Our financial statements for the quarter ended June 30, 2023 are prepared assuming that we will continue as a going concern. The going concern basis of presentation assumes that we will continue in operation for the foreseeable future and will be able to realize our assets and discharge our liabilities and commitments in the normal course of business and do not include any adjustments to reflect the possible future effects on the recoverability and classification of assets or the amounts and classification of liabilities that may result from our inability to continue as a going concern. Our current cash positions and recurring operating losses have raised substantial doubt about our ability to continue as a going concern for at least the twelve month period following the date the financial statements were issued. As of June 30, 2023, we had cash and cash equivalents of $6.2 million. Further, we have incurred, and expect to continue to incur, negative cash flows in pursuit of our business plans for at least the twelve-month period following the date the financial statements are issued. Without giving effect to the prospect of raising additional capital from Highbridge and Nant Capital, increasing revenue in the near future or executing other mitigating plans, many of which are beyond our control, it is unlikely that we will be able to generate sufficient cash flows to meet our required financial obligations, including our debt service and other obligations due to third parties. Management's plans to address this uncertainty are discussed under Part II, Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations." Our ability to continue as a going concern is dependent upon our success in obtaining additional equity or debt financing, attaining further operating efficiencies, reducing expenditures and ultimately, generating significant revenue growth. Our plans to raise additional capital, including our ability to consummate any equity or debt financing, or take other actions to address any doubt regarding our ability to continue as a going concern, may not be successful. There can be no assurance that we would be able to obtain additional liquidity when needed or under acceptable terms, if at all. The perception of our ability to continue as a going concern may make it more difficult for us to obtain financing for the continuation of our operations and could result in the loss of confidence by investors, customers and employees, and continued cash losses may risk our status as a going concern.

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

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

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

inability to generate or obtain sufficient levels of liquidity to meet our cash requirements at the level and times needed would have a material adverse impact on our business and financial position.

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

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

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

We have a significant amount of debt outstanding. As of June 30, 2023, we had $260.3 million of notes outstanding.

Our degree of leverage could have consequences, including:

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

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

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

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

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

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

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

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

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

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

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

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

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

We have incurred significant net losses from continuing operations in each fiscal year since inception and expect to continue to incur net losses for the foreseeable future. We experienced net losses of $67.8 million and $58.5 million during the years ended December 31, 2022 and 2021, respectively, and $17.5 million for the three months ended June 30, 2023. As of June 30, 2023, we had an accumulated deficit of $1.2 billion . The losses and accumulated deficit were primarily due to the substantial investments we made to grow our business and enhance our systems infrastructure and platforms. We have grown our business through research and development and the acquisition of assets, businesses and customers. We anticipate that our operating expenses will increase substantially in the foreseeable future as we seek to continue to grow our business, including through strategic acquisitions, and build and further penetrate our customer base and develop our product and service offerings, including (i) expansion of the features and capabilities of our NaviNet and Eviti product lines and (ii) expanding the OpenNMS solutions through the creation of cloud solutions and the addition of hardware devices for edge monitoring. These efforts may prove more expensive than we currently anticipate, and we may not succeed in increasing our revenue sufficiently to offset these higher expenses.

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

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

Risks related to our capital structure

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

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

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

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

In addition, the Credit Agreement required certain of our subsidiaries to guarantee the 2021 Convertible Notes, and required us to secure the 2021 Convertible Notes by second priority liens on substantially all of the assets (including intellectual property) of us and our subsidiary guarantors with substantially similar restrictions as described above.

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

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

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

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

Our ability to make scheduled payments of the principal of, to pay interest on or to refinance our indebtedness, including the Senior Secured Term Loan Facility, the 2021 Convertible Notes, the 2022 Nant Capital Note, and the 2022 Airstrip Note, depends on our future performance, which is subject to economic, financial, competitive and other factors beyond our control. For example, under the terms of the 2021 Indenture, we may be required to repurchase the 2021 Convertible Notes at a price equal to 100% of the principal amount of the 2021 Convertible Notes to be repurchased, plus accrued and unpaid interest, upon the occurrence of a fundamental changes (as defined in the 2021 Indenture).

Concurrently with the execution of, and pursuant to, the Credit Agreement, we also entered into (1) a subordination agreement (the "Subordination Agreement") with Nant Capital and Airstrip (collectively, the "Affiliated Lenders"), who are holders of certain affiliated debt of ours, and (2) a letter agreement (the "Letter Agreement") with certain entities affiliated with Highbridge and Nant Capital, who are holders of the 2021 Convertible Notes issued pursuant to the 2021 Indenture. The Subordination Agreement

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

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

Risks related to our system infrastructure and software solutions business

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

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

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

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

Some of our software solutions store and display data from a variety of third-party sources for use in treating patients and to search and compare options for healthcare services and treatments. As part of our Eviti platform, we provide up-to-date information regarding research in the diseases that our solutions support (e.g. cancer and autoimmune disease). along with a list of potential treatments and relevant clinical trials seeking enrollment. Most of this data comes from health plans, our customers, published

guidelines, peer-reviewed journals and other third parties. Because data in the healthcare industry is often fragmented in origin, inconsistent in format and often incomplete, the overall quality of certain types of data we receive can be poor. If this data is incorrect or incomplete or if we make mistakes in the capture or input of their data, or in our interpretation or analysis of such data, adverse consequences, including patient death and serious injury, may occur and give rise to product liability and other claims against us. In addition, a court or government agency may take the position that our storage and display of health information exposes us to personal injury liability or other liability for wrongful delivery or handling of healthcare services or erroneous health information. While we maintain insurance coverage, we cannot assure that this coverage will prove to be adequate or will continue to be available on acceptable terms, if at all. Even unsuccessful claims could result in substantial costs, reputational damage, and diversion of management resources. A claim brought against us that is uninsured or under-insured could harm our business, financial condition and results of operations.

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

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

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

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

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

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

A portion of the data that we use is either purchased or licensed from third parties or is obtained from our customers for specific customer engagements. Although we typically enter into long-term contractual arrangements with many of these suppliers of data, at the time of entry into a new contract or renewal of an existing contract, suppliers may increase restrictions on our use of such data, increase the price they charge us for data or refuse altogether to license the data to us. In addition, during the term of any data supply contract, suppliers may fail to adhere to our data quality control standards or fail to deliver data. Further, although no single

individual data supplier is material to our business, if a number of suppliers collectively representing a significant amount of data that we use for one or more of our services were to impose additional contractual restrictions on our use of or access to data, fail to adhere to our quality-control standards, repeatedly fail to deliver data or refuse to provide data, now or in the future, our ability to provide those services to our customers could be materially adversely impacted, which may harm our operating results and financial condition.

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

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

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

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

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

Our sales cycle can be lengthy and unpredictable. Our sales efforts involve educating our customers about the use and benefits of our offerings and solutions, including the technical capabilities of our solutions and the potential cost savings and productivity gains achievable by deploying them. Additionally, many of our potential customers are typically already in long-term contracts with their current providers and face significant costs associated with transitioning to our offerings and solutions. As a result, potential customers typically undertake a significant evaluation process, which frequently involves not only NantHealth solutions and component systems infrastructure and platforms but also their existing capabilities and solutions and can result in a lengthy sales cycle. We spend substantial time, effort and money on our sales efforts without any assurance that our efforts will produce any sales. In addition, purchases of NantHealth solutions and component systems infrastructure are frequently subject to budget constraints, multiple approvals and unplanned administrative, processing and other delays. For example, currently, hospitals in the United States face significant uncertainty over the continuing impact of federal government budgets, and continuing changes in the implementation and deadlines for compliance with the Patient Protection and Affordable Care Act of 2010, or ACA, and other healthcare reform legislation, as well as potential future statutes and rulemaking. Many of our potential hospital customers have used all or a significant portion of their revenues to comply with federal mandates to adopt electronic medical records to maintain their Medicaid and Medicare reimbursement levels. In the event we are unable to manage our lengthy and unpredictable sales cycle, our business may be adversely affected.

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

A portion of our revenue in each quarter is derived from agreements entered with our customers during previous quarters. Consequently, a decline in new or renewed agreements in any one quarter may not be fully reflected in our revenue for that quarter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The U.S. Office of Civil Rights may impose penalties on us if we do not fully comply with requirements of HIPAA. Penalties will vary significantly depending on factors such as whether we knew or should have known of the failure to comply, or whether our failure to comply was due to willful neglect. These penalties include civil monetary penalties of $100 to $50,000 per violation, up to an

annual cap of $1,500,000 for identical violations. A person who knowingly obtains or discloses individually identifiable health information in violation of HIPAA may face a criminal penalty of up to $50,000 per violation and up to one-year imprisonment. The criminal penalties increase to $100,000 per violation and up to five years imprisonment if the wrongful conduct involves false pretenses, and to $250,000 per violation and up to 10 years imprisonment if the wrongful conduct involves the intent to sell, transfer, or use identifiable health information for commercial advantage, personal gain, or malicious harm. The U.S. Department of Justice is responsible for criminal prosecutions under HIPAA. Furthermore, in the event of a breach as defined by HIPAA, we have specific reporting requirements to the Office of Civil Rights under the HIPAA regulations as well as to affected individuals, and we may also have additional reporting requirements to other state and federal regulators, including the Federal Trade Commission, and/or to the media. Issuing such notifications can be costly, time and resource intensive, and can generate significant negative publicity. Breaches of HIPAA may also constitute contractual violations, and such contractual violations or any other contractual violations relating to a security breach or incident, could lead to claims, damages, legal proceedings, and contractual damages, other liability or terminations.

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

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

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

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

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

Our services are designed to operate without perceptible interruption in accordance with our service level commitments. We have, however, experienced limited interruptions in these services in the past, and we expect that we will in the future experience interruptions and delays in services and availability from time to time. We rely on internal systems as well as third-party vendors, including data center providers and bandwidth providers, to provide our services. We store, process and transport petabytes of data and the nature of our business requires us to scale our storage capacity. In the event we are unable to scale appropriately, we may lose customers or fail to realize the network effects of our system and our business may be impaired. We do not currently maintain redundant systems or facilities for some of these services. Our operations and facilities are vulnerable to interruption and/or damage from a number of sources, many of which are beyond our control, including, without limitation: power loss and telecommunications failures; fire, flood, hurricane, tornado and other natural disasters; software and hardware errors, failures or crashes; and cyber and ransomware attacks, computer viruses, hacking, break-ins, sabotage, intentional acts of vandalism and other similar disruptive

problems. The occurrence of any of these events could result in interruptions, delays or cessations in service to users of our services, which could impair or prohibit our ability to provide our services, reduce the attractiveness of our services to our customers and could have a material adverse impact on our business, results of operations or financial condition. If user access to our services is interrupted because of problems in our operations, we could be in breach of our agreements with customers and/or exposed to significant claims, particularly if the access interruption is associated with problems in the timely delivery of medical care. In the event of a catastrophic event with respect to one or more of these systems or facilities, we may experience an extended period of system unavailability, which could result in substantial cost to remedy such unavailability and negatively impact our relationship with our customers and our business. To operate without interruption, both we and our service providers must guard against:

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

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

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

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

The reliability and performance of the Internet may be harmed by increased usage or by denial-of-service attacks. The Internet has experienced a variety of outages and other delays as a result of damages to portions of its infrastructure, and it could face outages and delays in the future. These outages and delays could reduce the level of Internet usage as well as the availability of the Internet to us for delivery of our internet-based services. Any failure to offer high-quality technical support services may adversely affect our relationships with our customers and harm our financial results.

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

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

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

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

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

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

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

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

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

The principal competitive factors in our markets include product features, performance and support, product scalability and flexibility, ease of deployment and use, total cost of ownership and time to value. Some of our actual and potential competitors have advantages over us, such as longer operating histories, significantly greater financial, technical, marketing or other resources, stronger brand and business user recognition, larger intellectual property portfolios and broader global distribution and presence. Further, competitors may be able to offer products or functionality similar to ours at a more attractive price than we can by integrating or bundling their software products with their other product offerings. In addition, our industry is evolving rapidly and is becoming increasingly competitive. Larger and more established companies may focus on creating a learning system or solutions that could directly compete with one or more of our offerings. If companies move a greater proportion of their data and computational needs to the cloud, new competitors may emerge which offer services comparable to ours or that are better suited for cloud-based data, and

the demand for one or more of our offerings may decrease. Smaller companies could also launch new products and services that we do not offer and that could gain market acceptance quickly.

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

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

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

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

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

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

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

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

The development, manufacturing and sale of hardware components in connection with some of our software solutions expose us to significant risk of product liability claims, product recalls and, occasionally, product failure claims. We face an inherent business

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

Risks related to our OpenNMS open source business

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

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

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

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

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

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

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

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

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

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

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

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

Risks related to our relationships with our employee other companies

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

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

events occur, our business and operating results could be harmed. Accordingly, if any of the foregoing occurs, our ability to commercialize our services, revenue and gross margins could suffer until lockdowns from COVID-19 infections are reduced and supply issues or business disruptions are resolved.

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

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

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

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

If we lose members of our senior management, we may not be able to find appropriate replacements on a timely basis, and our business could be adversely affected. Our existing operations and continued future development depend to a significant extent upon the continued performance and active participation of certain key individuals, including Dr. Soon-Shiong, our Chairman, Chief Executive Officer and our principal stockholder. Although we expect Dr. Soon-Shiong will continue to devote on average at least 20 hours per week to our company, he will continue to primarily focus on ImmunityBio, Inc., or ImmunityBio, a publicly-traded, clinical-stage immunotherapy company, of which he is Executive Chairman and Global Chief Scientific and Medical Officer. Dr. Soon-Shiong will also devote time to other companies operating under NantWorks, a collection of multiple companies in the healthcare and technology space that Dr. Soon-Shiong founded in 2011. We do not believe Dr. Soon-Shiong has any material conflicting obligations as a result of his involvement with other companies. Additionally, we are dependent on commercial relationships with various other parties affiliated with NantWorks and with Dr. Soon-Shiong and we may enter into additional relationships in the future. If Dr. Soon-Shiong was to cease his affiliation with us or with NantWorks, these entities may be unwilling to continue these relationships with us on commercially reasonable terms, or at all. The risks related to our dependence upon Dr. Soon-Shiong are particularly acute given his ownership percentage and role in our company. If we were to lose Dr. Soon-Shiong, we may not be able to find appropriate replacements on a timely basis and our financial condition and results of operations could be materially adversely affected. We have not entered into, nor do we intend to enter into, an employment agreement with Dr. Soon-Shiong.

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

Risks related to our business generally

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

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

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

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

In addition, a significant portion of the purchase price of companies we acquire may be allocated to acquired goodwill and other intangible assets, which must be assessed for impairment at least annually. As of June 30, 2023, the total value of our goodwill and intangible assets, net of accumulated amortization was $126.3 million. If our acquisitions do not yield expected returns, we have in the past, and may in the future, be required to take charges to our operating results based on this impairment assessment process, which could adversely affect our results of operations.

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

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

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

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

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

In March 2020, the World Health Organization declared the novel coronavirus (COVID-19) a pandemic. In the same month, the President of the United States declared a State of National Emergency due to the COVID-19 outbreak, and the world has been and continues to be impacted by COVID-19 and its variants. As a result, many jurisdictions, particularly in North America (including the United States), Europe and Asia, including the U.S. states in which we operate, such as California, have adopted or are considering laws, rules, regulations or decrees intended to address the COVID-19 outbreak, including implementing travel restrictions, closing non-essential businesses and/or restricting daily activities. On May 11, 2023, the federal government ended the COVID-19 public health emergency, which ended a number of temporary changes made to federally funded programs while some continue to be in effect. The full impact of such policy changes and the wind-down of the public health emergency on our industry and operations is unclear.

To date, there has been no material adverse impact to our business from the COVID-19 pandemic. To the extent the COVID-19 pandemic, a resurgence of COVID-19 cases, or other public health emergency poses a threat on our ability to effectively conduct our business operations, the future impact of these changes and potential changes on us and our contractors, consultants, customers, resellers and partners is unknown at this time. Moreover, the extent of the impact of the COVID-19 pandemic or any future public health emergencies on our business and operating results is uncertain and difficult to predict and will depend on factors outside of our control including the timing or effectiveness of the vaccine roll-out globally, the timing of easing of preventative or mitigation measures or mandates, the impact of any variants that emerge, or any impact of a global vaccine roll-out on the global economy. For example, the demand for our solutions among certain of our provider or payer customers could be impacted in the future, either through reduced transaction volume for solutions by which we derive revenue on a per transaction basis or through the delayed closing or signing of new or add-on contracts with customers that are dealing with impacts from the COVID-19 pandemic.

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

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

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

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

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

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

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

- Delayed access to deposits or other financial assets or the uninsured loss of deposits or other financial assets;
- Loss of access to revolving existing credit facilities or other working capital sources and/or the inability to refund, roll over or extend the maturity of, or enter into new credit facilities or other working capital resources;
- Potential or actual breach of contractual obligations that require us to maintain letters or credit or other credit support arrangements; or
- Termination of cash management arrangements and/or delays in accessing or actual loss of funds subject to cash management arrangements.

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

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

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

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

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

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

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

We have been named as a defendant in lawsuits arising out of our initial public offering and later public statements. In March 2017, a number of putative class action securities complaints were filed in the U.S. District Court for the Central District of California, naming as defendants the Company and certain of our executive officers and directors. Certain plaintiffs also named, as defendants, investment banks who were underwriters in our initial public offering but the claims against the underwriters were dropped. The complaints generally alleged that defendants made material misstatements and omissions in violation of the federal securities laws. The complaints were consolidated with the lead case captioned Deora v. NantHealth, Inc., 2:17-cv-01825 ("Deora"). In October 2019, the parties reached an agreement in principle to settle these federal class actions in their entirety for $16.5 million, which was included in accrued and other current liabilities in the Consolidated Balance Sheet at December 31, 2019. The Court granted preliminary approval of the settlement on January 31, 2020. A hearing for final approval of the settlement was scheduled for June 15, 2020, but on June 5, 2020, the Court decided to take the final approval motion on submission, and on July 17, 2020, the Court directed Plaintiff's counsel to submit evidence substantiating all costs incurred. The $16.5 million settlement was paid into a settlement fund prior to the payment deadline of March 2, 2020. The majority of the settlement amount was funded by our insurance carriers, and a portion was funded by us. On September 10, 2020, the Court entered an order granting final approval of the settlement, and the order and the settlement are now final. In May 2017, a putative class action complaint was filed in California Superior Court, Los Angeles County, asserting claims for violations of the Securities Act based on allegations similar to those in Deora. That case is captioned Bucks County Employees Retirement Fund v. NantHealth, Inc., BC 662330. At a case management conference on December 3, 2019, the parties informed the court of the pending settlement of the federal class action in the Deora action. During a status conference on February 4, 2021, the Court scheduled a further status conference for April 7, 2021 and stated that if Plaintiff did not voluntarily dismiss the action, the Court would entertain a motion to dismiss in light of the finalization of the Deora settlement. Plaintiff filed an unopposed request for voluntarily dismissal on March 15, 2021. On March 22, 2021, the court issued an order granting plaintiff's request and dismissing the action with prejudice. For additional information regarding this and other lawsuits in which we are involved, see Part II, Item 1, Legal Proceedings. We cannot assure you that we will not be involved in additional legal proceedings in the future, with similar, or worse, results which could harm our business, financial conditions and results of operations.

In April 2018, two putative shareholder derivative actions, captioned Engleman v. Soon-Shiong, Case No. 2018-0282, and Petersen v. Soon-Shiong, Case No. 2018-0302 were filed in the Delaware Court of Chancery. The plaintiff in the Engleman action previously filed a similar complaint in California Superior Court, Los Angeles County, which was dismissed based on a provision in the Company's charter requiring derivative actions to be brought in Delaware. The Engleman and Petersen complaints contain allegations similar to those in the Deora action but asserted causes of action on behalf of NantHealth against various of the Company's current or former executive officers and directors for alleged breaches of fiduciary duty, abuse of control, gross mismanagement, waste of corporate assets, and unjust enrichment. The Company is named solely as a nominal defendant. In July 2018, the court issued an order consolidating the Engleman and Petersen actions as In re NantHealth, Inc. Stockholder Litigation, Lead C.A. No. 2018-0302, appointing Petersen as lead plaintiff, and designating the Petersen complaint as the operative complaint. On September 20, 2018, the defendants moved to dismiss the complaint. In October 2018, in response to the motion to dismiss, Petersen filed an amended complaint. In November 2018, the defendants moved to dismiss the amended complaint, which asserts claims for breach of fiduciary duty, waste of corporate assets (which Petersen subsequently withdrew), and unjust enrichment. On January 14, 2020, the court issued an order granting in part and denying in part the defendants' motion to dismiss. The court dismissed all claims except one claim against Dr. Patrick Soon-Shiong for breach of fiduciary duty. Dr. Soon-Shiong and the

Company filed answers to the amended complaint on March 30, 2020. On June 29, 2021, the Court granted the Unopposed Motion to Substitute Lead Plaintiff, following Plaintiff Petersen's sale of his NantHealth stock, and appointed Engleman as Lead Plaintiff. On September 26, 2022, the parties filed with the Court a Stipulation for Compromise and Settlement to resolve the consolidated action in exchange for (i) the payment of $400, to be funded by the Company's insurance carriers, to offset the Company's contribution to the settlement of the Deora action, and (ii) agreeing to implement certain corporate governance reforms. Additionally, the Company agreed to pay an award of attorneys' fees and expenses to counsel for Lead Plaintiff in an amount of $1.25 million, to be funded by the Company's insurance carriers. The Court approved the settlement on January 10, 2023 therefore the Company is required to implement the settlement's corporate governance reforms within 60 days following the approval.

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

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

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

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

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

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

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

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

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

To manage our anticipated future growth effectively, we must continue to maintain and may need to enhance our information technology infrastructure, financial and accounting systems and controls and manage expanded operations in geographically-diverse locations. We also must attract, train and retain a significant number of qualified sales and marketing personnel, professional services personnel, software engineers, technical personnel and management personnel. Failure to manage our rapid growth effectively could lead us to over invest or under invest in technology and operations, could result in weaknesses in our infrastructure, systems or controls, could give rise to operational mistakes, losses, loss of productivity or business opportunities, and could result in

loss of employees and reduced productivity of remaining employees. Our growth could require significant capital expenditures and may divert financial resources from other projects, such as the development of new services. If our management is unable to effectively manage our growth, our expenses may increase more than expected, our revenue could decline or may grow more slowly than expected, and we may be unable to implement our business strategy.

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

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

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

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

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

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

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

Risks related to intellectual property

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

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

to such property or information created by Dr. Soon-Shiong, our business would be adversely affected. In addition, our attempts to protect our intellectual property may be challenged by others or invalidated through administrative process or litigation.

We have developed, acquired, and licensed various patents and patent applications and we possess substantial know-how, copyrights and trade secrets relating to the development and commercialization of healthcare technology products and services. In January 2016, we acquired NaviNet, a leading payer-provider collaboration platform. As part of this and other acquisitions, we acquired patents and other intellectual property. As of June 30, 2023, our patent portfolio consisted of the following matters relating to our proprietary technology and inventions: (i) twenty one (21) issued U.S. utility patents and two (2) issued U.S. design patents; (ii) eighteen (18) pending U.S. utility patent applications; (iii) eighteen (18) issued patents outside the United States; and (iv) six (6) patent applications pending in jurisdictions outside the United States. Twenty five (25) of these assets are jointly owned. We believe we have intellectual property rights that are necessary to commercialize our healthcare technology products and services. However, our patent applications may not result in issued patents, and, even if issued, the patents may be challenged and invalidated. Moreover, our patents and patent applications may not be sufficiently broad to prevent others from practicing our technologies or developing competing products. We also face the risk that others may independently develop similar or alternative technologies or may design around our proprietary property.

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

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

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

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

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

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

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

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

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

Third parties have asserted and may in the future assert that we are employing their proprietary technology without authorization. As we continue to commercialize our products and services in their current or updated forms, launch new products and services and enter new markets, we expect that competitors will claim that our products and services infringe their intellectual

property rights as part of business strategies designed to impede our successful commercialization and entry into new markets. We occasionally receive letters from third parties inviting us to take licenses under, or alleging that we infringe, their patents or trademarks. Third parties may have obtained, and may in the future obtain, patents under which such third parties may claim that the use of our technologies constitutes patent infringement.

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

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

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

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

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

Any of these occurrences could adversely affect our competitive business position, business prospects and financial condition. Similarly, if we assert trademark infringement claims, a court may determine that the marks we have asserted are invalid or unenforceable, or that the party against whom we have asserted trademark infringement has superior rights to the marks in question. In this case, we could ultimately be forced to cease use of such trademarks. An adverse determination of any litigation or other proceedings could put one or more of our patents at risk of being invalidated, held unenforceable or interpreted narrowly and could put our patent applications at risk of not issuing.

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

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

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

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

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

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

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

Many companies have encountered significant problems in protecting and defending intellectual property rights in foreign jurisdictions. The legal systems of certain countries, particularly certain developing countries, do not favor the enforcement of patents and other intellectual property protection, which could make it difficult for us to stop the infringement of our patents or marketing of competing products in violation of our proprietary rights generally. Proceedings to enforce our patent rights in foreign jurisdictions

could result in substantial costs and divert our efforts and attention from other aspects of our business, could put our patents at risk of being invalidated or interpreted narrowly and our patent applications at risk of not issuing, and could provoke third parties to assert claims against us. We may not prevail in any lawsuits that we initiate and the damages or other remedies awarded, if any, may not be commercially meaningful. In addition, certain countries in Europe and certain developing countries, including India and China, have compulsory licensing laws under which a patent owner may be compelled to grant licenses to third parties. In those countries, we may have limited remedies if our patents are infringed or if we are compelled to grant a license to our patents to a third party, which could materially diminish the value of those patents. This could limit our potential revenue opportunities. Accordingly, our efforts to enforce our intellectual property rights around the world may be inadequate to obtain a significant commercial advantage from the intellectual property that we own or license. Finally, our ability to protect and enforce our intellectual property rights may be adversely affected by unforeseen changes in foreign intellectual property laws.

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

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

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

An important change introduced by the AIA is that, as of March 16, 2013, the United States transitioned to a “first-to-file” system for deciding which party should be granted a patent when two or more patent applications are filed by different parties claiming the same invention. A third party that files a patent application in the USPTO on or after March 16, 2013 before us could therefore be awarded a patent covering an invention of ours even if we were the first to conceive of the invention. This will require us to be cognizant going forward of the time from invention to filing of a patent application. Furthermore, our ability to obtain and maintain valid and enforceable patents depends on whether the differences between our technology and the prior art allow our technology to be patentable over the prior art. Because patent applications in the United States and many other countries are confidential for a period of time after filing, we cannot be certain that we were the first to either file any patent application related to our products or services or invent any of the inventions claimed in our patents or patent applications.

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

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

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

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

There are many patents claiming diagnostic methods based on similar or related correlations that issued before Prometheus, and although some of these patents may be invalid under the standard set forth in Prometheus, until successfully challenged, these patents are presumed valid and enforceable, and certain third parties could allege that we infringe, or request that we obtain a license to, these patents. Whether based on patents issued prior to or after Prometheus, we could have to defend ourselves against claims of patent infringement, or choose to license rights, if available, under patents claiming such methods. Similarly, there are many patents claiming software and/or business methods that include an abstract idea that issued before Alice, and although some of these patents may be invalid under the standard set forth in Prometheus and Alice, until successfully challenged, these patents are presumed valid and enforceable, and certain third parties could allege that we infringe, or request that we obtain a license to, these patents. Whether based on patents issued prior to or after Alice, we could have to defend ourselves against claims of patent infringement, or choose to license rights, if available, under patents claiming such software or business methods. In any of the foregoing or in other situations involving third-party intellectual property rights, if we are unsuccessful in defending against claims of patent infringement, we could be forced to pay damages or be subjected to an injunction that would prevent us from utilizing the patented subject matter in question if we are unable to obtain a license on reasonable terms. Such outcomes could materially affect our ability to offer our products and have a material adverse impact on our business. Even if we are able to obtain a license or successfully defend against claims of patent infringement, the cost and distraction associated with the defense or settlement of these claims could have a material adverse impact on our business. Moreover, one or more of our pending United States patent applications may be rejected based on the changes in the law and the standards set forth in Prometheus, Myriad, Alice, or other cases. Our ability to secure United States patent rights could be impaired if we cannot overcome such rejections, which could have a material adverse impact on our business. In addition, one or more of our issued United States patents could be challenged on the basis of the law and the standards set forth in Prometheus, Myriad, Alice, or other cases, which could have a material adverse impact on our business. Further, on July 30, 2015, in response to the public comment on the Interim Eligibility Guidance, the USPTO issued an update pertaining to the Interim Eligibility Guidance. The Updated Eligibility Guidance includes additional examples from the case law and is intended to assist examiners in applying the Interim Eligibility Guidance during the patent examination process.

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

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

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

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

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

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

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

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

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

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

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

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

Risks related to government regulation

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

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

interoperability standards, that may be directly or indirectly applicable to our operations and relationships or the business practices of our clients.

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

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

U.S. federal, state and local laws and foreign legislation govern the confidentiality of personal information, how that information may be used, and the circumstances under which such information may be released. These regulations govern both the disclosure and use of confidential personal and patient medical record information and require the users of such information to implement specified security and privacy measures. U.S. regulations currently in place governing electronic health data transmissions continue to evolve and are often unclear and difficult to apply. Laws in non-U.S. jurisdictions are also evolving and may have similar or even stricter requirements related to the treatment of personal or patient information. Data protection regulations impact how businesses, including both us and our clients, can collect and process the personal data of individuals. The costs of compliance with, and other burdens imposed by, such laws, regulations and policies, or modifications thereto, that are applicable to us may limit the use and adoption of our technology solutions and could have a material adverse impact on our business, results of operations and financial condition. Furthermore, we incur development, resource, and capital costs in delivering, updating, and supporting solutions to enable our clients to comply with these varying and evolving standards. If we fail to comply with any applicable laws or regulations or fail to deliver compliant products and solutions, we could be subject to civil penalties, sanctions and contract liability. Enforcement investigations, even if meritless, could have a negative impact on our reputation, cause us to lose existing clients or limit our ability to attract new clients. Furthermore, our failure to maintain confidentiality of sensitive personal information in accordance with the applicable regulatory requirements could damage our reputation and expose us to claims, fines and penalties.

Our commercial and government clients continue to be subject to requirements to adopt interoperable health information technology which requires that our products and solutions to be interoperable with other third-party health information technology providers. Market forces and governmental or regulatory authorities create software interoperability standards that may apply to our products and solutions. For applicable products, these interoperability standards are the basis of certification requirements that our products must meet, and, in turn, many of our clients must meet prerequisite or participation requirements for many federal health insurance programs, including Medicare and Medicaid Fee for Service programs, for alternative payment models under the Innovation Center of CMS and for other federal or state health insurance or reimbursement programs. These expectations for interoperability are supported by the information blocking prohibitions of the Cures Act. If our products are not consistent with those requirements, we could be forced to incur substantial additional development costs to conform. The Office of the National

Coordinator for Health Information Technology (“ONC”) is also charged under the Cures Act with developing a Trusted Exchange Framework that establishes governance requirements for trusted health information exchange in the United States. ONC has developed the U.S. Common Data Set for Interoperability which may lay the groundwork for iterative expansion of future data exchange requirements for trusted exchange. ONC continues to modify and refine these standards. We may incur increased software development and administrative expenses and delays in delivering such products if we need to update our products to conform to these varying and evolving requirements. In addition, delays in interpreting these standards may result in postponement or cancellation of our clients' decisions to purchase our products. If our products are not compliant with these evolving standards, our market position and sales could be impaired, and we may have to invest significantly in changes to our products.

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

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

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

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

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

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

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

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

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

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

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

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

For example, the California Consumer Privacy Act of 2018 ("CCPA"), which went into effect on January 1, 2020, requires covered businesses to provide substantial disclosures to California residents and honor such residents’ data protection and privacy

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

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

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

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

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

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

- Government entities, particularly in the United States, often reserve the right to audit our contracts and conduct reviews, inquiries and investigations of our business practices and performance with respect to government contracts. If a government client discovers improper conduct during its audits or investigations, we may become subject to various civil and criminal penalties, including those under the civil U.S. False Claims Act, and administrative sanctions, which may include termination of contracts, suspension of payments, fines and civil money penalties, and suspensions or debarment from doing business with other government agencies.
- U.S. government contracting regulations impose strict compliance and disclosure obligations and our failure to comply with these obligations could be a basis for suspension or debarment, or both, from federal government contracting in addition to breach of the specific contract.
- Government contracts are subject to heightened reputational and contractual risks compared to contracts with commercial clients and often involve more extensive scrutiny and publicity. Negative publicity, including allegations of improper or illegal

activity, poor contract performance, or information security breaches, regardless of accuracy, may adversely affect our reputation.

- Terms and conditions of government contracts also tend to be more onerous, are often more difficult to negotiate and involve additional costs. We must comply with specific procurement regulations and a variety of other socio-economic requirements, as well as various statutes, regulations and requirements related to employment practices, recordkeeping and accounting. Our failure to comply with a variety of complex procurement rules and regulations could result in our liability for penalties, including termination of our government contracts, disqualification from bidding on future government contracts and suspension or debarment from government contracting.
- Government entities typically fund projects through appropriated monies, which can be impacted by changes in presidential administration and budget priorities.
- Government entities reserve the right to change the scope of or terminate these projects at their convenience for lack of approved funding or other reasons, which could limit our recovery of reimbursable expenses or investments. In addition, government contracts may be protested, which could result in administrative procedures and litigation, result in delays in performance and payment, be expensive to defend and be incapable of prompt resolution.
- It is common in contracting with governments for there to be a prime contractor with privity of contract to the government client and one or more subcontractors. There are inherent risks in being a subcontractor, including without limitation, reliance on the performance of the prime contractor for the execution of the contract to the satisfaction of the client. Additionally, when we serve as the prime contractor, we rely on our subcontractors to fulfill certain contractual obligations under our agreements with government clients. A failure by the prime contractor to perform under an agreement under which we serve as a subcontractor, or a failure by a subcontractor to perform under an agreement under which we serve as a prime contractor, could have a material adverse impact on our business, results of operations and financial condition.

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

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

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

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

operations or business, could disqualify us from providing services to healthcare providers doing business with government programs and, thus, could have an adverse effect on our business.

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

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

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

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

The scope and enforcement of these laws is uncertain and subject to rapid change in the current environment of healthcare reform, especially in light of the lack of applicable precedent and regulations. Federal or state regulatory authorities might challenge our current or future activities under these laws. Any such challenge could have a material adverse effect on our reputation, business, results of operations and financial condition. In addition, efforts to ensure that our business arrangements with third parties will comply with these laws and regulations and will involve substantial costs. Any state or federal regulatory review of us or the third parties with whom we contract, regardless of the outcome, would be costly and time-consuming. Further, it is not always possible to identify and deter misconduct by employees and third parties, and the precautions we take to detect and prevent misconduct may not be effective in controlling unknown or unmanaged risks or losses or in protecting us from governmental investigations or other actions or lawsuits stemming from a failure to be in compliance with applicable healthcare laws. If any such actions are instituted against us, and we are not successful in defending ourselves or asserting our rights, those actions could have a significant impact on our business, including the imposition of significant fines or other sanctions.

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

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

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

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

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

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

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

We are subject to the U.S. Foreign Corrupt Practices Act of 1977, as amended ("FCPA"), the U.S. domestic bribery statute contained in 18 U.S.C. § 201, the U.S. Travel Act, the USA PATRIOT Act, and possibly other state and national anti-bribery and anti-money laundering laws in countries in which we conduct activities. Anti-corruption laws are interpreted broadly and prohibit companies and their employees, agents, third-party intermediaries, joint venture partners and collaborators from authorizing, promising, offering, or providing, directly or indirectly, improper payments or benefits to recipients in the public or private sector. We currently engage in business and sales with select government and state-owned entities outside of the United States. In addition, we engage third-party intermediaries to promote and sell certain of our products and solutions abroad and/or to obtain necessary permits, licenses, and other regulatory approvals. We or our third-party intermediaries may have direct or indirect interactions with officials and employees of government agencies or state-owned or affiliated entities. We can be held liable for the corrupt or other illegal activities of these third-party intermediaries, our employees, representatives, contractors, partners, and agents, even if we do not explicitly authorize or have actual knowledge of such activities.

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

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

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

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

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

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

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

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

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

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

Risks related to our common stock

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

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

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

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

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

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

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

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

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

The trading price of our common stock has been and may continue to be volatile. This volatility may affect the price at which you could sell our common stock.

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

- announcements by us or our competitors of new products, significant contracts, commercial relationships or capital commitments and the timing of these introductions or announcements;
- adverse regulatory or reimbursement announcements;
- announcements by us or our competitors of significant acquisitions, strategic collaborations, joint ventures or capital commitments;
- the results of our efforts to develop additional offerings;
- our dependence on our customers, partners and collaborators;
- regulatory or legal developments in the United States or other countries;
- developments or disputes concerning patent applications, issued patents or other proprietary rights;
- the recruitment or departure of key management or other personnel;
- our ability to successfully commercialize our future products;
- the level of expenses related to any of our products;
- actual or anticipated changes in estimates as to financial results, development timelines or recommendations by securities analysts;

- actual or anticipated quarterly variations in our financial results or those of our competitors;
- any change to the composition of the board of directors or key personnel;
- sales of common stock by us or our stockholders in the future, as well as the overall trading volume of our common stock;
- commencement of, or our involvement in, litigation, including claims by our equity holders pertaining to our conversion from a Delaware limited liability company into a Delaware corporation or the pending class action litigation;
- general economic, industry and market conditions and other factors that may be unrelated to our operating performance or the operating performance of our competitors, including changes in market valuations of similar companies; and
- the other factors described in this “Risk Factors” section.

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

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

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

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

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

We cannot assure you that the measures we have taken, or will take, to remediate a material weakness and significant deficiencies will continue to be effective or that we will be successful in implementing them. Moreover, we cannot assure you that we have identified all significant deficiencies or material weaknesses or that we will not in the future have additional significant deficiencies or material weaknesses, in particular as we seek to transition to a more developed internal control environment and continue to grow as a company in terms of size, complexity of business and potentially in connection with future strategic transactions.

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

In addition, our independent registered public accounting firm did not perform an evaluation of our internal control over financial reporting during any period in accordance with the provisions of the Sarbanes-Oxley Act. Had our independent registered public accounting firm performed an evaluation of our internal control over financial reporting in accordance with the provisions of the Sarbanes-Oxley Act, additional control deficiencies amounting to significant deficiencies or material weaknesses may have been

identified. We cannot assure you that there will not be material weaknesses or significant deficiencies in our internal controls in the future. If we are unable to assert that our internal control over financial reporting is effective, we could lose investor confidence in the accuracy and completeness of our financial reports, which could have a material adverse effect on the price of our common stock.

The suspension and delisting of our common stock from Nasdaq could have a material adverse effect on our business and may prevent certain investors from investing or achieving a meaningful degree of liquidity.

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

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

On May 2, 2023, we received written notice from Nasdaq stating that we have not complied with the Public Float Requirement prior to the expiration of the Compliance Period (the "Delisting Notice"). The Delisting Notice indicated that our common stock would be suspended from trading on Nasdaq on May 11, 2023 unless we requested a hearing pursuant to the procedures set forth in the Nasdaq Listing Rule 5800 Series, by requesting a hearing before the Nasdaq Hearings Panel (the "Panel") by 4:00 p.m. Eastern Time on May 9, 2023. On May 8, 2023, the Company timely requested a hearing before the Panel, which temporarily stayed the suspension of trading and delisting of the Company's common stock from Nasdaq. The hearing was scheduled for June 8, 2023.

After additional consideration, we determined that it was no longer in our best interest to pursue continued listing of our common stock on the Nasdaq Global Select Market and withdrew our request for a hearing on May 19, 2023. On May 22, 2023, we received notice from Nasdaq that our shares would be suspended at the open of business on May 24, 2023, and our common stock began trading on the OTC Pink under a new symbol "NHIQ" on May 24, 2023. On May 30, 2023, our common stock began trading on the OTCQB Venture Market (the "OTCQB"), and Nasdaq filed a Form 25 Notification of Delisting with the Securities Exchange Commission ("SEC") on July 27, 2023.

As a result of the delisting of our common stock by Nasdaq, we may face significant material adverse consequences, including:

- a limited availability of market quotations for our securities;
- reduced liquidity for our securities;
- a determination that our common stock is a "penny stock" which will require brokers trading in our common stock to adhere to more stringent rules and possibly result in a reduced level of trading activity in the secondary trading market for our securities;
- a limited amount of news and analyst coverage; and
- a decreased ability to issue additional securities or obtain additional financing in the future.

The suspension and subsequent delisting of our common stock on Nasdaq could have a material adverse effect on our business and may prevent certain investors from investing or achieving a meaningful degree of liquidity. Trading on the over-the-counter market has certain limitations, including fewer market makers, lower trading volumes and larger spreads between bid and asked prices than securities listed on a national stock exchange or automated quotation system would typically have.

Because there may be a limited market and generally low volume of trading in our common stock, the share price of our common stock is more likely to be affected by broad market fluctuations, general market conditions, fluctuations in our operating results, changes in the market's perception of our business and announcements made by us, our competitors or parties with whom we have business relationships. There may also be fewer institutional investors willing to hold or acquire our common stock. The lack of liquidity in our common stock may make it difficult for us to issue additional securities for financing or other purposes or to otherwise arrange for any financing that we may need in the future.

We are no longer subject to Nasdaq's rules, such as corporate governance requirements or the minimum market capitalization and stockholders' equity criteria. Without required compliance with such standards, investor interest in our common stock could decrease. The delisting of our common stock from Nasdaq could also result in other negative implications, including the potential loss of confidence by customers, strategic partners and employees and the loss of investor and media interest in us and our common stock.

The National Securities Markets Improvement Act of 1996, which is a federal statute, prevents or preempts the states from regulating the sale of certain securities, which are referred to as "covered securities." Since our common stock is no longer currently

listed on the Nasdaq, it is not deemed “covered securities.” Therefore, we may be subject to regulation in each state in which we offer our securities, which could materially adversely affect our business, financial condition and results of operations.

Trading on the OTC Markets can be volatile and sporadic, which could depress the market price of our common stock and make it difficult for our stockholders to resell their shares.

Our common shares are quoted on OTCQB. There is no cost of such quotation and related services from OTC Markets, Inc. Trading in stock quoted on the OTCQB Markets is often thin and characterized by wide fluctuations in trading prices due to many factors that may have little to do with our operations or business prospects. This volatility could depress the market price of our common stock for reasons unrelated to operating performance. Moreover, the OTC Markets is not a stock exchange, and trading of securities on the OTCQB Markets is often more sporadic than the trading of securities listed on a quotation system like Nasdaq or a stock exchange like the New York Stock Exchange. Accordingly, our stockholders may have difficulty reselling any of their shares. A number of brokerage houses will not trade our securities for customers because we trade on the OTC.

If we fail to remain current on our reporting requirements, we could be removed from the OTCQB which would limit the ability of broker-dealers to sell our securities in the secondary market.

Companies trading on the OTCQB must be reporting issuers under Section 12 of the Securities Exchange Act of 1934, as amended, and must be current in their reports under Section 13, in order to maintain price quotation privileges on the OTCQB. As a result, the market liquidity for our securities could be severely adversely affected by limiting the ability of broker-dealers to sell our securities and the ability of stockholders to sell their securities in the secondary market. In addition, we may be unable to get relisted on the OTCQB, which may have an adverse material effect on the Company.

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

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

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

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

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

For example, the Tax Cuts and Jobs Act of 2017 ("Tax Act") was enacted on December 22, 2017 and significantly reformed the Code. The Tax Act lowered the U.S. federal corporate income tax rate, changed the utilization of net operating loss carryforwards arising in tax years beginning after December 31, 2017, allowed for the expensing of certain capital expenditures, and put into effect

sweeping changes to U.S. taxation of international business activities. As a result, our net U.S. deferred tax assets and corresponding valuation allowances were revalued at the new U.S. corporate rate.

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

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

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

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

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

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

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

Our common stock is presently subject to the "Penny Stock" rules of the SEC.

We are subject now to the "Penny Stock" rules since our shares of common stock sell below $5.00 per share. Penny stocks generally are equity securities with a price of less than $5.00. The penny stock rules require broker-dealers to deliver a standardized risk disclosure document prepared by the SEC which provides information about penny stocks and the nature and level of risks in the penny stock market. The broker-dealer must also provide the customer with current bid and offer quotations for the penny stock, the compensation of the broker-dealer and its salesperson, and monthly account statements showing the market value of each penny stock held in the customer's account. The bid and offer quotations, and the broker-dealer and salesperson compensation information must be given to the customer orally or in writing prior to completing the transaction and must be given to the customer in writing before or with the customer's confirmation. In addition, the penny stock rules require that prior to a transaction, the broker dealer must make a special written determination that the penny stock is a suitable investment for the purchaser and receive the purchaser's written agreement to the transaction. The penny stock rules are burdensome and may reduce the trading activity for shares of our common stock. As long as our shares of common stock are subject to the penny stock rules, the holders of such shares of common stock may find it more difficult to sell their securities.

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

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

- being permitted to provide only two years of audited financial statements, in addition to any required unaudited interim financial statements, with correspondingly reduced "Management's discussion and analysis of financial condition and results of operations" disclosure;

- not being required to comply with the auditor attestation requirements in the assessment of our internal control over financial reporting; and
- reduced disclosure obligations regarding executive compensation.

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

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

The trading market for our common stock will depend on the research and reports that securities or industry analysts publish about us or our business. We do not have any control over these analysts. There can be no assurance that analysts will cover us or provide favorable coverage. If one or more of the analysts who cover us downgrade our stock or change their opinion of our stock, our share price would likely decline. If one or more of these analysts cease coverage of our company or fail to regularly publish reports on us, we could lose visibility in the financial markets, which could cause our share price or trading volume to decline.

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

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

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

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

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

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

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

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

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

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

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

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

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

Unregistered Sales of Equity Securities

None.

Recent Repurchases of Equity Securities

None.

Item 3. Defaults Upon Senior Securities

Not applicable.

Item 4. Mine Safety Disclosures

Not applicable.

Item 5. Other Information

None.

Item 6. Exhibits Index

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

		Incorporated by Reference			
Number	Exhibit Title	Form	Exhibit	Filing Date	Filed Herewith
10.1 †	First Supplemental Indenture, dated as of May 17, 2023, by and between the Registrant, certain subsidiaries of the Registrant, as the subsidiary guarantors, U.S. Bank Trust Company, National Association, a national banking association, as successor in interest to U.S. Bank National Association, as trustee, and U.S. Bank Trust Company, National Association, a national banking association, as notes collateral agent.		10.1		X
31.1	Certification of Principal Executive Officer required by Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.				X
31.2	Certification of Principal Financial Officer required by Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.				X
32.1*	Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.*				X
32.2*	Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.*				X
101.INS**	XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.				X
101.SCH**	XBRL Taxonomy Extension Schema Document.				X
101.CAL**	XBRL Taxonomy Extension Calculation Linkbase Document.				X
101.DEF**	XBRL Taxonomy Extension Definition Linkbase Document.				X
101.LAB**	XBRL Taxonomy Extension Label Linkbase Document.				X
101.PRE**	XBRL Taxonomy Extension Presentation Linkbase Document.				X
104	Cover Page Interactive Data File - the cover page interactive data file does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document (included in Exhibit 101).				X

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

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

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

SIGNATURES

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

NantHealth, Inc.

(Registrant)

Date:	August 21, 2023	By:	/s/ Patrick Soon-Shiong
		Name:	Patrick Soon-Shiong
		Its:	Chairman, Chief Executive Officer and Director
			(Principal Executive Officer)
Date:	August 21, 2023	By:	/s/ Bob Petrou
		Name:	Bob Petrou
		Its:	Chief Financial Officer
			(Principal Financial and Accounting Officer)

FIRST SUPPLEMENTAL INDENTURE

This First Supplemental Indenture (this "**Supplemental Indenture**"), dated as of May 17, 2023, among NantHealth, Inc., a Delaware corporation (the "**Company**"), NaviNet, Inc., a Delaware corporation (the "**Original Subsidiary Guarantor**"), OpenNMS Group, Inc., a North Carolina corporation (the "**Additional Subsidiary Guarantor**", and, together with the Original Subsidiary Guarantor, the "**Subsidiary Guarantors**"), U.S. Bank Trust Company, National Association, a national banking association, as successor in interest to U.S. Bank National Association, as trustee (in such capacity, the "**Trustee**") and U.S. Bank Trust Company, National Association, a national banking association, as notes collateral agent (in such capacity, the "**Notes Collateral Agent**").

W I T N E S S E T H

WHEREAS, the Company, the Original Subsidiary Guarantor and the Trustee have executed an indenture (the "**Original Indenture**"), dated as of April 27, 2021, providing for the issuance of Company's 4.50% Convertible Senior Notes due 2026 (the "**Notes**"), initially in the aggregate principal amount of $137,500,000, and the guarantee of the Company's Obligations under the Notes by the Original Subsidiary Guarantor;

WHEREAS, Section 10.01 of the Original Indenture authorizes the entry into one or more supplemental indentures without the consent of the Holders to, among other things, (i) add guarantees with respect to the Notes, (ii) secure the Notes and (iii) add to the covenants or Events of Default of the Company or the Subsidiary Guarantors for the benefit of the Holders or surrender any right or power conferred upon the Company or the Subsidiary Guarantors;

WHEREAS, Section 10.02 of the Original Indenture authorizes the entry into one or more supplemental indentures with the consent of each Holder of the Notes affected (the "**Requisite Consent**") to, among other things, (i) make any change that adversely affects the conversion rights of any Notes and (ii) reduce the Redemption Price or the Repurchase Event Repurchase Price of any Note or amend or modify in any manner adverse to the Holders the Company's obligation to make such payments, whether through an amendment or waiver of provisions in the covenants, definitions or otherwise;

WHEREAS, with respect to matters for which the consent of the Holders is not required under Section 10.01 of the Original Indenture, the conditions set forth in the Original Indenture for the execution and delivery of this Supplemental Indenture have been complied with; and WHEREAS, with respect to matters for which Requisite Consent is required under Section 10.02 of the Original Indenture, the conditions set forth in the Original Indenture for the execution and delivery of this Supplemental Indenture have been complied with and the Company has received and caused to be delivered to the Trustee evidence of receipt of the Requisite Consent.

NOW, THEREFORE, THIS SUPPLEMENTAL INDENTURE WITNESSETH:

That in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties mutually covenant and agree as follows:

1. Capitalized Terms. Capitalized terms used herein without definition shall have the meanings assigned to them in the Original Indenture.

2. Amended and Restated Indenture. The Original Indenture is hereby amended and restated in its entirety as set forth in Exhibit A hereto (as so amended and restated, the "**Indenture**").

3. Additional Subsidiary Guarantor. The Additional Subsidiary Guarantor hereby agrees, jointly and severally with the Original Subsidiary Guarantor, to unconditionally guarantee the Company's Obligations under the Notes and the Indenture on the terms and subject to the conditions set forth in Article 13 of the Indenture and to be bound by all other applicable provisions of the Indenture and the Notes and to perform all of the obligations and agreements of a Subsidiary Guarantor under the Indenture.

4. Effectiveness. The Indenture will become effective immediately upon the execution and delivery of this Supplemental Indenture by the parties hereto.

5. Reference to and Effect on the Indenture. On and after the effective date of this Supplemental Indenture, each reference in the Indenture to "this Indenture," "hereunder," "hereof," or "herein" shall mean and be a reference to the Indenture as amended and restated by this Supplemental Indenture unless the context otherwise requires, and every Holder heretofore or hereafter authenticated and delivered shall be bound hereby.

6. Governing Law. This Supplemental Indenture, and any claim, controversy or dispute arising under or related to this Supplemental Indenture, will be governed by, and construed in accordance with, the laws of the State of New York.

7. Counterparts. This Supplemental Indenture may be executed by electronic signature and in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute one and the same instrument. The exchange of copies of this Supplemental Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Supplemental Indenture as to the parties hereto and may be used in lieu of the original Supplemental Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes. All notices, approvals, consents, requests and any communications hereunder must be in writing (provided that any such communication sent to Trustee hereunder must be in the form of a document that is signed manually or by way of a digital signature provided by DocuSign (or such other digital signature provider as specified in writing to Trustee by the authorized representative), in English. Company agrees to assume all risks arising out of the use of using digital signatures and electronic methods to submit communications to Trustee, including without limitation the risk of Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

8. Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

9. The Trustee and Notes Collateral Agent. The recitals herein contained are made by the Company and not by the Trustee or Notes Collateral Agent, and the Trustee and the Notes Collateral Agent assume no responsibility for the correctness thereof. The Trustee and the Notes Collateral Agent make no representation as to the validity or sufficiency of this Supplemental Indenture. All of the provisions contained in the Indenture in respect of the rights, privileges, immunities, powers, and duties of the Trustee and the Notes Collateral Agent shall be applicable in respect of this Supplemental Indenture as fully and with like force and effect as though fully set forth in full herein.

10. Benefits Acknowledged. Each of the Company, the Original Subsidiary Guarantor and the Additional Subsidiary Guarantor acknowledges that it will receive direct and indirect benefits from the transactions contemplated by the Indenture and this Supplemental Indenture and that the agreements made by it pursuant to the Indenture and this Supplemental Indenture are knowingly made in contemplation of such benefits.

11. Successors. All agreements of each of the Company, the Guarantors, the Trustee and the Notes Collateral Agent in the Indenture and this Supplemental Indenture shall bind its successors, except as otherwise provided therein and herein.

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed as of the date first written above.

NANTHEALTH, INC.

By /s/ Bob Petrou
Name: Bob Petrou
Title: General Counsel, Chief Financial Officer, Treasurer and Secretary

NAVINET, INC.
as Original Subsidiary Guarantor

By /s/ Bob Petrou
Name: Bob Petrou
Title: Chief Financial Officer, Treasurer and Secretary

OPENNMS GROUP, INC.
as Additional Subsidiary Guarantor

By /s/ Bob Petrou
Name: Bob Petrou
Title: Chief Financial Officer, Treasurer and Secretary

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION
as Trustee

By: /s/ Lauren Costales
Name: Lauren Costales
Title: Vice President

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION
as Notes Collateral Agent

By: /s/ Lauren Costales
Name: Lauren Costales
Title: Vice President

EXHIBIT A

Amended and Restated Indenture

NANTHEALTH, INC.
as Issuer

AND

THE SUBSIDIARY GUARANTORS PARTY HERETO FROM TO TIME

AND

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION
(as successor in interest to U.S. Bank National Association)

as Trustee

AND

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION
as Notes Collateral Agent

INDENTURE

Dated as of April 27, 2021
Amended and Restated as of May 17, 2023

4.50% Convertible Senior Secured Notes due 2026

TABLE OF CONTENTS

EXHIBIT

AMENDED AND RESTATED INDENTURE, dated as of May 17, 2023 (as amended and restated, this "**Indenture**"), among NantHealth, Inc., a Delaware corporation, as issuer (the "**Company,**" as more fully set forth in Section 1.01), the Subsidiary Guarantors (as defined below) party hereto from time to time, U.S. Bank Trust Company, National Association (as successor in interest to U.S. Bank National Association), a national banking association organized under the laws of the United States of America, as trustee (the "**Trustee,**" as more fully set forth in Section 1.01) and U.S. Bank Trust Company, National Association, a national banking association organized under the laws of the United States of America, as collateral agent (the "**Notes Collateral Agent,**" as more fully set forth in Section 1.01).

Each party agrees as follows for the benefit of the other parties and for the equal and proportionate benefit of the Holders (as defined below) from time to time of the Company's 4.50% Convertible Senior Secured Notes due 2026 (the "**Notes**") originally issued on April 27, 2021 in an aggregate principal amount not to exceed $137,500,000, as follows:

ARTICLE 1
Definitions

Section 1.01. *Definitions*. The terms defined in this Section 1.01 (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Indenture and of any indenture supplemental hereto shall have the respective meanings specified in this Section 1.01. The words "herein," "hereof," "hereunder" and words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision. The terms defined in this Article include the plural as well as the singular.

"**Acceptable Subordination Terms**" means, with respect to any Indebtedness, terms of subordination that provide:

(a) upon a liquidation, bankruptcy, reorganization, insolvency, receivership or similar proceeding relating to the Company or its property, or in connection with an assignment for the benefit of creditors or in any marshalling of the Company's assets and liabilities, all obligations (including interest after the commencement of any bankruptcy proceeding) in respect of the Notes and this Indenture shall be paid in full in cash or other payment satisfactory to the Holders before the holders of such Indebtedness are entitled to receive any payment or other distribution with respect to such Indebtedness;

(b) no payment in respect of such Indebtedness may be made if (i) an Event of Default described in any of Sections 6.01(a), (b) or (c) has occurred and is continuing, by acceleration or otherwise, until such Event of Default is cured or waived or the obligations in respect of the Notes are paid in full in cash or other payment satisfactory to the Holders, or (ii) any other Event of Default has occurred and is continuing and the Trustee or Holders of at least 25% in aggregate principal amount of the Notes then outstanding has sent to the Company a notice of default (a "**Payment Blockage Notice**"); *provided* that no more than one Payment Blockage Notice may be sent during any 360-day period and payments in respect of such Indebtedness may resume upon the earliest to occur of (A) the date on which such Event of Default is cured or waived, (B) the obligations under the Notes and this Indenture are paid in full in cash or other payment satisfactory to the Holders, (C) the date that is 179 days after the date on which the Payment Blockage Notice is received, and (D) the date the Payment Blockage Notice is rescinded; and

(c) if any holder of such Indebtedness (or any agent, trustee or other representative thereof) receives payment that is prohibited by the subordination provisions, such holder (or agent, trustee or other representative) will hold the payment in trust for the benefit of the Holders and upon written request of the Trustee or Holders of at least 25% in aggregate principal amount of the Notes then outstanding will deliver the amounts in trust to the Trustee for application to the obligations under the Notes and this Indenture.

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

all or substantially all of the assets of such Person or of a division, line of business or other business unit of such Person.

"**Action**" shall have the meaning specified in Section 17.07(u).

"**Additional Interest**" means all amounts, if any, payable pursuant to Section 4.06(d), Section 4.06(e) and Section 6.03, as applicable.

"**Additional Shares**" shall have the meaning specified in Section 14.03(a).

"**Affiliate**" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control," when used with respect to any specified Person means the power to direct or cause the direction of the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"**Affiliate Debt**" means any Indebtedness incurred by the Company or its Subsidiaries in favor of any Affiliate of the Company or its Subsidiaries (other than the Credit Agreement, intercompany Indebtedness between the Company and its Subsidiaries and any Notes held by Affiliates of the Company), including Indebtedness incurred under (a) that certain Amended and Restated Promissory Note dated May 9, 2016 by the Company in favor of Nant Capital, LLC (as amended, restated or otherwise modified from time to time) and (b) that certain Amended and Restated Promissory Note dated June 1, 2016 by the Company in favor of NantOmics, LLC (as amended, restated or otherwise modified from time to time).

"**Affiliated Entity**" means any of (a) Dr. Patrick Soon-Shiong or his estate, heirs and lineal descendants, (b) any trust, individual retirement account, or business entity (including any corporation, limited liability company, partnership, foundation or similar entity) for which Dr. Patrick Soon-Shiong retains direct or indirect control with respect to the Common Stock held by such trust, individual retirement account, or business entity and the trustees, legal representatives, beneficiaries and/or beneficial owners of such trust, individual retirement account or business entity, (c) any not-for-profit-entity where the acquisition of the Company's Common Equity is directed by Dr. Patrick Soon-Shiong and (d) any entity directly or indirectly controlled by Dr. Patrick Soon-Shiong or his estate. For the purposes of this definition, "control," when used with respect to any specified Person means the power to direct or cause the direction of the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"**Affiliate Note**" means any Note initially issued by the Company to any Holder that, at the time of the acquisition by such Holder of such Note, is an Affiliate of the Company.

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

"**Beneficial Ownership Limitation**" shall have the meaning specified in Section 14.13(d).

"**Board of Directors**" means the board of directors of the Company or a committee of such board duly authorized to act for it hereunder.

"**Board Resolution**" means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors, and to be in full force and effect on the date of such certification, and delivered to the Trustee.

"**Business Day**" means, with respect to any Note, any day other than a Saturday, a Sunday or a day on which the Federal Reserve Bank of New York is authorized or required by law or executive order to close or be closed.

"**Capital Stock**" means, for any entity, any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) stock issued by that entity.

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

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

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

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

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

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

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

"**Cash Settlement**" shall have the meaning specified in Section 14.02(a).

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

"**Clause A Distribution**" shall have the meaning specified in Section 14.04(c).

"**Clause B Distribution**" shall have the meaning specified in Section 14.04(c).

"**Clause C Distribution**" shall have the meaning specified in Section 14.04(c).

"**close of business**" means 5:00 p.m. (New York City time).

"**Code**" means the Internal Revenue Code of 1986.

"**Collateral**" means all of the "Collateral" and "Mortgaged Property" referred to in the Notes Security Documents and all of the other property that is or is intended under the terms of the Notes Security Documents to be subject to Liens in favor of the Notes Collateral Agent for the benefit of the Notes Secured Parties; provided, that Collateral shall exclude all Excluded Property "**Collateral Requirement**" means, subject to the Intercreditor Agreement and except with respect to Excluded Property, the requirement that:

(a) the Notes Collateral Agent shall have received from each Grantor a counterpart of the Notes Security Agreement duly executed and delivered on behalf of such Grantor;

(b) each Grantor shall have caused the Pledged Equity and all of its tangible and intangible personal property now owned or hereafter acquired by it to be subject at all times to a second priority, perfected Lien (subject to Permitted Liens, the Notes Security Documents and the Intercreditor Agreement) in favor of the Notes Collateral Agent for the benefit of the Notes Secured Parties to secure the Notes Obligations pursuant to the terms and conditions of the Notes Security Documents. The Grantors shall provide opinions of counsel and any filings and deliveries reasonably necessary in connection therewith to perfect the security interests therein, all substantially similar to the comparable documents delivered under the Credit Agreement;

(c) if any Grantor acquires any Real Estate after the date hereof constituting Material Real Estate, it shall promptly provide to the Trustee and the Notes Collateral Agent notice of such acquisition with details as to such Material Real Estate and within thirty (30) days thereafter, shall execute and deliver to the Notes Collateral Agent a Mortgage and such other documentation as necessary or that the Notes Collateral Agent may request to cause such Material Real Estate to be subject at all times to a second priority, perfected Lien (subject in each case to Permitted Liens) in favor of the Notes Collateral Agent for the benefit of the Notes Secured Parties to secure the Notes Obligations pursuant to the terms and conditions of the Notes Security Documents together with (i) a policy of title insurance insuring the Lien of such Mortgage in an amount equal to 110% of the Fair Market Value as reasonably estimated by the Company and substantially similar to what is delivered under the Credit Agreement and (ii) a legal opinion relating to such Mortgage, which opinion shall be substantially similar to the opinion delivered under the Credit Agreement. In connection with the foregoing, no later than twenty (20) Business Days prior to the date on which a Mortgage is executed and delivered pursuant to the requirements described in this definition, the applicable Grantor, shall deliver to the Notes Collateral Agent the flood insurance policy, such Grantor's application for a flood insurance policy plus proof of premium payment, a declaration page confirming that flood insurance has been issued, or such other evidence of flood insurance that complies with the Flood Laws;

(d) the Grantors shall use commercially reasonable efforts to secure a landlord waiver with respect to the facility located on Nancy Ridge in San Diego, California in form and substance substantially similar to what is delivered under the Credit Agreement and satisfactory in form to the Notes Collateral Agent (it being agreed that no such agreement shall require the Notes Collateral Agent to indemnify or reimburse any landlord) within one hundred eighty (180) days of the date hereof;

(e) each Grantor shall not open, maintain or otherwise have any deposit or other accounts (including securities accounts) at any bank or other financial institution, or any other account where money or securities are or may be deposited or maintained with any Person, other than (i) deposit accounts that are maintained at all times with depositary institutions as to which the collateral agent under the Credit Agreement shall have received a Qualifying Control Agreement in accordance with the terms of the Credit Agreement Documents, (ii) securities accounts that are maintained at all times with financial institutions as to which the collateral agent under the Credit Agreement shall have received a Qualifying Control Agreement in accordance with the terms of the Credit Agreement Documents, (iii) deposit accounts established solely as payroll and other zero balance accounts and (iv) other deposit accounts, so long as at any time the aggregate balance in all such accounts does not exceed $1,000,000;

(f) concurrently with the delivery of any Collateral pursuant to the terms described in this definition, the Company shall provide the Notes Collateral Agent and the Trustee with the applicable updated schedules to the Perfection Certificate; and

(g) promptly execute and deliver any and all further instruments and documents and take all such other action necessary or reasonably advisable to maintain in favor of the Notes Collateral Agent, for the benefit of the Notes Secured Parties, Liens and insurance rights on the Collateral that are duly perfected in accordance with the requirements of, or the obligations of the Grantors under, this Indenture, the Notes Security Documents and all applicable Laws.

"**Combination Settlement**" shall have the meaning specified in Section 14.02(a).

"**Commission**" means the U.S. Securities and Exchange Commission.

"**Common Equity**" of any Person means Capital Stock of such Person that is generally entitled (a) to vote in the election of directors of such Person or (b) if such Person is not a corporation, to vote or

otherwise participate in the selection of the governing body, partners, managers or others that will control the management or policies of such Person.

"**Common Stock**" means the common stock of the Company, par value $0.0001 per share, at April 27, 2021, subject to Section 14.07 and any adjustments thereunder after such date.

"**Common Stock Change Event**" shall have the meaning specified in Section 14.07(a).

"**Company**" shall have the meaning specified in the first paragraph of this Indenture, and subject to the provisions of ARTICLE 11, shall include its successors and assigns.

"**Company Order**" means a written order of the Company, signed by (a) the Company's Chief Executive Officer, President, Executive or Senior Vice President or any Vice President (whether or not designated by a number or numbers or word or words added before or after the title "Vice President") and (b) any such other Officer designated in clause (a) of this definition or the Company's Treasurer or Assistant Treasurer or Secretary or any Assistant Secretary, and delivered to the Trustee.

"**Consolidated Total Assets**" means, as of any date of determination, the total consolidated assets of the Company and its Subsidiaries without giving effect to any impairment or amortization of the amount of intangible assets since the date of this Indenture, determined on a consolidated basis in accordance with GAAP, as set forth on the consolidated balance sheet of the Company and its Subsidiaries as of the last day of the fiscal quarter most recently ended for which financial statements have been delivered pursuant to Section 4.06, calculated on a Pro Forma Basis after giving effect to any acquisition, Disposition or other pro forma event that may have occurred on or after the last day of such fiscal quarter.

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

"**Conversion Agent**" shall have the meaning specified in Section 4.02.

"**Conversion Consideration**" shall have the meaning specified in Section 14.12.

"**Conversion Date**" shall have the meaning specified in Section 14.02(c).

"**Conversion Obligation**" shall have the meaning specified in Section 14.01.

"**Conversion Price**" means as of any time, $1,000, *divided by* the Conversion Rate as of such time.

"**Conversion Rate**" shall have the meaning specified in Section 14.01.

"**Corporate Trust Office**" means the designated office of the Trustee or the Notes Collateral Agent at which at any time this Indenture shall be administered, which office at the date hereof is located at U.S. Bank Trust Company, National Association, 633 West 5th Street, 24th Floor Los Angeles, CA 90071, Attention: L. Costales (NantHealth, Inc. 4.50% Convertible Senior Secured Notes due 2026), or such other address as the Trustee or the Notes Collateral Agent, as applicable, may designate from time to time by notice to the Holders and the Company, or the designated corporate trust office of any successor trustee or successor notes collateral agent (or such other address as such successor trustee or successor notes collateral agent, as applicable, may designate from time to time by notice to the Holders and the Company).

"**Credit Agreement**" means the Credit Agreement, dated as of March 2, 2023, among the Company, the guarantors party thereto from time to time, each of the lenders from time to time party thereto, GLAS USA LLC, as administrative agent, and GLAS Americas LLC, as collateral agent, as such agreement may be amended or supplemented from time to time.

"**Credit Agreement Documents**" means the "Loan Documents" as defined in the Credit Agreement.

"**Custodian**" means the Trustee, as custodian for The Depository Trust Company, with respect to the Global Notes, or any successor entity thereto.

"**Daily Conversion Value**" means, for each of the 10 consecutive Trading Days during the Observation Period, 10% of the product of (a) the Conversion Rate on such Trading Day and (b) the Daily VWAP for such Trading Day.

"**Daily Measurement Value**" means the Specified Dollar Amount (if any), *divided by* 10.

"**Daily Settlement Amount**," for each of the 10 consecutive Trading Days during the Observation Period, shall consist of:

(a) cash in an amount equal to the lesser of (i) the Daily Measurement Value and (ii) the Daily Conversion Value on such Trading Day; and

(b) if the Daily Conversion Value on such Trading Day exceeds the Daily Measurement Value, a number of shares of Common Stock equal to (i) the difference between the Daily Conversion Value and the Daily Measurement Value, *divided by* (ii) the Daily VWAP for such Trading Day.

"**Daily VWAP**" means, for each of the 10 consecutive Trading Days during the relevant Observation Period, the per share volume-weighted average price as displayed under the heading "Bloomberg VWAP" on Bloomberg page "NH <equity> AQR" (or its equivalent successor if such page is not available) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such Trading Day (or if such volume-weighted average price is unavailable, the market value of one share of the Common Stock on such Trading Day determined, using a volume-weighted average method, by a nationally recognized independent investment banking firm retained for this purpose by the Company). The "**Daily VWAP**" shall be determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours.

"**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.

"**Default**" means any event that is, or after notice or passage of time, or both, would be, an Event of Default.

"**Defaulted Amounts**" means any amounts on any Note (including, without limitation, the Redemption Price, Repurchase Event Repurchase Price, principal and interest) that are payable but are not punctually paid or duly provided for.

"**Delisting Event**" shall have the meaning specified in the definition of "**Fundamental Change**".

"**Depositary**" means, with respect to each Global Note, the Person specified in Section 2.05(c) as the Depositary with respect to such Notes, until a successor shall have been appointed and become such pursuant to the applicable provisions of this Indenture, and thereafter, "**Depositary**" shall mean or include such successor.

"**Disposition**" or "**Dispose**" means the sale, conveyance, assignment, transfer, license, lease or other disposition (including any Sale and Leaseback Transaction) of any property by the Company or any of its Subsidiaries (or the granting of any option or other right to do any of the foregoing), including any sale, conveyance, assignment, transfer, license, lease or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith, or the sale or issuance of Capital Stock in the Company or any of its Subsidiaries, but excluding any (a) Involuntary Disposition, (b) the disposition of cash and Cash Equivalents in the ordinary course of business and (c) payment or delivery of cash, shares of Common Stock or any combination thereof by the Company in performing its obligations under this Indenture and the Notes.

"**Distributed Property**" shall have the meaning specified in Section 14.04(c).

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

"**Effective Date**" shall have the meaning specified in Section 14.03(c), except that, as used in Section 14.04 and Section 14.05, "**Effective Date**" means the first date on which shares of the Common Stock trade on the applicable exchange or in the applicable market, regular way, reflecting the relevant share split or share combination, as applicable.

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

"**Event of Default**" shall have the meaning specified in Section 6.01.

"**Ex-Dividend Date**" means the first date on which shares of the Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question, from the Company or, if applicable, from the seller of Common Stock on such exchange or market (in the form of due bills or otherwise) as determined by such exchange or market.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"**Exchange Election**" shall have the meaning specified in Section 14.12.

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

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

"**Fair Market Value**" means, with respect to any asset on any date of determination, the value of the consideration obtainable in a sale of such asset at such date of determination assuming a sale by a willing seller to a willing purchaser dealing at arm's length and arranged in an orderly manner over a reasonable period of time having regard to the nature and characteristics of such asset, as reasonably determined by the Company in good faith.

"**Flood Laws**" means, collectively, (a) the National Flood Insurance Act of 1968 as now or hereafter in effect or any successor statute thereto, (b) the Flood Disaster Protection Act of 1973 as now or hereafter in effect or any successor statute thereto (the "Flood Disaster Protection Act"), (c) the National Flood Insurance Reform Act of 1994 as now or hereafter in effect or any successor statute thereto and (d) the Flood Insurance Reform Act of 2004, and any regulations promulgated thereunder, as now or hereafter in effect or any successor statute or regulations thereto.

"**Foreign Subsidiary**" means any Subsidiary that is not a Domestic Subsidiary.

"**Form of Assignment and Transfer**" means the "Form of Assignment and Transfer" attached as Attachment 3 to the Form of Note attached hereto as Exhibit A.

"**Form of Note**" means the "Form of Note" attached hereto as Exhibit A.

"**Form of Notice of Conversion**" means the "Form of Notice of Conversion" attached as Attachment 1 to the Form of Note attached hereto as Exhibit A.

"**Form of Repurchase Event Repurchase Notice**" means the "Form of Repurchase Event Repurchase Notice" attached as Attachment 2 to the Form of Note attached hereto as Exhibit A.

"**Fundamental Change**" shall be deemed to have occurred at the time after the Notes are originally issued if any of the following occurs:

(a) a "person" or "group" within the meaning of Section 13(d) of the Exchange Act, other than (i) any Affiliated Entity or (ii) the Company, its direct or indirect Wholly Owned Subsidiaries and the employee benefit plans of the Company and its direct or indirect Wholly Owned Subsidiaries, files a Schedule TO (or any successor schedule, form or report) or any schedule, form or report under the Exchange Act that discloses that such person or group has become the direct or indirect "beneficial owner," as defined in Rule 13d-3 under the Exchange Act, of the Company's Common Equity representing more than 50% of the voting power of the Company's Common Equity; *provided* that no person or group shall be deemed to be the beneficial owner of any securities tendered pursuant to a tender or exchange offer made by or on behalf of such "person" or "group" until such tendered securities are accepted for purchase or exchange under such offer;

(b) the consummation of (i) any recapitalization, reclassification or change of the Common Stock (other than changes resulting from a subdivision or combination) as a result of which the Common Stock would be converted into, or exchanged for, stock, other securities, other property or assets; (ii) any share exchange, consolidation or merger of the Company pursuant to which the Common Stock will be converted into cash, securities or other property or assets; or (iii) any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of the Company and its Subsidiaries, taken as a whole, to any Person other than one of the Company's Wholly Owned Subsidiaries; *provided*, *however*, that a transaction described in clause (ii) in which the holders of all classes of the Company's Common Equity immediately prior to such transaction own, directly or indirectly, more than 50% of all classes of Common Equity of the continuing or surviving corporation or transferee or the parent thereof immediately after such transaction in substantially the same proportions as such ownership immediately prior to such transaction shall not be a Fundamental Change pursuant to this clause (b);

(c) the stockholders of the Company approve any plan or proposal for the liquidation or dissolution of the Company; or

(d) the Common Stock (or other common stock underlying the Notes) ceases to be listed or quoted on any of The New York Stock Exchange, The NASDAQ Global Select Market, The NASDAQ Global Market or the NASDAQ Capital Market (or any of their respective successors) (such event described herein this clause (d), a "**Delisting Event**");

provided, *however*, that a transaction or transactions described in clause (a) or clause (b) above shall not constitute a Fundamental Change, if at least 90% of the consideration received or to be received by holders of the Common Stock, excluding cash payments for fractional shares and cash payments made in respect of dissenters' appraisal rights, in connection with such transaction or transactions consists of

shares of common stock that are listed or quoted on any of The New York Stock Exchange, The NASDAQ Global Select Market, The NASDAQ Global Market or the NASDAQ Capital Market (or any of their respective successors) or will be so listed or quoted when issued or exchanged in connection with such transaction or transactions and as a result of such transaction or transactions the Notes become convertible into such consideration, excluding cash payments for fractional shares and cash payments made in respect of dissenters' appraisal rights (subject to the provisions of Section 14.02(a)). If any transaction in which the Common Stock is replaced by securities of another entity occurs, following completion of any related Make-Whole Fundamental Change Period (or, in the case of a transaction that would have been a Fundamental Change or a Make-Whole Fundamental Change but for the proviso immediately following clause (d) of the definition thereof, following the effective date of such transaction), references to the Company in this definition shall instead be references to such other entity.

For purposes of this definition of "Fundamental Change" above, any transaction or series of transactions that constitutes a Fundamental Change pursuant to both clause (a) and clause (b) of such definition (without giving effect to the proviso in clause (b) thereof) shall be deemed a Fundamental Change solely under clause (b) of such definition (subject to the proviso in clause (b) thereof).

"**GAAP**" means generally accepted accounting principles in the United States set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the accounting profession) including, without limitation, the FASB Accounting Standards Codification.

"**General Beneficial Ownership Limitation**" shall have the meaning specified in Section 14.13(d).

"**given**," with respect to any notice to be given to a Holder pursuant to this Indenture, shall mean notice (x) given to the Depositary (or its designee) pursuant to the standing instructions from the Depositary or its designee, including by electronic mail in accordance with accepted practices or procedures at the Depositary (in the case of a Global Note) or (y) mailed to such Holder by first class mail, postage prepaid, at its address as it appears on the Note Register, in each case in accordance with Section 18.03. Notice so "given" shall be deemed to include any notice to be "mailed" or "delivered," as applicable, under this Indenture.

"**Global Note**" shall have the meaning specified in Section 2.05(b).

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

"**Grantor**" means the Company or any Subsidiary Guarantor.

"**Guaranteed Obligations**" has the meaning set forth in Section 13.01(b).

"**Holder**," as applied to any Note, or other similar terms (but excluding the term "beneficial holder"), means any Person in whose name at the time a particular Note is registered on the Note Register.

"**Holder Beneficial Ownership Limitation**" shall have the meaning specified in Section 14.13(d).

"**Immaterial Subsidiary**" means any Foreign Subsidiary that (a) did not, as of the last day of the fiscal quarter of the Company most recently ended for which financial statements have been delivered pursuant to Section 4.06, have assets with a value in excess of 5.0% of the Consolidated Total Assets as of such date or revenues representing in excess of 5.0% of total revenues of the Company and its Subsidiaries on a consolidated basis as of such date, and (b) taken together with all Immaterial Subsidiaries as of such date, did not have assets with a value in excess of 10% of Consolidated Total Assets as of such date or revenues representing in excess of 10% of total revenues of the Company and its Subsidiaries on a consolidated basis as of such date; *provided* that the Company may elect in its sole discretion to exclude as an Immaterial Subsidiary any Foreign Subsidiary that would otherwise meet the

definition thereof; *provided further* that, notwithstanding anything to the contrary herein, no Foreign Subsidiary will be an Immaterial Subsidiary if it at any time owns any of the Specified Assets.

"**Indebtedness**" of any specified person means, without duplication, any indebtedness in respect of borrowed money or that is evidenced by bonds, notes, debentures or similar instruments or letters of credit (or reimbursement agreements with respect thereto) or any guarantee by the specified person thereof.

"**Indenture**" means this instrument as originally executed or, if amended or supplemented as herein provided, as so amended or supplemented.

"**Intercreditor Agreement**" means the Intercreditor Agreement attached as Exhibit C to this Indenture, governing the priority of the Collateral between the Notes Collateral Agent and the collateral agent under the Credit Agreement.

"**Interest Payment Date**" means each April 15 and October 15 of each year, beginning on October 15, 2021.

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

"**Involuntary Disposition**" means any loss of, damage to or destruction of, or any condemnation or other taking for public use of, any property of the Company or any of its Subsidiaries.

"**Last Reported Sale Price**" of the Common Stock on any date means the closing sale price per share (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on that date as reported in composite transactions for the principal U.S. national or regional securities exchange on which the Common Stock is traded. If the Common Stock is not listed for trading on a U.S. national or regional securities exchange on the relevant date, the "**Last Reported Sale Price**" shall be the last quoted bid price per share for the Common Stock in the over-the-counter market on the relevant date as reported by OTC Markets Group Inc. or a similar organization. If the Common Stock is not so quoted, the "**Last Reported Sale Price**" shall be the average of the mid-point of the last bid and last ask prices per share for the Common Stock on the relevant date from each of at least three nationally recognized independent investment banking firms selected by the Company for this purpose.

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

"**Make-Whole Fundamental Change**" means any transaction or event that constitutes a Fundamental Change (as defined above and determined after giving effect to any exceptions to or exclusions from such definition, but without regard to the *proviso* in clause (b) of the definition thereof).

"**Make-Whole Fundamental Change Period**" shall have the meaning specified in Section 14.03(a).

"**Market Disruption Event**" means, for the purposes of determining amounts due upon conversion (a) a failure by the primary U.S. national or regional securities exchange or market on which the Common Stock is listed or admitted for trading to open for trading during its regular trading session or

(b) the occurrence or existence prior to 1:00 p.m., New York City time, on any Scheduled Trading Day for the Common Stock for more than one half-hour period in the aggregate during regular trading hours of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant stock exchange or otherwise) in the Common Stock or in any options contracts or futures contracts relating to the Common Stock.

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

"**Maturity Date**" means April 15, 2026.

"**Measurement Period**" means, at any date of determination, the most recently completed four fiscal quarters of the Company.

"**Moody's**" means Moody's Investors Service, Inc. and any successor thereto.

"**Mortgage**" or "**Mortgages**" means, individually and collectively, as the context requires, each of the fee mortgages, deeds of trust or similar instruments executed by a Grantor that purports to grant a Lien to the Notes Collateral Agent for the benefit of the Notes Secured Parties in any Mortgaged Properties, in form and substance substantially similar to the corresponding Credit Agreement Documents and otherwise in form satisfactory to the Notes Collateral Agent.

"**Mortgaged Property**" means any owned real property of a Grantor that is or will become encumbered by a Mortgage in favor of the Notes Collateral Agent for the benefit of the Notes Secured Parties in accordance with the terms of this Indenture.

"**NaviNet**" means NaviNet, Inc., a Delaware corporation.

"**NaviNet Business**" refers to the Company's SaaS-based business, which includes a collaboration platform, consisting of clinical and administrative workflow, eligibility and benefits, claims, and referral management software products and services for payers and providers.

"**Note**" or "**Notes**" shall have the meaning specified in the first paragraph of the recitals of this Indenture.

"**Notes Collateral Agent**" means the Person named as the "Notes Collateral Agent" in the first paragraph of this Indenture until a successor collateral agent shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Notes Collateral Agent" shall mean or include each Person who is then a Notes Collateral Agent hereunder.

"**Notes Documents**" means the Indenture, the Notes, the Subsidiary Guarantees, the Notes Security Documents and the Intercreditor Agreement.

"**Notes Obligations**" means obligations in respect of the Notes, the Subsidiary Guarantees, this Indenture and the Notes Security Documents.

"**Note Register**" shall have the meaning specified in Section 2.05(a).

"**Note Registrar**" shall have the meaning specified in Section 2.05(a).

"**Notes Secured Parties**" means the Trustee, the Notes Collateral Agent and the Holders.

"**Notes Security Agreement**" means the security and pledge agreement, dated as of May 17, 2023, executed in favor of the Notes Collateral Agent by each Grantor party thereto.

"**Notes Security Documents**" means, collectively, the Notes Security Agreement, the Mortgages, each of the mortgages, collateral assignments, security agreements, pledge agreements or other similar agreements delivered to the Notes Collateral Agent pursuant to the Collateral Requirement, and each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Notes Collateral Agent for the benefit of the Notes Secured Parties.

"**Notice of Conversion**" shall have the meaning specified in Section 14.02(b).

"**Observation Period**" with respect to any Note surrendered for conversion means: (a) subject to clause (b) below, if the relevant Conversion Date occurs prior to January 15, 2026, the 10 consecutive Trading Day period beginning on, and including, the second Trading Day immediately succeeding such Conversion Date; (b) if the relevant Conversion Date occurs during a Redemption Period, the 10 consecutive Trading Days beginning on, and including, the 11th Scheduled Trading Day immediately preceding the date that is specified as the Redemption Date in the related Redemption Notice; and (c) if the relevant Conversion Date occurs on or after January 15, 2026, the 10 consecutive Trading Days beginning on, and including, the 11th Scheduled Trading Day immediately preceding the Maturity Date.

"**Officer**" means, with respect to the Company, the President, the Chief Executive Officer, Chief Financial Officer, the Treasurer, the Secretary, any Executive or Senior Vice President or any Vice President (whether or not designated by a number or numbers or word or words added before or after the title "Vice President").

"**Officer's Certificate**," when used with respect to the Company or a Subsidiary Guarantor, means a certificate that is delivered to the Trustee or the Notes Collateral Agent, as applicable, and that is signed by any Officer of the Company or such Subsidiary Guarantor, as applicable. Each such certificate shall include the statements provided for in Section 18.05 if and to the extent required by the provisions of such Section. The Officer giving an Officer's Certificate pursuant to Section 4.08 shall be the principal executive, financial or accounting officer of the Company or such Subsidiary Guarantor, as applicable.

"**Open of business**" means 9:00 a.m. (New York City time).

"**Opinion of Counsel**" means an opinion in writing signed by legal counsel, who may be an employee of or counsel to the Company or a Subsidiary Guarantor or other counsel reasonably acceptable to the Trustee or the Notes Collateral Agent, as applicable, that is delivered to the Trustee or the Notes Collateral Agent, as applicable. Each such opinion shall include the statements provided for in Section 18.05 if and to the extent required by the provisions of such Section 18.05 and such opinion may contain customary qualifications and assumptions.

"**Optional Redemption**" shall have the meaning specified in Section 16.01.

"**Organization Documents**" means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement or limited liability company agreement (or equivalent or comparable documents with respect to any non-U.S. jurisdiction); (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization (or equivalent or comparable documents with respect to any non-U.S. jurisdiction) and (d) with respect to all entities, any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization (or equivalent or comparable documents with respect to any non-U.S. jurisdiction).

"**outstanding**," when used with reference to Notes, shall, subject to the provisions of Section 8.04, mean, as of any particular time, all Notes authenticated and delivered by the Trustee under this Indenture, except:

(a) Notes theretofore canceled by the Trustee or accepted by the Trustee for cancellation;

(b) Notes, or portions thereof, that have become due and payable and in respect of which monies in the necessary amount shall have been deposited in trust with the Trustee or with any Paying Agent (other than the Company) or shall have been set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent);

(c) Notes that have been paid pursuant to Section 2.06 or Notes in lieu of which, or in substitution for which, other Notes shall have been authenticated and delivered pursuant to the terms of Section 2.06 unless proof satisfactory to the Trustee is presented that any such Notes

are held by protected purchasers in due course (in which case such other Notes shall not be deemed to be outstanding);

(d) Notes converted pursuant to ARTICLE 14 and required to be cancelled pursuant to Section 2.08;

(e) Notes repurchased by the Company pursuant to the penultimate sentence of Section 2.10; and

(f) Notes redeemed pursuant to ARTICLE 16.

"**Past Due Accounts Payable**" means accounts payable owed by the Company or any of its Subsidiaries to any non-Affiliate, in each case, with respect to invoices received on or after the date of this Indenture regarding accounts payable that are more than 30 days overdue.

"**Paying Agent**" shall have the meaning specified in Section 4.02.

"**Perfection Certificate**" means the information certificate of the Company and the Subsidiary Guarantors dated as of the date hereof.

"**Permitted Acquisition**" means an Acquisition by the Company or a Subsidiary Guarantor (the Person or division, line of business or other business unit of the Person to be acquired in such Acquisition shall be referred to herein as the "**Target**"), in each case that is a type of business (or assets used in a type of business) permitted to be engaged in by the Company and its Subsidiaries pursuant to this Indenture, in each case so long as:

(a) no Default or Event of Default shall then exist or would exist after giving effect thereto;

(b) the Notes Collateral Agent shall have received (or shall receive in connection with the closing of such Acquisition) a perfected security interest in all property (including, without limitation, Capital Stock) acquired with respect to the Target in accordance with ARTICLE 17 of this Indenture and the Target, if a Person, shall have executed a supplemental indenture to become a Subsidiary Guarantor under this Indenture;

(c) the Target shall have positive operating cash flow less capital expenditures as determined in accordance with GAAP for the four fiscal quarter period prior to the acquisition date;

(d) such Acquisition shall not be a "hostile" Acquisition and shall have been approved by the board of directors (or equivalent) and/or shareholders (or equivalent) of the acquiring Person and the Target;

(e) the purchase consideration payable in respect of all Permitted Acquisitions shall not exceed $5,000,000 in the aggregate in any fiscal year;

(f) no Indebtedness will be incurred, assumed, or would exist with respect to the Company or its Subsidiaries as a result of such Acquisition, other than indebtedness permitted under Section 4.12(c), Section 4.12(f) and Section 4.12(k) and no Liens will be incurred, assumed or would exist with respect to the assets of the Company or its Subsidiaries as a result of such Acquisition other than Permitted Liens; and

(g) (x) the assets or Capital Stock acquired are located in the United States and shall be owned by the Company or a Subsidiary Guarantor or (y) the Person whose Capital Stock is being acquired is organized in a jurisdiction located within the United States and shall become a Subsidiary Guarantor.

"**Permitted Refinancing**" means, with respect to any Person, any modification, refinancing, refunding, renewal or extension of any Indebtedness of such Person; *provided* that (a) the principal amount (or accreted value, if applicable) thereof does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so modified, refinanced, refunded, renewed or extended except by an

amount equal to unpaid accrued interest and premium thereon plus other amounts paid, and fees and expenses incurred, in connection with such modification, refinancing, refunding, renewal or extension and by an amount equal to any existing commitments unutilized thereunder, (b) other than with respect to a Permitted Refinancing in respect of Indebtedness permitted pursuant to Section 4.12(c), the Indebtedness resulting from such modification, refinancing, refunding, renewal or extension has a final maturity date equal to or later than the final maturity date of the Indebtedness being modified, refinanced, refunded, renewed or extended, (c) the Weighted Average Life to Maturity of the Indebtedness resulting from such modification, refinancing, refunding, renewal or extension shall be no shorter than the Weighted Average Life to Maturity of the Indebtedness being modified, refinanced, refunded, renewed or extended, (d) immediately after giving effect thereto, no Default shall have occurred and be continuing, (e) if the Indebtedness being modified, refinanced, refunded, renewed or extended is subordinated in right of payment to the Notes Obligations, Indebtedness resulting from such modification, refinancing, refunding, renewal or extension is subordinated in right of payment to the Notes Obligations on terms at least as favorable to the Holders as those contained in the documentation governing the Indebtedness being modified, refinanced, refunded, renewed or extended and (f) if the Indebtedness being modified, refinanced, refunded, renewed or extended is unsecured, the Indebtedness resulting from such modification, refinancing, refunding, renewal or extension shall be unsecured. For the avoidance of doubt, it is understood that a Permitted Refinancing may constitute a portion of an issuance of Indebtedness in excess of the amount of such Permitted Refinancing; *provided* that such excess amount is otherwise permitted to be incurred under Section 4.12.

"**Permitted Transfers**" means (a) Dispositions of inventory in the ordinary course of business; (b) Dispositions of property to the Company or any of its Subsidiaries; *provided* that if the transferor of such property is the Company or a Subsidiary Guarantor then the transferee thereof must be the Company or a Subsidiary Guarantor; (c) Dispositions of accounts receivable in connection with the collection or compromise thereof, (d) the sale or disposition of Cash Equivalents, and (e) lease, sublease, non-exclusive license and non-exclusive sublicenses of property of the Company or any of its Subsidiaries in the ordinary course of business and consistent with past practice.

"**Person**" means an individual, a corporation, a limited liability company, an association, a partnership, a joint venture, a joint stock company, a trust, an unincorporated organization or a government or an agency or a political subdivision thereof.

"**Physical Notes**" means permanent certificated Notes in registered form issued in denominations of $1,000 principal amount and integral multiples thereof.

"**Physical Settlement**" shall have the meaning specified in Section 14.02(a).

"**Pledged Equity**" shall have the meaning specified in the Notes Security Agreement.

"**Pro Forma Basis**" means, for any Disposition of all or substantially all of a division or a line of business or for any Acquisition, whether actual or proposed, each such transaction or proposed transaction shall be deemed to have occurred on and as of the first day of the relevant Measurement Period, and the following pro forma adjustments shall be made:

(a) in the case of an actual or proposed Disposition, all income statement items (whether positive or negative) attributable to the line of business or the Person subject to such Disposition shall be excluded from the results of the Company and its Subsidiaries for such Measurement Period;

(b) in the case of an actual or proposed Acquisition, income statement items (whether positive or negative) attributable to the property, line of business or the Person subject to such Acquisition shall be included in the results of the Company and its Subsidiaries for such Measurement Period;

(c) interest accrued during the relevant Measurement Period on, and the principal of, any Indebtedness repaid or to be repaid or refinanced in such transaction shall be excluded from the results of the Company and its Subsidiaries for such Measurement Period; and

(d) any Indebtedness actually or proposed to be incurred or assumed in such transaction shall be deemed to have been incurred as of the first day of the applicable Measurement Period, and interest thereon shall be deemed to have accrued from such day on

such Indebtedness at the applicable rates provided therefor (and in the case of interest that does or would accrue at a formula or floating rate, at the rate in effect at the time of determination) and shall be included in the results of the Company and its Subsidiaries for such Measurement Period.

"**Predecessor Note**" of any particular Note means every previous Note evidencing all or a portion of the same debt as that evidenced by such particular Note; and, for the purposes of this definition, any Note authenticated and delivered under Section 2.06 in lieu of or in exchange for a mutilated, lost, destroyed or stolen Note shall be deemed to evidence the same debt as the mutilated, lost, destroyed or stolen Note that it replaces.

"**Qualifying Control Agreement**" shall have the meaning specified in the Credit Agreement.

"**Real Estate**" means all real property at any time owned by the Company or any Subsidiary in the United States.

"**Record Date**" means, with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock (or other applicable security) have the right to receive any cash, securities or other property or in which the Common Stock (or such other security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of holders of the Common Stock (or such other security) entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors, by statute, by contract or otherwise).

"**Redemption Date**" shall have the meaning specified in Section 16.02(a).

"**Redemption Notice**" shall have the meaning specified in Section 16.02(a).

"**Redemption Notice Date**" means the date on which a Redemption Notice is delivered pursuant to Section 16.02.

"**Redemption Period**" means the period from, and including, the relevant Redemption Notice Date until the close of business on the Scheduled Trading Day immediately preceding the related Redemption Date or, if the Company defaults in the payment of the Redemption Price, until the Redemption Price has been paid or duly provided for.

"**Redemption Price**" means, for any Notes to be redeemed pursuant to Section 16.01, 100% of the principal amount of such Notes, plus accrued and unpaid interest, if any, to, but excluding, the Redemption Date (unless the Redemption Date falls after a Regular Record Date but on or prior to the Business Day immediately succeeding the corresponding Interest Payment Date, in which case interest accrued, if any, to the Interest Payment Date will be paid to Holders of record of such Notes on such Regular Record Date, and the Redemption Price will be equal to 100% of the principal amount of such Notes).

"**Reference Property**" shall have the meaning specified in Section 14.07(a).

"**Regular Record Date**," with respect to any Interest Payment Date, means the April 1 or October 1 (whether or not such day is a Business Day) immediately preceding the applicable April 15 or October 15 Interest Payment Date, respectively.

"**Related Person**" shall have the meaning specified in Section 17.07(b).

"**Repurchase Amount**" shall have the meaning specified in Section 15.02(a).

"**Repurchase Event**" shall mean the occurrence of a Fundamental Change or a Software Disposition Event.

"**Repurchase Event Company Notice**" shall have the meaning specified in Section 15.02(a).

"**Repurchase Event Repurchase Date**" shall have the meaning specified in Section 15.02(a).

"**Repurchase Event Repurchase Notice**" shall have the meaning specified in Section 15.02(b)(i).

"**Repurchase Event Repurchase Price**" shall have the meaning specified in Section 15.02(a).

"**Required Holders**" means, at any time, Holders having or holding more than 66 $^{2}/_{3}$% of the aggregate principal amount of the Notes then outstanding.

"**Resale Restriction Termination Date**" shall have the meaning specified in Section 2.05(c).

"**Responsible Officer**" means, when used with respect to the Trustee or the Notes Collateral Agent, any officer within the corporate trust department of the Trustee or the Notes Collateral Agent, as applicable, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee or the Notes Collateral Agent, as applicable, who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such person's knowledge of and familiarity with the particular subject and who, in each case, shall have direct responsibility for the administration of this Indenture and the Notes Security Documents, as applicable.

"**Restricted Payment**" means (a) any dividend or other distribution, direct or indirect, on account of any shares (or equivalent) of any class of Capital Stock of the Company or any of its Subsidiaries, now or hereafter outstanding, (b) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares (or equivalent) of any class of Capital Stock of the Company or any of its Subsidiaries, now or hereafter outstanding and (c) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of Capital Stock of the Company or any of its Subsidiaries, now or hereafter outstanding, but excluding any dividend, redemption, payment or other distribution of cash, shares of Common Stock or any combination thereof by the Company in performing its obligations under this Indenture and the Notes.

"**Restricted Securities**" shall have the meaning specified in Section 2.05(c).

"**Rule 144**" means Rule 144 as promulgated under the Securities Act.

"**Rule 144A**" means Rule 144A as promulgated under the Securities Act.

"**S&P**" means Standard & Poor's Rating Services, a Standard & Poor's Financial Services LLC business, and any successor thereto.

"**Sale and Leaseback Transaction**" means, with respect to the Company or any of its Subsidiaries, any arrangement, directly or indirectly, with any Person whereby the Company or such Subsidiary shall sell or transfer any property used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property being sold or transferred.

"**Scheduled Trading Day**" means a day that is scheduled to be a Trading Day on the principal U.S. national or regional securities exchange or market on which the Common Stock is listed or admitted for trading. If the Common Stock is not so listed or admitted for trading, "**Scheduled Trading Day**" means a Business Day.

"**Securities Act**" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"**Settlement Amount**" has the meaning specified in Section 14.02(a)(iv).

"**Settlement Method**" means, with respect to any conversion of Notes, Physical Settlement, Cash Settlement or Combination Settlement, as elected (or deemed to have been elected) by the Company.

"**Settlement Notice**" has the meaning specified in Section 14.02(a)(iii).

"**Shared Services Agreements**" means (a) the Shared Services Agreement dated February 10, 2023, by and between the Company and Airstrip Technologies, Inc., a Delaware corporation and (b) the

Shared Services Agreement dated November 19, 2012, by and between the Company and NantWorks, LLC, a Delaware limited liability company, in each case, as amended, restated or otherwise modified from time to time.

"**Significant Subsidiary**" means a Subsidiary of the Company that meets the definition of "significant subsidiary" in Article 1, Rule 1-02(w) of Regulation S-X under the Exchange Act; *provided* that, in the case of a Subsidiary of the Company that meets the criteria of clause (1)(iii) of the definition thereof but not clause (1)(i) or clause (1)(ii) of the definition thereof, in each case as the rule is in effect on the date hereof, such Subsidiary shall not be deemed to be a Significant Subsidiary unless such Subsidiary's income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principle exclusive of amounts attributable to any non-controlling interests for the last completed fiscal year prior to the date of such determination exceeds $5,000,000 (with such amounts calculated pursuant to Rule 1-02(w) as in effect on the date hereof). Notwithstanding the foregoing, for purposes of this definition, to the extent any such subsidiary would not be deemed to be a "significant subsidiary" under the relevant definition set forth in Rule 1-02(w) of Regulation S-X (or any successor rule) as in effect on the relevant date of determination, such Subsidiary shall not be deemed to be a "Significant Subsidiary" irrespective of whether such Subsidiary would otherwise be deemed to be a "Significant Subsidiary" after giving effect to the proviso in the immediately preceding sentence.

"**Software Disposition Event**" means (a) any sale, disposition or transfer of the Company's payer and provider software products Eviti Connect, Eviti Advisor, NaviNet Open and AllPayer Access or (b) the exclusive license (or equivalent) of any of the Company's payer and provider software products Eviti Connect, Eviti Advisor, NaviNet Open and AllPayer Access where the practical or actual effect of such license (or equivalent) is to transfer, convey or otherwise provide any one or more Persons (other than the Company or a Subsidiary Guarantor) collectively with the right to all or substantially all of the economic interests in such provider software products.

"**Specified Assets**" means any assets of the Company or its Subsidiaries that are at any time used to operate, manufacture, cultivate, produce, market, and in all other ways (whether like or unlike any of the foregoing), involved in any of the following businesses or business or product lines (and including the Capital Stock of any Subsidiary that operates any of such businesses or business or product lines): (a) payer and provider software products (Eviti and the NaviNet Business), (b) data analysis, reporting and professional services offering (Quadris) and (c) OpenNMS Group, Inc.

"**Specified Dollar Amount**" means the maximum cash amount per $1,000 principal amount of Notes to be received upon conversion as specified in the Settlement Notice related to any converted Notes (or otherwise deemed specified pursuant to Section 14.02(a)(iii)).

"**Spin-Off**" shall have the meaning specified in Section 14.04(c).

"**Stock Price**" shall have the meaning specified in Section 14.03(c).

"**Subsidiary**" means, with respect to any Person, any corporation, association, partnership or other business entity of which more than 50% of the total voting power of shares of Capital Stock or other interests (including partnership interests) entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers, general partners or trustees thereof is at the time owned or controlled, directly or indirectly, by (a) such Person; (b) such Person and one or more Subsidiaries of such Person; or (c) one or more Subsidiaries of such Person.

"**Subsidiary Guarantee**" means any guarantee by any Subsidiary Guarantor, or any successor obligor under the Subsidiary Guarantee, of the Company's obligations with respect to the Notes.

"**Subsidiary Guarantor**" means any Subsidiary that incurs a Subsidiary Guarantee; *provided* that upon the release or discharge of such Person from its Subsidiary Guarantee in accordance with this Indenture, such Subsidiary ceases to be a Subsidiary Guarantor.

"**Successor Person**" shall have the meaning specified in Section 11.01(a).

"**Synthetic Lease Obligation**" means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property (including Sale and Leaseback Transactions), in each case, creating obligations that do not appear on the balance sheet of such Person but which, upon the application of any Debtor Relief Laws to

such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

"**Trading Day**" means a day on which (a) trading in the Common Stock (or other security for which a closing sale price must be determined) generally occurs on The NASDAQ Global Select Market or, if the Common Stock (or such other security) is not then listed on The NASDAQ Global Select Market, on the principal other U.S. national or regional securities exchange on which the Common Stock (or such other security) is then listed or, if the Common Stock (or such other security) is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock (or such other security) is then traded and (b) a Last Reported Sale Price for the Common Stock (or such other security) is available on such securities exchange or market; *provided* that if the Common Stock (or such other security) is not so listed or traded, "**Trading Day**" means a Business Day; and *provided*, *further*, that for purposes of determining amounts due upon conversion only, "**Trading Day**" means a day on which (x) there is no Market Disruption Event and (y) trading in the Common Stock generally occurs on The NASDAQ Global Select Market or, if the Common Stock is not then listed on The NASDAQ Global Select Market, on the principal other U.S. national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock is then listed or admitted for trading, except that if the Common Stock is not so listed or admitted for trading, "**Trading Day**" means a Business Day.

"**transfer**" shall have the meaning specified in Section 2.05(c).

"**Trigger Event**" shall have the meaning specified in Section 14.04(c).

"**Trust Indenture Act**" means the Trust Indenture Act of 1939, as amended, as it was in force at the date of execution of this Indenture; *provided*, *however*, that in the event the Trust Indenture Act of 1939 is amended after the date hereof, the term "Trust Indenture Act" shall mean, to the extent required by such amendment, the Trust Indenture Act of 1939, as so amended.

"**Trustee**" means the Person named as the "Trustee" in the first paragraph of this Indenture until a successor trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Trustee" shall mean or include each Person who is then a Trustee hereunder.

"**UCC**" means the Uniform Commercial Code as in effect in the State of New York; *provided* that, if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, "UCC" means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

"**unit of Reference Property**" shall have the meaning specified in Section 14.07(a).

"**Valuation Period**" shall have the meaning specified in Section 14.04(c).

"**Voting Stock**" means, with respect to any Person, Capital Stock issued by such Person the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or persons performing similar functions) of such Person, even if the right to so vote has been suspended by the happening of such contingency.

"**Weighted Average Life to Maturity**" means, when applied to any Indebtedness at any date, the number of years obtained by dividing (a) the sum of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment, by (b) the then outstanding principal amount of such Indebtedness.

"**Wholly Owned Subsidiary**" means, with respect to any Person, any Subsidiary of such Person, except that, solely for purposes of this definition, the reference to "50%" in the definition of "Subsidiary" shall be deemed replaced by a reference to "100%".

Section 1.02. *References to Interest*. Unless the context otherwise requires, any reference to interest on, or in respect of, any Note in this Indenture shall be deemed to include Additional Interest if, in such context, Additional Interest is, was or would be payable pursuant to any of Section 4.06(d), Section 4.06(e), and Section 6.03. Unless the context otherwise requires, any express mention of Additional Interest in any provision hereof shall not be construed as excluding Additional Interest in those provisions hereof where such express mention is not made.

ARTICLE 2
Issue, Description, Execution, Registration and Exchange of Notes

Section 2.01. *Designation and Amount*. The Notes shall be designated as the "4.50% Convertible Senior Secured Notes due 2026." The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is initially limited to $137,500,000, subject to Section 2.10 and except for Notes authenticated and delivered upon registration or transfer of, or in exchange for, or in lieu of other Notes to the extent expressly permitted hereunder.

Section 2.02. *Form of Notes*. The Notes and the Trustee's certificate of authentication to be borne by such Notes shall be substantially in the respective forms set forth in Exhibit A, the terms and provisions of which shall constitute, and are hereby expressly incorporated in and made a part of this Indenture. To the extent applicable, the Company and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby.

The Notes (other than Affiliate Notes) shall be issued initially in the form of one or more Global Notes; *provided*, that Affiliate Notes shall be issued initially in the form of one or more Physical Notes. Physical Notes so issued will be registered in such names and authorized in such denominations as a Holder shall request, duly executed by the Company and authenticated by the Trustee as hereinafter provided. Subject to the additional requirements of Section 2.05(c)(v) with respect to any Affiliate Note, upon the written request of any Holder, subject to the Notes meeting the eligibility requirements of the Depositary, any of such Holder's Physical Notes may be exchanged for a beneficial interest in a Global Note, which shall (a) be assigned a restricted or unrestricted CUSIP number, as applicable, (b) be registered in the name of the Depositary, (c) bear the legend required on a Global Note set forth in Exhibit A hereto and (d) be deposited on behalf of such Holder with the Custodian, duly executed by the Company and authenticated by the Trustee as hereinafter provided.

Any Global Note may be endorsed with or have incorporated in the text thereof such legends or recitals or changes not inconsistent with the provisions of this Indenture as may be required by the Custodian or the Depositary, or as may be required to comply with any applicable law or any regulation thereunder or with the rules and regulations of any securities exchange or automated quotation system upon which the Notes may be listed or traded or designated for issuance or to conform with any usage with respect thereto, or to indicate any special limitations or restrictions to which any particular Notes are subject.

Any of the Notes may have such letters, numbers or other marks of identification and such notations, legends or endorsements as any Officer executing the same may approve (execution thereof to be conclusive evidence of such approval) and as are not inconsistent with the provisions of this Indenture, or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any securities exchange or automated quotation system on which the Notes may be listed or designated for issuance, or to conform to usage or to indicate any special limitations or restrictions to which any particular Notes are subject.

Each Global Note or Physical Note, as applicable, shall represent such principal amount of the outstanding Notes as shall be specified therein and shall provide that it shall represent the aggregate principal amount of outstanding Notes from time to time endorsed thereon and, in the case of a Global Note, that the aggregate principal amount of outstanding Notes represented thereby may from time to time be increased or reduced to reflect redemptions, repurchases, cancellations, conversions, transfers or exchanges permitted hereby. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the amount of outstanding Notes represented thereby shall be made by the Trustee or the Custodian, at the direction of the Trustee, in such manner and upon instructions given by the Holder of such Notes in accordance with this Indenture. Payment of principal (including the Redemption Price and the Repurchase Event Repurchase Price, if applicable) of, and accrued and unpaid interest on, a Global Note shall be made to the Holder of such Note on the date of payment, unless a record date or other means of determining Holders eligible to receive payment is provided for herein.

Section 2.03. *Date and Denomination of Notes; Payments of Interest and Defaulted Amounts*. (a) The Notes shall be issuable in registered form without coupons in denominations of $1,000 principal amount and integral multiples in excess thereof. Each Note shall be dated the date of its authentication and shall bear interest from the date specified on the face of such Note. Accrued interest on the Notes shall be computed on the basis of a 360-day year composed of twelve 30-day months and, for partial months, on the basis of the number of days actually elapsed in a 30-day month.

(b) The Person in whose name any Note (or its Predecessor Note) is registered on the Note Register at the close of business on any Regular Record Date with respect to any Interest Payment Date shall be entitled to receive the interest payable on such Interest Payment Date. The principal amount of any Note (x) in the case of any Physical Note, shall be payable at the office or agency of the Company maintained by the Company for such purposes in the United States of America, which shall initially be the Corporate Trust Office and (y) in the case of any Global Note, shall be payable by wire transfer of immediately available funds to the account of the Depositary or its nominee. The Company shall pay, or cause the Paying Agent to pay, interest (i) on any Physical Notes (A) to Holders holding Physical Notes having an aggregate principal amount of $5,000,000 or less, by check mailed to the Holders of these Notes at their address as it appears in the Note Register and (B) to Holders holding Physical Notes having an aggregate principal amount of more than $5,000,000, either by check mailed to each Holder or, upon application by such a Holder to the Note Registrar not later than the relevant Regular Record Date, by wire transfer in immediately available funds to that Holder's account within the United States if such Holder has provided the Company, the Trustee or the Paying Agent with the requisite information necessary to make such wire transfer, which application shall remain in effect until the Holder notifies, in writing, the Note Registrar to the contrary or (ii) on any Global Note by wire transfer of immediately available funds to the account of the Depositary or its nominee.

(c) Any Defaulted Amounts shall forthwith cease to be payable to the Holder on the relevant payment date but shall accrue interest per annum at the rate borne by the Notes *plus* one percent, subject to the enforceability thereof under applicable law, from, and including, such relevant payment date, and such Defaulted Amounts together with such interest thereon shall be paid by the Company, at its election in each case, as provided in clause (i) or (ii) below:

(i) The Company may elect to make payment of any Defaulted Amounts to the Persons in whose names the Notes (or their respective Predecessor Notes) are registered at the close of business on a special record date for the payment of such Defaulted Amounts, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of the Defaulted Amounts proposed to be paid on each Note and the date of the proposed payment (which shall be not less than 25 days after the receipt by the Trustee of such notice, unless the Trustee shall consent to an earlier date), and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount to be paid in respect of such Defaulted Amounts or shall make arrangements satisfactory to the Trustee for such deposit on or prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Amounts as in this clause provided. Thereupon the Company shall fix a special record date for the payment of such Defaulted Amounts which shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment, and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Company shall promptly notify the Trustee in writing of such special record date and the Trustee, in the name and at the expense of the Company, shall give notice of the proposed payment of such Defaulted Amounts and the special record date therefor to each Holder at its address as it appears in the Note Register, or by electronic means to the Depositary in the case of Global Notes, not less than 10 days prior to such special record date. Notice of the proposed payment of such Defaulted Amounts and the special record date therefor having been so given, such Defaulted Amounts shall be paid to the Persons in whose names the Notes (or their respective Predecessor Notes) are registered at the close of business on such special record date and shall no longer be payable pursuant to the following clause (ii) of this Section 2.03(c).

(ii) The Company may make payment of any Defaulted Amounts in any other lawful manner not inconsistent with the requirements of any securities exchange or automated quotation system on which the Notes may be listed or designated for issuance, and upon such notice as may be required by such exchange or automated quotation system, if, after written notice given by the Company to the Trustee of the proposed payment pursuant to this clause, such manner of payment shall be deemed practicable by the Trustee.

Section 2.04. *Execution, Authentication and Delivery of Notes*. The Notes shall be signed in the name and on behalf of the Company by the manual, facsimile, .pdf attachment or other electronically transmitted signature of its Chief Executive Officer, President, Chief Financial Officer, Treasurer, Secretary or any of its Executive or Senior Vice Presidents.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Notes executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Notes, and the Trustee in accordance with such Company Order shall authenticate and deliver such Notes, without any further action by the Company hereunder, other than delivery of an Officer's Certificate and Opinion of Counsel pursuant to Section 18.05.

Only such Notes as shall bear thereon a certificate of authentication substantially in the form set forth on the Form of Note attached as Exhibit A hereto, executed manually by an authorized signatory of the Trustee (or an authenticating agent appointed by the Trustee as provided by Section 18.09), shall be entitled to the benefits of this Indenture or be valid or obligatory for any purpose. Such certificate by the Trustee (or such an authenticating agent) upon any Note executed by the Company shall be conclusive evidence that the Note so authenticated has been duly authenticated and delivered hereunder and that the Holder is entitled to the benefits of this Indenture.

In case any Officer of the Company who shall have signed any of the Notes shall cease to be such Officer before the Notes so signed shall have been authenticated and delivered by the Trustee, or disposed of by the Company, such Notes nevertheless may be authenticated and delivered or disposed of as though the person who signed such Notes had not ceased to be such Officer of the Company; and any Note may be signed on behalf of the Company by such Persons as, at the actual date of the execution of such Note, shall be the Officers of the Company, although at the date of the execution of this Indenture any such Person was not such an Officer.

Section 2.05. *Exchange and Registration of Transfer of Notes; Restrictions on Transfer; Depositary*. (a) The Company shall cause to be kept at the Corporate Trust Office a register (the register maintained in such office or in any other office or agency of the Company designated pursuant to Section 4.02, the "**Note Register**") in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Notes and of transfers of Notes. Such register shall be in written form or in any form capable of being converted into written form within a reasonable period of time. The Trustee is hereby initially appointed the "**Note Registrar**" for the purpose of registering Notes and transfers of Notes as herein provided. The Company may appoint one or more co-Note Registrars in accordance with Section 4.02.

Upon surrender for registration of transfer of any Note to the Note Registrar or any co-Note Registrar, and satisfaction of the requirements for such transfer set forth in this Section 2.05, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Notes of any authorized denominations and of a like aggregate principal amount and bearing such restrictive legends as may be required by this Indenture.

Notes may be exchanged for other Notes of any authorized denominations and of a like aggregate principal amount, upon surrender of the Notes to be exchanged at any such office or agency maintained by the Company pursuant to Section 4.02. Whenever any Notes are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Notes that the Holder making the exchange is entitled to receive, bearing registration numbers not contemporaneously outstanding.

All Notes presented or surrendered for registration of transfer or for exchange, redemption, repurchase or conversion shall (if so required by the Company, the Trustee, the Note Registrar or any co-Note Registrar) be duly endorsed, or be accompanied by a written instrument or instruments of transfer in form satisfactory to the Company and duly executed, by the Holder thereof or its attorney-in-fact duly authorized in writing. Physical Notes must be surrendered to the Trustee prior to any transfer or exchange.

No service charge shall be imposed by the Company, the Trustee, the Note Registrar, any co-Note Registrar or the Paying Agent for any exchange or registration of transfer of Notes, but the Company may require a Holder to pay a sum sufficient to cover any documentary, stamp or similar issue or transfer tax required in connection therewith as a result of the name of the Holder of new Notes issued upon such

exchange or registration of transfer being different from the name of the Holder of the old Notes surrendered for exchange or registration of transfer.

None of the Company, the Trustee, the Note Registrar or any co-Note Registrar shall be required to exchange or register a transfer of (i) any Notes surrendered for conversion or, if a portion of any Note is surrendered for conversion, such portion thereof surrendered for conversion, (ii) any Notes, or a portion of any Note, surrendered for repurchase (and not withdrawn) in accordance with ARTICLE 15 or (iii) any Notes selected for redemption in accordance with ARTICLE 16, except the unredeemed portion of any Note being redeemed in part.

All Notes issued upon any registration of transfer or exchange of Notes in accordance with this Indenture shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture as the Notes surrendered upon such registration of transfer or exchange.

(b) To the extent, and for so long as, any Notes are eligible for book-entry settlement with the Depositary, unless otherwise required by law, subject to Section 2.05(c)(iii) all Notes (other than Affiliate Notes, if any, which shall initially issued as Physical Notes) may be represented by one or more Notes in global form (each, a "**Global Note**") registered in the name of the Depositary or the nominee of the Depositary. Each Global Note shall bear the legend required on a Global Note set forth in Exhibit A hereto. The transfer and exchange of beneficial interests in a Global Note that does not involve the issuance of a Physical Note shall be effected through the Depositary (but not the Trustee or the Custodian) in accordance with this Indenture (including the restrictions on transfer set forth herein) and the procedures of the Depositary therefor.

(c) Every Note that bears or is required under this Section 2.05(c) to bear the legend set forth in this Section 2.05(c) (together with any Common Stock issued upon conversion of the Notes that is required to bear the legend set forth in Section 2.05(d), collectively, the "**Restricted Securities**") shall be subject to the restrictions on transfer set forth in this Section 2.05(c) (including the legend set forth below), unless such restrictions on transfer shall be eliminated or otherwise waived by written consent of the Company, and the Holder of each such Restricted Security, by such Holder's acceptance thereof, agrees to be bound by all such restrictions on transfer. As used in this Section 2.05(c) and Section 2.05(d), the term "**transfer**" encompasses any sale, pledge, transfer or other disposition whatsoever of any Restricted Security.

(i) Until the date (the "**Resale Restriction Termination Date**") that is the later of (1) (x) with respect to the any Notes outstanding as of the date of this Indenture, March 2, 2024 or such shorter period of time as permitted by Rule 144 or any successor provision thereto or (y) with respect to any Additional Notes issued after the date of this Indenture, the date that is one year after the last date of original issuance of such Additional Notes or such shorter period of time as permitted by Rule 144 or any successor provision thereto, and (2) such later date, if any, as may be required by applicable law, any certificate evidencing such Note (and all securities issued in exchange therefor or substitution thereof, other than Common Stock, if any, issued upon conversion thereof, which shall bear the legend set forth in Section 2.05(d), if applicable) shall bear a legend in substantially the following form (unless such Notes have been transferred pursuant to a registration statement that has become or been declared effective under the Securities Act and that continues to be effective at the time of such transfer, or sold pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act, or unless otherwise agreed by the Company in writing, with notice thereof to the Trustee):

THIS SECURITY AND THE COMMON STOCK, IF ANY, ISSUABLE UPON CONVERSION OF THIS SECURITY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "**SECURITIES ACT**"), AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER AGREES FOR THE BENEFIT OF NANTHEALTH, INC. (THE "**COMPANY**") THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE THAT IS THE LATER OF (X) THE DATE ON WHICH THE SECURITY MAY BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED PURSUANT TO RULE 144 UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THEREUNDER WITHOUT COMPLIANCE WITH ANY CURRENT INFORMATION REQUIREMENT CONTAINED THEREIN AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW, EXCEPT:

(A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, OR

(B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT, OR

(C) WITHIN THE UNITED STATES, TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, OR

(D) OUTSIDE THE UNITED STATES, THROUGH OFFERS AND SALES THAT OCCUR OUTSIDE THE UNITED STATES WITHIN THE MEANING OF REGULATION S UNDER THE SECURITIES ACT, OR

(E) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT OR ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH CLAUSE (E) ABOVE, THE COMPANY AND THE TRUSTEE RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER FOR THE COMPANY TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

No transfer of any Note prior to the Resale Restriction Termination Date will be registered by the Note Registrar unless the applicable box on the Form of Assignment and Transfer has been checked.

(ii) Notwithstanding clause (i) above, each Affiliate Note (and all securities issued in exchange therefor or substitution thereof, other than Common Stock, if any, issued upon conversion thereof, which shall bear the legend set forth in Section 2.05(d), if applicable) shall bear a legend in substantially the following form (unless such Note has been transferred pursuant to a registration statement that has become or been declared effective under the Securities Act and that continues to be effective at the time of such transfer, or sold pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act in a transaction that results in such security or underlying securities, as the case may be, no longer being "restricted securities" (as defined in Rule 144 under the Securities Act), or unless otherwise agreed by the Company in writing, with notice thereof to the Trustee):

THIS SECURITY AND THE COMMON STOCK, IF ANY, ISSUABLE UPON CONVERSION OF THIS SECURITY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "**SECURITIES ACT**"), AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER AGREES FOR THE BENEFIT OF NANTHEALTH, INC. (THE "**COMPANY**") THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN, EXCEPT:

(A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, OR

(B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT, OR

(C) WITHIN THE UNITED STATES, TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, OR

(D) OUTSIDE THE UNITED STATES, THROUGH OFFERS AND SALES THAT OCCUR OUTSIDE THE UNITED STATES WITHIN THE MEANING OF REGULATION S UNDER THE SECURITIES ACT, OR

(E) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT OR ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH CLAUSE (E) ABOVE, THE COMPANY AND THE TRUSTEE RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER FOR THE COMPANY TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

NO AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF THE COMPANY OR PERSON THAT HAS BEEN AN AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF THE COMPANY DURING THE THREE IMMEDIATELY PRECEDING MONTHS MAY OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR A BENEFICIAL INTEREST HEREIN UNLESS PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT OR PURSUANT TO AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT IN A TRANSACTION THAT RESULTS IN SUCH SECURITY OR COMMON STOCK, AS THE CASE MAY BE, NO LONGER BEING A “RESTRICTED SECURITY” (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT).

No transfer of any Affiliate Note will be registered by the Note Registrar unless the applicable box on the Form of Assignment and Transfer has been checked.

(iii) Any Note (or security issued in exchange or substitution therefor) (A) as to which such restrictions on transfer shall have expired in accordance with their terms, (B) that has been transferred pursuant to a registration statement that has become effective or been declared effective under the Securities Act and that continues to be effective at the time of such transfer, or (C) that has been sold pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act, may, upon surrender of such Note for exchange to the Note Registrar in accordance with the provisions of this Section 2.05, be exchanged for a new Note or Notes as a Physical Note or a Global Note, in either case, of like tenor and aggregate principal amount, which shall not bear the restrictive legend required by this Section 2.05(c) and shall not be assigned a restricted CUSIP number. The Company shall be entitled to instruct the Custodian in writing to so surrender any Global Note as to which any of the conditions set forth in clause (A) through (E) of Section 2.05(c)(i), and, upon such instruction, the Custodian shall so surrender such Global Note for exchange; and any new Global Note so exchanged therefor shall not bear the restrictive legend specified in this Section 2.05(c) and shall not be assigned a restricted CUSIP number. The Company shall promptly notify the Trustee upon the occurrence of the Resale Restriction Termination Date and promptly after a registration statement, if any, with respect to the Notes or any Common Stock issued upon conversion of the Notes has been declared effective under the Securities Act. The Company shall complete any exchange process for the removal of a restrictive legend required by this Section 2.05(c) in accordance with the applicable procedures of the Depositary.

(iv) Notwithstanding any other provisions of this Indenture (other than the provisions set forth in this Section 2.05(c)), a Global Note may not be transferred as a whole or in part except (A) by the Depositary to a nominee of the Depositary or by a nominee of the Depositary to the Depositary or another nominee of the Depositary or by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary and (B) for exchange of a Global Note or a portion thereof for one or more Physical Notes in accordance with the second immediately succeeding paragraph.

The Depositary shall be a clearing agency registered under the Exchange Act. The Company initially appoints The Depository Trust Company to act as Depositary with respect to each Global Note. Initially, each Global Note shall be issued to the Depositary, registered in the name of Cede & Co., as the nominee of the Depositary, and deposited with the Trustee as custodian for Cede & Co.

If (A) the Depositary notifies the Company at any time that the Depositary is unwilling or unable to continue as depositary for the Global Notes and a successor depositary is not appointed within 90 days, (B) the Depositary ceases to be registered as a clearing agency under the Exchange Act and a successor depositary is not appointed within 90 days or (C) an Event of Default with respect to the Notes has occurred and is continuing and a beneficial owner of any Note requests that its beneficial interest therein be issued as a Physical Note, the Company shall execute, and the Trustee, upon receipt of an Officer's Certificate, an Opinion of Counsel and a Company Order for the authentication and delivery of Notes, shall authenticate and deliver (x) in the case of clause (C), a Physical Note to such beneficial owner in a principal amount equal to the principal amount of such Note corresponding to such beneficial owner's beneficial interest and (y) in the case of clause (A) or (B), Physical Notes to each beneficial owner of the related Global Notes (or a portion thereof) in an aggregate principal amount equal to the aggregate principal amount of such Global Notes in exchange for such Global Notes, and upon delivery of the Global Notes to the Trustee such Global Notes shall be canceled.

Physical Notes issued in exchange for all or a part of the Global Note pursuant to this Section 2.05(c) shall be registered in such names and in such authorized denominations as the Depositary, pursuant to instructions from its direct or indirect participants or otherwise, or, in the case of clause (iii) of the immediately preceding paragraph, the relevant beneficial owner, shall instruct the Trustee. Upon execution and authentication, the Trustee shall deliver such Physical Notes to the Persons in whose names such Physical Notes are so registered.

At such time as all interests in a Global Note have been converted, canceled, redeemed, repurchased or transferred, such Global Note shall be, upon receipt thereof, canceled by the Trustee in accordance with standing procedures and existing instructions between the Depositary and the Custodian. At any time prior to such cancellation, if any interest in a Global Note is exchanged for Physical Notes, converted, canceled, redeemed, repurchased or transferred to a transferee who receives Physical Notes therefor or any Physical Note is exchanged or transferred for part of such Global Note, the principal amount of such Global Note shall, in accordance with the standing procedures and instructions existing between the Depositary and the Custodian, be appropriately reduced or increased, as the case may be, and an endorsement shall be made on such Global Note, by the Trustee or the Custodian, at the direction of the Trustee, to reflect such reduction or increase.

None of the Company, the Trustee or any agent of the Company or the Trustee shall have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a Global Note or maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

(v) After the Resale Restriction Termination Date, the Holder of an Affiliate Note may exchange such Note for a beneficial interest in a Global Note or transfer such Affiliate Note to a Person who takes delivery thereof in the form of a beneficial interest in a Global Note only if the Trustee receives: (A) a Physical Note, duly endorsed or accompanied by appropriate instruments of transfer in form satisfactory to the Company and the Trustee, (B) a certificate from such Holder certifying as follows: (1) in the case of a proposed exchange, such Holder (x) is not an Affiliate of the Company and has not been an Affiliate of the Company during the three immediately preceding months, and (y) one year has elapsed since the later of the date the Affiliate Notes were acquired from the Company or from an Affiliate of the Company, or (2) in the case of a proposed transfer, such representations as are necessary to establish (x) that such Holder's proposed transfer of the Affiliate Note satisfies all applicable requirements set forth in Rule 144 under the Securities Act or (y) that such Holder's proposed transfer of Affiliate Notes was effected pursuant to an effective registration statement covering the resale of such Affiliate Note, (C) an Opinion of Counsel in form and substance reasonably satisfactory to the Company to the effect that such proposed exchange or transfer is in compliance with the safe harbor contained in Rule 144 under the Securities Act and that the restrictions on transfer contained on such Affiliate Note are no longer required in order to maintain compliance with such safe harbor or that such transfer was effected pursuant to an effective registration statement covering the sale of such Affiliate Note, and (D) written instructions directing the Trustee to make, or to direct the Note Registrar to make, an adjustment to its books and records with respect to such Global Note to reflect an increase in the aggregate principal amount of the Notes represented by the Global Note, such instructions to contain information regarding the Depositary account to be credited with such increase. Upon such transfer, and following delivery of an Officer's Certificate from the Company and an Opinion of Counsel, then the Trustee shall cancel such Physical Note and cause, or direct the Note Registrar to cause, in accordance with the standing instructions and procedures existing between the Depositary and the Note Registrar, the aggregate principal amount of the Physical Note to be exchanged, and shall credit or cause to be credited to the account of the Person

specified in such instructions a beneficial interest in the Global Note equal to the principal amount of the Physical Note so cancelled. The Company shall issue and the Trustee shall authenticate, upon written order of the Company in the form of a Company Order, an Officer's Certificate and an Opinion of Counsel, a new Global Note in the appropriate principal amount.

(d) Common Stock Legend.

(i) Until the Resale Restriction Termination Date, any stock certificate representing Common Stock issued upon conversion of a Note shall bear a legend in substantially the following form (unless the Note or such Common Stock has been transferred pursuant to a registration statement that has become or been declared effective under the Securities Act and that continues to be effective at the time of such transfer, or pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act, or such Common Stock has been issued upon conversion of a Note that has transferred pursuant to a registration statement that has become or been declared effective under the Securities Act and that continues to be effective at the time of such transfer, or pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act, or unless otherwise agreed by the Company with written notice thereof to the Trustee and any transfer agent for the Common Stock):

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "**SECURITIES ACT**"), AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER AGREES FOR THE BENEFIT OF NANTHEALTH, INC. (THE "**COMPANY**") THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE THAT IS THE LATER OF (X) THE DATE ON WHICH THE SECURITY MAY BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED PURSUANT TO RULE 144 UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THEREUNDER WITHOUT COMPLIANCE WITH ANY CURRENT INFORMATION REQUIREMENT CONTAINED THEREIN AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW, EXCEPT:

(A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, OR

(B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT, OR

(C) WITHIN THE UNITED STATES, TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, OR

(D) OUTSIDE THE UNITED STATES, THROUGH OFFERS AND SALES THAT OCCUR OUTSIDE THE UNITED STATES WITHIN THE MEANING OF REGULATION S UNDER THE SECURITIES ACT, OR

(E) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT OR ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH CLAUSE (E) ABOVE, THE COMPANY AND THE TRANSFER AGENT FOR THE COMPANY'S COMMON STOCK RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

(ii) Notwithstanding clause (i) above, any stock certificate representing Common Stock issued upon conversion of an Affiliate Note shall bear a legend in substantially the following form (unless such Common Stock has been transferred pursuant to a registration statement that has become or been declared effective under the Securities Act and that continues to be effective at the time of such transfer, or sold pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act in a transaction that results in such Common Stock no longer being a "restricted security" (as defined in Rule 144 under the Securities Act), or unless otherwise agreed by the Company in writing, with notice thereof to the Trustee):

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "**SECURITIES ACT**"), AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER AGREES FOR THE BENEFIT OF NANTHEALTH, INC. (THE "**COMPANY**") THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN, EXCEPT:

(A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, OR

(B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT, OR

(C) WITHIN THE UNITED STATES, TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, OR

(D) OUTSIDE THE UNITED STATES, THROUGH OFFERS AND SALES THAT OCCUR OUTSIDE THE UNITED STATES WITHIN THE MEANING OF REGULATION S UNDER THE SECURITIES ACT, OR

(E) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT OR ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH CLAUSE (E) ABOVE, THE COMPANY AND THE TRANSFER AGENT FOR THE COMPANY'S COMMON STOCK RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

NO AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF THE COMPANY OR PERSON THAT HAS BEEN AN AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF THE COMPANY DURING THE THREE IMMEDIATELY PRECEDING MONTHS MAY OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR A BENEFICIAL INTEREST HEREIN UNLESS PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT OR PURSUANT TO AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT IN A TRANSACTION THAT RESULTS IN SUCH SECURITY NO LONGER BEING A "RESTRICTED SECURITY" (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT).

(iii) Any such Common Stock (A) as to which such restrictions on transfer shall have expired in accordance with their terms, (B) that has been transferred pursuant to a registration statement that has become or been declared effective under the Securities Act and that continues to be effective at the time of such transfer, or (C) that has been sold pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act, may, upon surrender of the certificates representing such shares of Common Stock for

exchange in accordance with the procedures of the transfer agent for the Common Stock, be exchanged for a new certificate or certificates for a like aggregate number of shares of Common Stock, which shall not bear the restrictive legend required by this Section 2.05(d).

(e) Except as expressly set forth in Sections 2.05(c) and 2.05(d) with respect to Affiliate Notes (and shares of Common Stock issuable upon conversion or exchange thereof), any Note or Common Stock issued upon the conversion or exchange of a Note that is purchased or owned by any Affiliate of the Company (or any Person who was an Affiliate of the Company at any time during the immediately preceding three months) may not be resold by such Affiliate (or such Person, as the case may be) unless registered under the Securities Act or resold pursuant to an exemption from the registration requirements of the Securities Act in a transaction that results in such Note or Common Stock, as the case may be, no longer being a "restricted security" (as defined under Rule 144). The Company shall cause any Note that is repurchased or owned by it to be surrendered to the Trustee for cancellation in accordance with Section 2.08.

(f) Notwithstanding anything herein to the contrary, the Company may refuse to register any transfer of the Notes (or any shares of Common Stock issuable upon conversion thereof) not made in accordance with the provisions of Regulation S of the Securities Act (§§ 230.901 through 230.905)), pursuant to registration under the Securities Act, or pursuant to an available exemption from registration; *provided*, *however*, that if foreign law prevents the Company from refusing to register securities transfers, the Notes (or any shares of Common Stock issuable upon conversion thereof) include the restrictive legends required by Section 2.05(c) and Section 2.05(d) to prevent any transfer of the Notes (or any shares of Common Stock issuable upon conversion thereof) not made in accordance with the provisions of this Regulation S of the Securities Act.

(g) The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among depositary participants or beneficial owners or holders of any Global Note) other than to require delivery of such certificates and other documentation or evidence as are expressly required by the terms of this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements thereof.

(h) Neither the Trustee nor the Trustee in its capacity as Conversion Agent or Paying Agent shall have any responsibility or liability for any actions taken or not taken by the Depositary.

Section 2.06. *Mutilated, Destroyed, Lost or Stolen Notes*. In case any Note shall become mutilated or be destroyed, lost or stolen, the Company in its discretion may execute, and upon its written request the Trustee or an authenticating agent appointed by the Trustee shall authenticate and deliver, a new Note, bearing a registration number not contemporaneously outstanding, in exchange and substitution for the mutilated Note, or in lieu of and in substitution for the Note so destroyed, lost or stolen. In every case the applicant for a substituted Note shall furnish to the Company, to the Trustee and, if applicable, to such authenticating agent such security or indemnity as may be required by them to save each of them harmless from any loss, liability, cost or expense caused by or connected with such substitution, and, in every case of destruction, loss or theft, the applicant shall also furnish to the Company, to the Trustee and, if applicable, to such authenticating agent evidence to their satisfaction of the destruction, loss or theft of such Note and of the ownership thereof.

The Trustee or such authenticating agent may authenticate any such substituted Note and deliver the same upon the receipt of such security or indemnity as the Trustee, the Company and, if applicable, such authenticating agent may require. No service charge shall be imposed by the Company, the Trustee, the Note Registrar, any co-Note Registrar or the Paying Agent upon the issuance of any substitute Note, but the Company or the Trustee may require a Holder to pay a sum sufficient to cover any documentary, stamp or similar issue or transfer tax required in connection therewith as a result of the name of the Holder of the new substitute Note being different from the name of the Holder of the old Note that became mutilated or was destroyed, lost or stolen. In case any Note that has matured or is about to mature or has been surrendered for required repurchase or for redemption or is about to be converted in accordance with ARTICLE 14 shall become mutilated or be destroyed, lost or stolen, the Company may, in its sole discretion, instead of issuing a substitute Note, pay or authorize the payment of or convert or authorize the conversion of the same (without surrender thereof except in the case of a mutilated Note), as the case may be, if the applicant for such payment or conversion shall furnish to the Company, to the Trustee and, if applicable, to such authenticating agent such security or indemnity as may be required by them to save each of them harmless for any loss, liability, cost or expense caused by or connected with

such substitution, and, in every case of destruction, loss or theft, evidence satisfactory to the Company, the Trustee and, if applicable, any Paying Agent or Conversion Agent evidence of their satisfaction of the destruction, loss or theft of such Note and of the ownership thereof.

Every substitute Note issued pursuant to the provisions of this Section 2.06 by virtue of the fact that any Note is destroyed, lost or stolen shall constitute an additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Note shall be found at any time, and shall be entitled to all the benefits of (but shall be subject to all the limitations set forth in) this Indenture equally and proportionately with any and all other Notes duly issued hereunder. To the extent permitted by law, all Notes shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the replacement, payment, conversion, redemption or repurchase of mutilated, destroyed, lost or stolen Notes and shall preclude any and all other rights or remedies notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement, payment, conversion, redemption or repurchase of negotiable instruments or other securities without their surrender.

Section 2.07. *Temporary Notes*. Pending the preparation of Physical Notes, the Company may execute and the Trustee or an authenticating agent appointed by the Trustee shall, upon written request of the Company, authenticate and deliver temporary Notes (printed or lithographed). Temporary Notes shall be issuable in any authorized denomination, and substantially in the form of the Physical Notes but with such omissions, insertions and variations as may be appropriate for temporary Notes, all as may be determined by the Company. Every such temporary Note shall be executed by the Company and authenticated by the Trustee or such authenticating agent upon the same conditions and in substantially the same manner, and with the same effect, as the Physical Notes. Without unreasonable delay, the Company shall execute and deliver to the Trustee or such authenticating agent Physical Notes (other than any Global Note) and thereupon any or all temporary Notes (other than any Global Note) may be surrendered in exchange therefor, at each office or agency maintained by the Company pursuant to Section 4.02 and the Trustee or such authenticating agent shall authenticate and deliver in exchange for such temporary Notes an equal aggregate principal amount of Physical Notes. Such exchange shall be made by the Company at its own expense and without any charge therefor. Until so exchanged, the temporary Notes shall in all respects be entitled to the same benefits and subject to the same limitations under this Indenture as Physical Notes authenticated and delivered hereunder.

Section 2.08. *Cancellation of Notes Paid, Converted, Etc.* The Company shall cause all Notes surrendered for the purpose of payment, repurchase, redemption, registration of transfer or exchange or conversion, if surrendered to any of the Company's agents, Subsidiaries or Affiliates, to be delivered to the Trustee for cancellation. All Notes delivered to the Trustee shall be canceled promptly by it in accordance with its customary procedures, and, except as expressly permitted by the provisions of this Indenture in the case of Notes surrendered for registration of transfer or exchange, no Notes shall be authenticated in exchange thereof. The Trustee shall dispose of canceled Notes in accordance with its customary procedures and, after such disposition, shall deliver a certificate of such disposition to the Company, at the Company's written request in a Company Order.

Section 2.09. *CUSIP Numbers*. The Company in issuing the Notes may use "CUSIP" numbers (if then generally in use), and, if so, the Trustee shall use "CUSIP" numbers in all notices issued to Holders as a convenience to such Holders; *provided* that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or on such notice and that reliance may be placed only on the other identification numbers printed on the Notes. The Company shall promptly notify the Trustee in writing of any change in the "CUSIP" numbers.

Section 2.10. *Additional Notes; Repurchases*. The Company may, without the consent of the Holders and notwithstanding Section 2.01, but only if not prohibited by ARTICLE 4 of this Indenture, reopen this Indenture and issue additional Notes hereunder with the same terms and with the same CUSIP number as the Notes initially issued hereunder (other than differences in the issue date, the issue price, interest accrued prior to the issue date of such additional Notes and, if applicable, restrictions on transfer in respect of such additional Notes) in an unlimited aggregate principal amount; *provided* that if any such additional Notes are not fungible with the Notes initially issued hereunder for U.S. federal income tax purposes or securities law purposes, such additional Notes shall have one or more separate CUSIP numbers. Prior to the issuance of any such additional Notes, the Company shall deliver to the Trustee a Company Order, an Officer's Certificate and an Opinion of Counsel, such Officer's Certificate and Opinion of Counsel to cover such matters, in addition to those required by Section 18.05, as the Trustee shall reasonably request.

In addition, the Company may, to the extent permitted by law and not prohibited by ARTICLE 4 of this Indenture, and directly or indirectly (regardless of whether such Notes are surrendered to the Company), repurchase Notes in the open market or otherwise, with or without notice to Holders, whether by the Company or its Subsidiaries or through a private or public tender or exchange offer or through counterparties pursuant to private agreements, including by cash-settled swaps or other derivatives. The Company shall cause any Notes so repurchased (other than Notes repurchased pursuant to cash-settled swaps or other derivatives) to be surrendered to the Trustee for cancellation in accordance with Section 2.08 and such Notes shall no longer be considered outstanding under this Indenture upon their cancellation.

ARTICLE 3
Satisfaction And Discharge

Section 3.01. *Satisfaction and Discharge*. This Indenture, the Notes and the Notes Security Documents shall upon request of the Company contained in an Officer's Certificate cease to be of further effect, and the Trustee and the Notes Collateral Agent, at the expense of the Company, shall execute such instruments reasonably requested by the Company acknowledging satisfaction and discharge of this Indenture, the Notes and the Notes Security Documents, when (a) (i) all Notes theretofore authenticated and delivered (other than Notes which have been destroyed, lost or stolen and which have been replaced, paid or converted as provided in Section 2.06) have been delivered to the Trustee for cancellation; or (ii) the Company has deposited with the Trustee or delivered to Holders, as applicable, after the Notes have become due and payable, whether on the Maturity Date, Redemption Date, any Repurchase Event Repurchase Date, upon conversion or otherwise, cash or cash, shares of Common Stock or a combination thereof, as applicable, solely to satisfy the Company's Conversion Obligation, sufficient to pay all of the outstanding Notes and all other sums due and payable under this Indenture by the Company; and (b) the Company has delivered to the Trustee and the Notes Collateral Agent an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture and the Notes have been complied with. Notwithstanding the satisfaction and discharge of this Indenture, the rights, indemnities and immunities of the Trustee and the Notes Collateral Agent under this Indenture and the Notes Security Documents shall survive.

ARTICLE 4
Particular Covenants Of The Company

Section 4.01. *Payment of Principal and Interest*. The Company covenants and agrees that it will pay or cause to be paid the principal (including the Redemption Price and the Repurchase Event Repurchase Price, if applicable) of, and accrued and unpaid interest on, each of the Notes at the places, at the respective times and in the manner provided herein and in the Notes.

Section 4.02. *Maintenance of Office or Agency*. The Company will maintain in the United States of America an office or agency where the Notes may be surrendered for registration of transfer or exchange or for presentation for payment, redemption or repurchase ("**Paying Agent**") or for conversion ("**Conversion Agent**") and where notices and demands to or upon the Company in respect of the Notes and this Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or delivered to the Corporate Trust Office or the office or agency of the Trustee in the United States of America so designated by the Trustee as a place where Notes may be presented for payment or for registration or transfer.

The Company may also from time to time designate as co-Note Registrars one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided* that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in the United States of America so designated by the Trustee for such purposes. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency. The terms "**Paying Agent**" and "**Conversion Agent**" include any such additional or other offices or agencies, as applicable.

The Company hereby initially designates the Trustee as the Paying Agent, Note Registrar, Custodian and Conversion Agent and the Corporate Trust Office as the office or agency in the United States of America where Notes may be surrendered for registration of transfer or exchange or for

presentation for payment or repurchase or for conversion and where notices and demands to or upon the Company in respect of the Notes and this Indenture may be delivered.

Section 4.03. *Appointments to Fill Vacancies in Trustee's Office*. The Company, whenever necessary to avoid or fill a vacancy in the office of Trustee, will appoint, in the manner provided in Section 7.09, a Trustee, so that there shall at all times be a Trustee hereunder.

Section 4.04. *Provisions as to Paying Agent*. (a) If the Company shall appoint a Paying Agent other than the Trustee, the Company will cause such Paying Agent to execute and deliver to the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provisions of this Section 4.04:

(i) that it will hold all sums held by it as such agent for the payment of the principal (including the Redemption Price and the Repurchase Event Repurchase Price, if applicable) of, and accrued and unpaid interest on, the Notes in trust for the benefit of the Holders of the Notes;

(ii) that it will give the Trustee prompt notice of any failure by the Company to make any payment of the principal (including the Redemption Price and the Repurchase Event Repurchase Price, if applicable) of, and accrued and unpaid interest on, the Notes when the same shall be due and payable; and

(iii) that at any time during the continuance of an Event of Default, upon request of the Trustee, it will forthwith pay to the Trustee all sums so held in trust.

The Company shall, on or before each due date of the principal (including the Redemption Price and the Repurchase Event Repurchase Price, if applicable) of, or accrued and unpaid interest on, the Notes, deposit with the Paying Agent a sum sufficient to pay such principal (including the Redemption Price and the Repurchase Event Repurchase Price, if applicable) or accrued and unpaid interest, and (unless such Paying Agent is the Trustee) the Company will promptly notify in writing the Trustee of any failure to take such action; *provided* that if such deposit is made on the due date, such deposit must be received by the Paying Agent by 11:00 a.m., New York City time, on such date.

(b) If the Company shall act as its own Paying Agent, it will, on or before each due date of the principal (including the Redemption Price and the Repurchase Event Repurchase Price, if applicable) of, and accrued and unpaid interest on, the Notes, set aside, segregate and hold in trust for the benefit of the Holders of the Notes a sum sufficient to pay such principal (including the Redemption Price and the Repurchase Event Repurchase Price, if applicable) and accrued and unpaid interest so becoming due and will promptly notify the Trustee in writing of any failure to take such action and of any failure by the Company to make any payment of the principal (including the Redemption Price and the Repurchase Event Repurchase Price, if applicable) of, or accrued and unpaid interest on, the Notes when the same shall become due and payable.

(c) Anything in this Section 4.04 to the contrary notwithstanding, the Company may, at any time, for the purpose of obtaining a satisfaction and discharge of this Indenture, or for any other reason, pay, cause to be paid or deliver to the Trustee all sums or amounts held in trust by the Company or any Paying Agent hereunder as required by this Section 4.04, such sums or amounts to be held by the Trustee upon the trusts herein contained and upon such payment or delivery by the Company or any Paying Agent to the Trustee, the Company or such Paying Agent shall be released from all further liability but only with respect to such sums or amounts.

(d) Subject to applicable abandoned property laws, any money and shares of Common Stock deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal (including the Redemption Price and the Repurchase Event Repurchase Price, if applicable) of, accrued and unpaid interest on and the consideration due upon conversion of any Note and remaining unclaimed for two years (or as of any common law escheatment date) after such principal (including the Redemption Price and the Repurchase Event Repurchase Price, if applicable), interest or consideration due upon conversion has become due and payable shall be paid to the Company on request of the Company contained in an Officer's Certificate, or (if then held by the Company) shall be discharged from such trust; and the Holder of such Note shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money and shares of Common Stock, and all liability of the Company as trustee thereof, shall thereupon cease; *provided*, *however*, that the Trustee or such Paying Agent, before

being required to make any such repayment, may (but shall not be obligated to) at the expense of the Company cause to be published once, in a newspaper published in the English language, customarily published on each Business Day and of general circulation in The Borough of Manhattan, The City of New York, notice that such money and shares of Common Stock remain unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such publication, any unclaimed balance of such money and shares of Common Stock then remaining will be repaid or delivered to the Company.

(e) Upon any Event of Default pursuant to Section 6.01(h) or (i), the Trustee shall automatically be the Paying Agent, if the Trustee is not the Paying Agent at such time.

(f) In the event that the Paying Agent receives funds in advance of any due date, the Paying Agent shall be entitled to invest such funds in the U.S. Bank Money Market Deposit Account or any substantially similar successor account, any earnings on which shall be for the account of the Company.

Section 4.05. *Existence*. Subject to ARTICLE 11, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence.

Section 4.06. *Rule 144A Information Requirement and Annual Reports*. (a) At any time the Company is not subject to Section 13 or 15(d) of the Exchange Act, the Company shall, so long as any of the Notes or any shares of Common Stock issuable upon conversion thereof shall, at such time, constitute "restricted securities" within the meaning of Rule 144(a)(3) under the Securities Act, promptly provide to the Trustee and, upon written request, any Holder, beneficial owner or prospective purchaser of such Notes or any shares of Common Stock issuable upon conversion of such Notes, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act to facilitate the resale of such Notes or shares of Common Stock pursuant to Rule 144A. The Company shall take such further action as any Holder or beneficial owner of the Notes may reasonably request to the extent from time to time required to enable such Holder or beneficial owner to sell the Notes or any shares of Common Stock issuable upon conversion of the Notes in accordance with Rule 144A, as such rule may be amended from time to time.

(b) The Company shall file with the Trustee, within 15 days after the same are required to be filed with the Commission (giving effect to any grace period provided by Rule 12b-25 (or any successor rule) under the Exchange Act), copies of any documents or reports that the Company is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act. Any such document or report that the Company files with the Commission via the Commission's EDGAR system (or any successor thereto) shall be deemed to be filed with the Trustee for purposes of this Section 4.06(b) at the time such documents are filed via the EDGAR system (or any successor thereto), it being understood that the Trustee shall not be responsible for determining whether such filings have been made. Notwithstanding anything to the contrary, the Company shall in no event be required to file with, or otherwise provide or disclose to, the Trustee or any Holder any information for which the Company is requesting (assuming such request has not been denied), or have received, confidential treatment with the Commission.

(c) Delivery of the reports, information and documents described in subsection (b) above to the Trustee is for informational purposes only, and the information and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein, or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to conclusively rely on an Officer's Certificate).

(d) With respect to the Notes (other than Affiliate Notes), if, at any time during the six-month period beginning on, and including, the date that such Notes may be offered, sold, pledged or otherwise transferred pursuant to Rule 144 assuming satisfaction of the current public information requirement contained therein, the Company fails to timely file any document or report that it is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act, as applicable (after giving effect to all applicable grace periods thereunder and other than reports on Form 8-K), or the Notes are not otherwise freely tradable by Holders other than the Company's Affiliates or Holders that were the Company's Affiliates at any time during the immediately preceding three months (as a result of restrictions pursuant to U.S. securities laws or the terms of this Indenture or the Notes), the Company shall pay Additional Interest on the Notes (other than Affiliate Notes). Such Additional Interest shall accrue on the Notes (other than Affiliate Notes) at the rate of 0.50% per annum of the principal amount of the Notes outstanding (other than Affiliate Notes) for each day during such period for which the Company's failure to file has occurred and is continuing or the Notes are not otherwise freely tradable by Holders other than the Company's Affiliates (or Holders that have been the Company's Affiliates at any time during the immediately

preceding three months) without restrictions pursuant to U.S. securities laws or the terms of this Indenture or the Notes. As used in this Section 4.06(d), documents or reports that the Company is required to "file" with the Commission pursuant to Section 13 or 15(d) of the Exchange Act does not include documents or reports that the Company furnishes to the Commission pursuant to Section 13 or 15(d) of the Exchange Act.

(e) If, and for so long as, the restrictive legend on the Notes (other than Affiliate Notes) specified in Section 2.05(c) has not been removed, the Notes (other than Affiliate Notes) are assigned a restricted CUSIP or the Notes are not otherwise freely tradable by Holders other than the Company's Affiliates or Holders that were the Company's Affiliates at any time during the immediately preceding three months (without restrictions pursuant to U.S. securities laws or the terms of this Indenture or the Notes) as of the 5th day after March 2, 2024, the Company shall pay Additional Interest on the Notes (other than Affiliate Notes) at a rate equal to 0.50% per annum of the principal amount of Notes (other than Affiliate Notes) outstanding until the restrictive legend on the Notes has been removed in accordance with Section 2.05(c), the Notes (other than Affiliate Notes) are assigned an unrestricted CUSIP and the Notes are freely tradable by Holders other than the Company's Affiliates (or Holders that were the Company's Affiliates at any time during the immediately preceding three months) without restrictions pursuant to U.S. securities laws or the terms of this Indenture or the Notes.

(f) Additional Interest will be payable in arrears on each Interest Payment Date following accrual in the same manner as regular interest on the Notes.

(g) Subject to the immediately succeeding sentence, the Additional Interest that is payable in accordance with Section 4.06(d) or Section 4.06(e) shall be in addition to, and not in lieu of, any Additional Interest that may be payable as a result of the Company's election pursuant to Section 6.03. However, in no event shall any Additional Interest that may accrue as a result of the Company's failure to comply with its obligations pursuant to Section 4.06(d), together with any Additional Interest payable at the Company's election pursuant to Section 6.03 as the remedy for an Event of Default relating to its failure to comply with its obligations as set forth in Section 4.06(b), accrue at a rate in excess of 0.50% per annum, regardless of the number of events or circumstances giving rise to the requirement to pay such Additional Interest.

(h) If Additional Interest is payable by the Company pursuant to Section 4.06(d) or Section 4.06(e), the Company shall deliver to the Trustee an Officer's Certificate to that effect stating (i) the amount of such Additional Interest that is payable and (ii) the date on which such Additional Interest is payable. Unless and until a Responsible Officer of the Trustee receives at the Corporate Trust Office such a certificate, the Trustee may assume without inquiry that no such Additional Interest is payable and the Trustee shall not have any duty to verify the Company's calculation of Additional Interest. If the Company has paid Additional Interest directly to the Persons entitled to it, the Company shall deliver to the Trustee an Officer's Certificate setting forth the particulars of such payment.

Section 4.07. *Stay, Extension and Usury Laws*. The Company covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law or other law that would prohibit or forgive the Company from paying all or any portion of the principal of or interest on the Notes as contemplated herein, wherever enacted, now or at any time hereafter in force, or that may affect the covenants or the performance of this Indenture; and the Company (to the extent it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

Section 4.08. *Compliance Certificate; Statements as to Defaults*. The Company shall deliver to the Trustee within 120 days after the end of each fiscal year of the Company (beginning with the fiscal year ending on December 31, 2021) an Officer's Certificate stating whether the signers thereof have knowledge of any Default, Event of Default or other failure by the Company to comply with all conditions and covenants then required to be performed under this Indenture and, if so, specifying each Default, Event of Default or other such failure and the nature thereof.

In addition, the Company shall deliver to the Trustee, as soon as possible, and in any event within 30 days after the occurrence of any Event of Default or Default, an Officer's Certificate setting forth the details of such Event of Default or Default, its status and the action that the Company is taking or proposing to take in respect thereof and the action that the Company is taking or proposing to take in respect thereof.

Section 4.09. *Further Instruments and Acts*. Upon request of the Trustee, the Company will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of this Indenture.

Section 4.10. *Limitations on Affiliate Debt*.

(a) For so long as at least $25,000,000 principal amount of Notes are outstanding, the Company shall not, nor shall the Company permit any of its existing or future Subsidiaries to, create, assume or incur any Affiliate Debt; *provided*, *however*, that the Company may, and may permit any of its existing and future Subsidiaries to, incur Affiliate Debt if:

(i) no Default or Event of Default shall have occurred and be continuing at the time of such incurrence or would occur as a consequence of such incurrence;

(ii) such Indebtedness is unsecured and, by its terms, is expressly subordinated to the Notes pursuant to Acceptable Subordination Terms; and

(iii) no principal of such Indebtedness is scheduled to mature (or subject to mandatory repurchase or put rights) earlier than the date that is 181 days after the Maturity Date.

(b) For so long as at least $25,000,000 principal amount of Notes are outstanding, the Company shall not, nor shall the Company permit any of its existing or future Subsidiaries to prepay any Affiliate Debt; *provided* that the Company may convert, or exchange, any Affiliate Debt into or for shares of Common Stock or other junior securities and cash in lieu of fractional shares.

This Section 4.10 shall cease to apply upon the occurrence of a Fundamental Change described in clause (a) or (b) of the definition thereof.

Section 4.11. *Limitations on Liens*. The Company shall not, nor shall the Company permit any of its Subsidiaries to, create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, except for the following (the "**Permitted Liens**"):

(a) Liens on the Collateral securing Indebtedness permitted under Section 4.12(a);

(b) Liens existing on the date of this Indenture and any renewals or extensions thereof; *provided* that (i) the property covered thereby is not changed, (ii) the amount secured or benefited thereby to the extent constituting Indebtedness is not increased except as contemplated by Section 4.12(b), (iii) the direct or any contingent obligor with respect thereto is not changed, and (iv) any renewal or extension of the obligations secured or benefited thereby is permitted by Section 4.12(b);

(c) Liens for taxes not yet due or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the Company or the Subsidiary, as applicable, in accordance with GAAP;

(d) statutory Liens such as carriers', warehousemen's, mechanics', materialmen's, repairmen's, landlord's, supplier's, laborer's or other like Liens arising in the ordinary course of business which are not overdue for a period of more than thirty (30) days or which are being contested in good faith and by appropriate proceedings diligently conducted; *provided* adequate reserves with respect thereto are maintained on the books of the Company or the Subsidiary, as applicable;

(e) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation, other than any Lien imposed by ERISA;

(f) deposits to secure the performance of bids, trade contracts (including with suppliers) and leases (other than Indebtedness), statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, including reimbursement and indemnification obligations, incurred in the ordinary course of business;

(g) easements, rights-of-way, restrictions and other similar encumbrances affecting real property which, individually or in the aggregate, are not substantial in amount, and which do not in any

case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the Company and its Subsidiaries;

(h) Liens on the Collateral securing Indebtedness permitted under Section 4.12(c); *provided* that (i) such Liens do not at any time encumber any property other than the property financed by such Indebtedness and (ii) the Indebtedness secured thereby does not exceed the cost or Fair Market Value, whichever is lower, of the property being acquired on the date of acquisition;

(i) bankers' Liens, rights of setoff and other similar Liens existing solely with respect to cash and Cash Equivalents on deposit in one or more accounts maintained by the Company or the Subsidiary, as applicable, in the ordinary course of business in favor of the bank or banks with which such accounts are maintained, securing solely the customary amounts owing to such bank with respect to cash management and operating account arrangements; *provided* that in no case shall any such Liens secure (either directly or indirectly) the repayment of any Indebtedness;

(j) Liens arising out of judgments or awards not resulting in an Event of Default; *provided* the Company or the Subsidiary, as applicable, shall in good faith be prosecuting an appeal or proceedings for review;

(k) any interest or title of a lessor, licensor, sublicensor or sublessor under any lease, license, sublicense or sublease entered into by the Company or the Subsidiary, as applicable, in the ordinary course of business, consistent with past practice and covering only the assets so leased, licensed, sublicensed or subleased;

(l) Liens on property of a Person existing at the time of a Permitted Acquisition or such Person is merged into or consolidated with the Company or any Subsidiary of the Company or becomes a Subsidiary of the Company; *provided* that such Liens were not created in contemplation of such Permitted Acquisition or merger, consolidation or Investment and do not extend to any assets other than those of the Person merged into or consolidated with the Company or such Subsidiary or acquired by the Company or such Subsidiary, and the applicable Indebtedness secured by such Lien is permitted under Section 4.12(f);

(m) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(n) Liens securing the Notes and the Subsidiary Guarantees; and

(o) other Liens securing Indebtedness outstanding in an aggregate principal amount not to exceed $250,000.

Section 4.12. *Limitations on Indebtedness*. The Company shall not, nor shall the Company permit any of its Subsidiaries to, create, incur, assume or suffer to exist any Indebtedness, except for the following:

(a) Indebtedness outstanding under the Credit Agreement Documents in an aggregate principal amount at any time outstanding not to exceed $22,500,000 and any Permitted Refinancing thereof;

(b) Indebtedness outstanding on the date of this Indenture, other than the Notes and other than Indebtedness outstanding under the Credit Agreement, and any Permitted Refinancing thereof;

(c) Indebtedness in respect of Capitalized Leases, Synthetic Lease Obligations and purchase money obligations for fixed or capital assets within the limitations set forth in Section 4.11(h); *provided, however*, that the aggregate amount of all such Indebtedness at any one time outstanding shall not exceed $2,500,000;

(d) unsecured Indebtedness of the Company or a Subsidiary of the Company owed to the Company or a Subsidiary of the Company, which Indebtedness shall (i) to the extent in an amount in excess of $1,000,000 in the aggregate, be evidenced by promissory notes which shall be pledged to the Notes Collateral Agent as Collateral for the Notes Secured Obligations in accordance with the terms of the Notes Security Agreements and (ii) be otherwise permitted under the provisions of Section 4.13 ("**Intercompany Debt**");

(e) Guarantees of the Company or any Subsidiary Guarantor in respect of Indebtedness otherwise permitted hereunder of the Company or any other Subsidiary Guarantor;

(f) Indebtedness of any Person that becomes a Subsidiary of the Company after the date of this Indenture in a transaction permitted under this Indenture in an aggregate principal amount not to exceed $750,000; *provided* that such Indebtedness is existing at the time such Person becomes a Subsidiary of the Company and was not incurred solely in contemplation of such Person's becoming a Subsidiary of the Company;

(g) Past Due Accounts Payable not to exceed $250,000 at any one time outstanding; *provided* that any Indebtedness in respect of Past Due Accounts Payable shall only be permitted pursuant to this Section 4.12(g);

(h) Indebtedness of any Subsidiary that is not a Subsidiary Guarantor not to exceed $250,000 at any one time outstanding;

(i) obligations under corporate credit cards, netting services and similar services incurred in the ordinary course of business;

(j) Indebtedness evidenced by the Notes in an aggregate principal amount at any time outstanding not to exceed $137,500,000;

(k) other unsecured Indebtedness in an aggregate principal amount not to exceed $250,000 at any time outstanding;

(l) letters of credit outstanding in favor of suppliers and landlords in an amount at any one time outstanding not to exceed $1,000,000, including any Permitted Refinancing thereof; and

(m) Indebtedness consisting of the financing of insurance premiums in the ordinary course of business in a principal amount not to exceed at any time the amount of insurance premiums to be paid by the Company and its Subsidiaries.

Section 4.13. *Limitations on Investments*. The Company shall not, nor shall the Company permit any of its Subsidiaries to, make or hold any Investments, except for the following:

(a) Investments held by the Company and its Subsidiaries in the form of cash or Cash Equivalents, bank deposits in the ordinary course of business, negotiable instruments deposited in the ordinary course of business;

(b) advances made in connection with the purchase of goods or services in the ordinary course of business;

(c) (i) Investments by the Company and its Subsidiaries in their respective Subsidiaries outstanding on the date of this Indenture, (ii) additional Investments by the Company and its Subsidiaries in the Company or any Subsidiary Guarantor, (iii) additional Investments by Subsidiaries of the Company that are not Subsidiary Guarantors in other Subsidiaries that are not Subsidiary Guarantors and (iv) so long as no Default has occurred and is continuing or would result from such Investment, additional Investments by the Company and the Subsidiary Guarantors in Subsidiaries that are not Subsidiary Guarantors in an aggregate amount invested after the date of this Indenture not to exceed $250,000;

(d) Guarantees permitted by Section 4.12 and Liens permitted by Section 4.11 to the extent constituting an Investment;

(e) Permitted Acquisitions, and Investments held by the target of any Permitted Acquisition (other than of CFCs and Subsidiaries held directly or indirectly by a CFC which Investments are covered by Section 4.13(c)(iv));

(f) Investments consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the ordinary course of business, and (ii) loans to employees, officers or directors relating to the purchase of equity securities of Company or its Subsidiaries pursuant to employee stock purchase plans or agreements approved by Company's Board of Directors; *provided,*

however, that the aggregate amount of all such Investments shall not exceed $2,000,000 at any time outstanding;

(g) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the ordinary course of business;

(h) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of suppliers and customers and in settlement of delinquent obligations of, and other disputes with, customers and suppliers arising in the ordinary course of business;

(i) Investments by the Company in Subsidiaries that are not Subsidiary Guarantors for payments of employee salaries and rent of such Subsidiaries, in each case in the ordinary course of business, in an aggregate amount not to exceed $1,000,000 in any calendar month; *provided* that for the calendar month of April 2023, this amount shall not exceed $1,700,000; and

(j) other Investments in an aggregate principal amount not to exceed $250,000 at any time outstanding.

Notwithstanding any provision of this Indenture or any Notes Security Document to the contrary, the Company shall not, nor shall it permit any of its Subsidiaries to, directly or indirectly, make any Investment using or consisting of any of the Specified Assets.

Section 4.14. *Limitations on Fundamental Changes*. The Company shall not, nor shall the Company permit any of its Subsidiaries to, merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except that, so long as no Default exists or would result therefrom and subject to compliance with ARTICLE 11:

(a) any Subsidiary may merge, dissolve or liquidate into or consolidate with (i) the Company; *provided* that the Company shall be the continuing or surviving Person, or (ii) any one or more other Subsidiaries, *provided* that when any Subsidiary Guarantor is merging with another Subsidiary, such Subsidiary Guarantor shall be the continuing or surviving Person;

(b) the Company and the Subsidiary Guarantors may Dispose of any of its assets (upon voluntary liquidation or otherwise) to the Company or to another Subsidiary Guarantor;

(c) any Subsidiary that is not a Subsidiary Guarantor may dispose any of its assets (including any Disposition that is in the nature of a liquidation) to (i) another Subsidiary that is not a Subsidiary Guarantor or (ii) to the Company or a Subsidiary Guarantor;

(d) in connection with any Permitted Acquisition, any Subsidiary of the Company may merge, dissolve or liquidate into or consolidate with any other Person (other than the Company) or permit any other Person (other than the Company) to merge, liquidate or dissolve into or consolidate with it; *provided* that (i) the Person surviving such merger shall be a wholly-owned Subsidiary of the Company and (ii) in the case of any such merger, dissolution, liquidation or consolidation to which any Subsidiary Guarantor is a party, such Subsidiary Guarantor is the surviving Person; and

(e) so long as no Default has occurred and is continuing or would result therefrom, each of the Company and any of its Subsidiaries may merge into or consolidate with any other Person or permit any other Person to merge into or consolidate with it; *provided, however*, that in each case, immediately after giving effect thereto (i) in the case of any such merger or consolidation to which the Company is a party, the Company is the surviving Person and (ii) in the case of any such merger or consolidation to which any Subsidiary Guarantor is a party, such Subsidiary Guarantor is the surviving Person.

Section 4.15. *Limitations on Dispositions*. The Company shall not, nor shall the Company permit any of its Subsidiaries to, make any Disposition or enter into any agreement to make any Disposition, except:

(a) Permitted Transfers;

(b) Dispositions of obsolete, surplus, damaged or worn out property, whether now owned or hereafter acquired, in the ordinary course of business;

(c) Dispositions of equipment or real property for Fair Market Value to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are reasonably promptly applied to the purchase price of such replacement property;

(d) non-exclusive licenses, non-exclusive sublicenses, leases or subleases for Fair Market Value granted to third parties in the ordinary course of business and consistent with past practice; and Liens permitted under Section 4.11(k);

(e) the lapse, abandonment or other dispositions of intellectual property, in the ordinary course of business and consistent with past practice, that is, in the reasonable good faith judgment of the Company, no longer economically practicable or commercially desirable to maintain or necessary for the conduct of the business of the Company and its Subsidiaries;

(f) Dispositions permitted by Section 4.11, Section 4.13, Section 4.14 or Section 4.16;

(g) the sale or issuance of Capital Stock (i) of the Company to any Person and (ii) of any Subsidiary of the Company to the Company or any Subsidiary Guarantor; and

(h) other Dispositions for Fair Market Value so long as (x) at least seventy-five percent (75%) of the consideration paid in connection therewith shall be cash or Cash Equivalents paid contemporaneously with consummation of such Disposition, (y) such transaction does not involve the sale or other Disposition of a minority Equity Interest in any Subsidiary and (z) except with respect to any Disposition of all or a portion of the NaviNet Business, the aggregate net book value of all of the assets sold or otherwise Disposed of by the Company and its Subsidiaries pursuant to this Section 4.15(h) shall not exceed $1,000,000 for all such transactions in any fiscal year of the Company.

Notwithstanding any provision of this Indenture or any Notes Security Document to the contrary, the Company shall not, nor shall it permit any of its Subsidiaries to, directly or indirectly, make any Disposition of any of the Specified Assets (other than (i) any non-exclusive license to a Person that is not an Affiliate in the ordinary course of business and (ii) a Disposition of all or a portion of the NaviNet Business to the extent permitted by Section 4.15(h)).

Section 4.16. *Limitations on Restricted Payments*. The Company shall not, nor shall the Company permit any of its Subsidiaries to, declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except that:

(a) a Subsidiary may make Restricted Payments to any Person that owns Capital Stock in such Subsidiary, ratably according to their respective holdings of the type of Equity Interest in respect of which such Restricted Payment is being made;

(b) the Company and a Subsidiary may declare and make dividend payments or other distributions payable solely in common Capital Stock of such Person;

(c) payments to redeem or otherwise acquire existing stock of the Company so long as any consideration used to make such payments is delivered solely from the issuance of new Capital Stock by the Company after the date of this Indenture;

(d) the Company may make de minimis payments of cash in lieu of fractional shares;

(e) the Company may convert any of its convertible securities into other securities pursuant to the terms of such convertible securities or otherwise in exchange thereof;

(f) so long as no Default has occurred and is continuing or would occur or result from such Restricted Payment, any purchase, redemption, retirement or other acquisition of Capital Stock of the Company held by consultants, agents, officers, directors and employees or former consultants, agents, officers, directors or employees (or their transferees, estates, or beneficiaries under their estates) of the Company and its Subsidiaries not to exceed $500,000 in the aggregate;

(g) cashless repurchases of Capital Stock of Company deemed to occur upon exercises of options and warrants or the settlement or vesting of other equity awards if such Capital Stock represent a portion of the exercise price of such options or warrants or similar equity incentive awards; and

(h) the Company may acquire (or withhold) its respective Capital Stock pursuant to any employee equity option or grant or similar plan to pay withholding taxes for which Company is liable in respect of a current or former officer, director, employee, member of management or consultant upon such grant or award (or upon vesting or exercise thereof) and Company may make deemed repurchases in connection with the exercise of equity options or grants.

Notwithstanding any provision of this Indenture or any Notes Security Document to the contrary, the Company shall not, nor shall it permit any of its Subsidiaries to, directly or indirectly, make any Restricted Payment using, or in the form of, any of the Specified Assets.

Section 4.17. *Limitations on Change in Nature of Business*. The Company shall not, nor shall the Company permit any of its Subsidiaries to, engage in any material line of business substantially different from those lines of business conducted by the Company and its Subsidiaries on the date of this Indenture or any business substantially related or incidental thereto. Without limitation of the foregoing, neither the Company nor any of its Subsidiaries will become a "passive foreign investment company" as such term is defined in Section 1297 of the Code.

Section 4.18. *Limitations on Transactions with Affiliates*. The Company shall not, and shall the Company permit any of its Subsidiaries to, enter into or permit to exist any transaction or series of transactions with any officer, director or Affiliate of such Person (each, an "**Affiliate Transaction**") other than (a) advances of working capital to the Company or a Subsidiary Guarantor, (b) transfers of cash and assets to the Company or a Subsidiary Guarantor, (c) intercompany transactions expressly permitted by this Indenture, (d) reasonable compensation and reimbursement of expenses of officers and directors, (e) Affiliate Transactions in existence on the date of this Indenture, (f) transactions pursuant to the Shared Services Agreements; *provided* that (i) the aggregate consideration payable by the Company and its Subsidiaries during any fiscal year shall not exceed $420,000 and (ii) such transactions shall be permitted only if not otherwise prohibited by this Indenture, other transactions which are entered into in the ordinary course of such Person's business on fair and reasonable terms and conditions substantially as favorable to such Person as would be obtainable by it in a comparable arms-length transaction with a Person other than an officer, director or Affiliate; *provided* that for purposes of this clause (g), for any such Affiliate Transaction involving aggregate consideration in excess of $5,000,000 (i) other than for any financing that is provided by an Affiliate to the Company or its Subsidiaries and not secured by a Lien on Collateral that is senior to or pari passu with the Lien securing the Notes Obligations, a fairness opinion shall have been provided by a nationally recognized appraisal or investment banking firm with respect to such Affiliate Transaction (with a copy thereof made available to the Holders upon their request) and (ii) 100% of the aggregate consideration payable to the Company and its Subsidiaries with respect to such Affiliate Transaction shall be paid in cash or Cash Equivalents; *provided* further that notwithstanding the foregoing, the Company shall not, nor shall the Company permit any of its Subsidiaries to, directly or indirectly, enter into any Affiliate Transaction with respect to any of the Specified Assets unless (x) a fairness opinion shall have been provided by a nationally recognized appraisal or investment banking firm with respect to such Affiliate Transaction (with a copy thereof made available to the Holders upon their request) and (y) 100% of the aggregate consideration payable to the Company and its Subsidiaries with respect to such Affiliate Transaction shall be paid in cash or Cash Equivalents. Other than amounts under the Shared Services Agreements, the Notes and the Credit Agreement, the aggregate consideration payable by the Company and its Subsidiaries pursuant to all Affiliate Transactions during any fiscal year shall not exceed $10,500,000.

Section 4.19. *Restrictions on Burdensome Agreements*. The Company shall not, and shall the Company permit any of its Subsidiaries to, enter into, or permit to exist, any Contractual Obligation (except for the Credit Agreement) that (a) encumbers or restricts the ability of any Subsidiary Guarantor to (i) to provide a guarantee of the Notes; (ii) make Restricted Payments to the Company or any Subsidiary Guarantor, (iii) pay any Indebtedness or other obligation owed to Company or any Subsidiary Guarantor, (iv) make loans or advances to Company or any Subsidiary Guarantor, or (v) create any Lien upon any of their properties or assets, whether now owned or hereafter acquired, except, in the case of any of the foregoing, for (A) any document or instrument governing Indebtedness incurred pursuant to Section 4.12(c), *provided* that any such restriction contained therein relates only to the asset or assets constructed or acquired in connection therewith, (B) any Permitted Lien, (C) customary restrictions and conditions contained in any agreement related to a disposition permitted by the Indenture and the Notes Security Documents, or in any merger or acquisition agreement, (D) applicable laws, or (E) customary provisions in contracts prohibiting or restricting assignment or (b) requires the grant of any Lien on property or securities for any obligation if a Lien on such property is given as security for the Notes Obligations.

Section 4.20. *Limitations on Amendments of Organization Documents*. The Company shall not, and shall the Company permit any of its Subsidiaries to, amend any of its Organization Documents in a manner materially adverse to the Holders (including, without limitation, with respect to any of the matters for which the consent of each Holder affected would be required pursuant to Section 10.02 were such amendment to be made instead to the terms of this Indenture or the Notes)

Section 4.21. *Limitations on Sale and Leaseback Transactions*. The Company shall not, and shall the Company permit any of its Subsidiaries to, enter into any Sale and Leaseback Transaction.

Section 4.22. *Limitations on Payment of Indebtedness*. The Company shall not, and shall the Company permit any of its Subsidiaries to, prepay, redeem, purchase, pay, defease or otherwise satisfy any Indebtedness prior to the scheduled maturity thereof in any manner (including by the exercise of any right of setoff), except (a) the prepayment of the obligations under the Credit Agreement or this Indenture and the Notes (including payments due upon a Repurchase Event and payment and/or delivery, as the case may be, of consideration due upon conversion of the Notes, to the extent permitted under Section 4.16) and (b) regularly scheduled or required repayments or redemptions of Indebtedness outstanding on the date of this Indenture.

Section 4.23. *Limitations on Amendment of Indebtedness*. The Company shall not, and shall the Company permit any of its Subsidiaries to:

(a) amend, modify or change in any manner any term or condition of any the Shared Services Agreements or any Affiliate Debt existing on the date of this Indenture or, in each case, any Permitted Refinancing of the Indebtedness referred to therein or give any consent, waiver or approval thereunder; *provided* that any Affiliate Debt existing on the date of this Indenture may be amended or modified, subject to Section 4.10, to extend the amortization or maturity of the Indebtedness evidenced thereby, reduce the interest rate thereon, or otherwise amend or modify the terms thereof so long as the terms of any such amendment or modification are no more restrictive on the Company and its Subsidiaries than the terms of such documents as in effect on the date of the Indenture; or

(b) amend, modify or change in any manner any term or condition of any Indebtedness (other than Indebtedness arising under the Credit Agreement or this Indenture and the Notes) if such amendment or modification would add or change any terms in a manner adverse to the Company or any of its Subsidiaries, or shorten the final maturity or average life to maturity or require any payment to be made sooner than originally scheduled or increase the interest rate applicable thereto.

Section 4.24. *Future Subsidiary Guarantors*.

(a) The Grantors shall cause each of their Material Subsidiaries (other than any CFC or any direct or indirect Subsidiary of a CFC) whether newly formed, after acquired or otherwise existing (within thirty (30) days after such Subsidiary is formed or acquired or becomes a Material Subsidiary or ceases to qualify as a CFC or a direct or indirect Subsidiary of a CFC) to become a Subsidiary Guarantor hereunder by way of execution of and delivery to the Trustee a supplemental indenture substantially in the form of Exhibit B hereto; provided, however, no Foreign Subsidiary shall be required to become a Subsidiary Guarantor to the extent such Subsidiary Guarantee would result in a material adverse tax consequence for the Company.

(b) Notwithstanding any provision of this Indenture or any Notes Security Document to the contrary, unless otherwise agreed in writing by the Company, (i) no more than 65% of the Voting Stock in any CFC that is a direct (first-tier) Subsidiary of a Grantor shall be directly or indirectly pledged or similarly hypothecated to guarantee or support any obligation of the Company (aggregating all arrangements that result in a direct or indirect pledge of such stock), (ii) for the avoidance of doubt, no stock of any Subsidiary of a CFC shall be directly or indirectly pledged or similarly hypothecated to guarantee or support any obligation of the Company (aggregating all arrangements that result in a direct or indirect pledge of such stock), (iii) no CFC (or any Subsidiary of a CFC) shall guarantee or support any obligation of the Company, and (iv) no security or similar interest shall be granted in the assets of any CFC (or any Subsidiary of a CFC), which security or similar interest guarantees or supports any obligation of the Company. The parties hereto and each Holder agree that any pledge, guaranty or security or similar interest made or granted in contravention of this paragraph shall be void ab initio.

Section 4.25. *After-Acquired Collateral*.

(a) If any Subsidiary of any Grantor becomes a Subsidiary Guarantor after the date hereof pursuant to Section 4.24, such Subsidiary shall cause the Collateral Requirement to be satisfied with respect to such Subsidiary (within thirty (30) days after such Subsidiary is formed or acquired or becomes a Material Subsidiary or ceases to qualify as a CFC or a direct or indirect Subsidiary of a CFC).

(b) Each of the Grantors hereby covenants and agrees that on the date hereof and thereafter until the Maturity Date, such Grantor shall, and shall cause each of its Subsidiaries to promptly upon delivery to the collateral agent under the Credit Agreement or upon request by the Notes Collateral Agent, or any Holder through the Notes Collateral Agent with respect to the comparable documents thereunder (i) correct any material defect or error that may be discovered in any Notes Security Document or in the execution, acknowledgment, filing or recordation thereof, and (ii) 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 is necessary in order to (A) carry out more effectively the purposes of the Notes Security Documents, (B) to the fullest extent permitted by applicable Law, subject any Grantor's properties, assets, rights or interests that constitute (or are intended to constitute) Collateral to the Liens now or hereafter intended to be covered by any of the Notes Security Documents, (C) perfect and maintain the validity, effectiveness and priority of any of the Notes Security Documents and any of the Liens intended to be created thereunder and (D) assure, convey, grant, assign, transfer, preserve, protect and confirm more effectively unto the Notes Secured Parties the rights granted or now or hereafter intended to be granted to the Notes Secured Parties under any Notes Security Document or under any other instrument executed in connection with this Indenture or any Notes Security Document.

Section 4.26. *No Impairment of Security Interests*. Except as otherwise permitted under this Indenture, the Intercreditor Agreement and the Notes Security Documents, none of the Company nor any of the Subsidiary Guarantors shall be permitted to take any action, or knowingly omit to take any action, which action or omission would have the result of materially impairing the security interest with respect to the Collateral for the benefit of the Trustee, the Notes Collateral Agent and the Holders.

ARTICLE 5
Lists of Holders and Reports by the Company and the Trustee

Section 5.01. *Lists of Holders*. The Company covenants and agrees that it will furnish or cause to be furnished to the Trustee and the Paying Agent, semi-annually, not more than 15 days after each April 1 and October 1 in each year beginning with October 1, 2021, and at such other times as the Trustee may request in writing, within 30 days after receipt by the Company of any such request (or such lesser time as the Trustee may reasonably request in order to enable it to timely provide any notice to be provided by it hereunder), a list in such form as the Trustee may reasonably require of the names and addresses of the Holders as of a date not more than 15 days (or such other date as the Trustee may reasonably request in order to so provide any such notices) prior to the time such information is furnished, except that no such list need be furnished so long as the Trustee is acting as Note Registrar.

Section 5.02. *Preservation and Disclosure of Lists*. The Trustee shall preserve, in as current a form as is reasonably practicable, all information as to the names and addresses of the Holders contained in the most recent list furnished to it as provided in Section 5.01 or maintained by the Trustee in its capacity as Note Registrar, if so acting. The Trustee may destroy any list furnished to it as provided in Section 5.01 upon receipt of a new list so furnished.

ARTICLE 6
Defaults and Remedies

Section 6.01. *Events of Default*. Each of the following events shall be an "**Event of Default**" with respect to the Notes:

(a) default in any payment of interest on any Note when due and payable, and the default continues for a period of thirty days;

(b) default in the payment of principal of any Note when due and payable on the Maturity Date, upon Optional Redemption, upon any required repurchase, upon declaration of acceleration or otherwise;

(c) failure by the Company to comply with its obligation to convert the Notes in accordance with this Indenture upon exercise of a Holder's conversion right, and such failure continues for five Business Days;

(d) failure by the Company to issue a Repurchase Event Company Notice in accordance with Section 15.02(c);

(e) failure by the Company to comply with its obligations under ARTICLE 11;

(f) failure by the Company to comply with its obligations under any of (i) Section 4.06, Section 4.08, Section 4.10 through Section 4.23, and such failure continues for thirty days, or (ii) Section 4.05;

(g) failure by the Company for 60 days after written notice from the Trustee or the Holders of at least 25% in principal amount of the Notes then outstanding has been received by the Company to comply with any of its other agreements (not specified in (a), (b), (c), (d), (e) or (f) above) contained in the Notes or this Indenture;

(h) default by the Company or any Significant Subsidiary of the Company with respect to any mortgage, agreement or other instrument under which there may be outstanding, or by which there may be secured or evidenced, any indebtedness for money borrowed in excess of $5,000,000 (or its foreign currency equivalent) in the aggregate of the Company and/or any such Significant Subsidiary, whether such indebtedness now exists or shall hereafter be created (i) resulting in such indebtedness becoming or being declared due and payable or (ii) constituting a failure to pay the principal of any such indebtedness when due and payable at its stated maturity, upon required repurchase, upon declaration of acceleration or otherwise, and in the cases of clauses (i) and (ii), such acceleration shall not have been rescinded or annulled or such failure to pay or default shall not have been cured or waived, or such indebtedness is not paid or discharged, as the case may be, within 30 days determined in accordance with Section 8.04;

(i) the Company or any Significant Subsidiary shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to the Company or any such Significant Subsidiary or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company or any such Significant Subsidiary or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due;

(j) an involuntary case or other proceeding shall be commenced against the Company or any Significant Subsidiary seeking liquidation, reorganization or other relief with respect to the Company or such Significant Subsidiary or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company or such Significant Subsidiary or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of 30 consecutive days;

(k) a Subsidiary Guarantee ceases to be in full force and effect (except as contemplated by the terms thereof), and such Default continues for 10 Business Days, or the Company or any Subsidiary Guarantor denies or disaffirms its obligations under this Indenture or any Guarantee with respect to the Notes (except as contemplated by the terms thereof);

(l) any material provision of any Notes Security 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 Notes Obligations, ceases to be in full force and effect; or any Grantor contests in any manner the validity or enforceability of any provision of any Notes Security Document; or any Grantor denies that it has any or further liability or obligation under any provision of any Notes Security Document, or purports to revoke, terminate or rescind any provision of any Notes Security Document or it is or becomes unlawful for a Grantor to perform any of its obligations under the Notes Security Documents;

(m) any Notes Security Document after delivery thereof pursuant to the terms of this Indenture or the Notes Security Documents shall for any reason cease to create a valid and perfected

second priority Lien (subject to Permitted Liens) on the Collateral purported to be covered thereby, or any Grantor shall assert the invalidity of such Liens; or

(n) any representation, warranty, certification or statement of fact made or deemed to be made by or on behalf of the Company or any Subsidiary Guarantor in this Indenture, the Notes, any other Notes Documents or in any other document delivered in connection herewith or therewith shall be incorrect in any material respect when made or deemed made.

Section 6.02. *Acceleration; Rescission and Annulment*. If one or more Events of Default shall have occurred and be continuing (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body), then, and in each and every such case (other than an Event of Default specified in Section 6.01(h) or Section 6.01(i) with respect to the Company), unless the principal of all of the Notes shall have already become due and payable, either the Trustee or the Holders of at least 25% in aggregate principal amount of the Notes then outstanding determined in accordance with Section 8.04, by notice in writing to the Company and the Trustee, may declare 100% of the principal of, and accrued and unpaid interest on, all the Notes to be due and payable immediately, and upon any such declaration the same shall become and shall automatically be immediately due and payable, anything contained in this Indenture or in the Notes to the contrary notwithstanding. If an Event of Default specified in Section 6.01(h) or Section 6.01(i) with respect to the Company occurs and is continuing, 100% of the principal of, and accrued and unpaid interest, if any, on, all Notes shall become and shall automatically be immediately due and payable.

The immediately preceding paragraph, however, is subject to the conditions that if, at any time after the principal of the Notes shall have been so declared due and payable, and before any judgment or decree for the payment of the monies due shall have been obtained or entered as hereinafter provided, the Company shall pay or shall deposit with the Trustee a sum sufficient to pay installments of accrued and unpaid interest upon all Notes and the principal of any and all Notes that shall have become due otherwise than by acceleration (with interest on overdue installments of accrued and unpaid interest to the extent that payment of such interest is enforceable under applicable law, and on such principal at the rate borne by the Notes *plus* one percent at such time) and amounts due to the Trustee pursuant to Section 7.06, and if (a) rescission would not conflict with any judgment or decree of a court of competent jurisdiction and (b) any and all existing Events of Default under this Indenture, other than the nonpayment of the principal of and accrued and unpaid interest, if any, on Notes that shall have become due solely by such acceleration, shall have been cured or waived pursuant to Section 6.09, then and in every such case (except as provided in the immediately succeeding sentence) the Holders of a majority in aggregate principal amount of the Notes then outstanding (or the Required Holders, if so required in accordance with Section 6.09(b)(iv)), by written notice to the Company and to the Trustee, may waive all Defaults or Events of Default with respect to the Notes and rescind and annul such declaration and its consequences and such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver or rescission and annulment shall extend to or shall affect any subsequent Default or Event of Default, or shall impair any right consequent thereon. Notwithstanding anything to the contrary herein, no such waiver or rescission and annulment shall extend to or shall affect any Default or Event of Default resulting from (i) the nonpayment of the principal (including the Redemption Price and the Repurchase Event Repurchase Price, if applicable) of, or accrued and unpaid interest on, any Notes, (ii) a failure to repurchase any Notes when required or (iii) a failure to pay or deliver, as the case may be, the consideration due upon conversion of the Notes.

Section 6.03. *Additional Interest*. Notwithstanding anything in this Indenture or in the Notes to the contrary, to the extent the Company elects, the sole remedy for an Event of Default relating to the Company's failure to comply with its obligations as set forth in Section 4.06(b) shall for the first 180 days after the occurrence of such an Event of Default, consist exclusively of the right to receive Additional Interest on the Notes at a rate equal to (x) 0.25% per annum of the principal amount of the Notes outstanding for each day during the first 90-day period on which such Event of Default is continuing and (y) 0.50% per annum of the principal amount of the Notes outstanding for each day from the 91st day until the 180th day following the occurrence of such an Event of Default. Subject to the last paragraph of this Section 6.03, Additional Interest payable pursuant to this Section 6.03 shall be in addition to, not in lieu of, any Additional Interest payable pursuant to Section 4.06(d) or Section 4.06(e). If the Company so elects, such Additional Interest shall be payable in the same manner and on the same dates as the stated interest payable on the Notes. On the 181st day after such Event of Default (if the Event of Default relating to the Company's failure to file is not cured or waived prior to such 181st day), the Notes shall be immediately subject to acceleration as provided in Section 6.02. The provisions of this paragraph will not affect the rights of Holders of Notes in the event of the occurrence of any Event of Default other than the Company's failure to comply with its obligations as set forth in Section 4.06(b). In the event the Company

does not elect to pay Additional Interest following an Event of Default in accordance with this Section 6.03 or the Company elected to make such payment but does not pay the Additional Interest when due, the Notes shall be immediately subject to acceleration as provided in Section 6.02.

In order to elect to pay Additional Interest as the sole remedy during the first 180 days after the occurrence of any Event of Default described in the immediately preceding paragraph, the Company must notify in writing all Holders of the Notes, the Trustee and the Paying Agent of such election prior to the beginning of such 180-day period. Upon the failure to timely give such notice, the Notes shall be immediately subject to acceleration as provided in Section 6.02.

In no event shall Additional Interest payable at the Company's election as the remedy for an Event of Default relating to its failure to comply with its obligations under Section 4.06(b) as set forth in this Section 6.03, together with any interest that may accrue as a result of the Company's failure to comply with its obligations as described in Section 4.06(d), accrue at a rate in excess of 0.50% per annum, regardless of the number of events or circumstances giving rise to the requirement to pay such Additional Interest. The Trustee shall not have any duty to verify the Company's calculation of Additional Interest.

Section 6.04. *Payments of Notes on Default; Suit Therefor*. If an Event of Default described in clause (a) or (b) of Section 6.01 shall have occurred, the Company shall, upon demand of the Trustee, pay to the Trustee, for the benefit of the Holders of the Notes, the whole amount then due and payable on the Notes for principal and interest, if any, with interest on any overdue principal and interest, if any, at the rate borne by the Notes *plus* one percent at such time, and, in addition thereto, such further amount as shall be sufficient to cover any amounts due to the Trustee under Section 7.06. If the Company shall fail to pay such amounts forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid, may prosecute such proceeding to judgment or final decree and may enforce the same against the Company or any other obligor upon the Notes and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Company or any other obligor upon the Notes, wherever situated.

In the event there shall be pending proceedings for the bankruptcy or for the reorganization of the Company or any other obligor on the Notes under the Bankruptcy Code, or any other applicable law, or in case a receiver, assignee or trustee in bankruptcy or reorganization, liquidator, sequestrator or similar official shall have been appointed for or taken possession of the Company or such other obligor, the property of the Company or such other obligor, or in the event of any other judicial proceedings relative to the Company or such other obligor upon the Notes, or to the creditors or property of the Company or such other obligor, the Trustee, irrespective of whether the principal of the Notes shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand pursuant to the provisions of this Section 6.04, shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount of principal and accrued and unpaid interest, if any, in respect of the Notes, and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents and to take such other actions as it may deem necessary or advisable in order to have the claims of the Trustee and the Notes Collateral Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, the Notes Collateral Agent, their agents and counsel) and of the Holders allowed in such judicial proceedings relative to the Company or any other obligor on the Notes, its or their creditors, or its or their property, and to collect and receive any monies or other property payable or deliverable on any such claims, and to distribute the same after the deduction of any amounts due to the Trustee and the Notes Collateral Agent under Section 7.06; and any receiver, assignee or trustee in bankruptcy or reorganization, liquidator, custodian or similar official is hereby authorized by each of the Holders to make such payments to the Trustee, as administrative expenses, and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee and the Notes Collateral Agent any amount due it for reasonable compensation, expenses, advances and disbursements, including agents and counsel fees, and including any other amounts due to the Trustee and the Notes Collateral Agent under Section 7.06, incurred by it up to the date of such distribution. To the extent that such payment of reasonable compensation, expenses, advances and disbursements out of the estate in any such proceedings 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, monies, securities and other property that the Holders of the Notes may be entitled to receive in such proceedings, whether in liquidation or under any plan of reorganization or arrangement or otherwise.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting such Holder or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

All rights of action and of asserting claims under this Indenture, or under any of the Notes, may be enforced by the Trustee without the possession of any of the Notes, or the production thereof at any trial or other proceeding relative thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders of the Notes.

In any proceedings brought by the Trustee (and in any proceedings involving the interpretation of any provision of this Indenture to which the Trustee shall be a party) the Trustee shall be held to represent all the Holders of the Notes, and it shall not be necessary to make any Holders of the Notes parties to any such proceedings.

In case the Trustee shall have proceeded to enforce any right under this Indenture and such proceedings shall have been discontinued or abandoned because of any waiver pursuant to Section 6.09 or any rescission and annulment pursuant to Section 6.02 or for any other reason or shall have been determined adversely to the Trustee, then and in every such case the Company, the Holders and the Trustee shall, subject to any determination in such proceeding, be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Company, the Holders and the Trustee shall continue as though no such proceeding had been instituted.

Section 6.05. *Application of Monies Collected by Trustee*. Subject to the Intercreditor Agreement, any monies or property collected by the Trustee pursuant to this ARTICLE 6 with respect to the Notes shall be applied in the following order, at the date or dates fixed by the Trustee for the distribution of such monies or property, upon presentation of the several Notes, and stamping thereon the payment, if only partially paid, and upon surrender thereof, if fully paid:

First, to the payment of all amounts due the Trustee (in any capacity hereunder) and the Notes Collateral Agent under this Indenture and the Notes Security Documents;

Second, in case the principal of the outstanding Notes shall not have become due and be unpaid, to the payment of interest on, and any cash due upon conversion of, the Notes in default in the order of the date due of the payments of such interest and cash due upon conversion, as the case may be, with interest (to the extent that such interest has been collected by the Trustee) upon such overdue payments at the rate borne by the Notes at such time, such payments to be made ratably to the Persons entitled thereto;

Third, in case the principal of the outstanding Notes shall have become due, by declaration or otherwise, and be unpaid to the payment of the whole amount (including, if applicable, the payment of the Redemption Price, the Repurchase Event Repurchase Price and any cash due upon conversion) then owing and unpaid upon the Notes for principal and interest, if any, with interest on the overdue principal and, to the extent that such interest has been collected by the Trustee, upon overdue installments of interest at the rate borne by the Notes at such time *plus* one percent, and in case such monies shall be insufficient to pay in full the whole amounts so due and unpaid upon the Notes, then to the payment of such principal (including, if applicable, the Redemption Price, the Repurchase Event Repurchase Price and the cash due upon conversion) and interest without preference or priority of principal over interest, or of interest over principal or of any installment of interest over any other installment of interest, or of any Note over any other Note, ratably to the aggregate of such principal (including, if applicable, the Redemption Price and the Repurchase Event Repurchase Price and any cash due upon conversion) and accrued and unpaid interest; and Fourth, to the payment of the remainder, if any, to the Company.

Section 6.06. *Proceedings by Holders*. Except to enforce the right to receive payment of principal (including, if applicable, the Redemption Price and the Repurchase Event Repurchase Price) or interest when due, or the right to receive payment or delivery of the consideration due upon conversion, no Holder of any Note shall have any right by virtue of or by availing of any provision of this Indenture to institute any suit, action or proceeding in equity or at law upon or under or with respect to this Indenture, or for the appointment of a receiver, trustee, liquidator, custodian or other similar official, or for any other remedy hereunder, unless:

(a) such Holder previously shall have given to the Trustee written notice of an Event of Default and of the continuance thereof, as herein provided;

(b) Holders of at least 25% in aggregate principal amount of the Notes then outstanding shall have made written request upon the Trustee to institute such action, suit or proceeding in its own name as Trustee hereunder;

(c) such Holders shall have offered to the Trustee such security or indemnity reasonably satisfactory to it against any loss, liability or expense to be incurred therein or thereby;

(d) the Trustee for 60 days after its receipt of such notice, request and offer of such security or indemnity, shall have neglected or refused to institute any such action, suit or proceeding; and

(e) no written direction that, in the opinion of the Trustee, is inconsistent with such written request shall have been given to the Trustee by the Holders of a majority of the aggregate principal amount of the Notes then outstanding within such 60-day period pursuant to Section 6.09, it being understood and intended, and being expressly covenanted by the taker and Holder of every Note with every other taker and Holder and the Trustee that no one or more Holders shall have any right in any manner whatever by virtue of or by availing of any provision of this Indenture to affect, disturb or prejudice the rights of any other Holder, or to obtain or seek to obtain priority over or preference to any other such Holder, or to enforce any right under this Indenture, except in the manner herein provided and for the equal, ratable and common benefit of all Holders (except as otherwise provided herein). For the protection and enforcement of this Section 6.06, each and every Holder and the Trustee shall be entitled to such relief as can be given either at law or in equity.

Notwithstanding any other provision of this Indenture and any provision of any Note, the right of any Holder to receive payment or delivery, as the case may be, of (x) the principal (including the Repurchase Event Repurchase Price, if applicable) of, (y) accrued and unpaid interest, if any, on, and (z) the consideration due upon conversion of, such Note, on or after the respective due dates expressed or provided for in such Note or in this Indenture, or to institute suit for the enforcement of any such payment or delivery, as the case may be, on or after such respective dates against the Company shall not be impaired or affected without the consent of such Holder.

Section 6.07. *Proceedings by Trustee*. In case of an Event of Default, the Trustee may in its discretion proceed to protect and enforce the rights vested in it by this Indenture by such appropriate judicial proceedings as are necessary to protect and enforce any of such rights, either by suit in equity or by action at law or by proceeding in bankruptcy or otherwise, whether for the specific enforcement of any covenant or agreement contained in this Indenture or in aid of the exercise of any power granted in this Indenture, or to enforce any other legal or equitable right vested in the Trustee by this Indenture or by law.

Section 6.08. *Remedies Cumulative and Continuing*. Except as provided in the last paragraph of Section 2.06, all powers and remedies given by this ARTICLE 6 to the Trustee or to the Holders shall, to the extent permitted by law, be deemed cumulative and not exclusive of any thereof or of any other powers and remedies available to the Trustee or the Holders of the Notes, by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements contained in this Indenture, and no delay or omission of the Trustee or of any Holder of any of the Notes to exercise any right or power accruing upon any Default or Event of Default shall impair any such right or power, or shall be construed to be a waiver of any such Default or Event of Default or any acquiescence therein; and, subject to the provisions of Section 6.06, every power and remedy given by this ARTICLE 6 or by law to the Trustee or to the Holders may be exercised from time to time, and as often as shall be deemed expedient, by the Trustee or by the Holders.

Section 6.09. *Direction of Proceedings and Waiver of Defaults by Majority of Holders*. Subject to the Trustee's right to receive security or indemnity from the relevant Holders as described herein, the Holders of a majority of the aggregate principal amount of the Notes at the time outstanding determined in accordance with Section 8.04 shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee with respect to the Notes; *provided*, *however*, that (a) such direction shall not be in conflict with any rule of law or with this Indenture, and (b) the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction. The Trustee may refuse to follow any direction that it determines is in conflict with law, this Indenture, is unduly prejudicial to the rights of any other Holder or that would involve the Trustee in personal liability. The Holders of a majority in aggregate principal amount of the Notes at the time outstanding determined in accordance with Section 8.04 may on behalf of

the Holders of all of the Notes waive any past Default or Event of Default hereunder and its consequences except (i) a default in the payment of accrued and unpaid interest, if any, on, or the principal (including any Redemption Price or Repurchase Event Repurchase Price) of, the Notes when due that has not been cured pursuant to the provisions of Section 6.01, (ii) a failure by the Company to pay or deliver, as the case may be, the consideration due upon conversion of the Notes, (iii) a default in respect of a covenant or provision hereof which under ARTICLE 10 cannot be modified or amended without the consent of each Holder of an outstanding Note affected and (iv) any past Default or Event of Default hereunder arising under Section 6.01(f), Section 6.01(k), Section 6.01(l), Section 6.01(m) or Section 6.01(n) may not be waived on behalf of the Holders of all the Notes without the consent of the Required Holders. Upon any such waiver the Company, the Trustee and the Holders of the Notes shall be restored to their former positions and rights hereunder; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon. Whenever any Default or Event of Default hereunder shall have been waived as permitted by this Section 6.09, said Default or Event of Default shall for all purposes of the Notes and this Indenture be deemed to have been cured and to be not continuing; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon.

Section 6.10. *Notice of Defaults*. The Trustee shall send to all Holders as the names and addresses of such Holders appear upon the Note Register (or, in the case of Global Notes, pursuant to the customary procedures of the Depositary) notice of all Defaults actually known to a Responsible Officer within 90 days after it occurs, unless such Defaults shall have been cured or waived before the giving of such notice; *provided* that, except in the case of a Default in the payment of the principal of (including the Redemption Price and the Repurchase Event Repurchase Price, if applicable), or accrued and unpaid interest on, any of the Notes or a Default in the payment or delivery of the consideration due upon conversion, the Trustee shall be protected in withholding such notice if and so long as the Trustee in good faith determines that the withholding of such notice is in the interests of the Holders.

Section 6.11. *Undertaking to Pay Costs.* All parties to this Indenture agree, and each Holder of any Note by its acceptance thereof shall be deemed to have agreed, that any court may, in its discretion, require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; *provided* that the provisions of this Section 6.11 (to the extent permitted by law) shall not apply to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in principal amount of the Notes at the time outstanding determined in accordance with Section 8.04, or to any suit instituted by any Holder for the enforcement of the payment of the principal of or accrued and unpaid interest, if any, on any Note (including, but not limited to, the Redemption Price and the Repurchase Event Repurchase Price, if applicable) on or after the due date expressed or provided for in such Note or to any suit for the enforcement of the right to convert any Note, or receive the consideration due upon conversion, in accordance with the provisions of ARTICLE 14.

ARTICLE 7
Concerning the Trustee

Section 7.01. *Duties and Responsibilities of Trustee*. The Trustee, prior to the occurrence of an Event of Default and after the curing or waiver of all Events of Default that may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In the event an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs; *provided* that if an Event of Default occurs and is continuing, the Trustee will be under no obligation to exercise any of the rights or powers under this Indenture at the request or direction of any of the Holders unless such Holders have offered to the Trustee indemnity or security satisfactory to it against any loss, liability or expense that might be incurred by it in compliance with such request or direction; *provided further* that, notwithstanding anything to the contrary in this Article 7, in the event an Event of Default specified in Section 6.01(f), Section 6.01(k), Section 6.01(l), Section 6.01(m) or Section 6.01(n) has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, solely to the extent directed by the Required Holders; *provided further* that the Trustee shall not exercise any right or remedy (or direct the Notes Collateral Agent to exercise any right or remedy) requiring the written instructions of the Required Holders under Sections 6, 7, 8 and 9 of the Notes Security Agreement unless so directed by the Required Holders. Prior to taking any action hereunder at the Company's instruction, the Trustee shall be

entitled to indemnification by the Company satisfactory to the Trustee against any loss, liability or expense caused by taking or not taking such action.

No provision of this Indenture shall be construed to relieve the Trustee from liability for its own grossly negligent action, its own grossly negligent failure to act or its own willful misconduct, except that:

(a) prior to the occurrence of an Event of Default and after the curing or waiving of all Events of Default that may have occurred:

(i) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Indenture, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith and willful misconduct on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but, in the case of any such certificates or opinions that by any provisions hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of any mathematical calculations or other facts stated therein);

(b) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer or Officers of the Trustee, unless it shall be proved that the Trustee was grossly negligent in ascertaining the pertinent facts;

(c) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of not less than a majority of the aggregate principal amount of the Notes at the time outstanding determined as provided in Section 8.04 relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture;

(d) whether or not therein provided, every provision of this Indenture relating to the conduct or affecting the liability of, or affording protection to, the Trustee shall be subject to the provisions of this Section;

(e) the Trustee shall not be liable in respect of any payment (as to the correctness of amount, entitlement to receive or any other matters relating to payment) or notice effected by the Company or any Paying Agent or any records maintained by any co-Note Registrar with respect to the Notes;

(f) if any party fails to deliver a notice relating to an event the fact of which, pursuant to this Indenture, requires notice to be sent to the Trustee, the Trustee may conclusively rely on its failure to receive such notice as reason to act as if no such event occurred, unless a Responsible Officer of the Trustee had actual knowledge of such event;

(g) other than as provided in Section 4.04(e), in the absence of written investment direction from the Company, all cash received by the Trustee shall be placed in a non-interest bearing trust account, and in no event shall the Trustee be liable for the selection of investments or for investment losses incurred thereon or for losses incurred as a result of the liquidation of any such investment prior to its maturity date or the failure of the party directing such investments prior to its maturity date or the failure of the party directing such investment to provide timely written investment direction, and the Trustee shall have no obligation to invest or reinvest any amounts held hereunder in the absence of such written investment direction from the Company; and

(h) References to the Trustee in Sections 7.02, 7.03, 7.04, 7.06, 7.09 and 7.11 shall include the Trustee in its role as Paying Agent, Registrar, Conversion Agent, Custodian and transfer agent hereunder and the Notes Collateral Agent.

None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers.

The Trustee shall not be required to give any bond or surety in respect of the performance of its powers or duties hereunder.

Section 7.02. *Reliance on Documents, Opinions, Etc.* Except as otherwise provided in Section 7.01:

(a) the Trustee may conclusively rely and shall be fully protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, note, coupon or other paper or document believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties;

(b) any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced by an Officer's Certificate (unless other evidence in respect thereof be herein specifically prescribed); and any Board Resolution may be evidenced to the Trustee by a copy thereof certified by the Secretary or an Assistant Secretary of the Company;

(c) the Trustee may consult with counsel and require an Opinion of Counsel and any advice of such counsel or Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or omitted by it hereunder in good faith and in accordance with such advice or Opinion of Counsel;

(d) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney at the expense of the Company and shall incur no liability of any kind by reason of such inquiry or investigation;

(e) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, custodians, nominees or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent, custodian, nominee or attorney appointed by it with due care hereunder;

(f) the permissive rights of the Trustee enumerated herein shall not be construed as duties; and

(g) the Trustee may request that the Company deliver a certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture.

In no event shall the Trustee be liable for any consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action other than any such loss or damage caused by the Trustee's willful misconduct or gross negligence. The Trustee shall not be charged with knowledge of any Default or Event of Default with respect to the Notes, unless either (i) a Responsible Officer shall have actual knowledge of such Default or Event of Default or (ii) written notice of such Default or Event of Default shall have been given to the Trustee by the Company or by any Holder of the Notes.

Section 7.03. *No Responsibility for Recitals, Etc.* The recitals contained herein and in the Notes (except in the Trustee's certificate of authentication) shall be taken as the statements of the Company, and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Notes. The Trustee shall not be accountable for the use or application by the Company of any Notes or the proceeds of any Notes authenticated and delivered by the Trustee in conformity with the provisions of this Indenture.

Section 7.04. *Trustee, Paying Agents, Conversion Agents or Note Registrar May Own Notes*. The Trustee, any Paying Agent, any Conversion Agent or Note Registrar, in its individual or any other

capacity, may become the owner or pledgee of Notes with the same rights it would have if it were not the Trustee, Paying Agent, Conversion Agent or Note Registrar.

Section 7.05. *Monies and Shares of Common Stock to Be Held in Trust*. All monies and shares of Common Stock received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received. Money and shares of Common Stock held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money or shares of Common Stock received by it hereunder except as may be agreed from time to time by the Company and the Trustee.

Section 7.06. *Compensation and Expenses of Trustee*. The Company covenants and agrees to pay to the Trustee, in any of its capacities under this Indenture, from time to time, and the Trustee shall be entitled to, reasonable compensation for all services rendered by it hereunder in any capacity (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust) as mutually agreed to in writing between the Trustee and the Company, and the Company will pay or reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances reasonably incurred or made by the Trustee in accordance with any of the provisions of this Indenture in any capacity thereunder (including the reasonable compensation and the expenses and disbursements of its agents and counsel and of all Persons not regularly in its employ) except any such expense, disbursement or advance as shall have been caused by its gross negligence, willful misconduct or bad faith. The Company also covenants to indemnify the Trustee in any capacity under this Indenture and any other document or transaction entered into in connection herewith and its officers, directors, employees, agents and any authenticating agent for, and to hold them harmless against, any loss, claim, damage, liability or expense incurred without gross negligence, willful misconduct or bad faith on the part of the Trustee, its officers, directors, agents or employees, or such agent or authenticating agent, as the case may be, and arising out of or in connection with the acceptance or administration of this Indenture or in any other capacity hereunder, including the costs and expenses of defending themselves against any claim of liability in the premises. The obligations of the Company under this Section 7.06 to compensate or indemnify the Trustee and to pay or reimburse the Trustee for expenses, disbursements and advances shall be secured by a senior claim to which the Notes are hereby made subordinate on all money or property held or collected by the Trustee, except, subject to the effect of Section 6.05, funds held in trust herewith for the benefit of the Holders of particular Notes. The Trustee's right to receive payment of any amounts due under this Section 7.06 shall not be subordinate to any other liability or indebtedness of the Company. The obligation of the Company under this Section 7.06 shall survive the satisfaction and discharge of this Indenture and the earlier resignation or removal or the Trustee. The Company need not pay for any settlement made without its consent, which consent shall not be unreasonably withheld. The indemnification provided in this Section 7.06 shall extend to the officers, directors, agents and employees of the Trustee.

Without prejudice to any other rights available to the Trustee under applicable law, when the Trustee and its agents and any authenticating agent incur expenses or render services after an Event of Default specified in Section 6.01(h) or Section 6.01(i) occurs, the expenses and the compensation for the services are intended to constitute expenses of administration under any bankruptcy, insolvency or similar laws.

Section 7.07. *Officer's Certificate and Opinion of Counsel as Evidence*. Except as otherwise provided in Section 7.01, whenever in the administration of the provisions of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of gross negligence, willful misconduct, recklessness and bad faith on the part of the Trustee, be deemed to be conclusively proved and established by an Officer's Certificate and Opinion of Counsel delivered to the Trustee, and such Officer's Certificate, in the absence of gross negligence, willful misconduct, recklessness and bad faith on the part of the Trustee, shall be full warrant to the Trustee for any action taken or omitted by it under the provisions of this Indenture upon the faith thereof.

Section 7.08. *Eligibility of Trustee*. There shall at all times be a Trustee hereunder which shall be a Person that is eligible pursuant to the Trust Indenture Act (as if the Trust Indenture Act were applicable hereto) to act as such and has a combined capital and surplus of at least $50,000,000. If such Person publishes reports of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance

with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

Section 7.09. *Resignation or Removal of Trustee*. (a) The Trustee may at any time resign by giving written notice of such resignation to the Company and by giving notice thereof to the Holders. Upon receiving such notice of resignation, the Company shall promptly appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the resigning Trustee and one copy to the successor trustee. If no successor trustee shall have been so appointed and have accepted appointment within 60 days after the giving of such notice of resignation to the Holders, the resigning Trustee may, upon ten Business Days' notice to the Company and the Holders, petition any court of competent jurisdiction for the appointment of a successor trustee, or any Holder who has been a bona fide holder of a Note or Notes for at least six months (or since the date of this Indenture) may, subject to the provisions of Section 6.11, on behalf of himself or herself and all others similarly situated, petition any such court for the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

(b) In case at any time any of the following shall occur:

(i) the Trustee shall cease to be eligible in accordance with the provisions of Section 7.08 and shall fail to resign after written request therefor by the Company or by any such Holder, or

(ii) the Trustee shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation, then, in either case, the Company may by a Board Resolution remove the Trustee and appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor trustee, or, subject to the provisions of Section 6.11, any Holder who has been a bona fide holder of a Note or Notes for at least six months (or since the date of this Indenture) may, on behalf of himself or herself and all others similarly situated, petition any court of competent jurisdiction at the expense of the Company for the removal of the Trustee and the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee.

(c) The Holders of a majority in aggregate principal amount of the Notes at the time outstanding, as determined in accordance with Section 8.04, may at any time remove the Trustee and nominate a successor trustee that shall be deemed appointed as successor trustee unless within ten days after notice to the Company of such nomination the Company objects thereto, in which case the Trustee so removed or any Holder, upon the terms and conditions and otherwise as in Section 7.09(a) provided, may petition any court of competent jurisdiction for an appointment of a successor trustee.

(d) Any resignation or removal of the Trustee and appointment of a successor trustee pursuant to any of the provisions of this Section 7.09 shall become effective upon acceptance of appointment by the successor trustee as provided in Section 7.10.

Section 7.10. *Acceptance by Successor Trustee*. Any successor trustee appointed as provided in Section 7.09 shall execute, acknowledge and deliver to the Company and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor hereunder, with like effect as if originally named as Trustee herein; but, nevertheless, on the written request of the Company or of the successor trustee, the trustee ceasing to act shall, upon payment of any amounts then due it pursuant to the provisions of Section 7.06, execute and deliver an instrument transferring to such successor trustee all the rights and powers of the trustee so ceasing to act. Upon request of any such successor trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers. Any trustee ceasing to act shall, nevertheless, retain a senior claim to which the Notes are hereby made subordinate on all money or property held or collected by such trustee as such, except for funds held in trust for the benefit of Holders of particular Notes, to secure any amounts then due it pursuant to the provisions of Section 7.06.

No successor trustee shall accept appointment as provided in this Section 7.10 unless at the time of such acceptance such successor trustee shall be eligible under the provisions of Section 7.08.

Upon acceptance of appointment by a successor trustee as provided in this Section 7.10, each of the Company and the successor trustee, at the written direction and at the expense of the Company shall give or cause to be mailed notice of the succession of such trustee hereunder to the Holders at their addresses as they shall appear on the Note Register. If the Company fails to deliver such notice within ten days after acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be delivered at the expense of the Company.

Section 7.11. *Succession by Merger, Etc.* Any corporation or other entity into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation or other entity resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation or other entity succeeding to all or substantially all of the corporate trust business of the Trustee (including the administration of this Indenture), shall be the successor to the Trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto; *provided* that in the case of any corporation or other entity succeeding to all or substantially all of the corporate trust business of the Trustee such corporation or other entity shall be eligible under the provisions of Section 7.08.

In case at the time such successor to the Trustee shall succeed to the trusts created by this Indenture, any of the Notes shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor trustee or authenticating agent appointed by such predecessor trustee, and deliver such Notes so authenticated; and in case at that time any of the Notes shall not have been authenticated, any successor to the Trustee or an authenticating agent appointed by such successor trustee may authenticate such Notes either in the name of any predecessor trustee hereunder or in the name of the successor trustee; and in all such cases such certificates shall have the full force which it is anywhere in the Notes or in this Indenture provided that the certificate of the Trustee shall have; *provided*, *however*, that the right to adopt the certificate of authentication of any predecessor trustee or to authenticate Notes in the name of any predecessor trustee shall apply only to its successor or successors by merger, conversion or consolidation.

Section 7.12. *Trustee's Application for Instructions from the Company*. Any application by the Trustee for written instructions from the Company (other than with regard to any action proposed to be taken or omitted to be taken by the Trustee that affects the rights of the Holders of the Notes under this Indenture) may, at the option of the Trustee, set forth in writing any action proposed to be taken or omitted by the Trustee under this Indenture and the date on and/or after which such action shall be taken or such omission shall be effective. The Trustee shall not be liable to the Company for any action taken by, or omission of, the Trustee in accordance with a proposal included in such application on or after the date specified in such application (which date shall not be less than three Business Days after the date any officer that the Company has indicated to the Trustee should receive such application actually receives such application, unless any such officer shall have consented in writing to any earlier date), unless, prior to taking any such action (or the effective date in the case of any omission), the Trustee shall have received written instructions in accordance with this Indenture in response to such application specifying the action to be taken or omitted.

Section 7.13. *Limitation of Duty of Trustee with Respect to Collateral*.

(a) Beyond the exercise of reasonable care in the custody thereof, the Trustee shall have no duty as to any Collateral in its possession or control or in the possession or control of any agent or bailee or any income thereon or as to preservation of rights against prior parties or any other rights pertaining thereto and the Trustee shall not be responsible for filing any financing or continuation statements or recording any documents or instruments in any public office at any time or times or otherwise perfecting or maintaining the perfection of any security interest in the Collateral. The Trustee shall be deemed to have exercised reasonable care in the custody of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which it accords similar property held for the benefit of third parties and shall not be liable or responsible for any loss or diminution in the value of any of the Collateral, by reason of the act or omission of any carrier, forwarding agency or other agent or bailee selected by the Trustee or Notes Collateral Agent in good faith.

(b) The Trustee shall not be responsible for the existence, genuineness or value of any of the Collateral or for the validity, perfection, priority or enforceability of the Liens in any of the Collateral, whether impaired by operation of law or by reason of any action or omission to act on its part hereunder,

for the validity or sufficiency of the Collateral or any agreement or assignment contained therein, for the validity of the title of the Company to the Collateral, for insuring the Collateral or for the payment of Taxes, charges, assessments or Liens upon the Collateral or otherwise as to the maintenance of the Collateral. The Trustee shall have no duty to ascertain or inquire as to the performance or observance of any of the terms of this Indenture, the Intercreditor Agreement or the Notes Security Documents by the Company, any Subsidiary Guarantor, or any collateral agent.

ARTICLE 8
Concerning the Holders

Section 8.01. *Action by Holders*. Whenever in this Indenture it is provided that the Holders of a specified percentage of the aggregate principal amount of the Notes may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action, the Holders of such specified percentage have joined therein may be evidenced (a) by any instrument or any number of instruments of similar tenor executed by Holders in person or by agent or proxy appointed in writing, or (b) by the record of the Holders voting in favor thereof at any meeting of Holders duly called and held in accordance with the provisions of ARTICLE 9, or (c)(I) by a combination of such instrument or instruments and any such record of such a meeting of Holders. Whenever the Company or the Trustee solicits the taking of any action by the Holders of the Notes, the Company or the Trustee may, but shall not be required to, fix in advance of such solicitation, a date as the record date for determining Holders entitled to take such action. The record date if one is selected shall be not more than fifteen days prior to the date of commencement of solicitation of such action.

Section 8.02. *Proof of Execution by Holders*. Subject to the provisions of Section 7.01, Section 7.02 and Section 9.05, proof of the execution of any instrument by a Holder or its agent or proxy shall be sufficient if made in accordance with such reasonable rules and regulations as may be prescribed by the Trustee or in such manner as shall be satisfactory to the Trustee. The holding of Notes shall be proved by the Note Register or by a certificate of the Note Registrar. The record of any Holders' meeting shall be proved in the manner provided in Section 9.06.

Section 8.03. *Who Are Deemed Absolute Owners*. The Company, the Trustee, any authenticating agent, any Paying Agent, any Conversion Agent and any Note Registrar may deem the Person in whose name a Note shall be registered upon the Note Register to be, and may treat it as, the absolute owner of such Note (whether or not such Note shall be overdue and notwithstanding any notation of ownership or other writing thereon made by any Person other than the Company or any Note Registrar) for the purpose of receiving payment of or on account of the principal of and (subject to Section 2.03) accrued and unpaid interest on such Note, for conversion of such Note and for all other purposes; and neither the Company nor the Trustee nor any Paying Agent nor any Conversion Agent nor any Note Registrar shall be affected by any notice to the contrary. All such payments or deliveries so made to any Holder for the time being, or upon its order, shall be valid, and, to the extent of the sums or shares of Common Stock so paid or delivered, effectual to satisfy and discharge the liability for monies payable or shares deliverable upon any such Note. Notwithstanding anything to the contrary in this Indenture or the Notes following an Event of Default, any holder of a beneficial interest in a Global Note may directly enforce against the Company, without the consent, solicitation, proxy, authorization or any other action of the Depositary or any other Person, such holder's right to exchange such beneficial interest for a Note in certificated form in accordance with the provisions of this Indenture.

Section 8.04. *Company-Owned Notes Disregarded*. In determining whether the Holders of the requisite aggregate principal amount of Notes have concurred in any direction, consent, waiver or other action under this Indenture, Notes that are owned by the Company or by any Subsidiary thereof shall be disregarded and deemed not to be outstanding for the purpose of any such determination; *provided* that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, consent, waiver or other action only Notes that a Responsible Officer knows are so owned shall be so disregarded. Notes so owned that have been pledged in good faith may be regarded as outstanding for the purposes of this Section 8.04 if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to so act with respect to such Notes and that the pledgee is not the Company, a Subsidiary thereof or a Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or a Subsidiary thereof. In the case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall be full protection to the Trustee. Upon request of the Trustee, the Company shall furnish to the Trustee promptly an Officer's Certificate listing and identifying all Notes, if any, known by the Company to be owned or held by or for the account of any of the above described Persons; and, subject to Section 7.01, the Trustee shall be entitled to accept such

Officer's Certificate as conclusive evidence of the facts therein set forth and of the fact that all Notes not listed therein are outstanding for the purpose of any such determination.

Section 8.05. *Revocation of Consents; Future Holders Bound*. At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 8.01, of the taking of any action by the Holders of the percentage of the aggregate principal amount of the Notes specified in this Indenture in connection with such action, any Holder of a Note that is shown by the evidence to be included in the Notes the Holders of which have consented to such action may, by filing written notice with the Trustee at its Corporate Trust Office and upon proof of holding as provided in Section 8.02, revoke such action so far as concerns such Note. Except as aforesaid, any such action taken by the Holder of any Note shall be conclusive and binding upon such Holder and upon all future Holders and owners of such Note and of any Notes issued in exchange or substitution therefor or upon registration of transfer thereof, irrespective of whether any notation in regard thereto is made upon such Note or any Note issued in exchange or substitution therefor or upon registration of transfer thereof.

ARTICLE 9
Holders' Meetings

Section 9.01. *Purpose of Meetings*. A meeting of Holders may be called at any time and from time to time pursuant to the provisions of this ARTICLE 9 for any of the following purposes:

(a) to give any notice to the Company or to the Trustee or to give any directions to the Trustee permitted under this Indenture, or to consent to the waiving of any Default or Event of Default hereunder (in each case, as permitted under this Indenture) and its consequences, or to take any other action authorized to be taken by Holders pursuant to any of the provisions of ARTICLE 6;

(b) to remove the Trustee and nominate a successor trustee pursuant to the provisions of ARTICLE 7;

(c) to consent to the execution of an indenture or indentures supplemental hereto pursuant to the provisions of Section 10.02; or

(d) to take any other action authorized to be taken by or on behalf of the Holders of any specified aggregate principal amount of the Notes under any other provision of this Indenture or under applicable law.

Section 9.02. *Call of Meetings by Trustee*. The Trustee may at any time call a meeting of Holders to take any action specified in Section 9.01, to be held at such time and at such place as the Trustee shall determine. Notice of every meeting of the Holders, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting and the establishment of any record date pursuant to Section 8.01, shall be given to Holders of such Notes at their addresses as they shall appear on the Note Register. Such notice shall also be given to the Company. Such notices shall be given not less than 20 nor more than 90 days prior to the date fixed for the meeting.

Any meeting of Holders shall be valid without notice if the Holders of all Notes then outstanding are present in person or by proxy or if notice is waived before or after the meeting by the Holders of all Notes then outstanding, and if the Company and the Trustee are either present by duly authorized representatives or have, before or after the meeting, waived notice.

Section 9.03. *Call of Meetings by Company or Holders*. In case at any time the Company, pursuant to a Board Resolution, or the Holders of at least 10% of the aggregate principal amount of the Notes then outstanding, shall have requested the Trustee to call a meeting of Holders, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have given the notice of such meeting within 20 days after receipt of such request, then the Company or such Holders may determine the time and the place for such meeting and may call such meeting to take any action authorized in Section 9.01, by giving notice thereof as provided in Section 9.02.

Section 9.04. *Qualifications for Voting*. To be entitled to vote at any meeting of Holders a Person shall (a) be a Holder of one or more Notes on the record date pertaining to such meeting or (b) be a Person appointed by an instrument in writing as proxy by a Holder of one or more Notes on the record date pertaining to such meeting. The only Persons who shall be entitled to be present or to speak at any

meeting of Holders shall be the Persons entitled to vote at such meeting and their counsel and any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

Section 9.05. *Regulations*. Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Holders, in regard to proof of the holding of Notes and of the appointment of proxies, and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall think fit.

The Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by Holders as provided in Section 9.03, in which case the Company or the Holders calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by vote of the Holders of a majority in aggregate principal amount of the Notes represented at the meeting and entitled to vote at the meeting.

Subject to the provisions of Section 8.04, at any meeting of Holders each Holder or proxyholder shall be entitled to one vote for each $1,000 principal amount of Notes held or represented by him or her; *provided*, *however*, that no vote shall be cast or counted at any meeting in respect of any Note challenged as not outstanding and ruled by the chairman of the meeting to be not outstanding. The chairman of the meeting shall have no right to vote other than by virtue of Notes held by it or instruments in writing as aforesaid duly designating it as the proxy to vote on behalf of other Holders. Any meeting of Holders duly called pursuant to the provisions of Section 9.02 or Section 9.03 may be adjourned from time to time by the Holders of a majority of the aggregate principal amount of Notes represented at the meeting, whether or not constituting a quorum, and the meeting may be held as so adjourned without further notice.

Section 9.06. *Voting*. The vote upon any resolution submitted to any meeting of Holders shall be by written ballot on which shall be subscribed the signatures of the Holders or of their representatives by proxy and the outstanding aggregate principal amount of the Notes held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record in duplicate of the proceedings of each meeting of Holders shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more Persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was mailed as provided in Section 9.02. The record shall show the aggregate principal amount of the Notes voting in favor of or against any resolution. The record shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one of the duplicates shall be delivered to the Company and the other to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting.

Any record so signed and verified shall be conclusive evidence of the matters therein stated.

Section 9.07. *No Delay of Rights by Meeting*. Nothing contained in this ARTICLE 9 shall be deemed or construed to authorize or permit, by reason of any call of a meeting of Holders or any rights expressly or impliedly conferred hereunder to make such call, any hindrance or delay in the exercise of any right or rights conferred upon or reserved to the Trustee or to the Holders under any of the provisions of this Indenture or of the Notes.

ARTICLE 10
Amendments, Supplements and Waivers

Section 10.01. *Amendments Without Consent of Holders*. The Company, the Subsidiary Guarantors, the Trustee and the Notes Collateral Agent, at the Company's expense, may from time to time and at any time amend or supplement this Indenture, the Notes Security Documents and the Intercreditor Agreement for one or more of the following purposes:

(a) to cure any ambiguity, omission, defect or inconsistency;

(b) to provide for the assumption by a Successor Person of the obligations of the Company or a Subsidiary Guarantor under the Notes and this Indenture pursuant to ARTICLE 11;

(c) to add guarantees with respect to the Notes;

(d) to provide for the issuance of additional Notes;

(e) to add to the covenants or Events of Default of the Company or the Subsidiary Guarantors for the benefit of the Holders or surrender any right or power conferred upon the Company or a Subsidiary Guarantor under this Indenture;

(f) to make any change that does not adversely affect the rights of any Holder in any material respect;

(g) in connection with any Common Stock Change Event, subject to the provisions of Section 14.02, to provide that the Notes are convertible into Reference Property and make such related changes to the terms of the Notes to the extent expressly required by Section 14.07;

(h) comply with any requirement of the Commission in connection with the qualification of this Indenture under the Trust Indenture Act;

(i) to appoint a successor trustee with respect to the Notes;

(j) to irrevocably elect or eliminate one of the Settlement Methods and/or irrevocably elect a minimum Specified Dollar Amount

(k) to mortgage, pledge, hypothecate or grant any other Lien in favor of the Trustee or the Notes Collateral Agent or other representative for the benefit of the Holders, as additional security for the payment and performance of all or any portion of the Notes Obligations, in any property or assets, including any which are required to be mortgaged, pledged or hypothecated, or in which a Lien is required to be granted to or for the benefit of the Trustee or the Notes Collateral Agent pursuant to this Indenture, any of the Notes Security Documents or the Intercreditor Agreement;

(l) to add parties to any Notes Security Documents or any amendment to the Intercreditor Agreement that adds additional creditors permitted to become a party thereto as contemplated under the terms of this Indenture and the Intercreditor Agreement;

(m) to provide for the succession of any parties to the Notes Security Documents or the Intercreditor Agreement (and other amendments that are administrative or ministerial in nature) in connection with an amendment, renewal, extension, substitution, refinancing, restructuring, replacement, supplementing or other modification from time to time of the Credit Agreement that is not prohibited by this Indenture;

(n) to enter into any amendment to the Intercreditor Agreement that is necessary to permit the Company or the Subsidiary Guarantors to take any action that is not otherwise prohibited by the terms of this Indenture;

(o) to release any Collateral from the Liens of the Notes Security Documents in accordance with the terms of this Indenture, the Intercreditor Agreement or Notes Security Documents; or

(p) to permit additional Indebtedness to be secured by the Collateral in accordance with the terms of this Indenture, Notes Security Documents and the Intercreditor Agreement as applicable.

Notwithstanding the foregoing, without the consent of the Required Holders, no amendment may (A) make any change in any Notes Security Document or the provisions in this Indenture dealing with Collateral or application of trust proceeds of the Collateral with the effect of releasing the Liens on all or substantially all of the Collateral which secure the Notes Obligations or (B) change or alter the priority of the Liens securing the Notes Obligations in any material portion of the Collateral in any way materially adverse, taken as a whole, to the Holders, other than, in each case, as provided under the terms of this Indenture, the Notes Security Documents or any Intercreditor Agreement then in effect.

Upon the written request of the Company and the Subsidiary Guarantors, the Trustee and the Notes Collateral Agent are hereby authorized to join with the Company and the Subsidiary Guarantors in the execution of any such amendment of or supplement to this Indenture, the Notes Security Documents

and the Intercreditor Agreement, to make any further appropriate agreements and stipulations that may be therein contained, but the Trustee and the Notes Collateral Agent shall not be obligated to, but may in their respective discretion, enter into any such amendment or supplement that affects their respective rights, duties or immunities under this Indenture or otherwise.

Any amendment of or supplement to this Indenture, the Notes Security Documents and the Intercreditor Agreement authorized by the provisions of this Section 10.01 may be executed by the Company, the Subsidiary Guarantors, the Trustee and the Notes Collateral Agent without the consent of the Holders of any of the Notes at the time outstanding, notwithstanding any of the provisions of Section 10.02.

Section 10.02. *Amendments with Consent of Holders*. With the consent (evidenced as provided in ARTICLE 8) of the Required Holders (determined in accordance with ARTICLE 8 and including, without limitation, consents obtained in connection with a repurchase of, or tender or exchange offer for, Notes), the Company, the Subsidiary Guarantors, the Trustee and the Notes Collateral Agent, at the Company's expense, may from time to time and at any time amend or supplement this Indenture, the Notes Security Documents and the Intercreditor Agreement for the purpose of adding any provisions to or changing in any manner, waiving or eliminating any of the provisions of this Indenture, the Notes, any supplemental indenture, any Notes Security Document, or the Intercreditor Agreement, or of modifying in any manner the rights of the Holders; *provided*, *however*, that, without the consent of each Holder of an outstanding Note affected, no such amendment or supplement shall:

(a) reduce the principal amount of Notes whose Holders must consent to an amendment;

(b) reduce the rate of or extend the stated time for payment of interest on any Note;

(c) reduce the principal of or extend the Maturity Date of any Note;

(d) make any change that adversely affects the conversion rights of any Notes;

(e) reduce the Redemption Price or the Repurchase Event Repurchase Price of any Note or amend or modify in any manner adverse to the Holders the Company's obligation to make such payments, whether through an amendment or waiver of provisions in the covenants, definitions or otherwise;

(f) make any Note payable in a currency, or at a place of payment, other than that stated in the Note;

(g) change the ranking of the Notes; or

(h) make any change in this ARTICLE 10 that requires each Holder's consent or in the waiver provisions in Section 6.02 or Section 6.09.

Upon the written request of the Company and the Subsidiary Guarantors, and upon the filing with the Trustee of evidence of the consent of Holders as aforesaid and subject to Section 10.05, the Trustee shall join with the Company and the Subsidiary Guarantors in the execution of such amendment of or supplement to this Indenture, the Notes Security Documents and the Intercreditor Agreement unless such amendment or supplement affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such amendment or supplement.

Holders do not need under this Section 10.02 to approve the particular form of any proposed amendment or supplement. It shall be sufficient if such Holders approve the substance thereof. After any such supplemental indenture becomes effective, the Company shall give to the Holders a notice (with a copy to the Trustee) briefly describing such supplemental indenture. However, the failure to give such notice to all the Holders, or any defect in the notice, will not impair or affect the validity of the amendment, supplement or waiver.

Section 10.03. *Effect of Amendment or Supplement*. Upon the execution of any amendment or supplement pursuant to the provisions of this ARTICLE 10, this Indenture, the Notes Security Documents or the Intercreditor Agreement, as applicable, shall be and be deemed to be modified and amended in accordance therewith and the respective rights, limitation of rights, obligations, duties and immunities

under this Indenture of the Trustee, the Notes Collateral Agent, the Company, the Subsidiary Guarantors and the Holders shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments and all the terms and conditions of any such amendment or supplement shall be and be deemed to be part of the terms and conditions of this Indenture, the Notes Security Documents or the Intercreditor Agreement, as the case may be, for any and all purposes.

Section 10.04. *Notation on Notes*. Notes authenticated and delivered after the execution of any amendment or supplement pursuant to the provisions of this ARTICLE 10 may, at the Company's expense, bear a notation in form approved by the Trustee as to any matter provided for in such amendment or supplement. If the Company or the Trustee shall so determine, new Notes so modified as to conform, in the opinion of the Trustee and Company, to any modification contained in any such amendment or supplement may, at the Company's expense, be prepared and executed by the Company, authenticated by the Trustee (or an authenticating agent duly appointed by the Trustee pursuant to Section 18.09) and delivered in exchange for the Notes then outstanding, upon surrender of such Notes then outstanding.

Section 10.05. *Evidence of Compliance of Amendment or Supplement to Be Furnished to the Trustee and the Notes Collateral Agent*. In addition to the documents required by Section 18.05, the Trustee and the Collateral Agent shall receive an Officer's Certificate and an Opinion of Counsel as conclusive evidence that any amendment or supplement executed pursuant hereto complies with the requirements of this ARTICLE 10, is permitted or authorized by this Indenture and, solely with respect to the Officer's Certificate, the Notes Security Documents and the Intercreditor Agreement, and is the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with such amendment's or supplement's terms.

ARTICLE 11
Consolidation, Merger, Sale, Conveyance and Lease

Section 11.01. *Company May Consolidate, Etc. on Certain Terms*. Subject to the provisions of Section 11.02, the Company shall not consolidate with, merge with or into, or sell, convey, transfer or lease all or substantially all of the properties and assets of the Company to, another Person, unless:

(a) Either (i) the Company is the Person surviving such merger or consolidation, or (ii) the Person (if other than the Company) formed by such consolidation or into which the Company is merged or the Person who acquires by conveyance or transfer or which leases all or substantially all of the Company's assets (the "**Successor Person**"), shall be a corporation organized and validly existing under the laws of the United States of America, any State thereof or the District of Columbia, and in the case where there is a Successor Person, such Successor Person shall expressly assume, by supplemental indenture all of the obligations of the Company under the Notes and this Indenture;

(b) immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing under this Indenture;

(c) to the extent any assets of the Person which is merged, consolidated or amalgamated with or into such Company are assets of the type which would constitute Collateral under the Notes Security Documents, such Person or the Successor Person will take such action, if any, as may be reasonably necessary to cause such property and assets to be made subject to the Lien of the applicable Notes Security Documents in the manner and to the extent required in this Indenture or the applicable Notes Security Documents and shall take all reasonably necessary action so that such Lien in perfected to the extent required by the applicable Notes Security Documents; and

(d) in such transaction where there is a Successor Person other than the Company, the Company and the Successor Person shall have delivered to the Trustee the Officer's Certificate and an Opinion of Counsel provided for in Section 11.03.

For purposes of this Section 11.01, the sale, conveyance, transfer or lease of all or substantially all of the properties and assets of one or more Subsidiaries of the Company to another Person, which properties and assets, if held by the Company instead of such Subsidiaries, would constitute all or substantially all of the properties and assets of the Company on a consolidated basis, shall be deemed to be the sale, conveyance, transfer or lease of all or substantially all of the properties and assets of the Company to another Person.

Section 11.02. *Successor Corporation to Be Substituted*. In case of any such consolidation, merger, sale, conveyance, transfer or lease and upon the assumption by the Successor Person, by supplemental indenture, executed and delivered to the Trustee and satisfactory in form to the Trustee, of the due and punctual payment of the principal of and accrued and unpaid interest on all of the Notes, the due and punctual delivery or payment, as the case may be, of any consideration due upon conversion of the Notes and the due and punctual performance of all of the covenants and conditions of this Indenture to be performed by the Company, such Successor Person shall succeed to and, except in the case of a lease of all or substantially all of the consolidated properties and assets of the Company and its Subsidiaries, taken as a whole, shall be substituted for the Company, with the same effect as if it had been named herein as the party of the first part. Such Successor Person thereupon may cause to be signed, and may issue either in its own name or in the name of the Company any or all of the Notes issuable hereunder which theretofore shall not have been signed by the Company and delivered to the Trustee; and, upon the order of such Successor Person instead of the Company and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall deliver, or cause to be authenticated and delivered, any Notes that previously shall have been signed and delivered by the Officers of the Company to the Trustee for authentication, and any Notes that such Successor Person thereafter shall cause to be signed and delivered to the Trustee for that purpose. All the Notes so issued shall in all respects have the same legal rank and benefit under this Indenture as the Notes theretofore or thereafter issued in accordance with the terms of this Indenture as though all of such Notes had been issued at the date of the execution hereof. In the event of any such consolidation, merger, sale, conveyance or transfer (but not in the case of a lease), upon compliance with this ARTICLE 11 the Person named as the "Company" in the first paragraph of this Indenture (or any successor that shall thereafter have become such in the manner prescribed in this ARTICLE 11) may be dissolved, wound up and liquidated at any time thereafter and, except in the case of a lease, such Person shall be released from its liabilities as obligor and maker of the Notes and from its obligations under this Indenture and the Notes.

In case of any such consolidation, merger, sale, conveyance, transfer or lease, such changes in phraseology and form (but not in substance) may be made in the Notes thereafter to be issued as may be appropriate.

Section 11.03. *Opinion of Counsel to Be Given to Trustee and the Notes Collateral Agent*. If the Successor Person is not the Company, no such consolidation, merger, sale, conveyance, transfer or lease shall be effective unless the Trustee and the Notes Collateral Agent shall receive an Officer's Certificate and an Opinion of Counsel certifying that any such consolidation, merger, sale, conveyance, transfer or lease and any such assumption and, if a supplemental indenture or any additional Notes Documents are required in connection with such transaction, such supplemental indenture or additional Notes Documents, comply with the provisions of this Indenture and that the supplemental indenture or additional Notes Documents are the valid, binding obligations of the Successor Person, enforceable against such Successor Person in accordance with its terms, such Opinion of Counsel to be subject to customary exceptions.

Section 11.04. *Subsidiary Guarantors May Consolidate, Etc., Only on Certain Terms; Successor Guarantor*. A Subsidiary Guarantor shall not consolidate with or merge with or into any other Person (other than the Company) or convey, transfer or lease all or substantially all of its properties and assets to any Person (other than the Company), in a single transaction or in a series of related transactions, unless:

(a) either (i) such Subsidiary Guarantor shall be the continuing Person or (ii) the Person (if other than such Subsidiary Guarantor) formed by such consolidation or into which such Subsidiary Guarantor is merged or the Person which acquires by conveyance or transfer, or which leases, all or substantially all of the properties and assets of such Subsidiary Guarantor (the "**Successor Guarantor**"), shall be organized or incorporated and validly existing under the laws of the United States of America, any State thereof or the District of Columbia

(b) the Successor Guarantor shall expressly assume, by an indenture supplemental hereto, in form satisfactory to the Trustee, executed and delivered to the Trustee, all of the obligations of such Subsidiary Guarantor under the Notes, such Subsidiary Guarantor's Subsidiary Guarantee and this Indenture;

(c) where there is a Successor Guarantor, immediately after giving effect to such transaction, no Event of Default, and no event which, after notice or lapse of time or both, would become an Event of Default, shall have occurred and be continuing;

(d) to the extent any assets of the Person which is merged, consolidated or amalgamated with or into such Subsidiary Guarantor are assets of the type which would constitute Collateral under the Notes Security Documents, such Subsidiary Guarantor or the Successor Guarantor will take such action, if any, as may be reasonably necessary to cause such property and assets to be made subject to the Lien of the applicable Notes Security Documents in the manner and to the extent required in this Indenture or the applicable Notes Security Documents and shall take all reasonably necessary action so that such Lien in perfected to the extent required by the applicable Notes Security Documents; and

(e) where there is a Successor Guarantor, the Successor Guarantor has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, sale, conveyance, transfer or lease and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture comply with this Indenture and that the supplemental indenture is the valid, binding obligations of the Successor Guarantor, enforceable against such Successor Guarantor in accordance with its terms, such Opinion of Counsel to be subject to customary exceptions.

For purposes of this Section 11.04, the sale, conveyance, transfer or lease of all or substantially all of the properties and assets of one or more Subsidiaries of a Subsidiary Guarantor to another Person, which properties and assets, if held by such Subsidiary Guarantor instead of such Subsidiaries, would constitute all or substantially all of the properties and assets of such Subsidiary Guarantor on a consolidated basis, shall be deemed to be the sale, conveyance, transfer or lease of all or substantially all of the properties and assets of such Subsidiary Guarantor to another Person.

In case of any consolidation, merger, sale, conveyance, transfer or lease and upon the assumption by the Successor Guarantor, by supplemental indenture, executed and delivered to the Trustee and satisfactory in form to the Trustee, of all of the obligations of the applicable Subsidiary Guarantor under the Notes, such Subsidiary Guarantor's Subsidiary Guarantee and this Indenture, such Successor Guarantor shall succeed to and, except in the case of a lease of all or substantially all of the consolidated properties and assets of a Subsidiary Guarantor and its Subsidiaries, taken as a whole, shall be substituted for such Subsidiary Guarantor, with the same effect as if it had been named herein as the party of the first part. Such Successor Guarantor thereupon may cause to be signed, and may issue either in its own name or in the name of the applicable Subsidiary Guarantor any or all of the Notes issuable hereunder which theretofore shall not have been signed by such Subsidiary Guarantor and delivered to the Trustee; and, upon the order of such Successor Guarantor instead of such Subsidiary Guarantor and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall deliver, or cause to be authenticated and delivered, any Notes that previously shall have been signed and delivered by the Officers of such Subsidiary Guarantor to the Trustee for authentication, and any Notes that such Successor Guarantor thereafter shall cause to be signed and delivered to the Trustee for that purpose. All the Notes so issued shall in all respects have the same legal rank and benefit under this Indenture as the Notes theretofore or thereafter issued in accordance with the terms of this Indenture as though all of such Notes had been issued at the date of the execution hereof. In the event of any such consolidation, merger, sale, conveyance or transfer (but not in the case of a lease), upon compliance with this ARTICLE 11 the Person named as the "Subsidiary Guarantor" in the first paragraph of this Indenture (or any successor that shall thereafter have become such in the manner prescribed in this ARTICLE 11) may be dissolved, wound up and liquidated at any time thereafter and, except in the case of a lease, such Person shall be released from its liabilities as obligor and maker of the Notes and from its obligations under this Indenture and the Notes. In case of any such consolidation, merger, sale, conveyance, transfer or lease, such changes in phraseology and form (but not in substance) may be made in the Notes thereafter to be issued as may be appropriate.

ARTICLE 12
Immunity of Incorporators, Stockholders, Officers and Directors

Section 12.01. *Indenture and Notes Solely Corporate Obligations*. No recourse for the payment of the principal of or accrued and unpaid interest on any Note, nor for any claim based thereon or otherwise in respect thereof, and no recourse under or upon any obligation, covenant or agreement of the Company in this Indenture or in any supplemental indenture or in any Note, nor because of the creation of any indebtedness represented thereby, shall be had against any incorporator, stockholder, employee, agent, Officer or director or Subsidiary, as such, past, present or future, of the Company or of any successor corporation, either directly or through the Company or any successor corporation, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that all such liability is hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issue of the Notes.

ARTICLE 13
Subsidiary Guarantee

Section 13.01. *Subsidiary Guarantee*. (a) Each Subsidiary Guarantor hereby unconditionally and irrevocably guarantees, on a secured basis, subject to the Intercreditor Agreement, to each Holder and to the Trustee and the Notes Collateral Agent and their respective successors and assigns, irrespective of the validity and enforceability of this Indenture, the Notes or the obligations of the Company hereunder or thereunder:

(i) the full and punctual payment of principal of, premium (if any) on and interest on the Notes when the same becomes due and payable on the Maturity Date, upon optional redemption, upon required repurchase, upon declaration of acceleration or otherwise, and all other monetary obligations of the Company under this Indenture and the Notes; and

(ii) the full and punctual performance within applicable grace periods of all other obligations of the Company under this Indenture and the Notes (all the foregoing under (i) and (ii) of this Section 13.01(a) being hereinafter collectively called the "**Guaranteed Obligations**").

(b) Each Subsidiary Guarantor further agrees that the Guaranteed Obligations may be extended or renewed, in whole or in part, without notice or further assent from any Subsidiary Guarantor and that each Subsidiary Guarantor will remain bound under this ARTICLE 18 notwithstanding any extension or renewal of any Guaranteed Obligation.

(c) Each Subsidiary Guarantor waives, to the fullest extent permitted by law, diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of the Company, any right to require a proceeding first against the Company, protest, notice and all demands whatsoever and covenants that this Subsidiary Guarantee shall not be discharged except by full payment of the obligations contained in the Notes and this Indenture or by release in accordance with the provisions of this Indenture. The obligations of the Subsidiary Guarantors hereunder shall not be affected by:

(i) the failure of any Holder, the Trustee or the Notes Collateral Agent to assert any claim or demand or to enforce any right or remedy against any Subsidiary Guarantor or any other Person under this Indenture, the Notes or any other agreement or otherwise;

(ii) any extension or renewal of any thereof;

(iii) any rescission, waiver, amendment or modification of any of the terms or provisions of this Indenture, the Notes or any other agreement;

(iv) the release of any security held by any Holder, the Trustee or the Notes Collateral Agent for the obligations of any of them;

(v) the failure of any Holder, the Trustee or the Notes Collateral Agent to exercise any right or remedy against any other guarantor of the Guaranteed Obligations; or

(vi) except as set forth in Section 13.06, any change in the ownership of a Subsidiary Guarantor.

Each Subsidiary Guarantor further agrees that such Subsidiary Guarantor's Subsidiary Guarantee herein constitutes a guarantee of payment, performance and compliance when due (and not a guarantee of collection) and waives any right to require that any resort be had by any Holder, the Trustee or the Notes Collateral Agent to any security held for payment of the Guaranteed Obligations.

Except as expressly set forth in Sections 3.01 and 18.05, the obligations of the Subsidiary Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason, including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to any defense of setoff, counterclaim, recoupment or termination whatsoever or by reason of the invalidity, illegality or unenforceability of the Guaranteed Obligations, this Indenture, the Notes or otherwise. Without limiting the generality of the foregoing, the obligations of the Subsidiary Guarantors herein shall not be discharged or impaired or otherwise affected by the failure of any Holder, the Trustee or the Notes Collateral Agent to assert any claim or demand or to enforce any remedy under this

Indenture, the Notes or any other agreement, by any waiver or modification of any thereof, by any default, failure or delay, willful or otherwise, in the performance of the obligations, or by any other act or thing or omission or delay to do any other act or thing which may or might in any manner or to any extent vary the risk of any Subsidiary Guarantor or would otherwise operate as a discharge of any Subsidiary Guarantor as a matter of law or equity.

Each Subsidiary Guarantor further agrees that such Subsidiary Guarantor's Subsidiary Guarantee shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of principal of or premium (if any) on or interest on any Guaranteed Obligation is rescinded or must otherwise be restored by any Holder, the Trustee or the Notes Collateral Agent upon the bankruptcy or reorganization of the Company or otherwise.

In furtherance of the foregoing and not in limitation of any other right which any Holder, the Trustee or the Notes Collateral Agent has at law or in equity against the Subsidiary Guarantors by virtue hereof, upon the failure of the Company to pay the principal of or premium (if any) on or interest on any Guaranteed Obligation when or to perform or comply with any other Guaranteed Obligation, each Subsidiary Guarantor hereby promises to and shall, upon receipt of written demand by the Trustee, forthwith pay, or cause to be paid, in cash, to the Holders, the Trustee or the Notes Collateral Agent an amount equal to the sum of (A) the unpaid amount of such Guaranteed Obligations, (B) accrued and unpaid interest on such Guaranteed Obligations (but only to the extent not prohibited by law) and (C) all other monetary Guaranteed Obligations of the Company to the Holders, the Trustee and the Notes Collateral Agent.

Each Subsidiary Guarantor further agrees that, as between it, on the one hand, and the Holders, the Trustee and the Notes Collateral Agent, on the other hand, (x) the maturity of the Guaranteed Obligations guaranteed hereby may be accelerated as provided in ARTICLE 6 for the purposes of the Subsidiary Guarantee herein, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the Guaranteed Obligations guaranteed hereby, and (y) in the event of any declaration of acceleration of such Guaranteed Obligations as provided in ARTICLE 6, such Guaranteed Obligations (whether or not due and payable) shall forthwith become due and payable by each Subsidiary Guarantor for the purposes of this Section.

Each Subsidiary Guarantor also agrees to pay any and all costs and expenses (including reasonable attorneys' fees and expenses) incurred by the Trustee, the Notes Collateral Agent or any Holder in enforcing any rights under this ARTICLE 13.

Each payment to be made by any Subsidiary Guarantor in respect of its Subsidiary Guarantee shall be made without setoff, counterclaim, reduction or diminution of any kind or nature.

Section 13.02. *Benefits Acknowledged*. Each Subsidiary Guarantor acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated by this Indenture and that the guarantee and waivers made by it pursuant to its Subsidiary Guarantee are knowingly made in contemplation of such benefits.

Section 13.03. *Successors and Assigns*. This ARTICLE 13 shall be binding upon each Subsidiary Guarantor and its successors and assigns and shall enure to the benefit of the successors and assigns of the Trustee, the Notes Collateral Agent and the Holders and, in the event of any transfer or assignment of rights by any Holder, the Trustee or the Notes Collateral Agent, the rights and privileges conferred upon that party in this Indenture and in the Notes shall automatically extend to and be vested in such transferee or assignee, all subject to the terms and conditions of this Indenture.

Section 13.04. *No Waiver*. Neither a failure nor a delay on the part of either the Trustee or the Notes Collateral Agent or the Holders in exercising any right, power or privilege under this ARTICLE 13 shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise of any right, power or privilege. The rights, remedies and benefits of the Trustee, the Notes Collateral Agent and the Holders herein expressly specified are cumulative and not exclusive of any other rights, remedies or benefits which either may have under this ARTICLE 13 at law, in equity, by statute or otherwise.

Section 13.05. *Modification*. No modification, amendment or waiver of any provision of this ARTICLE 13, nor the consent to any departure by any Subsidiary Guarantor therefrom, shall in any event be effective unless the same shall be in writing and signed by the Trustee, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to

or demand on any Subsidiary Guarantor in any case shall entitle a Subsidiary Guarantor to any other or further notice or demand in the same, similar or other circumstances.

Section 13.06. *Release of Guarantor and Termination of Subsidiary Guarantee*. If a Subsidiary Guarantor and the Company merge with each other or consolidate together in a transaction permitted by Section 11.04, then such Subsidiary Guarantor's Subsidiary Guarantee shall automatically be terminated upon the consummation of such merger or consolidation and shall no longer have any effect from such time without any further action required on the part of the Trustee, the Notes Collateral Agent or any Holder. At the request of the Company, the Trustee and the Notes Collateral Agent shall execute and deliver such documents or instruments reasonably requested by the Company or such Guarantor evidencing such termination.

ARTICLE 14
Conversion of Notes

Section 14.01. *Conversion Privilege*. Subject to and upon compliance with the provisions of this ARTICLE 14, each Holder of a Note shall have the right, at such Holder's option, to convert all or any portion (if the portion to be converted is $1,000 principal amount or an integral multiple thereof) of such Note at any time prior to the close of business on the Business Day immediately preceding the Maturity Date, in each case, at an initial conversion rate of 259.8753 shares of Common Stock (subject to adjustment as provided in this ARTICLE 14, the "**Conversion Rate**") per $1,000 principal amount of Notes (subject to, and in accordance with, the settlement provisions of Section 14.02, the "**Conversion Obligation**").

Section 14.02. *Conversion Procedure; Settlement Upon Conversion*.

(a) Subject to this Section 14.02, Section 14.03(b) and Section 14.07(a), upon conversion of any Note, the Company shall satisfy its Conversion Obligation by paying or delivering, as the case may be, to the converting Holder, in respect of each $1,000 principal amount of Notes being converted, cash ("**Cash Settlement**"), shares of Common Stock, together with cash, if applicable, in lieu of delivering any fractional share of Common Stock in accordance with subsection (j) of this Section 14.02 ("**Physical Settlement**") or a combination of cash and shares of Common Stock, together with a cash payment, if applicable, in lieu of delivering any fractional share of Common Stock in accordance with subsection (j) of this Section 14.02 ("**Combination Settlement**"), at its election, as set forth in this Section 14.02.

(i) All conversions for which the relevant Conversion Date occurs (x) on or after January 15, 2026 or (y) during a Redemption Period, shall be settled using the same Settlement Method.

(ii) Except for any conversions for which the relevant Conversion Date occurs during a Redemption Period and any conversions for which the relevant Conversion Date occurs on or after January 15, 2026, the Company shall use the same Settlement Method for all conversions with the same Conversion Date, but the Company shall not have any obligation to use the same Settlement Method with respect to conversions with different Conversion Dates.

(iii) If, in respect of any Conversion Date (or the period described in the third immediately succeeding set of parentheses, as the case may be), the Company elects to deliver a notice (the "**Settlement Notice**") of the relevant Settlement Method in respect of such Conversion Date (or such period, as the case may be), the Company shall deliver such Settlement Notice in writing to converting Holders, the Trustee and the Conversion Agent (if other than the Trustee) no later than the close of business on the Trading Day immediately following the relevant Conversion Date (or, in the case of any conversions for which the relevant Conversion Date occurs (x) during a Redemption Period, in such Redemption Notice, or (y) on or after January 15, 2026, no later than January 15, 2026). If the Company does not elect a Settlement Method prior to the deadline set forth in the immediately preceding sentence, the Company shall no longer have the right to elect Cash Settlement or Physical Settlement with respect to any conversion on such Conversion Date or during such period, as the case may be, and the Company shall be deemed to have elected Combination Settlement in respect of its Conversion Obligation, and the Specified Dollar Amount per $1,000 principal amount of Notes shall be equal to $1,000. Such Settlement Notice shall specify the relevant Settlement Method and in the case of an election of Combination Settlement, the relevant Settlement Notice shall indicate the Specified Dollar Amount per $1,000 principal amount of Notes to be converted. If the Company delivers a Settlement Notice electing Combination Settlement in respect of its Conversion

Obligation but does not indicate a Specified Dollar Amount per $1,000 principal amount of Notes in such Settlement Notice, the Specified Dollar Amount per $1,000 principal amount of Notes to be converted shall be deemed to be $1,000.

(iv) The cash, shares of Common Stock or combination of cash and shares of Common Stock in respect of any conversion of Notes (the "**Settlement Amount**") shall be computed as follows:

(A) if the Company elects to satisfy its Conversion Obligation in respect of such conversion by Physical Settlement, the Company shall deliver to the converting Holder in respect of each $1,000 principal amount of Notes being converted a number of shares of Common Stock equal to the Conversion Rate in effect on the Conversion Date;

(B) if the Company elects to satisfy its Conversion Obligation in respect of such conversion by Cash Settlement, the Company shall pay to the converting Holder in respect of each $1,000 principal amount of Notes being converted cash in an amount equal to the sum of the Daily Conversion Values for each of the 10 consecutive Trading Days during the related Observation Period; and

(C) if the Company elects (or is deemed to have elected) to satisfy its Conversion Obligation in respect of such conversion by Combination Settlement, the Company shall pay or deliver, as the case may be, in respect of each $1,000 principal amount of Notes being converted, a Settlement Amount equal to the sum of the Daily Settlement Amounts for each of the 10 consecutive Trading Days during the related Observation Period.

(v) The Daily Settlement Amounts (if applicable) and the Daily Conversion Values (if applicable) shall be determined by the Company promptly following the last day of the Observation Period. Promptly after such determination of the Daily Settlement Amounts or the Daily Conversion Values, as the case may be, and the amount of cash payable in lieu of delivering any fractional share of Common Stock, the Company shall notify the Trustee and the Conversion Agent (if other than the Trustee) of the Daily Settlement Amounts or the Daily Conversion Values, as the case may be, and the amount of cash payable in lieu of delivering fractional shares of Common Stock. The Trustee and the Conversion Agent (if other than the Trustee) shall have no responsibility for any such determination.

(b) Subject to Section 14.02(e), before any Holder of a Note shall be entitled to convert a Note as set forth above, such Holder shall (i) in the case of a Global Note, comply with the procedures of the Depositary in effect at that time and, if required, pay funds equal to interest payable on the next Interest Payment Date to which such Holder is not entitled as set forth in Section 14.02(h) and (ii) in the case of a Physical Note (A) complete, manually sign and deliver an irrevocable notice to the Conversion Agent as set forth in the Form of Notice of Conversion (or a facsimile thereof) (a "**Notice of Conversion**") at the office of the Conversion Agent and state in writing therein the principal amount of Notes to be converted and the name or names (with addresses) in which such Holder wishes the certificate or certificates for any shares of Common Stock to be delivered upon settlement of the Conversion Obligation to be registered, (B) surrender such Notes, duly endorsed to the Company or in blank (and accompanied by appropriate endorsement and transfer documents), at the office of the Conversion Agent, (C) if required, furnish appropriate endorsements and transfer documents and (D) if required, pay funds equal to interest payable on the next Interest Payment Date to which such Holder is not entitled as set forth in Section 14.02(h). The Trustee (and if different, the Conversion Agent) shall notify the Company of any conversion pursuant to this ARTICLE 14 on the Conversion Date for such conversion. No Notice of Conversion with respect to any Notes may be surrendered by a Holder thereof if such Holder has also delivered a Repurchase Event Repurchase Notice to the Company in respect of such Notes and has not validly withdrawn such Repurchase Event Repurchase Notice in accordance with Section 15.03, in the case of Physical Notes, or through the applicable procedures of the Depositary, in the case of Global Notes.

If more than one Note shall be surrendered for conversion at one time by the same Holder, the Conversion Obligation with respect to such Notes shall be computed on the basis of the aggregate principal amount of the Notes (or specified portions thereof to the extent permitted thereby) so surrendered.

(c) A Note shall be deemed to have been converted immediately prior to the close of business on the date (the "**Conversion Date**") that the Holder has complied with the requirements set forth in subsection (b) above. Except as set forth in Section 14.03(b) and Section 14.07(a), the Company shall deliver the consideration due in respect of the Conversion Obligation on the second Business Day immediately following the relevant Conversion Date, if the Company elects Physical Settlement, or on the second Business Day immediately following the last Trading Day of the Observation Period, in the case of any other Settlement Method. If any shares of Common Stock are due to converting Holders, the Company shall issue or cause to be issued, and deliver to the Conversion Agent or to such Holder, or such Holder's nominee or nominees, certificates or a book-entry transfer through the Depositary for the full number of shares of Common Stock to which such Holder shall be entitled in satisfaction of the Company's Conversion Obligation.

(d) In case any Physical Note shall be surrendered for partial conversion, the Company shall execute and the Trustee shall authenticate and deliver to or upon the written order of the Holder of the Note so surrendered a new Note or Notes in authorized denominations in an aggregate principal amount equal to the unconverted portion of the surrendered Note, without payment of any service charge by the converting Holder but, if required by the Company or Trustee, with payment of a sum sufficient to cover any documentary, stamp or similar issue or transfer tax or similar governmental charge required by law or that may be imposed in connection therewith as a result of the name of the Holder of the new Notes issued upon such conversion being different from the name of the Holder of the old Notes surrendered for such conversion.

(e) If a Holder submits a Note for conversion, the Company shall pay any documentary, stamp or similar issue or transfer tax due on the issue of any shares of Common Stock upon conversion, unless the tax is due because the Holder requests such shares to be issued in a name other than the Holder's name, in which case the Holder shall pay that tax. The Company shall work directly with its stock transfer agent to effect any delivery of Common Stock in connection with a conversion. The Conversion Agent may refuse to deliver the certificates representing the shares of Common Stock being issued in a name other than the Holder's name until the Trustee receives a sum sufficient to pay any tax that is due by such Holder in accordance with the immediately preceding sentence.

(f) Except as provided in Section 14.04, no adjustment shall be made for dividends on any shares of Common Stock issued upon the conversion of any Note as provided in this ARTICLE 14.

(g) Upon the conversion of an interest in a Global Note, the Trustee, or the Custodian (if other than the Trustee) at the direction of the Trustee, shall make a notation on such Global Note as to the reduction in the principal amount represented thereby. The Company shall notify the Trustee in writing of any conversion of Notes effected through any Conversion Agent other than the Trustee.

(h) Upon conversion, a Holder shall not receive any separate cash payment for accrued and unpaid interest, if any, except as set forth below. The Company's settlement of the full Conversion Obligation shall be deemed to satisfy in full its obligation to pay the principal amount of the Note and accrued and unpaid interest, if any, to, but excluding, the relevant Conversion Date. As a result, accrued and unpaid interest, if any, to, but excluding, the relevant Conversion Date shall be deemed to be paid in full rather than cancelled, extinguished or forfeited. Upon a conversion of Notes into a combination of cash and shares of Common Stock, accrued and unpaid interest will be deemed to be paid first out of the cash paid upon such conversion. Notwithstanding the foregoing, if Notes are converted after the close of business on a Regular Record Date and prior to the open of business on the corresponding Interest Payment Date, Holders of such Notes as of the close of business on such Regular Record Date will receive the full amount of interest payable on such Notes on the corresponding Interest Payment Date notwithstanding the conversion. Notes surrendered for conversion during the period from the close of business on any Regular Record Date to the open of business on the immediately following Interest Payment Date must be accompanied by funds equal to the amount of interest payable on the Notes so converted; *provided* that no such payment shall be required (i) for conversions after the close of business on the Regular Record Date immediately preceding the Maturity Date; (ii) if the Company has specified a Repurchase Event Repurchase Date that is after a Regular Record Date and on or prior to the Business Day immediately following the corresponding Interest Payment Date; (iii) if the Company has specified a Redemption Date that is after a Regular Record Date and on or prior to the second Scheduled Trading day immediately succeeding the corresponding Interest Payment Date; or (iv) to the extent of any Defaulted Amounts, if any Defaulted Amounts exists at the time of conversion with respect to such Note.

Therefore, for the avoidance of doubt, all Holders of record after the close of business on the Regular Record Date immediately preceding the Maturity Date, any Repurchase Event Repurchase Date or

Redemption Date, in each case, as described above, shall receive the full interest payment in cash due on the Maturity Date or other applicable Interest Payment Date regardless of whether their Notes have been converted or redeemed following such Regular Record Date.

(i) The Person in whose name the shares of Common Stock shall be issuable upon conversion shall be treated as a stockholder of record as of the close of business on the relevant Conversion Date (if the Company elects to satisfy the related Conversion Obligation by Physical Settlement) or the last Trading Day of the relevant Observation Period (if the Company elects to satisfy the related Conversion Obligation by Combination Settlement), as the case may be. Upon a conversion of Notes, such Person shall no longer be a Holder of such Notes surrendered for conversion.

(j) The Company shall not issue any fractional share of Common Stock upon conversion of the Notes and shall instead pay cash in lieu of delivering any fractional share of Common Stock issuable upon conversion based on the Daily VWAP for the relevant Conversion Date (in the case of Physical Settlement) or based on the Daily VWAP for the last Trading Day of the relevant Observation Period (in the case of Combination Settlement). For each Note surrendered for conversion, if the Company has elected Combination Settlement, the full number of shares that shall be issued upon conversion thereof shall be computed on the basis of the aggregate Daily Settlement Amounts for the relevant Observation Period and any fractional shares remaining after such computation shall be paid in cash.

Section 14.03. *Increased Conversion Rate Applicable to Certain Notes Surrendered in Connection with Make-Whole Fundamental Changes or During a Redemption Period*.

(a) If a Make-Whole Fundamental Change occurs or becomes effective prior to the Maturity Date and a Holder elects to convert its Notes in connection with such Make-Whole Fundamental Change or the Company issued a Redemption Notice pursuant to Section 16.02 and a Holder elects to convert its Notes called for redemption during the related Redemption Period, the Company shall, under the circumstances described below, increase the Conversion Rate for the Notes so surrendered for conversion by a number of additional shares of Common Stock (the "**Additional Shares**"), as described below. A conversion of Notes shall be deemed for these purposes to be "in connection with" such Make-Whole Fundamental Change if the relevant Notice of Conversion is received by the Conversion Agent from, and including, the Effective Date of the Make-Whole Fundamental Change up to, and including, the Business Day immediately prior to the related Repurchase Event Repurchase Date (or, in the case of a Make-Whole Fundamental Change that would have been a Fundamental Change but for the proviso in clause (b) of the definition thereof, the 35th Trading Day immediately following the Effective Date of such Make-Whole Fundamental Change) (such period, the "**Make-Whole Fundamental Change Period**"). For the avoidance of doubt, if the Company elects to redeem fewer than all of the outstanding Notes pursuant to ARTICLE 16, Holders of the Notes not called for redemption will not be entitled to convert such Notes on account of the Notice of Redemption and will not be entitled to an increased Conversion Rate for conversions of such Notes (on account of the Notice of Redemption) during the applicable Redemption Period.

(b) Upon surrender of Notes for conversion in connection with a Make-Whole Fundamental Change or during a Redemption Period, the Company shall, at its option, satisfy the related Conversion Obligation by Physical Settlement, Cash Settlement or Combination Settlement in accordance with Section 14.02; *provided*, *however*, that if, at the effective time of a Make-Whole Fundamental Change described in clause (b) of the definition of Fundamental Change, the Reference Property following such Make-Whole Fundamental Change is composed entirely of cash, for any conversion of Notes following the Effective Date of such Make-Whole Fundamental Change, the Conversion Obligation shall be calculated based solely on the Stock Price for the transaction and shall be deemed to be an amount of cash per $1,000 principal amount of converted Notes equal to the Conversion Rate (including any adjustment for Additional Shares), *multiplied by* such Stock Price. In such event, the Conversion Obligation shall be paid to Holders in cash on the second Business Day following the Conversion Date. The Company shall notify in writing the Holders of Notes, the Trustee and the Conversion Agent (if other than the Trustee) of the Effective Date of any Make-Whole Fundamental Change no later than five Business Days after such Effective Date.

(c) The number of Additional Shares, if any, by which the Conversion Rate shall be increased shall be determined by reference to the table below, based on the date on which the Make-Whole Fundamental Change occurs or becomes effective (the "**Effective Date**") or the Redemption Notice Date, as the case may be, and the price (the "**Stock Price**") paid (or deemed to be paid) per share of the Common Stock in the Make-Whole Fundamental Change or the Redemption Notice Date, as applicable. If the holders of the Common Stock receive in exchange for their Common Stock only cash in a Make-

Whole Fundamental Change described in clause (b) of the definition of Fundamental Change, the Stock Price shall be the cash amount paid per share. Otherwise, the Stock Price shall be the average of the Last Reported Sale Prices of the Common Stock over the five consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Effective Date of the Make-Whole Fundamental Change or Redemption Notice Date, as the case may be. In the event that a Conversion Date occurs during both a Redemption Period and a Make-Whole Fundamental Change Period, a Holder of any such Notes to be converted will be entitled to a single increase to the Conversion Rate with respect to the first to occur of the applicable Redemption Notice Date or Effective Date, and the later event shall be deemed not to have occurred for purposes of this Section 14.03. The Board of Directors shall make appropriate adjustments to the Stock Price, in its good faith determination, to account for any adjustment to the Conversion Rate that becomes effective, or any event requiring an adjustment to the Conversion Rate where the Ex-Dividend Date, Effective Date (as such term is used in Section 14.04) or expiration date of the event occurs during such five consecutive Trading Day period.

(d) The Stock Prices set forth in the column headings of the table below shall be adjusted as of any date on which the Conversion Rate of the Notes is otherwise adjusted. The adjusted Stock Prices shall equal the Stock Prices applicable immediately prior to such adjustment, *multiplied by* a fraction, the numerator of which is the Conversion Rate immediately prior to such adjustment giving rise to the Stock Price adjustment and the denominator of which is the Conversion Rate as so adjusted. The number of Additional Shares set forth in the table below shall be adjusted in the same manner and at the same time as the Conversion Rate as set forth in Section 14.04.

(e) The following table sets forth the number of Additional Shares of Common Stock by which the Conversion Rate shall be increased per $1,000 principal amount of Notes pursuant to this Section 14.03 for each Stock Price and Effective Date or Redemption Notice Date, as applicable, set forth below:

	Stock Price									
Effective Date/Redemption Notice Date	**$2.96**	**$3.40**	**$3.85**	**$4.50**	**$5.00**	**$6.50**	**$8.00**	**$10.00**	**$15.00**	**$20.00**
April 27, 2021	77.9625	77.9625	66.6411	49.2661	39.5201	21.9005	12.6153	6.0729	0.4648	0.0000
April 15, 2022	77.9625	77.9625	65.4350	47.6098	37.7404	20.2366	11.2748	5.1545	0.2405	0.0000
April 15, 2023	77.9625	77.9625	62.2423	44.1142	34.2680	17.3491	9.1081	3.7724	0.0274	0.0000
April 15, 2024	77.9625	74.5686	55.6506	37.5112	28.0160	12.6478	5.8643	1.9198	0.0000	0.0000
April 15 2025	77.9625	62.0993	42.4983	25.0171	16.7014	5.3228	1.6006	0.0971	0.0000	0.0000
April 15, 2026	77.9625	34.2424	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000

The exact Stock Prices and Effective Dates or Redemption Notice Dates may not be set forth in the table above, in which case:

(i) if the Stock Price is between two Stock Prices in the table above or the Effective Date or the Redemption Notice Date, as the case may be, is between two Effective Dates in the table, the number of Additional Shares shall be determined by a straight-line interpolation between the number of Additional Shares set forth for the higher and lower Stock Prices and the earlier and later Effective Dates or Redemption Notice Dates, as applicable, based on a 365-day year;

(ii) if the Stock Price is greater than $20.00 per share (subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table above pursuant to subsection (d) above), no Additional Shares shall be added to the Conversion Rate; and

(iii) if the Stock Price is less than $2.96 per share (subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table above pursuant to subsection (d) above), no Additional Shares shall be added to the Conversion Rate.

Notwithstanding the foregoing, in no event shall the Conversion Rate per $1,000 principal amount of Notes exceed 337.8378 shares of Common Stock, subject to adjustment in the same manner as the Conversion Rate pursuant to Section 14.04.

(f) Nothing in this Section 14.03 shall prevent an adjustment to the Conversion Rate pursuant to Section 14.04 in respect of a Make-Whole Fundamental Change.

Section 14.04. *Adjustment of Conversion Rate*. The Conversion Rate shall be adjusted from time to time by the Company if any of the following events occurs, except that the Company shall not make any adjustments to the Conversion Rate if Holders of the Notes participate (other than in the case of a share split or share combination or a tender or exchange offer), at the same time and upon the same terms as holders of the Common Stock and solely as a result of holding the Notes, in any of the transactions described in this Section 14.04, without having to convert their Notes, as if they held a number of shares of Common Stock equal to the Conversion Rate, *multiplied by* the principal amount (expressed in thousands) of Notes held by such Holder.

(a) If the Company exclusively issues shares of Common Stock as a dividend or distribution on shares of the Common Stock, or if the Company effects a share split or share combination, the Conversion Rate shall be adjusted based on the following formula:

$$CR' = CR_0 \times \frac{OS'}{OS_0}$$

where,

CR_0	=	the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date of such dividend or distribution, or immediately prior to the open of business on the Effective Date of such share split or share combination, as applicable;
CR'	=	the Conversion Rate in effect immediately after the open of business on such Ex-Dividend Date or Effective Date;
OS_0	=	the number of shares of Common Stock outstanding immediately prior to the open of business on such Ex-Dividend Date or Effective Date; and
OS'	=	the number of shares of Common Stock outstanding immediately after giving effect to such dividend, distribution, share split or share combination.

Any adjustment made under this Section 14.04(a) shall become effective immediately after the open of business on the Ex-Dividend Date for such dividend or distribution, or immediately after the open of business on the Effective Date for such share split or share combination, as applicable. If any dividend or distribution of the type described in this Section 14.04(a) is declared but not so paid or made, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution, to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

(b) If the Company issues to all or substantially all holders of the Common Stock any rights, options or warrants entitling them, for a period of not more than 45 calendar days after the announcement date of such issuance, to subscribe for or purchase shares of the Common Stock at a price per share that is less than the average of the Last Reported Sale Prices of the Common Stock for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of such issuance, the Conversion Rate shall be increased based on the following formula:

$$CR' = CR_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where,

CR_0	=	the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such issuance;
CR'	=	the Conversion Rate in effect immediately after the open of business on such Ex-Dividend Date;
OS_0	=	the number of shares of Common Stock outstanding immediately prior to the open of business on such Ex-Dividend Date;
X	=	the total number of shares of Common Stock issuable pursuant to such rights, options or warrants; and
Y	=	the number of shares of Common Stock equal to the aggregate price payable to exercise such rights, options or warrants, *divided by* the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of the issuance of such rights, options or warrants.

Any increase made under this Section 14.04(b) shall be made successively whenever any such rights, options or warrants are issued and shall become effective immediately after the open of business on the Ex-Dividend Date for such issuance. To the extent that shares of the Common Stock are not delivered after the expiration of such rights, options or warrants, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect had the increase with respect to the issuance of such rights, options or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights, options or warrants are not so issued or if no such rights, options or warrants are exercised prior to their expiration, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect if such Ex-Dividend Date for such issuance had not occurred.

For purposes of this Section 14.04(b), in determining whether any rights, options or warrants entitle the holders to subscribe for or purchase shares of the Common Stock at less than such average of the Last Reported Sale Prices of the Common Stock for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of such issuance, and in determining the aggregate offering price of such shares of Common Stock, there shall be taken into account any consideration received by the Company for such rights, options or warrants and any amount payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined by the Board of Directors.

(c) If the Company distributes shares of its Capital Stock, evidences of its indebtedness, other assets or property of the Company or rights, options or warrants to acquire its Capital Stock or other securities, to all or substantially all holders of the Common Stock, excluding (i) dividends, distributions or issuances as to which an adjustment was effected pursuant to Section 14.04(a) or Section 14.04(b), (ii) rights issued under a stockholder rights plan (except as otherwise provided in Section 14.11), (iii) dividends or distributions paid exclusively in cash as to which the provisions set forth in Section 14.04(d) shall apply, (iv) distributions of Reference Property issued in exchange for Common Stock in a Common Stock Change Event, and (v) Spin-Offs as to which the provisions set forth below in this Section 14.04(c) shall apply (any of such shares of Capital Stock, evidences of indebtedness, other assets or property or rights, options or warrants to acquire the Company's Capital Stock or other securities, the "**Distributed Property**"), then the Conversion Rate shall be increased based on the following formula:

$$CR' = CR_0 \times \frac{SP_0}{SP_0 - FMV}$$

where,

CR_0	=	the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such distribution;
CR'	=	the Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for such distribution;
SP_0	=	the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such distribution; and
FMV	=	the fair market value (as determined by the Board of Directors) of the Distributed Property with respect to each outstanding share of the Common Stock on the Ex-Dividend Date for such distribution.

Any increase made under the portion of this Section 14.04(c) above shall become effective immediately after the open of business on the Ex-Dividend Date for such distribution. If such distribution is not so paid or made, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect if such distribution had not been declared. Notwithstanding the foregoing, if "FMV" (as defined above) is equal to or greater than "SP_0" (as defined above), then in lieu of the foregoing increase, each Holder of a Note shall receive, in respect of each $1,000 principal amount of Notes it holds, at the same time and upon the same terms as holders of the Common Stock receive the Distributed Property, the amount and kind of Distributed Property such Holder would have received if such Holder owned a number of shares of Common Stock equal to the Conversion Rate in effect on the Ex-Dividend Date for the distribution. If the Board of Directors determines the "FMV" (as defined above) of any distribution for purposes of this Section 14.04(c) by reference to the actual or when-issued trading market for any securities, it shall in doing so consider the prices in such market over the same period used in computing the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such distribution.

With respect to an adjustment pursuant to this Section 14.04(c) where there has been a payment of a dividend or other distribution on the Common Stock of shares of Capital Stock of any class or series, or similar equity interest, of or relating to any of the Company's Subsidiaries or other business units, that are, or, when issued, will be, listed or admitted for trading on a U.S. national securities exchange (a "**Spin-Off**"), the Conversion Rate shall be increased based on the following formula:

$$CR' = CR_0 \times \frac{FMV_0 + MP_0}{MP_0}$$

where,

CR_0	=	the Conversion Rate in effect immediately prior to the end of the Valuation Period;
CR'	=	the Conversion Rate in effect immediately after the end of the Valuation Period;
FMV_0	=	the average of the Last Reported Sale Prices of the Capital Stock or similar equity interest distributed to holders of the Common Stock applicable to one share of the Common Stock (determined by reference to the definition of Last Reported Sale Price as set forth in Section 1.01 as if references therein to Common Stock were to such Capital Stock or similar equity interest) over the first 10 consecutive Trading Day period after, and including, the Ex-Dividend Date of the Spin-Off (the "**Valuation Period**"); *provided* that if there is no last reported sale price of the Capital Stock or similar equity interest distributed to holders of Common Stock on such Ex-Dividend Date, the Valuation Period shall be the first ten consecutive Trading Day period after, and including the first date such Last Reported Sale Price is available; and
MP_0	=	the average of the Last Reported Sale Prices of the Common Stock over the Valuation Period.

The increase to the Conversion Rate under the preceding paragraph shall occur at the close of business on the last Trading Day of the Valuation Period; *provided* that (x) in respect of any conversion of Notes for which Physical Settlement is applicable, if the relevant Conversion Date occurs during the Valuation Period, references in the portion of this Section 14.04(c) related to Spin-Offs shall be deemed replaced with such lesser number of Trading Days as have elapsed between the Ex-Dividend Date for such Spin-Off and such Conversion Date in determining the Conversion Rate and (y) in respect of any conversion of Notes for which Cash Settlement or Combination Settlement is applicable, subject to the immediately succeeding sentence, for any Trading Day that falls within the relevant Observation Period for such conversion and within the Valuation Period, the reference to "10" in the preceding paragraph shall be deemed replaced with such lesser number of Trading Days as have elapsed between the Ex-Dividend Date for such Spin-Off and such Trading Day in determining the Conversion Rate as of such Trading Day. In addition, if the Ex-Dividend Date for such Spin-Off is after the 10th Trading Day immediately preceding, and including, the end of any Observation Period in respect of a conversion of Notes, references to "10" or "10th" in the preceding paragraph and this paragraph shall be deemed to be replaced, solely in respect of that conversion of Notes, with such lesser number of Trading Days as have elapsed from, and including, the Ex-Dividend Date for such Spin-Off to, and including, the last Trading Day of such Observation Period. If the distribution constituting the Spin-Off is not so paid or made, the Conversion Rate shall be decreased to the Conversion Rate that would be in effect if such distribution had not been declared.

For purposes of this Section 14.04(c) (and subject in all respect to Section 14.11), rights, options or warrants distributed by the Company to all holders of the Common Stock entitling them to subscribe for or purchase shares of the Company's Capital Stock, including Common Stock (either initially or under certain circumstances), which rights, options or warrants, until the occurrence of a specified event or events ("**Trigger Event**"): (i) are deemed to be transferred with such shares of the Common Stock; (ii) are not exercisable; and (iii) are also issued in respect of future issuances of the Common Stock, shall be deemed not to have been distributed for purposes of this Section 14.04(c) (and no adjustment to the Conversion Rate under this Section 14.04(c) will be required) until the occurrence of the earliest Trigger Event, whereupon such rights, options or warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Rate shall be made under this Section 14.04(c). If any such right, option or warrant, including any such existing rights, options or warrants distributed prior to April 27, 2021, are subject to events, upon the occurrence of which such rights, options or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and Ex-Dividend Date with respect to new rights, options or warrants with such rights (in

which case the existing rights, options or warrants shall be deemed to terminate and expire on such date without exercise by any of the holders thereof). In addition, in the event of any distribution (or deemed distribution) of rights, options or warrants, or any Trigger Event or other event (of the type described in the immediately preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate under this Section 14.04(c) was made, (A) in the case of any such rights, options or warrants that shall all have been redeemed or purchased without exercise by any holders thereof, upon such final redemption or purchase (x) the Conversion Rate shall be readjusted as if such rights, options or warrants had not been issued and (y) the Conversion Rate shall then again be readjusted to give effect to such distribution, deemed distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or purchase price received by a holder or holders of Common Stock with respect to such rights, options or warrants (assuming such holder had retained such rights, options or warrants), made to all holders of Common Stock as of the date of such redemption or purchase, and (B) in the case of such rights, options or warrants that shall have expired or been terminated without exercise by any holders thereof, the Conversion Rate shall be readjusted as if such rights, options and warrants had not been issued.

For purposes of Section 14.04(a), Section 14.04(b) and this Section 14.04(c), if any dividend or distribution to which this Section 14.04(c) is applicable also includes one or both of:

(A) a dividend or distribution of shares of Common Stock to which Section 14.04(a) is applicable (the "**Clause A Distribution**"); or

(B) a dividend or distribution of rights, options or warrants to which Section 14.04(b) is applicable (the "**Clause B Distribution**"),

then, in either case, (1) such dividend or distribution, other than the Clause A Distribution and the Clause B Distribution, shall be deemed to be a dividend or distribution to which this Section 14.04(c) is applicable (the "**Clause C Distribution**") and any Conversion Rate adjustment required by this Section 14.04(c) with respect to such Clause C Distribution shall then be made, and (2) the Clause A Distribution and Clause B Distribution shall be deemed to immediately follow the Clause C Distribution and any Conversion Rate adjustment required by Section 14.04(a) and Section 14.04(b) with respect thereto shall then be made, except that, if determined by the Company (I) the "Ex-Dividend Date" of the Clause A Distribution and the Clause B Distribution shall be deemed to be the Ex-Dividend Date of the Clause C Distribution and (II) any shares of Common Stock included in the Clause A Distribution or Clause B Distribution shall be deemed not to be "outstanding immediately prior to the open of business on such Ex-Dividend Date or Effective Date" within the meaning of Section 14.04(a) or "outstanding immediately prior to the open of business on such Ex-Dividend Date" within the meaning of Section 14.04(b).

(d) If any cash dividend or distribution is made to all or substantially all holders of the Common Stock, the Conversion Rate shall be adjusted based on the following formula:

$$CR' = CR_0 \times \frac{SP_0}{SP_0 - C}$$

where,

CR_0	=	the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such dividend or distribution;
CR'	=	the Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for such dividend or distribution;
SP_0	=	the Last Reported Sale Price of the Common Stock on the Trading Day immediately preceding the Ex-Dividend Date for such dividend or distribution; and
C	=	the amount in cash per share the Company distributes to all or substantially all holders of the Common Stock.

Any increase pursuant to this Section 14.04(d) shall become effective immediately after the open of business on the Ex-Dividend Date for such dividend or distribution. If such dividend or distribution is not so paid, the Conversion Rate shall be decreased, effective as of the date the Board of Directors

determines not to make or pay such dividend or distribution, to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared. Notwithstanding the foregoing, if "C" (as defined above) is equal to or greater than "SP0" (as defined above), then, in lieu of the foregoing increase, each Holder of a Note shall receive, for each $1,000 principal amount of Notes it holds, at the same time and upon the same terms as holders of shares of the Common Stock, the amount of cash that such Holder would have received if such Holder owned a number of shares of Common Stock equal to the Conversion Rate in effect on the Ex-Dividend Date for such cash dividend or distribution.

(e) If the Company or any of its Subsidiaries make a payment in respect of a tender or exchange offer for the Common Stock (other than odd-lot tender offers), to the extent that the cash and value of any other consideration included in the payment per share of the Common Stock exceeds the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer, the Conversion Rate shall be increased based on the following formula:

$$CR' = CR_0 \times \frac{AC + (SP' \times OS')}{OS_0 \times SP'}$$

where,

CR_0	=	the Conversion Rate in effect immediately prior to the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires;
CR'	=	the Conversion Rate in effect immediately after the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires;
AC	=	the aggregate value of all cash and any other consideration (as determined by the Board of Directors) paid or payable for shares of Common Stock purchased in such tender or exchange offer;
OS_0	=	the number of shares of Common Stock outstanding immediately prior to the date such tender or exchange offer expires (prior to giving effect to the purchase of all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer);
OS'	=	the number of shares of Common Stock outstanding immediately after the date such tender or exchange offer expires (after giving effect to the purchase of all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer); and
SP'	=	the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires.

The increase to the Conversion Rate under this Section 14.04(e) shall occur at the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires; *provided* that (x) in respect of any conversion of Notes for which Physical Settlement is applicable, if the relevant Conversion Date occurs during the 10 Trading Days immediately following, and including, the Trading Day next succeeding the expiration date of any tender or exchange offer, references to "10" or "10th" in the preceding paragraph shall be deemed replaced with such lesser number of Trading Days as have elapsed between the expiration date of such tender or exchange offer and such Conversion Date in determining the conversion rate and (y) in respect of any conversion of Notes for which Cash Settlement or Combination Settlement is applicable, subject to the immediately succeeding sentence, for any Trading Day that falls within the relevant Observation Period for such conversion and within the 10 Trading Days immediately following, and including, the expiration date of any tender or exchange offer, references in this Section 14.04(e) to "10" or "10th" in the preceding paragraph shall be deemed replaced with such lesser number of Trading Days as have elapsed between the date that such tender or exchange offer expires and such Trading Day in determining the Conversion Rate as of such Trading Day. In addition, if the Trading Day next succeeding the date such tender or

exchange offer expires is after the 10th Trading Day immediately preceding, and including, the end of any Observation Period in respect of a conversion of Notes, references to "10" or "10th" in the preceding paragraph and this paragraph shall be deemed to be replaced, solely in respect of that conversion of Notes, with such lesser number of Trading Days as have elapsed from, and including, the Trading Day next succeeding the date such tender or exchange offer expires to, and including, the last Trading Day of such Observation Period. If the Company is obligated to purchase shares of the Common Stock pursuant to any such tender or exchange offer described in this Section 14.04(e) but is permanently prevented by applicable law from effecting any such purchase or all such purchases are rescinded, the applicable Conversion Rate shall be decreased to be the Conversion Rate that would then be in effect if such tender or exchange offer had not been made or had been made only in respect of the purchases that have been effected.

(f) Notwithstanding this Section 14.04 or any other provision of this Indenture or the Notes, if: (i) a Conversion Rate adjustment for any event becomes effective on any Ex-Dividend Date; (ii) a Note is to be converted pursuant to Physical Settlement or Combination Settlement; (iii) the Conversion Date for such conversion (in the case of Physical Settlement) or any Trading Day in the Observation Period for such conversion (in the case of Combination Settlement) occurs on or after such Ex-Dividend Date and on or before the related Record Date; and (iv) the Holder would be treated, on such Record Date, as the record holder of such shares of Common Stock based on a Conversion Rate that is adjusted for such event on such basis, then, such Conversion Rate adjustment will not be given effect for such conversion (in the case of Physical Settlement) or such Trading Day (in the case of Combination Settlement). Instead, such Holder shall be treated as if such Holder were, as of such Record Date, the record owner of such shares of Common Stock on an unadjusted basis and will participate in such event.

(g) Except as stated herein, the Company shall not adjust the Conversion Rate for the issuance of shares of the Common Stock or any securities convertible into or exchangeable for shares of the Common Stock or the right to purchase shares of the Common Stock or such convertible or exchangeable securities.

(h) In addition to those adjustments required by clauses (a), (b), (c), (d) and (e) of this Section 14.04, and to the extent permitted by applicable law and subject to the applicable rules of any exchange on which any of the Company's securities are then listed, the Company from time to time may (but is not required to) increase the Conversion Rate by any amount for a period of at least 20 Business Days if the Board of Directors determines that such increase would be in the Company's best interest. In addition, to the extent permitted by applicable law and subject to the applicable rules of any exchange on which any of the Company's securities are then listed, the Company may (but is not required to) increase the Conversion Rate to avoid or diminish any income tax to holders of Common Stock or rights to purchase Common Stock in connection with a dividend or distribution of shares of Common Stock (or rights to acquire shares of Common Stock) or similar event. Whenever the Conversion Rate is increased pursuant to either of the preceding two sentences, the Company shall give to the Holder of each Note at its last address appearing on the Note Register a notice of the increase at least 15 days prior to the date the increased Conversion Rate takes effect, and such notice shall state the increased Conversion Rate and the period during which it will be in effect.

(i) Notwithstanding anything to the contrary in this ARTICLE 14, the Conversion Rate shall not be adjusted:

(i) upon the issuance of Common Stock at a price below the Conversion Price or otherwise (other than any such issuance described in Section 14.04(a), (b) or (c));

(ii) upon the issuance of any shares of Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Company's securities and the investment of additional optional amounts in shares of Common Stock under any plan;

(iii) upon the issuance of any shares of Common Stock or options or rights to purchase those shares pursuant to any present or future employee, director or consultant benefit plan or program of or assumed by the Company or any of the Company's Subsidiaries;

(iv) upon the issuance of any shares of the Common Stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not described in clause (iii) of this subsection and outstanding as of the date the Notes were first issued;

(v) for a third-party tender offer by any party other than a tender offer by one or more of the Company's Subsidiaries as described in Section 14.04(e)

(vi) upon the repurchase of any shares of the Common Stock pursuant to an open-market share purchase program or other buy-back transaction, including structured or derivative transactions, that is not a tender offer or exchange offer of the kind described in Section 14.04(e);

(vii) solely for a change in the par value of the Common Stock; or

(viii) for accrued and unpaid interest, if any.

(j) All calculations and other determinations under this ARTICLE 14 shall be made by the Company and shall be made to the nearest one-ten thousandth (1/10,000th) of a share. If an adjustment to the Conversion Rate otherwise required pursuant to clause (a), (b), (c), (d) or (e) of this Section 14.04 would result in a change of less than 1% to the Conversion Rate, then, notwithstanding the foregoing, the Company may, at its election, defer and carry forward such adjustment, except that all such deferred adjustments must be given effect immediately upon the earliest to occur of the following: (i) when all such deferred adjustments would result in an aggregate change of at least 1% to the Conversion Rate; (ii) the Conversion Date of, or any trading day of an Observation Period for, any Note; (iii) the date a Fundamental Change or Make-Whole Fundamental Change occurs; and (iv) January 15, 2026.

(k) Whenever the Conversion Rate is adjusted as herein provided, the Company shall promptly file with the Trustee (and the Conversion Agent if not the Trustee) an Officer's Certificate setting forth the Conversion Rate after such adjustment and setting forth a brief statement of the facts requiring such adjustment. Unless and until a Responsible Officer of the Trustee shall have received such Officer's Certificate, the Trustee shall not be deemed to have knowledge of any adjustment of the Conversion Rate and may assume without inquiry that the last Conversion Rate of which it has knowledge is still in effect. Promptly after delivery of such certificate, the Company shall prepare a notice of such adjustment of the Conversion Rate setting forth the adjusted Conversion Rate and the date on which each adjustment becomes effective and shall give such notice of such adjustment of the Conversion Rate to each Holder at its last address appearing on the Note Register of this Indenture. Failure to deliver such notice shall not affect the legality or validity of any such adjustment.

(l) For purposes of this Section 14.04, the number of shares of Common Stock at any time outstanding shall not include shares of Common Stock held in the treasury of the Company so long as the Company does not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company, but shall include shares of Common Stock issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock.

Section 14.05. *Adjustments of Prices*. Whenever any provision of this Indenture requires the Company to calculate the Last Reported Sale Prices, the Daily VWAPs, the Daily Conversion Values or the Daily Settlement Amounts over a span of multiple days (including an Observation Period and the period for determining the Stock Price for purposes of a Make-Whole Fundamental Change or a redemption pursuant to ARTICLE 16), the Board of Directors shall make appropriate adjustments to each to account for any adjustment to the Conversion Rate that becomes effective, or any event requiring an adjustment to the Conversion Rate as provided under Section 14.02 where the Ex-Dividend Date, Effective Date, effective time or expiration date, as the case may be, of the event occurs, at any time during the period when the Last Reported Sale Prices, the Daily VWAPs, the Daily Conversion Values or the Daily Settlement Amounts are to be calculated.

For the avoidance of doubt, the adjustments made pursuant to the foregoing paragraph will be made without duplication of any adjustment made pursuant to the provision set forth under Section 14.04.

Section 14.06. *Shares to Be Fully Paid*. The Company shall provide, free from preemptive rights, out of its authorized but unissued shares or shares held in treasury, sufficient shares of Common Stock to provide for conversion of the Notes from time to time as such Notes are presented for conversion (assuming delivery of the maximum number of Additional Shares pursuant to Section 14.03 and that at the time of computation of such number of shares, all such Notes would be converted by a single Holder and that Physical Settlement were applicable).

Section 14.07. Effect of Recapitalizations, Reclassifications and Changes of the Common Stock.

(a) In the case of:

(i) any recapitalization, reclassification or change of the Common Stock (other than a change to par value, or from par value to no par value, or changes resulting from a subdivision or combination),

(ii) any consolidation, merger, combination or similar transaction involving the Company,

(iii) any sale, lease or other transfer to a third party of the consolidated assets of the Company and the Company's Subsidiaries substantially as an entirety or

(iv) any statutory share exchange,

in each case, as a result of which the Common Stock would be converted into, or exchanged for, shares, stock, other securities, other property or assets (including cash or any combination thereof) (any such event, a "**Common Stock Change Event**"), then, at and after the effective time of such Common Stock Change Event, the Company or the successor or acquiring corporation, as the case may be, will execute a supplemental indenture with the Trustee, providing that the right to convert each $1,000 principal amount of Notes shall be changed into a right to convert such principal amount of Notes into the kind and amount of shares, shares of stock, other securities or other property or assets (including cash or any combination thereof) that a holder of a number of shares of Common Stock equal to the Conversion Rate immediately prior to such Common Stock Change Event would have owned or been entitled to receive (the "**Reference Property**," with each "**unit of Reference Property**" meaning the kind and amount of Reference Property that a holder of one share of Common Stock is entitled to receive) upon such Common Stock Change Event and, prior to or at the effective time of such Common Stock Change Event, the Company or the successor or purchasing Person, as the case may be, shall execute with the Trustee a supplemental indenture permitted under Section 10.01(g) providing for such change in the right to convert each $1,000 principal amount of Notes; *provided*, *however*, that at and after the effective time of the Common Stock Change Event (A) the Company shall continue to have the right to determine the form of consideration to be paid or delivered, as the case may be, upon conversion of Notes in accordance with Section 14.02 and (B) (I) any amount payable in cash upon conversion of the Notes in accordance with Section 14.02 shall continue to be payable in cash, (II) any shares of Common Stock that the Company would have been required to deliver upon conversion of the Notes in accordance with Section 14.02 shall instead be deliverable in the amount and type of Reference Property that a holder of that number of shares of Common Stock would have been entitled to receive in such Common Stock Change Event, (III) the Daily VWAP shall be calculated based on the value of a unit of Reference Property and (IV) the conditions to conversion specified in Section 14.04(c)(i), (ii), (iii), and (iv) shall be determined as if each reference to a share of Common Stock were instead to a unit of Reference Property.

If the Common Stock Change Event causes the Common Stock to be converted into, or exchanged for, the right to receive more than a single type of consideration (determined based in part upon any form of stockholder election), then (i) the Reference Property will be deemed to be (x) the weighted average of the types and amounts of consideration received by the holders of Common Stock that affirmatively make such an election or (y) if no holders of Common Stock affirmatively make such an election, the types and amounts of consideration actually received by the holders of Common Stock, and (ii) the unit of Reference Property for purposes of the immediately preceding paragraph shall refer to the consideration referred to in clause (i) attributable to one share of Common Stock. If the holders of the Common Stock receive only cash in such Common Stock Change Event, then for all conversions for which the relevant Conversion Date occurs after the effective date of such Common Stock Change Event (A) the consideration due upon conversion of each $1,000 principal amount of Notes shall be solely cash in an amount equal to the Conversion Rate in effect on the Conversion Date (as may be increased by any Additional Shares pursuant to Section 14.03), *multiplied by* the price paid per share of Common Stock in such Common Stock Change Event and (B) the Company shall satisfy the Conversion Obligation by paying cash to converting Holders on or before the second Business Day immediately following the relevant Conversion Date. The Company shall notify in writing Holders, the Trustee and the Conversion Agent (if other than the Trustee) of such weighted average as soon as practicable after such determination is made.

The supplemental indenture described in the second immediately preceding paragraph shall provide for anti-dilution and other adjustments that shall be as nearly equivalent as is possible to the adjustments provided for in this ARTICLE 14. If, in the case of any Common Stock Change Event, the Reference Property includes shares of stock, securities or other property or assets of a Person other than

the Company or the successor or purchasing corporation, as the case may be, in such Common Stock Change Event, then such supplemental indenture shall also be executed by such other Person and shall contain such additional provisions to protect the interests of the Holders, including the right of Holders to require the Company to repurchase their Notes upon a Fundamental Change ARTICLE 15, as the Board of Directors shall reasonably consider necessary by reason of the foregoing.

(b) When the Company executes a supplemental indenture pursuant to subsection (a) of this Section 14.07, the Company shall promptly file with the Trustee an Officer's Certificate briefly stating the reasons therefor, the kind or amount of cash, securities or property or asset that will comprise a unit of Reference Property after any such Common Stock Change Event, any adjustment to be made with respect thereto and that all conditions precedent have been complied with, and shall promptly mail notice thereof to all Holders. The Company shall cause notice of the execution of such supplemental indenture to be mailed to each Holder, at its address appearing on the Note Register provided for in this Indenture, within 20 days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of such supplemental indenture.

(c) The Company shall not become a party to any Common Stock Change Event unless its terms are consistent with this Section 14.07. None of the foregoing provisions shall affect the right of a holder of Notes to convert its Notes into cash, shares of Common Stock or a combination of cash and shares of Common Stock, as applicable, as set forth in Section 14.01 and Section 14.02 prior to the effective date of such Common Stock Change Event.

(d) The above provisions of this Section shall similarly apply to successive Common Stock Change Events.

Section 14.08. *Certain Covenants*. (a) The Company covenants that all shares of Common Stock issued upon conversion of Notes will be fully paid and non-assessable by the Company and free from all taxes, liens and charges with respect to the issue thereof.

(b) The Company covenants that, if any shares of Common Stock to be provided for the purpose of conversion of Notes hereunder require registration with or approval of any governmental authority under any federal or state law before such shares of Common Stock may be validly issued upon conversion, the Company will, to the extent then permitted by the rules and interpretations of the Commission, secure such registration or approval, as the case may be.

(c) The Company further covenants that if at any time the Common Stock shall be listed on any national securities exchange or automated quotation system the Company will list and keep listed, so long as the Common Stock shall be so listed on such exchange or automated quotation system, any Common Stock issuable upon conversion of the Notes.

Section 14.09. *Responsibility of Trustee*. The Trustee and any other Conversion Agent shall not at any time be under any duty or responsibility to any Holder to determine the Conversion Rate (or any adjustment thereto) or whether any facts exist that may require any adjustment (including any increase) of the Conversion Rate, or with respect to the nature or extent or calculation of any such adjustment when made, or with respect to the method employed, or herein or in any supplemental indenture provided to be employed, in making the same. The Trustee and any other Conversion Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock, or of any securities, property or cash that may at any time be issued or delivered upon the conversion of any Note; and the Trustee and any other Conversion Agent make no representations with respect thereto. Neither the Trustee nor any Conversion Agent shall be responsible for any failure of the Company to issue, transfer or deliver any shares of Common Stock or stock certificates or other securities or property or cash upon the surrender of any Note for the purpose of conversion or to comply with any of the duties, responsibilities or covenants of the Company contained in this Article. Without limiting the generality of the foregoing, neither the Trustee nor any Conversion Agent shall be under any responsibility to determine the correctness of any provisions contained in any supplemental indenture entered into pursuant to Section 14.07 relating either to the kind or amount of shares of stock or securities or property (including cash) receivable by Holders upon the conversion of their Notes after any event referred to in such Section 14.07 or to any adjustment to be made with respect thereto, but, subject to the provisions of Section 7.01, may accept (without any independent investigation) as conclusive evidence of the correctness of any such provisions, and shall be protected in relying upon, the Officer's Certificate (which the Company shall be obligated to file with the Trustee prior to the execution of any such supplemental indenture) with respect thereto.

Section 14.10. *Notice to Holders Prior to Certain Actions*. In case of any:

(a) action by the Company or one of its Subsidiaries that would require an adjustment in the Conversion Rate pursuant to Section 14.04 or Section 14.11;

(b) Common Stock Change Event; or

(c) voluntary or involuntary dissolution, liquidation or winding-up of the Company or any of its Subsidiaries; then, in each case (unless notice of such event is otherwise required pursuant to another provision of this Indenture), the Company shall promptly file with the Trustee and the Conversion Agent (if other than the Trustee) and to be given to each Holder, as promptly as possible but in any event at least 20 days prior to the applicable date hereinafter specified, a notice stating (i) the date on which a record is to be taken for the purpose of such action by the Company or one of its Subsidiaries or, if a record is not to be taken, the date as of which the holders of Common Stock of record are to be determined for the purposes of such action by the Company or one of its Subsidiaries, or (ii) the date on which such Common Stock Change Event, dissolution, liquidation or winding-up is expected to become effective or occur, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their Common Stock for securities or other property deliverable upon such Common Stock Change Event, dissolution, liquidation or winding-up. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such action by the Company or one of its Subsidiaries, Common Stock Change Event, dissolution, liquidation or winding-up.

Whenever the Conversion Rate is adjusted pursuant to Section 14.04 or Section 14.11, the Company shall promptly file with the Trustee and the Conversion Agent (if other than the Trustee) an Officer's Certificate setting forth the Conversion Rate after such adjustment and setting forth a brief statement of the facts requiring such adjustment. In the absence of an Officer's Certificate being filed with the Trustee and the Conversion Agent (if other than the Trustee), the Trustee may assume without inquiry that the Conversion Rate has not been adjusted and that the last Conversion Rate of which it has knowledge remains in effect.

Section 14.11. *Stockholder Rights Plans*. If the Company has a stockholder rights plan in effect upon conversion of the Notes, each share of Common Stock, if any, issued upon such conversion shall be entitled to receive the appropriate number of rights, if any, and the certificates representing the Common Stock issued upon such conversion shall bear such legends, if any, in each case as may be provided by the terms of any such stockholder rights plan, as the same may be amended from time to time. However, if, prior to any conversion of Notes, the rights have separated from the shares of Common Stock in accordance with the provisions of the applicable stockholder rights plan, the Conversion Rate shall be adjusted at the time of separation as if the Company distributed to all or substantially all holders of the Common Stock Distributed Property as provided in Section 14.04(c), subject to readjustment in the event of the expiration, termination or redemption of such rights.

Section 14.12. *Exchange in Lieu of Conversion*. Notwithstanding anything herein to the contrary, when a Holder surrenders its Notes for conversion, the Company may, at its election (an "**Exchange Election**"), direct the Conversion Agent to surrender, on or prior to the second Business Day following the Conversion Date, such Notes to a financial institution designated by the Company for exchange in lieu of conversion. In order to accept any Notes surrendered for conversion, the designated financial institution must agree to timely deliver, in exchange for such Notes, the cash, shares of Common Stock or combination of cash and shares of Common Stock that would otherwise be due upon conversion pursuant to Section 14.02 due upon conversion (the "**Conversion Consideration**"), all as provided in this ARTICLE 14. If the Company makes an Exchange Election, the Company shall, by the close of business on the second Business Day following the relevant Conversion Date, notify in writing the Trustee, the Conversion Agent (if other than the Trustee) and the Holder surrendering Notes for conversion that the Company has made the Exchange Election and the Company shall notify the designated financial institution of the Settlement Method the Company has elected with respect to such conversion and the relevant deadline for delivery of the Conversion Consideration.

Any Notes exchanged by the designated financial institution shall remain outstanding, subject to the applicable procedures of the Depositary. If the designated financial institution agrees to accept any Notes for exchange but does not timely deliver the Conversion Consideration, or if such designated financial institution does not accept the Notes for exchange, the Company shall deliver the Conversion Consideration due upon conversion to the converting Holder at the time and in the manner provided in this ARTICLE 14 as if the Company had not made an Exchange Election.

The Company's designation of a financial institution to which Notes may be submitted for exchange does not require such financial institution to accept any Notes, in which case the notes shall be converted in the manner provided in this ARTICLE 14. The Company may, but is not obligated to, pay any consideration to, or otherwise enter into any agreement with, any designated financial institution(s) for or with respect to such designation.

Section 14.13. *Beneficial Ownership Limitations*. (a) Notwithstanding anything to the contrary in this Indenture, no Holder (other than an Affiliated Entity) will be entitled to receive shares of Common Stock upon conversion of Notes, and no conversion of Notes shall take place, to the extent (but only to the extent) that such receipt (or conversion) would cause such Holder and its affiliates (as defined in Rule 12b-2 under the Exchange Act) and associates (as defined in Rule 12b-2 under the Exchange Act), in each case together with any other persons whose beneficial ownership would be aggregated with such Person for purposes of Section 13(d) of the Exchange Act (including, without limitation, any "group" of which such Person is a member) to beneficially own shares in excess of the Beneficial Ownership Limitations. For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by the Holder and its affiliates shall include the number of shares of Common Stock issuable upon conversion of any Notes with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which are issuable upon (i) conversion of the remaining, unexchanged principal amount of Notes beneficially owned by the Holder, its affiliates (as defined in Rule 12b-2 under the Exchange Act), its associates (as defined in Rule 12b-2 under the Exchange Act) or any other persons whose beneficial ownership would be aggregated with any of the foregoing Person for purposes of Section 13(d) of the Exchange Act (including, without limitation, any "group" of which such Person is a member) and (ii) exercise, conversion or exchange of the unexercised, unconverted or unexchanged portion of any other securities of the Company subject to a limitation on exercise, conversion or exchange analogous to the limitation contained herein (including, without limitation, any other Notes) beneficially owned by the Holder, its affiliates (as defined in Rule 12b-2 under the Exchange Act), its associates (as defined in Rule 12b-2 under the Exchange Act) or any other persons whose beneficial ownership would be aggregated with any of the foregoing Person for purposes of Section 13(d) of the Exchange Act (including, without limitation, any "group" of which such Person is a member). Except as set forth in the preceding sentence, for purposes of this provision, beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. Any purported delivery of shares of Common Stock upon conversion of the Notes held by any converting Holder (other than an Affiliated Entity) shall be void and have no effect to the extent (but only to the extent) that such delivery would result in such converting Holder exceeding the Beneficial Ownership Limitations in violation of this Section 14.13. Solely for the purpose of this Section 14.13, in the case of Global Notes, "Holder" shall mean a person that holds a beneficial interest in the Notes and not the Depository or its nominee. For the avoidance of doubt, the limitations set forth in this Section 14.13 shall not apply with respect to Notes held by an Affiliated Entity.

(b) To the extent that the limitation contained in this Section 14.13 applies, the determination of whether any Notes are convertible (in relation to other securities beneficially owned by the Holder) and of which principal amount of such Notes are convertible shall be in the sole discretion of the Holder, and, unless otherwise indicated in connection with the Notice of Conversion, the submission of a Notice of Conversion shall be deemed to be the Holder's determination of whether any Notes may be converted (in relation to other securities beneficially owned by the Holder) and which principal amount such Notes are convertible, in each case subject to the Beneficial Ownership Limitations. To ensure compliance with this restriction, unless otherwise indicated in connection with the Notice of Conversion, the Holder shall be deemed to represent to the Company each time it delivers a Notice of Conversion that such Notice of Conversion has not violated the restrictions set forth in this Section 14.13 and the Company shall have no obligation to verify or confirm the accuracy of such determination. In addition, a determination as to any "group" status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder.

(c) For purposes of this Section 14.13, in determining the number of outstanding shares of Common Stock, the Holder may rely on the number of outstanding shares of Common Stock as stated in the most recent of the following: (i) the Company's most recent periodic or annual report filed with the Commission, as the case may be, (ii) a more recent public announcement by the Company, or (iii) a more recent written notice by the Company or the Company's transfer agent to such Holder setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of a Holder, the Company shall within two Trading Days confirm orally and in writing to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the exercise, conversion or exchange of securities of the Company, including the Notes, by the Holder since the date as of which such number of outstanding shares of Common Stock was reported.

(d) The "**General Beneficial Ownership Limitation**" shall be 9.9% of the number of shares of Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon exchange of any Notes held by the Holder. Any Holder, upon written notice to the Company, may elect a beneficial ownership limit as to such Holder (but not as to any other Holder) (such limit, a "**Holder Beneficial Ownership Limitation**" and together with the General Beneficial Ownership Limitation, the "**Beneficial Ownership Limitations**") that is less than or equal to the then-applicable General Beneficial Ownership Limitation. Any Holder Beneficial Ownership Limitation will be effective as of the date specified in such notice, which shall not be earlier than (i) the date such notice is delivered to the Company in the event such notice decreases the Beneficial Ownership Limitations applicable to such Holder, and (ii) 61 days after the date such notice is delivered to the Company in all other cases.

(e) Any Notes surrendered for conversion for which shares of Common Stock are not delivered due to the Beneficial Ownership Limitations shall not be extinguished and, such Holder may either:

(i) request return of the Notes surrendered by such Holder for conversion, after which the Company shall deliver such Notes to such Holder within two Trading Days after receipt of such request; or

(ii) certify to the Company that the person (or persons) receiving shares of Common Stock upon conversion is not, and would not, as a result of such conversion, become the beneficial owner of shares of Common Stock outstanding at such time in excess of the applicable Beneficial Ownership Limitations, after which the Company shall cause to be delivered any such shares of Common Stock withheld on account of such applicable Beneficial Ownership Limitations by the later of (x) the date such shares were otherwise due to such person (or persons) and (y) two Trading Days after receipt of such certification; *provided*, *however*, until such time as the affected Holder gives such notice, no person shall be deemed to be the shareholder of record with respect to the shares of Common Stock otherwise deliverable upon conversion in excess of any applicable Beneficial Ownership Limitations. Upon delivery of such notice, the provisions under Section 14.02 shall apply to the shares of Common Stock to be delivered pursuant to such notice.

(f) Neither the Trustee nor the Conversion Agent shall have any duty to monitor Beneficial Ownership Limitations or to monitor the Company's or any Holder's compliance with this Section 14.13.

ARTICLE 15
Repurchase of Notes at Option of Holders

Section 15.01. *[Intentionally Omitted]*.

Section 15.02. *Repurchase at Option of Holders Upon a Repurchase Event*. (a) If a Repurchase Event occurs at any time prior to the Maturity Date, each Holder shall have the right, at such Holder's option, to require the Company to repurchase for cash all of such Holder's Notes, or any portion thereof (such amount, the "**Repurchase Amount**") that is equal to minimum denominations of $1,000 or an integral multiple of $1,000 in excess thereof, on the date (the "**Repurchase Event Repurchase Date**") specified by the Company that is not less than 20 Business Days or more than 35 Business Days following the date of the Repurchase Event Company Notice at a repurchase price equal to 100% of the principal amount thereof, *plus* accrued and unpaid interest thereon to, but excluding, the Repurchase Event Repurchase Date (the "**Repurchase Event Repurchase Price**"), unless the Repurchase Event Repurchase Date falls after a Regular Record Date but on or prior to the Interest Payment Date to which such Regular Record Date relates, in which case the Company shall instead pay the full amount of accrued and unpaid interest to Holders of record as of such Regular Record Date, and the Repurchase Event Repurchase Price shall be equal to 100% of the principal amount of Notes to be repurchased pursuant to this ARTICLE 15. Notwithstanding the immediately preceding sentence, in the case of a Repurchase Event resulting from a Software Disposition Event, the Repurchase Amount for each Holder shall be reduced by an amount equal to (x) the aggregate principal amount of Loans (as such term is defined in the Credit Agreement) prepaid pursuant to Section 2.5(b)(i) of the Credit Agreement as a result of such Software Disposition Event *multiplied* by (y) a fraction, the numerator of which is the aggregate principal amount of Notes held by such Holder at such time and the denominator of which is the aggregate principal amount of all Notes then outstanding. The Repurchase Event Repurchase Date shall be subject to postponement in order to allow the Company to comply with applicable law as a result of changes to such applicable law occurring after April 27, 2021.

(b) Repurchases of Notes under this Section 15.02 shall be made, at the option of the Holder thereof, upon:

(i) delivery to the Paying Agent by a Holder of a duly completed notice (the "**Repurchase Event Repurchase Notice**") in the form set forth in Attachment 2 to the Form of Note attached hereto as Exhibit A, if the Notes are Physical Notes, or in compliance with the Depositary's procedures for surrendering interests in Global Notes, if the Notes are Global Notes, in each case on or before the close of business on the Business Day immediately preceding the Repurchase Event Repurchase Date; and

(ii) delivery of the Notes, if the Notes are Physical Notes, to the Paying Agent at any time after delivery of the Repurchase Event Repurchase Notice (together with all necessary endorsements for transfer) at the Corporate Trust Office of the Paying Agent, or book-entry transfer of the Notes, if the Notes are Global Notes, in compliance with the procedures of the Depositary, in each case such delivery being a condition to receipt by the Holder of the Repurchase Event Repurchase Price therefor.

The Repurchase Event Repurchase Notice in respect of any Notes to be repurchased shall state:

(iii) in the case of Physical Notes, the certificate numbers of the Notes to be delivered for repurchase;

(iv) the portion of the principal amount of Notes to be repurchased, which must be $1,000 or an integral multiple thereof; and

(v) that the Notes are to be repurchased by the Company pursuant to the applicable provisions of the Notes and this Indenture;

provided, *however*, that if the Notes are Global Notes, the Repurchase Event Repurchase Notice must comply with applicable Depositary procedures.

Notwithstanding anything herein to the contrary, any Holder delivering to the Paying Agent the Repurchase Event Repurchase Notice contemplated by this Section 15.02 shall have the right to withdraw, in whole or in part, such Repurchase Event Repurchase Notice at any time prior to the close of business on the Business Day immediately preceding the Repurchase Event Repurchase Date by delivery of a written notice of withdrawal to the Paying Agent in accordance with Section 15.03.

The Paying Agent shall promptly notify the Company of the receipt by it of any Repurchase Event Repurchase Notice or written notice of withdrawal thereof.

(c) On or before the 20th calendar day after the occurrence of the effective date of a Repurchase Event, as applicable, the Company shall provide to all Holders of Notes and the Trustee and the Paying Agent (in the case of a Paying Agent other than the Trustee) a notice (the "**Repurchase Event Company Notice**") of the occurrence of the effective date of the Repurchase Event and of the repurchase right at the option of the Holders arising as a result thereof; *provided* that, if a Repurchase Event Company Notice required by this Section 15.02(c) is triggered solely by the occurrence of a Delisting Event, such Repurchase Event Company Notice shall be delivered by the later of (x) August 2, 2023 and (y) the 20th calendar day after the occurrence of such Delisting Event. In the case of Physical Notes, such notice shall be by first class mail or, in the case of Global Notes, such notice shall be delivered in accordance with the applicable procedures of the Depositary. Each Repurchase Event Company Notice shall specify:

(i) the events causing the Repurchase Event;

(ii) the date of the Repurchase Event;

(iii) the last date on which a Holder may exercise the repurchase right pursuant to this ARTICLE 15;

(iv) the Repurchase Event Repurchase Price;

(v) the Repurchase Event Repurchase Date;

(vi) the name and address of the Paying Agent and the Conversion Agent, if applicable;

(vii) if applicable, the Conversion Rate and any adjustments to the Conversion Rate;

(viii) that the Notes with respect to which a Repurchase Event Repurchase Notice has been delivered by a Holder may be converted only if the Holder withdraws the Repurchase Event Repurchase Notice in accordance with the terms of this Indenture; and

(ix) the procedures that Holders must follow to require the Company to repurchase their Notes.

No failure of the Company to give the foregoing notices and no defect therein shall limit the Holders' repurchase rights or affect the validity of the proceedings for the repurchase of the Notes pursuant to this Section 15.02.

At the Company's request given at least five (5) Business Days prior to the date such notice is required to be sent to Holders (or such shorter time as agreed by the Trustee), the Trustee shall give such notice in the Company's name and at the Company's expense; *provided*, *however*, that, in all cases, the text of such Repurchase Event Company Notice shall be prepared by the Company.

(d) Notwithstanding the foregoing, no Notes may be repurchased by the Company on any date at the option of the Holders upon a Repurchase Event if the principal amount of the Notes has been accelerated, and such acceleration has not been rescinded, on or prior to such date (except in the case of an acceleration resulting from a Default by the Company in the payment of the Repurchase Event Repurchase Price with respect to such Notes). The Paying Agent will promptly return to the respective Holders thereof any Physical Notes held by it during the acceleration of the Notes (except in the case of an acceleration resulting from a Default by the Company in the payment of the Repurchase Event Repurchase Price with respect to such Notes), or any instructions for book-entry transfer of the Notes in compliance with the procedures of the Depositary shall be deemed to have been cancelled, and, upon such return or cancellation, as the case may be, the Repurchase Event Repurchase Notice with respect thereto shall be deemed to have been withdrawn.

Section 15.03. *Withdrawal of Repurchase Event Repurchase Notice*. (a) A Repurchase Event Repurchase Notice may be withdrawn (in whole or in part) by means of a written notice of withdrawal delivered to the Corporate Trust Office of the Paying Agent in accordance with this Section 15.03 at any time prior to the close of business on the Business Day immediately preceding the Repurchase Event Repurchase Date, specifying:

(i) the principal amount of the Notes with respect to which such notice of withdrawal is being submitted, which must be $1,000 or an integral multiple thereof,

(ii) if Physical Notes have been issued, the certificate number of the Note in respect of which such notice of withdrawal is being submitted, and

(iii) the principal amount, if any, of such Note that remains subject to the original Repurchase Event Repurchase Notice, which portion must be in principal amounts of $1,000 or an integral multiple of $1,000;

provided, *however*, that if the Notes are Global Notes, the notice must comply with applicable procedures of the Depositary.

Section 15.04. *Deposit of Repurchase Event Repurchase Price*. (a) The Company will deposit with the Trustee (or other Paying Agent appointed by the Company, or if the Company is acting as its own Paying Agent, set aside, segregate and hold in trust as provided in Section 4.04) on or prior to 11:00 a.m., New York City time, on the Repurchase Event Repurchase Date an amount of money sufficient to repurchase all of the Notes to be repurchased at the appropriate Repurchase Event Repurchase Price. Subject to receipt of funds and/or Notes by the Trustee (or other Paying Agent appointed by the Company), payment for Notes surrendered for repurchase (and not withdrawn prior to the close of business on the Business Day immediately preceding the Repurchase Event Repurchase Date) will be

made on the later of (i) the Repurchase Event Repurchase Date (*provided* the Holder has satisfied the conditions in Section 15.02) and (ii) the time of book-entry transfer or the delivery of such Note to the Trustee (or other Paying Agent appointed by the Company) by the Holder thereof in the manner required by Section 15.02 by mailing checks for the amount payable to the Holders of such Notes entitled thereto as they shall appear in the Note Register; *provided*, *however*, that payments to the Depositary shall be made by wire transfer of immediately available funds to the account of the Depositary or its nominee. The Trustee shall, promptly after such payment and upon written demand by the Company, return to the Company any funds in excess of the Repurchase Event Repurchase Price.

(b) If by 11:00 a.m. New York City time, on the Repurchase Event Repurchase Date, the Trustee (or other Paying Agent appointed by the Company) holds money sufficient to make payment on all the Notes or portions thereof that are to be repurchased on such Repurchase Event Repurchase Date, then, with respect to the Notes that have been properly surrendered for repurchase and have not been validly withdrawn, (i) such Notes will cease to be outstanding, (ii) interest will cease to accrue on such Notes (whether or not book-entry transfer of the Notes has been made or the Notes have been delivered to the Trustee or Paying Agent) and (iii) all other rights of the Holders of such Notes will terminate (other than the right to receive the Repurchase Event Repurchase Price and, if applicable, accrued and unpaid interest).

(c) Upon surrender of a Note that is to be repurchased in part pursuant to Section 15.02, the Company shall execute and the Trustee shall authenticate and deliver to the Holder a new Note in an authorized denomination equal in principal amount to the unrepurchased portion of the Note surrendered.

Section 15.05. *Covenant to Comply with Applicable Laws Upon Repurchase of Notes*. In connection with any repurchase offer pursuant to a Repurchase Event Repurchase Notice, the Company will, if required:

(a) comply with the provisions of the tender offer rules under the Exchange Act;

(b) file a Schedule TO or any other required schedule under the Exchange Act; and

(c) otherwise comply in all material respects with all federal and state securities laws in connection with any offer by the Company to repurchase the Notes;

in each case, so as to permit the rights and obligations under this ARTICLE 15 to be exercised in the time and in the manner specified in this ARTICLE 15.

ARTICLE 16
Optional Redemption

Section 16.01. *Optional Redemption*. The Notes shall not be redeemable by the Company prior to April 20, 2024. On or after April 20, 2024, the Company may redeem (an "**Optional Redemption**"), if not otherwise prohibited by this Indenture, for cash all or any portion of the Notes, at the Redemption Price, if the Last Reported Sale Price of the Common Stock has been at least 130% of the Conversion Price then in effect for at least 20 Trading Days (whether or not consecutive) during any 30 consecutive Trading Day period (including the last Trading Day of such period) ending on, and including, the Trading Day immediately preceding, the date on which the Company provides the Redemption Notice in accordance with Section 16.02.

Section 16.02. *Notice of Optional Redemption; Selection of Notes*. (a) In case the Company exercises its Optional Redemption right to redeem all or, as the case may be, any part of the Notes pursuant to Section 16.01, it shall fix a date for redemption (each, a "**Redemption Date**") and it or, at its written request received by the Trustee not less than 5 Business Days prior to the date such Redemption Notice is to be sent (or such shorter period of time as may be acceptable to the Trustee), the Trustee, in the name of and at the expense of the Company, shall deliver or cause to be delivered a notice of such Optional Redemption (a "**Redemption Notice**") not less than 15 nor more than 35 Scheduled Trading Days prior to the Redemption Date to each Holder of Notes so to be redeemed as a whole or in part; *provided* that, if the Company shall give such notice, it shall also give written notice of the Redemption Date to the Trustee, the Conversion Agent (if other than the Trustee) and the Paying Agent (if other than the Trustee). The Redemption Date must be a Business Day. The Company may not specify a

Redemption Date that falls on or after the 11th Scheduled Trading Day immediately preceding the Maturity Date.

(b) The Redemption Notice, if delivered in the manner herein provided, shall be conclusively presumed to have been duly given, whether or not the Holder receives such notice. In any case, failure to give such Redemption Notice or any defect in the Redemption Notice to the Holder of any Note designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of any other Note.

(c) Each Redemption Notice shall specify:

(i) the Redemption Date;

(ii) the Redemption Price;

(iii) that on the Redemption Date, the Redemption Price will become due and payable upon each Note to be redeemed, and that interest thereon, if any, shall cease to accrue on and after the Redemption Date;

(iv) the place or places where such Notes are to be surrendered for payment of the Redemption Price;

(v) that Holders may surrender their Notes for conversion at any time prior to the close of business on the Scheduled Trading Day immediately preceding the Redemption Date unless the Company defaults in the payment of the Redemption Price (in which case a Holder may surrender their Notes for conversion until the Redemption Price has been paid or duly provided for);

(vi) the procedures a converting Holder must follow to convert its Notes and the Settlement Method and Specified Dollar Amount, if applicable;

(vii) the Conversion Rate and, if applicable, the number of Additional Shares added to the Conversion Rate in accordance with Section 14.03;

(viii) the CUSIP, ISIN or other similar numbers, if any, assigned to such Notes;

(ix) in case any Note is to be redeemed in part only, the portion of the principal amount thereof to be redeemed and on and after the Redemption Date, upon surrender of such Note, a new Note in principal amount equal to the unredeemed portion thereof shall be issued, which principal amount must be $1,000 or an integral multiple thereof.

(d) A Redemption Notice shall be irrevocable. An Optional Redemption may not be conditional.

(e) If fewer than all of the outstanding Notes are to be redeemed, the Notes to be redeemed will be selected according to the Depositary's applicable procedures, in the case of Notes represented by a Global Note, or, in the case of Notes represented by Physical Notes, by lot on a pro rata basis or by another method the Trustee deems to be appropriate and fair. If any Note selected for partial redemption is submitted for conversion in part after such selection, the portion of the Note submitted for conversion shall be deemed (so far as may be possible) to be the portion selected for redemption.

Section 16.03. *Payment of Notes Called for Redemption.* (a) If any Redemption Notice has been given in respect of the Notes in accordance with Section 16.02, the Notes shall become due and payable on the Redemption Date at the place or places stated in the Redemption Notice and at the applicable Redemption Price. On presentation and surrender of the Notes at the place or places stated in the Redemption Notice, the Notes shall be paid and redeemed by the Company at the applicable Redemption Price.

(b) Prior to 11:00 a.m. New York City time on the Redemption Date, the Company shall deposit with the Paying Agent or, if the Company or a Subsidiary of the Company is acting as the Paying Agent, shall segregate and hold in trust as provided in Section 7.05 an amount of cash (in immediately

available funds if deposited on the Redemption Date), sufficient to pay the Redemption Price of all of the Notes to be redeemed on such Redemption Date. Subject to receipt of funds by the Paying Agent, payment for the Notes to be redeemed shall be made on the Redemption Date for such Notes. The Paying Agent shall, promptly after such payment and upon written demand by the Company, return to the Company any funds in excess of the Redemption Price.

Section 16.04. *Restrictions on Redemption*. The Company may not redeem any Notes on any date if the principal amount of the Notes has been accelerated in accordance with the terms of this Indenture, and such acceleration has not been rescinded, on or prior to the Redemption Date (except in the case of an acceleration resulting from a Default by the Company in the payment of the Redemption Price with respect to such Notes).

ARTICLE 17
Collateral

Section 17.01. *Security Documents*.

(a) Subject to the Collateral Requirement, the due and punctual payment of the principal of, premium and interest on the Notes when and as the same shall be due and payable, whether on an interest payment date, at maturity, by acceleration, repurchase, redemption or otherwise, and interest on the overdue principal of, premium and interest on the Notes and performance of all other Notes Obligations, under this Indenture, the Notes and the Notes Security Documents, according to the terms hereunder or thereunder, shall be secured as provided in the Notes Security Documents, which define the terms of the Liens that secure the Notes Obligations, subject to the terms of the Intercreditor Agreement. Each Holder, by accepting a Note, and the Trustee, for the benefit of the Holders, hereby appoints U.S. Bank Trust Company, National Association as the initial Notes Collateral Agent, and the Notes Collateral Agent is hereby authorized and directed to execute and deliver this Indenture, the Notes Security Documents and the Intercreditor Agreement. The Trustee, the Company and the Subsidiary Guarantors hereby acknowledge and agree that the Notes Collateral Agent holds the security interest in the Collateral for the benefit of itself, the Notes Secured Parties and the Trustee and pursuant to the terms of this Indenture, the Notes Security Documents and the Intercreditor Agreement. Each Holder, by accepting a Note, and each beneficial owner of an interest in a Note, consents and agrees to the terms of the Notes Security Documents (including the provisions providing for the possession, use, release and foreclosure of Collateral) and the Intercreditor Agreement as the same may be in effect or may be amended from time to time in accordance with their terms and this Indenture and the Intercreditor Agreement, and authorizes and directs the Notes Collateral Agent to enter into the Notes Security Documents and the Intercreditor Agreement and to perform its obligations and exercise its rights thereunder in accordance therewith. Subject to the Collateral Requirement, the Company shall deliver to the Notes Collateral Agent copies of all documents required to be filed pursuant to the Notes Security Documents to which the Notes Collateral Agent is a party, and will do or cause to be done all such acts and things as may be reasonably required by the next sentence of this Section, to provide to the Notes Collateral Agent the security interest in the Collateral contemplated hereby and/or by the Notes Security Documents or any part thereof, as from time to time constituted, so as to render the same available for the security and benefit of this Indenture and of the Notes secured hereby, according to the intent and purposes herein expressed. Subject to the Collateral Requirement, the Company shall, and shall cause the Subsidiary Guarantors to, take any and all actions and make all filings (including the filing of UCC financing statements, continuation statements and amendments thereto (or analogous procedures under the applicable laws in the relevant jurisdiction)) required to cause the Notes Security Documents to create and maintain, as security for the Notes Obligations of the Grantors to the Notes Secured Parties, a valid and enforceable perfected second-priority Lien and security interest in and on all of the Collateral (subject to the terms of the Intercreditor Agreement and the Notes Security Documents), in favor of the Notes Collateral Agent for the benefit of the Notes Secured Parties subject to no Liens other than Permitted Liens.

(b) Notwithstanding any provision hereof to the contrary, the provisions of this Article are qualified in their entirety by the Collateral Requirement and neither the Company nor any other Grantor shall be required pursuant to this Indenture or any Notes Security Document to take any action that would be inconsistent with the Collateral Requirement.

Section 17.02. *Release of Collateral*. Each of the Trustee and the Holders hereby authorizes the Notes Collateral Agent to release any Collateral or any Subsidiary Guarantor that is permitted to be sold or released pursuant to the terms of this Indenture and the Notes Security Documents. Each of the Trustee and the Holders hereby authorizes the Notes Collateral Agent to execute and deliver to the Company, at the Company's sole cost and expense, any and all releases of Liens, termination

statements, assignments or other documents reasonably requested by the Company in connection with (a) the satisfaction and discharge of this Indenture or (b) any sale or other Disposition of property to the extent such sale or other Disposition is authorized by the terms of this Indenture and the Notes Security Documents, as evidenced in an Officer's Certificate delivered to the Notes Collateral Agent; provided that, prior to the satisfaction and discharge of this Indenture, the Liens on any Collateral securing the Notes Obligations shall not be released upon a sale, transfer or other Disposition of such Collateral to any Person that is, or that is required to be, in each case at the time of such sale, transfer or other Disposition, and after giving effect thereto, a Grantor (but in each case disregarding the grace period provided for in Section 4.24). Upon the request of the Company, in connection with any transaction otherwise permitted by this Indenture and the Notes Security Documents, the Notes Collateral Agent is authorized to release Collateral that is Disposed of to any Person (other than to a Person that is, or that is required to be, in each case at the time of such Disposition, and after giving effect thereto, a Grantor (but in each case disregarding the grace period provided for in Section 4.24), or to any Person that ceases to be a Subsidiary of the Company at the time of such Disposition, and after giving effect thereto.

Section 17.03. *Suits to Protect Collateral*. Subject to this Indenture and the Security Documents and the Intercreditor Agreement, including Section 6.02 of this Indenture, the Trustee, without the consent of the Holders, on behalf of the Holders, if an Event of Default has occurred and is continuing, may or may instruct the Notes Collateral Agent in writing to take all actions it reasonably determines are necessary in order to enforce any of the terms of the Notes Security Documents and collect and receive any and all amounts payable in respect of the Notes Obligations hereunder. Subject to the provisions of the Notes Security Documents and the Intercreditor Agreement, if applicable, the Trustee and the Notes Collateral Agent shall have power to institute and to maintain such suits and proceedings as the Trustee may deem expedient to prevent any impairment of the Collateral by any acts which may be unlawful or in violation of any of the Notes Security Documents or this Indenture, and such suits and proceedings as the Trustee may determine to preserve or protect its interests and the interests of the Holders in the Collateral. Nothing in this Section 17.03 shall be considered to impose any such duty or obligation to act on the part of the Trustee or the Notes Collateral Agent.

Section 17.04. *Authorization of Receipt of Funds by the Trustee*. Subject to the provisions of the Intercreditor Agreement, the Trustee is authorized to receive any funds for the benefit of the Holders distributed under the Notes Security Documents, and to make further distributions of such funds to the Holders according to the provisions of this Indenture.

Section 17.05. *Purchaser Protected*. In no event shall any purchaser or other transferee in good faith of any property or asset purported to be released hereunder be bound to ascertain the authority of the Notes Collateral Agent or the Trustee to execute the release or to inquire as to the satisfaction of any conditions required by the provisions hereof for the exercise of such authority or to see to the application of any consideration given by such purchaser or other transferee, nor shall any purchaser or other transferee of any property, asset or rights permitted by this ARTICLE 17 to be sold be under any obligation to ascertain or inquire into the authority of the Company or the applicable Subsidiary Guarantor to make any such sale or other transfer.

Section 17.06. *Powers Exercisable by the Receiver or Trustee*. In case the Collateral shall be in the possession of a receiver or trustee, lawfully appointed, the powers conferred in this ARTICLE 17 upon the Company or a Subsidiary Guarantor with respect to the release, sale or other disposition of such property or asset may be exercised by such receiver or trustee, and an instrument signed by such receiver or trustee shall be deemed the equivalent of any similar instrument of the Company or a Subsidiary Guarantor or of any Officer or Officers thereof required by the provisions of this this ARTICLE 17; and if the Trustee or Notes Collateral Agent shall be in the possession of the Collateral under any provision of this Indenture, then such powers may be exercised by the Trustee or Notes Collateral Agent, as applicable.

Section 17.07. *Matters Relating to the Notes Collateral Agent*.

(a) The Company and each Subsidiary Guarantor, and each of the Holders by acceptance of the Notes, and each beneficial owner of an interest in a Note, hereby designates and appoints the Notes Collateral Agent as its agent under this Indenture, the Notes Security Document and the Intercreditor Agreement and each of the Company and the Subsidiary Guarantors directs and authorizes, and each of the Holders by acceptance of the Notes hereby irrevocably authorizes, the Notes Collateral Agent to take such action on its behalf under the provisions of this Indenture, the Notes Security Documents and the Intercreditor Agreement and to exercise such powers and perform such duties as are expressly delegated to the Notes Collateral Agent by the terms of this Indenture, the Notes Security Documents and the

Intercreditor Agreement, and consents and agrees to the terms of the Intercreditor Agreement and each Notes Security Document, as the same may be in effect or may be amended, restated, supplemented or otherwise modified from time to time in accordance with their respective terms or the terms of this Indenture. The Notes Collateral Agent agrees to act as such on the express conditions contained in this Section 17.07. The provisions of this Section 17.07 are solely for the benefit of the Notes Collateral Agent and none of the Trustee, any of the Holders nor any of the Company or any Subsidiary Guarantor shall have any rights as a third party beneficiary of any of the provisions contained herein. Each Holder agrees that any action taken by the Notes Collateral Agent in accordance with the provisions of this Indenture, the Intercreditor Agreement and/or the applicable Notes Security Documents, and the exercise by the Notes Collateral Agent of any rights or remedies set forth herein and therein shall be authorized and binding upon all Holders. Notwithstanding any provision to the contrary contained elsewhere in this Indenture, the Notes Security Documents and the Intercreditor Agreement, the duties of the Notes Collateral Agent shall be ministerial and administrative in nature, and the Notes Collateral Agent shall not have any duties or responsibilities, except those expressly set forth herein and in the other Notes Documents to which the Notes Collateral Agent is a party, nor shall the Notes Collateral Agent have or be deemed to have any trust or other fiduciary relationship with the Trustee, any Holder or any Grantor, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Indenture, the Notes Security Documents or the Intercreditor Agreement or otherwise exist against the Notes Collateral Agent. Without limiting the generality of the foregoing sentence, the use of the term "agent" in this Indenture with reference to the Notes Collateral Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

(b) The Notes Collateral Agent may perform any of its duties under this Indenture, the Notes Security Documents or the Intercreditor Agreement by or through receivers, agents, employees, attorneys-in-fact or with respect to any specified Person, such Person's Affiliates, and the respective officers, directors, employees, agents, advisors and attorneys-in-fact of such Person and its Affiliates (a "Related Person"), and shall be entitled to advice of counsel concerning all matters pertaining to such duties, and shall be entitled to act upon, and shall be fully protected in taking action in reliance upon any advice or opinion given by legal counsel. The Notes Collateral Agent shall not be responsible for the negligence or willful misconduct of any receiver, agent, employee, attorney-in-fact or Related Person that it selects as long as such selection was made in good faith. Neither the Notes Collateral Agent nor any of its Related Persons shall (i) be liable for any action taken or omitted to be taken by any of them under or in connection with this Indenture or the transactions contemplated hereby (except for its own gross negligence or willful misconduct) or under or in connection with any Notes Security Document or the Intercreditor Agreement or the transactions contemplated thereby (except for its own gross negligence or willful misconduct), or (ii) be responsible in any manner to any of the Trustee or any Holder for any recital, statement, representation, warranty, covenant or agreement made by the Company or any other Grantor or Affiliate of any Grantor, or any Officer or Related Person thereof, contained in this Indenture, or any other Notes Documents, or in any certificate, report, statement or other document referred to or provided for in, or received by the Notes Collateral Agent under or in connection with, this Indenture, the Notes Security Documents or the Intercreditor Agreement, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Indenture, the Notes Security Documents or the Intercreditor Agreement, or for any failure of any Grantor or any other party to this Indenture, the Notes Security Documents or the Intercreditor Agreement to perform its obligations hereunder or thereunder. The Notes Collateral Agent nor any of its respective Related Persons shall not be under any obligation to the Trustee or any Holders to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Indenture, the Notes Security Documents or the Intercreditor Agreement or to inspect the properties, books, or records of any Grantor or any Grantor's Affiliates.

(c) The Notes Collateral Agent shall be entitled (in the absence of bad faith) to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, telegram, facsimile, certification, telephone message, statement, or other communication, document or conversation (including those by telephone or e-mail) believed by it to be genuine and correct and to have been signed, sent, or made by the proper Person or Persons, and upon advice and statements of legal counsel, independent accountants and/or other experts and advisors selected by the Notes Collateral Agent. The Notes Collateral Agent shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, or other paper or document. Unless otherwise expressly required hereunder or pursuant to any Notes Security Document, the Notes Collateral Agent shall be fully justified in failing or refusing to take any action under this Indenture, the Notes Security Documents or the Intercreditor Agreement unless it shall first receive such written advice or concurrence of the Trustee or the Holders of the majority of aggregate principal amount of the Notes or the Required Holders, to the

extent required pursuant to Section 10.02 or Sections 6, 7, 8 or 9 of the Notes Security Agreement, as it determines and, if it so requests, it shall first be indemnified to its satisfaction by the Holders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. The Notes Collateral Agent shall in all cases be fully protected from claims by any Holders in acting, or in refraining from acting, under this Indenture, the Notes Security Documents or the Intercreditor Agreement in accordance with a request, direction, instruction or consent of the Trustee or the requisite Holders and such request and any action taken or failure to act pursuant thereto shall be binding upon all of the Holders.

(d) The Notes Collateral Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, unless a Responsible Officer of the Notes Collateral Agent shall have received written notice from the Trustee or the Company referring to this Indenture, describing such Default or Event of Default and stating that such notice is a "notice of default." The Notes Collateral Agent shall take such action with respect to such Default or Event of Default as may be requested by the Trustee in accordance with ARTICLE 6, the Holders of the majority of aggregate principal amount of the Notes or the Required Holders, to the extent required pursuant to Section 10.02 or Sections 6, 7, 8 or 9 of the Notes Security Agreement (in each case subject to this Section 17.07).

(e) The Notes Collateral Agent may resign at any time by notice to the Trustee and the Company, such resignation to be effective upon the acceptance of a successor agent to its appointment as Notes Collateral Agent. If the Notes Collateral Agent resigns under this Indenture, the Company shall appoint a successor collateral agent. If no successor collateral agent is appointed prior to the intended effective date of the resignation of the Notes Collateral Agent (as stated in the notice of resignation), the Notes Collateral Agent may appoint, after consulting with the Trustee, subject to the consent of the Company (which shall not be unreasonably withheld and which shall not be required during a continuing Event of Default), a successor collateral agent. If no successor collateral agent is appointed and consented to by the Company pursuant to the preceding sentence within thirty (30) days after the intended effective date of resignation (as stated in the notice of resignation) the Notes Collateral Agent shall be entitled to petition a court of competent jurisdiction to appoint a successor. Upon the acceptance of its appointment as successor collateral agent hereunder, such successor collateral agent shall succeed to all the rights, powers and duties of the retiring Notes Collateral Agent, and the term "Notes Collateral Agent" shall mean such successor collateral agent, and the retiring Notes Collateral Agent's appointment, powers and duties as the Notes Collateral Agent shall be terminated. After the retiring Notes Collateral Agent's resignation hereunder, the provisions of this Section 17.07 (and Section 7.06) shall continue to inure to its benefit and the retiring Notes Collateral Agent shall not by reason of such resignation be deemed to be released from liability as to any actions taken or omitted to be taken by it while it was the Notes Collateral Agent under this Indenture.

(f) The Company and Subsidiary Guarantors, and each of the Holders by its acceptance of the Notes, and each beneficial owner of an interest in a Note, hereby authorizes the Trustee and the Notes Collateral Agent, respectively, to appoint co-collateral agents, sub-agents and other additional collateral agents (and, in each case, appointment of such person shall be reflected in documentation, which the Trustee and the Notes Collateral Agent are hereby authorized to enter into) as the Notes Collateral Agent deems necessary or appropriate. Except as otherwise explicitly provided herein or in the Notes Security Documents or the Intercreditor Agreement, no collateral agent nor any of its respective officers, directors, employees or agents or other Related Persons 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 other Person or to take any other action whatsoever with regard to the Collateral or any part thereof. The Notes Collateral Agent shall be accountable only for amounts that it actually receives as a result of the exercise of such powers, and neither the Notes Collateral Agent nor any of their respective officers, directors, employees or agents shall be responsible for any act or failure to act hereunder, except for its own gross negligence or willful misconduct.

(g) The Notes Collateral Agent is authorized and directed to (i) enter into the Notes Security Documents to which it is party, whether executed on or after the date hereof, (ii) enter into a supplement or joinder to the Intercreditor Agreement, (iii) make the representations of the Holders set forth in the Notes Security Documents or the Intercreditor Agreement, (iv) bind the Holders on the terms as set forth in the Notes Security Documents or the Intercreditor Agreement and (v) perform and observe its obligations under the Notes Security Documents and the Intercreditor Agreement. Whether or not expressly provided therein, when entering into and performing under any other Notes Document, the Notes Collateral Agent shall be entitled to all of the rights, privileges, immunities and indemnities granted to it under this Indenture.

(h) If applicable, the Notes Collateral Agent is the Trustee's and each Holder's agent for the purpose of perfecting the Holders' and the Trustee's security interest in assets which, in accordance with Article 9 of the UCC can be perfected only by possession. Should the Trustee obtain possession of any such Collateral, upon request from the Company, the Trustee shall notify the Notes Collateral Agent thereof and promptly shall deliver such Collateral to the Notes Collateral Agent or otherwise deal with such Collateral in accordance with the Notes Collateral Agent's instructions.

(i) The Notes Collateral Agent shall not have any obligation whatsoever to the Trustee or any of the Holders to assure that the Collateral exists or is owned by any Grantor or is cared for, protected, or insured or has been encumbered, or that the Notes Collateral Agent's Liens have been properly or sufficiently or lawfully created, perfected, protected, maintained or enforced or are entitled to any particular priority, or to determine whether all of the Grantor's property constituting collateral intended to be subject to the Lien and security interest of the Notes Security Documents has been properly and completely listed or delivered, as the case may be, or the genuineness, validity, marketability or sufficiency thereof or title thereto, or to exercise at all or in any particular manner or under any duty of care, disclosure, or fidelity, or to continue exercising, any of the rights, authorities, and powers granted or available to the Notes Collateral Agent pursuant to this Indenture, any Notes Security Document or the Intercreditor Agreement other than pursuant to the instructions of the Trustee or the requisite Holders or as otherwise provided in the Notes Security Documents, it being understood and agreed that in respect of the Collateral, or any act, omission, or event related thereto, no Notes Collateral Agent shall have any other duty or liability whatsoever to the Trustee or any Holders or any other Notes Collateral Agent as to any of the foregoing.

(j) If the Company or any Subsidiary Guarantor incurs any obligations in respect of first-priority obligations that is permitted by the terms of this Indenture at any time when neither the Intercreditor Agreement nor any other intercreditor agreement in respect of such first-priority obligations is in effect or at any time when Indebtedness constituting first-priority obligations entitled to the benefit of such Intercreditor Agreement or other intercreditor agreement is concurrently retired, or incurs any other obligations permitted hereunder and required to be subject to an intercreditor agreement, subject to the second paragraph of Section 10.01, the Notes Collateral Agent and the Trustee (as applicable) are hereby authorized and directed to enter into such intercreditor agreement (at the sole expense and cost of the Company, including reasonable and documented legal fees and expenses of the Notes Collateral Agent and Trustee incurred in connection therewith), and bind the Holders on the terms set forth therein and perform and observe its obligations thereunder.

(k) If the Company or any Subsidiary Guarantor incurs any obligations in respect of Indebtedness on which a junior lien on the Collateral is to be granted that is permitted by the terms of this Indenture, subject to the second paragraph of Section 10.01, the Notes Collateral Agent and the Trustee (as applicable) are hereby authorized and directed to enter into such intercreditor agreement (at the sole expense and cost of the Company, including legal fees and expenses of the Notes Collateral Agent and Trustee) and bind the Holders on the terms set forth therein and perform and observe its obligations thereunder.

(l) No provision of this Indenture or the Intercreditor Agreement or any Notes Security Document shall require the Notes Collateral Agent (or the Trustee) to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or thereunder or to take or omit to take any action hereunder or thereunder or take any action at the request or direction of Holders (or the Trustee in the case of the Notes Collateral Agent) unless it shall have first received security or indemnity satisfactory to the Notes Collateral Agent against potential costs and liabilities incurred by the Notes Collateral Agent relating thereto. Notwithstanding anything to the contrary contained in this Indenture, the Intercreditor Agreement or the Notes Security Documents, in the event the Notes Collateral Agent is entitled or required to commence an action to foreclose or otherwise exercise its remedies to acquire control or possession of the Collateral, the Notes Collateral Agent shall not be required to commence any such action or exercise any remedy or to inspect or conduct any studies of any property under the Mortgages or take any such other action if the Notes Collateral Agent has determined that it may incur personal liability as a result of the presence at, or release on or from, the Collateral or such property, of any hazardous substances unless the Notes Collateral Agent has received security or indemnity from the Holders in an amount and in a form all satisfactory to the Notes Collateral Agent in its sole discretion, protecting the Notes Collateral Agent from all such liability. The Notes Collateral Agent shall at any time be entitled to cease taking any action described in this Section if it no longer reasonably deems any indemnity, security or undertaking from the Company or the Holders to be sufficient.

(m) The Notes Collateral Agent (i) shall not be liable for any action taken or omitted to be taken by it in connection with this Indenture, the Intercreditor Agreement and the Notes Security Documents or instrument referred to herein or therein, except to the extent that any of the foregoing are found by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from its own gross negligence or willful misconduct, (ii) shall not be liable for interest on any money received by it except as the Notes Collateral Agent may agree in writing with the Company (and money held in trust by the Notes Collateral Agent (a) shall be held uninvested without liability for interest, unless otherwise agreed in writing, (b) shall be held in a non-interest bearing trust account and (c) shall not be segregated from other funds except to the extent required by law) and (iii) may consult with counsel of its selection and the advice or opinion of such counsel as to matters of law shall be full and complete authorization and protection from liability in respect of any action taken, omitted or suffered by it in good faith and in accordance with the advice or opinion of such counsel. The grant of permissive rights or powers to the Notes Collateral Agent shall not be construed to impose duties to act.

(n) Neither the Notes Collateral Agent nor the Trustee shall be liable for delays or failures in performance resulting from acts beyond its control. Such acts shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, communication line failures, computer viruses, power failures, earthquakes or other disasters. Neither the Notes Collateral Agent nor the Trustee shall be liable for any indirect, special, punitive, incidental or consequential damages (included but not limited to lost profits) whatsoever, even if it has been informed of the likelihood thereof and regardless of the form of action.

(o) The Notes Collateral Agent assumes no responsibility for any failure or delay in performance or any breach by the Company or any other Grantor under this Indenture, the Intercreditor Agreement or the Notes Security Documents. The Notes Collateral Agent shall not be responsible to the Holders or any other Person for any recitals, statements, information, representations or warranties contained in any Notes Documents or in any certificate, report, statement, or other document referred to or provided for in, or received by the Notes Collateral Agent under or in connection with, this Indenture, the Intercreditor Agreement or any Notes Security Document; the execution, validity, genuineness, effectiveness or enforceability of the Intercreditor Agreement or any Notes Security Document of any other party thereto; the genuineness, enforceability, collectability, value, sufficiency, location or existence of any Collateral, or the validity, effectiveness, enforceability, sufficiency, extent, perfection or priority of any Lien therein; the validity, enforceability or collectability of any Notes Obligations; the assets, liabilities, financial condition, results of operations, business, creditworthiness or legal status of any obligor; or for any failure of any obligor to perform its Notes Obligations under this Indenture, the Intercreditor Agreement or any Notes Security Document. The Notes Collateral Agent shall not have any obligation to any Holder or any other Person to ascertain or inquire into the existence of any Default or Event of Default, the observance or performance by any obligor of any terms of this Indenture, the Intercreditor Agreement, the Credit Agreement or any Notes Security Document, or the satisfaction of any conditions precedent contained in this Indenture, the Intercreditor Agreement or any Notes Security Document. The Notes Collateral Agent shall not be required to initiate or conduct any litigation or collection or other proceeding under this Indenture, the Intercreditor Agreement or any Notes Security Document unless expressly set forth hereunder or thereunder. Without limiting its obligations as expressly set forth herein, the Notes Collateral Agent shall have the right at any time to seek instructions from the Holders with respect to the administration of the Notes Documents.

(p) The parties hereto and the Holders hereby agree and acknowledge that the Notes Collateral Agent shall not assume, be responsible for or otherwise be obligated for any liabilities, claims, causes of action, suits, losses, allegations, requests, demands, penalties, fines, settlements, damages (including foreseeable and unforeseeable), judgments, expenses and costs (including but not limited to, any remediation, corrective action, response, removal or remedial action, or investigation, operations and maintenance or monitoring costs, for personal injury or property damages, real or personal) of any kind whatsoever, pursuant to any environmental law as a result of this Indenture, the Intercreditor Agreement, any Notes Security Document or any actions taken pursuant hereto or thereto. Further, the parties hereto and the Holders hereby agree and acknowledge that in the exercise of its rights under this Indenture, the Intercreditor Agreement and the Notes Security Documents, the Notes Collateral Agent may hold or obtain indicia of ownership primarily to protect the security interest of the Notes Collateral Agent in the Collateral and that any such actions taken by the Notes Collateral Agent shall not be construed as or otherwise constitute any participation in the management of such Collateral. However, if the Notes Collateral Agent is required to acquire title to an asset pursuant to this Indenture which in the Notes Collateral Agent's reasonable discretion may cause the Notes Collateral Agent to be considered an "owner or operator" under the provisions of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §9601, et seq., or otherwise cause the Notes Collateral Agent to incur liability under CERCLA or any equivalent federal, state or local law, the Notes Collateral Agent

reserves the right, instead of taking such action, to either resign as the Notes Collateral Agent hereunder or arrange for the transfer of the title or control of the asset to a court-appointed receiver.

(q) Upon the receipt by the Notes Collateral Agent of an Officer's Certificate, the Notes Collateral Agent is hereby authorized to execute and enter into, and shall execute and enter into, without the further consent of any Holder or the Trustee, any Notes Security Document to be executed after the date hereof that is permitted to be entered into pursuant to this Indenture or the Notes Security Documents. Such Officer's Certificate shall (i) state that it is being delivered to the Notes Collateral Agent pursuant to this Section 17.07(q), and (ii) instruct the Notes Collateral Agent to execute and enter into such Notes Security Document and such Officer's Certificate shall state that such Notes Security Document is permitted to be entered into pursuant to this Indenture. Any such execution of a Notes Security Document shall be at the direction and expense of the Company, upon delivery to the Notes Collateral Agent of an Officer's Certificate stating that all conditions precedent (if any) to the execution and delivery of the applicable Notes Security Document have been satisfied. The Holders, by their acceptance of the Notes, hereby authorize and direct the Notes Collateral Agent to execute such Notes Security Documents.

(r) Subject to the provisions of the applicable Notes Security Documents and the Intercreditor Agreement, each Holder, by acceptance of the Notes, agrees that the Notes Collateral Agent shall execute and deliver the Intercreditor Agreement and the Notes Security Documents to which it is a party and all agreements, documents and instruments incidental thereto (including any releases permitted hereunder and thereunder), and act in accordance with the terms thereof. For the avoidance of doubt, the Notes Collateral Agent shall not be required to exercise discretion under this Indenture, the Intercreditor Agreement or the Notes Security Documents and shall not be required to make or give any determination, consent, approval, request or direction without the written direction of the requisite Holders or the Trustee, as applicable, except as otherwise expressly provided for herein or in any Notes Security Document or the Intercreditor Agreement.

(s) If an Event of Default has occurred and is continuing, the Trustee may direct the Notes Collateral Agent in connection with any action required or permitted by this Indenture, the Notes Security Documents or the Intercreditor Agreement.

(t) The Notes Collateral Agent is authorized to receive any funds for the benefit of itself, the Trustee and the Holders distributed under the Notes Security Documents or the Intercreditor Agreement and to the extent not prohibited under the Intercreditor Agreement, for turnover to the Trustee to make further distributions of such funds to itself, the Trustee and the Holders in accordance with the provisions of Section 6.05 and the other provisions of this Indenture.

(u) Subject to the terms of the Notes Security Documents and the Intercreditor Agreement, in each case that the Notes Collateral Agent may or is required hereunder or under any other Notes Document to take any action (an "**Action**"), including without limitation to make any determination, to give consents, to exercise rights, powers or remedies, to release or sell Collateral or otherwise to act hereunder or under any other Notes Document, the Notes Collateral Agent may seek direction from the requisite Holders. The Notes Collateral Agent shall not be liable with respect to any Action taken or omitted to be taken by it in accordance with the direction from the requisite Holders. Subject to the terms of the Notes Security Documents and the Intercreditor Agreement, if the Notes Collateral Agent shall request direction from the requisite Holders with respect to any Action, the Notes Collateral Agent shall be entitled to refrain from such Action unless and until the Notes Collateral Agent shall have received direction from the requisite Holders, and the Notes Collateral Agent shall not incur liability to any Person by reason of so refraining.

(v) Notwithstanding anything to the contrary in this Indenture or any other Notes Document, in no event shall the Notes Collateral Agent or the Trustee be responsible for, or have any duty or obligation with respect to, the recording, filing, registering, perfection, protection or maintenance of the security interests or Liens intended to be created by this Indenture or the other Notes Documents (including without limitation the filing or continuation of any UCC financing or continuation statements or similar documents or instruments (or analogous procedures under the applicable laws in the relevant jurisdiction), nor shall the Notes Collateral Agent or the Trustee be responsible for, and neither the Notes Collateral Agent nor the Trustee makes any representation regarding, the validity, effectiveness or priority of any of the Notes Security Documents or the security interests or Liens intended to be created thereby.

(w) Before the Notes Collateral Agent acts or refrains from acting in each case at the request or direction of the Company, the Subsidiary Guarantors or the Trustee, it may require an Officer's

Certificate. The Notes Collateral Agent shall not be liable for any action it takes or omits to take in good faith in reliance on such certificate.

(x) Notwithstanding anything to the contrary contained herein, except as otherwise expressly provided for otherwise herein or in any other Note Document, the Notes Collateral Agent shall only act pursuant to the instructions of the requisite Holders and/or the Trustee with respect to the Notes Security Documents and the Collateral.

(y) The Company shall pay compensation to, reimburse expenses of and indemnify the Notes Collateral Agent in accordance with Section 7.06. Accordingly, the reference to the "Trustee" in Section 7.06 shall be deemed to include the reference to the Notes Collateral Agent. The obligations of the Company and Subsidiary Guarantors to compensate, reimburse and indemnify the Notes Collateral Agent in accordance with the Notes Documents shall survive the discharge of this Indenture, termination of the other Notes Documents and the resignation or removal of the Notes Collateral Agent.

ARTICLE 18
Miscellaneous Provisions

Section 18.01. *Provisions Binding on Successors*. All the covenants, stipulations, promises and agreements of the Company and Subsidiary Guarantors contained in this Indenture shall bind its successors and assigns whether so expressed or not.

Section 18.02. *Official Acts by Successor Corporation*. Any act or proceeding by any provision of this Indenture authorized or required to be done or performed by any board, committee or Officer of the Company or a Subsidiary Guarantor, as applicable, shall and may be done and performed with like force and effect by the like board, committee or officer of any corporation or other entity that shall at the time be the lawful sole successor of the Company.

Section 18.03. *Addresses for Notices, Etc*. Any notice or demand that by any provision of this Indenture is required or permitted to be given or served by the Trustee or by the Holders on the Company shall be deemed to have been sufficiently given or made, for all purposes if given or served by being deposited postage prepaid by registered or certified mail in a post office letter box addressed (until another address is filed by the Company with the Trustee) to NantHealth, Inc., 9922 Jefferson Blvd., Culver City, CA 90232, Attention: General Counsel. Any notice, direction, request or demand hereunder to or upon the Trustee or the Notes Collateral Agent shall be deemed to have been sufficiently given or made, for all purposes, if given or served by being deposited postage prepaid by registered or certified mail in a post office letter box addressed to the applicable Corporate Trust Office or sent electronically in PDF format, whether sent by mail or electronically, upon actual receipt by the Trustee or the Notes Collateral Agent, as applicable.

The Trustee and the Notes Collateral Agent, by notice to the Company, may designate additional or different addresses for subsequent notices or communications.

Any notice or communication given to a Holder shall be sent electronically through the facilities of the Depositary (in the case of Holders of Global Notes) or mailed to it by first class mail, postage prepaid, at its address as it appears on the Note Register and shall be sufficiently given to it if so mailed within the time prescribed.

Failure to give a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders. If a notice or communication is given in the manner provided above, it is duly given, whether or not the addressee receives it.

In case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice to Holders by mail, then such notification as shall be made with the approval of the Trustee shall constitute a sufficient notification for every purpose hereunder.

Section 18.04. *Governing Law; Jurisdiction*. THIS INDENTURE, EACH NOTE, THE NOTES SECURITY DOCUMENTS, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS INDENTURE, ANY NOTE, OR ANY NOTE SECURITY DOCUMENTS SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO THE CONFLICTS OF LAWS PROVISIONS THEREOF).

Each of the Company and each Subsidiary Guarantor irrevocably consents and agrees, for the benefit of the Holders from time to time of the Notes, the Trustee and the Notes Collateral Agent, that any legal action, suit or proceeding against it with respect to obligations, liabilities or any other matter arising out of or in connection with this Indenture or the Notes may be brought in the courts of the State of New York or the courts of the United States located in the Borough of Manhattan, New York City, New York and, until amounts due and to become due in respect of the Notes have been paid, hereby irrevocably consents and submits to the non-exclusive jurisdiction of each such court *in personam*, generally and unconditionally with respect to any action, suit or proceeding for itself in respect of its properties, assets and revenues.

Each of the Company and each Subsidiary Guarantor irrevocably and unconditionally waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions, suits or proceedings arising out of or in connection with this Indenture brought in the courts of the State of New York or the courts of the United States located in the Borough of Manhattan, New York City, New York and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

Section 18.05. *Evidence of Compliance with Conditions Precedent; Certificates and Opinions of Counsel to Trustee*. Upon any application or demand by the Company to the Trustee or the Notes Collateral Agent to take any action under any of the provisions of this Indenture, the Company shall, if requested by the Trustee or the Notes Collateral Agent, as applicable, furnish to the Trustee or, if such action relates to a Security Document or the Intercreditor Agreement, the Notes Collateral Agent, an Officer's Certificate and an Opinion of Counsel stating that such action is permitted by the terms of this Indenture.

Each Officer's Certificate or Opinion of Counsel, as the case may be, provided for, by or on behalf of the Company in this Indenture and delivered to the Trustee or the Notes Collateral Agent with respect to compliance with a condition provided for in this Indenture (other than the Officer's Certificates provided for in Section 4.08) shall include (a) a statement that the person signing such certificate is familiar with the requested action and this Indenture; (b) a brief statement as to the nature and scope of the examination or investigation upon which the statement contained in such certificate is based; (c) a statement that, in the judgment of such person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed judgment as to whether or not such action is permitted by this Indenture; and (d) a statement as to whether or not, in the judgment of such person, such action is permitted by this Indenture and that all conditions precedent thereto have been complied with.

Notwithstanding anything to the contrary in this Section 18.05, if any provision in this Indenture specifically provides that the Trustee or the Notes Collateral Agent shall or may receive an Opinion of Counsel in connection with any action to be taken by the Trustee or the Notes Collateral Agent or the Company hereunder, the Trustee and the Notes Collateral Agent shall be entitled to such Opinion of Counsel.

Section 18.06. *Legal Holidays*. In any case where any Interest Payment Date, Repurchase Event Repurchase Date or Maturity Date is not a Business Day, then any action to be taken on such date need not be taken on such date, but may be taken on the next succeeding Business Day with the same force and effect as if taken on such date, and no interest shall accrue in respect of the delay.

Section 18.07. *Benefits of Indenture*. Nothing in this Indenture or in the Notes, expressed or implied, shall give to any Person, other than the Holders, the parties hereto, any Paying Agent, any Conversion Agent, any authenticating agent, any Note Registrar and their successors hereunder, any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 18.08. *Table of Contents, Headings, Etc.* The table of contents and the titles and headings of the articles and sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

Section 18.09. *Authenticating Agent*. The Trustee may appoint an authenticating agent that shall be authorized to act on its behalf and subject to its direction in the authentication and delivery of Notes in connection with the original issuance thereof and transfers and exchanges of Notes hereunder, including under Section 2.04, Section 2.05, Section 2.06, Section 2.07, Section 10.04 and Section 15.04 as fully to all intents and purposes as though the authenticating agent had been expressly authorized by

this Indenture and those Sections to authenticate and deliver Notes. For all purposes of this Indenture, the authentication and delivery of Notes by the authenticating agent shall be deemed to be authentication and delivery of such Notes "by the Trustee" and a certificate of authentication executed on behalf of the Trustee by an authenticating agent shall be deemed to satisfy any requirement hereunder or in the Notes for the Trustee's certificate of authentication. Such authenticating agent shall at all times be a Person eligible to serve as trustee hereunder pursuant to Section 7.08.

Any corporation or other entity into which any authenticating agent may be merged or converted or with which it may be consolidated, or any corporation or other entity resulting from any merger, consolidation or conversion to which any authenticating agent shall be a party, or any corporation or other entity succeeding to the corporate trust business of any authenticating agent, shall be the successor of the authenticating agent hereunder, if such successor corporation or other entity is otherwise eligible under this Section 18.09, without the execution or filing of any paper or any further act on the part of the parties hereto or the authenticating agent or such successor corporation or other entity.

Any authenticating agent may at any time resign by giving written notice of resignation to the Trustee and to the Company. The Trustee may at any time terminate the agency of any authenticating agent by giving written notice of termination to such authenticating agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time any authenticating agent shall cease to be eligible under this Section, the Trustee may appoint a successor authenticating agent (which may be the Trustee), shall give written notice of such appointment to the Company and shall give notice of such appointment to all Holders as the names and addresses of such Holders appear on the Note Register.

The Company agrees to pay to the authenticating agent from time to time reasonable compensation for its services although the Company may terminate the authenticating agent, if it determines such agent's fees to be unreasonable.

The provisions of Section 7.02, Section 7.03, Section 7.04, Section 8.03 and this Section 18.09 shall be applicable to any authenticating agent.

If an authenticating agent is appointed pursuant to this Section 18.09, the Notes may have endorsed thereon, in addition to the Trustee's certificate of authentication, an alternative certificate of authentication in the following form:

__
as Authenticating Agent, certifies that this is one of the Notes described in the within-named Indenture.

By: __
Authorized Signatory

Section 18.10. Execution in Counterparts. This Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument. The exchange of copies of this Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to this Indenture or any document to be signed in connection with this Indenture shall be deemed to include electronic signatures, 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 applicable, to the fullest 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 and any other similar state laws based on the Uniform Electronic Transactions Act; *provided* that, notwithstanding anything herein to the contrary, the Trustee and the Notes Collateral Agent are under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Trustee and the Notes Collateral Agent pursuant to reasonable procedures approved by the Trustee and the Notes Collateral Agent. Any communication sent to Trustee or the Notes Collateral Agent under this Indenture that requires a signature must be in the form of a document that is signed manually or by way of a digital signature provided by DocuSign (or such other digital signature provider as specified in writing to Trustee or the Notes Collateral Agent by an authorized representative of the Company). The Company agrees to

assume all risks arising out of the use of using digital signatures and electronic methods to submit communications to the Trustee and the Notes Collateral Agent, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

Section 18.11. *Severability*. In the event any provision of this Indenture or in the Notes shall be invalid, illegal or unenforceable, then (to the extent permitted by law) the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired.

Section 18.12. *Waiver of Jury Trial*. EACH OF THE COMPANY, EACH SUBSIDIARY GUARANTOR, THE TRUSTEE AND THE NOTES COLLATERAL AGENT HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES, THE NOTES SECURITY DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 18.13. *Force Majeure*. In no event shall the Trustee or the Notes Collateral Agent be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, epidemics, pandemics, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee and the Notes Collateral Agent shall use reasonable efforts that are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

Section 18.14. *Calculations*. The Company shall be responsible for making all calculations called for under this Indenture and the Notes. These calculations include, but are not limited to, determinations of the Last Reported Sale Prices of the Common Stock, the Redemption Price, the Daily VWAPs, the Daily Conversion Values, the Daily Settlement Amounts, any Additional Interest payable on the Notes and the Conversion Rate of the Notes. The Company shall make all these calculations in good faith and, absent manifest error, the Company's calculations shall be final and binding on Holders of Notes, the Trustee and the Conversion Agent (if other than the Trustee). The Company shall provide a schedule of its calculations to each of the Trustee and the Conversion Agent, and each of the Trustee and Conversion Agent is entitled to rely conclusively upon the accuracy of the Company's calculations without independent verification. The Trustee will forward the Company's calculations to any Holder of Notes upon the written request of that Holder at the sole cost and expense of the Company.

Section 18.15. *USA PATRIOT Act*. The parties hereto acknowledge that in accordance with Section 326 of the USA PATRIOT Act, the Trustee, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. The parties to this Indenture agree that they will provide the Trustee with such information as it may request in order for the Trustee to satisfy the requirements of the USA PATRIOT Act.

[*Remainder of page intentionally left blank*]

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed as of the date first written above.

NANTHEALTH, INC., as Company

By /s/ Bob Petrou
Name: Bob Petrou
Title: General Counsel, Chief Financial Officer, Treasurer and Secretary

NaviNet, Inc., as Subsidiary Guarantor

By /s/ Bob Petrou
Name: Bob Petrou
Title: Chief Financial Officer, Treasurer and Secretary

The OpenNMS Group, Inc., as Subsidiary Guarantor

By /s/ Bob Petrou
Name: Bob Petrou
Title: Chief Financial Officer, Treasurer and Secretary

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, as successor in interest to U.S. BANK NATIONAL ASSOCIATION, as Trustee

By /s/ Lauren Costales
Name: Lauren Costales
Title: Vice President

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, as Notes Collateral Agent

By /s/ Lauren Costales
Name: Lauren Costales
Title: Vice President

EXHIBIT A

[FORM OF FACE OF NOTE]

[INCLUDE FOLLOWING LEGEND IF A GLOBAL NOTE]

[UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT HEREUNDER IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]

[INCLUDE FOLLOWING LEGEND IF A RESTRICTED SECURITY (OTHER THAN AN AFFILIATE NOTE)]

[THIS SECURITY AND THE COMMON STOCK, IF ANY, ISSUABLE UPON CONVERSION OF THIS SECURITY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER AGREES FOR THE BENEFIT OF NANTHEALTH, INC. (THE "COMPANY") THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE THAT IS THE LATER OF (X) THE DATE ON WHICH THE SECURITY MAY BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED PURSUANT TO RULE 144 UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THEREUNDER WITHOUT COMPLIANCE WITH ANY CURRENT INFORMATION REQUIREMENT CONTAINED THEREIN AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW, EXCEPT:

(A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, OR

(B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT, OR

(C) WITHIN THE UNITED STATES, TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, OR

(D) OUTSIDE THE UNITED STATES, THROUGH OFFERS AND SALES THAT OCCUR OUTSIDE THE UNITED STATES WITHIN THE MEANING OF REGULATION S UNDER THE SECURITIES ACT, OR

(E) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT OR ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH CLAUSE (E) ABOVE, THE COMPANY AND THE TRUSTEE RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER FOR THE COMPANY TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.]

[INCLUDE FOLLOWING LEGEND IF SECURITY IS AN AFFILIATE NOTE]

[THIS SECURITY AND THE COMMON STOCK, IF ANY, ISSUABLE UPON CONVERSION OF THIS SECURITY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "**SECURITIES ACT**"), AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. BY

ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER AGREES FOR THE BENEFIT OF NANTHEALTH, INC. (THE "**COMPANY**") THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN, EXCEPT:

(A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, OR

(B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT, OR

(C) WITHIN THE UNITED STATES, TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, OR

(D) OUTSIDE THE UNITED STATES, THROUGH OFFERS AND SALES THAT OCCUR OUTSIDE THE UNITED STATES WITHIN THE MEANING OF REGULATION S UNDER THE SECURITIES ACT, OR

(E) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT OR ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH CLAUSE (E) ABOVE, THE COMPANY AND THE TRUSTEE RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER FOR THE COMPANY TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

NO AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF THE COMPANY OR PERSON THAT HAS BEEN AN AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF THE COMPANY DURING THE THREE IMMEDIATELY PRECEDING MONTHS MAY OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR A BENEFICIAL INTEREST HEREIN UNLESS PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT OR PURSUANT TO AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT IN A TRANSACTION THAT RESULTS IN SUCH SECURITY OR COMMON STOCK, AS THE CASE MAY BE, NO LONGER BEING A "RESTRICTED SECURITY" (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT).

NANTHEALTH, INC.

4.50% Convertible Senior Secured Note due 2026

No. [____] [Initially][1] $[_____]

CUSIP No. [_____]

NantHealth, Inc., a corporation duly organized and validly existing under the laws of the State of Delaware (the "**Company**," which term includes any successor corporation or other entity under the Indenture referred to on the reverse hereof), for value received hereby promises to pay to [CEDE & CO.][2][_____][3], or registered assigns, the principal sum [as set forth in the "Schedule of Exchanges of Notes" attached hereto][4] [of $[_____]][5], which amount, taken together with the principal amounts of all other outstanding Notes, shall not, unless permitted by the Indenture, exceed $137,500,000 in aggregate at any time, in accordance with the rules and procedures of the Depositary, on April 15, 2026, and interest thereon as set forth below.

This Note shall bear interest at the rate of 4.50% per year from April 27, 2021, or from the most recent date to which interest had been paid or provided for to, but excluding, the next scheduled Interest Payment Date until April 15, 2026. Interest is payable semi-annually in arrears on each April 15 and October 15, commencing on October 15, 2021, to Holders of record at the close of business on the preceding April 1 and October 1 (whether or not such day is a Business Day), respectively. Accrued interest on this Note shall be computed on the basis of a 360-day year composed of twelve 30-day months and, for partial months, on the basis of the number of days actually elapsed in a 30-day month. Additional Interest will be payable as set forth in Section 4.06(d), Section 4.06(e) and Section 6.03 of the within-mentioned Indenture, and any reference to interest on, or in respect of, any Note therein shall be deemed to include Additional Interest if, in such context, Additional Interest is, was or would be payable pursuant to any of such Section 4.06(d), Section 4.06(e) or Section 6.03, and any express mention of the payment of Additional Interest in any provision therein shall not be construed as excluding Additional Interest in those provisions thereof where such express mention is not made.

Any Defaulted Amounts shall accrue interest per annum at the rate borne by the Notes, subject to the enforceability thereof under applicable law, from, and including, the relevant payment date to, but excluding, the date on which such Defaulted Amounts shall have been paid by the Company, at its election, in accordance with Section 2.03(c) of the Indenture.

The Company shall pay the principal of and interest on this Note, if and so long as such Note is a Global Note, in immediately available funds to the Depositary or its nominee, as the case may be, as the registered Holder of such Note. As provided in and subject to the provisions of the Indenture, the Company shall pay the principal of any Notes (other than Notes that are Global Notes) at the office or agency designated by the Company for that purpose. The Company has initially designated the Trustee as its Paying Agent and Note Registrar in respect of the Notes and its agency in the United States of America as a place where Notes may be presented for payment or for registration of transfer and exchange.

Reference is made to the further provisions of this Note set forth on the reverse hereof, including, without limitation, provisions giving the Holder of this Note the right to convert this Note into cash, shares of Common Stock or a combination of cash and shares of Common Stock, as applicable, on the terms and subject to the limitations set forth in the Indenture. Such further provisions shall for all purposes have the same effect as though fully set forth at this place.

This Note, and any claim, controversy or dispute arising under or related to this Note, shall be construed in accordance with and governed by the laws of the State of New York (without regard to the conflicts of laws provisions thereof).

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[1] Include if a global note.
[2] Include if a global note.
[3] Include if a physical note.
[4] Include if a global note.
[5] Include if a physical note.

In the case of any conflict between this Note and the Indenture, the provisions of the Indenture shall control and govern.

This Note shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been signed manually by the Trustee or a duly authorized authenticating agent under the Indenture.

[*Remainder of page intentionally left blank*]

IN WITNESS WHEREOF, the Company has caused this Note to be duly executed.

NANTHEALTH, INC.

By: __
Name:
Title:

Dated:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION
as Trustee, certifies that this is one of the Notes described in
the within-named Indenture.

By: __
Authorized Signatory

[FORM OF REVERSE OF NOTE]

NANTHEALTH, INC.

4.50% Convertible Senior Secured Note due 2026

This Note is one of a duly authorized issue of Notes of the Company, designated as its 4.50% Convertible Senior Secured Notes due 2026 (the "**Notes**"), initially limited to the aggregate principal amount of $137,500,000 all issued or to be issued under and pursuant to an Indenture dated as of April 27, 2021 (the "**Indenture**"), between the Company, the Subsidiary Guarantors (as defined in the Indenture) and U.S. Bank Trust Company, National Association, as successor in interest to U.S. Bank National Association, as trustee (the "**Trustee**") and U.S. Bank Trust Company, National Association, as collateral agent (the "**Notes Collateral Agent**"), to which Indenture and all indentures supplemental thereto reference is hereby made for a description of the rights, limitations of rights, obligations, duties and immunities thereunder of the Trustee, the Notes Collateral Agent, the Company and the Holders of the Notes. Additional Notes may be issued in an unlimited aggregate principal amount, subject to certain conditions specified in the Indenture. Capitalized terms used in this Note and not defined in this Note shall have the respective meanings set forth in the Indenture. This Note is guaranteed by the Subsidiary Guarantors, as set forth in the Indenture.

In case certain Events of Default shall have occurred and be continuing, the principal of, and interest on, all Notes may be declared, by either the Trustee or Holders of at least 25% in aggregate principal amount of Notes then outstanding, and upon said declaration shall become, due and payable, in the manner, with the effect and subject to the conditions and certain exceptions set forth in the Indenture.

Subject to the terms and conditions of the Indenture, the Company will make all payments and deliveries in respect of the Repurchase Event Repurchase Price on the Repurchase Event Repurchase Date, the Redemption Price on the Redemption Date and the principal amount on the Maturity Date, as the case may be, to the Holder who surrenders a Note to a Paying Agent to collect such payments in respect of the Note. The Company will pay cash amounts in money of the United States that at the time of payment is legal tender for payment of public and private debts.

The Indenture contains provisions permitting the Company and the Trustee in certain circumstances, without the consent of the Holders of the Notes, and in certain other circumstances, with the consent of the Holders of not less than a majority in aggregate principal amount of the Notes at the time outstanding, evidenced as in the Indenture provided, to execute supplemental indentures modifying the terms of the Indenture and the Notes as described therein. It is also provided in the Indenture that, subject to certain exceptions, the Holders of a majority in aggregate principal amount of the Notes at the time outstanding may on behalf of the Holders of all of the Notes waive any past Default or Event of Default under the Indenture and its consequences.

No reference herein to the Indenture and no provision of this Note or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay or deliver, as the case may be, the principal (including the Redemption Price, the Repurchase Event Repurchase Price, if applicable) of, accrued and unpaid interest on, and the consideration due upon conversion of, this Note at the place, at the respective times, at the rate and in the lawful money and/or shares of Common Stock, as the case may be, herein prescribed.

The Notes are issuable in registered form without coupons in denominations of $1,000 principal amount and integral multiples thereof. At the office or agency of the Company referred to on the face hereof, and in the manner and subject to the limitations provided in the Indenture, Notes may be exchanged for a like aggregate principal amount of Notes of other authorized denominations, without payment of any service charge but, if required by the Company or Trustee, with payment of a sum sufficient to cover any transfer or similar tax that may be imposed in connection therewith as a result of the name of the Holder of the new Notes issued upon such exchange of Notes being different from the name of the Holder of the old Notes surrendered for such exchange.

The Notes shall be redeemable at the Company's option on or after April 20, 2024, in accordance with the terms and subject to the conditions specified in the Indenture. No sinking fund is provided for the Notes. Upon the occurrence of a Repurchase Event, the Holder has the right, at such Holder's option, to require the Company to repurchase for cash all of such Holder's Notes or any portion thereof (in principal amounts of $1,000 or integral multiples thereof) on the Repurchase Event Repurchase Date at a price equal to the Repurchase Event Repurchase Price.

Subject to the provisions of the Indenture, the Holder hereof has the right, at its option, during certain periods and upon the occurrence of certain conditions specified in the Indenture, prior to the close of business on the Business Day immediately preceding the Maturity Date, to convert any Notes or portion thereof that is $1,000 or an integral multiple thereof, into cash, shares of Common Stock or a combination of cash and shares of Common Stock, as applicable, at the Conversion Rate specified in the Indenture, as adjusted from time to time as provided in the Indenture.

The Notes and the Subsidiary Guarantees will be secured by the Collateral on the terms and subject to the conditions set forth in the Indenture and the Notes Security Documents. The Notes Collateral Agent holds a security interest in the Collateral for the benefit of itself, the Trustee and the Holders, in each case pursuant to the Notes Security Documents and the Intercreditor Agreement. Each Holder, by accepting this Note, consents and agrees to the terms of the Notes Security Documents (including the provisions providing for the foreclosure and release of Collateral) and the Intercreditor Agreement, each as may be in effect or may be amended from time to time in accordance with their terms.

Terms used in this Note and defined in the Indenture are used herein as therein defined.

ABBREVIATIONS

The following abbreviations, when used in the inscription of the face of this Note, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM = as tenants in common

UNIF GIFT MIN ACT = Uniform Gifts to Minors Act

CUST = Custodian

TEN ENT = as tenants by the entireties

JT TEN = joint tenants with right of survivorship and not as tenants in common

Additional abbreviations may also be used though not in the above list.

SCHEDULE A[6]

SCHEDULE OF EXCHANGES OF NOTES

NANTHEALTH, INC.

4.50% Convertible Senior Secured Notes due 2026

The initial principal amount of this Global Note is _____ DOLLARS ($[_____]). The following increases or decreases in this Global Note have been made:

Date of exchange	Amount of decrease in principal amount of this Global Note	Amount of increase in principal amount of this Global Note	Principal amount of this Global Note following such decrease or increase	Signature of authorized signatory of Trustee or Custodian

[6] Include if a global note.

ATTACHMENT 1

[FORM OF NOTICE OF CONVERSION]

NANTHEALTH, INC.

4.50% Convertible Senior Secured Notes due 2026

To: U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION
633 West 5th Street, 24th Floor
Los Angeles, CA 90071

Attention: L. Costales (NantHealth, Inc. 4.50% Convertible Senior Secured Notes due 2026)

The undersigned registered owner of this Note hereby exercises the option to convert this Note, or the portion hereof (that is $1,000 principal amount or an integral multiple thereof) below designated, into cash, shares of Common Stock or a combination of cash and shares of Common Stock, as applicable, in accordance with the terms of the Indenture referred to in this Note, and directs that any cash payable and any shares of Common Stock issuable and deliverable upon such conversion, together with any cash for any fractional share, and any Notes representing any unconverted principal amount hereof, be issued and delivered to the registered Holder hereof unless a different name has been indicated below. If any shares of Common Stock or any portion of this Note not converted are to be issued in the name of a Person other than the undersigned, the undersigned will pay all documentary, stamp or similar issue or transfer taxes, if any in accordance with Section 14.02(d) and Section 14.02(e) of the Indenture. Any amount required to be paid to the undersigned on account of interest accompanies this Note. Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Indenture.

The undersigned hereby represents and warrants that the undersigned has full power and authority to execute this document and take all action in connection with this Note required hereby.

Dated:

Signature(s)

Signature Guarantee

Signature(s) must be guaranteed

by an eligible Guarantor Institution (banks, stock brokers, savings and loan associations and credit unions) with membership in an approved signature guarantee medallion program pursuant to Securities and Exchange Commission Rule 17Ad-15 if shares of Common Stock are to be issued, or Notes are to be delivered, other than to and in the name of the registered holder.

Fill in for registration of shares if to be issued, and Notes if to be delivered, other than to and in the name of the registered holder:

(Name)

(Street Address)

(City, State and Zip Code)
Please print name and address

Principal amount to be converted (if less than all):

$_____,000

NOTICE: The above signature(s) of the Holder(s) hereof must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

Social Security or Other Taxpayer

Identification Number

ATTACHMENT 2

[FORM OF REPURCHASE EVENT REPURCHASE NOTICE]

NANTHEALTH, INC.

4.50% Convertible Senior Secured Notes due 2026

To: U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION
633 West 5th Street, 24th Floor
Los Angeles, CA 9007

Attention: L. Costales (NantHealth, Inc. 4.50% Convertible Senior Secured Notes due 2026

The undersigned registered owner of this Note hereby acknowledges receipt of a notice from NantHealth, Inc. (the "**Company**") as to the occurrence of a Repurchase Event with respect to the Company and specifying the Repurchase Event Repurchase Date and requests and instructs the Company to pay to the registered holder hereof in accordance with Section 15.02 of the Indenture referred to in this Note (a) the entire principal amount of this Note, or the portion thereof (that is $1,000 principal amount or an integral multiple thereof) below designated, and (b) if such Repurchase Event Repurchase Date does not fall during the period after a Regular Record Date and on or prior to the corresponding Interest Payment Date, accrued and unpaid interest, if any, thereon to, but excluding, such Repurchase Event Repurchase Date. Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Indenture.

The undersigned hereby represents and warrants that the undersigned has full power and authority to execute this document and take all action in connection with this Note required hereby.

In the case of Physical Notes, the certificate numbers of the Notes to be repurchased are as set forth below:

Dated: __ __

__

Signature(s)

__

Social Security or Other Taxpayer

Identification Number

Principal amount to be repaid (if less than all):

$_____,000

NOTICE: The above signature(s) of the Holder(s) hereof must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

ATTACHMENT 3

[FORM OF ASSIGNMENT AND TRANSFER]

NANTHEALTH, INC.

4.50% Convertible Senior Secured Notes due 2026

For value received _____ hereby sell(s), assign(s) and transfer(s) unto _____ (Please insert social security or Taxpayer Identification Number of assignee) the within Note, and hereby irrevocably constitutes and appoints _____ attorney to transfer the said Note on the books of the Company, with full power of substitution in the premises.

In connection with any transfer of the within Note occurring prior to the Resale Restriction Termination Date, as defined in the Indenture governing such Note, the undersigned confirms that such Note is being transferred:

To NantHealth, Inc. or a subsidiary thereof; or

Pursuant to a registration statement that has become or been declared effective under the Securities Act of 1933, as amended; or

Within the United States, pursuant to and in compliance with Rule 144A under the Securities Act of 1933, as amended; or

Outside the United States, through offers and sales that occur outside the United States within the meaning of Regulation S under the Securities Act of 1933, as amended; or

Pursuant to and in compliance with Rule 144 under the Securities Act of 1933, as amended, or any other available exemption from the registration requirements of the Securities Act of 1933, as amended.

The undersigned hereby represents and warrants that the undersigned has full power and authority to execute this document and take all action in connection with this Note required hereby.

Dated: __

__

__
Signature(s)

__
Signature Guarantee

Signature(s) must be guaranteed by an eligible Guarantor Institution (banks, stock brokers, savings and loan associations and credit unions) with membership in an approved signature guarantee medallion program pursuant to Securities and Exchange Commission Rule 17Ad-15 if Notes are to be delivered, other than to and in the name of the registered holder.

NOTICE: The signature on the assignment must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

EXHIBIT B

[FORM OF SUPPLEMENTAL INDENTURE]

[_____] SUPPLEMENTAL INDENTURE (this "Supplemental Indenture"), dated as of [____], among NantHealth, Inc., a Delaware corporation (the "Company"), [____] (the "New Subsidiary Guarantor"), U.S. Bank Trust Company, National Association, a national banking association, as successor in interest to U.S. Bank National Association, as trustee under the indenture referred to below (the "Trustee") and U.S. Bank Trust Company, National Association, a national banking association, as collateral agent under the indenture referred to below (the "Notes Collateral Agent").

WITNESSETH:

WHEREAS the Company, the Trustee and the Notes Collateral Agent have heretofore executed an indenture, dated as of April 27, 2021 (as amended, supplemented or otherwise modified, the "Indenture"), providing for the issuance of the Company's 4.50% Convertible Senior Secured Notes due 2026 (the "Notes"), initially in the aggregate principal amount of $137,500,000;

WHEREAS Section 4.24 of the Indenture provides that under certain circumstances the Company is required to cause the New Subsidiary Guarantor to execute and deliver to the Trustee and the Notes Collateral Agent a supplemental indenture pursuant to which the New Subsidiary Guarantor shall unconditionally guarantee all the Company's obligations under the Notes and the Indenture pursuant to a Subsidiary Guarantee on the terms and conditions set forth herein; and WHEREAS pursuant to Section 10.01 of the Indenture, the Trustee, the Notes Collateral Agent and the Company are authorized to execute and deliver this Supplemental Indenture, without the consent of any Holder of the Notes.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the New Subsidiary Guarantor, the Company and the Trustee mutually covenant and agree for the equal and ratable benefit of the holders of the Notes as follows:

1. Defined Terms. As used in this Supplemental Indenture, terms defined in the Indenture or in the preamble or recital hereto are used herein as therein defined, except that the term "Holders" in this Supplemental Indenture shall refer to the term "Holders" as defined in the Indenture and the Trustee acting on behalf of and for the benefit of such Holders. The words "herein," "hereof" and "hereby" and other words of similar import used in this Supplemental Indenture refer to this Supplemental Indenture as a whole and not to any particular Section hereof.

2. Agreement to Guarantee. The New Subsidiary Guarantor hereby agrees, jointly and severally with all existing Subsidiary Guarantors (if any), to unconditionally guarantee the Company's Obligations under the Notes and the Indenture on the terms and subject to the conditions set forth in ARTICLE 13 of the Indenture and to be bound by all other applicable provisions of the Indenture and the Notes and to perform all of the obligations and agreements of a Subsidiary Guarantor under the Indenture.

3. Notices. All notices or other communications to the New Subsidiary Guarantor shall be given as provided in Section 18.03 of the Indenture.

4. Ratification of Indenture; Supplemental Indentures Part of Indenture. Except as expressly amended hereby, the Indenture is in all respects ratified and confirmed and all the terms, conditions and provisions thereof shall remain in full force and effect. This Supplemental Indenture shall form a part of the Indenture for all purposes, and every holder of Notes heretofore or hereafter authenticated and delivered shall be bound hereby.

5. Governing Law. **THIS SUPPLEMENTAL INDENTURE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.**

6. Trustee and Notes Collateral Agent Make No Representation. The recitals herein contained are made by the Company and not by the Trustee or Notes Collateral Agent, and the Trustee and the Notes Collateral Agent assume no responsibility for the correctness thereof. The Trustee and the Notes Collateral Agent make no representation as to the validity or sufficiency of this Supplemental Indenture.

7. Counterparts. The parties may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

8. Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction thereof.

[*Remainder of page intentionally left blank*.]

IN WITNESS WHEREOF, the parties have caused this Supplemental Indenture to be duly executed as of the date first written above.

NantHealth, Inc.,

as Company

By: __
Name:
Title:

[__],
as New Subsidiary Guarantor

By: __
Name:
Title:

U.S. Bank Trust Company, National Association, as Trustee

By: __
Name:
Title:

U.S. Bank Trust Company, National Association, as Notes Collateral Agent By:

By: __
Name:
Title:

Exhibit 31.1

CERTIFICATION OF CHIEF EXECUTIVE OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Patrick Soon-Shiong, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of NantHealth, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 21, 2023

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

Exhibit 31.2

CERTIFICATION OF CHIEF FINANCIAL OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Bob Petrou, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of NantHealth, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 21, 2023

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

Exhibit 32.1

CERTIFICATION OF CHIEF EXECUTIVE OFFICER
PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

I, Patrick Soon-Shiong, the chief executive officer of NantHealth, Inc. (the “Company”), certify for purposes of 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

(i) the Company’s Quarterly Report on Form 10-Q for the quarter ended June 30, 2023 (the “Report”), fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and

(ii) that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: August 21, 2023

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

This certification accompanies the Quarterly Report on Form 10-Q to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of the Company under the Securities Act of 1933, as amended, or the Exchange Act (whether made before or after the date of the Form 10-Q), irrespective of any general incorporation language contained in such filing.

Exhibit 32.2

CERTIFICATION OF CHIEF FINANCIAL OFFICER
PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

I, Bob Petrou, the chief financial officer of NantHealth, Inc. (the “Company”), certify for purposes of 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

(i) the Company’s Quarterly Report on Form 10-Q for the quarter ended June 30, 2023 (the “Report”), fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and

(ii) that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: August 21, 2023

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

This certification accompanies the Quarterly Report on Form 10-Q to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of the Company under the Securities Act of 1933, as amended, or the Exchange Act (whether made before or after the date of the Form 10-Q), irrespective of any general incorporation language contained in such filing.